

## DOCKETED

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Before the Energy Resources Conservation and Development  
Commission of the State of California

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, JULY 27, 2017

9:04 A.M.

Reported by:  
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James Caldwell  
Andrew Gray

California Coastal Commission  
Jonna Engel

United State Geological Survey  
Li Erikson

ALSO PRESENT

Jordan Pinjuv, California Independent System Operator

PUBLIC COMMENT

Mark Spellman  
Nancy Lindholm  
Daniel Chavez, Jr.  
Mike Stubblefield

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P R O C E E D I N G S

JULY 27, 2017 9:04 A.M.

COMMISSIONER SCOTT: Okay. Good morning, everyone.  
We're going to go ahead and get started. So please come on up  
to your seats, and we will get going.

Welcome to day two of the Puente Power Project  
Evidentiary Hearings. I am Commissioner Janea Scott. I'm the  
presiding member over this proceeding. Two folks over to my  
right is Commissioner Karen Douglas. She's the associate  
member on this proceeding. Sitting right next to me on my  
right is Hearing Officer Paul Kramer. To my left are my  
advisors, Rhetta deMesa and Matt Coldwell, and to  
Commissioner Douglas' right are her two advisors, Jennifer  
Nelson and Le-Quyen Nguyen. We're also joined by Kristy Chew,  
the Commissioner's technical advisor on siting matters, and  
she's back there manning our Spanish WebEx.

I would now like to ask the parties to introduce  
themselves, starting with the Applicant.

MR. CARROLL: Good morning. Mike Carroll, with  
Latham and Watkins, on behalf of the Applicant. On my right  
is Dawn Gleiter, the Director for the Puente Power Project  
with NRG Energy. On my immediate left is George Piantka,  
Director of Environmental for NRG Energy, and on his left is  
my associate Cal Leslie (phonetic).

COMMISSIONER SCOTT: Good morning. And I'll now turn

1 to the Energy Commission staff.

2 MS. WILLIS: Good morning. Kerry Willis, Staff  
3 Counsel, and with me is also Michelle Chester, who we're  
4 representing Staff, and Ron Payne, our budget manager.

5 COMMISSIONER SCOTT: Good morning. Now I'll turn to  
6 the intervenors, starting with the City of Oxnard.

7 MS. FOLK: Good morning. Ellison Folk on behalf of  
8 the City of Oxnard.

9 COMMISSIONER SCOTT: Good morning. And Environmental  
10 Coalition, Environmental Defense Center, and Sierra Club?

11 MS. ROESSLER: Hi. This is Alicia Roessler from  
12 Environmental Defense Center.

13 COMMISSIONER SCOTT: Good morning.

14 MS. SEEL: Good morning. This is Alison Seel with  
15 the Sierra Club.

16 COMMISSIONER SCOTT: Okay. Good morning.

17 Do we have Intervenor Bob Sarvey on the line? I do  
18 not see him in the room? If you're on the WebEx, Bob Sarvey,  
19 please say hello and introduce yourself. Everyone is unmuted.  
20 So if you are there, please speak up and introduce yourself.

21 DR. ERIKSON: Hello. This is Li Erikson with USGS.

22 COMMISSIONER SCOTT: Good morning. We're just going  
23 through our introductions right now. I'm looking for  
24 Intervenor Bob Sarvey to speak up and introduce himself if he  
25 is there on the phone. Sounds like not.

1                   Do we have the California Environmental Justice  
2 Alliance?

3                   MS. LAZEROW: Yes. Hello. Good morning. This is  
4 Shana Lazerow on behalf of the California Environmental  
5 Justice Alliance.

6                   COMMISSIONER SCOTT: Good morning. How about Center  
7 for Biological Diversity?

8                   MS. BELENKY: Yes. Good morning. This is Lisa  
9 Belenky on behalf of the Center for Biological Diversity.

10                  COMMISSIONER SCOTT: Good morning, Lisa.

11                  Do we have Fighting for Informed Environmentally  
12 Responsible Clean Energy? Doctor Chang, if you are on the  
13 line, please speak up and introduce yourself. Okay.

14                  Next let's check in, do we have anyone from the  
15 California Independent System Operator?

16                  MR. PINJUV: Yes. Good morning. Jordan Pinjuv from  
17 the California ISO.

18                  COMMISSIONER SCOTT: Good morning, Jordan.

19                  How about from the California Coastal Commission?  
20 Everyone's unmuted. So if you're from the California Coastal  
21 Commission, please go ahead and speak up.

22                  Okay. And now to the USGS. I think I heard Doctor  
23 Erikson. Are you still there?

24                  DR. ERIKSON: Yes, that's correct. Sorry. This is  
25 Lee Erikson, Doctor Erikson, yes, on behalf of Patrick



1 Barnard at USGS.

2 COMMISSIONER SCOTT: Good morning. And do you have  
3 any of your colleagues with you?

4 DR. ERIKSON: No, I do not this morning, and I am  
5 only here for an hour.

6 COMMISSIONER SCOTT: Okay. Great. Good morning.

7 Do I have anyone from the State or Federal Wildlife  
8 agencies? If you are from one of the State or Federal  
9 Wildlife agencies, please go ahead and introduce yourself.

10 Okay. Hearing none, let me check to see whether or  
11 not we have any other federal, state, or local officials who  
12 would like to introduce themselves. If so, please go ahead. I  
13 don't see any in the room. So if there are any on the WebEx,  
14 please go ahead and introduce yourself.

15 Okay. Hearing none, I would also like to introduce  
16 to you all our public advisor, Alana Matthews. She is waving  
17 to you from the yellow table over to my right. If you are a  
18 member of the public and would like to make a comment, Ms.  
19 Matthews can help you with our process and make sure you get  
20 a blue card so that we know you'd like to comment on today's  
21 proceeding.

22 And, with that, I will turn the conduct of today's  
23 hearing over to our Hearing Officer, Paul Kramer.

24 HEARING OFFICER KRAMER: Okay. I don't know if  
25 anyone has noticed that Mr. Carroll filed and passed around

1 to some of us at least copies of a new motion to strike  
2 portions of the Exhibit 4039 from the Environmental Defense  
3 Sierra Club group. So we'll have to discuss that in a moment.

4 And then do the parties have any other items of  
5 business they want to bring up before we get into the -- into  
6 the substance of today's -- I know Ms. Folk told me she had a  
7 couple of additional questions for USGS. So I want to get to  
8 that right away before Doctor Erikson leaves, but anything  
9 else that I should put on my radar screen?

10 Okay. So hearing nothing, so then let's -- for  
11 Doctor Erikson's convenience and a little token of thanks for  
12 all the time they put in with us yesterday, let's -- Ms.  
13 Folk, if you want to ask your questions of USGS, go ahead.

14 MS. FOLK: Sure. And it would help if we could pull  
15 up Doctor Revell's presentation from yesterday and go to that  
16 -- the pink slide which says -- I can't remember what page  
17 number it is. I have to just pull it up here.

18 HEARING OFFICER KRAMER: That may be the --

19 MS. FOLK: It was the PowerPoint.

20 HEARING OFFICER KRAMER: Right. Let me pull that  
21 down from the website. Give me a second. It's the one that I  
22 will be assigning an exhibit number to later today, but the  
23 TN number is 220366.

24 MS. FOLK: So one thing I should say is we did have  
25 a -- an exhibit that we're docketing right now based on the

1 run-off elevations that were provided in the USGS report as  
2 well as based on their modeling tool that was just published.  
3 It's just something that Doctor Revell put together, and he  
4 can't be on the line until 10:30. So I don't know if you want  
5 to do this at 10:30.

6 HEARING OFFICER KRAMER: Well, you -- so you want to  
7 show this to Doctor Erikson, who needs to leave by 10:00,  
8 maybe 10:15.

9 MS. FOLK: Okay.

10 HEARING OFFICER KRAMER: And then -- but then wait  
11 until Doctor Revell is available. It sounds like that's an  
12 impossibility.

13 MS. FOLK: Yeah. I mean, we could -- I don't have to  
14 show this to her. We can just have Doctor Revell say what it  
15 is. The question I had really was for USGS on the -- what  
16 slide is it -- Slide 18.

17 HEARING OFFICER KRAMER: And it may be that the  
18 other parties want to have a little time to look at this  
19 document before it's discussed as well.

20 UNIDENTIFIED SPEAKER: Mr. Kramer, could you speak  
21 up, please. I'm just having a hard time --

22 HEARING OFFICER KRAMER: Sure. I'll set an example  
23 for Ms. Folk. And later we'll start a club. We'll meet  
24 weekly, and we will work on projecting our voices.

25 Okay. So -- okay. Here's the slide. Go ahead.

1 MS. FOLK: Okay. Do, Doctor Erikson, I just wanted  
2 to follow up on something you said at the end of the  
3 testimony yesterday about how the CoSMoS Model works and why  
4 the slides here might show different inundation expense. So  
5 in -- in the first slide, for example, you see sort of the  
6 southern portion where you have the mark dune erosion at 30  
7 feet, you see flooding inundation, and then in the second  
8 one, even though there's been sea level rise, there's not  
9 flooding, and I believe you testified that was because the  
10 model evolves the dune. I think it would be called the DEM.  
11 It's the Digital Elevation Model, is that right?

12 It looks like she's trying to speak.

13 HEARING OFFICER KRAMER: Hold on second. I have to  
14 switch screens. Jeremy, I'm going to give control to you so  
15 you can be the muter and the unmuter. Okay. You should have  
16 control now. I see Doctor Erikson doesn't appear to be muted.

17 DR. ERIKSON: Hello.

18 HEARING OFFICER KRAMER: Okay. Now we hear you. Go  
19 ahead.

20 DR. ERIKSON: Okay. Still can hear me?

21 HEARING OFFICER KRAMER: Yes.

22 DR. ERIKSON: Yes. Okay. Yes, that's correct. That  
23 bottom portion would be for the future sea level, two-year  
24 sea level rise there. The dune migrated landward. So and  
25 that's on migration that occurs landward, and that's why it

1 appears as not flooded in that larger sea level.

2 MS. FOLK: Okay. And then when you look at the  
3 actual -- the MGS site, which is the currently developed  
4 site, are the dunes allowed to migrate landward on that site?

5 DR. ERIKSON: No, because there's hard structures.  
6 So there's a so-called squeeze. So the dunes go up against  
7 the structures, and that erodes away.

8 MS. FOLK: Okay. And then --

9 DR. ERIKSON: So they don't offer protection.

10 MS. FOLK: Right. Okay. And then if we move up to  
11 where the proposed project site is, right now does the model  
12 assume that that site is undeveloped and, therefore, the  
13 dunes can migrate landward?

14 DR. ERIKSON: Yes.

15 MS. FOLK: If that site were developed, would the  
16 dunes migrate landward under the model?

17 DR. ERIKSON: If it -- if it were developed, it  
18 would be the same story. If there's an infrastructure there,  
19 then the dunes would be inhibited to migrate, and they would  
20 erode and not offer protection anymore in this case.

21 MS. FOLK: Okay. Just as it's shown on the MGS site?

22 DR. ERIKSON: Yes.

23 MS. FOLK: Okay. Thank you.

24 HEARING OFFICER KRAMER: Any follow-up from anyone  
25 else?

1 MR. CARROLL: No.

2 HEARING OFFICER KRAMER: Okay. Then --

3 MR. CARROLL: I will -- I guess I'm not clear on now  
4 how we're planning to handle the new exhibit that's been  
5 proposed, and I will say that it's unlikely that I'm not  
6 going to have objections to that regardless of how we're  
7 planning to handle it, because we did close out that topic  
8 yesterday because we were able to get the answer to the  
9 question on the pink slide earlier than we thought, and we --  
10 there was an opportunity for follow-up questions for USGS  
11 this morning, but I believe you did close out that topic, and  
12 now we have a brand new exhibit. We have -- our witnesses are  
13 gone. I have no opportunity to show this to them, discuss  
14 this with them. So, like I said, I haven't -- I don't  
15 understand exactly what the proposal was, but I can't imagine  
16 a proposal that's not going to be objectionable.

17 HEARING OFFICER KRAMER: I think we were all under  
18 the impression that we had completed soil and water --

19 MS. FOLK: Part of the problem was that we were --  
20 we did get the USGS presentation at 11:45 the night before,  
21 and then we were looking at -- and we didn't even get to see  
22 it until, you know, while they were going through it, and so  
23 I guess I'd just ask one more question about the model, and I  
24 would like to docket the exhibit.

25 MR. CARROLL: I object to the docketing of the

1 exhibit, and I'd object to any question that refers to the  
2 exhibit, proposed exhibit.

3 MS. FOLK: I'll just ask one question, Doctor  
4 Erikson, about the -- the wave runup calculations. Do they  
5 make the same assumptions about dune erosion that we just  
6 discussed?

7 DR. ERIKSON: The wave runup calculations are done  
8 on the evolved profile.

9 MS. FOLK: So --

10 DR. ERIKSON: Yes.

11 MS. FOLK: So if the site were developed, then the  
12 dunes would erode, is that correct?

13 DR. ERIKSON: Yeah, the dune is first migrated with  
14 that long-term change, which if it's a developed site, then  
15 it was eroded, and then the runup calculations -- dynamic  
16 runup calculations are computed with the X Beach Model.

17 MS. FOLK: But -- and currently if an area's not  
18 developed, you allow the dunes to migrate inward, but if the  
19 site is developed, the dunes erode?

20 MR. CARROLL: I'm going to ask for a little --

21 DR. ERIKSON: Yes.

22 MR. CARROLL: -- under what circumstances?

23 DR. ERIKSON: Well, they migrate if there's no  
24 structures inhibiting their migration.

25 MS. FOLK: If no structure is inhibiting it, is that

1 correct?

2 DR. ERIKSON: Yeah, yeah. And also there can be  
3 instances where the -- the natural system is shown to -- to  
4 erode the dune partially as well. It is also dependent on the  
5 -- somewhat on the slope and the vegetation that's there as  
6 well.

7 MS. FOLK: So the dune could erode under natural  
8 conditions as well?

9 DR. ERIKSON: It could, but more likely it will  
10 migrate.

11 MS. FOLK: Migrate inward?

12 DR. ERIKSON: More often than not, yes.

13 MS. FOLK: But I just want to verify again that the  
14 model currently assumes that the Puente site, where the  
15 project would be located, is undeveloped and, therefore, the  
16 dunes migrate landward?

17 DR. ERIKSON: I think so. I'd have to double-check  
18 to see our non-erodable line that is in the model, if that is  
19 right in front of the proposed site. I would have to double-  
20 check on that.

21 MS. FOLK: Okay. I believe you testified earlier  
22 that the model currently assumes it's undeveloped.

23 DR. ERIKSON: Okay.

24 HEARING OFFICER KRAMER: Okay. Well, then let's --

25 MR. CARROLL: May I ask one follow-up question?



1 HEARING OFFICER KRAMER: Sure.

2 MR. CARROLL: This is Mike Carroll for the  
3 Applicant. Is it correct that what you've just said about  
4 possible future scenarios that in all of those cases the  
5 model would continue to assume no replenishment?

6 DR. ERIKSON: No replenishment, yes, correct.  
7 There's no actual beach nourishment modeling yet.

8 MR. CARROLL: Okay. So any beach nourishment that  
9 might be occurring, in fact, would not be occurring, in fact,  
10 would not be reflected in the results of the modeling?

11 DR. ERIKSON: Right.

12 MR. CARROLL: Thank you.

13 HEARING OFFICER KRAMER: Okay. I see that the -- the  
14 document that Ms. Folk referred to is in the docket now. It's  
15 TN220420. It's just two aerial photos with -- maybe three --  
16 with lines and dots overlaid on them with no explanation. So  
17 it would require Dr. Revell to -- to explain, I suppose, what  
18 it means, and given the nature of it and that we -- all the  
19 time we spent exhausting this issue yesterday, we're not  
20 going to -- we're not going to have another discussion of yet  
21 an additional round of -- of evidence on this particular  
22 topic. So it remains in the docket, but we're not going to  
23 admit it as an exhibit.

24 So, with that, let's move to Mr. Carroll's  
25 motion to -- the title says to strike Exhibit 4038.

1           MR. CARROLL: Okay. And I apologize. There is an  
2 error in the title. The text in the body of the document is  
3 correct. So it's proposed Exhibit -- EDC's proposed Exhibit  
4 4039, the supplemental testimony of Lawrence H. Hunt. It's  
5 TN215434.

6           The -- the motion is very short. The basis of the  
7 motion is that yesterday counsel for EDC made a motion to  
8 strike portions of Petitioner's Biological Resources Survey  
9 Report, which is Petitioner's proposed Exhibit 1148. The  
10 subject portions related to designation of certain portions  
11 -- designation or not of certain portions of the site as a  
12 wetland. The argument was that designation of wetlands was  
13 not something that was within the scope of the March 10th  
14 order and, therefore, those issues were not appropriate for  
15 either written or oral testimony in the context of these  
16 proceedings. I agreed, so I did not object to the motion. It  
17 was granted. We agreed to provide a revised document. I did  
18 not produce a wetland because, as it turns out, the changes  
19 are very simple. There's one section in one appendix that  
20 needs to come out. And so when it comes time to move that  
21 document into evidence, I will exclude that section and that  
22 appendix from the document.

23           With that position having been taken and that  
24 action having been taken, this motion, based on that standard  
25 of admissibility, seeks to strike the similar provisions from

1 Mr. Hunt's testimony. So, as was the case with Ms. Love's  
2 testimony, Mr. Hunt's testimony also has discussion of  
3 designating certain areas within the site as wetlands and  
4 certain areas within the site as ESHA. It's -- it's the exact  
5 same analysis that was in Ms. Love's declaration that EDC  
6 objected to. It was inclusions of the expert regarding  
7 certain designations based on the results of the biological  
8 surveys. Mr. Hunt has asserted certain designations, those  
9 being wetlands and ESHA based on the results of the  
10 biological survey. So, applying the standard that was  
11 articulated yesterday by EDC, we seek to strike those  
12 sections of Mr. Hunt's testimony. We've identified those on  
13 Page 2 of the motion. It's very discrete sections, and  
14 therefore, like the Love declaration, relatively easy to  
15 identify the sections that are subject of the motion, and we  
16 would ask that those sections be stricken from the proposed  
17 exhibit.

18 Thank you.

19 HEARING OFFICER KRAMER: Okay. First of all, this --  
20 let's see, I think you've -- you may have gotten the TN  
21 number from Ms. Roessler's --

22 MR. CARROLL: You're right.

23 HEARING OFFICER KRAMER: -- exhibit list, and that's  
24 the wrong one.

25 MR. CARROLL: You're right. I did. I'm sorry. It's -

1 -

2 HEARING OFFICER KRAMER: And, so, actually, it is  
3 4038. That is the correct exhibit number.

4 MR. CARROLL: Right. So it is Exhibit Number 4038,  
5 TN Number 220216.

6 HEARING OFFICER KRAMER: Right. That's what I see,  
7 because the 4039 are those photos of the --

8 MR. CARROLL: That's right.

9 HEARING OFFICER KRAMER: -- you might say alleged  
10 legless lizard, but, anyway -- okay. So we're talking about  
11 4038, 220216.

12 Ms. Roessler?

13 MS. ROESSLER: Yes. Let me get this a little closer.  
14 Thank you.

15 First of all, Applicant misstates the oral motion  
16 that I made yesterday and the basis for it. The oral motion  
17 to strike I asked for yesterday was related specifically to  
18 -- to a section in their Biological Survey Report that was  
19 not based on new biological surveys or any new information.  
20 It was in there as a reanalysis of the two-acre wetland, and  
21 that's it. It had nothing to do with the survey results at  
22 all, which by far exceeded the scope of the March 10 orders.  
23 And, as I understand, then Applicant agreed to take that out.

24 I don't have objections to the sections of  
25 Applicant's -- on Julie Love's testimony that the Applicant

1 wants to take out, that's fine, as it relates -- because it's  
2 purely Ms. Love did a new delineation that is not based on  
3 any new information.

4           So in terms of the information and areas in the  
5 standard that was misstated in trying to exclude our evidence  
6 in Mr. Hunt's declaration, I'll say first part of the section  
7 that he wants to strike -- and pardon me, I just got this a  
8 few minutes before this started, but in one of the sections  
9 Mr. Hunt analyzes new information based on a wetland obligate  
10 plant species that was identified in the report that was not  
11 previously identified in any other prior source. So that's  
12 one information that should not be struck because it is based  
13 on new information from the Biological Survey Reports.

14           Second, in regards to ESHA, first of all, the whole  
15 point of these studies to identify rare species is to get to  
16 the point where they're not -- there are additional concerns  
17 on the project site. So to restrict an expert's conclusions  
18 on what those -- what this new information means is --  
19 unreasonably restricts intervenor's testimony and evidence.  
20 It doesn't get to any -- to put the new evidence into  
21 context. It does not go beyond the scope of the March 10  
22 orders in any way. It analyzes the new evidence that was  
23 presented in the survey. It's only new information, and the  
24 expert's analysis is useful and exactly on point as to  
25 whether that new information has a new meaningful impact on

1 the site. Otherwise, what would be the point of gathering all  
2 of this new information and data if we're not allowed to  
3 analyze it and apply it to the project and assess whether or  
4 not there are new impacts. That is why we have expert  
5 testimony. I cannot imagine any circumstances where our  
6 expert conclusions regarding what the new studies mean in  
7 terms of their new findings for rare and sensitive species  
8 could possibly be excluded.

9 HEARING OFFICER KRAMER: Anyone else on this topic?

10 MR. CARROLL: May I have an opportunity to reply?

11 HEARING OFFICER KRAMER: Yes. Go ahead.

12 MR. CARROLL: With respect to the first point, it is  
13 not the case that the wetland discussion in Ms. Love's  
14 declaration or in the Biological Resources Survey Report that  
15 was Appendix B to Ms. Love's declaration was not based on new  
16 information. That was based on information that Doctor Engel  
17 at the California Coastal Commission reported to Ms. Watson  
18 of the California Energy Commission as a result of her site  
19 visit to observe the survey results. So it was new  
20 information provided in the course of the survey results that  
21 led to the reanalysis of the wetland on site. So it was new  
22 information that came out of the surveys that led to that  
23 conclusion.

24 MS. ROESSLER: Can you be specific which wetland,  
25 because there's the two-acre wetland. I believe you're

1 talking about the .52 acre dune swale wetland. That's what  
2 Ms. Engel, I'm sorry, had discussed. I'm talking about Julie  
3 Love's testimony in her report pertaining to the two-acre  
4 wetland, where she took that two-acre wetland delineation and  
5 recalculated it. That's what -- I just want to make sure that  
6 we're clear on which wetland.

7 MR. CARROLL: So I am -- I am referring to the -- to  
8 the two-acre wetland. So Ms. -- Ms. Engel, if you look at the  
9 record of conversation between Ms. Engel and Ms. Watson,  
10 there were two issues addressed. The first issue related to  
11 the dune swale wetland. That was -- I don't know how best to  
12 describe it, but it was --

13 MS. ROESSLER: Which point in that -- I have the  
14 record of conversation.

15 MR. CARROLL: Okay.

16 MS. ROESSLER: Can you -- there seem to be five  
17 points. Which point are you referring to?

18 MR. CARROLL: Sure. I am referring to -- well, let  
19 me do it -- let me do it this way. I think it's easier if we  
20 look at the section of the report that we've agreed to  
21 strike. So if you look at the Biological Resources Survey  
22 Report --

23 MS. ROESSLER: I think you're referring to number  
24 one in the record of conversation. That's the only one that  
25 discussed the coyote brush scrub.

1           MR. CARROLL: Well, there -- I'm actually referring  
2 to two. There were two points raised by Ms. Engel in the  
3 course of the biological resources surveys. One was the --  
4 the point that related to the dune swale wetland issue, and I  
5 believe that there was a dune swale wetland. The other was  
6 with respect to the -- looking for the terminology -- the  
7 change in status, the wetland indicator status of slender-  
8 leaf ice plant.

9           MS. ROESSLER: Where is that documented anywhere?

10          MR. CARROLL: It's in 3.7.2 of the Biological  
11 Resources Survey. But in both cases new information arose  
12 during the course of the Biological Resources Survey that led  
13 to a reassessment of both of the alleged wetlands, the dune  
14 swale wetland and the one parameter Coastal Commission  
15 wetland.

16          We understood your motion to be to strike all  
17 discussion of wetland which is what we've agreed to do, and  
18 our motion is to do exactly the same with respect to the Hunt  
19 testimony.

20          MS. ROESSLER: Right. And I stated that that was not  
21 what my motion was, and I'd like to state that 3.7.2 just  
22 mentions that Ms. Engel brought to the attention of Ms. Love  
23 that there was a status change in the Wetland species. Ms.  
24 Engel addressed that in her July 21 letter, that it was a  
25 meaningless change. I'm not sure what the relevance is.



1           MR. CARROLL: IP agree with everything you said up  
2 until the part about the meaningless change. I'm not sure  
3 what you're referring to there, but I -- I agree, yes --

4           MS. ROESSLER: Meaning that it's --

5           MR. CARROLL: -- this was a point that was brought  
6 to our attention by Ms. Engel as a result of her  
7 participation in the Biological Resources Surveys.

8           MS. ROESSLER: Right. If you want to -- if you want  
9 to leave it in, I think the Coastal Commission did in their  
10 July 21 letter dispatch of this issue. So I don't think it  
11 has a consequence any longer in terms of the two-acre  
12 wetland.

13           HEARING OFFICER KRAMER: Well, it will be for the  
14 Committee to decide among all these different opinions about  
15 whether there are wetlands or not.

16           It does appear that -- that wetlands are either in  
17 or out, and that's on both sides. Let me go off the record  
18 for a second.

19           (Whereupon, a brief recess was taken.)

20           HEARING OFFICER KRAMER: Back on the record. So what  
21 I -- the Committee would like to let all the information in.  
22 So, Mr. Carroll, that would include the wetlands and  
23 information that you were offering to redact from the survey  
24 report, and then we would deny the motion to remove that  
25 information from -- from the Environmental Defense Energy

1 exhibit. So it all comes in.

2 I think the point of your motion seemed to be that  
3 if you're taking it out, then they should take theirs out as  
4 well, and --

5 MR. CARROLL: Well, that's true, but there is also  
6 the substantive point that the -- the parties are in  
7 agreement that the standard of admissibility would preclude  
8 that, but I understand the ruling, and I -- and I understand  
9 that the Committee has the authority to say "I don't care if  
10 all of you think it's inadmissible. We believe that it is."  
11 So I understand the ruling.

12 HEARING OFFICER KRAMER: Yeah, and the biological  
13 topic given that we -- you know, we sent everyone back to --  
14 to conduct surveys, let's -- this is not a wide open door,  
15 just by way of warning to everyone, but, you know, there is a  
16 new relationship between the wetlands and the ESHA issues and  
17 what you found when the surveys were conducted. So we -- this  
18 is an area where we think having more of the available  
19 information rather than less would be -- would be useful.

20 Okay. So everyone clear on the ruling? Okay. So  
21 then that brings us to our first topic of the day which I  
22 don't think is in my -- it's not -- it's the alternatives,  
23 specifically, the -- the effects of -- the comparative  
24 effects of using smaller turbines at the alternate sites  
25 against the existing comparison that was in the alternatives

1 analysis of putting the large turbine that's proposed for the  
2 Puente site at each of those two alternative sites.

3 So our panel would be Gary Rubenstein, Jonathan  
4 Fong. Is Andrea Coke here? No. Okay. Doctor Gray, is he  
5 here? Joseph Hughes? Okay. He's here. Mr. Caldwell, is he?

6 COMMISSIONER SCOTT: He's supposed to be calling in.  
7 I just texted him.

8 HEARING OFFICER KRAMER: Can you open up the phones,  
9 Jeremy, to see if Mr. Caldwell's on one of the lines?

10 MR. CALDWELL: I'm on my cell phone.

11 HEARING OFFICER KRAMER: Thank you. Okay. That's Mr.  
12 Caldwell?

13 MR. CALDWELL: Yes.

14 HEARING OFFICER KRAMER: Okay. Thank you. Is that  
15 your dog, Mr. Caldwell?

16 MR. CALDWELL: No, it's not.

17 HEARING OFFICER KRAMER: It's not yours. Okay. Okay.  
18 We'll figure out who that is and mute that line. And that  
19 looks to be everyone that's identified as a witness. So if  
20 you would raise your right hand.

21 (Whereupon, the witnesses were duly sworn.)

22 HEARING OFFICER KRAMER: So, with introductions,  
23 I'll begin with Mr. Rubenstein. Say your name, and if you  
24 want it to be spelled right in the transcript, spell it for  
25 our court reporter.

1           MR. RUBENSTEIN: Yes. My name is Gary Rubenstein, G-  
2 A-R-Y R-U-B-E-N-S-T-E-I-N. I'm a senior partner with Sierra  
3 Research, and I'm here today on behalf of the Applicant.

4           MR. GRAY: My name is --

5           HEARING OFFICER KRAMER: Get pretty close to the  
6 mic.

7           MR. GRAY: Okay. My name is Andrew Gray, G-R-A-Y,  
8 and I'm here on behalf of the Intervenors.

9           MR. FONG: My name is Jonathan Fong, J-O-N-A-T-H-A-N  
10 F-O-N-G, here for Commission Staff.

11          MR. HUGHES: My name is Joseph Hughes, H-U-G-H-E-S,  
12 and I'm here as Energy Commission Staff.

13          HEARING OFFICER KRAMER: Okay. Mr. Caldwell?

14          MR. CALDWELL: Yes. James Caldwell here on behalf of  
15 the City of Oxnard.

16          HEARING OFFICER KRAMER: Okay. Again, the topic is -  
17 - is the -- the turbines or the potential use of smaller  
18 turbines and how that would affect the -- the exhaust plume  
19 and potential impacts to aviation at the two alternative  
20 sites.

21          Let's see. Mr. Rubenstein, did you want to open and  
22 summarize your thoughts and position.

23          MR. RUBENSTEIN: Thank you, Mr. Kramer.

24          In preparing for today's hearing, I did review the  
25 supplemental testimony of Doctor Gray, Mr. Caldwell, and the

1 Commission Staff regarding thermal plumes as that issue  
2 relates to the topic of alternatives.

3           In response to the Committee's order, I looked at  
4 the potential thermal plume impact associated with multiple  
5 smaller turbines in several different configurations at the  
6 Fifth Street, Del Norte and Ormond Beach alternative sites. I  
7 did my analysis based on the Commission Staff's methodology  
8 and criteria as they had presented that in the final staff  
9 assessment, and based on that methodology and criteria, I  
10 concluded that using multiple smaller turbines would not  
11 eliminate the potential significant impacts related to  
12 thermal plumes at these two sites.

13           In particular, the Staff's criteria, excuse me, was  
14 a peak vertical velocity of 2.6 meters per second within the  
15 plume, which is equivalent to, by the Staff's assessment, 5.3  
16 meters per second as an average velocity across the plume.  
17 And they used that value as a -- excuse me -- as a threshold  
18 for assessing whether there was the potential for significant  
19 impact.

20           The -- my analysis indicated that for multiple  
21 smaller turbines this threshold would be exceeded at  
22 altitudes of between 1100 and 1400 square feet depending on  
23 the exact configuration of the turbines and the slant.

24           The Staff in their assessment combined these  
25 critical elevations, their own numbers, with proximity to the

1 Camarillo Airport in the context of the Fifth Del Norte site  
2 and in combination with testimony for Naval Base Ventura  
3 County in the context of the Ormond Beach site to reach their  
4 conclusions. I did not go that final step. My assessment was  
5 simply that the numbers were roughly the same as I've  
6 presented and that as a result, I didn't expect that there  
7 would be any change to the conclusions in the Staff's memo.

8 That completes my summary.

9 HEARING OFFICER KRAMER: Okay. Let's -- let's then  
10 go to the Staff just to offer initial explanation, and then  
11 -- then we'll have a round questions, if that will work.

12 Ms. Folk, you --

13 MS. FOLK: I know that Jim Caldwell has some time  
14 constraints, but --

15 MS. WILLIS: I just want to take 10 minutes to go  
16 through direct.

17 HEARING OFFICER KRAMER: Okay. Well, Mr. Caldwell,  
18 what are your time constraints?

19 MR. CALDWELL: I'm just at a PUC workshop. So I'm at  
20 your disposal.

21 HEARING OFFICER KRAMER: Okay. Thank you.

22 Staff then?

23 MS. WILLIS: Thank you. We'll start with Mr. Fong.  
24 Did you prepare a system preparation -- in preparing the  
25 supplemental testimony entitled "Traffic and Transportation

1 Alternative Supplemental Testimony," Exhibit 2025?

2 MR. FONG: Yes.

3 MS. WILLIS: Do you have any changes to your written  
4 supplemental testimony that you're proposing today?

5 MR. FONG: Yes. Regarding the Staff's conclusions  
6 about the Ormond Beach area alternative with respect to  
7 aviation impacts, my written supplemental testimony stated  
8 that impacts to aviation from smaller turbines at the Ormond  
9 Beach area offsite alternatives would be less than  
10 significant with mitigation. However, we are changing that  
11 conclusion to significant unmitigable based on information  
12 from Naval Base County Ventura. We know that military  
13 operations regularly fly over this site at low altitudes and  
14 that the extent of the varied military operations at the site  
15 are much more extensive than previously understood. So we  
16 have concluded that plumes at the site could endanger  
17 military aircraft and substantially disrupt military  
18 operations.

19 MS. WILLIS: Thank you.

20 Mr. Hughes, did you prepare the appendices TT-1 and  
21 TT-2, Thermal Plume Analysis for the Puente Project  
22 Alternatives, Exhibit 2025?

23 MR. HUGHES: Yes.

24 MS. WILLIS: And do you have any changes to your  
25 written testimony today?

1 MR. HUGHES: No.

2 MS. WILLIS: Thank you.

3 Mr. Fong, could you briefly state the purpose of  
4 your testimony?

5 MR. FONG: Yes. We were responding to the  
6 Committee's March 10th orders for additional evidence.

7 MS. WILLIS: And what was required of Staff for the  
8 Committee orders?

9 MR. FONG: As part of the order, the Committee asked  
10 for an analysis of the use of one or more smaller turbines of  
11 the Del Norte Fifth Street offsite alternative and at the  
12 Ormond Beach area offsite alternative instead of the turbine  
13 proposed by the Applicant at the Puente site. The Committee  
14 had wanted this analysis to determine whether it was feasible  
15 to reduce or eliminate the identified potential aviation  
16 impacts at these alternative sites.

17 MS. WILLIS: And how did Staff respond?

18 MR. FONG: We evaluated the thermal plumes that  
19 would be generated by one or more of these smaller turbines  
20 at the alternative sites and then determined the resulting  
21 impacts to aviation. We then compared these impacts to those  
22 from the Puente design at those same alternative sites.

23 MS. WILLIS: And, Mr. Hughes, what types of modeling  
24 did you use to analyze thermal plume impacts for the proposed  
25 site and alternative sites?



1           MR. HUGHES: For consistency we used the same  
2 approaches that were used in the final staff assessment,  
3 which were the Spillane methodology and the MITRE Exhaust-  
4 Plume-Analyzer.

5           MS. WILLIS: And could you please describe the  
6 Spillane approach?

7           MR. HUGHES: The Spillane approach uses a series of  
8 calculations relating to plume momentum, in other words,  
9 initial jet velocity, and thermal buoyancy to determine  
10 vertical velocities from the turbine exhaust stacks during  
11 calm wind conditions. We used a peak vertical velocity of 10  
12 meters per second or an average plume velocity of 5.3 meters  
13 per second as a screening threshold for potentially  
14 significant impacts to aircraft, and we calculated the  
15 heights at which these velocities are expected to occur.

16          MS. WILLIS: And could you please describe the MITRE  
17 Exhaust-Plume-Analyzer?

18          MR. HUGHES: The MITRE model, which was developed  
19 under contract with the FAA, uses the Spillane methodology to  
20 calculate plume characteristics such as trajectory, velocity,  
21 temperature, and concentration containment and expands on  
22 this to include location-specific weather data and aircraft-  
23 specific characteristics. The MITRE model is aircraft-type  
24 specific. The model provides risk probabilities of  
25 encountering severe turbulence or reaching aircraft upset for

1 four fixed-wing aircraft types and allows users to input  
2 characteristics for other fixed-wing aircraft types.

3 The risk frequency results are determined  
4 considering short-term peak vertical gusts.

5 MS. WILLIS: Did you review Doctor Gray's testimony  
6 regarding the Spillane model?

7 MR. HUGHES: Yes.

8 MS. WILLIS: And given your analysis of Doctor  
9 Gray's testimony, do you still stand behind Staff's analysis  
10 methods and results?

11 MR. HUGHES: Yes. Staff prepares a conservative  
12 worst case safety based analysis for a buoyant jet type plume  
13 as we want to capture the worst case conditions. This  
14 analysis supports the Traffic and Transportation Safety  
15 Impact Analysis where the risk is related to dire  
16 consequences. The use of methods that would provide average  
17 or, in Doctor Gray's terms, more reasonable results, would in  
18 Staff's opinion, not capture the range of conditions  
19 including those that would be unsafe for types of aircraft  
20 that operate in the county.

21 Furthermore, Doctor Gray's suggested alternative  
22 velocity calculation method appears to consider buoyant only  
23 plumes with no initial momentum flex, and his methods also  
24 remove some of the conservatism included in Staff's  
25 methodology.

1           Staff could not reproduce Doctor Gray's results,  
2   and no calculations were provided in his testimony, but he  
3   appears to have not included the effects of exhaust initial  
4   plume momentum and rather, only included the effects of  
5   thermal buoyancy.

6           MS. WILLIS: Mr. Fong, how do you assess impacts to  
7   aviation safety?

8           MR. FONG: In assessing aviation safety, we review  
9   maps that shows the locations of airports. Those airports fly  
10  paths and patterns. We also consider information from  
11  relevant airport landings compatibility plans and maps and  
12  documents published by the FAA.

13          Staff also considers information provided relative  
14  to any nearby military bases, and then, finally, Staff  
15  considers the plume modeling results by staff, air quality  
16  staff.

17          MS. WILLIS: And did you review the air quality  
18  staff's plume modeling results?

19          MR. FONG: Yes, we reviewed the plume modeling  
20  results to see if either of the design alternatives would  
21  result in reducing impacts to Aviation at the Del Norte Fifth  
22  Street site or at the Ormond Beach area offsite alternative  
23  as compared to the Puente's design at these sites. Staff also  
24  considered the supplemental testimony of Doctor Gray.

25          MS. WILLIS: And what did the modeling show?

1           MR. FONG: Using both the MITRE model and the  
2   Spillane approach, Staff found that the critical velocity  
3   generated by the alternative designs would occur at a lower  
4   height than the Puente design at these sites. The modeling  
5   conducted by Staff using the MITRE model indicated a plume  
6   safety level of approximately 3,000 feet. The results of the  
7   Spillane method conducted by staff indicated a plume of  
8   approximately 500 feet, and in the testimony of Doctor Gray,  
9   he concluded a plume of approximately 300 feet.

10           But, as staff has previously stated, the plume  
11   modeling is only a component of an overall safety analysis.  
12   Staff acknowledges the wide range of results of the plume  
13   modeling presented. You know, due to the uncertainty of these  
14   results, staff focuses its conclusion based on known flight  
15   operations near and around the project site and the  
16   alternative sites.

17           MS. WILLIS: Does this reduce or eliminate the  
18   impacts with respect to aviation at these sites?

19           MR. FONG: No. Incorporating the turbine designs at  
20   the alternative sites in any configuration would still result  
21   in significant and unmitigable impacts to aviation. While it  
22   is true that the critical velocity of the thermal plume would  
23   occur on a lower height during operation of a smaller  
24   turbine, the plumes would be still high enough to pose a  
25   significant and unmitigable impact.

1 MS. WILLIS: Why would impacts at the alternative  
2 sites from the smaller turbines still be significant and  
3 unmitigable?

4 MR. FONG: The FAA does not provide any thresholds  
5 for when a plume is hazardous to flight. Furthermore, the FAA  
6 does not establish a safe distance between a thermal plume  
7 and a safe operating altitude of an aircraft. The FAA only  
8 advises pilots to fly upwind and see and avoid sources of  
9 thermal plumes.

10 MS. WILLIS: Mr. Fong, what were your conclusions at  
11 the Del Norte Fifth Street site?

12 MR. FONG: At the Del Norte Fifth Street site,  
13 aircraft from the nearby Camarillo Airport commonly overfly  
14 the site at low altitudes as they enter and exit the traffic  
15 pattern. Pilots entering and exiting this traffic pattern are  
16 in the process of either taking off or approaching to land.  
17 This is considered a critical phase of flight which makes it  
18 difficult to see and avoid these plumes. Also aircraft taking  
19 off and landing are more susceptible to plumes not only to  
20 their low altitudes but due to their approach or departure  
21 angles which can limit their visibility to see and avoid a  
22 plume.

23 While Staff acknowledges that the traffic pattern  
24 altitude for the Camarillo Airport is 875 feet above ground  
25 level, due to the potential of overflight of this location

1 and because pilots cannot see and reasonably avoid the Del  
2 Norte Fifth Street site, Staff concludes that that  
3 configuration of any power plant there would be a significant  
4 and unmitigable impact.

5 And Staff's conclusions at the Ormond Beach site were  
6 that aircraft from the nearby Naval Base County Ventura  
7 commonly overfly this site as well at low altitudes because  
8 of base operations. Thermal plumes at the Ormond Beach area  
9 site would also pose a risk for aircraft conducting various  
10 field carrier landing practices and would also negatively  
11 impact unmanned aerial surveillance equipment which regularly  
12 operate at low altitudes in this location. Because of these  
13 flights at the Ormond Beach area alternative site and because  
14 these flights would not be able to see and avoid that source  
15 of plumes at that site, Staff considers that the Ormond Beach  
16 area would, again, continue to be a significant and  
17 unmitigable impact.

18 MS. WILLIS: Is there any feasible mitigation?

19 MR. FONG: No. For the Del Norte Fifth Street  
20 alternative site, Staff had concluded that it's not feasible  
21 for the project owner to petition the FAA to change the  
22 flight patterns at the Camarrillo Airport, and, similarly, at  
23 the Ormond Beach area alternative site, it's not feasible for  
24 the project owner to petition the Navy to alter or otherwise  
25 substantially disrupt military operations at the site.

1 MS. WILLIS: Mr. Fong, Todd McNamee of the County of  
2 Ventura Department of Airports actually gave public comment  
3 last night. I know you weren't available for that, but did  
4 you read the letter that he submitted on July 20th of this  
5 year?

6 MR. FONG: Yes.

7 MS. WILLIS: And does the information he provided  
8 change any of your conclusions?

9 MR. FONG: No. His conclusions do not change ours.  
10 In Mr. McNamee's letter, he describes the aviation activity  
11 at the Camarillo Airport that would result in overflight of  
12 the Del Norte Fifth Street site. Mr. McNamee identified that  
13 departing aircraft from the Oxnard Airport may fly over the  
14 site en route to Camarillo. In the event of congested  
15 airspace around the Camarillo Airport, the traffic pattern  
16 may be extended, which would result in overflight of that  
17 alternative site.

18 And, finally, he noted that helicopters may be  
19 directed over the site during special visual flight rules,  
20 and that these flights could occur at elevations between 500  
21 and 2500 feet. You know, Staff considers that Mr. McNamee's  
22 letter reinforces our conclusion that because overflight may  
23 occur at that site due to regular airport operations and that  
24 pilots may not be able to see and avoid that location, that  
25 the impacts at the Del Norte Fifth Street site would be

1 significant and unmitigable.

2 MS. WILLIS: Does that conclude your testimony?

3 MR. FONG: Yes.

4 MS. WILLIS: Thank you.

5 HEARING OFFICER KRAMER: Okay. Let's then hear from  
6 Doctor Gray.

7 MS. SEEL: Good morning Doctor Gray. Could you  
8 please summarize your work experience and your educational  
9 background.

10 DR. GRAY: I am an atmospheric scientist and  
11 engineer, and I manage Gray Sky Solutions, an air pollution  
12 consulting firm. My credentials include a Ph.D. in  
13 atmospheric science and engineering from Cal Tech and over 35  
14 years' experience working on air quality models and related  
15 issues. I have evaluated the environmental impacts of  
16 hundreds of pollution sources -- actually, thousands, using  
17 computer-based dispersion models that include the  
18 characterization of the atmosphere and the dynamics of plumes  
19 that are emitted as exhaust from stacks.

20 MS. SEEL: And could you briefly state the purpose  
21 of your testimony?

22 DR. GRAY: I was asked to take a look at the Energy  
23 Commission Staff's calculations that were used to estimate  
24 the plume rise from the alternative turbine designs to the  
25 Puente project.



1 MS. SEEL: And what were the main conclusions of  
2 your analysis?

3 DR. GRAY: I concluded that the plume rise  
4 calculations, using the Spillane approach that was used by  
5 CEC Staff, provided not just very conservative estimates on  
6 the impacts of aviation but grossly overestimated values  
7 which are not realistic even under extreme meteorological  
8 conditions. If more realistic meteorological conditions had a  
9 proper accounting for the forces that act to slow down the  
10 rising plume and taking into account, it is my expert opinion  
11 that it is highly unlikely that thermal plumes will impact  
12 aviation at the Del Norte Fifth Street alternative site,  
13 particularly for a single stack alternative.

14 MS. SEEL: And is it your opinion that the Spillane  
15 model is based on meteorological conditions that are not  
16 merely conservative but impossible?

17 DR. GRAY: Yes. The Spillane model is based on  
18 improbable meteorological conditions and also unrealistic  
19 physics. As CEC staff has discussed today, their supplemental  
20 testimony estimated the critical height at which a plume  
21 exiting from a turbine would be traveling upwards of 5.3  
22 meters per second, which is about 12 miles per hours, which  
23 has been defined as the threshold average plume velocity for  
24 aircraft safety. And the estimated height at which velocity,  
25 5.3 meters per second, is reached is defined as the critical

1 height. Their analysis relied on the Spillane approach, which  
2 is a mathematical model developed by a group of researchers  
3 from Katestone Environmental in Australia. The Spillane  
4 approach has often been described as providing a conservative  
5 estimate of a plume rise. However, the Spillane model is not  
6 merely conservative, but, rather, it presents an extreme  
7 hypothetical solution under idealized meteorological  
8 conditions that will not actually occur.

9 MS. SEEL: Okay. So what are these unrealistic  
10 meteorological conditions used in the Spillane approach?

11 DR. GRAY: The Spillane approach requires both calm  
12 winds, actually, zero winds and neutral stability. In  
13 addition, the model makes a very unrealistic assumption  
14 concerning the physics of the rising plume. By turning the  
15 winds off and assuming a neutral stability, the model  
16 essentially assumes that there is no interaction between the  
17 rising plume and the air surrounding the plume, which means  
18 that there's no heat loss to the atmosphere, which isn't a  
19 real problem, but, more importantly, there is no mechanical  
20 energy transfer whatsoever, that is, no turbulent friction  
21 between the rising plume and the surrounding atmosphere.

22 MS. SEEL: So I'd like to quickly walk through each  
23 of these assumptions that you identified.

24 Why is the assumption about calm winds  
25 unreasonable?

1 DR. GRAY: Spillane's solution requires not just  
2 calm or low winds but absolute zero horizontal winds, and not  
3 just near the ground, which does happen occasionally on the  
4 order of a couple percent of the time, but also in the entire  
5 column of air extending vertically from the top of the stack  
6 over a quarter of a mile up into the atmosphere.

7 As Spillane and the Katestone group have indicated,  
8 their mathematical solution is very sensitive to the presence  
9 of even very light horizontal winds. When the Katestone group  
10 presented their approach, they said, and I quote, "The  
11 introduction of realistic wind profiles reduces the height at  
12 which the guidelines is achieved by 50 percent to 70  
13 percent." In other words, it is a half to a third or less of  
14 the calculations using the Spillane approach.

15 In the real world, even the lightest horizontal  
16 wind will actually erode the outer edge of the plume,  
17 increasing friction. This resulting turbulence will  
18 contribute to slowing down the plume's rise. The resulting  
19 turbulence will contribute to -- sorry. Excuse me. This will  
20 especially be true when a plume travels over a long distance,  
21 such as hundreds of feet, at a fairly high initial -- at  
22 least initial velocity.

23 I used the textbook formula for the plume's  
24 velocity that considers the small amount of light wind  
25 associated with the entrainment necessary to grow the plume,

1 ignoring the momentum for the moment. The textbook velocity  
2 formula would estimate critical heights that are roughly  
3 about half of Spillane's estimated critical heights for his  
4 blind plume, similar to Katestone's results when they put in  
5 their model the realistic winds.

6           For example, this means that the critical heights  
7 for the LM6000 alternative decreases from 512 feet to about  
8 288 feet. Because even the slightest winds, the lightest  
9 winds will lower the estimated critical height by a factor of  
10 two or more, I'm confident that a small turbine like the  
11 LM6000 would not pose a problem for overflight of aircraft.

12           MS. SEEL: Thank you. You also mentioned that the  
13 Spillane model assumes neutral stability of the atmosphere in  
14 addition to calm winds. Can you explain what that means and  
15 why that is unlikely?

16           DR. GRAY: The Spillane model also requires that the  
17 atmospheric stability is perfectly neutral. This is necessary  
18 so that the plume's buoyancy meets no thermal resistance as  
19 it rises. Neutral conditions represent an equilibrium between  
20 thermally stable and thermally unstable atmospheric  
21 conditions. This equilibrium point is in itself a very  
22 unstable mathematical condition, and, therefore, it doesn't  
23 exist in the atmosphere for very long. Neutral conditions are  
24 typically only found during the brief phase that occurs soon  
25 after the sun sets or rises in between stable nighttime

1 cooling and unstable daytime warming regimes.

2 More importantly, neutral stability does not occur  
3 during calm or even close to calm conditions. It is important  
4 to understand that neutral conditions are characterized by  
5 windy, well-mixed atmospheres. In fact, when characterizing  
6 the atmospheres into stability classes for atmospheric  
7 modeling, the neutral stability class has a minimum  
8 horizontal wind speed of three meters per second, and it's  
9 higher under most conditions, under most situations. In other  
10 words, the completely calm wind and neutral conditions  
11 required by the Spillane model simply do not occur together.

12 MS. SEEL: And the third assumption you mentioned  
13 was a frictionless atmosphere. Is that assumption reasonable?

14 DR. GRAY: The Spillane model assumes that the  
15 atmosphere offers no physical resistance to the plume, no  
16 mechanical direction with the plume whatsoever. The model  
17 plume is assumed to have expanded from about 21 feet at the  
18 stack to 135 feet wide for the LM6000 turbine at the critical  
19 height. This expansion has required the entrainment of cooler  
20 nearby air which the model includes the entrainment, and yet  
21 the model accounts for no mechanical interactions between the  
22 plume and its surrounding. The assumption of no frictional  
23 force in the form of turbulence over that entire distance is  
24 completely unrealistic.

25 MS. SEEL: Okay. So we've identified a number of

1 unrealistic assumptions in the --

2 DR. GRAY: Can I just add one more thing?

3 MS. SEEL: Oh, of course.

4 DR. GRAY: I just have one more -- assume zero winds  
5 and neutral atmosphere, the only force that's acting on the  
6 plume in the Spillane model is its own buoyancy. There's  
7 nothing slowing it down other than its own growth. So it  
8 never stops moving upward, never, according to the model.  
9 Real plumes do not do this. In fact, real plumes always have  
10 some limiting factor that will cause the plume eventually to  
11 stop rising. For neutral atmospheres, the limiting factor, in  
12 fact, is the turbulent diffusion, which was turned off in  
13 their model. So the factor that actually would limit the rise  
14 was assumed to be zero. There's no turbulence. If it weren't  
15 expanding, Spillane's approach would have this plume rising  
16 unfettered in a column of constant speed vertically forever.  
17 Obviously this isn't close to reality. All plumes rise and  
18 hit an equilibrium point and stop rising at some point.

19 The assumption of a frictionless atmosphere,  
20 therefore, is completely unrealistic, especially when  
21 considering a neutral atmosphere.

22 MS. SEEL: Okay. So, accepting these assumptions  
23 that you've identified, even though you've explained why you  
24 believe they're unrealistic, is it correct that under the  
25 Spillane approach, the rising plume would, in fact, exert

1 very little force on any passing aircraft?

2 DR. GRAY: Yes. The Spillane approach -- the  
3 Spillane solution provides an equation that describes the  
4 average temperature of the plume as a function of the height  
5 in addition to the average velocity. I found it interesting  
6 that the CEC Staff failed to include the temperature  
7 calculations in their analysis. They only looked at the  
8 velocity.

9 If you look at the temperature difference between  
10 the plume and the ambient air, it provides a measure of the  
11 buoyant force of the plume. When I compare the temperature,  
12 using Spillane's equations -- Spillane's equation, I found  
13 that the plume was very similar to the ambient air  
14 temperature at the critical height and, therefore, would  
15 exert very little impact on passing aircraft.

16 Let's take a step back here. At the beginning of  
17 its journey, the temperature difference between the plume and  
18 the surrounding air is almost 500 degrees Celsius. Therefore,  
19 it has quite a lot of buoyant lift. However, at the modeled  
20 critical height, the temperature is just a few degrees warmer  
21 than the surrounding air. The plume is cooled considerably by  
22 entraining ambient air as the plume has grown wider. And,  
23 according to the model, it is now only six and a half degrees  
24 warmer than the surrounding air at that height. That was for  
25 the LM6000. For the GE7HA turbine it was only about one and a

1 half degrees warmer at the critical height. In other words,  
2 there's almost no buoyancy, no weight behind the air mass  
3 that is moving upwards at this 5.3 meters per second.

4 We can use the model temperature difference to  
5 actually computer the local buoyancy or the reduced gravity  
6 of the plume known as G Prime, which computes to just over  
7 one point -- one percent, excuse me, of the G Force  
8 corresponding to the six and a half degree temperature  
9 difference.

10 It's important to realize now that not everything  
11 moving at five meters per second or 12 miles per hour is  
12 created equal. As an example, imagine being hit by a five-  
13 pound brick that's traveling at 12 miles per hour, and the  
14 consider getting hit by a one-ounce feather traveling at the  
15 same speed. They can both be traveling at about 12 miles per  
16 hour, but clearly the impact is obviously much greater for  
17 the heavier object. The rising plume has essentially no  
18 weight behind it, and although it is moving relatively fast,  
19 if 12 miles per hour could be considered fast, the impact  
20 would be, in fact, very small.

21 MS. SEEL: So you discussed how the relationship in  
22 temperature, the small difference in temperature between the  
23 plume and the ambient air affects the force that it would  
24 impose on any -- any passing aircraft. So would the force  
25 behind the plume decrease if ambient temperature was higher?



1 DR. GRAY: Yes. With less difference between the  
2 plume and the surrounding air, the plume would have somewhat  
3 less buoyant lift. The calculations do show that the plume  
4 will tend to rise somewhat higher when the ambient air is  
5 cooler, such as in the winter versus summer.

6 MS. SEEL: So if these facilities were running  
7 primarily in the summer, we would expect the buoyant lift to  
8 be lower?

9 DR. GRAY: Lower than the calculations for the  
10 winter. That's correct.

11 MS. SEEL: Okay. And in these alternatives we've  
12 discussed a number of smaller turbines. If the turbines were  
13 separated far enough apart so that the plumes of the turbines  
14 never merged, would it be appropriate to analyze the impacts  
15 of a single stack to determine the plume impacts?

16 DR. GRAY: Yes.

17 MS. SEEL: Do you agree with the Spillane approach's  
18 assumption about the relationship between average and peak  
19 velocity?

20 DR. GRAY: No, I do not.

21 MS. SEEL: Could you explain?

22 DR. GRAY: In their analysis for this project, CEC  
23 staff actually determined that at 10.6 meters per second peak  
24 vertical velocity, about 24 miles per hour, should be  
25 considered as the appropriate threshold for aircraft safety.

1 Many polarized calculations, including the Spillane approach  
2 that was used here, don't provide an estimate of the peak  
3 velocity. Rather they only provide an estimate of the plume  
4 average velocity using gross properties of the plume.

5           The peak velocity of a general plume is usually  
6 located in the center of the plume with a velocity profile  
7 that has been observed to curve downwards as you move away  
8 from the edge of the jet or plume. The CEC staff assumed  
9 that, and I quote, "The maximum plume velocity based on a  
10 normal Gaussian distribution is two times the plume average  
11 velocities." Unfortunately, this statement is unsupported. A  
12 normal distribution cannot actually be used to describe the  
13 velocity profile for a number of reasons.

14           First, there is absolutely no physical basis for  
15 assuming that the velocity profile follows the normal  
16 distribution. Second, the velocity profile for the Spillane  
17 approach requires that the velocity of the plume average is  
18 at zero, which is not at all the case for a normal  
19 distribution. And third, most importantly, the choice of how  
20 much of the distribution, the normal distribution, is used to  
21 fit within the width of the plume is completely arbitrary, as  
22 I have demonstrated in my written testimony as you can see in  
23 Figure 4 for example.

24           The assumption that the peak or center of velocity  
25 in a plume will have an upwards velocity that is exactly

1 twice the average velocity at all heights, including hundreds  
2 of feet above the stack, is not based on any fact. It is  
3 simply not justified based on any theoretical or observed  
4 scientific basis, nor should anyone expect that ratio to  
5 always be true. In the real world, as the plume rises and  
6 loses its buoyant energy or its upwards force, the vertical  
7 velocity will tend to accelerate across the plume, lowering  
8 peak value and also the ratio until at some point the ratio  
9 will approach one, as the plume's upward force diminishes  
10 completely, which is what we have seen that the extreme  
11 Spillane model predicts.

12           The assumption of the Gaussian distribution is also  
13 incompatible with the Spillane approach's assumption of a  
14 perfectly frictionless atmosphere. In fact, if a plume were  
15 to rise in the ideal frictionless atmosphere represented by  
16 the Spillane approach, the velocity of distribution would  
17 actually be completely flat across, uniform from one edge of  
18 the plume to the other. The reason that a plume has a higher  
19 velocity in the center and near zero along the edge in the  
20 first place is exactly due to the downward frictional drag  
21 that occurs between -- that is occurring -- being exerted on  
22 the plume's outer edge by the atmosphere.

23           MS. SEEL: So for those of us who aren't experts in  
24 this area, what effects does correcting for this error that  
25 you've just described regarding average and peak plume

1 velocities have on the height of the peak critical velocity  
2 of the plume?

3 DR. GRAY: Well, unfortunately, there's no way to  
4 really know using simple calculations like this what the  
5 ratio is. It's actually a very complicated process of fluid  
6 dynamics, and it would take a large computational fluid  
7 dynamics model to properly simulate, which probably should be  
8 done in order to estimate the heights that a plume -- not  
9 only the heights but the velocities that these plumes would  
10 fly at and could tune a computation fluid dynamics to  
11 simulate extremely logical conditions but with realistic  
12 physics to simulate a plume, and you could find out what the  
13 typical peak velocity is in the center.

14 However, there is an empirical textbook result that  
15 we could use to estimate the local buoyancy using the  
16 estimated plume temperatures, just out of the Spillane  
17 approach. And the maximum buoyancy, the temperatures of the  
18 plume, if you use that calculation -- I did that -- is only  
19 about two percent of a G Force -- that's the force upward --  
20 in the center of the plum versus about a 1.4 percent of the G  
21 Force over the average of the plume. So, therefore, it's  
22 still a small force upward, even in the center of the plume.

23 MS. SEEL: So, to summarize your testimony, is it  
24 your testimony that once realistic conditions such as light  
25 winds and the temperature difference between the plume and

1 the ambient air are accounted for, that in your expert  
2 opinion there should be no issues with aircraft flying over a  
3 -- the plume from an LM6000 turbine?

4 DR. GRAY: Yes, I agree.

5 MS. SEEL: Does that conclude your testimony?

6 DR. GRAY: Yes.

7 MS. SEEL: Thank you.

8 HEARING OFFICER KRAMER: Okay. Mr. Caldwell, do you  
9 want to summarize your testimony?

10 MR. CARROLL: Before Mr. Caldwell's go button gets  
11 hit, I want to -- I assume that he's been apprised of the  
12 Committee's ruling on the motion to strike his testimony from  
13 yesterday, and I want to say at the outset that I am not  
14 going to be as complacent about Mr. Caldwell's testimony as I  
15 was about Mr. Campbell's testimony yesterday, because what  
16 ended up happening yesterday is notwithstanding that we  
17 brought a motion and -- and the Committee having granted the  
18 motion, Mr. Campbell then went on to provide his testimony as  
19 though nothing had happened, and I am deeply concerned that  
20 that is what's likely to happen if Mr. Caldwell is permitted  
21 to testify. The ruling yesterday was that his testimony is  
22 relevant only to the extent that it goes to the inputs to the  
23 thermal plume modeling.

24 Having listened to these three experts in thermal  
25 plume modeling, there is nothing in the written testimony of

1 Mr. Caldwell that goes to the inputs to that modeling. And,  
2 frankly, Mr. Caldwell's not qualified to testify to that. So  
3 I suspect that there won't be anything in the oral testimony  
4 that is admissible in light of the Committee's ruling. So we  
5 have the written testimony. If he has something specific to  
6 add to the technical analyses that these experts have  
7 conducted that goes to inputs to the model -- and, again,  
8 nothing in his written testimony goes to that, then that's  
9 fine, but --

10 MS. FOLK: So I definitely want to respond to that.  
11 First, as to Mr. Campbell, I think the reason his -- he gave  
12 his testimony as planned was because it goes to the  
13 assumptions in CoSMoS about how to include river flooding.

14 HEARING OFFICER KRAMER: Well, that's --

15 MS. FOLK: But, in any event, the Committee's order  
16 yesterday was not that Mr. Caldwell's testimony is limited to  
17 the input to the model but to the type of technology that was  
18 assumed at the project site for these smaller turbines, and I  
19 reemphasized the motion to strike. Specifically I just told  
20 him to keep it short and focused on the technology.

21 HEARING OFFICER KRAMER: Well, that's probably going  
22 to be too broad. We're --

23 MS. FOLK: It's about the technology that allows it  
24 to operate without combustion. That's what he's testifying  
25 to, and that's what matters for the assumption about whether

1     there's a plume or not.

2                 MR. CARROLL: But that is not an assumption that any  
3     of these experts made one way or another in their analysis of  
4     the thermal plumes. This is a -- this subtopic is a technical  
5     thermal plume analysis. It is not a -- this is so clearly a  
6     second attempt on the part of Mr. Caldwell to shoehorn into  
7     this subtopic his additional testimony that he wants to make  
8     related to needs and to share with us his somewhat definitive  
9     conclusions about the outcome of the ISO study that is  
10    underway now largely at his behest. Mr. Caldwell will have  
11    another chance to testify in September on these topics, and  
12    he can propose whatever he wants at that time, and we will  
13    all react to it at that time, but this is clearly outside the  
14    scope of this hearing, and it's -- it is a blatant attempt to  
15    shoehorn in once again additional testimony on need and  
16    alternatives that is outside the scope of this subtopic.

17                MS. FOLK: It's not about need. It's about the type  
18    of technology they could use regardless of the need.

19                HEARING OFFICER KRAMER: Okay. But this is simply  
20    analyzing what happens if a turbine -- it's going to have to  
21    burn gas to generate a plume. I think that's pretty obvious.  
22    I don't need an expert to say that. And then what -- what the  
23    effects of the plume from these smaller turbines would be on  
24    aviation in comparison to the effects of the proposed  
25    turbine, and, as I said yesterday, I understand some of the

1 things he's getting to is suggesting that at times when the  
2 turbines operate they might be configured in such a way that  
3 they would not generate a plume, but that's not the way this  
4 analysis works. We have to assume -- and if we don't, you'll  
5 be all over us -- that these -- the turbines are going to  
6 operate at their maximum permitted level and that they're  
7 going to be burning gas while they're doing that. So those  
8 are the assumptions that have to be modeled by Staff, and,  
9 Staff, that's what you modeled, correct?

10 MS. FOLK: First of all, this --

11 HEARING OFFICER KRAMER: So we -- we don't need to  
12 hear about clutches. We don't need to hear about EGT today.  
13 That's -- that is -- as Mr. Carroll says, that's for the  
14 hearing in September after we get the ISO study.

15 MS. FOLK: That all goes to the -- when the plumes  
16 will be emitted, the time of year, whether or not they'll be  
17 emitted at all, and that's certainly relevant to analyzing  
18 whether there's a significant plume effect.

19 HEARING OFFICER KRAMER: Well, not to a worst case  
20 analysis, which is that if they're going to be operated  
21 whenever they want to operate and that it's going to be at --  
22 you know, the -- the point in time where the impacts on  
23 aviation will be at their maximum.

24 MS. FOLK: But I believe that there's also an issue  
25 of mitigation and avoiding impacts that also comes into play



1 and not just what the worst case scenario would show.

2 MR. CARROLL: There's nothing in the scope of the  
3 March 10th order that asks the parties to address mitigation  
4 for thermal plumes, assuming that what you just described  
5 would be mitigation when, in fact, it would be an alternative  
6 project. But, even if it were mitigation, that's not within  
7 the scope of the March 10th order.

8 MS. WILLIS: This is Kerry Willis for Staff. We did  
9 bring the motion to strike. The direction from the Committee  
10 on Page 3 of the March orders is very short and specific, to  
11 analyze the use of one or more smaller 50 to 100 megawatt  
12 turbines instead of the larger turbine proposed by the  
13 Applicant at the two alternative sites analyzed in the final  
14 staff assessment, the Del Norte Fifth Street site offsite  
15 alternative and the Ormond Beach offsite alternative, to  
16 determine whether it is feasible to reduce or eliminate the  
17 previous identified potential impacts on aviation. There was  
18 nothing about the operation profile. There was nothing about  
19 using different technologies other than the ones that you  
20 specifically asked for. The Staff did specifically consider  
21 your March order and followed that to the T.

22 MS. FOLK: I think the point is that using these  
23 additional technologies, which will affect when they operate,  
24 are ways to reduce the impact on aviation.

25 MR. CARROLL: It may be a valid point, but it's not

1 appropriate for this hearing.

2 MS. FOLK: But that's within the scope of the order.

3 MR. CARROLL: No, it isn't.

4 MS. FOLK: It's whether these technologies --  
5 smaller technologies could reduce or avoid the impact.

6 MR. CARROLL: It is not. And, again, it may or may  
7 not be a valid point. It's a topic for the September hearing.

8 HEARING OFFICER KRAMER: Well, it is -- it can be an  
9 element of mitigation. The danger here is that Mr. Caldwell  
10 is going -- going to go into a long soliloquy about -- and  
11 that is more appropriate when we actually have the hearing in  
12 September and we have the ISO study. So we will allow Mr.  
13 Caldwell to speak briefly about how some of the technologies  
14 but certainly not all of them that he mentioned in his  
15 testimony might serve as mitigation.

16 I will, though, say that I don't think the  
17 Committee can presume that -- that they will be able to be  
18 used and, therefore, our analysis will have to assume the  
19 worst case, which is that these turbines are fired with gas  
20 when they generate.

21 So, with that, Mr. Caldwell, go ahead. Pause  
22 occasionally because we may want to tell you to stop.

23 MR. CALDWELL: I'm not sure what to say at this  
24 point.

25 MR. CARROLL: Precisely.

1           MR. CALDWELL: Again, the whole point of the  
2 testimony was that the technology is different and that when  
3 you use the smaller turbines, they will be operated  
4 differently and that those operations are such and the need  
5 is such that the conditions under which the maximum  
6 generation from -- from these technologies as opposed to the  
7 -- the project itself, that -- that the only time in which  
8 the alternate technologies will be used at their maximum is  
9 during the summer and late afternoons when the temperature is  
10 much higher and the atmospheric conditions are not conducive  
11 to plume, and that's -- that's really it, that in the worst  
12 case times, then the need can be met by --

13           MR. CARROLL: I'm going to -- I object. Mr. Caldwell  
14 -- nothing that Mr. Caldwell has said so far is a function of  
15 the technology. Everything he has said so far is a function  
16 of an assessment of the need.

17           MS. FOLK: But it's --

18           MS. WILLIS: Yes, it's -- twice in the first --

19           MS. FOLK: Because just assume you're -- we're  
20 running these things to meet a particular need. I want to  
21 actually -- let me just ask a couple of questions directed to  
22 this.

23           Jim, can you just describe what the clutch and  
24 synchronous condenser technology is and how that would be  
25 used with a -- the LMS100 and the LM6000?

1           MR. CARROLL: I object. That is clearly an  
2 alternatives question that has absolutely nothing to do with  
3 aviation hazards.

4           MS. FOLK: That has to go to the mitigation and the  
5 ability to reduce the impact.

6           MR. CARROLL: That is -- that is an alternatives  
7 question. You can't --

8           MS. FOLK: We're looking at alternative technology.

9           MR. CARROLL: Okay. We can either spend five minutes  
10 arguing or five minutes hearing a question and an answer.  
11 Let's try the question and answer route.

12          MS. FOLK: I also --

13          MR. CARROLL: I will just say I think Applicant has  
14 been more than conciliatory to Mr. Caldwell's desire to  
15 produce and have others produce additional testimony and  
16 evidence on this. And, frankly, I think it's inappropriate to  
17 insist upon testifying at this hearing when we're having  
18 another hearing a month from now largely at Mr. Caldwell's  
19 behest.

20          MS. FOLK: This goes to the technology that was  
21 evaluated by Staff. They looked into the LMS100 and the  
22 LM6000 and did not include features as part of that which are  
23 included as a standard method with these turbines that  
24 address plume impacts.

25          MR. CARROLL: Okay. And then -- and now the attorney

1 is testifying and saying the things that she had intended the  
2 witness to state.

3 HEARING OFFICER KRAMER: Well, you did sort of  
4 invite it as an offer of proof. Five minutes has spoke.  
5 Overruled.

6 MS. FOLK: Okay. Then can you just describe the  
7 clutch and synchronous condenser technology that would be  
8 used with the LM100 and the LM6000?

9 MR. CALDWELL: I'm sorry. I'm trying to find a quiet  
10 spot. I thought I was in one, and then people invaded it. So  
11 hold on just a second. Okay. Either of the LMS6000's or the  
12 LMS100's will come equipped in this case with a clutch which  
13 disconnects the turbine from the generator, and when the  
14 clutch is engaged, that is, they are disconnected, then the  
15 generator spins at synchronous speeds and provides reactive  
16 power. And that reactive power is what mitigates the need for  
17 -- to avoid voltage collapse and that when loads in the  
18 Moorpark area are low, that will be the mode of operation of  
19 these turbines, whether they are the 6000's or the LMS100's.  
20 That is not available -- that feature is not available with  
21 the frame seven of the Puente Project, so that if reactive  
22 power is needed, which it will be at certain times of the  
23 year, then the Puente Project will have to operate and supply  
24 real power whereas the LM100's or the LMS6000's will not and  
25 will not generate a plume in that method of operation.

1           Secondly, the other feature of the LMS100's and the  
2 LMS6000s is that they come equipped with enough battery  
3 storage so that they can supply spinning reserve without  
4 combustion. And that means, again, that they will operate --  
5 that those turbines will operate significantly less often  
6 than the frame seven Puente Project. To quantify this, we do  
7 need -- this impact, we do need the results of -- at least  
8 some of the results from the Cal ISO's study, but those facts  
9 are the facts. That is true that there will be significantly  
10 less operation. The other thing I would say is that the time  
11 in which you will get this worst case of all the turbines  
12 operating will be confined to summer late afternoons when the  
13 load in the area is very high, and that means that they will  
14 not occur in conditions that were described by the plume  
15 experts. I am not a plume expert, but I do understand the  
16 impact of temperature and neutral atmosphere on -- on plumes.

17           MS. FOLK: Okay. Thank you. That's all I have.

18           HEARING OFFICER KRAMER: Thank you.

19           Okay.

20           MS. FOLK: Wait. Can I just -- are you going to have  
21 questions for Jim?

22           MR. CARROLL: No.

23           MS. FOLK: Is staff? So we can probably let him go  
24 unless --

25           HEARING OFFICER KRAMER: Well, let's see if anyone

1 else -- anyone from the Panel wish to ask Mr. Caldwell any  
2 questions? Okay.

3 MR. HUGHES: I might be able to follow up and add  
4 some additional information to that because we --

5 COMMISSIONER SCOTT: Okay. Mr. Caldwell, stay on the  
6 line then in case you need to respond to what --

7 MR. HUGHES: This is Joseph Hughes with Energy  
8 Commission Staff, and I do appreciate that if the turbines  
9 have a clutch and operate in a synchronous condensing mode  
10 that provides grid stability, that means it would be  
11 operating less than as a combustion turbine which produces  
12 those thermal plumes that we're analyzing. However, there  
13 would still be times of operation as a clutch and turbine and  
14 would result in similar or the same impacts because the  
15 impacts to aviation are instantaneous impact. We don't look  
16 at it as like an annual average -- annual average impact and  
17 how often these things are operating. We assume it's  
18 operating on the worst case day and that plane is flying  
19 through that plume on that day. So even if it operates a few  
20 hours over the year, those impacts would be similar.

21 MS. FOLK: Did you -- can I follow up with that?  
22 Did you consider whether or not these were -- if they were  
23 equipped with a synchronous -- the clutch with a synchronous  
24 condenser that they would actually only need to operate on  
25 the hottest days in the summer?

1           MR. HUGHES: No, I did not. But, regardless, we  
2 evaluated the lowest midrange annual average and hottest day  
3 of the year ambient cases. We evaluated a wide range of  
4 ambient conditions. We just presented the results for the  
5 worst case.

6           MS. FOLK: Okay. You didn't present the results for  
7 hotter conditions then?

8           MR. HUGHES: We analyzed those. In the Staff  
9 assessment we presented the results for the worst case, which  
10 correlated or corresponded to the colder ambient days.

11          MS. FOLK: I just want to confirm what we have in  
12 the Staff assessment. It's only for the colder -- the  
13 combination of the plume of the --

14          MR. HUGHES: Correct, but I will point out with  
15 these types of technologies, the temperature of the exhaust  
16 gas is coming out around, what was it, like 900 degrees or  
17 something and that's -- sorry, that's Kelvin. But the Delta T  
18 between the exhaust and these turbines and the ambient  
19 temperature is significant, and even if you're looking at the  
20 coldest to the hottest day, it doesn't change the thermal  
21 impacts all that much.

22          MS. FOLK: It's -- my understanding was it's hot  
23 when it first comes out of the plume stack but as it rises,  
24 the temperature decreases dramatically based on Mr. Gray's --  
25 Doctor Gray's testimony?



1           MR. HUGHES: Yeah. And so I actually had a few  
2 follow-up points to Doctor Gray's thing, but I don't know  
3 when -- or if it's inappropriate to get into that, but I was  
4 taking notes. He made a ton of points. So I don't know if  
5 it's going to be helpful to the Committee to get back to that  
6 or not since I guess it didn't really ultimately change  
7 transportation's conclusions, but we could talk about all the  
8 various modelings that we did do and debate those all day if  
9 we wanted to.

10           HEARING OFFICER KRAMER: Okay. Well, first let me  
11 ask does anybody have any comments that would potentially  
12 involve Mr. Caldwell?

13           Okay. Does anybody believe that we could not set  
14 him free? So thank you, Mr. Caldwell.

15           MR. CALDWELL: Thank you.

16           HEARING OFFICER KRAMER: Okay. Go ahead with your  
17 points, Mr. Hughes for -- unless anybody had something to  
18 add, because you were going to change the subject a little  
19 bit, correct?

20           MR. HUGHES: If it would be helpful to the  
21 Committee. I don't have to. I was just pointing out that  
22 Doctor Gray made quite a bit of points in his thermal  
23 testimony, and I was making notes, and I had some rebuttals  
24 to those, but I don't know that it would be helpful even to  
25 get into that.

1 MS. WILLIS: I would ask you to please go ahead.

2 HEARING OFFICER KRAMER: Yeah, we do. Just to keep  
3 the flow, though, if somebody was speaking to the point that  
4 was just made, we'd get to that first and then go on to your  
5 other points.

6 Does anybody -- it sounds like nobody wants to. So  
7 go ahead, Mr. Hughes.

8 MR. HUGHES: So, first up, a lot of the points that  
9 Doctor Gray made about the force and the significance of the  
10 force to the aircraft to the velocity of the plume was all  
11 based on thermal buoyancy, and if he neglected the initial  
12 plume momentum flux, then that's a major flaw in that  
13 analysis, and so the impacts to aviation, that would be like  
14 saying if the gas came out of the stack at the same  
15 temperature as the ambient temperature, then there would be  
16 no force, but because it's coming out of an air -- jet engine  
17 and there's a huge amount of initial velocity, a lot of the  
18 impacts were due to the initial momentum flux and plume  
19 momentum. So --

20 HEARING OFFICER KRAMER: Is there a way to simplify  
21 that point even more from --

22 DR. GRAY: Can I respond to that --

23 HEARING OFFICER KRAMER: We don't -- we have English  
24 to Spanish interpreters but not engineer to lawyer. Just to  
25 be clear --

1 MR. HUGHES: Yeah. So there's two parts to the  
2 plume. There's the plume momentum which is the initial jet  
3 velocity, and then there's the thermal buoyancy, which is the  
4 temperature differences, and so he was talking about  
5 crosswinds and entrainment, and the plume cools as it rises,  
6 and that's true, but a lot of the force is due to the initial  
7 plume momentum and that jet velocity.

8 And then I wanted to point out that also -- also a  
9 lot of the -- he was saying that we didn't include crosswinds  
10 or meteorological conditions. I wanted to remind everyone  
11 that we also ran the MITRE Exhaust-Plume-Analyzer, which is  
12 an FAA funded plume model that includes all those three years  
13 of meteorological data and all those parameters that he was  
14 talking about like containment of the air and all these other  
15 things, and those risk probability results still correlated  
16 pretty well with the Spillane results.

17 MS. FOLK: Can Doctor Gray respond to that?

18 HEARING OFFICER KRAMER: Yeah, I was expecting him  
19 to.

20 DR. GRAY: So the initial plume momentum, which is  
21 related to the velocity of the mass coming out of the plume  
22 is quickly lost. By the time you get to 512 feet, none of  
23 that is left. It's all gone, and the only thing left that's  
24 pushing the plume at that point is the buoyant momentum, the  
25 buoyancy which contributes to a velocity. So it evaluates it

1 as momentum.

2           The jet -- so when you normally -- when you compute  
3 the -- a plume rise, it is competing forces, sometimes  
4 competing varying forces. There's a jet force initially.  
5 There's a buoyancy due to the temperature difference. They'll  
6 both contribute to an initial velocity, but the jet plume  
7 will -- the jet's momentum that we're talking about will  
8 quickly be lost to the atmosphere, and by the time you get to  
9 512 feet, there will be none of that left. If the plume was  
10 the same temperature as the atmosphere, there would be no jet  
11 energy left at all by the time you get even to a couple  
12 hundred feet. So that's why I ignored that when we're looking  
13 at the total force at that point. There's no jet energy left.

14           MR. HUGHES: So then for that purpose we also  
15 modeled the FAA's funded MITRE model that does include all of  
16 those parameters, and the results correlate pretty well with  
17 the Spillane stuff, but need I remind everyone that John said  
18 that his conclusions weren't based on the modeling. So --

19           MR. FONG: Right. This is Jonathan Fong with the  
20 Commission Staff. I mean, if you were to consider that, you  
21 know, Todd McNamee's letter of July 20th said that in the  
22 Camarillo airport near the Del Norte Fifth Street site that  
23 aircraft could fly as low as 500 feet over the Del Norte  
24 Fifth Street alternative site. So if you considered Doctor  
25 Gray's result of roughly 300 feet, the FAA does not say that

1 the difference between 500 feet, the lowest you could  
2 potentially find aircraft, and the height of this plume, that  
3 that difference is safe. So, therefore, staff has considered  
4 all of the results in the ranges but ultimately concludes  
5 that we cannot say that there is a safe separation between  
6 the top of a potentially, you know, hazardous plume and where  
7 we can reasonably find aircraft to fly over the site.  
8 Therefore, you know, the results of these models and the  
9 discrepancies of assumptions largely don't change Staff's  
10 conclusions of we know based on our review and Mr. McNamee's  
11 letter reinforces that we know that flights occur over the  
12 site, and we know that they occur at heights that could be  
13 hazardous to aviation.

14 MS. FOLK: Can I just follow up on that? So for the  
15 Puente site you also have overflight of aircraft, is that  
16 correct?

17 MR. FONG: Yes.

18 MS. FOLK: And yet you found that the impacts there  
19 would not be significant because you could redirect -- you  
20 would provide a warning to pilots that this --

21 MR. FONG: That's not the sole reason. The  
22 conclusion of Staff at the Puente site as opposed to the Del  
23 Norte site is a phrase that we routinely are repeating,  
24 reasonably see and avoid, and the fact that the Puente site  
25 is located at an area that -- that aircraft is not directed

1 over, meaning that aircraft that's on approach or departure  
2 is in constant -- in radio contact with air traffic control  
3 and there's a situation at the Camarillo site where the  
4 extended down leg approach would be where the air traffic  
5 controller is directing you to fly over the Del Norte site,  
6 whereas the Puente site pilots are not required to fly over  
7 it. So, yes, in our PSA and FSA we identify an occasional  
8 overflight at Puente. Those flights were not required to fly  
9 over that site. So Staff concluded in conjunction with our  
10 mitigation to notify pilots that they can reasonably see and  
11 avoid Puente. That is how the impacts ere less than  
12 significant.

13 MR. RUBENSTEIN: Mr. Kramer, if I might respond to  
14 your earlier question about linguistics and translation. In  
15 the discussion about momentum, maybe one way to think about  
16 this is that -- and, given that we're talking about a column  
17 of air impacting an airplane, the stack from the H class  
18 turbine puts out several million pounds of exhaust gas per  
19 hour. That's a lot of mass, and it's coming out when it meets  
20 the stack at about 80 miles an hour, and so if you were  
21 looking at Doctor Gray's analogy of, you know, getting hit by  
22 a five-pound brick or whatever versus a feather, this is a  
23 rather large brick coming out at a relatively high speed, and  
24 the whole purpose of all of this analysis is to figure out by  
25 the time it gets to a point where it might intersect with the

1 flight path of the airplane whether it's moving fast enough  
2 to interrupt that flight in some way. So we're not talking  
3 about feathers. We're talking about very large quantities of  
4 mass moving at a very high speed, and frankly, I disagree  
5 with the suggestion that we can ignore momentum. I know Mr. -  
6 - Doctor Gray suggested that at 500 feet there's no momentum  
7 left in the plume. I don't know for sure. That might be about  
8 right. I was thinking it was somewhere between 500 and 1,000  
9 feet, but Doctor Gray is suggesting that, well, the plume  
10 impacts really disappear by about 300 feet, and there are  
11 clearly momentum impacts at that lower level.

12           So, you know, if the whole question he is is the  
13 Staff's analysis conservative, absolutely. I've been arguing  
14 that for 10 years, and that's why the staff modifies their  
15 analysis based on more practical aspects which includes the  
16 information they have about the Camarillo Airport and about  
17 Naval Base Ventura County, because it's not a black and white  
18 decision. They make judgments based on that, if that helps to  
19 translate it a little bit.

20           HEARING OFFICER KRAMER: Thank you.

21           Doctor Gray, are you queuing up again?

22           DR. GRAY: Yes. Yes, there is a difference between  
23 the jet momentum and the buoyancy momentum, and I was only  
24 focusing on the buoyancy momentum at that height because, as  
25 I said, the jet's momentum would be long gone.

1           The plume that he's describing that's coming out of  
2 the stack with all that mass and all that velocity, that's  
3 true. I would not fly an aircraft right over the stack.  
4 You'll feel it. When we're at the critical height, at least  
5 in the model, the plume has now spread out to be 135 feet  
6 wide. That's how wide the plume is as it's entrained in air,  
7 and it's moving at, according to the model, 12 miles per  
8 hour. That plume at that point has none of the jet engine jet  
9 momentum left. It's only lifting itself because of its  
10 buoyancy, because it's a few degrees warmer than the air, and  
11 there's nothing pushing back. So it's just rising at five  
12 meters per second at that point.

13           That point -- at that point it would feel like a  
14 feather. There is no weight behind it. That's not the case at  
15 this -- at the stack. If you fly right over the stack with an  
16 aircraft or anything else, there is a huge amount of force  
17 there, and I didn't deny that. I'm not talking about what's  
18 happening a few feet above the stack. I'm talking about  
19 what's happening hundreds of feet above the stack when the --  
20 the momentum flux from the jet part of the engine -- jet part  
21 of the plume is long gone and all you're left with is buoyant  
22 momentum.

23           MS. FOLK: Could I ask -- I have a few more  
24 questions for Jonathan Fong.

25           So I believe you referred to Mr. McNamee's letter.



1 He indicates that based on his review of the Staff's  
2 preliminary Staff assessment with respect to Puente there  
3 were -- he identifies a number of overflights there. There  
4 were 14 -- let's see. I'm sorry. It appears that there were  
5 about 75 flights documented in the Staff assessment over  
6 Puente during a -- I'm sorry -- 85. My math is slow -- during  
7 a two-month period which would equate to 510 overflights at  
8 Puente.

9 Did you do a similar assessment of the number of  
10 planes flying over the Camarillo Airport -- I mean, sorry --  
11 the Fifth and Del Norte site?

12 MR. FONG: No. I mean, we -- we considered the air -  
13 - the County's airport land use plan which included figures  
14 that indicated overflight over the Del North Fifth Street  
15 site as part of normal traffic operations at the airport.

16 MS. FOLK: And what was the date of that plan?

17 MR. FONG: I don't know.

18 MS. FOLK: Was it 2000?

19 MR. FONG: I'm not sure.

20 HEARING OFFICER KRAMER: Just for the record, are  
21 you referring to TN220288, the letter? Did you happen to --  
22 do you have the document, a copy with you in front?

23 MS. FOLK: 220288, yes.

24 HEARING OFFICER KRAMER: Okay. Thank you.

25 MS. FOLK: So in your report -- what -- did you

1 conduct any observation of actual flight patterns of the  
2 Fifth and Del Norte site?

3 MR. FONG: No.

4 MS. FOLK: You -- you testified that ultimately  
5 aircraft might be more susceptible to thermal plume impacts.  
6 What was the threshold of significance you used to consider  
7 potential impacts to ultra light craft?

8 MR. FONG: Ultra light aircraft are generally  
9 smaller, lighter, and less powerful. Therefore, they would be  
10 more susceptible to impacts. So by --

11 MS. FOLK: Did you have a threshold of significance?

12 MR. FONG: Other than the definition of what an  
13 ultra light is compared to general aviation or light jet.

14 MS. FOLK: So -- but what's your -- how do you  
15 determine whether the impact's significant? Is it based on  
16 the 5.3 meters per second factor that you used here to  
17 testify?

18 MR. FONG: That threshold doesn't change, but we  
19 were simply noting that because of the nature of the light --  
20 ultra light aircraft of what it is as compared to other types  
21 of aircraft, that they would be more susceptible to any  
22 change in plume from any type of source. It's just by the  
23 nature of those aircraft.

24 MS. FOLK: So, again, it's the 5.3 meters per second  
25 was your threshold for determining significance?

1 MR. FONG: Yes.

2 MS. FOLK: Do you know how many ultra light aircraft  
3 operate out of the Camarillo airport?

4 MR. FONG: Not off the top of my head. I believe  
5 it's in the land use plan.

6 MS. FOLK: Do you know the total number of aircraft  
7 based on Camarillo?

8 MR. FONG: I believe that's also in the land use  
9 plan.

10 MS. FOLK: Do ultra light aircraft also operate out  
11 of the Oxnard Airport?

12 MR. FONG: I would imagine, yes.

13 MS. FOLK: I believe in your testimony today you  
14 identified that the -- the flight pattern, the elevation at  
15 which planes would be flying over the Camarillo -- I mean,  
16 the Fifth and Del Norte site based on the flight patterns was  
17 875 feet?

18 MR. FONG: Yes. That's the published traffic pattern  
19 altitude.

20 MS. FOLK: Okay. And you're relying on the published  
21 traffic pattern when you're determining whether or not  
22 there'll be a significant impact here?

23 MR. FONG: We also considered Todd McNamee's letter  
24 that you're referring to that states that the operations will  
25 range from 500 feet to 2500 feet.

1 MS. FOLK: Five hundred feet, and you in your  
2 testimony assuming the use of the Spillane model and all of  
3 its assumptions, particularly Doctor Gray's question here,  
4 identified that one LM6000 would -- the plume would no longer  
5 be significant under your thresholds at 512 feet, is that  
6 correct?

7 MR. FONG: That's correct.

8 MS. FOLK: And so we're talking about 12 feet?

9 MR. FONG: I would reiterate, as I have multiple  
10 times, that the FAA does not establish any safe distance  
11 between a plume and operating aircraft.

12 MS. FOLK: So any time a plane flies over a plume at  
13 all, it would be a significant impact in your view?

14 MR. FONG: As we stated, the FAA advises direct  
15 overflight, to avoid direct overflight and to fly upwind of  
16 the source of a plume.

17 MS. FOLK: Even if there's no plume left after 512  
18 feet?

19 MR. FONG: That's not my area of expertise.

20 HEARING OFFICER KRAMER: Okay. Now, if either Doctor  
21 Gray or Mr. Rubenstein want to weigh in on these topics, feel  
22 free to do so after the original subject of the question and  
23 answers.

24 Are we running out of gas? Pardon the pun.

25 MS. FOLK: I realize this is all very technical, and

1 so I'm trying to decide whether I should get more technical  
2 or not. I don't have any more questions on that point.

3 MS. SEEL: I have a couple of questions for Doctor -  
4 - Doctor Rubenstein, MR. Rubenstein?

5 MR. RUBENSTEIN: Mr. Rubenstein.

6 MS. SEEL: Mr. Rubenstein. A couple of clarification  
7 questions about your testimony. So could you turn to your  
8 third site diagram, which is Figure A-3.

9 HEARING OFFICER KRAMER: Let me try to bring that up  
10 for everyone. So which exhibit is that? Do you recall?

11 MS. SEEL: I don't have the TN number in front of  
12 me.

13 MR. RUBENSTEIN: 218887.

14 MS. SEEL: Just let me know when I should go ahead.

15 HEARING OFFICER KRAMER: It looks like it's Exhibit  
16 1147.

17 MR. RUBENSTEIN: And you were talking about -- you  
18 were talking about Figure A-3?

19 MS. SEEL: Figure A-3, yes. This is a configuration  
20 of the Del Norte site with five LM6000 turbines. I was just  
21 wondering if you could clarify what the stack separation is  
22 between the -- the stacks in this layout.

23 MR. RUBENSTEIN: I was trying to do the math in my  
24 head. I think I'm reminded of a previous discussion with  
25 Doctor Folk where I should not -- or Ms. Folk where I should

1 not do that.

2 The distances between the stacks can be determined  
3 by taking a look at the UTM coordinates above each stack.

4 MS. SEEL: Okay.

5 MR. RUBENSTEIN: So that, for example, to the one at  
6 the far right which ends at 180 meters and the one next to it  
7 at 145 meters, that would suggest that the distance between  
8 the center lines of the stacks was -- between those two  
9 stacks was 35 meters.

10 MS. SEEL: Thirty-five meters. Okay. We'll just take  
11 that as an approximation.

12 And so if the -- if the Commission were to decide a  
13 smaller number --

14 HEARING OFFICER KRAMER: Hold on a second. You need  
15 to project sometimes better than I do.

16 MS. SEEL: Thank you. So if the Commission were to  
17 decide that a smaller number of these LM6000 turbines were  
18 appropriate, would it be possible to -- let's say, for  
19 example, they -- they approved three LM6000 turbines. Could  
20 we then eliminate every other turbine in this site diagram?

21 MR. CARROLL: I'm going to object to the question on  
22 the basis that it calls for speculation.

23 HEARING OFFICER KRAMER: Well, if he can answer it.  
24 If -- she's just asking if they could be spaced wider, is  
25 that it?

1 MS. SEEL: If they could be spaced wider, exactly.

2 HEARING OFFICER KRAMER: Yeah. And then how that  
3 would affect the -- the plume calculations.

4 MS. SEEL: That is where I'm going.

5 MR. RUBENSTEIN: Well, to get to the ultimate  
6 extreme, we did look at the impacts of just a single plume.  
7 That's shown in our analysis, and so --

8 MS. SEEL: Yes.

9 MR. RUBENSTEIN: -- you know, depending on how many  
10 turbines you had and how they were stacked, the -- the  
11 critical elevation would be somewhere between what we show  
12 for a single turbine and what we show for the total.

13 MS. SEEL: So could you -- could you answer the --  
14 the question?

15 MR. RUBENSTEIN: Well, if money was no object and  
16 space was no object, then, yes, you could use just the three  
17 slots for the left, right, and center turbines.

18 MS. SEEL: And --

19 MR. RUBENSTEIN: You know, I'm not convinced that  
20 would be sound engineering, but in theory, yes, you could,  
21 just take those off the diagram.

22 MS. SEEL: You could just take those off. And this -  
23 - just to clarify, this site diagram takes into account the  
24 space available at the Del Norte site?

25 MR. RUBENSTEIN: These were done at a very

1 preliminary engineering stage, but, yes, they're based on the  
2 physical sites where the -- the projects would be located  
3 under the assumption of these alternatives.

4 MS. SEEL: Okay. Thank you. And now looking back at  
5 Page A-2 of your testimony, that's Table A-1 --

6 MR. RUBENSTEIN: Yes.

7 MS. SEEL: -- so here you identify for the Del Norte  
8 Fifth site for the LM6000 technology that the critical  
9 distance between the stats is 53.4 meters. Hold on one  
10 second. And in your testimony you wrote that only plumes that  
11 are less than the critical distance apart will merge. Is that  
12 correct?

13 MR. CARROLL: I would just ask that to the extent  
14 specific statements in the testimony are being referred to  
15 that a reference be provided so that we can --

16 MS. SEEL: Sure. So I took that quote from the  
17 previous page, page one of your testimony. It's in the middle  
18 of that bottom paragraph.

19 MR. RUBENSTEIN: Could you restate the question? I  
20 just want to make sure I don't get the direction wrong when I  
21 answer the question.

22 MS. SEEL: Sure. Sure. So in your testimony on Page  
23 A-1, in the middle of that bottom paragraph, you write "Only  
24 plumes that are less than the critical distance apart will  
25 merge." Do you see that?



1 MR. RUBENSTEIN: Yes.

2 MS. SEEL: And so now looking on the next page at  
3 Table A-1, I see here the critical distance for the LM6000  
4 turbines you've identified to be 53.4 meters, correct?

5 MR. RUBENSTEIN: Correct.

6 MS. SEEL: So if those stacks were 53.4 meters apart  
7 or greater, then you would not expect the plumes to merge?

8 MR. RUBENSTEIN: That's correct.

9 MS. SEEL: And in that situation, would the single  
10 stack plume analysis apply?

11 MR. RUBENSTEIN: Yes.

12 MS. SEEL: Thank you. Those were all my questions.

13 MS. FOLK: I actually have just a couple of follow-  
14 up questions.

15 HEARING OFFICER KRAMER: Okay. Go ahead.

16 MS. FOLK: So this is for Jonathan Fong.

17 Can you tell me what the distance is from the Fifth  
18 and Del Norte site to the Camarillo Airport?

19 MR. FONG: I would have to double-check, but I  
20 thought it was approximately 1.8 miles.

21 MS. FOLK: And can you tell me what the distance is  
22 from the Puente site to the Oxnard Airport?

23 MR. FONG: I know it's in the FSA. I'd have to  
24 double-check because I don't want to misstate it.

25 MS. FOLK: Do you know is it approximately 1.6 to

1 1.7 miles?

2 MR. FONG: It sounds reasonable.

3 MS. FOLK: And do you know with regard to flight  
4 paths whether ultimately it's the pilot's discretion on the  
5 flight path that they take?

6 MR. FONG: I know instances when air traffic control  
7 directs you the pilot is required to abide by those  
8 directions.

9 MS. FOLK: Are you sure about that?

10 MR. FONG: To the best of my knowledge.

11 MS. FOLK: And what is your knowledge of --

12 MR. FONG: Just reviewing air -- either the FAA's  
13 guidance documents and the Aeronautical Information Manual.

14 MS. FOLK: And if Mr. McNamee was to say it's  
15 ultimately the pilot's discretion, would you believe that?

16 MR. FONG: I would agree with him.

17 MS. FOLK: I don't have anything further.

18 HEARING OFFICER KRAMER: Okay. Anyone else?

19 MR. CARROLL: I do not have anything further for any  
20 of the witnesses on the panel, but there -- there's an issue  
21 related to the City's proposed Exhibit 3069, which are the  
22 photographs taken by Mr. Williams of the Fifth Street Del  
23 Norte site which I assume given the options pertain to this  
24 topic area and yesterday I believe the understanding was that  
25 Mr. Williams would be made available for questioning on that.

1 So I just wanted to make sure that we didn't lose sight of  
2 that before we moved on.

3 MS. FOLK: So the Fifth and Del Norte photos were  
4 struck.

5 HEARING OFFICER KRAMER: Yeah. I'm trying to find my  
6 --

7 MS. FOLK: You won.

8 MR. CARROLL: It happens so infrequently I guess I  
9 forgot.

10 HEARING OFFICER KRAMER: I believe that's correct.

11 MR. CARROLL: I apologize. I forgot that. Thank you.

12 MS. FOLK: But the other ones, the photos of the  
13 flooding as to --

14 MR. CARROLL: And with respect to those, I don't  
15 need to question -- excuse me. I don't need to question  
16 those. Those were -- in retrospect, in watching some of the  
17 presentations yesterday, those were in previous documents  
18 from Mr. Revell, and we had a lot of discussions about those  
19 photos at previous hearings, and so I withdraw the objection  
20 with respect to those particular photos.

21 HEARING OFFICER KRAMER: So that is -- is that 3060?

22 MR. CARROLL: It is --

23 MS. FOLK: I think so.

24 MR. CARROLL: Yes, it is.

25 HEARING OFFICER KRAMER: Okay. So that's now no

1 longer subject to cross. It will be -- okay. Okay. So we --  
2 it sounds like we're finished with this topic unless I hear  
3 otherwise.

4 Okay. Thank you, gentlemen. So we have closed now  
5 three of our four topics, just to be clear, yesterday's and  
6 this one today. Okay. Let's take a 15-minute break. I'll even  
7 put a timer on the screen just so you can see when you need  
8 to be back.

9 (Whereupon, a brief recess was taken.)

10 COMMISSIONER SCOTT: Okay, folks. We have our  
11 witnesses here. We are going to go ahead and get going. So if  
12 you are not back at your seat, please come on back. We are  
13 going to start with the next portion of our evidentiary  
14 hearing, which is on the biological resources.

15 So let me turn this over to Hearing Officer Paul  
16 Kramer to get everyone sworn in.

17 HEARING OFFICER KRAMER: Okay. So do we have anyone  
18 on the telephone? Let's see, Jonna Engel from the Coastal  
19 Commission, are you there? Can you -- on mute, Jeremy? Yes,  
20 she's on the list. So please unmute her, Ms. Engel, with an  
21 E.

22 MS. ENGEL: I'm listening until any questions come  
23 my way.

24 HEARING OFFICER KRAMER: Okay. And we just heard the  
25 tail end of that. I'm sure there was -- okay. So we're going

1 to -- first we'll be swearing everyone in as a witness, and I  
2 have on the list would be Julie Love, Ivan Parr, Lawrence  
3 Hunt, Carol Watson, and John Hilliard, and then Jonna Engel  
4 from the Coastal Commission.

5 Am I pronouncing your first name correctly, Ms.  
6 Engel, Jonna?

7 MS. ENGEL: Jonna.

8 HEARING OFFICER KRAMER: Okay. They tell me it's  
9 Jonna, and it looks like maybe you're -- maybe she's one of  
10 the call-in users then, because we're not hearing from her.  
11 So Jonna, can you speak now? Okay. Well, we'll see when she  
12 comes back. We'll get going. So if the witnesses could raise  
13 their right hand.

14 (Whereupon, Julie Love, Ivan Parr, Lawrence Hunt,  
15 Carol Watson, John Hilliard, and Jonna Engel, witnesses, duly  
16 sworn.)

17 HEARING OFFICER KRAMER: Okay. Let's introduce each  
18 of you and have you spell your name for the court reporter,  
19 beginning with the gentleman on my right.

20 MR. PARR: My name is Ivan Parr, I-V-A-N P-A-R-R.

21 MS. LOVE: My name is Julie Love, J-U-L-I-E, Love,  
22 L-O-V-E, with AECOM.

23 MS. WATSON: Good morning. Carol Watson, C-A-R-O-L  
24 W-A-T-S-O-N.

25 MR. HILLIARD: Good morning. I'm John Hilliard, J-O-

1 N H-I-L-L-I-A-R-D, with the Energy Commission.

2 MR. HUNT: Good morning. My name is Lawrence Hunt,  
3 L-A-W-R-E-N-C-E H-U-N-T, and I'm a consulting biologist  
4 that's working with the Intervenor.

5 HEARING OFFICER KRAMER: Mr. Hunt, you -- and I have  
6 to remind myself too, you need to speak directly into the  
7 microphone, and even if you hear -- you sound a little loud  
8 from the speakers coming back at you, don't do the natural  
9 thing that people do, which is to speak quieter, because  
10 we're trying to make for a good hearing for those of us in  
11 the room and also on the WebEx.

12 Jonna Engel, did you come back to us on the phone  
13 or the computer? Okay. Well, we need to get going. Okay.  
14 She's wanting us to call her. Jeremy, can you call her and  
15 help her get back into the WebEx? Okay. He will. Thank you,  
16 because we don't really have a way to call her with -- from  
17 WebEx. Okay.

18 MR. CARROLL: Mr. Kramer, point of clarification  
19 with respect to Ms. Engel. It wasn't exactly clear to me in  
20 what capacity she was participating today. You may recall  
21 that at the February hearings we had requested that Ms. Engel  
22 be presented as a witness to be cross examined, and the  
23 response to that from Coastal Commission was that the Coastal  
24 Commission's 30413(d) report spoke for itself, that Staff had  
25 no authority to modify the report and, therefore, other than

1 Mr. Street who could speak generally to how the report was  
2 produced, the subject matter experts, including Ms. Engel,  
3 would not be made available as witnesses.

4 So I'm not clear now if that continues to be the  
5 case and she's here in the event that we have questions for  
6 her. So I'm just seeking clarification to the extent that  
7 there is any.

8 HEARING OFFICER KRAMER: What she would be  
9 participating about? Well, she told me earlier in the week  
10 that -- or left me with the impression that she was willing  
11 to speak to the recent letter from the Coastal Commission,  
12 and she said she had prepared part of it, and she seemed a  
13 little more willing to explain its meaning. So we may find  
14 that we are able to obtain a little more information out of  
15 them than we did the previous time.

16 MR. CARROLL: Okay. So -- so she is theoretically a  
17 -- will be a sworn expert witness here at the behest of the  
18 Committee?

19 HEARING OFFICER KRAMER: That's fair to say, and we  
20 did make the outreach to try to -- to make sure that they  
21 were aware of the meeting and were willing to -- you know, if  
22 they were willing to attend, we desired their presence.

23 MS. ROESSLER: Isn't she participating in the same  
24 matter other agencies have participated in? I don't recall  
25 any --

1           HEARING OFFICER KRAMER: Well, they can participate  
2 as an other agency, yes.

3           MS. ROESSLER: I mean in terms of I understood she  
4 was here to discuss her -- the July 21 letter and the new  
5 information in the same capacity that all the other witnesses  
6 have been instructed to limit their scope and testimony to.  
7 Is that accurate?

8           HEARING OFFICER KRAMER: I think that's a fair  
9 characterization.

10          MS. ROESSLER: Is that what Mr. Carroll's asking?  
11 I'm just trying to understand.

12          MR. CARROLL: Well, you know, I guess we'll see  
13 where it goes. The only reason that I raise it is that we  
14 tried very hard to get Ms. Engel to participate at the  
15 February hearings and were told under no uncertain terms that  
16 she would not be made available as a witness, and so I'm just  
17 trying to understand the capacity in which she's appearing  
18 here today. It may not matter depending on where things go.  
19 So I don't think we need to pursue it any further, but I just  
20 wanted to seek clarification and, you know, we'll see what  
21 happens if and when she participates.

22          HEARING OFFICER KRAMER: Okay. Looks like she's back  
23 on WebEx, although she may have muted herself.

24          Ms. Engel, can you unmute yourself and confirm that  
25 you're with us?



1 MS. ENGEL: Yeah. I'm here. Can you hear me?

2 HEARING OFFICER KRAMER: Okay. Oh, no, I see. You're  
3 just -- okay. Yes, we can hear you. So did you hear the oath  
4 that I administered a few minutes ago?

5 MS. ENGEL: Not really. What -- the reason I'm  
6 having trouble with -- you had asked me when we spoke the  
7 other day to not have it on speaker phone, and when I try to  
8 get my phone onto speaker phone, I'm just in an unmute  
9 speaker phone mode now. So are you hearing the back chatter?  
10 Does this work for you?

11 HEARING OFFICER KRAMER: That is not ideal. So you  
12 don't have a handset that you can use?

13 MS. ENGEL: I do have a handset, but then when I --  
14 when I try to use it, like going from speaker phone to the  
15 handset -- I'm sorry to be messing up with this. I just don't  
16 know how to do it. So I guess I could just be on the headset  
17 the whole time.

18 HEARING OFFICER KRAMER: I think we'd appreciate  
19 that because we have a very echoey room here, and the --

20 MS. ENGEL: Okay.

21 HEARING OFFICER KRAMER: -- better signal -- if you  
22 can avoid echoes on this end, that's one less echo we have to  
23 listen to.

24 MS. ENGEL: Okay. Well, I may have to end the  
25 meeting and have you call me back and just be on the headset,

1 but I did not hear the intro that you gave, and the reason  
2 I'm on the phone is that -- or I'm participating is Joe  
3 Street is on vacation, and as I understand it, I'm just to  
4 represent the Coastal Commission and to just answer any  
5 questions.

6 HEARING OFFICER KRAMER: Okay. Yes. Okay. Well, let  
7 me swear you in as a witness and then if you can arrange to  
8 call back to get on your headset.

9 MS. ENGEL: Will do.

10 HEARING OFFICER KRAMER: So if you'd raise your  
11 right hand.

12 (Whereupon, Jonna Engel is duly sworn.)

13 HEARING OFFICER KRAMER: Okay. Thank you.

14 MS. ENGEL: Okay. I'll call you back.

15 HEARING OFFICER KRAMER: All right.

16 MS. ENGEL: Or I'll log out and have you guys call  
17 me back.

18 HEARING OFFICER KRAMER: Well, okay. You have to  
19 tell it to call you back.

20 MS. ENGEL: Yes, I will do that. Thank you.

21 HEARING OFFICER KRAMER: Okay. Thank you.

22 MS. ENGEL: Okay. If you guys want to --

23 HEARING OFFICER KRAMER: Okay. You didn't actually  
24 hang up on us. Could you --

25 MS. ENGEL: Oops. So you're there?

1 HEARING OFFICER KRAMER: Oh, we are there. Okay.

2 MS. ENGEL: Okay. Then never mind. I don't have to.

3 HEARING OFFICER KRAMER: Okay. And that is so much  
4 better. Thank you.

5 MS. ENGEL: Okay. Okay.

6 HEARING OFFICER KRAMER: All right. Let's proceed.  
7 We're just starting. I gather you're not also on your  
8 computer, though, are you? Ms. Engel?

9 MS. ENGEL: Hello?

10 HEARING OFFICER KRAMER: Yeah. Are you also looking  
11 at your computer?

12 MS. ENGEL: Yes, I am.

13 HEARING OFFICER KRAMER: Okay. So you'll be able to  
14 see the presentations that are on our screen then.

15 MS. ENGEL: Yes, I will. Thank you.

16 HEARING OFFICER KRAMER: Okay. Excellent.

17 All right. Let's begin with the Applicant's --

18 MR. CARROLL: Okay.

19 HEARING OFFICER KRAMER: -- witnesses and their  
20 opening summaries.

21 MR. CARROLL: Yes. So Applicants call Ms. Love and  
22 Mr. Parr. She has been -- throughout these proceedings, Ms.  
23 Love is our primary witness on biological resources. Mr. Parr  
24 assisted Ms. Love in the conduct of the surveys that are the  
25 subject of these proceedings, and so Ms. Love will continue

1 to play the lead role, and Mr. Parr will be here to the  
2 extent that he can contribute to responses to any questions.

3 So, with that, Ms. Love, could you please proceed  
4 with your opening statement.

5 MS. LOVE: So, as directed by the Committee, AECOM  
6 biologists conducted focused biological surveys for the five  
7 special status species indicated by the Committee and an  
8 additional nine species requested by the Intervenors.  
9 Cumulatively, these 14 species are referred to as the target  
10 species. Surveys were conducted between April and June of  
11 2017. No target species were observed within the project  
12 site. One target species, the Globose dune beetle, was  
13 detected in other portions of the biological survey area.

14 The Committee's order directed us to conduct  
15 focused biological surveys on the project site. We went above  
16 and beyond this directive and conducted focus surveys in the  
17 four undeveloped areas at the MS -- MGS facility that will be  
18 affected by the Puente development. So that's one, the three-  
19 acre project site that you can see up here on the screen.  
20 Number two, the --

21 HEARING OFFICER KRAMER: Jeremy, could you make that  
22 full screen for everyone. Thank you.

23 MS. LOVE: So the first project component is the  
24 three-acre project site. The second one is the lay-down area,  
25 third the outfall area, and fourth, the access road to the

1 outfall area.

2           In addition, we conducted focus surveys 100 feet  
3 beyond the boundaries of the project site and lay-down area  
4 and 25 feet beyond the boundaries of the access road to the  
5 outfall except for where those boundaries -- I'm sorry. I  
6 think I might have let me spoke. Let me just repeat myself.

7           In addition, we conducted focus surveys 100 feet  
8 beyond the boundaries of the project site and lay-down areas  
9 and 25 feet beyond the boundaries of the access road to the  
10 outfall, except for where those buffers extended off the MGS  
11 property into private lands, into the Edison Canal or outfall  
12 drainage or into paved areas. The outfall area incorporates a  
13 25-foot buffer beyond the area of demolition work, and,  
14 therefore, no additional buffer was added to that area.

15           Together, all of these areas were -- in which we  
16 conducted the focus biological surveys are called the  
17 biological study area or the BSA.

18           The decision to not extend the BSA off the MGS  
19 property and into adjacent private property meant that the  
20 buffer area on the northern border of the project site was  
21 reduced by approximately 10 feet to avoid extending into the  
22 adjacent McGrath Lake, Ventura milk vetch -- marsh milk vetch  
23 mitigation site. The mitigation site is a restricted area  
24 which is well documented in terms of biological resources.

25           With respect to the access road, as discussed, we

1 did survey the outfall access road and a 25-foot buffer on  
2 each side of the access road because this access road is  
3 currently utilized only to the limited extent and is located  
4 on undeveloped lands. We did not survey other existing access  
5 roads because they are paved or gravel and regularly used for  
6 current operations at the facility.

7           Lastly, questions have been raised about whether we  
8 surveyed the onsite alternative locations identified in the  
9 final Staff assessment. Because these locations are currently  
10 developed, we do not survey them.

11           Mr. Hunt's written testimony correctly notes that  
12 we did not identify all existing records or observations of  
13 target species. Such records searches are typically conducted  
14 to determine which species should be surveyed. In this case,  
15 the target species were already identified. So we -- so while  
16 we did conduct the standard CNDDB search, we did not conduct  
17 an extensive research effort.

18           The three special status plant species that were  
19 targeted for the focus biological surveys included Ventura  
20 marsh milk vetch, orchids pin cushion and salt marsh bird's  
21 beak. None of these species or any individuals of the same  
22 genus were observed within the BSA during the focus botanical  
23 transit surveys that we were conducted. Surveys were  
24 conducted prior to and during the blooming season of each of  
25 these three species. Referenced population visits were

1 conducted concurrently with our onsite surveys. So the  
2 Ventura marsh milk vetch individuals were observed at the  
3 McGrath Lake reference site. The orchid pin cushion  
4 individuals were observed at the Marina Del Rey and McGrath  
5 Lake reference sites. And the salt marsh bird's beak  
6 individuals were observed at the Ormond Beach Generating  
7 Station Reference site.

8           Incidentally, three non-target special status plant  
9 species were also observed with the BSA, and those include  
10 the red sand verbenas, the wooly seablite and potentially the  
11 branching beach aster.

12           Intervenors have commented that we should have  
13 collected voucher specimens to comply with CDF protocols, but  
14 the portion of the protocols that discusses voucher specimens  
15 is only a recommendation, and even if we had collected those  
16 specimens, our survey results would remain the same.

17           One invertebrate, the Globose dune beetle, was  
18 targeted for focus biological surveys. Although the Globose  
19 dune beetle are considered a federal species of concern, they  
20 are not protected under a state or federal or state  
21 Endangered Species Act.

22           No globos dune beetles were observed with the  
23 project site or the lay-down area and buffer area. Globose  
24 dune beetles were observed in the northern and western  
25 project site buffer, the outfall area, and the access road

1 and buffer area during both our transect surveys and our  
2 pitfall trapping. Undetermined dune beetle furrow marks were  
3 also observed in the project site and the buffer and the  
4 access road buffer and undetermined dune beetle larvae were  
5 observed in the project site buffer, the outfall area, and  
6 the access road.

7           The purpose of the focus survey was to determine  
8 the likelihood for the presence of Globose dune beetle. The  
9 survey was not intended to be a census count of the beetles.

10           In his written testimony, Mr. Hunt expresses  
11 several concerns with our methodology. First he criticizes  
12 our survey for not using sieves. We successfully found  
13 Globose dune beetles using four other methods to locate these  
14 beetles. We used pitfall traps, coverboards, raking and  
15 transects. Cumulatively, these methods proved effective in  
16 locating dune beetles. Therefore, it wasn't necessary to use  
17 the sieves. Moreover, the use of sieves can be hazardous to  
18 the beetles and can also be hazardous to the associated plant  
19 species.

20           Second, Mr. Hunt questions our decision not to  
21 identify the species of all the dune beetles we discovered.  
22 We only stopped identifying the species of every dune beetle  
23 in a particular project component of the BSA after we  
24 confirmed that Globose dune beetles were among those that  
25 were discovered. To continue identifying each beetle we



1 discovered would have been unproductive, and, furthermore,  
2 identifying the beetles would be unnecessarily disruptive to  
3 them. Moreover, all beetles found within the project site  
4 were identified and determined not to be the Globose dune  
5 beetle.

6 Finally, Mr. Hunt takes issue with our use of  
7 pitfall traps at a density of 20 traps per acre. Since dune  
8 beetles have no proscribed protocol in regards to density, we  
9 used our best professional judgment, which we continue to  
10 believe was appropriate, and we surveyed the entire BSA.

11 Three special status reptile species were targeted  
12 for the focus biological surveys, including the Blainesville  
13 horned lizard, two-striped garter snake, and California  
14 legless lizard. None of these species or any closely related  
15 species were observed within the BSA during the transect,  
16 coverboard, or raking box surveys.

17 Mr. Hunt critiques the density of coverboard  
18 placement, the breadth of raking for lizards, and the  
19 duration of the coverboard surveys. Again, as discussed in  
20 the absence of particular protocols for the density of  
21 coverboards and breadth of raking, we used our best  
22 professional judgment in respect to those items, and we were  
23 constrained in regards to the duration in the Committee's  
24 orders.

25 Seven special status avian species were targeted

1 with the focus biological surveys, including the burrowing  
2 owl, Western snowy plover, California least tern, least  
3 Bell's vireo, white-tailed kite, northern harrier and  
4 California black rail. None of these species were observed in  
5 the BSA during the burrowing owl CDFW breeding season  
6 protocol surveys or the general avian surveys.

7           Mr. Hunt suggests that we should have surveyed for  
8 a longer period, but we were constrained by the Committee's  
9 orders and feel that the surveys that were conducted were  
10 sufficient and biologically appropriate. To summarize the  
11 results of our surveys of target species, Globose dune  
12 beetles were observed in the northern and western project  
13 site buffer, the outfall area, the outfall access road and  
14 buffer areas during both transect surveys and pitfall  
15 trapping.

16           No Globose dune beetles were detected on the  
17 project site, and no other target species were detected  
18 anywhere within the BSA. The results of our survey are a  
19 strong indication that the target species are not present  
20 within those portions of the BSA that are to be developed.  
21 Even if some species are in the BSA, implementation of the  
22 conditions of certification would ensure that no significant  
23 impacts to those species will occur as a result of  
24 development of the project.

25           Three non-target species -- I'm sorry. Three non-

1 target special status species were also observed during the  
2 -- during our survey efforts. Two individual California  
3 horned larks were observed in the open dune areas and the  
4 outfall access road buffer area. No nesting or breeding  
5 behavior were observed.

6 A pair of Peregrine falcons and a pair of great  
7 horned owls, excuse me, were observed nesting on NGS Unit 1.  
8 Forging habitat is widespread in the area, and the habitats  
9 within the BSA are not unique. Furthermore, since MGS Unit 1  
10 will be demolished as part of the project development,  
11 continued use of this nesting site will not occur.

12 Although the Committee orders did not require any  
13 determinations with respect to habitat, agency, or Intervenor  
14 experts -- I'm sorry. Although the Committee efforts did not  
15 require any determinations with respect to habitats, agency  
16 and Intervenor experts have made certain assertions with  
17 which we disagree with.

18 Doctor Engel of the California Coastal Commission  
19 observed that the area to the north of the project site  
20 constitutes dune habitat. We disagree. This area consists of  
21 a manmade flood protection berm, an access road, and a fence  
22 line. While there are some open areas between these manmade  
23 elements, they are degraded and low quality, and they're also  
24 fragmented. In his written testimony, Mr. Hunt concludes that  
25 numerous locations within and adjacent to the project site

1 constitute ESHA or Environmentally Sensitive Habitat Areas.  
2 In my view, formal ESHA determinations are made by agencies  
3 and not by biologists. However, I would not characterize any  
4 of these areas identified by Mr. Hunt or any part of the BSA  
5 as an ESHA for several reasons. Those areas are low quality.  
6 They have wildlife barriers. They're fragmented, and they are  
7 also degraded.

8           We still maintain that the two-acre wooly seablite  
9 scrub and ice plant vegetation community onsite is not a  
10 wetland and is, therefore, not ESHA due to the presence of  
11 the wetland.

12           After conducting these requested surveys, we remain  
13 convinced that with implementation of the proposed conditions  
14 of certification, the project as a whole will not  
15 significantly impact biological resources. The only areas  
16 where the targeted special status species were observed are  
17 within areas of temporary impact. Avoidance and minimization  
18 measures outlying within the conditions of certification  
19 limit impacts to special status species.

20           Additionally, the project will result in a  
21 cumulative net gain and habitat for special status species  
22 where the outfall will be removed.

23           MR. CARROLL: Thank you.

24           And Mr. Parr will not be providing an opening  
25 statement. So that concludes opening statements on behalf of

1 the Applicant.

2 HEARING OFFICER KRAMER: Okay. Staff?

3 MS. CHESTER: Good morning. These questions will be  
4 directed just to Ms. Watson. Again, Mr. Hilliard will be  
5 available to answer questions.

6 Ms. Watson, can you please tell me what was  
7 required of Staff by the Committee orders?

8 MS. WATSON: The Committee orders directed the NRG  
9 Commission Staff, California Coastal Commission Staff, and  
10 California Department of Fish and Wildlife Staff were invited  
11 to participate in the design and conduct of the biological  
12 resources surveys. Subsequently, Staff filed comments on  
13 April 7th, 2017. These comments were incorporated by the  
14 Applicant into the April 10th, 2017 final biological  
15 resources survey methodology.

16 And could you briefly state the purpose of your  
17 testimony?

18 MS. WATSON: To analyze potential impacts to  
19 biological resources from the construction and operation of  
20 the proposed project using updated survey information as  
21 provided in the Applicant's biological resources survey  
22 report.

23 MS. CHESTER: And did you review the Applicant's  
24 survey methodology?

25 MS. WATSON: Yes, I did.

1 MS. CHESTER: Did the biological study area include  
2 the entire project site?

3 MS. WATSON: Yes, it did. The project site is  
4 defined as the approximate three-acre triangular portion  
5 located to the north of the existing MGS site. The biological  
6 study area, or what I'll refer to as the BSA from now on,  
7 includes the project site, the ocean outfall, the associated  
8 temporary access road, and buffer zones around the project  
9 site and access road.

10 MS. CHESTER: Did the biological study area include  
11 a full 100-foot buffer area around the project site?

12 MS. WATSON: No, it did not. It did not extend  
13 beyond the northern fence line of the NGS property or into  
14 areas covered with impervious surfaces. However, that does  
15 not affect Staff's conclusion that impacts to biological  
16 resources following mitigation are less than significant. As  
17 written, the Staff's proposed conditions of certification for  
18 biological resources assumed presence of special status  
19 species, and so staff has proposed sufficient mitigation to  
20 reduce impacts to species to below the level of significance  
21 on the site at the ocean outfalls and in the surrounding  
22 project area.

23 MS. CHESTER: Did Energy Commission Staff visit the  
24 site during any of the focused surveys?

25 MS. WATSON: Yes, we did. We visited the site on May

1 2nd and 3rd and May 10th through 11th.

2 MS. CHESTER: What surveys were performed while you  
3 were on site?

4 MS. WATSON: Staff attended coverboard surveys which  
5 were being performed on May 2nd and also reviewed the  
6 locations of pitfall traps. On May 3rd, Staff walked the site  
7 with Doctor Engel from the Coastal Commission, observing  
8 silvery legless lizard raking plots and reviewing the entire  
9 site, buffer area, ocean outfall, and the associated access  
10 road.

11 The following week, Staff attended focus surveys on  
12 May 10th and accompanied the Applicant's biology team on  
13 walking transects for Globose dune beetle on the project  
14 site, the buffer areas, and planned access road to the  
15 northwest. Staff viewed coverboard locations and past sand  
16 raking locations. On May 11th, Staff attended inspection of  
17 pitfall traps on the project site, proposed project site, the  
18 proposed staging and lay-down area, and the buffer lands and  
19 proposed access road to the north and the west.

20 MS. CHESTER: Did you review the results of the  
21 Applicant's Biological Resources Survey Report?

22 MS. WATSON: Yes, I did.

23 MS. CHESTER: Were there -- were any surveyed  
24 species identified in the survey area?

25 MS. WATSON: Yes. The applicant performed focus

1 surveys on 14 species. Of these, one special status species,  
2 the Globose dune beetle, was identified during the surveys.  
3 The Globose dune beetles were located along the project site  
4 buffer and the ocean outfall and access road. Two silvery  
5 legless lizards were found by Intervenor's. One was northwest  
6 of the ocean outfall access road, and another individual was  
7 located to the north of the project sites.

8 MS. CHESTER: Did the results of Applicant's surveys  
9 or Intervenor's testimony change staff's conclusion that the  
10 site does not constitute an environmentally sensitive habitat  
11 area?

12 MS. WATSON: No. Staff has relied on the opinion of  
13 the Coastal Commission in determining the designation of  
14 ESHA. My interpretation of the Coastal Commission Staff  
15 comments is that there is no change to the ESHA designation  
16 as stated in the original 30413(d) report.

17 MS. CHESTER: Does the applicant's testimony  
18 contained on Page 3-11 of the Biological Resources Survey  
19 Report change your position regarding the wetland  
20 delineation?

21 MS. WATSON: No, it does not.

22 MS. CHESTER: Do you agree with Doctor Hunt's  
23 testimony regarding the presence of 0.52 acres of wetland  
24 habitat on the project area?

25 MS. WATSON: No. Staff has been deferential to the



1 Coastal Commission's determination as to the extent of  
2 wetlands on the site which uses a single parameter  
3 determination of jurisdiction. That has not changed. Their  
4 Staff's latest comments do not note a change of opinion  
5 regarding the extent of wetlands on the proposed project  
6 site.

7 MS. CHESTER: Applicant noted the occurrence of  
8 incidental wildlife in a service -- survey area. That's on  
9 Biological Resources Survey Report Page 3-9. Does the  
10 occurrence of any of these species change your conclusions or  
11 proposed conditions of certification contained in the final  
12 Staff assessment?

13 MS. WATSON: No. The California horned lark, which  
14 is a watch listed species, was observed in the BSA along the  
15 access road buffer area. This species is not expected to nest  
16 in the area. No impacts are expected. Nests of great horned  
17 owl and Peregrine falcon were discovered on Unit 1 but are  
18 also outside of the BSA, and no direct impacts would occur  
19 with implementation of condition of certification Bio 8.  
20 Indirect impacts, such as the noise of demolition may impact  
21 nesting birds. Noise impacts are subsequently mitigated under  
22 conditions Bio 8 and Bio 10. Several species of special  
23 status plants ere also detected in the BSA along the project  
24 buffer and the ocean outfall access road. These plants,  
25 however, are California rare plant ranked three and four and,

1     therefore, are not considered significant under CEQA.

2             MS. CHESTER: Are you recommending changes to  
3     Staff's proposed conditions of certification contained in the  
4     FSA?

5             MS. WATSON: Yes, I am. The special status species  
6     translocation plan within Bio 10 has been modified. This  
7     condition now proposes translocating individuals of legless  
8     lizard and Globose dune beetle to avoid impacts to these  
9     species. This measure will ensure that a scientifically  
10    robust translocation plan would be developed and would  
11    utilize suitable habitat adjacent to the project site to  
12    mitigate for the temporary impacts of removal of the ocean  
13    outfall and use of the outfall access road.

14            MS. CHESTER: Does this conclude your testimony?

15            MS. WATSON: Yes, it does.

16            MS. CHESTER: Thank you.

17            HEARING OFFICER KRAMER: Okay. Next would be Mr.  
18    Hunt.

19            MR. CARROLL: Mr. Kramer, just a -- sorry to  
20    interrupt, but a point of order. We had asked to be permitted  
21    to question Mr. Trautwein with respect to the City's proposed  
22    -- I'm sorry -- Environmental Defense Center proposed Exhibit  
23    4039. Mr. Hunt's written testimony and, therefore, I assume  
24    perhaps his verbal testimony refers to that exhibit. So I  
25    just wanted to remind the Committee it may make sense to take

1 Mr. Trautwein first, but that's up to the Committee  
2 obviously.

3 HEARING OFFICER KRAMER: That's not a bad idea. He's  
4 here and available, correct?

5 MS. ROESSLER: He is. Like I mentioned before, he is  
6 Staff, and he's my only Staff member working this case with  
7 me. So what I ask is that if he is questioned, then he's  
8 released off the panel because I need his assistance as I  
9 hadn't anticipated.

10 HEARING OFFICER KRAMER: That seems fair. So -- so,  
11 Mr. Carroll, you can then --

12 MS. ROESSLER: Do you want to question him now  
13 beforehand?

14 HEARING OFFICER KRAMER: Yeah, let's do that. I  
15 think Mr. Carroll is saying that he prefers to resolve that  
16 before he hears from Doctor Hunt, correct?

17 MR. CARROLL: That makes sense to me, yes.

18 HEARING OFFICER KRAMER: Yes.

19 MR. CARROLL: And I feel if we get it resolved, that  
20 would allow Mr. Trautwein to be released.

21 MS. ROESSLER: Sure. I would like to remind you that  
22 according to what was established yesterday, though, his  
23 testimony is limited to authenticating the two photographs  
24 attached to his declaration.

25 HEARING OFFICER KRAMER: Okay. Mr. Trautwein, can

1     you raise your right hand.

2                     (Whereupon, Brian Trautwein is duly sworn.)

3                     HEARING OFFICER KRAMER: Thank you. Spell your name  
4     for our court reporter, please.

5                     MR. TRAUTWEIN: B-R-I-A-N T-R-A-U-T-W-E-I-N.

6                     MR. CARROLL: Mr. Carroll.

7                     MR. CARROLL: Thank you.

8                     Thank you, Mr. Trautwein for appearing. Our team  
9     has dubbed you the legless lizard whisperer in light of your  
10    seeming ease with which you detected the lizards relative to  
11    the efforts that our team put in. So we appreciate the  
12    opportunity to ask you a little bit more about your efforts  
13    in that regard.

14                    What training do you have in conducting surveys for  
15    invertebrate species such as the legless lizard?

16                    MS. ROESSLER: Objection. Irrelevant. Outside the  
17    scope of the question. Mr. Trautwein's declaration attached  
18    two photographs only. He's here to authenticate that he took  
19    those pictures and where he located them. He is not here as  
20    an expert testifying. He never said that he conducted  
21    biological surveys on the site. This is what he's testifying  
22    today. It's what we discussed yesterday. I'm not going to  
23    have him testifying here today as an expert witness. It's not  
24    worth the evidence being introduced which is at issue. He's  
25    here to just address those two photographs. He is a Staff

1 person who went out to the site and took photographs and made  
2 observations. That's what's submitted here.

3 HEARING OFFICER KRAMER: Okay. Well, we need to hear  
4 much of that from the witness.

5 MS. ROESSLER: That's fine if we ask those  
6 questions, but he's asking questions to establish him as an  
7 expert biologist conducting surveys when you're asking about  
8 his training.

9 MR. CARROLL: Well, if the answer to the question is  
10 none, that's a satisfactory answer.

11 HEARING OFFICER KRAMER: Overruled.

12 MR. CARROLL: Mr. Trautwein, what training do you  
13 have in conducting surveys for vertebrate -- invertebrate  
14 species such as the legless lizard?

15 MS. ROESSLER: Can I ask -- I'm sorry. How is this -  
16 - I just don't understand how is this relevant at all. There  
17 is no mention that he conducted invertebrate species. This is  
18 a fishing expedition. This is exactly why I stated my  
19 objections yesterday.

20 MR. CARROLL: Well --

21 MS. ROESSLER: He's an environmental analyst on our  
22 staff.

23 HEARING OFFICER KRAMER: Well --

24 MS. ROESSLER: He is not here to conduct studies or  
25 give opinions about those studies or to discuss any training.

1 I thought we'd been pretty limited and narrow in the scope of  
2 testimony in the face of --

3 HEARING OFFICER KRAMER: I suspect we've -- I  
4 suspect we'd be already past the question and the answer  
5 without the objection, which is overruled.

6 MR. CARROLL: Thank you.

7 Mr. Trautwein, do you have prior experience in  
8 conducting surveys or otherwise undertaking to detect the  
9 presence of species such as the legless lizard?

10 MS. ROESSLER: Again, objection. It's completely  
11 irrelevant and outside the scope of why he's here to testify.  
12 If you want to ask if he's experienced or knows how to take a  
13 photograph, that would be relevant. The purpose of his  
14 declaration is to authenticate.

15 HEARING OFFICER KRAMER: Overruled.

16 MR. CARROLL: Let me -- perhaps I can provide a  
17 little sense of where I'm going here with this that will  
18 help. Prior to the time that Mr. Trautwein was in a position  
19 to take the photograph, he had to find a legless lizard. What  
20 I'm getting at here is trying to understand the steps that he  
21 went through in getting to that point. I'm, frankly, less  
22 interested in what happened after he took the photograph. I'm  
23 trying to understand what happened up to the point to put him  
24 in a position to take the photograph.

25 MS. ROESSLER: But that's irrelevant. For one, he

1 was there as our staff. So any steps, reasons why he was  
2 there, et cetera, is confidential information.

3 HEARING OFFICER KRAMER: Stop.

4 MS. ROESSLER: This is --

5 HEARING OFFICER KRAMER: How he came upon this --  
6 these lizards is relevant. It's -- it may go to the veracity  
7 of his testimony about, you know, what's in the photo, how  
8 the photo came to be.

9 Mr. Carroll, would it -- would it work if you asked  
10 him how he came to -- came upon the lizards and maybe work  
11 backwards from there?

12 MR. CARROLL: Yes. Let me -- so let me skip and I  
13 think sidestep. We've received answers to the questions about  
14 prior training and experience. So let me skip to more factual  
15 matters associated with the date that the photographs were  
16 taken.

17 Can you tell me approximately what time of day on  
18 May 5th you arrived in the vicinity of the Mandalay  
19 Generating Station?

20 MR. TRAUTWEIN: I arrived there approximately 2:00  
21 to 3:00 o'clock on May 5th.

22 MR. CARROLL: Thank you. And -- and was the purpose  
23 of your visit to -- and I'm going to use the word "survey"  
24 because it seems to be the best word to use. I'm not using  
25 that in a technical sense. But was the purpose of your visit

1   there to conduct surveys or to see if you could detect or to  
2   look for I guess would be a more colloquial way of putting  
3   it, legless lizard?

4               MR. TRAUTWEIN: I was there to look generally at the  
5   site, the characteristics of the site, and the surrounding  
6   area and take photographs of the general area and vicinity.

7               MR. CARROLL: So it wasn't your intention in  
8   visiting the site to necessarily look for any of the special  
9   status species that were the subject of the Biological  
10  Resource Surveys?

11              MR. TRAUTWEIN: I went to the area generally to  
12  familiarize myself with the site and its general  
13  characteristics and to take photographs of that -- the area.

14              MR. CARROLL: Thank you. And if I could ask to put  
15  the -- I'm sorry. I should have asked this before -- the  
16  diagram or the aerial photograph that is part of Mr.  
17  Trautwein's attachments to his declaration. And that's  
18  proposed Exhibit 4039. It's 217 -- 217571.

19              MS. ROESSLER: Is this from the corrected exhibits  
20  that we filed?

21              MR. CARROLL: I'm not sure about that. It may not  
22  be. Those may be the older numbers.

23              MS. ROESSLER: The exhibit number is the same, but,  
24  Mr. Kramer, this is what I called to your attention this  
25  morning. We filed corrected exhibits, same photograph. We



1 realized that there was a conversion error when we filed  
2 them, and so it changed the size of the photograph when it  
3 was converted from a jpeg to a pdf.

4 HEARING OFFICER KRAMER: Does that have an exhibit  
5 number yet? I think --

6 MS. ROESSLER: No.

7 HEARING OFFICER KRAMER: -- you were going to give  
8 me the numbers and I was just going to change it later in the  
9 system.

10 MS. ROESSLER: I have -- I have the TN number.

11 HEARING OFFICER KRAMER: Okay. Let's find that.

12 MS. ROESSLER: So the TN number that we just filed  
13 was 220367. And that just has the three exhibits.

14 HEARING OFFICER KRAMER: Let's -- on the docket  
15 that's your opposition to his motion to strike. So maybe you  
16 have the wrong number.

17 MS. ROESSLER: Really?

18 HEARING OFFICER KRAMER: 68?

19 MS. ROESSLER: It was filed on the -- it's hard  
20 without the Internet access.

21 HEARING OFFICER KRAMER: Yes, it's --

22 MS. ROESSLER: Did you find it? Okay. It was just  
23 filed a couple of days ago.

24 HEARING OFFICER KRAMER: Okay. Here it is. So then  
25 we are going to change this. May as well get this detail out

1 of the way. This will become the new 4039, is that correct?

2 MS. ROESSLER: Well, I realize the exhibits are  
3 there but not the declaration. So they --

4 HEARING OFFICER KRAMER: Okay. So we'll give it a  
5 new number.

6 MS. ROESSLER: So to be combined. Sorry.

7 HEARING OFFICER KRAMER: Okay.

8 MS. ROESSLER: I should have just filed the  
9 declaration too. I thought that would be confusing.

10 HEARING OFFICER KRAMER: So, Mr. Carroll, you wanted  
11 the overhead map?

12 MR. CARROLL: Yes, please.

13 HEARING OFFICER KRAMER: This needs to be rotated.

14 MR. CARROLL: Thank you.

15 Mr. Trautwein, you indicated in your declaration  
16 that you walked generally the northern, western, and southern  
17 perimeters of the project site. Can you please provide an  
18 approximate description of the route that you took in your  
19 walk around the project site that day?

20 MS. ROESSLER: Objection. Why is the route that he  
21 walked relevant if he's indicating where he saw the picture?  
22 Is there another purpose to this line of questioning?

23 MR. CARROLL: I'm trying to understand more  
24 precisely what portions of the project site he observed. In  
25 particular, I'm not exactly clear on what is meant by the

1 southern border since the southern border of the project  
2 site, it's immediately adjacent to other industrial  
3 facilities. I'm trying to get a sense of where he was and the  
4 route that he took in his walk.

5 MS. ROESSLER: Perhaps you could just ask him where  
6 he was when he took photograph one as described in his  
7 declaration.

8 MR. CARROLL: Well that I know.

9 HEARING OFFICER KRAMER: Overruled. This seems a  
10 reasonable question. It doesn't seem that it would reveal any  
11 privileged information or attorney work product.

12 Please go ahead and describe the path you took.

13 MR. TRAUTWEIN: Sure. I came north --

14 HEARING OFFICER KRAMER: Could you get closer to the  
15 microphone?

16 MR. TRAUTWEIN: I sure can. Thank you.

17 I walked north up to the beach using the  
18 photographic exhibit that's on the screen on the left-hand  
19 bottom side of that. I walked north upwards -- in an upwards  
20 direction using the photograph, and I also -- and that's  
21 where I observed and photographed the legless lizard.

22 MR. CARROLL: And the legless lizard that you just  
23 referred to as -- and I think I have the numbers right. The  
24 one that's on the beach is number one?

25 MR. TRAUTWEIN: Yes, that's correct.

1           MR. CARROLL: And then can you please continue to  
2 describe your route and activities from there?

3           MR. TRAUTWEIN: Yes. I continued northward from the  
4 site of the legless lizard number one along the beach and  
5 dune areas to the rest of the property, and I turned to my  
6 right or east in a location that would be near the top of the  
7 exhibit on the screen.

8           MR. CARROLL: What looks like to be a corner?

9           MR. TRAUTWEIN: Correct.

10          MR. CARROLL: Okay. Please continue.

11          MR. TRAUTWEIN: I turned that corner and walked on  
12 an existing road to the east to the location where I observed  
13 and photographed a second legless lizard.

14          MR. CARROLL: Thank you. And -- and if you can just  
15 continue, what I'm really trying to understand is the  
16 entirety of your walk around the site that day. So if you  
17 want to just continue until the point that you departed the  
18 site, that would be helpful.

19          MS. ROESSLER: Objection. Again, this -- this does  
20 get into why he was there or what he was looking for. That is  
21 confidential and privileged information except for where he  
22 took the photos. I really -- I'm not trying to hide anything.  
23 I'm just trying not to disclose anything, but you're asking  
24 for all his activities, what he was doing, where he was  
25 walking. I don't see how that's relevant to authenticating

1 two photographs.

2 MR. CARROLL: Again, it goes to the events leading  
3 up to the taking of the photographs, which was the detection  
4 of the legless lizards. I find it difficult to conceive --  
5 although I must say you're making me more and more curious --  
6 how any of that could be privileged or confidential or one of  
7 the purposes of his visit to that area was privileged or  
8 confidential. All I'm trying to understand is the activities  
9 that resulted in the purported detection and photographing of  
10 these legless lizards.

11 HEARING OFFICER KRAMER: Overruled.

12 MS. ROESSLER: But why do you -- why do -- it's not  
13 explained why the activities --

14 HEARING OFFICER KRAMER: We overruled the objection.

15 MR. TRAUTWEIN: After I took the photograph of  
16 legless lizard number two, I walked back out the same way  
17 that I came in and left the site.

18 MR. CARROLL: Okay. So just to be clear, let me  
19 paraphrase what I think you said and tell me if I'm right or  
20 wrong. So you came walking north --

21 MS. ROESSLER: I'd rather you not paraphrase the  
22 witness's testimony. He answered your questions. Every time  
23 you paraphrase, you tend to misstate it, and it's already in  
24 the record.

25 MR. CARROLL: Well, I haven't paraphrased anything

1 up to this point.

2 MS. ROESSLER: Yes.

3 HEARING OFFICER KRAMER: Let him paraphrase before  
4 you -- you object that he's improperly done it if that's the  
5 case, but the witness seems capable of being able to -- to do  
6 that on his own.

7 MS. ROESSLER: Why is it -- okay.

8 HEARING OFFICER KRAMER: Overruled.

9 MR. CARROLL: So as I understand it, Mr. Trautwein,  
10 your testimony is that you commenced at a point on the beach  
11 somewhere south of the NGS property, proceeded north along  
12 the beach to the NGS property up to the point where the first  
13 legless lizard was discovered. From there you continued  
14 proceed north to the corner of the NGS property line where  
15 you turned right and walked along the property boundary to  
16 the point where the second legless lizard was detected. From  
17 there you turned around and essentially retraced your steps.  
18 Is that correct?

19 MR. TRAUTWEIN: I didn't walk on the property  
20 boundary. And I would refer to what I just said describing my  
21 walk around the project area. I'd just referenced back to my  
22 -- my first answer to that question.

23 MR. CARROLL: And let me be clear. This is not about  
24 whether you had permission to be on the -- whether you were  
25 on NGS property or you had permission to be on NGS property

1 or trespassing or anything like that. So to the extent that  
2 that is a concern, that is not where any of this is going.  
3 I'm just trying to understand the route.

4 MS. ROESSLER: He was not on -- just so it's clear,  
5 he was not ever on any private property or NGS property.

6 HEARING OFFICER KRAMER: Okay. Well, if that's going  
7 to be testimony, then it should come from the witness.

8 MS. ROESSLER: I believe it was in his declaration,  
9 but if that's a question, I'm happy to let the witness answer  
10 that.

11 MR. CARROLL: That's -- it's not relevant. There's  
12 no need for him to answer that question. There was a  
13 statement in the declaration. I -- that's not relevant to the  
14 line of inquiry. So there's no need to cover that further.  
15 But just to follow up on your response, so your response to  
16 my question as to whether or not I accurately characterized  
17 your route was not a simple yes. Do I take that to mean that  
18 you did go over areas around the project site besides the  
19 route that I described?

20 MS. ROESSLER: Objection. Now he's asking for him to  
21 restate it a third time to answer questions he's already  
22 answered. It's already in the record. The route that he  
23 walked is in the declaration. You paraphrased it. You asked  
24 him if it's correct. He answered that. You're paraphrasing  
25 again, asking him again if that paraphrase is correct.

1           MR. CARROLL: No. The -- well, first of all, the  
2 route that he walked is not in the declaration. I paraphrased  
3 what I understood him to say the route he walked was. But  
4 rather than saying yes, that is correct, he stated -- he  
5 referred back to prior testimony, and I'm not clear on what  
6 prior testimony he's referring back to.

7           MS. ROESSLER: He's referring to the questions that  
8 you had asked him already, that you then tried to paraphrase  
9 his response to. That's I believe -- he can answer that, but  
10 I -- that's what I understood it to be.

11          HEARING OFFICER KRAMER: Okay. Let's see if he  
12 agrees with you.

13          MR. TRAUTWEIN: Yes, I was referring to my prior  
14 testimony here today.

15          MR. CARROLL: Can you restate that for me please?  
16 It's not clear to me which prior testimony you're referring  
17 to.

18          MR. TRAUTWEIN: You asked my route, and I described  
19 it. You asked again, and I referred back to the first time I  
20 described it.

21          HEARING OFFICER KRAMER: Well, just please describe  
22 it again so we all -- we have it in one place instead of over  
23 20 pages in the transcript.

24          MS. ROESSLER: As I -- sorry. I'm going to -- this  
25 is just my caution here. As I understand, the questioning was



1 to authenticate the photographs, and he's being called here  
2 today for purposes of impeachment, and he's now being asked  
3 to restate his testimony. This will be the fourth time. Is  
4 this for the purposes of if he miss -- if he doesn't quote it  
5 exactly like he said it before? Is this going toward  
6 impeachment or where is this going? Do you honestly not  
7 understand the route?

8 MS. DOUGLAS: So we've asked him to just restate his  
9 route if he could, please.

10 MR. TRAUTWEIN: I walked north on the beach from in  
11 the vicinity of the bottom left-hand corner of the exhibit as  
12 shown on the screen. I continued north to the point of  
13 legless lizard number one, continued north from that point  
14 along the beach to -- to a point that appears to be a corner  
15 on the exhibit, at which point I turned east, and I followed  
16 an existing dirt road to the point of legless lizard number  
17 two. Following that, I returned on the same route.

18 MR. CARROLL: Thank you. Did you -- did you dig in  
19 the -- did you dig at any other locations other than the two  
20 locations where you detected the two legless lizards?

21 MS. ROESSLER: Objection. Assumes facts not in  
22 evidence. There's nowhere it states that he dug I believe.

23 MR. CARROLL: I believe his declaration says that he  
24 in one case gently dug in the sand and in the other case  
25 lightly dug in the sand to the depth of approximately four

1 inches at the two locations.

2 MS. ROESSLER: No, it does not say that he dug.

3 MR. CARROLL: Mr. Trautwein, how would you describe  
4 the activity that you undertook to reach a surface of  
5 approximately four inches below ground level at the two  
6 locations where the legless lizards were detected?

7 MR. TRAUTWEIN: At the two locations I gently sifted  
8 the sand to a point down approximately four inches.

9 MR. CARROLL: And did you -- was that activity  
10 undertaken with your bare hands or did you have some type of  
11 rake or tool with you?

12 MR. TRAUTWEIN: I had a -- a rake with me.

13 MR. CARROLL: Thank you. And did you sift through  
14 sand at any other locations in addition to the two identified  
15 on the map where the specimens were detected?

16 MS. ROESSLER: Objection. Relevance. We're not  
17 admitting photographs from any other locations but the two in  
18 question. This would go to activities on the site that don't  
19 relate anywhere to these two points. He's -- again, the  
20 testimony's just to authenticate two photographs. In these  
21 proceedings no one else who's submitted photographs into the  
22 evidence has undergone any questioning like this. I don't  
23 understand. It just seems that there's a totally different  
24 standard being applied here to authenticate two photographs.  
25 There is no testimony attached to these photographs.

1           MR. CARROLL: Well, but that is not the case. There  
2 is extensive testimony on the part of Mr. Hunt.

3           MS. ROESSLER: Not by Mr. Trautwein, and you are  
4 able to question Mr. Hunt --

5           HEARING OFFICER KRAMER: Okay. Hold on.

6           MS. ROESSLER: -- first.

7           HEARING OFFICER KRAMER: Overruled because this --  
8 this is a survey of the sorts the way it's presented, and Mr.  
9 Carroll is certainly -- it seems appropriate to determine if  
10 other locations were queried if you will and -- or gently or  
11 lightly sifted or raked and -- and what the results were at  
12 those locations. We don't need great depth. We don't need to  
13 try to put pins on the map, but, for instance, if this was --  
14 these are two of 20 locations. That may be of some relevance  
15 if there are perhaps two or four that are perhaps different,  
16 but we don't know yet.

17          MS. ROESSLER: Again, I'll just state my objection  
18 for the record. This is entirely out of the scope and goes  
19 into attorney-client work product and confidential  
20 communications. There's nothing being submitted about  
21 anywhere else on the site from this witness.

22          HEARING OFFICER KRAMER: Objection noted and  
23 overruled.

24          MR. CARROLL: Mr. Trautwein, I don't know if you  
25 recall the pending question, but it was were there other

1 locations at which you sifted sand in addition to the two at  
2 which the species were identified?

3 MR. TRAUTWEIN: I did look through the -- kind of  
4 test the sand if you will in a few locations before I found  
5 legless lizard number one.

6 MR. CARROLL: And did you sift sand at any  
7 additional locations between the time that you found legless  
8 lizard number one and legless lizard number two?

9 MR. TRAUTWEIN: Yes. There were a handful of  
10 locations between the two sightings where I also looked at  
11 the sand.

12 MR. CARROLL: Okay. And how did you, as you were  
13 walking, determine which areas to investigate further?

14 MS. ROESSLER: Again, totally irrelevant, outside  
15 the scope of questions. I understood from your motion to  
16 strike, which is the reason why he's testifying, that you had  
17 questions about the location. This is totally outside the  
18 scope and enters into issues not even addressed in your  
19 motion to strike.

20 MR. CARROLL: I --

21 MS. ROESSLER: He did not conduct surveys on site.  
22 He is not an expert biologist testifying as such. This is  
23 just two photographs in the record.

24 MR. CARROLL: Upon which or from which Mr. Hunt  
25 makes extensive conclusions and upon which he bases extensive

1 analysis, and I assume that Mr. Hunt is not going to be in a  
2 position to answer for me any of the questions related to Mr.  
3 Trautwein's detection of the legless lizards.

4 HEARING OFFICER KRAMER: So overruled. Your option,  
5 if you want to terminate this discussion, is to withdraw the  
6 exhibit at this point, but this does seem appropriate, an  
7 appropriate line of inquiry, and we will allow.

8 MS. ROESSLER: I don't want to withdraw the exhibit.  
9 I just want to remark it seems to be held to an entirely  
10 different standard for authentication than any prior exhibit  
11 so far in this proceedings.

12 HEARING OFFICER KRAMER: Well --

13 MS. ROESSLER: No one knows this photograph --

14 HEARING OFFICER KRAMER: Many exhibits the parties  
15 they have no issues with, and there are a few that they do,  
16 and they choose to dig more deeply upon. But that's their  
17 choice.

18 MR. CARROLL: So, Mr. Trautwein, again, the pending  
19 question is how you selected the areas for further sifting of  
20 the sand?

21 MS. ROESSLER: Again, objection. Irrelevant. Outside  
22 the scope of authenticating the two photographs.

23 MR. CARROLL: My question, just to be clear --

24 HEARING OFFICER KRAMER: Let me just overrule it,  
25 and then you don't have to fight.

1 MS. ROESSLER: Just so I'm clear, if we're going to  
2 overrule all of my objections as to relevance, is there a  
3 boundary for this questioning? I don't want to take up  
4 everyone's time by continuing objections. I just don't  
5 understand what the Committee is allowing here. As I  
6 understood it yesterday, it was just to authenticate the  
7 photographs. Yet here we are today and we're going beyond the  
8 boundary of that. So I'm not trying to obstruct testimony.  
9 I'm just trying to understand maybe what the Committee thinks  
10 is a relevant boundary for this.

11 HEARING OFFICER KRAMER: Well, this is part of the  
12 authentication in that, and the photographs are making a  
13 broader point than -- likely to be offered for a broader  
14 point than just the raw contents of the two photographs, and  
15 when we hear from Mr. Hunt -- there may be a line. Mr.  
16 Carroll has not reached it, and I'm not going to hypothesize  
17 about what it might be.

18 MS. ROESSLER: I'd just like to say this witness is  
19 not making a broader conclusion about the photographs, so  
20 everyone understands that.

21 HEARING OFFICER KRAMER: No, but he's an observer of  
22 facts, and facts are what support conclusions and expert  
23 opinions. So we need to test -- or Mr. Carroll desires to  
24 test those facts, and that is his -- his right.

25 Go ahead, Mr. Carroll.

1           MR. CARROLL: So, again, Mr. Trautwein, the pending  
2 question is how you determined which areas to conduct further  
3 sifting of the sand.

4           MR. TRAUTWEIN: I had no rhyme nor reason, no set  
5 reason for sifting through those several locations.

6           MR. CARROLL: Thank you. Approximately -- at the two  
7 locations where the species were detected, approximately how  
8 long did you rake before detecting the species? I'm sorry. I  
9 withdraw the question.

10           At the two locations where the species were  
11 detected, approximately how long did you sift the sand before  
12 detecting the species?

13           MR. TRAUTWEIN: The first legless lizard popped out  
14 in a few seconds, perhaps as many as 30 seconds, and the  
15 second legless lizard popped up in a matter of less than 10  
16 seconds.

17           MR. CARROLL: Thank you. And in the course of  
18 sifting through the sand, did you -- did you also detect any  
19 dune beetles?

20           MS. ROESSLER: Objection. Assumes that Mr. Trautwein  
21 knows how to identify a dune beetle or has that expertise,  
22 and there are no pictures of dune beetles in this exhibit at  
23 all, and there is no mention of dune beetles in your motion  
24 to strike this exhibit.

25           MR. CARROLL: Mr. Trautwein, when -- I'll withdraw

1 the question. That's fine. How did you -- how did you  
2 recognize the two specimens when you detected them as  
3 potentially silvery legless -- I'm sorry -- legless lizards?

4 MS. ROESSLER: Objection. Assumes he detected them  
5 as the silvery legless lizard. If you're just asking him how  
6 they were identified, just species, that's fine. He did not  
7 make the species identification. That's -- I don't know if  
8 that's where you're going.

9 MR. CARROLL: I understand that. I --

10 MS. ROESSLER: I just don't need -- it sounded like  
11 your question assumed that he did.

12 MR. CARROLL: And I -- I know he did not make the  
13 species identification. My point is that Mr. -- presumably,  
14 Mr. Trautwein, you -- how did you recognize that these were  
15 potentially legless lizards such that you determined to send  
16 photographs of them to Mr. Hunt?

17 MR. TRAUTWEIN: I observed what I considered to be a  
18 very unusual species. I had never seen anything like that  
19 before, and I thought that Mr. Hunt would know what it was.

20 MR. CARROLL: So at the point that you detected  
21 them, you did not have any understanding that they might be  
22 silvery legless lizards? You just thought they were an  
23 interesting species?

24 MS. ROESSLER: Objection. It restates his testimony.  
25 He just let him answer the question -- or he didn't -- he



1 didn't say -- he did not paraphrase and say he thought it was  
2 an interesting species.

3 MR. CARROLL: All right. I --

4 HEARING OFFICER KRAMER: Overruled. Let him answer  
5 if --

6 MS. ROESSLER: He just keeps paraphrasing the  
7 witness's answers every time he answers something.

8 HEARING OFFICER KRAMER: Well, he's -- if his  
9 characterization of what Mr. -- he just said is inaccurate, I  
10 think Mr. Trautwein can -- he seems fully capable of calling  
11 Mr. Carroll on that and clarifying it. So go ahead and answer  
12 the question.

13 MS. ROESSLER: I'd like to also remind Mr. Trautwein  
14 if he cannot remember, he can also have the transcript read  
15 back into the record if he is unsure.

16 HEARING OFFICER KRAMER: Reading back the transcript  
17 is really difficult with our system. In fact, it's probably  
18 impossible, because all we do is make an audio recording and  
19 then it's transcribed in --

20 MS. ROESSLER: The court --

21 HEARING OFFICER KRAMER: -- the next few days.

22 MS. ROESSLER: Oh, I was thinking the court reporter  
23 was able to.

24 HEARING OFFICER KRAMER: She's not a stenographer.  
25 We don't normally use stenographers for these proceedings

1 because, frankly, you all would kill them. You would just  
2 wear them out. We did have a hearing in the past where the  
3 stenographer got up and said "I can't do it anymore." So  
4 that's why we use recordings.

5 MS. ROESSLER: Okay. My mistake.

6 MR. CARROLL: And that's -- the response is in the  
7 record, and that suffices. So I'll move on and maybe ask a  
8 slightly different question that gets to the same point.

9 What led you to conclude that taking a photograph  
10 of these two specimens and sending those photographs to Mr.  
11 Hunt was important? Or what compelled you -- let me rephrase  
12 it a different way. What was it that compelled you to  
13 photograph these two specimens and send those photographs to  
14 Mr. Hunt?

15 MS. ROESSLER: I'm going to object as to relevance  
16 again, but go ahead and answer it. You already discussed  
17 before why you were on the site.

18 HEARING OFFICER KRAMER: Mr. Carroll, where are you  
19 going because now -- now it seems to be beyond the fact of  
20 the discovery and the authenticity of the photographs. Can  
21 you make an offer of proof? Otherwise we'll sustain.

22 MR. CARROLL: Fair enough. Fair enough. I'll move on  
23 to a different line of questioning, and I want to make sure  
24 that I am not presuming something that's not in the  
25 declaration, "I sent the photographs to Mr. Hunt," and it

1 wasn't clear. How did you show the photographs to Mr. Hunt?

2 MR. TRAUTWEIN: I believe that I sent an email or a  
3 text to Mr. Hunt.

4 MR. CARROLL: Thank you. And by what means did Mr.  
5 Hunt communicate back to you his confirmation that the --  
6 that those specimens were legless lizards?

7 MR. TRAUTWEIN: By email or by text.

8 MR. CARROLL: And did you provide any other  
9 information besides the two photographs to Mr. Hunt in  
10 connection with the two specimens that you detected?

11 MR. TRAUTWEIN: I do not believe so.

12 MR. CARROLL: Thank you. And, if you know, did Mr.  
13 Hunt provide any explanation to you as to why he was able to  
14 confirm the first specimen within about 10 minutes according  
15 to your declaration but it took several days with respect to  
16 the second, and if you don't know, I can ask Mr. Hunt that  
17 question?

18 MS. ROESSLER: Are you asking him for what Mr. Hunt  
19 told him or --

20 MR. CARROLL: I'm --

21 MS. ROESSLER: Because you do have Mr. Hunt here.  
22 You --

23 MR. CARROLL: Yes.

24 MS. ROESSLER: -- can ask him how he confirmed it.

25 MR. CARROLL: I can hold the question Mr. Hunt. He

1 probably would be in a better position to answer. I'll  
2 withdraw the question.

3 In Mr. Hunt's communication back to you, did he  
4 specifically state that he determined the specimens to be  
5 *anniella pulchra pulchra*, as indicated in your declaration?

6 MR. TRAUTWEIN: I don't recall the specific language  
7 in Mr. Hunt's communication back to me.

8 MR. CARROLL: Is the -- is the language in your  
9 declaration verbatim from Mr. Hunt's communication back to  
10 you?

11 MS. ROESSLER: Objection. What are you trying to get  
12 at? The declaration doesn't have it in quotes. You're trying  
13 to get the exact verbatim language?

14 MR. CARROLL: Yes.

15 MS. ROESSLER: How is that relevant?

16 MR. CARROLL: It's somewhat unusual. It's an old  
17 taxonomy. It is not the taxonomy that Mr. Hunt uses in his  
18 written testimony to specify the species of legless lizard,  
19 and I'm trying to understand why Mr. Hunt would use one  
20 taxonomy in his communications back to Mr. Trautwein and a  
21 different taxonomy in his written declaration, and so I'm  
22 trying to understand whether those were Mr. Hunt's precise  
23 words or whether those words came from some other source.

24 MS. ROESSLER: Are you referring to the name of the  
25 lizard? Is that what you mean by taxonomy?

1           MR. CARROLL: Yes. I'm -- and I'm not an expert in  
2   this area. My understanding is that the designation of  
3   anniella pulchra pulchra is an old taxonomy from the time  
4   when there was one species and two subspecies, that  
5   subsequent to that there are five different species under the  
6   current taxonomy, which is the one that Mr. Hunt uses in his  
7   written testimony.

8           MS. ROESSLER: Are you contesting the identification  
9   of the legless lizard, the accuracy of that? I'm just not  
10   understanding.

11          MR. CARROLL: Not yet.

12          HEARING OFFICER KRAMER: Okay. I'm --

13          MS. ROESSLER: I don't understand where the  
14   question's going about --

15          HEARING OFFICER KRAMER: As I understand the  
16   question, you're asking if he was directly quoting Mr. Hunt  
17   in his declaration?

18          MR. CARROLL: Yes, if -- if that specific  
19   designation, anniella pulchra pulchra was in the  
20   communication from Mr. Hunt.

21          HEARING OFFICER KRAMER: Okay. I'll put the  
22   declaration up on the screen.

23          MS. ROESSLER: The declaration simply says he  
24   confirmed it was the legless lizard, anniella pulchra  
25   pulchra. I don't understand the ambiguity in that. You can

1 ask Mr. Hunt.

2 HEARING OFFICER KRAMER: I think he can answer this.

3 MR. TRAUTWEIN: I don't recall the specific language  
4 that Mr. Hunt used in his communication back to me.

5 MS. ROESSLER: Again, this declaration was filed in  
6 May, and that's when it was drafted, and it's been almost  
7 three months later.

8 MR. CARROLL: Mr. Trautwein, on May 5th, were you  
9 knowledgeable of the formal name of the legless lizard? In  
10 other words, did the term "anniella pulchra pulchra" have any  
11 meaning to you on May 5th?

12 MS. ROESSLER: Objection. What is the relevance of  
13 that? His statement in his declaration said Mr. Hunt  
14 confirmed the legless lizard with the species name next to  
15 it.

16 MR. CARROLL: Well, he --

17 MS. ROESSLER: If you want to ask Mr. Hunt whether  
18 he confirmed the species -- the species by using that  
19 language, you can do that directly, but that's what Mr.  
20 Trautwein's declaration states.

21 HEARING OFFICER KRAMER: Overruled. He's asking what  
22 -- in essence where he got that terminology that he put in  
23 his declaration.

24 MR. CARROLL: Yes. Exactly.

25 HEARING OFFICER KRAMER: So that's the question.

1 MS. ROESSLER: How he knows the terminology or just  
2 if Mr. Hunt used that terminology? There's a distinction.

3 HEARING OFFICER KRAMER: If that's an objection,  
4 overruled.

5 MS. ROESSLER: It's a clarification. If my witness  
6 understands the difference, then by all means answer.

7 HEARING OFFICER KRAMER: Please --

8 MS. ROESSLER: If you don't --

9 HEARING OFFICER KRAMER: Please project better into  
10 the mic. I'm having a little trouble hearing you.

11 MS. ROESSLER: Sorry. There.

12 HEARING OFFICER KRAMER: Thanks. So what is the  
13 clarification again?

14 MS. ROESSLER: Is he asking whether -- how Mr.  
15 Trautwein is familiar with that term or is he asking if Mr.  
16 Hunt confirmed the species using that term? I was unclear  
17 from his question. So I'm just -- I want to make sure that  
18 Mr. Trautwein and myself understands the question.

19 HEARING OFFICER KRAMER: Okay. Mr. Carroll, go  
20 ahead.

21 MR. CARROLL: Let me clarify. It seems to me that  
22 there are only two sources of that term as appears in this  
23 declaration. One would be Mr. Hunt. One would be Mr.  
24 Trautwein. Mr. Trautwein testified that he didn't recall  
25 whether that phrasing was provided by Mr. Hunt. That would

1 suggest that the phrasing came from Mr. Trautwein and in  
2 order to --

3 MS. ROESSLER: No. You're paraphrasing again. This  
4 is from three months ago. He wrote it in his declaration.  
5 Just because he doesn't recall --

6 HEARING OFFICER KRAMER: Okay --

7 MS. ROESSLER: -- doesn't mean that --

8 HEARING OFFICER KRAMER: Ms. --

9 MS. ROESSLER: -- it came from someone else.

10 HEARING OFFICER KRAMER: This is --

11 MR. CARROLL: It's somewhat of a unique term.

12 HEARING OFFICER KRAMER: We were doing well  
13 yesterday. So, Mr. Carroll, why don't you ask, if we need to  
14 first clarify, where Mr. Trautwein -- where the term came  
15 from. Let's clarify that, and then -- then we can follow up.  
16 So let me just ask him.

17 Mr. Trautwein, where -- you wrote this declaration,  
18 is that correct?

19 MR. TRAUTWEIN: That's correct.

20 HEARING OFFICER KRAMER: Okay. So where did you get  
21 that term for the species?

22 MR. TRAUTWEIN: I don't specifically remember where  
23 I got that term. I may have found it through online research,  
24 but I honestly don't recall where I found that term, the  
25 Latin name that's presented in my declaration.



1 MS. ROESSLER: I'd like to clarify or ask a  
2 question. It sounds like you're answering how you ever knew  
3 that term, not how you put it in the declaration. Did you  
4 identify the species with that term or did Mr. Hunt?

5 MR. TRAUTWEIN: Mr. Hunt did. Well, Mr. Hunt  
6 identified the species. I don't recall the exact language in  
7 his communication back to me.

8 MS. ROESSLER: Is that what you're asking?

9 MR. CARROLL: No. I understand that Mr. Hunt  
10 identified the species. What I was asking, and I think it's  
11 been answered, is who was the source of the words in the  
12 declaration.

13 Let me ask, Mr. Trautwein, do you -- do you have  
14 the communications back and forth between you and Mr. Hunt?

15 MR. TRAUTWEIN: I do not believe -- no, I don't have  
16 them anymore.

17 MR. CARROLL: You deleted those from --

18 MS. ROESSLER: Objection. Where is this going? You  
19 have Mr. Hunt to ask him right here. Now you're going to be  
20 probing through communications?

21 MR. CARROLL: Where it's going is that there's some  
22 very unusual language in this declaration, and the declarant  
23 hasn't been able to answer where the language came from.

24 MS. ROESSLER: You're tripping him up with the  
25 language on taxonomy is what is happening. This is a Staff

1 person. This is not a professional expert witness who is used  
2 to testifying under oath. He stated in his declaration every  
3 question you've answered here today. He's just restated it.  
4 He confirmed that the species identification was made by Mr.  
5 Hunt. It is stated in his declaration, and he confirmed it  
6 again here today, and you have Mr. Hunt to ask.

7 HEARING OFFICER KRAMER: Well, apparently Mr.  
8 Carroll believes that there's a distinction in the taxonomies  
9 that are used in different places, and so he's trying to  
10 determine how this -- this version of the term made it into  
11 Mr. Trautwein's declaration.

12 MR. CARROLL: We can move on past this issue of the  
13 language in the declaration.

14 Mr. Trautwein, are you familiar with the different  
15 species of legless lizards?

16 MS. ROESSLER: Objection. Where are --

17 MR. CARROLL: It's a simple yes or no question.

18 MS. ROESSLER: It's totally irrelevant. He did not  
19 identify species here. He took a photograph, and we didn't  
20 take pictures of different species of legless lizards, and he  
21 did not do a species identification in here. You can read the  
22 declaration. He explained he found -- I'll paraphrase -- what  
23 he thought looked like a rare animal, and he sent it and  
24 communicated it to Larry Hunt, and he confirmed the species.  
25 If you want to question a species, then question Mr. Hunt on

1 how Mr. Hunt identified the species. I understand that line  
2 of questioning. I don't understand why it's relevant what Mr.  
3 Trautwein knows about legless lizard identification.

4 MR. CARROLL: The reason it's relevant is my  
5 understanding is that the primary way of distinguishing  
6 between the species is by the coloring on their bellies.  
7 These two photographs, coincidentally, were taken in a manner  
8 that the bellies of the two species are not visible in the  
9 photographs, and so I'm trying to understand whether Mr.  
10 Trautwein, who presumably saw the underside, since he saw the  
11 species in the flesh, is familiar with the distinctions  
12 between the species.

13 MS. ROESSLER: Why don't you --

14 HEARING OFFICER KRAMER: Overruled.

15 MS. ROESSLER: -- ask him what color their bellies  
16 were then if you want to know what color? Ask him if he --  
17 that seems most relevant if that's what we're getting at.

18 MR. CARROLL: Fair enough.

19 MS. ROESSLER: He -- but just don't ask him what it  
20 was. He's not qualified to answer that.

21 MR. CARROLL: Mr. Trautwein, do you recall, because  
22 it's not visible in the photograph, what color the undersides  
23 of the bellies of the two specimens that you detected were?

24 MR. TRAUTWEIN: No, I don't. I did not look at the  
25 bellies. I did not have any indication or idea that the color

1 of the bellies mattered. I did not even know what species it  
2 was or that there are different species of legless lizard.

3 MR. CARROLL: Thank you. You just answered my last  
4 four questions, and I appreciate it. I don't have any further  
5 questions.

6 HEARING OFFICER KRAMER: Given that, I have one. The  
7 location map that shows the sites of the two photographs, was  
8 that prepared contemporaneously with the taking of the  
9 photographs?

10 MR. TRAUTWEIN: Define contemporaneously.

11 HEARING OFFICER KRAMER: Well, the same day for  
12 instance or --

13 MR. TRAUTWEIN: Within a couple of days.

14 HEARING OFFICER KRAMER: Okay. And how were you able  
15 to locate the point so precisely? Was that with GPS  
16 coordinates?

17 MR. TRAUTWEIN: No, it was not. I did not have  
18 equipment such as GPS for my walk around. I didn't need that.  
19 There were several landmarks in the field that I used,  
20 including the outfall fence and the outfall access road for  
21 legless lizard number one, and there was vegetation on the  
22 ground, ice plant that I could distinguish. I had with me an  
23 image similar to the Google Earth image but without the  
24 animals mapped on it when I was out in the field, and I was  
25 able to identify landmarks both in the field and on the

1 Google Earth image, and so, therefore, I was able to plot the  
2 locations. I also walked off the location of the first  
3 legless lizard to the outfall fence and to the outfall access  
4 road as a way of estimating the distances in order to, you  
5 know, to kind of mark the location, and so that was my  
6 process for mapping the location.

7 HEARING OFFICER KRAMER: Okay. Thank you.

8 Okay. Anybody have any other questions?

9 MS. CHESTER: This is Michelle Chester. I have one  
10 question.

11 HEARING OFFICER KRAMER: Okay. Go ahead.

12 MS. CHESTER: Did you send any other pictures to  
13 Doctor Hunt for identification?

14 MR. TRAUTWEIN: I took many pictures on that site  
15 visit, only a few of which were -- a couple of which were  
16 legless lizard. I took pictures of the power plant, the  
17 beach, et cetera, et cetera, et cetera. No, I did not send  
18 him any other photographs.

19 MS. CHESTER: So that was the only species that you  
20 requested identification?

21 MS. ROESSLER: Are you referring to in this  
22 declaration?

23 MS. CHESTER: In his declaration.

24 MR. TRAUTWEIN: I did not ask him to identify any  
25 other species.

1 HEARING OFFICER KRAMER: Okay. Any follow up, Mr.

2 Roessler?

3 MS. ROESSLER: Yes, I do, please.

4 When you were on the site, when you were taking  
5 observations and walking around, did you have a method to how  
6 you picked the spots or did you pick the spots at random?

7 MR. TRAUTWEIN: I was not on the project site, but  
8 in terms of determining the vicinity, your question was how  
9 did I determine where to take photographs?

10 MS. ROESSLER: Yeah. You were asked that earlier,  
11 and so I just wanted to be clear. Were you -- did you choose  
12 those sites for a specific reason or were they just chosen at  
13 random?

14 MR. TRAUTWEIN: The sites that I photographed?

15 MS. ROESSLER: No, the sifting where you looked for  
16 -- did the soft rake or sift.

17 MR. TRAUTWEIN: Random.

18 MS. ROESSLER: So just again to confirm, you found a  
19 species and you submitted it to Doctor Hunt, and did you do  
20 the species identification?

21 MR. TRAUTWEIN: No, I did not.

22 MS. ROESSLER: Doctor Hunt did the species  
23 identification?

24 MR. TRAUTWEIN: That's correct.

25 MS. ROESSLER: That's all the questions that I have.

1 MS. CHESTER: I have one follow-up question based on  
2 that.

3 HEARING OFFICER KRAMER: Go ahead.

4 MS. CHESTER: Was anyone else on the site with you  
5 when you took the photographs and did this walk?

6 MR. TRAUTWEIN: No. I was alone.

7 MS. CHESTER: Thank you.

8 HEARING OFFICER KRAMER: Okay. Mr. Carroll, any  
9 final questions?

10 MR. CARROLL: No additional questions. Thank you,  
11 Mr. Trautwein.

12 HEARING OFFICER KRAMER: Okay. So are you  
13 withdrawing your objections or not? Do we need to rule on  
14 them?

15 MR. CARROLL: I will -- I withdraw the objection to  
16 the entry of the exhibit, but I reserve the right to revisit  
17 the authenticity of these photographs that new information  
18 comes to light after today.

19 MS. ROESSLER: Objection. What does that mean?

20 HEARING OFFICER KRAMER: Well, we're going to close  
21 the record, but okay. And that then includes the --

22 MR. CARROLL: That would go more to the weight to be  
23 given to the photographs than it would to whether or not they  
24 should be in the record.

25 HEARING OFFICER KRAMER: Okay. And then -- so then

1     you --

2                 MS. ROESSLER: Can I ask one follow-up question. Are  
3     you reserving the right -- are you submitting more evidence  
4     in the record? Is that what we're to expect, that would  
5     somehow factoring on the weight of this?

6                 MR. CARROLL: Well, I --

7                 MS. ROESSLER: I just -- I didn't know if that's  
8     what you were saying you were intending you were going to  
9     come back with --

10                MR. CARROLL: Not necessarily, but perhaps. Not  
11     today.

12                MS. ROESSLER: During these evidentiary proceedings  
13     or --

14                MR. CARROLL: I don't know.

15                HEARING OFFICER KRAMER: I think this is one of  
16     those known unknowns or, actually, I'm not going to try to --

17                MS. ROESSLER: I just don't want to --

18                HEARING OFFICER KRAMER: I'm going to try to --

19                MS. ROESSLER: We got late filed motions -- I'm  
20     sorry. I just didn't want to -- I wanted know if we were  
21     opening the door for more testimony and evidence to come in  
22     on this, a declaration that was filed in May. And I wanted to  
23     make -- that's what I'm asking. I didn't know if that's what  
24     he was reserving the right to do.

25                HEARING OFFICER KRAMER: It's going to be --



1 MS. ROESSLER: If we're closing it today, that's  
2 fine.

3 HEARING OFFICER KRAMER: It's going to be unusual,  
4 but there's always a possibility, remote I would say.

5 Okay. So I -- what I wanted to clarify with Mr.  
6 Carroll was then he then does not object to the updated  
7 version of the --

8 MR. CARROLL: No, I do not object to the --

9 HEARING OFFICER KRAMER: -- photographs as well. So  
10 --

11 MR. CARROLL: -- update.

12 HEARING OFFICER KRAMER: -- I'll take care of  
13 getting that on -- those on the exhibit list, those numbers.

14 MS. ROESSLER: Thank you.

15 HEARING OFFICER KRAMER: Okay. With that then we  
16 will break for lunch. Okay. Twenty-five minutes, and then  
17 we'll be back to --

18 MS. WILLIS: Mr. Kramer, we need to go off site. So  
19 we need at least 30 minutes just to get --

20 HEARING OFFICER KRAMER: Okay.

21 MS. WILLIS: -- somewhere and back, and we're --  
22 we've been rushing to do that. We did ask for more time for  
23 lunch breaks.

24 HEARING OFFICER KRAMER: Well, okay. We'll see you  
25 and raise you to 35. So we're off the record.

1  
2  
3

(Off the record at 1:00 p.m.)

1 (On the record at 1:41 p.m.)  
2 COMMISSIONER SCOTT: Okay, we are back on the  
3 record. I just wanted to note that we had just looked  
4 to see whether or not Intervenor Bob Sarvey or Dr.  
5 Grace Chang from FFIERCE were on the phone and had  
6 joined us this afternoon or anytime this morning, and  
7 they are not there.

8 So with that, let me turn the conduct of  
9 this hearing back over to Hearing Officer Paul  
10 Kramer.

11 HEARING OFFICER KRAMER: Thank you. So we  
12 were about to get to Mr. Hunt.

13 So go ahead, sir, with your -- I presume you  
14 had an opening presentation?

15 MR. HUNT: Yes, I do.

16 HEARING OFFICER KRAMER: Go ahead.

17 MR. HUNT: The statements I'm going to make  
18 are a summary of the supplemental testimony that I've  
19 already submitted. So it's going to seem a little bit  
20 disjointed because the applicant rebutted statements  
21 that I made in that testimony. So I'm going back over  
22 my testimony that I was going to present originally.

23 I'll just summarize quickly the main points  
24 of my supplemental testimony. And that was focusing  
25 on a critique of the final Biological Survey Report

1 that was submitted by AECOM. I'll just give you some  
2 of my main points.

3           The first main point is that the biological  
4 survey area, or BSA, did not include the entire  
5 project site. It omitted certain elements, such as  
6 the demolition access road which is east of the P3  
7 site, Units 1 and 2 that are slated for demolition,  
8 three parking and laydown areas, the two alternative  
9 project sites, and it didn't include the full 100-  
10 foot buffer that was directed by CEC to be surveyed.

11           I think this is a serious deficiency in the  
12 methodology because it affects the conclusions of the  
13 Biological Report, namely that none of the special-  
14 status species that were surveyed for occurred in the  
15 -- on the project site itself. In fact, the project  
16 site includes the 100-foot buffer. And several  
17 species were found in that, including critical  
18 habitat for the endangered Ventura marsh milk vetch,  
19 as well as excellent habitat for Globose dune  
20 beetles, California legless lizards, horned lizards,  
21 two-striped gartersnakes.

22           New evidence presented in the Biological  
23 Report reveals that the Globose dune beetle and the  
24 legless lizard are, in fact, present in the 100-foot  
25 buffer along the northern and western sides of the

1 MGS property, which triggers an ESHA designation for  
2 these habitats. New information also reveals that a  
3 pair of Peregrine falcons, in fact, nest on the  
4 project site itself and use the entire project site  
5 as foraging habitat, which also triggers an ESHA  
6 designation.

7           Surveys for the burrowing owl, which is a  
8 candidate for federal listing, were not conducted in  
9 accordance with the Fish and Game protocols, namely,  
10 they were conducted at the wrong time of year. All of  
11 the observations of burrowing owls in the area are in  
12 fall or winter. The species formerly bred in the  
13 project region. And at that time, when they were  
14 breeding, surveys conducted in the spring and summer  
15 would be appropriate. It no longer breeds here and  
16 hasn't bred along the coast in at least 10 to 15  
17 years. They're all wintering observations. So, of  
18 course, they would not find the burrowing owl, even  
19 though they did surveys for them.

20           The surveys for Globose dune beetles and  
21 California legless lizards were inadequate due to  
22 several factors, in my estimation. Improper  
23 application of survey techniques; for example, they  
24 did not use sieves to sieve soil beneath cover boards  
25 or other areas for the beetle. It's a relatively

1 small insect. If you're just using a rake, you can  
2 easily miss the animal.

3           The survey duration using coverboards was  
4 too brief. The whole idea with coverboards is that  
5 they acclimate to the substrates and form a  
6 microhabitat that's favorable for these species.  
7 Usually these are left in place on an order of many  
8 months, six months, nine months, a year, two years,  
9 and then they form the appropriate microhabitat. They  
10 were in place for six to seven weeks, so of limited  
11 use.

12           Another factor was inadequate sample size  
13 for spatial application of their techniques for  
14 pitfall traps or other transect methods. They only  
15 placed these where they thought they would have these  
16 system, like a transect or a pitfall trap or  
17 whatever, where they thought they'd have the greatest  
18 likelihood of finding the species, and that was not  
19 the purpose of the focus studies. You're not going to  
20 find the animals if you don't survey all portions of  
21 the project site, and that includes areas that you  
22 think are marginal. You'll have to have equal  
23 sampling effort in these areas for credibility.

24           So the surveys are inadequate to conclude  
25 that Globose dune beetles are absent from the project

1 site. They are, in fact, in the buffer around the  
2 project site. They did find them there.

3           The surveys did not follow a standard field  
4 protocol in not identifying all of the beetles  
5 encountered to species. I don't know why this would  
6 come up, because the whole focus was to find the  
7 particular sensitive species, that is the Globose  
8 dune beetle. And there's two co-occurring species on  
9 the project site, so why wouldn't you distinguish  
10 every beetle that you find, every live beetle that  
11 you find?

12           Ninety-nine percent of the biological survey  
13 was not surveyed for legless lizards. They did not  
14 extensively use the method that would mostly likely  
15 find these animals, and that is raking surveys. They  
16 only -- instead, they used these time-constrained  
17 plot methods where they raked in an area that was 15  
18 by 15 feet, and did that a replicate of 20 times.  
19 That amounted to less than a tenth of an acre of the  
20 ten-acre project site, which is only one percent of  
21 the project site. So 99 percent of the project site  
22 was not surveyed by the method that would mostly  
23 likely turn up lizards.

24           They also conclude that -- I think they give  
25 -- the report gives an inaccurate idea of habitat

1 suitability for that legless lizard, saying that  
2 they're typically found in undisturbed soils. This is  
3 not the case. I've found them innumerable times in  
4 disturbed situations, including areas where  
5 residential development has occurred. The animals  
6 have survived initial grading and other kinds of soil  
7 disturbance to continue to occupy an area. So simply  
8 because it's disturbed does not preclude the  
9 occurrence of that species.

10           The report fails to acknowledge the fact  
11 that legless lizards were found, in fact, very close  
12 to the project site, including the locations that we  
13 were talking about just prior to lunch, right along  
14 the border of the project site. And also, other  
15 habitat restoration that are only a couple of hundred  
16 feet northeast of the project site, they've been seen  
17 several times in that habitat. And then in my  
18 previous testimony, in the early 2000s, going back to  
19 the late 1980s up to early 2000s, I found legless  
20 lizards right along the project fence line for the  
21 property, the MGS property.

22           The 2.03-acre wetland delineation conducted  
23 on the P3 site still meets the California Coastal  
24 Commission's one parameter definition of wetland,  
25 that is prevalence of hydrophytic vegetation. The



1 report only talks about the three parameter Army  
2 Corps designation, and three parameters are not  
3 present. But the one parameter Coastal Commission  
4 definition is present, that is prevalence of  
5 hydrophytic vegetation.

6           The Coastal Commission also concluded that  
7 areas that were mapped in the FSA as ice plant maps  
8 in their Figure 2 would -- should properly be  
9 classified as coastal dune habitat. And this coastal  
10 dune habitat is inhabited by Globose dune beetles.  
11 Legless lizards have a high probability of occurring  
12 there. And it's also used by Peregrine falcons as  
13 foraging habitat. Therefore, it is ESHA. And the fact  
14 that it is disturbed does not preclude it be named it  
15 as ESHA. The Coastal Commission has determined that  
16 in several cases, that just because a site is  
17 disturbed does not mean it's not ESHA.

18           Placing a required 100-foot buffer around  
19 coastal dune ESHA, if these areas that are mapped as  
20 ice plant maps are, in fact, coastal dunes, which  
21 they certainly looked like to me when I was out on  
22 the site, looking through the fence, if you put a  
23 100-foot buffer around that habitat, that will extend  
24 well into the proposed P3 project site. And if you  
25 put 100-foot buffer around the wetlands, the 2.03-

1 acre wetland on the P3 site, that could potentially  
2 make the site unbuildable, it extends that far and  
3 takes up the entire site, the wetland does. The 100-  
4 foot buffer then extends beyond that, into the rest  
5 of the project area.

6 And that concludes my comments, based on the  
7 Biological Report. I'd be glad to answer questions.

8 HEARING OFFICER KRAMER: Okay. Jonna Engel is  
9 on the phone. Could you un-mute her, Jeremy?

10 Ms. Engel --

11 MS. ENGEL: Hello?

12 HEARING OFFICER KRAMER: -- did you have  
13 anything to say, by way of an opening?

14 MS. ENGEL: I did not.

15 HEARING OFFICER KRAMER: Okay. I heard you to  
16 say you did not. Okay. Please stand by then and we  
17 will see if we have some questions for you.

18 So let's begin with the applicant. Do you  
19 have any particular questions for the panel?

20 MR. CARROLL: Just a few questions.

21 **DIRECT EXAMINATION**

22 MR. CARROLL: Mr. Hunt, you stated in your --  
23 or you referred in your opening statement to  
24 observations that you had made of the project site  
25 through the fence line. You had previously testified

1 at the hearings in February of having made some  
2 observations. Are those the same observations that  
3 you're referring to?

4 MR. HUNT: No -- well, I'll preface that.

5 When I was in that particular area back in  
6 the '80s, '90s, early 200s, I would go right up to  
7 the fence and look at the project site. But when the  
8 -- so those were my statements in February.

9 The statement I was just making now was  
10 referring to a site visit that I made in April of  
11 this year.

12 MR. CARROLL: Thank you.

13 MR. HUNT: And that was not on the project  
14 site itself. It was on public property around the  
15 project site.

16 MR. CARROLL: Thank you. And then just one  
17 question for CEC Staff with respect to the proposed  
18 changes to Bio-10.

19 Applicant has some question about the  
20 necessity of modifying the condition to impose  
21 additional requirements related to legless lizard and  
22 Globose dune beetle, in light of the findings from  
23 the survey. So if Staff could provide a little bit  
24 further explanation about what it was about the  
25 additional evidence that's been developed since the

1 FSA was produced that led you to propose those  
2 modifications? We'd appreciate having better  
3 understanding of that.

4 MS. WATSON: So just to restate, you're  
5 curious why I added legless lizard to Bio-10 as part  
6 of the translocation plan?

7 MR. CARROLL: Yes.

8 MS. WATSON: So I considered several factors  
9 when I made that determination. I considered Mr.  
10 Trautwein's finding of the two legless lizards  
11 offsite. I considered the location of those findings,  
12 as well as the proximity of those locations to the  
13 project sites. I also looked at CNDDB records that  
14 were available. And I also considered Dr. Engel's  
15 report of conversation that I had filed which stated  
16 that the boundaries of the habitat should be  
17 considered dune habitat, which would also be  
18 considered suitable habitat. So these are the factors  
19 that I took into consideration.

20 MR. CARROLL: Thank you.

21 And then, Mr. Parr, I'd like to ask you a  
22 couple of questions. Do you have experience doing  
23 field surveys for legless lizard?

24 MR. PARR: Yes.

25 MR. CARROLL: Over how many years have you

1 conducted such field surveys?

2 MR. PARR: Six.

3 MR. CARROLL: And what's the preferred time  
4 of day for conducting legless lizard surveys?

5 MR. PARR: Early morning.

6 MR. CARROLL: And that is, I assume -- well,  
7 I won't assume anything. That's because -- or can you  
8 explain why that's the preferred time?

9 MR. PARR: Well, they're sensitive to heat.  
10 They prefer moisture. Morning is usually when there's  
11 a fair amount of moisture in the top layers of the  
12 soil.

13 MR. CARROLL: And were you -- can you just  
14 confirm that you were here, sitting at the table,  
15 during my questioning of Mr. Trautwein earlier today?

16 MR. PARR: Yes.

17 MR. CARROLL: And based on your six years of  
18 experience, is it -- did it strike you as -- let me  
19 rephrase that.

20 Based on your six years of experience, was  
21 Mr. Trautwein's experience on May 5th, in terms of  
22 the detection of the two legless lizards, typical?

23 MR. PARR: No, it was not typical.

24 MR. CARROLL: And can you explain in what way  
25 it was not typical for --

1           MR. PARR: Yes. So in my experience, finding  
2 the lizard requires a fair amount of time. One  
3 usually doesn't just sift through sand and find one.  
4 One generally digs or rakes. And it usually takes  
5 quite a few minutes to locate one, if you're lucky,  
6 often more. The lizards, you know, when they sense  
7 that you're there, generally try to go down in the  
8 soil rather than up.

9           Mr. Trautwein's description of them popping  
10 up sounded unusual to me because they're usually  
11 traveling down. And it would take a few minutes to  
12 try to locate them as you're trying to dig faster  
13 than they can slither.

14           MR. CARROLL: And in your six years of  
15 experience as a professional conducting surveys for  
16 legless lizard, how many have you detected in the  
17 wild?

18           MR. PARR: Six.

19           MR. CARROLL: Okay. I have no further  
20 questions for the panel at this time.

21           MR. HUNT: Can I make a statement?

22           HEARING OFFICER KRAMER: Yes. Go ahead.

23           MR. HUNT: I wish Mr. Carroll would have  
24 asked me the same questions.

25           HEARING OFFICER KRAMER: Well, and that's

1 exactly the point of our panel presentation. After he  
2 answers those questions, you're free to respond, so  
3 go ahead.

4 MR. HUNT: Okay. I have over 30 years of  
5 experience with this species and have, a conservative  
6 estimate, maybe 6,000 to 7,000 of these animals,  
7 including many, many surveys where I start out early  
8 in the morning, searching for these animals all day  
9 long. They have, in fact, a bimodal distribution  
10 close to the surface. You find them close to the  
11 surface in the morning. In the heat of the day, Mr.  
12 Parr correctly says, they try to avoid high  
13 temperatures. They have one of the lowest temperature  
14 requirements of lizards. And then in the middle-to-  
15 late afternoon, you again find them in large numbers  
16 up at the surface. And it's not unusual to gently  
17 rake the soil, and they're only a millimeter or two  
18 under the soil.

19 So when Mr. Trautwein says they pop up,  
20 yeah, all of a sudden here's the animal sitting on  
21 the surface after a very minor amount of soil  
22 disturbance. So --

23 MR. CARROLL: Thank you.

24 MR. HUNT: -- his observation that he found  
25 them in the afternoon is not unusual at all.

1 MS. ENGEL: Excuse me. I'm not sure exactly  
2 how -- the proper protocol, but this is Jonna Engel  
3 with the California Coastal Commission. I have a  
4 question.

5 HEARING OFFICER KRAMER: Go ahead.

6 MS. ENGEL: someone asked me if I wanted to  
7 say anything. And what I want to make sure is that  
8 everything that the Coastal Commission presented in  
9 the July 21st, 2017 letter is on record.

10 And in addition to that, I want to correct  
11 the status of the Globose dune beetle. It is not,  
12 according to the California Natural Diversity  
13 Database and the NatureServe method of identifying  
14 rarity, the Globose dune beetle is globally one in --  
15 between -- it's a G1-G2/S1-S2 ranked species, which  
16 means it's between critically imperiled and  
17 imperiled, both globally and in the state of  
18 California, so it is considered very rare.

19 And so I'm not sure where the statement that  
20 it is not recognized via the state as being rare, it  
21 is. And it is -- I don't know what this federal  
22 species of concern, that's not a category that I know  
23 of.

24 But I'm available to answer any questions.

25 HEARING OFFICER KRAMER: Okay. Well, to



1 answer the question about the July 21st letter from  
2 the Coastal Commission, it's been identified as  
3 Exhibit 4043. So it is proposed to be evidence in the  
4 record.

5 So does anybody want to --

6 MS. ENGEL: Thank you.

7 MR. CARROLL: If I may, this is Mike Carroll  
8 with the applicant, Ms. Engel.

9 If the statement regarding the status of the  
10 beetle that you were referring to was made by one of  
11 Applicant's witnesses, I believe that their statement  
12 was that the Globose dune beetle is not protected  
13 under either the California or the Federal Endangered  
14 Species Act. They concur with your assessment of its  
15 designation. They we merely pointing out that, for  
16 example, a take of a Globose dune beetle in the  
17 course of a project would not require take  
18 authorization. So I think that we're --

19 MS. ENGEL: Oh, okay. Okay. That's true, it  
20 does not have an endangered or threatened status at  
21 the state or federal level. It has this additional  
22 global and state ranking, which the Coastal  
23 Commission recognizes.

24 COMMISSIONER SCOTT: Let me recommend as we  
25 go through the discussion, just so the folks on the

1 folks on the phone know who's speaking, if you would  
2 identify yourself before speaking, I think that will  
3 help follow along, especially for Jonna.

4 HEARING OFFICER KRAMER: Okay. So this is  
5 Paul Kramer.

6 Questions for the panel from other parties?

7 MS. CHESTER: Yes. Staff has questions.

8 HEARING OFFICER KRAMER: Go ahead, Staff.

9 MS. CHESTER: These are questions for the  
10 applicant.

11 **CROSS EXAMINATION BY CALIFORNIA ENERGY COMMISSION**

12 MS. CHESTER: On page 4-2 of the Biological  
13 Resources Survey Report, it states that the nest of  
14 the Peregrine falcon and great horned owl were found  
15 on the existing MGS Unit 1. In Appendix D on page D-  
16 5, it notes that the Peregrine falcon was found on  
17 the P3 site and buffer.

18 Can you please clarify what you mean by P3  
19 site and buffer, in light of your testimony on page  
20 4-2?

21 MS. LOVE: Sure. So I didn't catch the exact  
22 page you were talking about in the wildlife list. But  
23 in general, the P3 site is the three-acre site, and  
24 then the buffer is the 100-foot buffer around the 3-  
25 acre site that has some areas that are not included

1 to make it 100 all the way around, which we talked  
2 about earlier, how we exclude private lands, paved  
3 areas and open water. But in the case of P3, there is  
4 no open water there.

5 MS. CHESTER: So when it notes that  
6 the -- when it notes that the nests were found on the  
7 MGS Unit 1 --

8 MS. LOVE: Correct.

9 MS. CHESTER: -- that is a different  
10 observation from the falcons being found on the P3  
11 site and buffer?

12 MS. LOVE: That's correct. So on Unit 1, that  
13 is outside the BSA, outside of the study area, so we  
14 included that because it was an incidental sighting  
15 that we found while we were doing the surveys. But we  
16 also found -- we also saw the Peregrine while we were  
17 surveying these other areas. So the nest is only on  
18 MGS 1, but we saw the individual elsewhere in the  
19 biological study area.

20 MS. CHESTER: And for clarification, when you  
21 saw it elsewhere was it just exhibiting foraging  
22 behavior?

23 MS. LOVE: We think that it could forage in  
24 the area. We didn't see any direct evidence of the  
25 bird foraging when we were surveying, but we did see

1 carcasses in those areas, particular coots we were  
2 seeing on the ground, I believe in the laydown area.  
3 We found coots in the laydown areas.

4 MS. CHESTER: So your observations of the  
5 Peregrine falcon, in accordance with page D-5, on the  
6 P3 site and buffer were overflight only?

7 MS. LOVE: Can you give me just a minute  
8 please? What page are you on?

9 MS. CHESTER: I'm looking at Appendix D, D-5,  
10 in the middle of the page.

11 MS. LOVE: Was there another page number?

12 MS. CHESTER: I'm also looking at page 4-2 of  
13 the Biological Resources Survey Report.

14 MS. LOVE: I'm sure that we saw them flying  
15 over. But I think, also, that they could have landed  
16 in the site, and that's how we observed them there.  
17 They're not nesting there.

18 But I believe what you're asking is what  
19 sort of behavior we saw in that area? So I wouldn't  
20 --

21 MS. CHESTER: Actually, you've answered my  
22 question.

23 MS. LOVE: Oh. Oh, great.

24 MS. CHESTER: Yes.

25 MS. ROESSLER: I have one question.

1           When you said they're not nesting there,  
2   where are you referring to?

3           MS. LOVE: The only nest of the Peregrine  
4   falcon we saw was on the MGS Unit 1. So we did not  
5   see it nest anywhere else in the BSA.

6           MS. ROESSLER: Is the MGS Unit 1 on the  
7   project site?

8           MS. LOVE: It is in the facility of MGS, but  
9   it is not in the three-acre project site for the  
10   Puente Power  
11   Project.

12          MS. ROESSLER: That wasn't quite what I  
13   asked.

14          If MGS 1 on the project site for the  
15   proposed project? Is it --

16          MS. LOVE: No.

17          MS. ROESSLER: -- part of the proposed  
18   project?

19          MS. LOVE: It is part of the proposed  
20   project, but it is not the project site.

21          MS. ROESSLER: It's not on the project site?

22          MS. LOVE: That's correct. So our methodology  
23   and results section clearly define what we call  
24   project -- P3 project site versus other terms that we  
25   use for the biological study area. So as I mentioned

1 in our report, project site is just the three-acre  
2 site to the north. I would call the greater area the  
3 MGS facility in the fence line.

4 MS. ROESSLER: Okay. I understand that,  
5 reading the Biological Survey Report. You are  
6 familiar with the FSA and the project  
7 description --

8 COURT REPORTER: Could you speak up please?

9 MS. ROESSLER: -- is that correct?

10 MS. LOVE: Yes.

11 MS. ROESSLER: Does the project site, or P3,  
12 as described in the biological survey report, is that  
13 different than the project site in the FSA?

14 MS. LOVE: I can tell you what our definition  
15 of the project site is. I'm sorry, I can't remember  
16 right now how the FSA describes the project site. But  
17 for us and our purposes, it's only the three-acre  
18 site where the unit is going to be installed.

19 MS. ROESSLER: I would --

20 MS. LOVE: I think --

21 MS. ROESSLER: When you say "our," are you  
22 talking about as the applicant or are you talking  
23 about as -- I'm just trying to understand who you're  
24 -- when you say "our definition of the project," say  
25 --

1 MS. LOVE: I suppose "our" could be AECOM or  
2 the applicant or my opinion. It's defined here in the  
3 methods report, and the results report.

4 MS. ROESSLER: So in the Biological Survey  
5 Report?

6 MS. LOVE: Correct.

7 MS. ROESSLER: Okay. So that has its own  
8 definition that is separate from the project  
9 description in the final -- in the FSA?

10 MS. LOVE: I apologize. I can't exactly  
11 remember what the -- how the FSA defines the project  
12 site. I could look and tell you, if someone can  
13 provide that to me --

14 MS. ROESSLER: You don't know?

15 MS. LOVE: -- before --

16 MS. ROESSLER: I'm sorry. I thought you  
17 testified in February.

18 MS. LOVE: Yeah.

19 MS. ROESSLER: Weren't you involved with the  
20 initial studies and biological surveys conducted --

21 MS. LOVE: I was.

22 MS. ROESSLER: -- on the project?

23 MS. LOVE: I'm sorry, I just can't exactly  
24 remember if their definition is just the three acres  
25 or if it's the entire facility.

1 MS. CHESTER: I would note that the Energy  
2 Commission witness has already testified that her  
3 definition of the project site is the three-acre  
4 proposed site.

5 MS. ROESSLER: Okay.

6 MS. CHESTER: We went over that today.

7 MS. ROESSLER: Okay. Thank you.

8 HEARING OFFICER KRAMER: Okay.

9 MS. LOVE: Right.

10 MS. ROESSLER: And that's not what I asked,  
11 but thank you for clarifying that.

12 MR. CARROLL: May I offer a clarification?

13 The truth is that the term project site is  
14 used in different ways throughout the document. So as  
15 Ms. Love has testified, for purposes of the  
16 Biological Resources Survey project site is the three  
17 -- and it's all laid out very clearly in the  
18 document, the project site is the three-acre site  
19 proper.

20 I do believe in the broader document,  
21 because it's in the broader CEQA context, that  
22 sometimes all of the areas that will be affected by  
23 the construction of Puente, which would include the  
24 three-acre construction site, the demolition of MGS  
25 Unit 1 and 2, the demolition of the outfall, that in



1 some cases all of that is defined as the project  
2 site. So there are different definitions of project  
3 site, depending on what you're looking at.

4 MS. ROESSLER: Well, there's one legal  
5 definition of the project site. That should have been  
6 adequately defined in the FSA. And then there's  
7 Applicant's and their biologist's definition that was  
8 used in the Biological Survey Report.

9 MR. CARROLL: Correct.

10 MS. ROESSLER: I just wanted to understand  
11 that there is a difference in what that was.

12 MR. CARROLL: I agree with you. And the  
13 answer is that there is a difference between those  
14 two.

15 MS. ROESSLER: Next time I'll ask you then.

16 Are we free to continue questioning, or I'm

17 --

18 HEARING OFFICER KRAMER: Yes.

19 MS. ROESSLER: I have more.

20 HEARING OFFICER KRAMER: Go ahead.

21 MS. ROESSLER: I have more questions.

22 MS. CHESTER: I actually --

23 HEARING OFFICER KRAMER: Go ahead or --

24 MS. CHESTER: I have some more

25 questions --

1 MS. ROESSLER: Oh, you have more questions?

2 Okay.

3 MS. CHESTER: -- along my line, as well.

4 HEARING OFFICER KRAMER: Okay. Okay. That's  
5 right, she did insert herself into yours. Go ahead.

6 MS. CHESTER: So I have another question for  
7 Dr. Hunt.

8 On page 10 of your supplemental testimony,  
9 you note that the Peregrine falcon was on the P3 site  
10 and buffer. And you have a citation to the  
11 Applicant's Appendix D, which I referenced earlier.  
12 You note that the presence of the falcon and their  
13 foraging habitat onsite meets ESHA.

14 I'm wondering, did you use any other source  
15 or have any other information regarding the Peregrine  
16 falcon onsite, other than the Biological Survey  
17 Report?

18 MR. HUNT: No. I wasn't aware that species  
19 was nesting onsite until I read it in the Biological  
20 Report.

21 MS. CHESTER: And did you hear the earlier  
22 explanation from Ms. Love regarding the distinction  
23 between the MGS Unit 1 and the P3 site?

24 MR. HUNT: Could you rephrase that question?

25 MS. CHESTER: I apologize. We just heard from

1 Ms. Love the distinction between MGS Unit 1 and the  
2 defined three-acre site. Your testimony refers to the  
3 presence of the Peregrine falcons on the P3 site.

4 Is it still your testimony that the  
5 Peregrine falcon was found onsite?

6 MR. HUNT: Yes, it is.

7 MS. CHESTER: And when you refer to the  
8 Peregrine falcon onsite, are you referring just to  
9 the presence that was noted in Appendix D?

10 MR. HUNT: Yes. Their observations of finding  
11 prey remains scattered around the various project  
12 elements, the P3 site buffer.

13 MS. CHESTER: And so you would agree that  
14 you're not referring to the presence of the Peregrine  
15 falcon on MGS Unit 1?

16 MS. ROESSLER: I'm sorry. Can you restate  
17 that?

18 MR. HUNT: Well, I am. You can't divorce the  
19 two observations. You've got an observation which Ms.  
20 Engel just stated about seeing the birds on the site,  
21 finding prey remains on the site. And there's a nest  
22 location a few hundred feet away.

23 MS. CHESTER: Correct.

24 MR. HUNT: I don't know why --

25 MS. CHESTER: There is a nest --

1 MR. HUNT: -- you would separate those.

2 MS. CHESTER: -- location. I'm trying to  
3 determine whether it is your testimony that that nest  
4 location is on the project site?

5 MS. CHESTER: And how are you defining  
6 project site? Now if there's project site in  
7 the --

8 MS. ROESSLER: We have discussed --

9 MS. CHESTER: -- survey?

10 MS. ROESSLER: -- that the staff's definition  
11 of the project site is specifically for biological  
12 resources is that three-acre proposed site.

13 MS. ROESSLER: Sorry. Let me understand. CEC  
14 staff, just for biological resources, has a different  
15 definition of the project site?

16 MS. CHESTER: No. I am not referring back  
17 broadly. I would have to go back to the February  
18 hearings. I am referring, for these hearings now,  
19 Staff has redefined, restated, clarified previously  
20 in direct testimony that we consider the project site  
21 to be the three acres of the proposed project.

22 I am trying to clarify now, because I agree  
23 that I was unclear in the testimony, project area  
24 versus project site. So I'm trying to decide -- or  
25 hear if Mr. Hunt's testimony is that the nests were

1 on the project site.

2 MS. ROESSLER: Project site as defined by the  
3 Survey Report --

4 MS. CHESTER: The three-acre --

5 MS. ROESSLER: -- or the FSA?

6 MS. CHESTER: The three-acre project site.

7 MS. ROESSLER: The three-acre subsection of  
8 the FSA's project site?

9 MS. CHESTER: I can't verify that they're  
10 consistent. I can stand here and look it up. I think  
11 I've been clear about what I mean by the three-acre  
12 project site.

13 Is it your testimony that the Peregrine  
14 falcon is nesting onsite?

15 MR. HUNT: Yes, it is.

16 MS. ROESSLER: Okay. Now --

17 MR. CARROLL: Yeah.

18 MR. HUNT: Based --

19 MS. ROESSLER: Well --

20 MR. HUNT: Based on my understanding and  
21 reading of the FSA and what the project site was  
22 described as, yes, that's what I'm basing my  
23 testimony on.

24 MS. CHESTER: I have no further questions.

25 HEARING OFFICER KRAMER: Ms. Roessler?

1 MS. ROESSLER: Yeah. I'm really curious as to  
2 -- can I ask some questions?

3 HEARING OFFICER KRAMER: Yes. Yes. I was  
4 inviting you to.

5 MR. CARROLL: And I'm sorry to interrupt, but  
6 I know feel the need to clarify this to some extent,  
7 because it's just a matter of semantics, and we're  
8 all saying the same thing but we're talking past each  
9 other. But we now have testimony on the record from  
10 EDC's expert of the Peregrine falcon being on the  
11 project site, which for purposes of the Biological  
12 Resources Survey is just the three-acre site.

13 MS. ROESSLER: I object to that  
14 characterization. It's not semantics. The definition  
15 of the project site is defined for the proposed  
16 project. It's not -- it shouldn't be something that  
17 gets redefined or changed based on the impact area.  
18 I've never ever heard of that.

19 HEARING OFFICER KRAMER: Well --

20 MS. ROESSLER: It is what it is. It's a fact.  
21 I understand there's a separate P3 site that's  
22 defined in the Biological Survey Report.

23 MR. CARROLL: Well, actually --

24 MS. ROESSLER: So I just --

25 MR. CARROLL: -- there isn't anything --

1 MS. ROESSLER: want to be --

2 MR. CARROLL: -- defined as the P3 site. And

3 --

4 MS. ROESSLER: The Biological Survey Report -

5 -

6 MR. CARROLL: It's defined as the --

7 MS. ROESSLER: -- has the BSA and it refers  
8 throughout there to P3 and buffer. So it's confusing.  
9 I just want --

10 MR. CARROLL: It is.

11 MS. ROESSLER: -- to make clear when we're  
12 speaking, when someone says site or project site, in  
13 my opinion, there's just one proposed project site.  
14 But if we're going to distinguish it, I want to know  
15 which -- what people are saying.

16 MR. CARROLL: I agree.

17 HEARING OFFICER KRAMER: Okay. Well --

18 MR. CARROLL: And that's my --

19 MS. ROESSLER: That's all.

20 MR. CARROLL: That's my point, as well. And  
21 in retrospect, project site was probably not the best  
22 term to attach to the three-area parcel for purposes  
23 of the Biological Resources Survey, but that's what  
24 we did.

25 But I think we can clarify this, because Mr.

1 Hunt did testify that his knowledge of the Peregrine  
2 falcon onsite is limited to the information in the  
3 Biological Resources Survey Report. If that's in fact  
4 true, then we're all consistent.

5 Now it just so happens that that information  
6 indicates that it's not on the project site.

7 MS. ROESSLER: You're testifying now. We  
8 asked a question.

9 MR. CARROLL: All right. I'm just trying to -  
10 - I'm trying to be helpful, but --

11 MS. ROESSLER: I can --

12 MR. CARROLL: -- you can figure it out.

13 MS. ROESSLER: And it gets to my next line of  
14 questions about project site and the site as  
15 described in the Biological Survey area.

16 So, Ms. Watson, I'd like to direct these  
17 questions for you.

18 Being on CEC Staff and part of the FSA, does  
19 the Biological Survey area match the project  
20 description, or are there areas that are excluded  
21 from it?

22 MS. CHESTER: I would object to that. The  
23 Biological Survey area was defined by the applicant  
24 and not the CEC staff. It was not their direction to  
25 align their two.



1 MS. ROESSLER: She supplied -- she's your  
2 witness testifying about the Biological Survey area  
3 results, so I would hope that she would be familiar -  
4 -

5 MS. WILLIS: Mr. Kramer --

6 MS. ROESSLER: I'm still speaking.

7 MS. WILLIS: -- we have an objection. We  
8 would just ask for a ruling on that.

9 MS. ROESSLER: Usually both parties get to  
10 speak when there's an objection.

11 I'm just -- are you saying she can't -- my  
12 point is, are you saying she doesn't -- she supplied  
13 a supplemental testimony on an area that she's not  
14 familiar with what the boundaries are?

15 MS. CHESTER: That is not what I'm saying. I  
16 would wait for a ruling.

17 HEARING OFFICER KRAMER: Okay. Heard enough.  
18 So if the witness is -- you're asking her to make a  
19 comparison of two areas.

20 MS. ROESSLER: That she should be familiar  
21 with.

22 HEARING OFFICER KRAMER: And if she doesn't  
23 understand what is encompassed by your description of  
24 either area, she can point that out. If she  
25 understands what both are, she can compare the two.

1           So the objection is overruled.

2           MS. ROESSLER: Thank you. That's all I'm  
3   trying to get to.

4           MS. CHESTER: If I -- I'm sorry. Oh.

5           MS. WATSON: I think I understand your  
6   question. And the biological study area, the BSA,  
7   encompasses that three-acre project, proposed project  
8   parcel, plus additional areas.

9           MS. ROESSLER: Does it encompass the  
10   demolition area? I'm sorry, I'll be specific.

11          Does the BSA encompass the demolition area?

12          MS. WATSON: I believe it does not.

13          HEARING OFFICER KRAMER: Okay. But is  
14   it --

15          MS. ROESSLER: Is the -- or, sorry.

16          HEARING OFFICER KRAMER: As the designer of  
17   the study or the reporter, Ms. Love, feel free to  
18   also offer your thoughts about what it encompasses or  
19   does not.

20          MS. LOVE: Sure. So if you can look there at  
21   Figure 1 that showed up on the screen, what I think  
22   you're asking is if the demolition of Unit 1 and 2  
23   shown in blue hatching is part of the biological  
24   study area, the answer to that is, no, because that  
25   is an existing facility that's developed. That is not

1 part of the study area.

2 MR. CARROLL: May I clarify?

3 MS. LOVE, when you say it's not part of the  
4 study area, do you mean the study area for purposes  
5 of this Biological Resources Survey?

6 MS. LOVE: That is correct, as part of this  
7 Biological Resources Survey Report that we prepared.

8 MR. CARROLL: And was the biological study  
9 area for the AFC broader than the biological study  
10 area for these focused surveys?

11 MS. LOVE: Yes, that is correct.

12 MR. CARROLL: And was MGS Unit 1 and -- the  
13 area where MGS Units 1 and 2 currently exist part of  
14 the BSA for purposes of the AFC?

15 MS. LOVE: Yes, it was.

16 MR. CARROLL: We have -- so just to clarify,  
17 we have two BSAs, a BSA that was defined in the AFC  
18 for the entirety of the project site as defined in  
19 CEQA, and a smaller BSA that was defined for purposes  
20 of the protocol surveys that were just completed, one  
21 component of which also happens to be defined as the  
22 project site, which is the three acres. Is that a  
23 correct characterization?

24 MS. LOVE: I agree.

25 MR. CARROLL: Thank you.

1 MS. ROESSLER: Thank you for that  
2 clarification.

3 MR. HUNT: I'd like to comment, add a comment  
4 to that, and this kind of corroborates what Mr.  
5 Carroll is saying to a certain extent.

6 The figures that are prepared for the  
7 Biological Survey Report, including the one that's up  
8 on the project, if you look down on the third line,  
9 it says, "project components," and the demolition  
10 site is one of the project components. Below that are  
11 laydown and storage areas that the report says they  
12 did not survey because they were paved or hardscaped  
13 in some way or whatever.

14 So I just wanted to reiterate, it is  
15 confusing because the project components are somewhat  
16 muddled with the BSA, Biological Survey area.

17 MS. ROESSLER: So thank you for pointing that  
18 out. So I'm just trying to get to the point that -- a  
19 question.

20 Is it your understanding, this can be the  
21 whole panel, that the March 10th orders from the  
22 Committee directed the applicant to conduct  
23 biological studies for an area smaller than the  
24 project site?

25 Can anyone answer that question?

1 MS. LOVE: I'm sorry, did you say smaller  
2 than the project site?

3 MS. ROESSLER: That's right, the project site  
4 as described in the FSA, yes. I should be more clear  
5 with that. The proposed project as described in the  
6 FSA.

7 Nobody has an answer?

8 MR. CARROLL: I don't think it's a technical  
9 question, so I will answer.

10 The March 10 order said that the surveys  
11 were to be conducted on the project site, but did not  
12 define project site. So applicant took it upon itself  
13 to define the BSA for purposes of the Biological  
14 Resources Surveys.

15 MS. ROESSLER: Yes, Applicant did take it  
16 upon themselves to survey an area that was not the  
17 complete project site. That's what I'm trying to get  
18 to, which you just answered, which was not what was  
19 directed by the March 10th --

20 MR. CARROLL: Well, I --

21 MS. ROESSLER: -- orders.

22 MR. CARROLL: I disagree with that.  
23 The --

24 MS. ROESSLER: You thought it was up to your  
25 --

1 MR. CARROLL: The March 10th --

2 MS. ROESSLER: -- interpretation to redefine  
3 what the project site was for the purposes of  
4 complying with that order?

5 MR. CARROLL: Yes, we did, and that's why we  
6 were very specific in the protocol as to the areas  
7 that would be surveyed, and sent that out for public  
8 comment to all of the parties so that everyone would  
9 understand precisely what the areas to be surveyed  
10 were.

11 MS. ROESSLER: Right. And this is the first  
12 opportunity we've had to actually specify those areas  
13 that were different and raise this issue.

14 MR. CARROLL: Well, no, it's not because we  
15 sent the draft protocol out for review and comment by  
16 all of the parties, and everyone had an opportunity  
17 to provide input. In fact, many parties did provide  
18 input --

19 MS. ROESSLER: Yes.

20 MR. CARROLL: -- into the areas that they  
21 thought should be surveyed. And --

22 MS. ROESSLER: Correct. But you didn't do  
23 what everybody's comment said precisely. That was up  
24 to your discretion because there was no hearing,  
25 except for where we are right now, to discuss how you

1 complied with that order or what comments and how you  
2 designed the protocols.

3 MR. CARROLL: Well --

4 MS. ROESSLER: So I don't need to get into it  
5 now. I'd like to just continue with the questions.

6 MR. CARROLL: Well --

7 MS. ROESSLER: I don't want to waste  
8 anybody's time.

9 MR. CARROLL: Well, the implication is that  
10 some portion of the overall area where there will be  
11 development of the project that should have been  
12 surveyed wasn't. The fact of the matter is that the  
13 BSA was defined more narrowly for purposes of these  
14 focused surveys than it was for purposes of the  
15 initial biological assessment of the project. And we  
16 concede that and we don't think that there's any  
17 problem with that. And any suggestion that those  
18 discrepancies were in error or improper in any way is  
19 incorrect. There is a distinction, but --

20 MS. ROESSLER: Yeah. Sorry. This is where I'd  
21 like to actually question the expert biologist on the  
22 panel. I think it's up to them to decide if there was  
23 suitable habitat left out of the survey area.  
24 Because, as you stated in your words, decided upon  
25 yourself to narrow it. So I'd like to being again.

1 I believe you were trying to discuss which  
2 areas were left out of the Biological Survey area  
3 when you compare it to the FSA, looking at Figure 1.  
4 Sorry, it's a little blurry up there. Looking at  
5 Figure 1, so I think we left establishing that the  
6 area in blue stripes up there is the demolition area,  
7 which does encompass MGS 1 and 2, is a project  
8 component but was not part of the project area.

9 I'm looking at Ms. Watson.

10 MS. WATSON: I see that.

11 HEARING OFFICER KRAMER: Jeremy, can I have  
12 full screen?

13 MS. WATSON: Oh, it can get bigger? That  
14 would be helpful.

15 MS. CHESTER: Can I ask, do you have a  
16 reference --

17 MS. ROESSLER: Thank you.

18 MS. CHESTER: -- to the FSA regarding --

19 MS. ROESSLER: I have a question outstanding.

20 MS. CHESTER: I'm just wondering if this is a  
21 visual --

22 MS. ROESSLER: I still have --

23 MS. CHESTER: -- or a description we can use  
24 of the project site that's being used for this line  
25 of questioning?



1 MS. ROESSLER: What do you mean?

2 MS. CHESTER: For references for the  
3 witnesses.

4 HEARING OFFICER KRAMER: If --

5 MS. ROESSLER: We're looking at the map right  
6 there that defines the Biological Survey area.

7 MS. CHESTER: Correct. But you said the  
8 project site in the FSA, and that is different from  
9 what is being shown on the screen.

10 MS. ROESSLER: And I'm going through the  
11 different components that are part of the project  
12 description --

13 HEARING OFFICER KRAMER: Well --

14 MS. ROESSLER: -- in the FSA.

15 HEARING OFFICER KRAMER: -- Ms. Roessler, I  
16 suspect you may have written down a list when you  
17 made your own comparison. Would it be --

18 MS. ROESSLER: It's in the -- the FSA  
19 is -- I can describe it as I go through. It's  
20 confusing throughout the FSA, depending what map you  
21 look at. Project site sometimes is the entire MGS  
22 site. And sometimes -- well, in this instance, they  
23 use P3. So I would love to say there's one map but --  
24 so I have to go off components that are part of the  
25 project. We don't have to debate the legality of it

1 now. I'm just trying to establish project components  
2 --

3 HEARING OFFICER KRAMER: Okay. Well --

4 MS. ROESSLER: -- looking at this map, which  
5 are outlined.

6 HEARING OFFICER KRAMER: Yeah. I'm just  
7 trying to think of an efficient way to answer you. I  
8 think your questions, correct me if I'm wrong, are  
9 along the lines that, well, why didn't you analyze  
10 this area?

11 MS. ROESSLER: Yeah. I only have -- that's  
12 what I'm trying to get to. I have about two or three  
13 questions that would --

14 HEARING OFFICER KRAMER: Okay.

15 MS. ROESSLER: -- get to the end of it.

16 HEARING OFFICER KRAMER: Well, maybe calling  
17 it -- or saying where we're going will help people --

18 MS. ROESSLER: Yeah. That's --

19 HEARING OFFICER KRAMER: -- (indiscernible).

20 So go ahead. Go ahead.

21 MS. ROESSLER: I can be specific.

22 So, for example, I was saying -- so we  
23 established the demolition area.

24 Was the demolition access road that was  
25 proposed -- that is proposed to be graded with four

1 inches of gravel, surveyed?

2 MS. WATSON: Are you addressing me again?

3 MS. ROESSLER: I'm sorry. I can ask Love or  
4 you.

5 MS. LOVE: Oh, I'm sorry. I thought you were  
6 still talking to Mrs. Watson.

7 MS. ROESSLER: That's okay.

8 MS. LOVE: Can you please repeat the question  
9 for me?

10 MS. ROESSLER: Was the demolition access road  
11 only -- so let me back up because I got interrupted.  
12 I'll go back to Watson, and then you.

13 Was the demolition access road, is that part  
14 of the project, Mrs. Watson?

15 MS. WATSON: Portions of it were.

16 MS. ROESSLER: Only portions of it.  
17 What -- can you describe which portions are part of  
18 the project, the proposed project?

19 MS. WATSON: Well --

20 MR. CARROLL: This is not going to work if  
21 you continue to use the term project and project  
22 site, because it's different. So --

23 MS. ROESSLER: I just --

24 MS. CHESTER: I would --

25 MS. ROESSLER: I just clarified the -- I'm

1 asking about project components. So --

2 MR. CARROLL: Just -- if you could just ask,  
3 was the demolition access road surveyed as part of  
4 the Biological Resources Survey, I think you'll get a  
5 clear answer to your question.

6 MS. ROESSLER: But that -- I understand that.

7 What I want to know is if the demolition  
8 access road is part of the proposed project?

9 MS. CHESTER: I just wonder if this question  
10 is better directed to the applicant, as Staff did not  
11 conduct the survey, and as I've mentioned, we're  
12 using a different definition of project site in their  
13 testimony.

14 MS. ROESSLER: I'm not talking about project  
15 site, the proposed project. I'm asking about a  
16 component of the proposed project, which is included  
17 in the project description, that is in Staff's  
18 opening testimony or FSA. It's just -- it's what we  
19 should be referring to. That's what I'm asking.

20 MS. WILLIS: Mr. Kramer, our staff witnesses  
21 did review the applicant's Biological Survey. But  
22 they are here. They can directly answer the question  
23 of what they surveyed and what they didn't. It seems  
24 more appropriate that those who actually went out and  
25 did the survey respond.

1 MS. ROESSLER: I will -- I direct -- I will  
2 direct questions about the surveys to Ms. Love,  
3 absolutely.

4 I'm just trying to figure out from the best  
5 source, whether it's Ms. Love or Ms. Watson, I would  
6 think it would be Ms. Watson as to --

7 HEARING OFFICER KRAMER: Well --

8 MS. ROESSLER: -- whether or not the  
9 demolition access road is part of the proposed  
10 project?

11 HEARING OFFICER KRAMER: When --

12 MS. ROESSLER: If you don't know, that's  
13 fine.

14 HEARING OFFICER KRAMER: (Indiscernible) I  
15 call a panel proper use theorem is that you just ask  
16 the question, and the panelists who feel that they  
17 can answer it can answer it.

18 MS. ROESSLER: That's fine. I was trying to  
19 direct it to the best, but --

20 MR. CARROLL: Okay. I object to the question,  
21 because the definition of project, as used in the  
22 question, is vague and ambiguous.

23 MS. ROESSLER: Proposed -- the proposed  
24 project as described in the FSA is vague and  
25 ambiguous? I'm asking about a component.

1           MR. CARROLL: Well, you didn't say the  
2 proposed project as described in the FSA.

3           MS. ROESSLER: I did.

4           MR. CARROLL: You said "the project."

5           MS. ROESSLER: No, I didn't.

6           MR. CARROLL: And I would --

7           MS. ROESSLER: I actually -- I didn't. I said  
8 "the proposed project as described in the FSA."

9           MR. CARROLL: That's clearer.

10          HEARING OFFICER KRAMER: Okay.

11          MS. ROESSLER: Okay.

12          HEARING OFFICER KRAMER: Okay. Then let's get  
13 an answer.

14          MS. ROESSLER: Are we clear? Do I  
15 need -- I can repeat the question if it's lost at  
16 this point.

17          MS. WATSON: I think I can answer, and that  
18 is that you can clearly see in the map that when you  
19 access the site from Harbor Road [sic], that portion  
20 was not accessed, the northern or the northeastern  
21 portion was not surveyed.

22          MS. ROESSLER: Okay. So is it safe to say  
23 that the demolition access road, or substantial parts  
24 of it, were not surveyed?

25          MS. WATSON: I don't know.

1           MR. CARROLL: I'm going to object to the  
2 question, because the definition of demolition access  
3 road that's being used is --

4           MS. ROESSLER: It's on the map --

5           MR. CARROLL: -- vague.

6           MS. ROESSLER: -- that we're looking at as an  
7 illustrative figure.

8           HEARING OFFICER KRAMER: Okay. So  
9 then --

10          MS. ROESSLER: Figure 1. I'm staring at it.

11          MR. CARROLL: Ms. Watson, do you, looking at  
12 the map, do you understand exactly what Ms. Roessler  
13 is referring to when she says "the demolition access  
14 road?"

15          MS. WATSON: In my interpretation, it's the  
16 road that accesses off of Harbor Boulevard, runs down  
17 to the south, running -- assuming this is facing  
18 north, north is a little kitty-corner. So running  
19 down west, towards the beach, then cutting in and  
20 running south and directly down to the access road.  
21 So the first perhaps third or quarter of that road  
22 from Harbor Boulevard down to the northern buffer --  
23 or the eastern buffer or the actual three-acre  
24 project site was not surveyed.

25          MR. CARROLL: And by not surveyed, do you

1 mean in this most recent round --

2 MS. WATSON: In the --

3 MR. CARROLL: -- of Biological Resources  
4 Surveys?

5 MS. WATSON: Yes. As directed in the  
6 Committee order, the most recent rounds of surveys  
7 were not conducted.

8 MR. CARROLL: Was it studied in the AFC and  
9 the FSA?

10 MS. WATSON: I believe it was pretty,  
11 basically, covered.

12 MS. ROESSLER: Okay. Let me go over my  
13 questions here.

14 MR. CARROLL: If I may --

15 MS. ROESSLER: Okay.

16 MR. CARROLL: -- just point out, part of the  
17 problem, there are multiple access roads and there  
18 are multiple demolition areas. So we were talking at  
19 one point about the MGS 1 and 2 demolition area and  
20 that that is not within the BSA for purposes of these  
21 most recent surveys. And Mr. Hunt pointed out, but in  
22 the legend it refers to the demolition area, and that  
23 is true because the outfall area also involves  
24 demolition, and that is included in the BSA. So this  
25 is --



1 MS. ROESSLER: Are you testifying or are you  
2 --

3 MR. CARROLL: No. I'm trying to --

4 MS. ROESSLER: What are you clarifying?

5 MR. CARROLL: I'm trying to get us through  
6 this because I believe, to be honest, that I am the  
7 most knowledgeable person in the room about the  
8 project components and the various descriptions. It's  
9 not a biological resources issues. So I'm trying to  
10 be helpful to all of the parties and get through the  
11 semantics --

12 MS. ROESSLER: I would hope that the --

13 MR. CARROLL: -- problem here. If you don't  
14 want clarification and all you want is the  
15 opportunity to confuse the witnesses so that you get  
16 answers on the record that you like, that's fine. If  
17 you want me to help you clarify the various project  
18 components and the various descriptions that have  
19 been used for purposes of this survey work or the  
20 overall CEQA analysis, I'm happy to do that.

21 MS. ROESSLER: Thank you. I'll make sure to  
22 ask you when I have questions.

23 MR. CARROLL: Please do.

24 MS. ROESSLER: I was hoping that with the  
25 panel of biologists, that they would be aware of the

1 area that they surveyed, and whether that was part of  
2 the -- in the proposed project in the FSA or not.

3 MR. CARROLL: And I believe --

4 MS. ROESSLER: Ms. Watson --

5 MR. CARROLL: -- that they testified they  
6 are.

7 MS. ROESSLER: Ms. Watson, is the demolition  
8 access road part of the proposed project as described  
9 in the FSA?

10 MR. CARROLL: Asked and answered.

11 HEARING OFFICER KRAMER: Sustained.

12 MS. ROESSLER: If it's asked and answered,  
13 what was the answer?

14 MR. CARROLL: Yes.

15 MS. ROESSLER: Yes. Okay. Okay. Actually, I'm  
16 going to switch back here.

17 Mr. Hunt, is the -- according to the FSA, is  
18 the demolition access road supposed to be improved  
19 with four inches of gravel?

20 MR. HUNT: Yes, that's my understanding.

21 MS. ROESSLER: Okay.

22 MR. CARROLL: Mr. Hunt, do you -- when -- do  
23 you understand the term "demolition access road" to  
24 mean the outfall demolition road or the broader  
25 demolition access road?

1 MS. ROESSLER: What is the --  
2 MR. HUNT: I'm referring to --  
3 MS. ROESSLER: -- broader?  
4 MR. HUNT: -- both of them.  
5 MR. CARROLL: All right. If I may, may I, Ms.  
6 Roessler?  
7 MS. ROESSLER: I would actually --  
8 MR. CARROLL: You didn't ask --  
9 MS. ROESSLER: -- like to --  
10 MR. CARROLL: You didn't ask me, but may I  
11 explain?  
12 MS. ROESSLER: Okay.  
13 MR. CARROLL: There were two demolition  
14 access roads.  
15 MS. ROESSLER: Yes.  
16 MR. CARROLL: There is the outfall demolition  
17 access road, which is this black and gold cross-  
18 checked area right here. That is a seldom used road.  
19 It's, I mean, probably an overstatement to call it a  
20 road. It's on soft substrate. It will be used to  
21 demolish the outfall. Because it's not a frequently  
22 used road and it's not currently paved, that was  
23 included in the Biological Resources Surveys that  
24 were recently completed.

25 There's a broader demolition access road

1 that circles the entire site that will be used to  
2 demolish Unit 1 and 2. Because that is on developed  
3 impervious surfaces, it wasn't included in the most  
4 recent Biological Resources Surveys, although it was  
5 included in the initial Biological Resources Surveys  
6 for the AFC. Now you may criticize, you may say that  
7 you think it should have been included here, and  
8 that's certainly your right. But that's the  
9 distinction between, you know, this broader gold road  
10 that was -- all of which was analyzed in the AFC, and  
11 this portion down here which is the black and gold,  
12 which was analyzed for purposes of these surveys.

13 MS. ROESSLER: Okay. So the FSA states that  
14 four inches of gravel will be added to all unimproved  
15 roads. Does that encompass --

16 MR. CARROLL: I'm sorry, yeah, I'm sorry, I  
17 forgot to -- I forgot to answer that very question.

18 MS. ROESSLER: All right.

19 MR. CARROLL: So that refers to --

20 MS. ROESSLER: I'm not asking you -- okay.

21 MR. CARROLL: That refers to this --

22 MS. ROESSLER: Can we --

23 MR. CARROLL: -- unimproved road.

24 MS. ROESSLER: I object. I'm trying to ask a  
25 question. We're going to be here until midnight if we

1 continue questioning like this.

2 MR. CARROLL: No. That --

3 MS. ROESSLER: I just -- I'm not asking  
4 questions of you. I'm not asking you to testify. I  
5 appreciate your knowledge of the site. I am hoping  
6 that those, particularly the CEC, who provide  
7 testimony are familiar with at least the project  
8 components and the project description. And I'm  
9 hoping that the biologists are aware of where they  
10 studied. I'd like to move on to the rest of my  
11 questions.

12 MR. CARROLL: I don't think the biologists --

13 MS. ROESSLER: I appreciate you --

14 MR. CARROLL: I don't think the biologists  
15 know what substrates necessarily are going to be used  
16 for the construction of the project. But if you want  
17 to ask them --

18 MS. ROESSLER: Your biologist, Ms. Love, has  
19 provided testimony now at two hearings about  
20 biological impacts to the site and to surveys. I  
21 would hope that she would be aware of a project  
22 component that could potentially cause an impact to  
23 rare species. If she's not, then she can say she's  
24 not.

25 MR. CARROLL: She is. And if you'd listen

1 more carefully to her testimony --

2 HEARING OFFICER KRAMER: All right.

3 MS. ROESSLER: I can't listen --

4 HEARING OFFICER KRAMER: Hold on.

5 MS. ROESSLER: -- to her testimony --

6 HEARING OFFICER KRAMER: Hold on. Hold on.

7 MR. CARROLL: You would --

8 MS. ROESSLER: -- because you're the

9 only --

10 MR. CARROLL: Her opening --

11 MS. ROESSLER: -- one testifying.

12 MR. CARROLL: In her opening statement,

13 because the testimony filed by the intervenors --

14 MS. ROESSLER: I am not asking you --

15 MR. CARROLL: -- were so clearly

16 Confused --

17 MS. ROESSLER: -- a question.

18 MR. CARROLL: -- about the project

19 components, we spent a great deal of time --

20 HEARING OFFICER KRAMER: Time out.

21 MR. CARROLL: -- on the opening

22 statement --

23 HEARING OFFICER KRAMER: Time out.

24 MR. CARROLL: -- clarifying.

25 HEARING OFFICER KRAMER: Time out. Okay.

1 Let's -- the witnesses, can you all swear that if you  
2 don't know you can tell us that? Okay.

3 And so go ahead and ask your questions. But  
4 let's be careful when you're defining terms, such as  
5 progress -- project area, or even the outfall road. I  
6 think this would go so much better if you would ask  
7 about specific areas, which I believe you have in  
8 mind.

9 MS. ROESSLER: I agree. I'm trying to get to  
10 them.

11 HEARING OFFICER KRAMER: Okay. Well, can't --  
12 I'm not sure why you can't go directly to them.

13 MS. ROESSLER: I am. And every time I am, if  
14 we had a court reporter that could read back the  
15 transcript, it would show that Mr. Carroll is  
16 answering the questions, and I'm not directing them  
17 at him, several times. When someone tries to answer a  
18 question, he interrupts and claims he has the best  
19 knowledge. So if he can be restrained from  
20 interrupting and answering other witness's questions,  
21 I'm sure I could get onto the rest of mine.

22 HEARING OFFICER KRAMER: Yes, go ahead.

23 MS. ROESSLER: Mr. Hunt, you reviewed the applicants  
24 proposed Biological Resources Survey Methodology also

1 attached to Ms. Love's declaration and provided comments  
2 identified as Exhibit 4040; is that correct?

3 MR. HUNT: Yes.

4 MS. ROESSLER: Are you also familiar with the  
5 comments the California Coastal Commission provided on the  
6 proposed Biological Resources Survey Methodology filed as  
7 Exhibit 4041?

8 MR. HUNT: Yes, I am.

9 MS. ROESSLER: Did the Coastal Commission provide  
10 comments to the applicant's methodology advising them to  
11 include a 100-foot buffer around the project site, the BSA,  
12 biological survey area?

13 MR. HUNT: Yes, we did.

14 MS. ROESSLER: And did the BSA include a 100-foot  
15 buffer around the entire proposed project as defined in the  
16 FSA?

17 MR. HUNT: No, it didn't. In portions -- I should  
18 say it did include 100-foot buffer in certain areas such as  
19 the west side of the P3 site. But if you look at Figure 1,  
20 the north side -- northern side, it is truncated at the  
21 property line. It doesn't extend -- it actually should extend  
22 15 to 20 feet further offsite.

23 MS. ROESSLER: And --

24 MR. HUNT: There is no buffer also around the  
25 outfall survey area or around the demolition access road to



1 the east. And it was my understanding that unimproved roads  
2 would be paved covered with gravel. Those look like dirt  
3 roads to me. I would consider them unimproved as opposed to  
4 paved road. So there's no buffer on that either.

5 MS. ROESSLER: Thank you. And I just want to clarify  
6 you are looking at Figure 1, title, "Biological Survey Area"  
7 and you said P3 site. Were you talking about the area where  
8 it says P3, referring to the three-acre site?

9 MR. HUNT: Yes. Yes, I am.

10 MS. ROESSLER: Thank you.

11 Can we pull up -- Mr. Kramer, I had some exhibits  
12 that were just copies of maps. So if you could pull up Figure  
13 3. It's illustrative figure docketed by the CEC staff.  
14 There's a few Figure 3s.

15 MR. KRAMER: Is this it?

16 MS. ROESSLER: No, that's the vegetative. It's the  
17 one showing --

18 MR. HILLIARD: Sorry to interrupt, this is John  
19 Hilliard.

20 Were you referring to the aerials, there were like  
21 three aerial-type exhibits docketed about five days ago or  
22 so?

23 MS. ROESSLER: Yes. I was referring to the buffer.  
24 That's what I was trying to pull up. I think it was in that  
25 batch.

1 HEARING OFFICER KRAMER: Wait. So was this in the  
2 exhibits you gave me earlier today?

3 MS. ROESSLER: I think so. Oh. Oh, I'm sorry, I'm  
4 mistaken, it wasn't. So many exhibits. I didn't realize the  
5 CEC map. I'm trying to get to the CEC map that was docketed a  
6 few days ago that showed 100-foot buffer on the northern  
7 boundary of the property that was excluded from the BSA. I  
8 think --

9 HEARING OFFICER KRAMER: Do you happen to have the T  
10 --

11 MS. ROESSLER: I think I have a TN number but I'm  
12 not --

13 MS. CHESTER: Hearing Officer Kramer, I believe I  
14 asked for those images to be up. If you still have the window  
15 open, I think it's something you've already pulled up.

16 MS. ROESSLER: Great.

17 HEARING OFFICER KRAMER: Is this it? Oh, yeah, you  
18 can see it.

19 MS. ROESSLER: Yes. Thank you. Is it possible to --  
20 thank you.

21 So, actually -- so Mr. Hunt, in viewing this map,  
22 titled, "Site Context in Extent of Omitted 100-foot Buffer,"  
23 Figure 3, docketed by CEC staff.

24 Does that map depict the entire 100-foot buffer  
25 that you just testified was excluded from the BSA in the

1 Biological Resources Survey Report?

2 MR. HUNT: Yes, it does.

3 MS. ROESSLER: It does depict the entire excluded  
4 area?

5 MR. HUNT: Let me modify that.

6 MS. ROESSLER: I believe this is just showing the --

7 MR. HUNT: It does depict that for the northern  
8 border but there's also a laydown area that was part of the  
9 survey, part of the BSA, and that buffer does not extend all  
10 the way around the laydown area. It's not shown on this  
11 figure.

12 MS. ROESSLER: So you also testified a couple of  
13 minutes ago that there was no 100-foot buffer around the demo  
14 area.

15 Is that depicted on this map?

16 MR. HUNT: That structure in the lower center of the  
17 photograph is the demo area, if I'm correct, then there's no  
18 buffer around that area.

19 MS. ROESSLER: Okay. So -- just I won't go through  
20 every component, but it's safe to say that --

21 MR. HUNT: Okay.

22 MS. ROESSLER: -- this map just includes the 100-  
23 foot area excluded from the BSA on the northern boundary?

24 MR. HUNT: Yes, that's correct.

25 MS. ROESSLER: Thank you.

1 HEARING OFFICER KRAMER: Okay. That's from  
2 Exhibit 2029, just to be clear.

3 MS. ROESSLER: Thank you. Okay. Was there habitat  
4 that supported special status species that was excluded from  
5 the biological survey area as a result of the 100-foot buffer  
6 area on this northern boundary being excluded?

7 MR. HUNT: Yes, I think so. Some suitable habitat  
8 for Globose dune beetle, legless lizard, horned lizards, two-  
9 striped garter snake was excluded by not including that, a  
10 full buffer.

11 MS. ROESSLER: Thank you. Okay. Thank you.  
12 Is the Coastal Commission still online?

13 HEARING OFFICER KRAMER: Ms. Engel?

14 DR. ENGEL: This is Jonna Engel, yes, I am.

15 MS. ROESSLER: Ms. Engel, since we're referring to a  
16 100-foot buffer area in which the Coastal Commission  
17 recommended surround the project site, can you explain the --  
18 why you, Coastal Commission, staff recommended the 100 -- a  
19 100-foot buffer area?

20 DR. ENGEL: I'm looking at the letter that we  
21 submitted to Janae Scott on April 7, 2017 and we did identify  
22 that there should be additional areas in an expanded survey  
23 area. The reason we would ask for all of the potential  
24 project -- proposed project footprint to include a 100-foot  
25 buffer area is because we would be identifying any rare or

1 listed species in that buffer area to determine any  
2 potential, you know, listed species.

3           So we typically assign a buffer area of 100 feet to  
4 any area -- well, the Commissioners make that decision but we  
5 as staff recommend 100 feet to protect what we identify as  
6 ESHA.

7           MS. ROESSLER: Thank you.

8           MS. CHESTER: I would remind and invite staff that  
9 they're able to chime in if they have comments on these  
10 questions. Okay.

11           MR. HILLIARD: Let me ask a follow-up question on  
12 this line of questioning to Ms. --

13           UNKNOWN SPEAKER: [Inaudible]

14           MR. HILLARD: Sorry. This is John Hilliard.

15           I'm unclear as far as what you're allowing us to  
16 comment on. I was the one that actually prepared this  
17 exhibit. It shows project components, what I call omitted  
18 100-foot buffer. It also indicates -- because there is an  
19 existing paved access road that comes off of not actually  
20 Harbor Boulevard, but the Harbor Boulevard driveway to the  
21 MGS property. And so, yeah, that does project substantially -  
22 - when I say substantially, 100 feet into the adjacent north  
23 property. That was to illustrate that.

24           I did not look at the other pieces of the Puente  
25 Project in terms of the demo site and the laydown area and I

1 think there's a temporary parking area that's also designated  
2 next to Edison Canal.

3 MS. ROESSLER: Thank you. I think I was asking the  
4 wrong person about the project site.

5 MR. HILLIARD: I'm sorry.

6 MR. CARROLL: Ms. Love, may I -- with respect to the  
7 buffer area north of the project's site, in the Biological  
8 Resources Survey that was just completed, is it correct that  
9 the northern -- the buffer area on the northern boundary of  
10 the project site as defined in the Biological Resources  
11 Survey was truncated to some extent because 100 feet would  
12 have run off the MGS property?

13 MS. LOVE: That's correct. So the three-acre project  
14 site has a 100-foot buffer that was restricted by ten feet,  
15 so it's a 90-foot buffer. So we only did not include ten feet  
16 at the northern terminus of the buffer because it is in the  
17 private lands to the north, that is the Ventura Marsh milk-  
18 vetch mitigation site.

19 MR. CARROLL: And there's been a lot of discussion  
20 about that area today and it's been frequently described as  
21 public property. Your understanding is that that is private  
22 land on the other side of the fence?

23 MS. LOVE: That is my understanding. I -- yes.

24 MR. CARROLL: Then was it your understanding that  
25 permission was required to enter into that Ventura Marsh

1 milk-vetch private?

2 MS. LOVE: Yes, it is so we --

3 MS. ROESSLER: Can you -- sorry, just to clarify.

4 I'm just trying to -- which -- what area are you talking

5 about? The slim portion or --

6 MS. LOVE: My under --

7 MR. CARROLL: I'm talking about --

8 MS. ROESSLER: [Inaudible]

9 MR. CARROLL: No. Let me be clear. So what I am  
10 referring to --

11 HEARING OFFICER KRAMER: You really need to describe  
12 this orally so that it -- we have a transcript.

13 MR. CARROLL: Okay. I'm referring to what is defined  
14 as the project site for purposes of the Biological Resources  
15 Survey which is the three-acre parcel, the northern 100-foot  
16 boundary, which would extend this way.

17 Now what I believe the testimony that Ms. Love just  
18 gave is that because of the property fence line, this what  
19 would have been a 100-foot buffer was truncated by ten feet  
20 and was only a 90-foot buffer.

21 Did I characterize your testimony correctly?

22 MS. LOVE: That is correct.

23 MS. ROESSLER: So I have a question on that. You're  
24 calling private property -- where is the extent of McGrath  
25 State Park? Is that not on that boundary or are you

1 referring to McGrath State Park as private property?

2 MR. CARROLL: I don't -- are you asking me?

3 MS. ROESSLER: Yes.

4 MR. CARROLL: I don't know where the boundary of  
5 McGrath State Park is but our understanding is that this is  
6 the Ventura Marsh milk-vetch conservation area and that it is  
7 private property and this is the site of the reference  
8 location for the milk-vetch and we felt we had to and did  
9 obtain permission to go on to that site to observe the milk-  
10 vetch. And part of the reason we didn't include it in the  
11 original boundary was because we didn't think we had time  
12 because we had to get the surveys underway to get permission  
13 for that extra ten feet.

14 MS. ROESSLER: But you don't know if it's the  
15 McGrath?

16 Does anyone know if that's McGrath State Park on  
17 the northern boundary?

18 MS. LOVE: We did look at maps at some point that  
19 would have shown the different property owners in the area.  
20 And as was just stated, we did work with CDFW with Dan  
21 Blankenship and Mary Meyer to get access to view Ventura  
22 Marsh milk-vetch and it took about a month before we were  
23 able to have someone from CDFW grant us access and get us  
24 someone to escort us over there to visit the milk-vetch in  
25 June of 2017. Exact date is shown in our reports -- our



1 report. I can find that if you'd like.

2 MS. ROESSLER: On what -- on what basis did you  
3 think it was privately owned? Did -- I'm just --

4 MS. LOVE: CDFW Mary Meyer told us that we needed to  
5 have an escort in order to go into that area.

6 MS. ROESSLER: Into that. Okay. But she just didn't  
7 specify whose it was or --

8 MS. LOVE: I don't believe that she specified whose  
9 it was but I know she called the area the CDFW -- CDFW does  
10 refer to that area as the 28-acre mitigation site as we  
11 mentioned in the results report.

12 MS. ROESSLER: Restoration area, is that wetland  
13 restoration going on there, do you know?

14 MS. LOVE: Yes, there's restoration going on over  
15 there.

16 MS. ROESSLER: Is anyone from CEC aware of what's on  
17 the northern boundary that is McGrath State Park?

18 MR. HILLIARD: My understanding -- this is John  
19 Hilliard again. My understanding is the extent of McGrath  
20 State Park does not extend into those areas that I marked on  
21 that figure. That shown, at least on Biological Resources  
22 Figure 1 that was prepared by Cardo to be a -- not part of  
23 McGrath State Park. That McGrath State Park starts far to the  
24 north of McGrath Lake, extends down the beach, and then  
25 captures a portion of the beach proximate to the northwest

1 corner of the NGS site of which the project site is a part,  
2 but that that was a private preserve parcel and it was being  
3 used for wetland mitigation I believe for the beach walk at  
4 Mandalay Bay project across Harbor Boulevard.

5 MS. ROESSLER: Okay. Thank you.

6 MR. CARROLL: May I ask Mr. Hilliard a question  
7 about this document which I understand he exhibited --

8 MS. ROESSLER: I have a question. Just in terms of  
9 the format, we seem to be skipping around a lot, whereas in  
10 the prior subject areas we were kind of having people go in  
11 order. It's kind of like having to question five people at  
12 one time.

13 HEARING OFFICER KRAMER: Well, if you were about to  
14 move off of this graphic and Mr. Carroll has a question about  
15 this graphic, it seems reasonable that he ask it now.

16 We're more interested in kind of grouping of  
17 discussions of discrete topics than we are that one party  
18 gets out all of their questions. Because the informal process  
19 is designed to avoid that constantly coming back to an issue  
20 and arguing for a minute or two about what was previously  
21 said.

22 MS. ROESSLER: That's fine. I just thought earlier  
23 in this subject when CEC staff was questioning that I was not  
24 allowed to interrupt their line of questions.

25 HEARING OFFICER KRAMER: Don't worry, we'll get --

1 MS. ROESSLER: And now we're volleying back and  
2 forth. I just want to know which format to proceed on. I  
3 don't want to be rude and interrupt someone. But if we're  
4 just following questions back, then that's fine too.

5 HEARING OFFICER KRAMER: We're trying to get through  
6 this --

7 MS. ROESSLER: It sounds like the --

8 HEARING OFFICER KRAMER: -- with the record --

9 MS. ROESSLER: It sounds like the latter.

10 MR. CARROLL: And I apologize if I seem to be  
11 interrue -- I was just trying to jump in at the point that we  
12 were talking about before we moved on.

13 But my question on this exhibit, Mr. Hilliard, is  
14 I'm unclear on what is being depicted in that yellow box to  
15 the right because it says omitted 100-foot buffer. But  
16 that's, you know, much further -- that's far east of the  
17 project site so it's not clear to me how.

18 MR. HILLIARD: It was -- it was included because  
19 yes, it's far east of -- well, when I say far, I'm not sure  
20 eyeballing it couple hundred feet east of the project site,  
21 meaning that area encompassed by the turquoise boundary --

22 MR. CARROLL: Uh-huh.

23 MR. HILLIARD: But one of the project components is  
24 that existing paved access road that ties in to the driveway  
25 from Harbor Boulevard.

1           MR. CARROLL: I see.

2           MR. HILLIARD: So that was included to show if it  
3 had gone all the way from the farthest edge of that project  
4 component which hugs the property line, shows up on a  
5 previous ALTA survey as an existing ten-foot road. That's the  
6 area that we captured by that.

7           MR. CARROLL: I see. I -- okay, I understand. I  
8 don't necessarily agree that that's a project component --

9           HEARING OFFICER KRAMER: Well, depicting --

10          MR. CARROLL: -- existing road, but I understand  
11 what the diagram shows, so that's fine.

12          HEARING OFFICER KRAMER: It's depicting maybe  
13 greater than 100-foot, but anyway a buffer from the road,  
14 right?

15          MR. HILLIARD: Correct. And that's why I labeled the  
16 exhibit when we docketed it illustrated because this is not  
17 done with a finely honed computer program, this was done  
18 capturing the distances off a Google Earth image and then  
19 doing a screen capture of it.

20          HEARING OFFICER KRAMER: Okay. And you're not  
21 necessarily saying that you agree that the admitted survey  
22 aspect is a problem, you're just trying to lay it out on the  
23 map so we can see what people are talking about.

24          MR. HILLIARD: If we were throwing out an  
25 illustration of the broadest net, yes.

1 HEARING OFFICER KRAMER: Okay. Thank you.

2 MS. ROESSLER: I have a question for Ms. Love since  
3 we're still looking at this picture.

4 Does the habitat depicted on Figure 3 of the same  
5 exhibit, does it show habitat that is suitable for rare  
6 sensitive species?

7 MS. LOVE: So as I mentioned in my opening  
8 statement, we recognize that there are a lot of biological  
9 resources, a lot of them are sensitive that occur in that  
10 area so we're not denying that there are any, you know,  
11 sensitive species or sensitive habitats over there. If I  
12 remember correctly, that area is mostly restored right there.  
13 But like I said, we're not -- we're not making any claim in  
14 our Bio Resources Report that there are not sensitive  
15 biological resources on the other side of the fence.

16 MS. ROESSLER: I'm just asking you, though, if there  
17 are -- if there are suitable -- you didn't really answer the  
18 question. I get what you did not include in the survey report  
19 --

20 MS. LOVE: Okay.

21 MS. ROESSLER: -- but does that habitat that's  
22 depicted show that there's suitable habitat for rare and  
23 sensitive species?

24 MS. LOVE: I did not survey there but I understand  
25 that there are sensitive species over there. Mr. Hunt's very

1 familiar with that area so if he would like to describe his  
2 view -- if there's sensitive habitat there, I think he would  
3 be the better person to answer and I think his answer would  
4 be yes because he has mentioned multiple times that he has  
5 found sensitive species over there.

6 MS. ROESSLER: Thank you. Yeah, I think we discussed  
7 his opinion earlier but was just curious what yours was.

8 Okay. Mr. Hunt, did the Biological Resources Survey  
9 Report find that the legless lizard was present on the  
10 project site?

11 MR. HUNT: No, it did not.

12 MS. ROESSLER: I'm going to say proposed project  
13 site as defined in the FSA.

14 MS. CHESTER: I'm sorry, I'm not clear what that is.  
15 I don't think we have a clear understanding. Are you talking  
16 about the three-acre site or are you talking broader than the  
17 blue outline that is in front of us now?

18 MS. ROESSLER: I'm referring to actually what  
19 Mr. Carroll addressed earlier that there is a distinction,  
20 there's the project site as described in the FSA, and then  
21 there's the project that's defined in the BSA.

22 MS. CHESTER: Okay. So --

23 MS. ROESSLER: I'm not -- so that's why I asked the  
24 question the way I did.

25 MS. CHESTER: So for my own clarification, you are

1 referring to an area larger than the blue outline on the  
2 screen in front of us.

3 MS. ROESSLER: I'm referring to the proposed project  
4 as described in the FSA which includes all of the project  
5 components.

6 MS. CHESTER: I'm not clear.

7 MS. ROESSLER: You're not clear on what the proposed  
8 project --

9 MS. WILLIS: I'm sorry, just --

10 MS. ROESSLER: -- is for the --

11 MS. WILLIS: We're asking --

12 MS. ROESSLER: -- Puente Power Plant?

13 MS. WILLIS: We do understand that.

14 MS. ROESSLER: Okay.

15 MS. WILLIS: We understand what we've written. We  
16 don't understand what you're asking.

17 MS. ROESSLER: So we know --

18 MS. WILLIS: Are you asking, are you including the  
19 MGS property as well? I mean, because the proposed project  
20 that we evaluate under CEQA includes the whole of the project  
21 which is not necessarily the project where the project is  
22 going to be built. That included demolition and that included  
23 other things. So we're just trying to ask you when you ask a  
24 question, is it the three-acre proposed site or is it larger?  
25 And that's what we're asking. We're not asking you to keep

1 using the same words because if we understood the words you  
2 were using, we wouldn't be asking these questions.

3 MS. ROESSLER: Right. I assumed when I said the  
4 proposed project as described in the FSA which includes all  
5 of the components that we would all be on the same page I  
6 thought we were on earlier. Does that make sense to you? I'm  
7 not -- we're talking about -- the only other project  
8 description is the one presented as part of the BSA and the  
9 applicant's Biological Resources Survey.

10 MS. CHESTER: Yes.

11 MS. ROESSLER: I am not talking about that.

12 MS. CHESTER: If you're referring to all components,  
13 I understand what you mean by the project site. I apologize  
14 for interrupting.

15 MS. ROESSLER: Mr. Hunt, do I need to repeat the  
16 question? Do you --

17 MR. HUNT: No, they did not -- the Biological Survey  
18 Report did not find legless lizards.

19 MS. ROESSLER: Did Biological Resources Survey  
20 Report find like the legless lizard in the buffer --

21 MR. HUNT: No, they did not.

22 MS. ROESSLER: -- area? The 100-foot buffer area.

23 MR. HUNT: No.

24 MS. ROESSLER: Thank you. Were there other legless  
25 lizards found in the 100-foot buffer area surrounding the



1 proposed project site as described in the FSA?

2 MR. HUNT: Yes, the FSA referenced my observations  
3 along the northern border of the project area.

4 MS. ROESSLER: And were there other observations  
5 reported by the CNDBD database?

6 MR. HUNT: Yes, there were the two observations that  
7 Mr. Trautwein previously testified to were also in the CNDBD.

8 MS. ROESSLER: Thank you. In your supplemental  
9 testimony you touched on a little bit earlier, but can you  
10 describe the survey method -- was the survey methodology  
11 adequate to detect the presence of the legless lizard on the  
12 project site and in the 100-foot buffer area surrounding the  
13 project site?

14 MR. HUNT: No, I don't think it was. As I stated,  
15 they relied on -- put a lot of effort on passive survey  
16 methods rather than ranking surveys which have the greatest  
17 likelihood of finding that particular species.

18 MS. ROESSLER: Okay. And do you agree with this  
19 Biological Resources Survey Report's findings regarding the  
20 legless lizard?

21 MR. HUNT: Regarding the absence of legless lizards  
22 on the project site?

23 MS. ROESSLER: Correct. Yeah.

24 MR. HUNT: No, I don't. No, I don't. Because in not  
25 surveying the buffer areas that they did survey properly, I

1 think they may have missed animals. There's other areas to  
2 the west that appear to be suitable habitat. Again, we're  
3 sampled ranking surveys and the project site, the P3 site  
4 itself, around the edges of it or even in the interior of it  
5 was not adequately sampled by ranking surveys.

6 MS. ROESSLER: And so when you say P3, you're  
7 referring to the three-acre site?

8 MR. HUNT: Yes, the three-acre site, yes.

9 MS. ROESSLER: Trying to keep the language clear.

10 MR. HUNT: Yeah.

11 MS. ROESSLER: Thank you. Did the applicant's  
12 Biological Resources Survey Report find the Globose dune  
13 beetle was present on the project site as described in the  
14 FSA?

15 MR. HUNT: Now, you're referring to the 3.0 acre --

16 MS. ROESSLER: No.

17 MR. HUNT: -- area or --

18 MS. ROESSLER: Unless I say, I'm -- when I'm asking  
19 these series of questions, I'm referring to all the project  
20 components where they hold the --

21 MR. HUNT: Yes.

22 MS. ROESSLER: -- development --

23 MR. HUNT: Okay. Yes, they did --

24 MS. ROESSLER: -- as described in the FSA.

25 MR. HUNT: They did find it in the buffer area

1 around the three-acre project site.

2 MS. ROESSLER: Okay. And you mentioned in your  
3 opening testimony about the Globose dune beetle and not all  
4 of the beetles being identified to species. Is that a  
5 standard practice if there are multiple species not  
6 identifying each of them to species or can you explain?

7 MR. HUNT: No, it's not the -- it's against standard  
8 practice. The whole purpose to be out there is to identify  
9 that one species. So if you can't tell that apart from the  
10 other individual beetles, dune beetles that you're finding,  
11 the survey's flawed.

12 MS. ROESSLER: Thank you.

13 And, Ms. Love, trying to keep it all on the dune  
14 beetle right now. Was -- was the purpose of the Biological  
15 Resources Survey Report in part to conduct surveys to  
16 determine the presence of the Globose dune beetle?

17 MS. LOVE: Yes, that was one of the target species  
18 we were looking for, the Globose dune beetle.

19 MS. ROESSLER: Thank you. In the survey report,  
20 short for the full name here, on page 2-3 -- give you a  
21 minute to look that up. This is in the declaration. It  
22 states, "Due to the number of dune beetle sightings, not  
23 every individual live beetle was identified to species."

24 Can you explain why not every individual beetle  
25 wasn't identified to species in this statement?

1 MS. LOVE: Sure.

2 MS. ROESSLER: Or am I dressing this --

3 MS. LOVE: Would you like that?

4 MS. ROESSLER: Okay.

5 MR. PARR: I can answer this?

6 MS. ROESSLER: Sure.

7 MR. PARR: So the dune beetles of the Genus Coelus,  
8 there are two species, Coelus dune beetle and Globose dune  
9 beetle. They're about 5 millimeters to 11 millimeters long,  
10 they are very small. The features we use to identify them  
11 are in the facial features of the beetle which are very,  
12 very tiny. In order to identify the beetle, you have to  
13 look at it with a very strong magnifying loop and proper  
14 lighting. Once we have identified the beetle, it seems  
15 prudent to consider that the beetle is present within the  
16 contiguous habitat of the component we found it rather than  
17 to continuously take the beetle and put it under the stress  
18 and pressure of identifying every single one of them.

19 MS. LOVE: And I would also like to note that in all  
20 areas where we had found and determined dune beetles, we  
21 verified that there were Globose dune beetles present and  
22 there were no undetermined Dune Beetles in areas where we  
23 did not -- we did not find any undetermined Dune Beetles in  
24 areas that hadn't already had Globose dune beetle present.

25 So for example, the three-acre project site had

1       some beetles that we looked at closely and we were able to  
2       determine that they were all the common Ciliate dune  
3       beetles and there were no undetermined beetles at all in  
4       that area.

5               MS. ROESSLER: Thank you. I guess I'm still trying  
6       to understand, was there a protocol or reason you didn't  
7       identify them all to species? Was -- I don't want to  
8       paraphrase your testimony with the --

9               MS. WILLIS: Could you please speak up --

10              MS. SCOTT: The court reporter can't hear you --

11              MS. ROESSLER: Oh.

12              MS. SCOTT: -- can you get a little closer, please.

13              MS. ROESSLER: Yes.

14              MS. SCOTT: Thank you.

15              MS. ROESSLER: I'm still trying to understand from  
16       either Mr. Parr or Ms. Love what the reason was why you  
17       would not identify each dune beetle to species. You said it  
18       was complex, is that part of the reason?

19              MR. PARR: Could you restate that?

20              MS. ROESSLER: I'm trying to understand the reason  
21       for not identifying the Globose dune beetle to species.  
22       Sorry, not identify the Dune Beetles.

23              MR. PARR: We did identify the dune beetles to  
24       species. There were some dune beetles that were  
25       unidentified. Is that what you're referring to?

1 MS. ROESSLER: I was referring to the statement on  
2 page 2-3, it says, "Due to the number of dune beetle  
3 sightings, not every individual live beetle was identified  
4 to species."

5 MR. CARROLL: I believe the testimony was that  
6 once they --

7 MS. ROESSLER: Can you not paraphrase the testimony?  
8 I'd like them to answer.

9 MR. CARROLL: No, I am going to paraphrase the  
10 testimony because it's been --

11 MS. ROESSLER: It's not your -- you're not a  
12 witness.

13 MR. CARROLL: It's been asked and answered twice.  
14 And the testimony was that once they concluded there were  
15 Globose dune beetles --

16 MS. ROESSLER: Objection, based on -- you're not a  
17 witness --

18 MR. CARROLL: Objection, asked and answered.

19 MS. ROESSLER: -- I don't want your testimony.

20 MR. CARROLL: Objection, asked and answered.

21 MS. ROESSLER: Do you under --

22 HEARING OFFICER KRAMER: Sustained.

23 MS. ROESSLER: Thank you. Can you please answer the  
24 question, Mr. Parr.

25 MR. CARROLL: It was sustained.

1 HEARING OFFICER KRAMER: No, it was sustained.

2 MS. ROESSLER: Oh, sorry. Sorry. Okay.

3 So asked and answered. What's the answer, then? I

4 missed it as to why.

5 MR. CARROLL: Now you want me to answer?

6 MS. ROESSLER: Go ahead.

7 MR. CARROLL: The answer --

8 MS. ROESSLER: If you heard it. I didn't it. They

9 sustained it.

10 MR. CARROLL: The answer was that once they

11 determined in a particular area one of the four components

12 of the BSA the Globose dune beetle were present, they then

13 did not entirely discontinue but did not thereafter do a

14 species determine on every single beetle that was detected

15 because they had already reached a conclusion okay, we have

16 Globose dune beetle in this area, there's no point in bring

17 stress on every additional beetle we find because purpose

18 here was determine whether there were Globose dune beetle

19 detected and we now satisfy the purpose.

20 I believe. Correct me if I'm wrong in that

21 characterization.

22 MS. ROESSLER: Is that accurate?

23 MS. LOVE: I agree.

24 MR. PARR: I agree.

25 MS. ROESSLER: Okay. On --

1 MR. HUNT: May I make a comment?

2 MS. ROESSLER: Yes.

3 MR. HUNT: This is Lawrence Hunt. On page 3-6, and  
4 this is directed to Mr. Parr. Again, reading the same  
5 sentence, it says, "Due to the number of dune beetle  
6 sightings during the transect surveys, not every individual  
7 beetle was identified to species."

8 Then you look at Exhibit 4 that shows the dune  
9 beetle survey results and it doesn't show where transect  
10 were done, it has dots showing where beetles were found.

11 Does that mean -- your statement on 3-6, does that  
12 mean that there transects all through the project area and  
13 you were finding high numbers of beetles but not  
14 identifying them as species except at those locations that  
15 are marked the Ciliate dune beetle?

16 MS. LOVE: I'll just describe the figure to help out  
17 with that question and then I think Ivan might have -- Mr.  
18 Parr might have some stuff to add to that.

19 So on Figure 4, there are several things indicated  
20 here. This is the Globose dune beetle survey result figure.  
21 So it shows the results of the pitfall trap surveys, those  
22 are all the symbologies as circles. Then it shows the  
23 transect survey results and incidental sightings, those are  
24 all in diamond shape or rectangle.

25 You're correct, we don't show the exact pathway of



1       our transects on this map, but we did do ten meter -- or  
2       ten foot, sorry, ten foot slowly paced transect through the  
3       entirety of the biological study area to look for the  
4       Globose dune beetle.

5               MR. HUNT: And then you put pitfall traps in the  
6       southern portion and found Ciliate dune beetles there; is  
7       that correct?

8               MR. PARR: Please define what you mean by the  
9       southern portion.

10              MR. HUNT: Okay. That's not Figure 4 on the screen.

11              HEARING OFFICER KRAMER: Yeah, that's what I'm  
12       trying to find.

13              MS. ROESSLER: No, we don't -- we don't have  
14       Figure 4 up there.

15              MR. HUNT: Figure 4 of the Biological Survey Report  
16       has four or five dots that, if I'm reading this key  
17       correctly, it means Globose dune beetle absent.

18              HEARING OFFICER KRAMER: Okay. So where is that  
19       relative to the --

20              MR. HUNT: That is in the southern portion of the  
21       three-acre site and the southeastern portion of the three-  
22       acre site.

23              HEARING OFFICER KRAMER: Where is the figure in the  
24       document?

25              MS. ROESSLER: This is in the Biological Resources

1 Survey Report.

2 MR. HUNT: Yes.

3 MS. ROESSLER: Under --

4 MS. LOVE: Where you are now is in the appendix --

5 MS. ROESSLER: -- it just says figures.

6 MS. LOVE: -- so if you go up, you'll be able to  
7 find the figures which are at the end of the text of the  
8 report itself before -- or after the references.

9 MS. ROESSLER: Yeah. It's not in, if this is my set  
10 of maps I gave you, it's not in this set, you have to go to  
11 --

12 HEARING OFFICER KRAMER: No, I'm looking at the --

13 MS. ROESSLER: -- the declaration,

14 HEARING OFFICER KRAMER: I'm looking at the  
15 Biological Survey Report.

16 MS. ROESSLER: You are. Okay.

17 HEARING OFFICER KRAMER: So you were taking about  
18 Figure 4; is that correct?

19 MR. HUNT: Yes, that's right.

20 HEARING OFFICER KRAMER: Okay. Got it.

21 MS. LOVE: And so those black dots I believe that  
22 you're asking about are the locations of the pitfall traps.  
23 But in addition to showing the locations of the pitfall  
24 traps, it also shows that when we surveyed those pitfall  
25 traps, we did not find Globose dune beetle in the pitfall

1 trap.

2 MR. HUNT: Okay. You found the other species. No,  
3 you did not find the other species. Okay.

4 But you had transect surveys and pitfall trap lines  
5 throughout that three-acre site; is that correct?

6 MR. PARR: We have transect surveys throughout the  
7 entire BSA. We have pitfall traps where those black dots are  
8 shown.

9 MS. LOVE: And I also would like to point out that  
10 we also have pitfall traps in the other two color dots. If  
11 you want a figure that shows just the location of the pitfall  
12 traps and the names of those pitfall traps in the -- it's in  
13 the appendix, but this particular figure is also trying to  
14 show what we found in the pitfall traps which are I think is  
15 important for everyone to see. So I just wanted to make sure  
16 that it's clear that those other two dots are showing results  
17 as well as locations of the pitfall traps.

18 MS. ROESSLER: I have a question unless Mr. Hunt has  
19 more on this slide.

20 MR. HUNT: No, I'm finished.

21 MS. ROESSLER: Ms. Love or Mr. Parr, whoever wants  
22 to answer this, still on the Globose dune beetle.

23 Were all dead dune beetles found on the project  
24 site identified to species?

25 MR. PARR: No.

1 MS. WILLIS: I'm sorry, the court reporter just  
2 indicated she is not able to hear you.

3 MS. ROESSLER: Okay. Were all dead dune beetles  
4 found on the project site identified to species?

5 MR. PARR: No, they were not.

6 MS. ROESSLER: Okay.

7 MR. PARR: Dune beetles lose their features which  
8 are diagnostic after they die, they fall apart, their hairs  
9 fall off. They are not very easy to identify to species.

10 MS. ROESSLER: Is it possible that Globose dune  
11 beetles were amongst the dead dune beetles found on the  
12 project site and not identified to species?

13 MR. CARROLL: Objection. Calls for speculation. A  
14 witness just answered that they cannot be identified once  
15 dead.

16 MS. ROESSLER: Right. I'm asking about the dune  
17 beetles, then. Is it fair to say that those dead dune beetles  
18 could be Globose dune beetles as well?

19 MR. CARROLL: Objection. Calls for speculation. All  
20 the witness can testify to is what they found, not what could  
21 be possible or fair to say.

22 MS. ROESSLER: I'm asking based on his --

23 HEARING OFFICER KRAMER: Overruled.

24 MS. ROESSLER: -- opinion.

25 HEARING OFFICER KRAMER: Overruled. Go ahead and ask

1 the question.

2 MS. ROESSLER: Thank you.

3 MR. PARR: So you're speaking again of the larger  
4 project site. I can refer to the BSA.

5 MS. ROESSLER: I'm just asking about dead dune  
6 beetles found on the BSA identified to species. You said that  
7 they couldn't be identified to species. It sounds like it's  
8 challenging. I'm asking is it possible that Globose dune  
9 beetles were amongst the dead dune beetles that you found in  
10 the BSA?

11 MR. PARR: I understand that. I just wanted to know,  
12 you mean the BSA or the three-acre site?

13 MS. ROESSLER: The BSA.

14 MR. PARR: So in portions of the BSA, yes, it is  
15 possible that the dune beetles could be Globose dune beetles.

16 MS. ROESSLER: Okay. Can you look at Table 2 on page  
17 3-5 which is titled, "Results of Dune Beetle Transect Surveys  
18 by Area."

19 Okay. Here's the question. So looking at this  
20 table, it appears that there were 167 dune beetles found. And  
21 156 -- oh, sorry. And out of that, 124 were dead and not  
22 identified to species and another 32 were alive and not  
23 identified to species. Is that correct?

24 MR. PARR: That is correct. Those numbers represent  
25 the outfall area, the outfall access road, and the access

1 road buffer to the outfall areas where we confirmed the  
2 presence of Globose dune beetle as you can see from Figure 4.

3 MS. ROESSLER: I was referring to Table 2. Okay. So  
4 the Table 2 includes the project site and buffer, the laydown  
5 area and buffer, the outfall area, and the access road and  
6 buffer.

7 So out of 167 dune beetles found in the transect  
8 studies, 156 of those dune beetles found were not identified  
9 to species; is that correct?

10 MS. CHESTER: I'm sorry to interject. I'm curious  
11 what -- where you're getting at the 167. I'm looking in the  
12 table, can you point out where you're seeing that? Are you  
13 looking at the total line?

14 MS. ROESSLER: I'm looking at the total line and I  
15 minus --

16 MS. CHESTER: I'm seeing 177.

17 MS. ROESSLER: Correct. And I didn't include furrow  
18 marks because I'm talking about beetles, not their furrow  
19 marks.

20 MS. CHESTER: I see. I understand.

21 MS. ROESSLER: That's why I subtracted ten.

22 MS. CHESTER: Thank you.

23 MS. ROESSLER: Is that correct? Out of 167 Dune  
24 Beetles found in the transect studies, 156 of those Dune  
25 Beetles found were not identified to species?

1           MR. PARR: That is correct. But only in the areas  
2 where the Globose Dune Beetle was identified.

3           MS. LOVE: And also that 156 number you're referring  
4 to is including dead Dune Beetles and as already mentioned,  
5 you cannot determine what type of Dune Beetle it is once it  
6 is already dead.

7           MS. ROESSLER: Correct. I am referring to it does  
8 include dead Dune Beetles and live Dune Beetles. And it  
9 includes 156 of those, 167 not identified to species.

10           So 28 dead Dune Beetles were found in the -- trying  
11 to use the -- project site and buffer and I'm referring to  
12 the titles in that Table 2 which is says, "Project Site and  
13 Buffer." Is that correct?

14           MR. PARR: Specifically the buffer, that is correct.

15           MS. ROESSLER: In the buffer. I believe in the  
16 testimony or report it mentioned that dead beetles also were  
17 blow around the site and it is unclear exactly where they  
18 came from.

19           MR. PARR: That is correct. When they die, they are  
20 very light. The wind can pick them up and carry them around.

21           MS. ROESSLER: Is it possible that the 28 dead Dune  
22 Beetles that you found in the buffer as we just discussed  
23 were possibly blown from the project site referring to the  
24 project site in that table?

25           MR. CARROLL: Objection. Calls for speculation.

1 MS. ROESSLER: I'm asking his biological opinion,  
2 he's the one that did the studies.

3 HEARING OFFICER KRAMER: Overruled.

4 MS. ROESSLER: It's the same type of question as  
5 before. Thank you.

6 MR. PARR: I do not believe that the P3 site, the  
7 three-acre site would be a source population for Dune  
8 Beetles.

9 MS. ROESSLER: So the wind only blows away off the  
10 site?

11 MR. PARR: The wind would only blow Dune Beetles in  
12 areas where the Dune Beetles are present.

13 MS. ROESSLER: That seems to conflict with the  
14 testimony you just said that Dune Beetles were light and  
15 blown in several different areas.

16 MR. CARROLL: Objection, argumentative. Was that a  
17 question?

18 MS. ROESSLER: Is that true?

19 MR. CARROLL: I'm sorry, can you repeat the  
20 question?

21 MS. ROESSLER: I'm asking about Dune Beetles. You  
22 testified that the Dune Beetles -- dead Dune Beetles were  
23 blown around various areas and you mention that 28 dead  
24 beetles were found in the project site buffer as mentioned in  
25 that Table 2. And I'm asking is it possible that those dead



1 beetles could have come from the project site?

2 MR. PARR: I do not believe so, no.

3 MS. ROESSLER: Okay. Mr. Hunt, do you believe that  
4 the Globose Dune Beetle has a high potential to be present on  
5 the project site -- I'll say proposed project as described in  
6 the FSA?

7 MR. HUNT: Yes, I do.

8 MS. ROESSLER: Can you explain the basis for that  
9 belief? Conclusion.

10 MR. HUNT: The project site contains habitat that's  
11 suitable for that species. And the sampling that was done was  
12 not intensive enough to exhaustively exclude it from all  
13 parts of the project site.

14 MS. ROESSLER: Thank you. Did -- Mr. Hunt, did the  
15 Biological Resources Survey Report find the Blainville Horned  
16 Lizard was present on the proposed project site as described  
17 in the FSA?

18 MR. HUNT: No, they did not.

19 MS. ROESSLER: Did the survey report find the  
20 Blainville Horned Lizard in the 100-foot buffer area of the  
21 same proposed project site?

22 MR. HUNT: In the surveyed portion of the 100-foot  
23 buffer, they did not find it. But the 100-foot buffer as  
24 we've discussed before extends northward of the project site  
25 and they didn't survey. That's suitable habitat there too.

1 MS. ROESSLER: Thank you. Do you believe the  
2 Blainville Horned Lizard has a high potential to be present  
3 on the proposed project site as described in the FSA?

4 MR. HUNT: Yes, I do, especially in the full 100-  
5 foot buffer.

6 MS. ROESSLER: And in the buffer area?

7 MR. HUNT: Yes.

8 MS. ROESSLER: Thank you. Sorry. Just switching real  
9 quickly.

10 Okay. In regards to the two-striped garter snake,  
11 did the Biological Resources Survey Report find the two-  
12 striped garter snake was present on the project site?

13 MR. HUNT: No, it did not.

14 MS. ROESSLER: Project site meaning proposed project  
15 site in the FSA.

16 MR. HUNT: The answer's no.

17 MS. ROESSLER: Okay. What about in the buffer?

18 MR. HUNT: No, they didn't find it in the buffer  
19 either.

20 MS. ROESSLER: In your supplemental testimony, did  
21 you find the survey methodology adequate to detect presence  
22 of the two-striped garter snake on the proposed project site  
23 as described in the FSA and in the 100-foot buffer area  
24 surrounding the project site?

25 MR. HUNT: Yes, I did. The areas that they surveyed

1 for the garter snake, I think they would have found it if it  
2 had been there at that time.

3 But as I've said, they haven't surveyed the full  
4 buffer including suitable habitat north of the project site  
5 itself. And account for the fact, too, that this animal has  
6 pretty good powers of dispersal and a fairly large home  
7 range, so there are known observations of the species just a  
8 few hundred feet north of the project site. The species can  
9 easily disperse on the project site.

10 MS. ROESSLER: Thank you. In regards to the  
11 burrowing owl you did mention in the summary of your  
12 testimony, can you describe, did the Biological Resources  
13 Survey Report find the burrowing owl was present on the  
14 project site, meaning the proposed project site as described  
15 in the FSA?

16 MR. HUNT: No, again, they did not find it in the  
17 areas that they surveyed.

18 MS. ROESSLER: What about in the buffer?

19 MR. HUNT: They didn't survey the full 100-foot  
20 buffer, so again.

21 MS. ROESSLER: And did you find the methodology  
22 complied with established Wildlife Agency protocols?

23 MR. HUNT: The methodology complied on the project  
24 site, that is they conducted transect surveys for the bird at  
25 a time suitable to the tech nesting individuals. But as I've

1 testified before, the species no longer nests along the coast  
2 and the surveys should rightfully be conducted in the fall  
3 and winter when the species is near the coast.

4 MS. ROESSLER: Is -- does the California Department  
5 of Fish and Wildlife protocol say that these species should  
6 be surveyed for in the winter?

7 MR. HUNT: Yes, it does.

8 MS. ROESSLER: Thank you. Do you believe the  
9 burrowing owl has a high potential to be present on the  
10 proposed project site?

11 MR. HUNT: Yes, I do. There's an observation, fairly  
12 recent observation of the -- an owl between McGrath Lake and  
13 the project site. There's five or six observations of owls at  
14 the Camarillo airport. And these individuals, that's only a  
15 few miles away. These individuals could also easily disperse  
16 into the coastal dunes.

17 Again, all those observations are fall, winter  
18 individuals.

19 MS. ROESSLER: Thank you.

20 MR. HUNT: Uh-huh.

21 MS. ROESSLER: Did -- Mr. Hunt, did the Biological  
22 Resources Survey Report disclose any meaningful findings for  
23 other special status species, nontarget special target  
24 species?

25 MR. HUNT: You're referring to wildlife species or

1 all plant and animal?

2 MS. ROESSLER: I'm referring to nontarget special  
3 status wildlife species.

4 MR. HUNT: Wildlife species. Yeah. They made an  
5 observation of horned larks on site. The FSA says that  
6 there's not suitable breeding habitat for the species there.  
7 I contradict that, there is suitable habitat breeding --  
8 suitable habitat for breeding of that species on the project  
9 site. The Biological Survey Report saw two individuals on  
10 site.

11 And then they have the Peregrine falcon that we've  
12 already discussed. They also make note of a nesting great  
13 horned owl in the same general area which is interesting.

14 MS. ROESSLER: Thank you. Regarding the Peregrine  
15 falcon, these are questions for Ms. Love or Mr. Parr, which  
16 ever one is best suited.

17 In Appendix D, there are -- let me try Appendix D.

18 Appendix D-1, the wildlife list describes the  
19 locations of species present in that particular area. Is that  
20 accurate?

21 MS. LOVE: Sorry, I was looking down at my piece of  
22 paper. But Table D-1 in the appendix is a wildlife list of  
23 the species that we observed in the BSA.

24 Does that answer your question?

25 MS. ROESSLER: Yes. That were present, observed.

1 Thank you.

2 So it's checked off here P3 site and buffer. Can  
3 you describe, it's -- I didn't find it anywhere else mention  
4 any more specifics of what was observed in the P3 site and  
5 buffer.

6 MS. LOVE: You're correct. We didn't go into a lot  
7 of detail on what every single wildlife species was doing  
8 while we saw them in the BSA. As we talked earlier, the  
9 Peregrine falcon was observed on the three-acre P3 site and  
10 in the buffer. We did not observe them foraging directly  
11 while we were surveying so that would mean that in this  
12 particular instance, more than likely the Peregrine falcon  
13 was maybe resting on the site but not nesting there and not  
14 foraging there on the three-acre project site to be clear and  
15 the buffer as well. And that same analysis would also go for  
16 the outfall and access road buffer which is also checked off  
17 on that table.

18 MS. ROESSLER: So you mentioned avian remains. Are  
19 avian remains evidence of foraging raptors?

20 MS. LOVE: Yeah, like I mentioned in my previous  
21 statement and it's also documented in the results report that  
22 the remains are -- are evidenced that the Peregrine falcon or  
23 any particular animal would eat a bird that, you know, a  
24 foraging is happening. But in this particular instance with  
25 the Peregrine falcon, we did not directly observe the

1 Peregrine falcon foraging on the -- in the BSA.

2 MS. ROESSLER: Can you describe where you did  
3 observe the Peregrine falcon foraging?

4 MS. LOVE: As I just mentioned, we did not directly  
5 observe the Peregrine falcon foraging in the BSA. But there's  
6 evidence that it had occurred as I mentioned with the coots  
7 and other -- at a minimum, we found one dead coot and I don't  
8 remember right now if there were other such animals as well.

9 MS. ROESSLER: So I'm referring to a statement that  
10 says on page 3-10 in the Survey Results Report that says,  
11 "Two falcons -- Peregrine falcons were observed regularly  
12 resting and foraging in the vicinity of the BSA during the  
13 surveys."

14 So I realize you answered you didn't observe them  
15 foraging on that P3 site, so I am trying to find out what you  
16 mean by in the vicinity of the biological study area.

17 MR. CARROLL: I believe the question  
18 mischaracterizes the testimony. I believe the testimony was  
19 that --

20 MS. ROESSLER: I --

21 MR. CARROLL: -- did not observe Peregrine falcon  
22 foraging anywhere --

23 MS. ROESSLER: Objection. I'm reading from the  
24 report, I didn't -- I did not characterize testimony, I'm  
25 reading from the report.

1           MR. CARROLL: No, but you -- you asked -- you said,  
2   "I believe you testified that you did not see the Peregrine  
3   falcon foraging on the P3 site." The testimony was that they  
4   did not observe the Peregrine falcon foraging anywhere in the  
5   BSA I believe.

6           MS. ROESSLER: I disagree. I thought she also said  
7   on the P3 site, so please clarify.

8           MS. LOVE: So, yes, in that particular page 3-10, so  
9   we are saying that the Peregrine falcons were resting and  
10   foraging in the vicinity of the BSA. Like I mentioned, we  
11   didn't have direct observation of that occurring in the BSA.

12          MS. ROESSLER: Okay. So I'm asking, what do you mean  
13   in the vicinity?

14          MS. LOVE: That would be any --

15          MS. ROESSLER: Where did you observe them?

16          MS. LOVE: That would be -- well in the vicinity  
17   that you could see with your binoculars or with your eyeballs  
18   so you obviously can only survey as far as you can see. So if  
19   someone saw something in the vicinity, that wasn't in the  
20   BSA, it would be outside the BSA but still in an area that  
21   they could observe and be confident that what they saw was  
22   correct.

23           And as we mentioned before, we did see a Peregrine  
24   falcon nest on MGS Unit 1 and that is not in the BSA but it  
25   is very, it is, you know, it's the vicinity as close to the



1 BSA. Yes.

2 MS. ROESSLER: So did you observe the Peregrine  
3 falcons?

4 MS. LOVE: Yes, I did.

5 MS. ROESSLER: So can you be more specific about in  
6 the vicinity? I mean, were you looking north, south, east,  
7 west? I understand the definition of vicinity implies it's  
8 close where you can see. I'm asking you since you were there,  
9 what you saw, where you were standing, where you saw it. Some  
10 more specifics.

11 MS. LOVE: So I personally saw the Peregrine falcon  
12 on MGS Unit 1.

13 MS. ROESSLER: Was it foraging?

14 MS. LOVE: It was nesting.

15 MS. ROESSLER: So did you personally see the  
16 Peregrine falcon foraging and resting in the vicinity of the  
17 BSA?

18 MS. LOVE: I -- so --

19 MS. ROESSLER: I'm just trying to -- I'm trying to  
20 be plain here, I'm not trying to be -- I'm trying to  
21 understand this sentence more specifically in the vicinity of  
22 the BSA meets, where is that?

23 MS. LOVE: Okay, hold on.

24 MS. ROESSLER: Because this is a California fully  
25 protected species and there is a nest on the proposed project

1 site. Trying to understand here, given this is a nontargeted  
2 observation what your observations were.

3 MS. LOVE: So -- can you just please repeat the  
4 question for me one more time?

5 MS. ROESSLER: In the survey report it states,  
6 "Peregrine falcons were observed" and I quote, "regularly  
7 resting and foraging in the vicinity of the BSA during the  
8 surveys."

9 MS. LOVE: Uh-huh.

10 MS. ROESSLER: End quote.

11 MS. LOVE: Correct.

12 MS. ROESSLER: Can you please describe what you  
13 meant by in the vicinity.

14 MS. LOVE: So, then this --

15 MS. ROESSLER: Where did you observe them?

16 MS. LOVE: Yeah. So --

17 MS. ROESSLER: Or whoever. I understand you're  
18 testifying on behalf of several biologists who participated.

19 MS. LOVE: So we did see them at McGrath Lake and we  
20 did see them on the Unit 1.

21 MS. ROESSLER: Foraging?

22 MR. CARROLL: Asked and answered. The witness has  
23 testified multiple times that she observed them nesting on  
24 Unit 1 which is in the vicinity of the BSA and she just  
25 testified that she observed them foraging at McGrath Lake

1     which is in the vicinity of the BSA.

2             The testimony has -- she's testified as to where  
3     she has observed or where the team observed foraging and  
4     nesting a Peregrine falcon in the vicinity of the BSA on  
5     several occasions and several different context.

6             MS. LOVE: And I guess I would like to add to that  
7     that when I say I personally only saw the Peregrine falcon on  
8     the unit so that's what you were asking me before about my  
9     personal observation, our team saw the Peregrine at McGrath  
10    Lake like I just mentioned but I personally was not the one  
11    who made that observation, if that helps to clarify.

12            MS. ROESSLER: Was that the only place where the  
13    Peregrine falcon was observed foraging? McGrath Lake.

14            MS. LOVE: Our surveys were focused on the  
15    biological survey area. So.

16            MS. ROESSLER: I know. I just asked you a question,  
17    I know where your surveys were focused for, a simple  
18    question. You said you saw them on McGrath Lake, is that the  
19    only place that your team or anyone working for a common part  
20    of this report reported seeing Peregrine falcons foraging?

21            MS. LOVE: I would have to go back to the raw data  
22    to tell you that for sure. Like I mentioned, we're -- we're -  
23    - our survey is focused in the biological survey area so  
24    there are not extensive notes on what the target species or  
25    any target -- or any species for that matter is doing outside

1 of the study area. So I can only tell you whatever I've said  
2 so far about the Peregrine falcon and what I have understand  
3 that we have seen, observed it doing on -- in the BSA and in  
4 the immediate vicinity of the BSA.

5 MR. CARROLL: Ms. Love, a follow-up question. And  
6 here's the danger of being asked the same question six  
7 different times.

8 Did you observe -- did you or anyone else on your  
9 team observe the Peregrine falcon foraging or nesting within  
10 the BSA?

11 MS. LOVE: No, we did not.

12 MR. CARROLL: Thank you.

13 MS. ROESSLER: So I'd -- just to be -- just to  
14 understand here, you cannot answer affirmatively the extent  
15 of the observations of the Peregrine falcon foraging that the  
16 surveyors reported? You would have to go check your survey  
17 results?

18 MR. CARROLL: Answer the question to the best of  
19 your knowledge.

20 MS. LOVE: So --

21 MS. ROESSLER: Wait, I'm trying -- she said she  
22 would have to go check before because it wasn't a target  
23 specifies.

24 MR. CARROLL: Look, we're talking -- this is  
25 ridiculous, we're talking about a nontarget --

1 MS. ROESSLER: We're talking about a California  
2 fully protected species.

3 MR. CARROLL: Who -- which is --

4 MS. ROESSLER: And we're talking about where the  
5 foraging habitat is and it was never disclosed in any of the  
6 prior studies.

7 MR. CARROLL: Which --

8 HEARING OFFICER KRAMER: Hold on.

9 MS. ROESSLER: Although there is a statement that  
10 NRG employees knew that there was a --

11 HEARING OFFICER KRAMER: Time out. Time out again.  
12 She started to answer the question so it sounds like she's  
13 able -- or at least let's hear her answer.

14 MS. LOVE: I'm not sure I remember what I was going  
15 to say anymore, honestly. But I feel like I've already --

16 HEARING OFFICER KRAMER: That is how we use a lot of  
17 our time.

18 MS. LOVE: I've already stated as much as I can  
19 state about the Peregrine falcon.

20 MS. ROESSLER: So in Appendix D when you checked off  
21 P3 site and buffer, the Peregrine falcon was present or flew  
22 over?

23 MS. LOVE: Flyovers are not in -- included in this  
24 wildlife list. So this is actual observations of these animal  
25 utilizing the site.

1 MS. ROESSLER: So how -- how was it utilizing the  
2 Site?

3 MS. LOVE: It could have been resting there. It  
4 could have been perching there in the P3 site and the buffer.

5 MS. ROESSLER: And it could have been -- could it  
6 have been foraging? Or do you know it was?

7 MS. LOVE: As I already mentioned --

8 MR. CARROLL: Asked and answered.

9 MS. LOVE: -- we did not observe -- we did not  
10 directly observing foraging of the Peregrine falcon I the  
11 biological study area.

12 MS. ROESSLER: I asked again because you say could  
13 have been doing several things. And it sounds like you're not  
14 clear on what it was.

15 MS. LOVE: They were sedentary.

16 MR. CARROLL: Objection to the characterization of  
17 the testimony. She -- she has testified that it was not  
18 foraging and it was nesting. It could have been resting --

19 MS. ROESSLER: But that's --

20 MR. CARROLL: -- or something else --

21 MS. ROESSLER: But she's speculation and I'm asking  
22 for a specific answer unless she doesn't know, then she  
23 doesn't know. But it's checked off here. It's the survey  
24 report she's testifying on.

25 MR. CARROLL: I would just admonish the witness not

1 to speculation. Answer the question the best you can.

2 MS. WILLIS: Mr. Kramer, this was actually a line of  
3 questioning that we -- that we start -- almost started with  
4 me. So it's been asked and answered quite a few times.

5 MS. ROESSLER: No, it's not --

6 MR. CARROLL: We're talking about a nontarget  
7 species --

8 MS. ROESSLER: We're talking --

9 MR. CARROLL: -- and occurrences outside the BSA.  
10 I'm not discounting the status of the species, I'm just  
11 saying for purposes of this --

12 MS. ROESSLER: No, that's incorrect.

13 MR. CARROLL: -- survey, it was not a focus of the  
14 survey because it wasn't one of the species that was the  
15 target of the surveys and you're asking questions about what  
16 it was doing outside of the BSA.

17 MS. ROESSLER: I'm not. It's checked off in your  
18 survey report as in the BSA, and that is what I'm asking. Go  
19 look at Appendix D, it says P3 and buffer, that is in the  
20 BSA, it is checked off in several areas in your -- in the  
21 BSA.

22 MR. CARROLL: Yes, you are now. But previously we  
23 had a very long series of questions about what it was doing  
24 outside of the BSA.

25 HEARING OFFICER KRAMER: Okay. So now that the

1 question is regarding inside the BSA, overruled, please  
2 answer it.

3 MS. LOVE: So inside the BSA, we did not observe the  
4 Peregrine falcon. We did not directly observe the Peregrine  
5 falcon foraging.

6 MS. ROESSLER: I asked --

7 MS. LOVE: We didn't see it nesting so the only  
8 behavior left it would be sedent -- stationary behavior where  
9 the bird could have been perching on a substrate of some sort  
10 in the project components listed here in Table D1.

11 MS. ROESSLER: So you know it wasn't foraging and  
12 you know it wasn't nesting. So if I'm understanding, are  
13 you -- the only behaviors left, then, are resting and  
14 perching? Is that why -- you just sound very unsure in your  
15 answer.

16 Are there only four behaviors that are tracked?  
17 Maybe that would be helpful.

18 MS. LOVE: Can you give us just a second?

19 MR. PARR: So the bird was sitting on substrates  
20 within those components. What it was doing, we don't know  
21 because it may have been resting, it may have just been  
22 sitting there. All we know is that we observed it.

23 MS. ROESSLER: Okay. You observed it. You weren't  
24 sure what the behavior was that it was doing; is that  
25 correct?



1 MR. CARROLL: Asked and answered.

2 MS. ROESSLER: Well, I'm asking him, I did not ask  
3 Mr. Carr. Let him answer it. And how many questions have you  
4 rephrased and recharacterized so that the witness can answer?

5 MR. CARROLL: Not nearly as many as you have.

6 HEARING OFFICER KRAMER: Okay. And I have to  
7 apologize --

8 MS. ROESSLER: I just --

9 HEARING OFFICER KRAMER: -- for not having kept  
10 score to have settled that dispute.

11 MS. ROESSLER: It's not a competition, I just wanted  
12 an answer to it. I'm asking questions and instead of  
13 answering the questions directly, they sometimes get  
14 rephrased. So I'm just trying to make sure that I'm getting  
15 the response in a way that's clear.

16 HEARING OFFICER KRAMER: It's been talked about --

17 MR. CARROLL: Went through all these --

18 HEARING OFFICER KRAMER: -- in so many different  
19 ways, it's hard to imagine what is left to determine on that  
20 particular question about what the bird was doing. So could  
21 you move on?

22 MS. ROESSLER: Sure.

23 MR. HUNT: May I add something quickly about this  
24 issue with the falcon.

25 The bio report also states that great horned owls

1 were nesting at the MGS site. I just want to state that that  
2 observation is very rare. Almost never have they found  
3 Peregrine nests with great horned owl nests. And when that  
4 does occur, it's because the species are competing with each  
5 other and they're highly territorial. It indicates a very  
6 high prey density in the vicinity of the Puente Power Plant,  
7 possibly onsite and offsite.

8               So I'm just throwing that in there those two  
9 species are nesting in the same substrate.

10              MS. ROESSLER: What is the -- and this is for anyone  
11 on the panel. What is the foraging habitat or foraging  
12 distance for the Peregrine falcon from their nest site?

13              Ms. Love, have you ever done prior work with  
14 raptors and specifically the Peregrine falcon?

15              MS. LOVE: I have done multiple avian surveys. I am  
16 not -- I am not an avian biologist but I have done many, many  
17 focus burrowing owl surveys and I always assist people with  
18 avian surveys, but I myself am not an avian biologist but I  
19 have many people on my team who conducted the surveys that  
20 are avian biologists.

21              MS. ROESSLER: But have you ever done any work or  
22 any of those surveys whose results included the Peregrine  
23 falcon?

24              MS. LOVE: Sorry, are you saying professionally have  
25 I ever observed a Peregrine falcon as part of a survey?

1 MS. ROESSLER: No, I'm asking have you ever  
2 conducted any avian [inaudible], just any of your prior work  
3 history involve the Peregrine falcon, studying for it,  
4 assessing it in any professional capacity?

5 MS. LOVE: No, my limit for avian biology I would  
6 think would be to general avian surveys and burrowing owls,  
7 specific surveys, but not Peregrine specific surveys.

8 MR. CARROLL: Mr. Hunt, do you --

9 MS. LOVE: But I would also like to point out I am  
10 not the only person on the survey team.

11 MR. CARROLL: Mr. Hunt, before we move --

12 MS. ROESSLER: Correct.

13 MR. CARROLL: -- off from this topic, I would like  
14 to ask a follow up to your question. Would your observations  
15 regarding the Peregrine falcon and the great horned owl  
16 knowledge that conclude then that Unit 1 is ESHA?

17 MR. HUNT: Yes.

18 MR. CARROLL: Meaning? What would be the  
19 implications of that for the demolition of MGS Unit 1, would  
20 it then be your position that that could to occur?

21 MS. ROESSLER: Objection.

22 MR. HUNT: None. I'm not qualified to say.

23 MS. ROESSLER: The implications.

24 MR. CARROLL: You're -- I'm sorry, you're not --  
25 you're not qualified to say what the implications of an area

1 being designated ESHA are?

2 MS. FOLK: I'm going to object, that calls for a  
3 legal conclusion.

4 MS. ROESSLER: It does -- it calls for a lot  
5 speculation.

6 MR. CARROLL: Mr. Hunt's testimony, both written and  
7 verbal is replete with opinions about the implications of an  
8 area being designated ESHA. I take it at your word, I'm just  
9 a little surprised to be --

10 MS. ROESSLER: He discusses --

11 MR. CARROLL: -- hearing his lack of qualifications  
12 in that area this late in the proceedings.

13 MS. FOLK: There's a difference between identifying  
14 factors that might designate properties ESHA and  
15 identifying the legal consequences of that.

16 MS. ROESSLER: I agree. Mr. Hunt, what is the  
17 foraging distance for Peregrine falcons?

18 MR. HUNT: A conservative estimate would be a radius  
19 of about ten miles around a known site. It can vary from  
20 site to site. Some studies have found that as little as  
21 three or four miles, some found it 25 miles or so. But ten  
22 miles seems to be a conservative estimate.

23 MS. ROESSLER: Would that ten miles cover the entire  
24 proposed project site as foraging habitat?

25 MR. HUNT: Yes, it would.

1           HEARING OFFICER KRAMER: When you say conservative,  
2       do you mean it's a lower number than some might give or a  
3       higher number?

4           MR. HUNT: Let me correct that. An average of the  
5       studies is about ten miles.

6           MS. ROESSLER: And Mr. Hunt, is it -- is foraging  
7       habitat generally qualify or would trigger an ESHA  
8       designation?

9           MR. HUNT: It could, yes.

10          MS. ROESSLER: Let's see. Sorry. Mr. Hunt, was the  
11       presence of the Peregrine falcon discussed anywhere in the  
12       FSA?

13          MR. HUNT: No, it was not, including the updated  
14       version with a table showing sensitive species, Peregrine  
15       falcons were left off that list.

16          MS. ROESSLER: Ms. Watson or Mr. Hilliard, can you  
17       explain why you excluded the observations of a fully  
18       protected species from the updated supplemental testimony  
19       you submitted?

20          MS. WATSON: I believe that the table that Mr. Hunt  
21       is referring to is a simple table that shows what species  
22       were requested to be surveyed under the committee order  
23       versus which ones were requested by intervenor status.

24          MS. ROESSLER: You're saying the table was only  
25       updated to include the species subject to the order?

1 MS. WATSON: Can you refer me to the number table  
2 that you're looking at?

3 MR. HUNT: I'm referring -- this is Lawrence Hunt.  
4 I'm referring to the Biological Resources' supplemental  
5 testimony of Carol Watson, John Hilliard and it's dated --  
6 sometime in July.

7 MS. ROESSLER: It's page 2 of your supplemental  
8 testimony. It says, "Biological Resources Table 3  
9 identifies the nearest occurrences of special status  
10 species."

11 MS. WATSON: So that table -- I understand the table  
12 you're referring to.

13 MS. ROESSLER: Okay.

14 MS. WATSON: That was corrected after the last set  
15 of hearings. There had been some typos in that table so the  
16 table was specifically updated just to address that and  
17 provide the committee with the new table. The table was not  
18 updated per the new survey results.

19 MS. ROESSLER: Mr. Hilliard, is that accurate? The  
20 table was not updated to report any of the new survey  
21 results?

22 MR. HILLIARD: Yes, Ms. Watson is correct. Those  
23 were reflective of the changes. I think they were done  
24 verbally and discussed verbally in our testimony back in  
25 February. And then we cleaned that table up. But it did not

1 get expanded to include the observations that were part of  
2 what I call the Biological Survey Report.

3 MS. ROESSLER: Can you explain, then, why on page 2  
4 it states under Special Status Species and I quote, "Changes  
5 to Globose dune beetle and silvery legless lizard have been  
6 made based on applicants' updated survey results and  
7 intervenor's information."

8 MS. WATSON: You're correct. Those two species were  
9 updated in addition.

10 MS. ROESSLER: So the table was only updated to  
11 address two species but not all of the results; is that  
12 correct?

13 MS. WATSON: I believe that's correct.

14 MS. ROESSLER: Why?

15 MR. HILLIARD: Oops. I mean, it was oversight.

16 Oh, I'm sorry. If the intended data include  
17 everything, yes, it would have been an oversight. I think our  
18 focus had been because of the translocation plan which speaks  
19 to directly to Globose dune beetle and the silvery legless  
20 lizard. That's why those were included. That was really the  
21 focus that we had when we updated that table.

22 MS. ROESSLER: So would you agree, then, the table  
23 does not accurately reflect the presence of special status  
24 species known to occur or potentially occur in the project  
25 area?

1           MR. HILLIARD: No, I think the table was accurate.  
2   It is not completely exhaustive to 100 percent.

3           MS. ROESSLER: Can you explain what you mean it's  
4   accurate but not completely exhaustive. So it either includes  
5   all these species or it doesn't.

6           MR. HILLIARD: It doesn't include all the species,  
7   you're correct.

8           MS. ROESSLER: Okay. Is there a specific reason that  
9   you did not include the Peregrine falcon or was it just an  
10   oversight?

11          MS. WATSON: I would refer back to the answer that  
12   John had just given you which I think you know the intent of  
13   that had really been to clean up the table to provide the  
14   committee a clean table. We did address Globose dune beetle  
15   and the silvery legless lizard because we had updated  
16   condition, the certification Bio 10, and so those were the  
17   main focuses of that report and of staff supplemental  
18   testimony.

19          MS. ROESSLER: To your knowledge was there -- are  
20   there any other known occurrences or special status species  
21   that were disclosed in the new information besides the  
22   Peregrine falcon that are not included in this table?

23          MS. WATSON: I think the plant species such as the  
24   branching aster.

25          MS. ROESSLER: Is there anything else excluded?



1 MS. WATSON: Not off the top of my head.

2 MR. CARROLL: May I ask a follow-up question to  
3 Ms. Watson and Mr. Hilliard.

4 Did you review your obligations with respect to  
5 updating your analysis to be limited by the scope of the  
6 March 10<sup>th</sup> order?

7 MS. WATSON: Yes, we did with the exception that I  
8 just mentioned of trying to provide an updated table for the  
9 committee's reference.

10 MR. CARROLL: And does the March 10<sup>th</sup> order require  
11 surveying for or providing any information at all including  
12 incidental sightings with respect to nontarget species  
13 including the Peregrine falcon?

14 MS. WATSON: I believe it does not.

15 MR. CARROLL: Thank you.

16 MS. ROESSLER: So even though the March 10<sup>th</sup> order  
17 did not include the Peregrine falcon, do you think it's  
18 important to include the observation and evidence revealing a  
19 fully protected species found in and around the project site?

20 MS. WATSON: I believe that my analysis is focused  
21 to the species of which I thought there would be an impact  
22 to, either direct or indirect. And specifically with respect  
23 to new in passages the disclosure or of the new findings of  
24 the Globose dune beetle and the silvery legless lizard. Their  
25 species or other impacts as I mentioned in my opening

1 testimony are already covered. If they weren't already  
2 covered by the existing conditions, it wasn't updated.

3 MS. ROESSLER: So you don't think the presence of a  
4 fully protected species not previously disclosed on the site  
5 and in the buffer and nesting would not be impacted by the  
6 project?

7 MS. WATSON: I think with application of the  
8 conditions and certifications that there would not be  
9 impacts. There were no new impacts identified to these  
10 species that I didn't feel were already covered by the  
11 conditions.

12 MS. CHESTER: And if I may jump in. Ms. Watson, is  
13 it your professional opinion that the condition of  
14 certification Bio 8 is sufficient to mitigate any potential  
15 impacts to species found outside of the BSA including the  
16 demolition area?

17 MS. WATSON: Yes. Bio 8 and Bio 10 also restricts  
18 demolition of the [inaudible] to outside of the breeding  
19 season.

20 MS. ROESSLER: So do the conditions have any  
21 mitigation for raptor species that are present or foraging or  
22 nesting on the proposed project site?

23 MS. WATSON: There is mitigation such as  
24 preconstruction nesting surveys, there are prohibitions on  
25 demolition activities during nesting season. There are --

1     there is language limiting the decibel ratings within, I  
2     believe, 100 feet of the nests, I think, alone.

3             MS. ROESSLER: Do you think that the Peregrine  
4     falcon should have been added to this table?

5             MS. CHESTER: Objection. I think that's been asked  
6     and answered, that it was outside of the scope and so was not  
7     included in the table.

8             MS. ROESSLER: That's diff -- I'm asking in her  
9     professional opinion if she believes that the table is --  
10    should have been put on there. That's -- that's not been  
11    asked and answered.

12            MS. CHESTER: This is out of the scope, I think you  
13    have gotten --

14            MS. ROESSLER: The scope of what?

15            MS. CHESTER: Her testimony --

16            MS. ROESSLER: From the supplemental --

17            MS. CHESTER: Her testimony about the [inaudible]  
18    orders.

19            MS. ROESSLER: I'm asking -- she's the one that put  
20    the table together. She first testified that the table wasn't  
21    even intended to address any of the new survey reports. Then  
22    the testimony changed to it actually is intended to address  
23    the survey results.

24            And now I'm trying to understand why a fully  
25    protected specifiers was not included in the table. And

1 I'm -- and then it sounded. It's unclear --

2 MS. CHESTER: I think [inaudible] closure on that  
3 issue.

4 MS. ROESSLER: It's a critical species left off --

5 MS. CHESTER: Again --

6 HEARING OFFICER KRAMER: Well, okay.

7 MS. CHESTER: -- outside the scope of the original  
8 orders.

9 MS. ROESSLER: -- the disclosure in the FSA.

10 HEARING OFFICER KRAMER: Well, I don't think the  
11 scope -- I don't think the scope of her testimony would  
12 limit that because she -- this clearly relates to  
13 biological resources, she's staff's expert on that. So if  
14 she can't answer the question, she can indicate that. But -  
15 -

16 MR. CARROLL: It's been asked and answered. Her  
17 testimony was that she was focused on the species that were  
18 target -- species of the biological resource surveys and  
19 she was focused on species where she thought that there  
20 would be impacts that hadn't been previously evaluated that  
21 wouldn't be covered by the existing mitigation measures.  
22 That's been her testimony consistently for the last 20  
23 minutes.

24 MS. CHESTER: It's not clear how the line of  
25 questioning would come to any conclusion about the accuracy

1 of staff's results --

2 MS. ROESSLER: It's exactly -- it's exactly on the  
3 accuracy. Was it left off as a mistake which in some of the  
4 testimony by Mr. Hilliard sounds like it as an oops I heard  
5 him say or -- and then --

6 MS. CHESTER: That mischaracterizes [inaudible]  
7 testimony.

8 MS. ROESSLER: Still talking. Or was it  
9 intentionally left off? That's -- that's -- I want to know  
10 if your opinion, do you think it does not belong on this  
11 table that it should not be disclosed? That's a -- that's  
12 my question there, they're different.

13 MS. CHESTER: If staff can answer, they're welcome  
14 to answer.

15 MS. WATSON: In general, the intent of the table is  
16 such as I've already described to you. With this line of  
17 conversation and seeing how you are using the table, then I  
18 would say, yes if you were looking for a complete  
19 resummation of the biological survey results, then I  
20 would say that it could have been updated. That was not  
21 really the intent of that table.

22 MS. ROESSLER: How should this table be used? Is it  
23 not -- is it supposed to disclose special status species  
24 known to occur or potentially occur in the project area?

25 MS. CHESTER: I would object. It is occurring in the

1 project area within the scope of the surveys that were  
2 conducted.

3 MS. ROESSLER: It's not what the --

4 MS. CHESTER: It's already been discussed, it's  
5 outside.

6 MS. ROESSLER: That's not what the table says. It --  
7 this is staff's supplemental testimony --

8 MS. CHESTER: Correct.

9 MS. ROESSLER: -- of biological resources and the  
10 disclosure of those resources.

11 MS. WILLIS: Excuse me, Mr. Kramer. Ms. Watson has  
12 already testified that it was left off. She testified to  
13 the reasons why it was left off. I don't think there is any  
14 more that she can add. She also testified why that it  
15 wasn't important because we have -- staff has offered  
16 conditions of certification that would cover any sort of  
17 mitigation, translocation, that would be required if  
18 there -- if any of these species were actually found on the  
19 site as opposed to off of the site as the case where -- so  
20 I don't know what else she can add except the questions  
21 just keep going and they're repeating themselves over and  
22 over.

23 MS. ROESSLER: It's inaccurate. So under what you  
24 just stated, then there should be no species on this table  
25 unless they're not impacted or the mitigation position.

1 MS. WILLIS: Correct -- she had said she was  
2 correcting what she testified in February.

3 HEARING OFFICER KRAMER: Okay. At this point I think  
4 asked and answered applies.

5 MS. ROESSLER: That's fine. I think the point is  
6 made.

7 Just a second.

8 MS. CHESTER: In this meantime, if I could ask a  
9 question of the staff.

10 Just to be clear, has staff proposed conditions of  
11 certification to mitigate potential impacts to species  
12 found outside of the biological study area including the  
13 demolition area which may include the Peregrine falcon --

14 MS. WATSON: Yes.

15 MS. CHESTER: -- as observed?

16 MS. WATSON: Yes, that's correct. Those were  
17 proposed in the BSA and the FSA.

18 HEARING OFFICER KRAMER: And in your opinion, did  
19 those -- were those conditions mitigate any potential  
20 impacts on those species to a less than significant level?

21 MS. WATSON: Yes, absolutely.

22 MS. ROESSLER: And just to be clear, the Peregrine  
23 falcon is included in that species that's mitigated to the  
24 level of less than significant?

25 MS. WATSON: The bird conditions -- they're not

1 called bird conditions but the conditions that are  
2 applicable to birds [inaudible] Peregrines as well as the  
3 great horned owls.

4 MS. ROESSLER: How do those conditions address and  
5 mitigate for impacts to fully protected species?  
6 California fully protected species.

7 MS. WATSON: I believe there are no direct impacts.  
8 For example, as I just mentioned, avoids demolition of  
9 either the outfall or MGS 1 and 2 to outside of the  
10 breeding season.

11 MS. ROESSLER: So even though there are nests on the  
12 project site, there would be demoed and there are habitat  
13 on site, avian [inaudible] onsite demonstrating foraging --

14 MR. CARROLL: I object to --

15 MS. ROESSLER: -- and other behaviors and presence  
16 onsite.

17 MR. CARROLL: -- your questions [inaudible]  
18 mischaracterization of the testimony.

19 MS. ROESSLER: It's a question. I'm not  
20 characterizing her testimony. It's a question.

21 Given that you still think it's --

22 MR. CARROLL: You're mischaracterizing the evidence  
23 in the record, then. I mean --

24 HEARING OFFICER KRAMER: Okay. Let her finish the  
25 question, then we'll decide.



1 MS. ROESSLER: Given the presence of nests,  
2 potential foraging, habitat, resting, perching, foraging  
3 behaviors by fully protected species that would be  
4 destroyed and habitat removed by the project, that's not an  
5 impact? Or is that an impact -- I'm sorry [inaudible] --  
6 is that an impact that's mitigated by those measures?

7 MS. WATSON: I think --

8 MR. CARROLL: I object to that question. The  
9 conditions that you just described are inconsistent with  
10 all of the testimony. There's been -- both of these -- all  
11 of these witnesses have testified --

12 MS. ROESSLER: It's my question, I didn't ask her if  
13 it was her -- I'm not paraphrasing, I'm asking a question.

14 MR. CARROLL: The question assumes evidence not in  
15 the record because you're referring to activities including  
16 nesting and foraging on the project site and these  
17 witnesses have both testified on multiple occasions that  
18 there was no nesting or foraging on the project site.

19 MS. ROESSLER: I disagree. I'd like to ask my  
20 question.

21 HEARING OFFICER KRAMER: Well, yeah, I guess I do  
22 too to an extent because there is nesting on the broader  
23 project site. And although I did hear there's been no  
24 evidence of -- or observation of foraging certainly.

25 MS. ROESSLER: In the BSA. And there is a

1 distinction between the BSA and the proposed project site.  
2 I'm not even sure why during these hearings we're --  
3 usually when you're in a project there's one proposed  
4 project site. But because applicant unilaterally decided to  
5 downsize the project in their survey, is there --

6 HEARING OFFICER KRAMER: Okay, now you're testifying  
7 by criticism of there so.

8 MS. ROESSLER: Obviously there's two different --

9 HEARING OFFICER KRAMER: We're -- no, we're not  
10 going to take that into account. So.

11 MS. ROESSLER: That's fine. It's just confusing.

12 HEARING OFFICER KRAMER: Okay. So what was your  
13 question again?

14 MS. ROESSLER: To Ms. Watson?

15 HEARING OFFICER KRAMER: Yes.

16 MS. ROESSLER: Okay. Thank you.

17 Given evidence of nesting, potential foraging,  
18 resting, perching by a fully protected species, do the  
19 conditions that you described mitigate those impacts?

20 MS. WATSON: My answer is yes. This is in practice,  
21 this is common conditions that are known to avoid impact  
22 during breeding seasons. And also if there were foraging  
23 onsite, there's the 2 to 1 replacement of the habitat under  
24 condition of certification Bio 9.

25 MS. ROESSLER: So the -- okay.

1 I'd like to actually Ms. -- Dr. Engel some  
2 questions on this subject.

3 MS. CHESTER: I have a quick couple of questions for  
4 the panel if that's possible.

5 HEARING OFFICER KRAMER: Go ahead.

6 MS. CHESTER: Per Ms. Watson, do the intervenors  
7 allege criticisms of the survey area or methodology affect  
8 staff's conclusions regarding significant impacts on the  
9 site or the lack thereof?

10 MS. WATSON: I'm sorry could you restate that?

11 MS. CHESTER: Sure. Do the alleged criticisms from  
12 the intervenor of the survey area and the survey  
13 methodology affect your conclusions?

14 MS. WATSON: No, they don't. For example, where  
15 we're talking about Globose dune beetle and the locations  
16 or silvery legless lizard, staff has gone ahead and -- as  
17 in presence of those species. So that's just one example of  
18 where we're [inaudible] and why that doesn't change my  
19 conclusions.

20 MS. CHESTER: And can an individual biologist make a  
21 designation of ESHA?

22 MS. WATSON: No, they cannot. That would need to  
23 come from the city or the Coastal Commission.

24 MS. CHESTER: Thank you.

25 MS. ROESSLER: Can an individual biologist have an

1 opinion about what triggers an ESHA designation?

2 MS. WATSON: I'm sure they do.

3 MR. HUNT: May I ask a question?

4 MS. ROESSLER: Yeah. Go ahead.

5 MR. HUNT: This is Lawrence Hunt. This is regarding  
6 the Peregrine falcon.

7 As a fully protected species by definition you  
8 cannot have any impacts to that species, avoidance is the  
9 only way the agencies will allow project to proceed. So  
10 simply by having a mitigation mission says we're going to  
11 destroy the nest in the nonbreeding season, it's my opinion  
12 that's not going to fly with the resource agencies.

13 Other projects where this has occurred, they've had  
14 to build artificial nests and demonstrate that the birds are  
15 using those artificial roosts before they destroy an existing  
16 nest. I just wanted to clarify that.

17 MS. CHESTER: Ms. Watson, do the proposed conditions  
18 of certification avoid impacts?

19 MS. WATSON: I believe they do. And I would further  
20 state that the biological survey results were specifically  
21 reviewed by the wildlife agencies and I've had no other  
22 comments from them on the treatment of those nests or  
23 requests for additional conditions of certification.

24 MR. CARROLL: And I would just add that another  
25 means of avoidance would be to redesign the project to

1 eliminate the component that has the potential effect on the  
2 species so there are other options as well.

3 MS. FOLK: And I would add that if you do that, then  
4 you have to redo the environmental review.

5 MR. CARROLL: Not if the impacts are within the  
6 existing envelope.

7 HEARING OFFICER KRAMER: Okay. That sounds like that  
8 briefing topic.

9 Okay. We -- I think we're going --

10 MS. ROESSLER: I had questions for Dr. Engel. But I  
11 think you want to take a break.

12 HEARING OFFICER KRAMER: Yeah, I was going -- we  
13 were going to try to free up Dr. Engel and then take a break.

14 DR. ENGEL: I'm here.

15 HEARING OFFICER KRAMER: Okay. And are you so  
16 riveted that you would stay into the evening with this or  
17 would you prefer to --

18 DR. ENGEL: I'm unable to stay beyond 5.

19 HEARING OFFICER KRAMER: Okay. Well, there you go,  
20 then. So let's -- do you have anything you want to say after  
21 all you've heard first and then we may have a couple of  
22 questions for you.

23 DR. ENGEL: I would prefer to answer any questions  
24 that may be asked of me.

25 HEARING OFFICER KRAMER: Okay. Ms. Roessler has

1     some.

2                 MS. ROESSLER: I do. Got my list here.

3                 Okay. Some things that we covered. Dr. Engel, can  
4     you please describe when you went to visit the site, what you  
5     observed about the coastal dune and vegetative areas around  
6     the site and how that contributed to your conclusions in the  
7     July 21<sup>st</sup> letter from the Commission regarding coastal dune  
8     habitat and ESHA.

9                 DR. ENGEL: So when we walked to the P3 site, we  
10    were particularly looking at the dune soil area but then we  
11    walked along the perimeter and to the locations of where  
12    there were the raking was occurring because we observed two  
13    different times while the [inaudible] biologist were doing  
14    the raking for the lizards. But during the walking around, I  
15    observed the locations identified on various maps,  
16    particularly the vegetative maps colored pink. For instance,  
17    I have the CEC survey sealed map Figure 1, dated from May 20,  
18    '17. I observed that those areas were compromised of sandy  
19    substrate that was occupied both definitely some -- probably  
20    dominate was ice plant but there was also native dune species  
21    amongst the ice plant and the presence of dune hummock.

22                 So there was the dune morphology, the dune  
23    substrate, and a dominance of ice plant, but also plenty of  
24    native dune species. And at the Coastal Commission as the  
25    ecologist, I have identified dune habitat without any dune

1 morphology sandy substrate with or without any vegetation at  
2 all as dune habitat even -- even dune habitat or dune  
3 morphology that had been 100 percent ice plant as EHSA. So I  
4 made the observation -- this was not brought to our  
5 Commission, but I made the observation that that area of pink  
6 rather than ice plant maps met the what in my opinion was  
7 coastal dune habitat not just ice plant maps.

8 Does that answer your question?

9 MS. ROESSLER: Yes. Can -- I think it would be  
10 easier if we had a map up. There's a vegetative map in the  
11 BSA. I think it was Figure 3.

12 DR. ENGEL: Figure 2.

13 MS. ROESSLER: Figure 2. Ms. Engel, are you familiar  
14 with that map? Is that the one you're referring to as the  
15 vegetation map in the Biological Resources Survey Report?

16 DR. ENGEL: Yes, I have it and I also have that  
17 document in front of me. Yes. I don't see it on the docket or  
18 the screen for the WebEx but --

19 MS. ROESSLER: Right.

20 DR. ENGEL: -- I'm scrolling to it.

21 MS. ROESSLER: So --

22 DR. ENGEL: So it is -- will Figure 2 in the most  
23 recent survey report, the vegetation community --

24 MS. ROESSLER: Yes.

25 DR. ENGEL: Yes.

1 MS. ROESSLER: So the --  
2 DR. ENGEL: All that pink.  
3 MS. ROESSLER: All the pink --  
4 DR. ENGEL: All the pink area identified as ice  
5 plant maps adjacent to the P3 site I said, I disagreed with  
6 that characterization that it should be in my, you know, as  
7 the Coastal Commission ecologist, this hasn't gone before the  
8 commissioners but I would recommend that that be considered  
9 dune habitat. And that's in my record of conversation that  
10 Carol Watson recorded in the -- recorded conversation. I have  
11 the file number if you need it.  
12 MS. ROESSLER: In your -- in the July 21<sup>st</sup> letter, it  
13 concludes that the coastal dune habitat that you're referring  
14 to now is ESHA; is that accurate?  
15 DR. ENGEL: Well, what the letter says is that in  
16 our 30413(d) report that the surrounding area did support  
17 ESHA. This -- this -- I would recommend if we were to go  
18 before the Commission again that this be considered ESHA but  
19 it has not been determined to be ESHA by our commissioners.  
20 HEARING OFFICER KRAMER: Okay. This is Paul Kramer.  
21 Do I have the right figure on the screen now?  
22 DR. ENGEL: Oh, hold on.  
23 MS. ROESSLER: Yes.  
24 HEARING OFFICER KRAMER: Okay. So this --  
25 DR. ENGEL: Yeah, you do.



1           HEARING OFFICER KRAMER: So this is from the  
2 Biological Survey Report. I'm not going to switch to look up  
3 the exhibit number but we've been referring to this document  
4 quite a bit today.

5           It's attached to the declaration of Julie Love  
6 filed on June 23<sup>rd</sup>, I think, thereabouts.

7           DR. ENGEL: Yeah. Yeah.

8           MS. ROESSLER: That's the same ones.

9           So looking from the vegetation map, it looks as if  
10 the purple -- several of the purple mapping area does  
11 encroach into the boundaries of the three-acre P3 site on  
12 most of the sides, at least the western side, north, east,  
13 south.

14          Is that accurate? Ms. -- Dr. Engel.

15          DR. ENGEL: I see what you're talking about -- yeah,  
16 I see what you're talking about the boundaries and  
17 encroachment on the west side into the P3 boundary. And on  
18 the east side, there's an encroachment. I was specifically  
19 talking about the area to the west and north. I did not look  
20 at that area to the south that's adjacent to what we call  
21 coyote bush. But I was referring, my observations were to the  
22 north and west. And so that would include that corner coming  
23 in to the west side of the P3 site.

24          MS. ROESSLER: Does that include the northern purple  
25 area that is -- along the demolition access road which I

1 believe is marked on that map.

2 DR. ENGEL: We did not walk -- I didn't walk beyond  
3 the P3 site boundary to go east, if that's what you're  
4 talking about. So I can't speak to that.

5 MS. ROESSLER: Is that the same coastal dune habitat  
6 on the northern boundary?

7 DR. ENGEL: It's identi -- sorry. I'm sorry, go  
8 ahead.

9 MS. ROESSLER: No, I'm just trying to be clear. The  
10 northern boundary of the property site has a consistent line  
11 of purple.

12 DR. ENGEL: Uh-huh.

13 MS. ROESSLER: Is that dune -- coast dune ESHA?

14 DR. ENGEL: I can't speak from experience but based  
15 on -- and what I mean by that is that I walked the entire  
16 edge of the P3 project site from east to west. And if that  
17 habitat was the same above, along that road, then yes. But I  
18 didn't walk that.

19 And if we brought up an aerial, it would appear  
20 that it is the same and so I -- I would be speculation on my  
21 part but I think it probably is what I would identify dune  
22 habitat versus ice plant map. If it's got dune hummocks, if  
23 it's sandy substrate. And had both ice plant and native dune  
24 species.

25 MS. ROESSLER: Thank you. I believe some of the

1 reasons you -- that was stated in the Commission's July 21<sup>st</sup>  
2 letter mentioned the presence of rare and sensitive special  
3 status species in the dune habitat. Are to your knowledge,  
4 are there rare and sensitive species in that northern to  
5 northeast boundary?

6 DR. ENGEL: Well, there was the Globose dune beetle  
7 that was found there. I've noted that the survey report found  
8 the red verbena, red sand verbena, but I think they found  
9 that further out not on the project site. But at any rate,  
10 the Globose dune beetle is found to the north, yes.

11 MR. CARROLL: I'm going to interject because I think  
12 we have a breakdown in communication because  
13 Ms. Roessler I believe was referring to the north -- I'm  
14 sorry, the eastern most reaches of that purple section. And  
15 then in her response, Ms. Engel referred to results of the  
16 biological surveys none of which were conducted east of that  
17 hash line so I don't think there was an understanding in that  
18 question response --

19 DR. ENGEL: Okay. That could be. I only know that  
20 there were Globose dune beetles found by AECOM adjacent to  
21 the P3 power plant proposed site.

22 MR. CARROLL: Right. I think we just had a  
23 misunderstanding what northeast meant in the context of that  
24 question.

25 DR. ENGEL: With the little hand, yeah, it says,

1 where you put the little hand, that was outside where surveys  
2 were done. Yeah.

3 MR. CARROLL: Just so -- this is Mike Carroll with  
4 the applicant [inaudible], just so I'm clear, as I understand  
5 your statements on this issue beginning I think with the  
6 record of conversation and consistent up until to date,  
7 you're not -- and I'm not quite sure how this map ended up  
8 being the reference point for all this discussion, but you're  
9 not expressing a view that all of the area shaded in purple  
10 here is dune habitat. You're expressing the view that the  
11 portion of the purple shaded area that lies westerly and  
12 northerly of the three-acre project site in your view is dune  
13 habitat.

14 Is that accurate?

15 DR. ENGEL: Yes, because that is the site that I  
16 observed on the ground in person.

17 MR. CARROLL: Thank you.

18 MS. ROESSLER: Can you, Dr. Engel, can you conclude,  
19 then, that the adjoining coastal dune habitat -- I'm looking  
20 at the northern boundary to the east side is not ESHA?

21 DR. ENGEL: Could you say that one more time just so  
22 I make sure to understand what you're asking?

23 MS. ROESSLER: Sure. I understand that you have not  
24 -- you did not go out of the biological study area which did  
25 not include the area to the northeast of the three-acre site

1       which was -- which includes the demolition access road.

2               DR. ENGEL: Uh-huh.

3               MS. ROESSLER: It appears on the map, it looks like  
4       it would extend to be part of the same vegetative community,  
5       at least that's what's mapped here. I just want to understand  
6       that your -- can you conclude that that area adjacent to the  
7       ESHA, dune ESHA, is not ESHA?

8               DR. ENGEL: I cannot conclude that it is not dune  
9       habitat that I potentially might recommend to the  
10      Commissioners to identify as ESHA.

11              MS. ROESSLER: If you were to make a recommendation  
12      to the Commissioners, would you recommend that additional  
13      studies be done on habitat that borders dune habitat?

14              DR. ENGEL: I would have -- I would have liked our -  
15      - one of our attorneys on the phone to be able to address  
16      whether I should answer that question. I don't know.

17              MS. ROESSLER: I'm not trying to be a trick  
18      question, I'm just trying to understand, it sounds like your  
19      opinions are limited by the extent and boundary of the survey  
20      area.

21              DR. ENGEL: Yes.

22              MS. ROESSLER: Thank you. So another question while  
23      we're still in that same area. I believe you also cited in  
24      your letter, sorry, the Commission's July 21 letter two  
25      sightings of legless lizards and that the presence of those

1 legless lizards contributed to an ESHA designation as well?

2 DR. ENGEL: I would not --

3 MR. CARROLL: I'm going to have to --

4 DR. ENGEL: -- phrase it that way.

5 MS. ROESSLER: Okay. Can you -- can you then explain  
6 the --

7 DR. ENGEL: Yeah, I will --

8 MS. ROESSLER: -- observations of the lizards in  
9 your own words?

10 MR. CARROLL: And I just object --

11 DR. ENGEL: Yeah.

12 MR. CARROLL: -- to the form of the questions that  
13 refer to an ESHA designation. Ms. Engel is being very careful  
14 and very precise and I appreciate that in her response. She  
15 is explaining that it might cause her to make a  
16 recommendation that there be an ESHA designation but object  
17 to the phrasing of the questions that assume that there is an  
18 ESHA designation which would assume that it's on the record.

19 DR. ENGEL: I'll -- would it be helpful for me to  
20 refer to the letter and -- and I think it's pretty clear in  
21 our letter what we did say.

22 MS. ROESSLER: Yeah, I'm asking, you mentioned ESHA  
23 in your letter, you are the coastal -- this is a Coastal  
24 Commission letter which is an agency that can designate ESHA,  
25 so I'm just asking you to explain in the letter you mentioned

1 the sightings of the legless lizards. And those sightings  
2 were outside the BSA on that northeastern edge in that same  
3 coastal -- or dune habitat that is in the proposed project  
4 site along the demo -- demolition access road that's to be  
5 graded with gravel.

6 DR. ENGEL: Yes, so we observed the docket record  
7 of EDC that reported -- so EDC reported two observations of  
8 silvery legless lizards, I saw the pictures, I saw the  
9 photograph with the Mandalay generating station behind the  
10 hand with the silvery legless lizards. I recognized that  
11 species. The species has previously been reported at multiple  
12 -- multiple occasions in the project vicinity not on the  
13 project vicinity. And based on these prior observations of  
14 recorded in the CNDDDB database and my site visit on May 10<sup>th</sup>,  
15 I identified -- I determined that the sandy substrate along  
16 the border and in the buffer of the proposed project  
17 footprint would be suitable with the high likelihood of  
18 supporting silvery legless lizards.

19 MS. ROESSLER: Thank you for clarifying. Sorry. Just  
20 a moment here.

21 Are there -- you did mention some observations,  
22 special status species. Are there other observations and  
23 evidence of special status species in the dune area that you  
24 concluded in the letter were ESHA?

25 DR. ENGEL: No.

1 MS. ROESSLER: Okay. Let me ask this in a different  
2 way here.

3 In the letter -- sorry. I think you mentioned the  
4 Globose dune beetle, the legless lizard, are there any other  
5 ones or do those, the presence of those species in coastal  
6 dune habitat establish it as ESHA?

7 DR. ENGEL: What is your question?

8 MS. ROESSLER: I'm just trying to get -- figure out  
9 which species observations contribute to your conclusions  
10 regarding an ESHA determination.

11 DR. ENGEL: I didn't make any conclusions of an ESHA  
12 determination. I made a conclusion that the area supported  
13 dune habitat that I, you know, if it was my -- if I was asked  
14 to go before our Commission, I would recommend that the  
15 Commission find that that dune habitat is ESHA.

16 MS. ROESSLER: Okay. Thank you, I didn't mean to  
17 mistake you. I understand only the Commission can designate  
18 ESHA.

19 So you do state in your letter, though, that the  
20 Coastal Commission had -- did find the coastal dune and  
21 wetland area containing suitable habitat [inaudible] species  
22 constitute ESHA and recommended they be protected with a 100-  
23 foot buffer; is that correct?

24 DR. ENGEL: In the letter, the coastal dune, the  
25 dune scrub, and [inaudible] habitat surrounding the MGS site



1 meet the coastal act and LCD definition of ESHA that was  
2 found in the 30413(d) report.

3 MS. CHESTER: If I may comment. The letter in  
4 question is being referred to as her letter being Jonna  
5 Engel, and I want to clarify that this is in fact a letter  
6 from the executive director and constitutes staff comments  
7 and not the Coastal Commission.

8 MS. ROESSLER: I did try to make that distinction.

9 MS. CHESTER: I just want to be clear about who the  
10 letter is actually from.

11 MS. ROESSLER: Dr. Engel, the July 21 letter  
12 concludes that there is now evidence that the project site  
13 and surrounding dunes provide resting and foraging habitat  
14 for protected birds and raptors; is that correct?

15 DR. ENGEL: According to the survey report which  
16 reported incidental observation of as has been discussed the  
17 Peregrine falcon and the California horned lark as well as in  
18 the Appendix D, the presence has also identified the great  
19 horned owl nesting on the MSG Unit 1 and the Peregrine  
20 falcons nesting on a pier, I believe, the Peregrine falcons  
21 nesting on MSG -- MGS Unit 1.

22 And then the great horned owl, red tailed hawk,  
23 American kestrel, and Peregrine falcon as occurring at the  
24 proposed project site along the outfall access road and/or  
25 within the surrounding coastal dune habitats. And so those  
26 incidental observations have been made and yes, that is  
27 identified in the letter, our letter from staff.

1 MS. ROESSLER: Thank you. Is foraging habitat vital  
2 to a species' survival?

3 DR. ENGEL: Yes.

4 MS. ROESSLER: Are these incidental findings of the  
5 raptors and species you discussed meaningful?

6 MR. CARROLL: Objection --

7 DR. ENGEL: Meaningful but we require formal raptor  
8 foraging or nesting surveys to make -- to make a decision  
9 about the importance of habitat.

10 MS. ROESSLER: Would you recommend -- would you  
11 recommend based on the incidental observations that  
12 additional surveys be conducted? I'll say incidents --  
13 incidental observations of the raptors and the fully  
14 protected species that you discussed earlier.

15 DR. ENGEL: I think that before I would make any  
16 decisions I would need to see raptor -- formal raptor  
17 foraging and nesting surveys.

18 MS. ROESSLER: Okay. That's kind of what I was  
19 asking if -- if that's -- would you recommend the -- that  
20 those surveys be conducted based on the incidental  
21 observations today?

22 MR. CARROLL: For what purpose?

23 MS. ROESSLER: Not my question. Just let her answer  
24 the question.

25 MR. CARROLL: I object to the question as vague and  
26 ambiguous.

1 DR. ENGEL: I -- I'm not sure, I don't think it's my  
2 place to make recommendations.

3 MS. ROESSLER: It is -- I'm sorry, I'm trying to get  
4 at -- you stated before you can't make conclusions for the  
5 Coastal Commission, but as a biologist, you make  
6 recommendations. For example, if there are new species  
7 presence and impacts based on new information to in this case  
8 reopen the 30413(d) report.

9 So I'm just asking to the extent based on the  
10 presence of a fully protected species that wasn't even a  
11 target of surveys, a nest combined with several other raptors  
12 an addition nest onsite and the identification of those  
13 species as you already went through regarding presence,  
14 nesting, perching, foraging on and off the project site,  
15 would that warrant in your opinion additional surveys?

16 MR. CARROLL: Objection, compound --

17 DR. ENGEL: If I --

18 MR. CARROLL: objection --

19 MS. ROESSLER: Just let her answer the question.

20 MR. CARROLL: No, I'm not going to let her answer.  
21 I object to this entire line of questioning because it's very  
22 consistent with the previous several lines of questioning.  
23 What we have here is a very carefully worded --

24 MS. ROESSLER: What's the objection based on?

25 MR. CARROLL: What we have here is a very carefully  
26 worded letter from the Coastal Commission staff and I  
27 understand that it doesn't go as far as you would like it to

1 go and that you would like to continue badgering this  
2 witness --

3 MS. ROESSLER: This is pure conjecture and argument.

4 MR. CARROLL: -- to try to push her a little bit  
5 further, but the letter speaks for itself.

6 MS. ROESSLER: I never heard an objection there  
7 except that you wanted to get testimony --

8 MR. CARROLL: The objection was that the question  
9 was compound, vague, and ambiguous.

10 HEARING OFFICER KRAMER: Please break it in to  
11 pieces.

12 MR. CARROLL: The question was vague and ambiguous  
13 because the --

14 HEARING OFFICER KRAMER: No, no, no.

15 MR. CARROLL: I'm sorry.

16 HEARING OFFICER KRAMER: Sustain the objection.

17 MR. CARROLL: The objection or the question?

18 HEARING OFFICER KRAMER: Sustained. But try -- you  
19 can try to break it into smaller pieces so it will be less  
20 compound, ideally not at all

21 MS. ROESSLER: Dr. Engel, based on the information  
22 which you stated -- I'm sorry, which was stated in the  
23 Coastal Commission letter and which in your testimony where  
24 you identify that there is evidence that documents the  
25 Peregrine falcon and other raptors nesting, foraging,  
26 perching, and other activities onsite and in the buffer,  
27 would you recommend that there be additional studies?

1 DR. ENGEL: I am going to abstain from answering  
2 your question because I don't have representation from one of  
3 our attorneys and I have -- I have put myself in a bind  
4 before and I don't want to get in a bind today. So I am  
5 abstaining from answering your question. If -- I refer you  
6 back to the letter.

7 MS. ROESSLER: So am I understanding you think that  
8 if you -- what conclusions can you draw from the raptor --  
9 the presence of raptor nest species in habitat onsite and in  
10 the buffer?

11 DR. ENGEL: The -- taken all together, the  
12 observations indicate that the project site and surrounding  
13 coastal dune habitats provide resting and foraging habitat  
14 for protected birds and raptors.

15 MS. ROESSLER: Okay. Thank you.

16 MS. CHESTER: I have some questions briefly, if  
17 she's complete.

18 HEARING OFFICER KRAMER: Go ahead.

19 MS. CHESTER: Dr. Engel, this is Michelle Chester  
20 representing staff.

21 Is the 30413(d) report the only official report  
22 from the Coastal Commission on the Puente Project?

23 DR. ENGEL: Yes. Yes.

24 MS. CHESTER: And do you know of any plans of the  
25 Coastal Commission to reconsider the 30413(d) report  
26 submitted for the Puente Project?

1 DR. ENGEL: No. Due to the timing of the release of  
2 the survey report and the scheduling of the new evidentiary  
3 hearing on yesterday and today, there was not sufficient time  
4 for the Coastal Commission itself to consider this new  
5 information.

6 MS. CHESTER: Thank you.

7 MS. ROESSLER: Dr. Engel, did the Coastal Commission  
8 request that the CEC delay these evidentiary proceedings to  
9 allow for times to accommodate reopening the 30413(d)  
10 report?

11 MR. CARROLL: Objection, calls for hearsay.

12 DR. ENGEL: You know, I really don't know the answer  
13 to that

14 MS. ROESSLER: It's not hear -- I'm asking her --

15 DR. ENGEL: I don't know.

16 MS. ROESSLER: I'm asking her about a letter.

17 MR. CARROLL: You can ask her if she requested it.

18 MS. CHESTER: Question answered.

19 MS. ROESSLER: No, I'm asking about her knowledge of  
20 a Coastal Commission letter requesting that the evidentiary  
21 hearings be delayed. It's in the document.

22 DR. ENGEL: You know, I don't know.

23 UNKNOWN SPEAKER: She keeps answering but you talk  
24 [inaudible].

25 MS. ROESSLER: Sorry, I didn't mean to talk over  
26 you. Can you answer again there's multiple people speaking  
27 here, it makes it challenging.

1 DR. ENGEL: Sure, sure. I do not know if Joe Street,  
2 the coastal analyst assigned to this project is on vacation,  
3 otherwise he would be here. I don't know if he informally  
4 requested that, it's not in this letter.

5 Coastal Commission staff believe that the  
6 information and analyses reinforce the conclusions and  
7 recommendations contained in the September 9, 2016 report on  
8 the project that was pursuant to Section 30413(d) of the  
9 Coastal Act.

10 MS. ROESSLER: I understand. I believe that the  
11 request in question was a letter signed from Mr. Street  
12 requesting that the Energy Commission allow additional time  
13 to accommodate the Coastal Commission's request.

14 I apologize, I thought it was from -- I thought  
15 your name was on it

16 DR. ENGEL: I didn't catch that. In our July 21  
17 letter, I don't think there was a request for additional  
18 time.

19 MS. ROESSLER: No, it was an earlier letter from I  
20 believe it was from Mr. Street.

21 DR. ENGEL: Okay.

22 MS. ROESSLER: That was docketed.

23 HEARING OFFICER KRAMER: Okay. Well, and there was  
24 actually not a question pending.

25 Okay. Anymore questions?

26 MS. ROESSLER: Just a second here. I think that's  
27 all from me [inaudible].

1 HEARING OFFICER KRAMER: Okay. Thank you. Anyone  
2 else?

3 MS. ROESSLER: At least with Dr. Engel, I should  
4 say.

5 HEARING OFFICER KRAMER: Okay. Ms. Belenky, are you  
6 on the line? We may have to unmute her.

7 MS. BELENKY: Yes, I am on the line. Can you hear  
8 me?

9 HEARING OFFICER KRAMER: If you could speak up, that  
10 would be good.

11 Did you have any questions for anyone?

12 MS. BELENKY: No, I don't at this time. I think that  
13 all points I was going to go over have been thoroughly gone  
14 over. Thank you.

15 HEARING OFFICER KRAMER: Okay. I heard no. Thank  
16 you.

17 Okay. Anyone else in the room?

18 Okay. I'm seeing none. So, thank you, Dr. Engel. We  
19 will go on and we will miss you and we hope you miss us, but  
20 I understand that you have to leave.

21 So with that --

22 DR. ENGEL: I'm sorry, were you just speaking to me?

23 HEARING OFFICER KRAMER: Yes, we were --

24 DR. ENGEL: This is Jonna.

25 HEARING OFFICER KRAMER: We were -- we were wishing  
26 you well because we understand that you have to leave us for  
27 the day.



1 DR. ENGEL: Yes.

2 HEARING OFFICER KRAMER: And thank you for  
3 participating.

4 DR. ENGEL: Yes, thank you very much. Happy -- happy  
5 continuation of this.

6 HEARING OFFICER KRAMER: I'm sure that was meant  
7 sincerely.

8 DR. ENGEL: Bye everyone.

9 HEARING OFFICER KRAMER: Thank you.

10 DR. ENGEL: It is. It is meant sincerely. Okay, bye.

11 HEARING OFFICER KRAMER: Take care. Okay, so now  
12 we're going to take a -- okay, we've settled on a 15-minute  
13 break. I'll put up the handy timer again. And we'll see you  
14 then. And we'll continue with this panel. Thank you.

15 (Off the record at 4:55 p.m.)

16 (On the record at 5:13 p.m.)

17 COMMISSIONER SCOTT: Okay. Good afternoon everybody.

18 We are back on the record please. If you -- it looks like  
19 everyone's at your seat. But if you're not, please  
20 come on back to the tables. We will go ahead and get  
21 going.

22 I just want to check one more time to see  
23 whether or not we've been joined by either Intervenor  
24 Bob Sarvey or Intervenor Dr. Grace Chang from  
25 FFIERCE? We are un-muting the phone lines right now.  
26 If you are there and would like to say hello, please

1 introduce yourself. Okay.

2           Hearing none, we will turn the conduct of  
3 this hearing back to our Hearing Officer, Paul  
4 Kramer.

5           HEARING OFFICER KRAMER: Okay. So I think we  
6 left for our break with -- well, we finished with Ms.  
7 Engel. I don't know that we finished with the rest of  
8 the panel.

9           So let me ask if anyone has additional  
10 questions for the panel?

11           And then we -- if you can un-mute Lisa  
12 Belenky, we'll check with her and see.

13           Lisa, do you have any questions at this  
14 point?

15           MS. BELENKY: No, I don't at this point.  
16 Thank you.

17           HEARING OFFICER KRAMER: Okay. Would you like  
18 us to check in with you one more time, before we  
19 conclude?

20           MS. BELENKY: Yes, I think so. I've been  
21 following as closely as I can, but --

22           HEARING OFFICER KRAMER: Okay.

23           MS. BELENKY: -- I may have missed something.

24           HEARING OFFICER KRAMER: Okay. Thank you.

25           So did anyone have any -- Mr. Carroll says

1 no.

2 MS. ROESSLER: I still have some questions --

3 HEARING OFFICER KRAMER: Okay. Go ahead.

4 MS. ROESSLER: -- I didn't get a  
5 chance -- thank you. This is for Mr. Hunt.

6 In your supplemental testimony, you provided  
7 a map in there, or a figure. Hang on just a second.  
8 I'm going to get to the page.

9 HEARING OFFICER KRAMER: Okay. And project.

10 MS. ROESSLER: Okay.

11 HEARING OFFICER KRAMER: Can I suggest you  
12 move the mike to the other side of your materials, so  
13 then when you're looking at Mr. Hunt, you'll also be  
14 aiming at the microphone.

15 MS. ROESSLER: Yes. There's a lot of  
16 materials up here. Thank you. Thank you. Okay.

17 I'm referring to Figure 1 on page 15 --

18 MR. HUNT: Yes.

19 MS. ROESSLER: -- of your report. Can you  
20 describe Figure 1 for us?

21 MR. HUNT: Sure. Figure 1 is an aerial view  
22 of the --

23 MS. ROESSLER: Oh, and sorry, just a second.

24 MR. HUNT: Yeah.

25 MS. ROESSLER: It's also in -- this one, Mr.

1 Kramer, is in the little subset of maps that I gave  
2 you, in case you couldn't pull up the --

3 HEARING OFFICER KRAMER: Okay. I actually --

4 MS. ROESSLER: -- this one.

5 HEARING OFFICER KRAMER: -- found it in his  
6 report itself, Exhibit 4038

7 MR. HUNT: Yeah. Okay. Figure 1, the white  
8 line shows the interior edge of ESHA, dune ESHA,  
9 based on Jonna Engel's observations, and the  
10 Biological Survey Report results where they're  
11 finding special status species in those areas, and  
12 that extends along the southern -- I mean the western  
13 side of the three-acre BSA, a portion of the BSA, and  
14 then along the northern edge. The blue line is the  
15 three-acre BSA project footprint. And the yellow line  
16 is a 100-foot buffer that the Coastal Commission  
17 would typically put around ESHA that extends into the  
18 three-acre project area.

19 MS. ROESSLER: And that buffer is -- that's  
20 the yellow line; is that correct?

21 MR. HUNT: That's the yellow line, yes.

22 MS. ROESSLER: Were you able to estimate  
23 about what percentage that constraint would apply to  
24 the project site?

25 MR. HUNT: Yeah. It looks to me, just

1 eyeballing it, that it goes into about 40 percent of  
2 the three-acre project site.

3 MS. ROESSLER: Thank you.

4 HEARING OFFICER KRAMER: Can I ask why the --  
5 why there's a tail on the ESHA instead of wrapping  
6 around that corner --

7 MR. HUNT: Sure.

8 HEARING OFFICER KRAMER: -- that the  
9 gentleman earlier described as locking (phonetic), it  
10 points out to the ocean?

11 MR. HUNT: There's an old -- it looks like an  
12 old road through the dunes there that extends there,  
13 so it's bare soil. I just mapped it that way because  
14 it was devoid of vegetation, but you could easily  
15 just go right across it. The dune beetles, or  
16 whatever, could be there. So just called it a mapping  
17 artifact.

18 MR. CARROLL: Just to be clear, it's not an  
19 ESHA. We have some witnesses who have indicated that  
20 they believe it should be.

21 MS. ROESSLER: He's --

22 MR. HUNT: I'm not determining -- I'm not the  
23 one to be the final word on whether or not this is  
24 ESHA, but I'm certainly qualified to argue whether or  
25 not these habitats meet the criteria of defined ESHA.

1                   HEARING OFFICER KRAMER: Yeah. I think  
2 there's going to be some briefing on that  
3 point --

4                   MR. CARROLL: Yeah.

5                   MR. HUNT: Okay.

6                   HEARING OFFICER KRAMER: -- I predict.

7                   MR. CARROLL: And I wasn't -- I agree. I  
8 don't disagree with what you just said. Occasionally  
9 we all, I think, slip into referring to it as an  
10 ESHA, and I just want to make sure the record's  
11 clear, it's not an ESHA. It's been suggested by some  
12 that it could be or should be, but -- and it's  
13 labeled as such on the diagram, which contributes to  
14 that confusion.

15                  MS. ROESSLER: Well, this is in his  
16 supplemental testimony, and that is his conclusion.

17                  Mr. Hunt, with respect to the dune habitat  
18 that Dr. Engel was discussing that runs along that  
19 northern boundary and along the demolition access  
20 road, can you describe, from your personal experience  
21 with this area, what that area and habitat along the  
22 demolition access road and the northeastern portion  
23 of the site looks like, what's the habitat is like?  
24 Is it suitable habitat for any species?

25                  MR. HUNT: Yes. Again, I've never been onsite

1   itself, but just offsite and looking through the  
2   chain-link fence. That area has similar  
3   characteristics to the area further to the west that  
4   Jonna Engel commented on as dune, it should be dune  
5   habitat.

6               MS. ROESSLER: Should be coastal dune --

7               MR. HUNT: Coastal.

8               MS. ROESSLER: -- habitat --

9               MR. HUNT: Yeah, coastal dune.

10              MS. ROESSLER: -- meeting the criteria for  
11   ESHA?

12              MR. HUNT: Of ESHA, yes.

13              MS. ROESSLER: Thank you. Can I -- sorry,  
14   quick question. Can we now turn to look at Figure 16  
15   and 17 in the FSA that shows the two onsite  
16   alternative locations?

17              This is in the -- yes. Thank you.

18              HEARING OFFICER KRAMER: Okay. Now I'm in the  
19   documents that you gave me, so --

20              MS. ROESSLER: I think it's the third or  
21   fourth. It should be the next one after this. Yeah.  
22   Thank you.

23              HEARING OFFICER KRAMER: Are we going to show  
24   them one at a time?

25              MS. ROESSLER: Yes, please. First, we're

1 going to discuss Figure 16. There. Thank you.

2           So this also depicts the -- one of the  
3 onsite alternative configurations and the two-acre  
4 wetland in the green; is that correct? I'm talking  
5 about --

6           MR. HUNT: Yes.

7           MS. ROESSLER: -- referring to Figure 16.

8           MR. HUNT: Yes, that's correct.

9           MS. ROESSLER: Does a 100-foot buffer around  
10 the two-acre wetland identified on the three-acre  
11 project site constrain or effect the development  
12 footprint?

13           MR. HUNT: Yes, it does in the following  
14 ways. I should note that this figure, north is up on  
15 this. All the other figures, north was to the left,  
16 so just for orientation.

17           The rectangle to the south of the wetland  
18 would have its northwestern corner encroached upon.  
19 And then curving a 100-foot buffer, again, this is  
20 eyeballing it, up around to the east, it would  
21 encroach into the -- what is labeled a P3 power  
22 block.

23           And then in relation to the dune habitat  
24 that I had considered ESHA, and the CEC considers  
25 ESHA, and extension of that going along the



1 demolition access road, along that northern border,  
2 would encroach significantly into that P3 power  
3 block, probably taking out cumulatively, again, 40  
4 percent, maybe 50 percent of the area.

5 MS. ROESSLER: Thank you.

6 MR. CARROLL: If I may ask a follow-up  
7 question?

8 So when you (indiscernible) -- when you say  
9 "taking out a percent of the area," what do you mean?

10 MR. HUNT: I mean that the 100-foot buffer  
11 would encroach about 40 percent into that area, so  
12 that if the project footprint extended all the way  
13 into it, it would be fully within the 100-foot buffer  
14 around ESHA.

15 MR. CARROLL: So you're not testifying to  
16 what the implications of that would be?

17 MR. HUNT: Only so far as, you know, mapping  
18 its encroachment into a proposed project area.

19 MR. CARROLL: Thank you.

20 MS. ROESSLER: Can we turn to Alternative  
21 Figure 17? The next one. Thank you.

22 So can you describe for us the same -- if  
23 you -- what a 100-foot buffer around the wetland,  
24 would that impede on the project configuration as  
25 displayed here in Alternative 17?

1           MR. HUNT: Yes. It would have the same effect  
2 on the P3 power block. The small northwestern portion  
3 of it would be encroached upon. It looks like a  
4 buffer around that  
5 access -- demolition access road, the dune habitat  
6 there along the north edge would be avoided for the  
7 most part.

8           MS. ROESSLER: And --

9           MR. HUNT: And I can't, well, I can't read  
10 what those blue dots are. What does that say?

11           HEARING OFFICER KRAMER: "Possible Warehouse  
12 Relocation."

13           MR. HUNT: Okay.

14           MS. ROESSLER: I --

15           MR. HUNT: It would encroach into that area  
16 that's called "Possible Warehouse Relocation." And  
17 it looks like it avoids what's depicted as  
18 construction parking.

19           MS. ROESSLER: Thank you. And does  
20 that -- the legless lizard sightings on that northern  
21 boundary, I think you did -- you have testified, I  
22 believe, in your testimony multiple places about  
23 suitable habitat for legless lizard meeting the  
24 definition of ESHA. Would that add an additional  
25 constraint on the northern --

1 MR. HUNT: Yes, it would.

2 MS. ROESSLER: -- border?

3 MR. HUNT: It would significant constrain the

4 -- I can't --

5 MS. ROESSLER: The blue?

6 MR. HUNT: I've forgotten what it says.

7 MS. ROESSLER: I got it. The blue?

8 MR. HUNT: The blue dots, yeah.

9 MS. ROESSLER: The warehouse --

10 MR. HUNT: Yeah.

11 MS. ROESSLER: -- (indiscernible)?

12 MR. HUNT: The warehouse, and go into the

13 construction parking block there too.

14 MS. ROESSLER: And I believe you testified

15 earlier about potential foraging habitat constraints.

16 Would that add another layer of additional

17 constraints on these two project configurations?

18 MR. HUNT: Foraging habitat for?

19 MS. ROESSLER: The Peregrine falcon.

20 MR. HUNT: Yes. I think the entire site is

21 potential foraging habitat for that species.

22 MS. ROESSLER: Thank you. So from looking at

23 these pictures, does it look like there is potential

24 for these two configurations to comply with the

25 Coastal Commission's 100-foot buffer around wetlands

1 and ESHA and potential ESHA?

2 MR. HUNT: Is there potential for it to  
3 comply, yes, by severely --

4 MR. CARROLL: I --

5 MR. HUNT: -- or I should say significantly  
6 reducing the proposed area to avoid that 100-foot  
7 buffer.

8 MR. CARROLL: I just have a question, Dr.  
9 Hunt. I'm getting somewhat confused, because earlier  
10 when I asked you a question about the implications of  
11 MGS Unit 1, first I asked you if you thought it was -  
12 - it could be designated an ESHA. Then I asked you  
13 what the implications of that would be, and you  
14 stated that while you could speak to the criteria for  
15 designating an ESHA and expressing an opinion as to  
16 whether it qualified, that you weren't in a position  
17 to speak to the implications of that. And now we've  
18 had a series of questions where it was somewhat  
19 ambiguous because the response was "would constrain."  
20 I wasn't sure what constrain meant.

21 But in the last question you seemed to  
22 pretty clearly state that you didn't -- well, you  
23 have -- you expressed an opinion as to whether or not  
24 the alternative project could be constructed there in  
25 compliance with applicable requirements.

1           So I'm confused about the extent to which  
2   you are or are not expressing opinions regarding the  
3   implications of these areas being designated an ESHA  
4   as opposed to opinions as to whether or not they  
5   qualify as ESHA.

6           MR. HUNT: Sure.

7           MS. ROESSLER: Sorry. I would say, objection  
8   on a lot of statements in there. But I believe it  
9   mischaracterizes the previous objections and  
10   statements by Mr. Hunt and myself. He's testifying as  
11   just to the boundary of a 100-foot ESHA and what that  
12   looks like on the alternative maps. He's not  
13   testifying open-endedly on -- I'm not even sure what  
14   "implications" meant in the context you used it. So  
15   he's looking at maps and he's looking at a 100-foot  
16   buffer area around those ESHA areas. That's different  
17   than the question that you had asked before.

18          MR. HUNT: Your previous question, I was  
19   assuming you were talking about demolition of sites 1  
20   and 2.

21          MR. CARROLL: I was.

22          MR. HUNT: Okay.

23          MR. CARROLL: I was. And you indicated that  
24   you are not in a position to express an opinion about  
25   that. However, it seems that you are routinely

1 expressing opinions about the ability to construct  
2 either the project or the analyzed alternatives to  
3 the project.

4 MS. FOLK: I think you're mischaracterizing  
5 his testimony. What he's testifying to is the  
6 location of the 100-foot buffer and how that relates  
7 to the ESHA-qualifying habitat.

8 MR. CARROLL: Well, he's going beyond that  
9 occasionally, but --

10 HEARING OFFICER KRAMER: So is that a  
11 question at this point, or an observation?

12 MR. CARROLL: It was -- the last statement  
13 was an observation. I withdraw the last statement. It  
14 was a question as to the scope of the testimony. I  
15 understand the explanation of counsel. I'm not sure  
16 that it always squares with what I'm hearing from the  
17 witness, but I appreciate the attempt to provide an  
18 explanation.

19 (Colloquy)

20 MS. ROESSLER: I think that finishes my  
21 question, Mr. Hunt.

22 I don't know if you had any follow-up  
23 questions?

24 MS. CHESTER: I have a couple of follow-up  
25 questions for my staff.

1 HEARING OFFICER KRAMER: Go ahead.

2 MS. CHESTER: Ms. Carol, is it correct that  
3 the 100-foot buffer is required by the Oxnard Local  
4 Coastal Plan?

5 MS. WATSON: Yes. I believe that's LCP Policy  
6 6.

7 MS. CHESTER: And is it also correct that the  
8 buffer may be reduced to a minimum of 50 feet?

9 MS. WATSON: That is also correct, based on,  
10 I believe, that the applicant would have to turn in a  
11 Biological Survey Report to the Coastal Commission.  
12 And then there's a minimum buffer distance.

13 MS. FOLK: The City of Oxnard is the first  
14 agency to apply. It's LCP, not the Coastal  
15 Commission.

16 HEARING OFFICER KRAMER: Okay. Well, but the  
17 Energy Commission is stepping into the shoes of both  
18 of those, so --

19 MS. FOLK: It's still a question for  
20 interpretation for the City of Oxnard.

21 HEARING OFFICER KRAMER: Okay. Okay.  
22 Anything else?

23 MS. CHESTER: Yes.

24 Have you reviewed onsite reconfiguration two  
25 as shown in the FSA Alternatives Figure 17?

1 MS. WATSON: Yes. Staff compared that against  
2 Mr. Hunt's proposed new ESHA boundary to the north,  
3 the figure that we were just looking at with the  
4 white line on it.

5 MS. CHESTER: And is it your opinion that the  
6 onsite reconfiguration is still possible, even with  
7 this buffer applied?

8 MS. WATSON: With the new ESHA buffer just to  
9 the north and the west, not -- I think just a moment  
10 ago Mr. Hunt was speaking to an ESHA buffer around  
11 the entire site as a parcel, as a wetland. But just  
12 considering, based off of his one figure, the new  
13 ESHA buffer to the north and to the west, that would  
14 not conflict with reconfigured Project Site 2.

15 MS. CHESTER: Thank you.

16 MS. ROESSLER: Sorry.

17 Could clarify that? Are you talking about a  
18 buffer around the wetland or --

19 MS. WATSON: No, just -- we could pull up his  
20 figure. I could give you the number.

21 MS. CHESTER: This is again in reference to  
22 the figure on page 15 of Mr. Hunt's closing  
23 testimony.

24 MS. WATSON: Yes.

25 MS. FOLK: Is that this one?



1 MS. CHESTER: No.

2 MS. FOLK: Can we pull that up?

3 HEARING OFFICER KRAMER: Where is it?

4 MS. WATSON: That's the correct figure. So  
5 that would not interfere with -- as what we can tell,  
6 that would not interfere with site Reconfiguration  
7 Number 2.

8 And what is that conclusion based on? Did  
9 you measure or are you looking -- are you just  
10 looking at the diagram or --

11 MS. WATSON: Looking at the diagram, we also  
12 had our cartography department do some very quick  
13 preliminary sketches, but mainly just eyeballing it.

14 MS. FOLK: They're eyeballing it.

15 HEARING OFFICER KRAMER: So then you were  
16 using 50 feet as opposed to 100-foot setback?

17 MS. WATSON: We used 100-foot.

18 HEARING OFFICER KRAMER: You used 100?

19 MS. WATSON: Yes.

20 HEARING OFFICER KRAMER: Okay.

21 MS. WATSON: The LCP designation or the LCP  
22 Policy 6 for the 100-foot buffer applies to new  
23 developments. And so the portions of the site in  
24 Reconfigured Alternative 2, which would come close to  
25 that, is a construction and laydown area which is

1 already developed and paved.

2 MS. FOLK: Have you consulted with the City  
3 of Oxnard about whether or not they consider this  
4 project to be new development?

5 MS. CHESTER: I would object to that. It's is  
6 the Energy Commission's --

7 MS. FOLK: They're opining as to --

8 MS. CHESTER: -- authority in this instance  
9 to apply the rules. There was -- this information was  
10 filed. Our staff looked into it. This is their  
11 response.

12 MS. FOLK: Yes. And I'm asking whether or not  
13 you have consulted with the City of Oxnard regarding  
14 its interpretation of whether this project  
15 constitutes new development because you have to --  
16 you're interpreting the city's ordinance. And if  
17 you're making a finding of consistency, then the  
18 city's interpretation of its ordinance matters.

19 MS. CHESTER: The Energy Commission would  
20 make the finding. My witness is not making a finding.

21 HEARING OFFICER KRAMER: Okay. Well,  
22 overruled.

23 It's a simply question about whether the  
24 question was asked of the city?

25 MS. WATSON: I did not coordinate with the  
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1 city, no.

2 MR. CARROLL: And I'm going to object to any  
3 further questioning along this line of this panel.  
4 Because, in my view, these are legal questions. In my  
5 view there is no 100-foot buffer in the LCP. There is  
6 a 100-foot resource protection area buffer which is  
7 not necessarily synonymous. So we are into an area  
8 that I believe needs to be handled in briefs and not  
9 through testimony from biological resource experts.

10 MS. ROESSLER: I believe the 100-foot buffer  
11 is actually in the Commission's 30413(d) Report. It's  
12 just -- it's a recommendation that the Commission  
13 made.

14 MR. CARROLL: It is a recommendation. That's  
15 not what we were just talking about. What we were  
16 talking about is a policy in the LCP. And there is no  
17 policy in the approved Local Coastal Plan that there  
18 be a 100-foot buffer around ESHA. There is a policy  
19 related to mapped resource protection areas --

20 MS. ROESSLER: Now you are getting  
21 into --

22 MR. CARROLL: -- of which --

23 MS. ROESSLER: -- (indiscernible).

24 MR. CARROLL: -- of which the project is site  
25 is not. Well, that's my point.

1 MS. ROESSLER: Okay. I don't --

2 MR. CARROLL: That's why I'm objecting to  
3 this line of questioning for this panel. They're  
4 legal issues that I think need to be addressed in the  
5 briefs.

6 HEARING OFFICER KRAMER: Okay. Well, we'll  
7 address those objections when we hear a new question.

8 MS. ROESSLER: I do have a question. How does  
9 Reconfiguration 2 in Figure 17, and this is for Ms.  
10 Watson, if you put a 100-foot buffer around that  
11 wetland --

12 HEARING OFFICER KRAMER: Project.

13 MS. ROESSLER: Sorry. If there's a 100-foot  
14 buffer around the wetland in Reconfiguration Number  
15 2, does that not impede on the project alternative as  
16 depicted in Figure 17?

17 MS. WATSON: That would. What I had been  
18 referring to earlier when I said it would not impede,  
19 it was to Mr. Hunt's line -- or, yes, to that line  
20 right there on page 15 of that Figure Number 1.

21 MS. ROESSLER: Okay.

22 MS. WATSON: If you drew 100-foot line or a  
23 100-foot buffer around the entire project site or  
24 around that 2.03 acres of the project site considered  
25 to be a wetland, then I believe it looks like it

1 would encroach into an area which is marked  
2 "Construction Laydown and Storage."

3 MS. ROESSLER: And it looks like it  
4 encroaches on the possible warehouse location, as  
5 well; is that correct? That's the blue dot on Figure  
6 17.

7 MS. WATSON: Yes, it would encroach there to  
8 the northeast of the proposed project site.

9 MS. ROESSLER: Thank you. I just wanted to  
10 clarify.

11 HEARING OFFICER KRAMER: Okay. And that was a  
12 reference to Alternative's Figure 17 from the Final  
13 Staff Assessment?

14 MS. ROESSLER: Yes. I don't have any further  
15 questions.

16 HEARING OFFICER KRAMER: Okay. Anyone else?  
17 Okay.

18 Well, let the Committee take -- we'll give  
19 you a breather. We have a couple, the first of which  
20 is the new revised condition of Bio-10 that's in the  
21 supplemental staff testimony. The way we read it, and  
22 I'm talking about subpart 8 which is talking about  
23 the translocation plans for beetles and the legless  
24 lizard, specifically the silvery one. It implies, but  
25 it does not explicitly say that when beetles or

1 lizards are encountered, they should  
2 be translocated.

3 Are we correct in assuming that was the  
4 intent of the condition, that they be translocated  
5 when they're found during the pre-construction  
6 survey?

7 MS. WATSON: Yes, sir, that is the intent. If  
8 you look at Bio-10, part two, and the second sentence  
9 of that says,

10 "If special status species are found onsite or  
11 within 500 feet of the site, all individuals of  
12 these species shall be avoided or relocated per  
13 Bio-10 8(a) and 8(b) (phonetic)."

14 So the intent is that all legless lizard and  
15 all Globose dune beetles would be relocated, or  
16 translocated --

17 HEARING OFFICER KRAMER: So where is that?

18 MS. WATSON: -- I should say. That's in  
19 Condition Bio-10, number 2.

20 HEARING OFFICER KRAMER: Okay. I don't have a  
21 2. I have A and B.

22 MS. CHESTER: She is referring to page ten of  
23 her testimony where, at the top of the page, it  
24 begins with conclusions. It then lists Bio-10. There  
25 is one small area of --

1 HEARING OFFICER KRAMER: Oh, I see.

2 MS. CHESTER: -- bolded underline.

3 HEARING OFFICER KRAMER: Okay. Oh, okay. We  
4 might have missed that part. Okay. And then to be  
5 clear, you believe that translocation will mitigate  
6 any impacts to the species?

7 MS. WATSON: I'm sorry, what was the  
8 question?

9 HEARING OFFICER KRAMER: You believe that the  
10 avoidance or translocation will mitigate any  
11 potential impacts to those species?

12 MS. WATSON: Yes, sir.

13 HEARING OFFICER KRAMER: Okay. Earlier today  
14 you alluded to Condition Bio-9 containing provisions  
15 for -- or providing a mechanism to mitigate the loss  
16 of foraging habitat, if that were found to be  
17 affected by the project.

18 MS. WATSON: Bio-9 requires mitigation for  
19 2.03 acres of wetland at, I believe, a four-to-one  
20 ratio.

21 HEARING OFFICER KRAMER: Okay. But -- so then  
22 you're presuming that any foraging habitat would be  
23 considered a wetland for --

24 MS. WATSON: Not necessarily. Foraging  
25 habitat could comprise or be comprised of upland

1 habitat, as well.

2 HEARING OFFICER KRAMER: Okay. So I guess  
3 what I'm thinking is this only refers to wetlands. So  
4 is it a complete solution to the potential issue of  
5 finding a loss of foraging habitat that's not a  
6 wetland, or does the condition need to be expanded to  
7 describe that? Because you also said it would be  
8 two-to-one, not the four-to-one that's --

9 MS. WATSON: I believe it -- I think I  
10 misspoke. It's definitely four-to-one.

11 HEARING OFFICER KRAMER: Okay. So do you  
12 think the condition needs a little bit of TLC to make  
13 it clear that it also applies to foraging habitat?

14 MS. WATSON: I believe that impacts to  
15 foraging raptors would be avoided. And so I'm not  
16 sure that I would agree that that condition needs to  
17 be tweaked.

18 HEARING OFFICER KRAMER: Okay. Although  
19 earlier you said that there was, you know, there was  
20 a program in place in the conditions to replace it.  
21 So --

22 MS. WATSON: The intent of the condition as  
23 originally written is to mitigate for the loss of the  
24 specific wetlands. But it does have some peripheral  
25 benefits.



1 HEARING OFFICER KRAMER: It has some what  
2 again? I'm sorry.

3 MS. WATSON: Additional benefits, as well.

4 HEARING OFFICER KRAMER: Okay. If we were to  
5 expand this to include foraging habitat, would that  
6 cause you any concern?

7 MS. WATSON: No.

8 HEARING OFFICER KRAMER: Okay.

9 MR. HUNT: May I ask a question of Ms.  
10 Watson?

11 HEARING OFFICER KRAMER: Sure.

12 MR. HUNT: Why does Condition Bio-10 only  
13 refer to the outfall removal impacts when we know  
14 that there's -- legless lizard have a high potential  
15 of occurring elsewhere in the project area?

16 MS. WATSON: I believe it also discusses the  
17 access road, and includes a buffer area of 500 feet  
18 around the structures.

19 MR. HUNT: So it's not just the outfall that  
20 these procedures would be applicable to, anywhere  
21 that dune beetle or legless lizard habitat occurs?

22 MS. WATSON: Oh, I see what you're saying. As  
23 written, it's applicable to the project buffer, the  
24 access road and the outfall structure.

25 HEARING OFFICER KRAMER: But not the project,

1 the three-acre project site itself?

2 MS. WATSON: That's not explicitly stated,  
3 no.

4 HEARING OFFICER KRAMER: I think he's asking  
5 --

6 MR. HUNT: You know --

7 HEARING OFFICER KRAMER: -- should it be  
8 included?

9 MR. HUNT: -- what if animals are found  
10 elsewhere, what do you do then?

11 MS. WATSON: I think there is ample  
12 opportunity since there would be a designated  
13 biologist onsite. And all sightings of special status  
14 species are supposed to be reported back to the  
15 Commission. So I think if beetles were actually found  
16 onsite, that would be reported to us and there would  
17 be an opportunity to make an update, if that was  
18 necessary.

19 HEARING OFFICER KRAMER: Well, they were  
20 found in the project construction area. Do you  
21 anticipate that your solution to that would be  
22 anything other than translocation?

23 MS. WATSON: No, sir.

24 HEARING OFFICER KRAMER: So would it be just  
25 as good to just put that into the list of locations

1 to which Bio-10 applies?

2 MS. WATSON: That would work. That would be a  
3 very conservative way to address the beetle.

4 HEARING OFFICER KRAMER: Does that answer  
5 your question, Mr. Hunt?

6 MR. HUNT: Yes, it does. Thank you.

7 HEARING OFFICER KRAMER: Thank you.

8 I don't want to go over all the various  
9 criticisms that have been stated by the intervenors  
10 about the staff's analysis, and then also the  
11 Biological Survey. And I believe that I've heard  
12 responses to most, if not all, of them over the  
13 course of today's -- this afternoon's testimony. But  
14 I want to give the applicant and staff, and then  
15 others can comment, as well, an opportunity if they  
16 feel that they have not addressed one of the  
17 criticisms at all, or to the extent that they would  
18 like to, to do so now.

19

20 MR. PARR: This is Ivan Parr. I will respond  
21 to one of the criticisms.

22 In regards to Mr. Hunt's criticism of the  
23 dune beetle surveys, I just wanted to emphasize that  
24 there are not very many surveys of this type  
25 conducted, and that there is no designated protocol

1 for the dune beetle. So I feel that our surveys were  
2 strong in that we used coverboards, raking, transects  
3 and pitfall traps, and that our identification  
4 methods were sound in that we took the time to take  
5 the beetle and look at it and photograph it, and that  
6 to have done an exhaustive identification of every  
7 beetle encountered would defeat the purpose of the  
8 surveys as that would be a census, not a survey.

9 MR. HUNT: May I respond --

10 HEARING OFFICER KRAMER: Anybody else?

11 MR. HUNT: -- to that?

12 HEARING OFFICER KRAMER: Yes. Go ahead.

13 MR. HUNT: Sure. There's no standard protocol  
14 for surveying dune beetles. But there are protocols  
15 for conducting ecological studies, including  
16 presence/absence surveys. And one of those is the  
17 assumption of equal sampling effort. I don't feel  
18 that equal sampling effort was done in the project  
19 area versus, quote unquote, what they deemed as  
20 suitable habitat.

21 Moreover, identifying every individual  
22 species is just basic protocol. It's not a census.  
23 That's -- you know, you can go ahead and count them  
24 up when you're all done, but what you're trying to do  
25 is identify every individual to a specific species.

1 That's the standard practice.

2 MS. CHESTER: Staff doesn't have any further  
3 comments.

4 HEARING OFFICER KRAMER: Okay. Anything else  
5 from the panel?

6

7 MR. HUNT: I would only add that there were  
8 some suggestions made over the course of the day,  
9 particularly related to the geographic scope of the  
10 surveys and some criticism that the scope had changed  
11 over time, and that was uncommon. I would simply say  
12 it's also uncommon to undertake a second round of  
13 surveys as comprehensive as these were. And in  
14 applicant's view, was that it tried to accommodate to  
15 and, admittedly, did not accommodate every request from  
16 the intervenor's and the agencies, but tried to  
17 accommodate every request in terms of expanding the  
18 geographic scope, adding all the additional species  
19 that were requested by the intervenor.

20 So I think notwithstanding the criticisms that were  
21 leveled at it today, given the nature of this survey  
22 and it being in addition to all of the traditional  
23 survey work that would come with every other project,  
24 it is certainly not the spirit of the March and the  
25 letter of the March 10th order.

1           MR. PIANTKA: George Piantka with the  
2   applicant. And also what I've heard in the latter part  
3   here, we're talking about the translocation plans, the  
4   Bio-10 and, from what I understand, there was some  
5   reference to TLC and some potential revisiting of the  
6   plan or at least those proposed conditions by staff.  
7   And so that will be, you know, a good reason for us to  
8   look at it further.

9           I know there is a process PMPD will have  
10   presumably with this type of language, but I would say  
11   we'd reserve time to look at this condition more  
12   clearly. And the way it's written, it's pertaining to  
13   the outfall activities, and that's what we anticipated  
14   and the translocation associated with beetles as well  
15   as what we've heard and the reason why the legless  
16   lizard was added to it. But we will need to take a good  
17   time to review that more closely. So if there is  
18   anything additional that gets added we'll, again, look,  
19   review, and response.

20           HEARING OFFICER KRAMER: Okay. And I think that  
21   might be -- the briefs may be a good place for that, to  
22   propose new language.

23           MS. ROESSLER: I have one last comment to make  
24   too, if I may be permitted.

25           HEARING OFFICER KRAMER: Go ahead.

1 MS. ROESSLER: I noted that the March 10 orders  
2 very clearly say, and I can say in quotes: Applicant  
3 shall provide results from one or more focused  
4 biological surveys of the proposed project area -- I'm  
5 sorry -- proposed project site. Nowhere did it ask  
6 applicant to determine based on what they decided in  
7 the order, that there was some smaller subarea of the  
8 proposed project site. And it's in intervenor's view  
9 that they did not comply with this order on many  
10 things, but particularly with just singularly and  
11 unilaterally deciding to survey a smaller subset, a  
12 significantly smaller subset of the proposed project  
13 site.

14 HEARING OFFICER KRAMER: Okay. We understand  
15 that's your position.

16 Lisa Belenky, are you there? I may have to  
17 unmute there.

18 MS. BELENKY: Yes. I'm here.

19 HEARING OFFICER KRAMER: Okay, please speak way  
20 up, but do you have anything? We're about to close out  
21 this topic, so do you have anything for us?

22 MS. BELENKY: I do not have any additional  
23 questions today. Thank you.

24 HEARING OFFICER KRAMER: Okay. Thank you.

1           Okay, stick around because we're going to talk  
2 about briefing in a couple moments and then we --

3           MS. BELENKY: Oh, yeah.

4           HEARING OFFICER KRAMER: -- we also have  
5 exhibits, although you did not propose any.

6           Okay, so with that I think we can close this  
7 topic. Thank the panel.

8           And our next issues are housekeeping. And  
9 first would be exhibits. Unfortunately, because of the  
10 wifi situation in the room, most of you probably cannot  
11 find yourself the current copy of the exhibit list. So  
12 what I propose today to do is to do the best we can,  
13 recognizing that we may have to just check our work and  
14 when we come back to the hearing in September and see  
15 if we've got everything right.

16           What I've put up on the screen is a download  
17 of the exhibit list from earlier this afternoon after I  
18 had -- can we have the screen back -- after I had one  
19 of my colleagues make a couple of entries in the  
20 database to assign exhibit numbers. Again, something I  
21 would normally do myself but because of the access  
22 issue, I didn't have high hopes that that was going to  
23 go real well, so I phoned it in.

24           So the first of the exhibits that are offered  
25 or, rather, have been identified, and we need to then



1 rule about whether they will be accepted into evidence,  
2 are from the applicant. It doesn't look like I can fit  
3 them all on the page, but they start at 1141.

4 Let me ask: Is anybody objecting to any of the  
5 applicant's exhibits? If so, or thinking about it,  
6 what we can do is pause for a moment and look at the  
7 different parts of the list on the screen and then you  
8 can tell us which ones are of concern to you or are the  
9 applicant's exhibits all acceptable to the parties?

10 They end with the declaration of Mr. Mineart,  
11 in response to Dr. Revell's testimony, and they begin  
12 with the Applicant's Biological Resources Survey  
13 Methodology that was a part of the lead-up to the  
14 survey.

15 MS. FOLK: Is it just those five?

16 HEARING OFFICER KRAMER: No, it's --

17 MR. CARROLL: No.

18 HEARING OFFICER KRAMER: -- 1141 to...

19 MR. CARROLL: 1150.

20 HEARING OFFICER KRAMER: I could zoom out, and  
21 then you wouldn't be able to read it, though.

22 MS. FOLK: No. Actually -- I actually don't  
23 need that.

24 MR. CARROLL: That is consistent with my list.

25 MS. CHESTER: Staff has no objections.

1 MS. FOLK: Sorry. Sorry. It's hard for me to...

2 HEARING OFFICER KRAMER: Is the one on the

3 floor any better?

4 MS. [SPEAKER]: Prehearing conference table,

5 they're on the...

6 MS. FOLK: Yeah, I have those actually.

7 MS. [SPEAKER]: Yeah.

8 MS. FOLK: Yes. So remind me.

9 If this is the same list you had originally,

10 then I don't have any objections.

11 MR. CARROLL: Yes. So this list -- I don't want

12 to say identical. It's the same exhibits that were on

13 our exhibit list attached to our prehearing conference.

14 MS. FOLK: I think that's fine.

15 HEARING OFFICER KRAMER: Ms. Belenky, any

16 objections?

17

18 MS. FOLK: Is yours any different than the one

19 you had?

20 MS. BELENKY: [SPEAKER?] added.

21 MS. FOLK: Oh, I'm going to object to that

22 because we don't get to go through them all. You can

23 keep the March ones.

24 HEARING OFFICER KRAMER: Ms. Roessler, are you

25 okay?

1 MS. ROESSLER: I'm sorry. I'm trying to catch  
2 them up right now. If there's nothing new, I don't  
3 think I have any objection.

4 HEARING OFFICER KRAMER: But your --

5 MS. [SPEAKER]: If you could keep it up.

6 MS. ROESSLER: If there's nothing new, I don't  
7 believe we have any objections.

8 HEARING OFFICER KRAMER: Okay. So hearing no  
9 objections, we will let in 1141 to 1150.

10 \* (Exhibits 1141 through 1150 received in evidence.)

11 HEARING OFFICER KRAMER: Next we go down to  
12 staff. And...

13 MS. CHESTER: I would note that the Committee  
14 requested that staff include the USGS slides as one of  
15 their exhibits and the next number would be 2030.

16 HEARING OFFICER KRAMER: Already there.

17 MS. FOLK: And what's the TN number?

18 MS. CHESTER: That is TN220369.

19 MS. FOLK: And is that the document that was  
20 docketed on Tuesday night?

21 HEARING OFFICER KRAMER: Yes.

22 MS. FOLK: So I do have an objection in that I  
23 don't object to the March presentation, but we never  
24 finished going through those slides. They let -- we had  
25 a few minutes left with the USGS folks last night and

1 you pointed out there were another 20 slides that they  
2 hadn't gone through --

3 HEARING OFFICER KRAMER: Well, let me ask you  
4 this then. Ms. Hart suggested to me that -- or she  
5 actually wanted to file a new set of those slides which  
6 would be -- what she believes were the slides that were  
7 actually presented at yesterday's hearing, so would you  
8 prefer to -- we can postpone this. We can file and then  
9 we can discuss which set comes in at the next time.

10 MS. FOLK: So she's proposing to file just the  
11 ones that they showed and went through at the --

12 HEARING OFFICER KRAMER: Right.

13 MS. FOLK: -- hearing?

14 HEARING OFFICER KRAMER: I don't know how  
15 accurately we can check her recollection, --

16 MS. FOLK: Check that.

17 HEARING OFFICER KRAMER: -- but...

18 MS. FOLK: What was the difference, was it just  
19 they had a lot more in there?

20 HEARING OFFICER KRAMER: Yeah, I think we quit  
21 at slide -- I want to say -- 28 or so, and it went up  
22 into the sixties --

23 MS. FOLK: It went up to the sixties, so that -  
24 -

25 HEARING OFFICER KRAMER: Yeah.

1 MS. CHESTER: There was a clear break for  
2 questions and then additional slides.

3 HEARING OFFICER KRAMER: So we can also limit  
4 it to -- if you want to say we're letting it in, limit  
5 it to...

6 MS. FOLK: Slide --

7 HEARING OFFICER KRAMER: ...slides 1 through  
8 the last one we saw.

9 MS. FOLK: Yeah. Per the comments, I can't pull  
10 it up right now, so.

11 HEARING OFFICER KRAMER: Okay.

12 MS. FOLK: I mean if we could -- she goes -- I  
13 would prefer to go with what they had up there and stop  
14 at slide 28, or have them redocket those.

15 HEARING OFFICER KRAMER: Okay, subject to  
16 verification that 28 was the last one.

17 MS. FOLK: Okay.

18 HEARING OFFICER KRAMER: Does anybody object to  
19 that?

20 MR. CARROLL: No.

21 HEARING OFFICER KRAMER: Okay, we're hearing  
22 no. Okay, so 2025 through 2029, does anybody object to  
23 those other staff exhibits?

24 At least in the case of 2029, we discussed  
25 those illustrative figures somewhat, so we need them in

1 the record in some way to illustrate the transcript.

2 And the others are much less recent filings.

3 So I'm not hearing any objections to staff's  
4 exhibits?

5 MR. CARROLL: No.

6 HEARING OFFICER KRAMER: Okay. There is one  
7 more I need to bring to your attention and it will take  
8 me a second to get it up on the screen, but Exhibit  
9 2022, which was filed for the February hearings, it was  
10 supporting documents and they may be referenced during  
11 the hearings. But then there was a filing after that.  
12 The TN is 2157720, and let me bring that up on the  
13 screen. And that by its nature was clearly meant to put  
14 something into the Exhibit 2022 package that was  
15 inadvertently omitted, and so when I saw that it  
16 occurred to me that I should bring it to your attention  
17 because you may find it to be important. And it is an  
18 environmental justice map.

19 MS. FOLK: So what is this figure?

20 MS. CHESTER: This figure was referenced by  
21 staff. It includes EnviroScreen 3.0 that was run after  
22 comments from other parties.

23 MS. FOLK: And was it discussed during the  
24 hearing?

25 MS. CHESTER: It was discussed in the hearings.

1 MS. FOLK: Okay.

2 MS. WILLIS: Can we go back to the listing?

3 HEARING OFFICER KRAMER: The exhibit list or --

4 MS. WILLIS: Yeah, just the list. It was -- I  
5 think we're confused. Was it not entered into evidence?

6 HEARING OFFICER KRAMER: No, hold on. Let me  
7 look. No, I'm looking at the docket log on my screen  
8 and the exhibit column is blank, so it was not given an  
9 exhibit number.

10 MS. WILLIS: Well, if there are no objections,  
11 staff would move to include it.

12 HEARING OFFICER KRAMER: Does anyone object?

13 MR. CARROLL: No.

14 HEARING OFFICER KRAMER: Okay, I'm not hearing  
15 any. So that will get the next number which would be  
16 2031, and I'll take care of that when I get back to  
17 internet land.

18 (Exhibit 2031 received in evidence.)

19 HEARING OFFICER KRAMER: Okay, so that's it for  
20 staff's exhibits. Now let's return to the others.

21 MS. FOLK: Can I just make one clarification on  
22 that last exhibit? I'd like to make that subject to  
23 verification that it actually was discussed during the  
24 February hearings, because otherwise then the parties  
25 wouldn't have had a chance to respond to it. And we can

1 do that by, I believe, hopefully reference it to the  
2 transcript.

3 HEARING OFFICER KRAMER: So can I put it on  
4 staff to find that and then --

5 MS. WILLIS: I'm sorry. Can you scroll up to  
6 2022? I'm still confused of where it is on the exhibit  
7 list.

8 HEARING OFFICER KRAMER: Well, the original is  
9 here, but then shortly afterward you --

10 MS. WILLIS: Oh, we revised the original; is  
11 that what happened?

12 HEARING OFFICER KRAMER: Right.

13 MS. WILLIS: Because this was admitted.

14 HEARING OFFICER KRAMER: Yes. This was in  
15 February. And so this one is -- this is 769 and the  
16 other one was 772, so it was filed.

17 MS. CHESTER: This is Michelle for staff. I  
18 have found a reference to the February 8th hearings  
19 where Ms. Worrall discussed that she did review  
20 CalEnviroScreen 3.0 and... I believe it's in here. They  
21 also looked at CalEnviroScreen 3.0 to identify where  
22 there would be any disadvantaged communities.

23 MS. FOLK: I thought this referenced a specific  
24 exhibit.



1           HEARING OFFICER KRAMER: Okay, well, let's flip  
2 in there --

3           MS. FOLK: But it doesn't actually seem to  
4 indicate the exhibit was up.

5           HEARING OFFICER KRAMER: Okay, let's turn to  
6 the City's.

7           MS. FOLK: So, just to clarify, is that then  
8 subject to verification?

9           HEARING OFFICER KRAMER: Okay, on the --

10          MS. WILLIS: I mean our testimony stands. If  
11 this was probably for an illustrative purpose, to  
12 actually show, visually show what was on the screen. I  
13 don't know that we actually have anything that would  
14 have a TN number on it at this point to know which was  
15 shown. It's pretty -- it's been, you know, six months  
16 or more, so.

17          MS. FOLK: But just having a TN number is not  
18 evidence and referring to CalEnviroScreen is in  
19 evidence that it was actually up and used.

20          MS. WILLIS: Well, we do have testimony that we  
21 used CalEnviro -- we have written testimony --

22          MS. FOLK: Well, I understand that --

23          MS. WILLIS: -- that we -- yes.

24          MS. FOLK: Yes, and but this is an actual  
25 diagram with, you know, areas indicated that we don't

1 know if you had that up and were talking about it or  
2 not.

3 MS. WILLIS: Well, we did. We did have at least  
4 one version of that, I don't know if -- I'm not --

5 MS. FOLK: Well, that's -- that's the question.

6 MS. WILLIS: Yes. And we may not be able to  
7 prove anything by a TN number that which one was which.  
8 It was -- I'm not sure. This was news that we're just  
9 getting right now, so we're not able to respond.

10 MS. FOLK: But that's why I was saying me we  
11 should wait and see if we can verify it.

12 MS. CHESTER: I again am reading from the  
13 transcript. This is our witness, Lisa Woorall: Staff  
14 using CalEnviroScreen 2.0 and then also looked at  
15 CalEnviroScreen 3.0 to identify where the there would  
16 be any disadvantaged communities, not just in Oxnard  
17 but, you know, Port Hueneme and within the six-mile  
18 radius. The image on the screen shows the six-mile  
19 radius.

20 MS. FOLK: Is that -- wait, wait, is that in  
21 the transcript that says that?

22 MS. CHESTER: Yes, I am reading from the  
23 transcript on February 8th.

24 MS. FOLK: So it's the image on the screen, so  
25 --

1 MS. CHESTER: This is page 237 out of 368.

2 MS. FOLK: Okay, I'm just saying -- the  
3 transcript does not say the image on the screen shows  
4 the six-mile radius.

5 MS. WILLIS: I don't believe the transcript has  
6 to say the image on the screen, --

7 MS. FOLK: I'm not -- but --

8 MS. WILLIS: In my defense -- their  
9 [unintelligible] has been proposed into the docket.

10 MS. FOLK: Well, we have already got a document  
11 that's in the record that, you know, the --

12 HEARING OFFICER KRAMER: Okay. For now I'll  
13 mark it as identified by staff today and we will  
14 revisit this at our next hearing. How's that?

15 MS. FOLK: We may not need to, just...

16 HEARING OFFICER KRAMER: Well, for now it's  
17 only going to be identified, so we will need to resolve  
18 what happens to it.

19 MS. FOLK: Okay.

20 HEARING OFFICER KRAMER: Okay. For the City.

21 MS. FOLK: Okay. So of course mine are --

22 HEARING OFFICER KRAMER: Okay, so 3060 -- let  
23 me check my notes -- is admitted, at least it survived  
24 its objections.

1 MS. CHESTER: Same has some objections. I would  
2 just comment first that Exhibit 3065 was also submitted  
3 by the intervenors --

4 MS. FOLK: Yeah.

5 MS. CHESTER: -- and is probably better suited  
6 for a number for the environmental intervenors.

7 HEARING OFFICER KRAMER: Yeah, actually I did  
8 that already.

9 MS. CHESTER: Okay.

10 HEARING OFFICER KRAMER: I didn't reproduce my  
11 chart of identification collisions, but I've added it  
12 to that, and that was the only collision this time  
13 around. So because the intervenors docketed it, I gave  
14 it to them -- I'm sorry -- the Environmental Coalition,  
15 the other -- one of the other intervenors. And we'll  
16 get to that in a minute.

17 Okay, so 360 through 364 are on the table, and  
18 then 366 to -- 3066, rather, to 3072 with the exception  
19 that we've already excluded 3069 on the motion --

20 MS. CHESTER: Can you -- can you describe what  
21 was added so that now there's 3072.

22 MS. FOLK: It was Dave Revell's.

23 MS. CHESTER: Oh, the additional, okay.

24 MS. FOLK: Right.

25 MR. CARROLL: So 3- -- I'm sorry, go ahead.

1 MS. FOLK: So I was also going -- wanted to  
2 identify Chris Campbell's presentation yesterday, which  
3 was TN220361, as Exhibit 3073.

4 HEARING OFFICER KRAMER: Okay, give me the TN  
5 again.

6 MS. FOLK: Yeah. 220361.

7 HEARING OFFICER KRAMER: So 307 -- excuse me --  
8 3. Okay. So with the exception of 3065 and 3069, are  
9 there any objections to admitting 3060 to 3073?

10 MS. CHESTER: Yes, staff has two objections.

11 HEARING OFFICER KRAMER: Okay.

12 MS. CHESTER: Staff would object to the  
13 inclusion of Exhibit 3067 which was the closing  
14 supplemental testimony of James H. Caldwell. He was not  
15 able to speak to his testimony within the scope of the  
16 Committee's order. It has no relevance to the  
17 evidentiary record.

18 MS. FOLK: So Mr. Caldwell's -- first of all,  
19 his testimony was limited and he provided oral  
20 testimony as to specific statements that appear in that  
21 testimony regarding the technology. And I think the  
22 Committee has already ruled as to the scope of what  
23 would be admitted, but the written testimony  
24 specifically addresses the ability to retrofit the  
25 LM100 and LMS6000 -- I know it's flipped --

1 MS. CHESTER: And staff would object --

2 MS. FOLK: -- with --

3 MS. CHESTER: Oh, excuse me.

4 MS. FOLK: -- with a clutch and synchronous  
5 condenser and the EGT technology, so --

6 MS. CHESTER: Staff would object on the grounds  
7 that we did not hear testimony to that effect.

8 MS. FOLK: Well, that's absolutely what he  
9 testified to. I got my five minutes, I asked him, and  
10 that's what he testified to.

11 HEARING OFFICER KRAMER: Yeah. And we indicated  
12 that we did not feel that we could base our  
13 environmental analysis on assumptions that the turbine  
14 would not be burning gas when it was operating, so  
15 we'll let it in for the limited purpose that we  
16 described yesterday.

17 (Exhibit 3067 with limitation received in  
18 evidence.)

19 MR. CARROLL: So -- I'm sorry. So, just to be  
20 clear, so that would be -- by that you mean subject to  
21 your ruling on the motion to strike filed by the City?

22 MS. FOLK: No, brought by the staff.

23 MS. CHESTER: Staff.

24 MR. CARROLL: I'm sorry.

25 HEARING OFFICER KRAMER: Staff.

1 MR. CARROLL: By the staff. My apologies.

2 HEARING OFFICER KRAMER: Which we ruled on  
3 yesterday, by my notes, --

4 MR. CARROLL: Yes.

5 HEARING OFFICER KRAMER: -- yeah. Yeah. And the  
6 other thing the exhibit list will have when we're done  
7 is it will have another cover sheet besides the  
8 collision issue. That will -- because we can't do it in  
9 the body of the exhibit list that's generated by our  
10 system, it will explain for exhibits that have an  
11 asterisk, if you will, what the asterisk means. And in  
12 this case it will offer that explanation.

13 MR. CARROLL: And then I have another asterisk  
14 which would be Exhibits 3063, 3064, and then 3073.  
15 These are Mr. Campbell's exhibits, that those would  
16 also be admitted subject to the Committee's ruling on  
17 the motion to strike those exhibits --

18 MS. FOLK: That's fine.

19 MR. CARROLL: -- or as limited by the  
20 Committee's ruling on the motion.

21 HEARING OFFICER KRAMER: And that's a new  
22 motion, isn't it?

23 MR. CARROLL: No, that was a --

24 MS. FOLK: No, it was yesterday's.

1 HEARING OFFICER KRAMER: Okay, that was -- I  
2 didn't have the exhibit numbers written down, but --

3 MR. CARROLL: No, that --

4 MS. FOLK: They were admitted to the extent  
5 they went to the CoSMoS model, and I think the  
6 Committee is able --

7 MR. CARROLL: Yeah, I would --

8 MS. FOLK: -- to make that interpretation.

9 HEARING OFFICER KRAMER: Enter -- oh, --

10 MR. CARROLL: I mean the ruling is in the  
11 transcript, so I would just say that they be admitted  
12 to the extent or consistent with the committee's ruling  
13 on the motion to strike, --

14 MS. FOLK: Well, --

15 MR. CARROLL: -- that that motion was filed on  
16 -- that was in the first round of motions.

17 HEARING OFFICER KRAMER: Okay.

18 MS. FOLK: You have --

19 HEARING OFFICER KRAMER: So the numbers again?

20 MR. CARROLL: It's 3063, 3064, and 3073.

21 MS. FOLK: Yeah, I just want to make clear,  
22 though. They were -- the documents are admitted, but I  
23 think their use was related to the Coastal CoSMoS  
24 issues.

25 MR. CARROLL: Well, I --



1 MS. FOLK: But the transcript will speak --

2 MR. CARROLL: Yeah, I think we're --

3 MS. FOLK: -- for itself.

4 MR. CARROLL: -- saying the same thing, they're  
5 admitted but for limited purposes.

6 HEARING OFFICER KRAMER: Okay.

7 MR. CARROLL: I know you probably won't respect  
8 that when it comes time to brief, --

9 MS. FOLK: Oh, no, no.

10 MR. CARROLL: -- but that's what we're going to  
11 argue.

12 And then, finally, this is just a loose end.  
13 We also had a motion pending on 3071, and unless this  
14 is another one that I forgot, I think we were going to  
15 come back to it when we got to the Coastal discussion  
16 and we never did, but we withdraw the motion to the  
17 extent it's still pending, so.

18 MS. CHESTER: Staff would object to the  
19 admission of Exhibit 3071.

20 HEARING OFFICER KRAMER: Okay, and this was the  
21 website that was never really -- never really received  
22 a context, if you will.

23 MS. CHESTER: Correct. It is also a USGS  
24 website that was not sponsored in testimony by the  
25 City.

1 MR. CARROLL: Is it --

2 MS. FOLK: The City submitted it and designated  
3 as an expert, but we're allowed to go on, you know,  
4 download from the USGS website.

5 MR. CARROLL: Am I --

6 MS. CHESTER: USGS did not sponsor the  
7 admission of this information --

8 MS. FOLK: They don't have to sponsor the  
9 admission of it. We did.

10 MS. CHESTER: There is no foundation. I'm just  
11 getting to the fact that it's submitted with no  
12 context.

13 MS. FOLK: That's fine. I don't care that much,  
14 but I...

15 HEARING OFFICER KRAMER: Yeah, we have no idea  
16 what it means.

17 MS. FOLK: Well, it's download from Our Coast,  
18 Our Future. It has on the front page -- well, actually  
19 the disclaimer right there is --

20 MR. CARROLL: Was that --

21 MS. FOLK: -- kind of important.

22 MR. CARROLL: Was the intent of this exhibit to  
23 get the disclaimer into the record?

24 MS. FOLK: Well, it's the disclaimer and then  
25 the first page is actually the -- you can just see, if

1 you look, on the first page it tells you what it is.  
2 It's the 20-year flooding scenario -- not that one --  
3 20-year, no sea level rise. That's -- that's what it  
4 is.

5 MS. CHESTER: Well, I don't know --

6 MS. FOLK: It says it shows it right there --

7 MS. CHESTER: -- that this is the appropriate  
8 time to now define the exhibit and the context.

9 MS. FOLK: I'm just -- I'm just looking at the  
10 exhibit on its face. It shows it right there.

11 HEARING OFFICER KRAMER: Shows what?

12 MS. FOLK: That it's the 20-year flood storm  
13 frequency and no sea level rise scenario, and that's  
14 what CoSMoS predicts for flooding.

15 But, honestly, the disclaimer is also  
16 important. I mean that's actually probably more  
17 important. I don't think CoSMoS would disagree that  
18 that's what it says, that it's not meant for site-  
19 specific analysis.

20 MS. WILLIS: Mr. Kramer, there was no testimony  
21 on this exhibit, so we would really strenuously object  
22 to this going into the record.

23 HEARING OFFICER KRAMER: Yeah.

24 MS. FOLK: Actually Dr. Revell testified to it  
25 in his testimony.

1           HEARING OFFICER KRAMER: So is your real point  
2 the disclaimer?

3           MS. FOLK: No, it's both. Dr. Revell did  
4 testify as to the 20-year flood extent shown by the  
5 USGS. That's what's in this exhibit.

6           MS. CHESTER: No questions were directed to  
7 USGS as to the content of this.

8           MS. FOLK: Well, the USGS was here. If you  
9 wanted to ask some questions about it, you could have.

10          MS. CHESTER: No, it was not ours --

11          MS. FOLK: There is no obligation for us to do  
12 that.

13          MS. CHESTER: -- to authenticate.

14          MS. WILLIS: Mr. Kramer, we don't have a hard  
15 copy and we can't read it from here. We can't read the  
16 little, tiny type or the big blurry type.

17          HEARING OFFICER KRAMER: Okay, we're going to  
18 exclude it. So that's 3071 out.

19          3063, 3064, and 3073, limited purpose.

20          3060 to 3062, any objections? Let me bring  
21 them back. Any objections to those?

22          MS. CHESTER: None from staff.

23          MR. CARROLL: No.

24          HEARING OFFICER KRAMER: Okay, hearing none, --  
25 we will get the tab bigger, there we go. So that...

1 (Exhibits 3060 through 3062 received in evidence.)

2 HEARING OFFICER KRAMER: Okay, so 3066, the  
3 video, and through 3070 -- wait, 3069 is out. So 3066  
4 through 3068, any objections?

5 MS. FOLK: We already did that.

6 HEARING OFFICER KRAMER: 3070, Mr. Campbell's  
7 résumé; any objections?

8 MS. CHESTER: It's out.

9 HEARING OFFICER KRAMER: 307...

10 MS. FOLK: '2.

11 HEARING OFFICER KRAMER: ...2 is the last one -  
12 - oh, no, sorry. There's --

13 MS. FOLK: To '73.

14 HEARING OFFICER KRAMER: Yeah, 3073 is --  
15 remind us again what that was?

16 MR. CARROLL: Mr. Campbell's PowerPoint.

17 MS. FOLK: That's Chris Campbell.

18 HEARING OFFICER KRAMER: Okay, so 307- --

19 MS. FOLK: That was his presentation, yes.

20 HEARING OFFICER KRAMER: Okay, so 3072 and  
21 3073, any objections?

22 MR. CARROLL: Well, 3073, just as we previously  
23 discussed, subject to your ruling on the --

24 MS. WILLIS: Could you all speak into the mics?

1           MR. CARROLL: I'm sorry. So all of the Campbell  
2 exhibits, the technical memorandum, the supporting  
3 diagrams, and the PowerPoint, not his résumé  
4 necessarily, but 3063, 3064, and 3073 would all -- we  
5 have no objection subject to the ruling on the motion  
6 to strike.

7           HEARING OFFICER KRAMER: Okay, they're in for  
8 the limited purpose.

9           (Exhibits 3063, 3064, and 3073 received in  
10 evidence.)

11          MS. FOLK: So can I just make sure we're all on  
12 the same page? It's 3060 to 3064, 3066 to 3068, 3070,  
13 and then 3072 to 3073?

14          HEARING OFFICER KRAMER: Well, also it's 3063  
15 and 3064 for the limited purpose.

16          MS. FOLK: Well, yes, subject to that.

17          MS. CHESTER: As well as 3067.

18          MS. FOLK: 3067, well, all subject to the  
19 rulings on the motion to strike.

20          HEARING OFFICER KRAMER: Okay, 3067 is --

21          MS. CHESTER: Is Campbell's testimony --

22          MS. FOLK: Testimony -- Mr. --

23          MS. CHESTER: Or, excuse me --

24          HEARING OFFICER KRAMER: Caldwell.

25          MS. FOLK: -- Caldwell.

1 MS. CHESTER: -- Mr. Caldwell's testimony which  
2 has also been limited.

3 HEARING OFFICER KRAMER: Okay, okay. So I think  
4 we've got all those.

5 So -- so those that are totally out are 3069,  
6 3071. Limited are 3065, '64, '67, and '73.

7 MS. FOLK: What?

8 MS. CHESTER: No.

9 MS. FOLK: No, no, no. 3063, 3064, and 3067 and  
10 3073 are subject to the rulings on the motions to  
11 strike.

12 HEARING OFFICER KRAMER: In other words, what  
13 the ruling was that they're let in for a limited  
14 purpose.

15 MR. CARROLL: Correct.

16 MS. FOLK: Yeah.

17 MS. CHESTER: Those are two separate motions,  
18 both allowing the testimony in for limited purposes.

19 MS. FOLK: Yeah.

20 HEARING OFFICER KRAMER: Right, okay.

21 MS. FOLK: I just think it's -- yeah, whatever.

22 HEARING OFFICER KRAMER: Yeah. No, I'll have to  
23 sort that out in my overlay sheet.

1           Okay, so and then, let's see, and without many  
2   restrictions are 3060, '61, '62, '66, '67, '68, '70,  
3   '72.

4           (Exhibits 3060, 3061, 3062, 3066, 3067, 3068, 3070,  
5   and 3072 received in evidence.)

6           HEARING OFFICER KRAMER: So onto the  
7   Environmental Coalition. Okay, so we begin with Dr.  
8   Gray at 4037. That's Hunt. 4039 was the photographs and  
9   that ended up coming in, so.

10          MS. CHESTER: Staff has no objections.

11          HEARING OFFICER KRAMER: To any of those?  
12   Okay.

13          MR. CARROLL: No objection.

14          HEARING OFFICER KRAMER: Okay, and then there  
15   was an additional -- oh, wait, it's in here. Never  
16   mind. 4044. So any objections to any of these? Do I  
17   need to scroll them again or...

18          MR. CARROLL: No objection from applicant.

19          HEARING OFFICER KRAMER: Okay, hearing none,  
20   and all of those exhibits are in, and that's the extent  
21   of the exhibits.

22          (Coalition Exhibits received in evidence.)

23          HEARING OFFICER KRAMER: Next order of business  
24   is briefing. Of course you are free to brief anything  
25   that you want.



1           Okay, oh, Ms. Belenky, did you have any  
2 thoughts on the exhibits?

3           Lisa Belenky, can you unmute her?

4           MS. BELENKY: Can you hear me now?

5           HEARING OFFICER KRAMER: Yes, we can.

6           MS. BELENKY: Okay. No, I do not have anything  
7 on the exhibits. Thank you.

8           HEARING OFFICER KRAMER: Okay. Anything to  
9 close up from you -- well, let me check back with you  
10 again to see if you have any questions after we discuss  
11 the briefing topics. But, first, do you have any  
12 particular topics that you want to propose for  
13 briefing?

14          MS. BELENKY: Are you talking to me?

15          HEARING OFFICER KRAMER: Yes.

16          MS. BELENKY: Probably nothing that everybody  
17 else isn't going to propose.

18          HEARING OFFICER KRAMER: Okay.

19          MS. BELENKY: Over -- I am a little bit  
20 concerned about this two-part briefing with CalISO  
21 because I think it may go to several issues, but other  
22 than that I think, you know, the basic briefing issues  
23 are pretty well laid out partly from what we've all  
24 discussed of these.

1           HEARING OFFICER KRAMER: Okay, and the ISO  
2 study of course is something for another time.

3           Okay, so as far as issues that the Committee  
4 has identified, we first of all in our March 10 orders  
5 we identified two land-use issues. I won't repeat  
6 those. But, you know, ultimately we said that those  
7 could be briefed later. We had originally set a  
8 deadline for that, but now is the time to work on  
9 those. One was about, you know, going through the  
10 effort of taking the City General Plan and other  
11 policies and standards and applying them to the  
12 project, you know, basically laying that out for us,  
13 laying out. You know, ultimately the Committee has to  
14 perform a LORS analysis and a CEQA analysis. But as of  
15 this and some of the other topics I will mention, it  
16 would be most helpful to us if you can both explain the  
17 law as you understand it and then apply the law to the  
18 facts, kind of actually, you know, a typical court  
19 brief. And, you know, in the way that you believe that  
20 it should be applied. And of course we'll consider all  
21 that and come up with our own -- our own version. But,  
22 you know, to the extent you want to influence our  
23 decision, that's the place to do it. And the clearer  
24 you can be on that the better.

1           Now getting to topics you hadn't heard about  
2 before, in socioeconomics, the term "environmental  
3 justice" is, you know, used quite frequently. We heard  
4 about it a lot last night in public comment, for  
5 instance, but that term also has specific meaning in  
6 the law, derived originally from a President Clinton  
7 executive order and there's been some subsequent state  
8 law. So we would like you to brief what exactly are the  
9 legal requirements, not so much the policy, you know,  
10 what people believe environmental justice means to them  
11 but what the law requires and, again, apply that to the  
12 facts in this case and explain the conclusions we  
13 should draw.

14           On the topic of biology, one question is do we  
15 have any ESHAs here, you know, on the site or in the  
16 neighborhood that affect the project. Explain -- you  
17 know, apply the criteria to determine whether they  
18 exist and if they do then explain what constraints, if  
19 anything, that creates upon the project, the proposed  
20 project.

21           And then similarly for wetlands, is there a  
22 wetland. Explain why you think there is or is not one,  
23 again, relating it to the facts.

24           And, finally, we just discussed a little while  
25 ago maybe enhancing the biological conditions to make

1 it more clear that Bio-9 also is a tool available to  
2 mitigate the loss of foraging habitat in addition to  
3 the wetlands that the title of that condition clearly  
4 says it relates to.

5           And then also whether we should make the Bio-  
6 10 translocation requirement apply to parts of the  
7 project, whether that's the place where the new turbine  
8 would be constructed or demolition areas, or whatever.  
9 In other words, to extend its coverage so that if  
10 beetles or legless lizards are discovered in those new  
11 areas, they would also clearly be required to be either  
12 avoided or translocated, as the condition currently  
13 states.

14           That's it from us. Do the parties want to  
15 tell us any issues they think are a special concern and  
16 that they plan to brief that would then help the others  
17 plan their work or you may decide you don't want to do  
18 that? But, anyway, this is your opportunity to do so.

19           MR. CARROLL: Just one area that might warrant  
20 some discussion so that we ensure that all the parties  
21 are on the same page and it's the briefing regarding  
22 the special study. So what the most recent order says  
23 is that briefs regarding the special -- the special  
24 study being the CAISO study -- briefs regarding the  
25 special study are due September 29th, 2017. I assume

1 that regarding the special study will be interpreted  
2 very broadly because obviously there will be a  
3 technical component to that. There may well be a legal  
4 component to it. There could be market components to  
5 it. I mean it's sort of alternatives. You know there is  
6 a lot potentially that relates to or is regarding the  
7 special study.

8 I mean, for example, it may be somewhat  
9 difficult to complete one's briefing on alternatives in  
10 advance of having the special study, but I wouldn't  
11 want to be in a position of holding all of my  
12 alternatives briefing until the due date for the  
13 special study. I want to say, okay, well, some of that  
14 doesn't relate to the special study, you could have  
15 filed that back with your earlier brief. So it's a  
16 vague area and I don't think any party should be, you  
17 know, penalized for the way in which they interpret it  
18 and potentially have some of their brief stricken for  
19 having been not timely filed.

20 MS. FOLK: Yeah. I would also just -- I think  
21 that's a good point. And I know from our perspective it  
22 probably would have affect our briefing on the LORS  
23 issue as well as potentially aviation risk. I can't  
24 think of others off the top of my head, but I don't

1 know that it's necessarily a clean -- that it breaks  
2 down cleanly.

3 HEARING OFFICER KRAMER: Okay, I might give you  
4 alternatives. I don't see the connection to aviation.

5 MS. FOLK: Well, it has to do -- we were  
6 talking about what the -- for example, if the studies  
7 were to show that you could make the LCR need with only  
8 one 50-megawatt plant, gas, you know, generation, then  
9 locating that on an inland site with all the other  
10 enhancements that could go with it might be a way of  
11 reducing aviation hazards, because the testimony we  
12 heard was that one turbine, even if we accept  
13 everything that staff did, would only have, you know,  
14 an exhaust plume of 512 feet at the threshold that they  
15 considered to be significant. And I think there's  
16 certainly enough testimony to question whether or not  
17 that significance threshold was actually appropriately  
18 applied, but in any event.

19 HEARING OFFICER KRAMER: Okay, but that just  
20 sounds like alternatives. That doesn't sound like  
21 traffic and transportation.

22 MS. FOLK: Well, --

23 HEARING OFFICER KRAMER: I mean it's a traffic  
24 and transportation comparison applied to the

1 alternative sites and alternative technologies, but  
2 it's in the alternatives section.

3 MS. FOLK: Okay.

4 HEARING OFFICER KRAMER: Okay. So, Mr. Carroll,  
5 you're asking that -- are you suggesting that we  
6 postpone any discussion of alternatives until  
7 September?

8 MR. CARROLL: No. I wasn't suggesting  
9 postponement, but what I was suggesting is that to the  
10 extent the brief or portions of the brief on the  
11 special study look like alternatives briefing, that  
12 that not be excluded because it should have been filed  
13 as alternatives briefing on the earlier date as opposed  
14 to special study briefing on the later date.

15 MS. FOLK: Well, it might be cleaner to  
16 separate them, but I would also point out LORS is  
17 another issue that would come up in terms of the  
18 ability to make the override finding.

19 HEARING OFFICER KRAMER: Okay. Well, that --  
20 and overrides is the other aspect -- I mean overrides  
21 is clearly the most affected aspect of the ISO study.

22 MS. FOLK: Well, and alternatives.

23 MS. ROESSLER: Yeah, I would agree that it  
24 would be really challenging to brief alternatives and

1 complete it at the least if that was in advance to the  
2 release of the CAISO study.

3 HEARING OFFICER KRAMER: Okay. Well, Mr.  
4 Carroll is actually arguing in your favor here.

5 MS. FOLK: Kind of.

6 MR. CARROLL: I am being very generous. My  
7 suggestion would be that parties be obviously free to  
8 submit whatever they want by the earlier deadline, but  
9 that we not be at risk of having portions of our brief  
10 stricken on the basis that it falls into a category  
11 that's related to the special study that we had  
12 previously briefed in part.

13 So, in other words, when we submit the brief  
14 at the earlier deadline, it may have some of our  
15 alternatives briefing in it. When we submit the special  
16 study briefing, it may also have parts that look like  
17 alternatives or LORS compliance. Perhaps the --

18 HEARING OFFICER KRAMER: Well, which LORS are  
19 you thinking of? I mean it doesn't affect land use at  
20 the project site.

21 MS. FOLK: But --

22 MR. CARROLL: Well, the -- I mean the issue of  
23 LORS and alternatives are intertwined.

24 HEARING OFFICER KRAMER: If you mean the LORS  
25 overrides.



1 MR. CARROLL: Overrides. That's what --

2 MS. FOLK: Yeah.

3 HEARING OFFICER KRAMER: Yeah, okay.

4 MR. CARROLL: Yeah.

5 HEARING OFFICER KRAMER: Well, but --

6 MS. FOLK: I think we all agree.

7 HEARING OFFICER KRAMER: But the land-use  
8 analysis just determines if the project complies with  
9 the LORS or not. And as we -- the way we organize our  
10 decisions, then there will be a separate overrides  
11 section if there is a need to override, which seems  
12 likely, but -- and that is will discuss, you know, the  
13 balancing of all the factors, so I don't -- I don't see  
14 that as a reason why you can't discuss whether the  
15 proposed project at the proposed site is compliant with  
16 LORS right now. You don't need to --

17 MS. CHESTER: If I may, --

18 MS. FOLK: We agree about that.

19 MS. CHESTER: I think the distinction is we  
20 have two briefing deadlines because of the two  
21 hearings. And that briefing submitted at the later  
22 deadline after the ISO hearing, if they include  
23 discussions of alternatives or other subjects that were  
24 briefed at the earlier deadline not be struck for  
25 untimeliness.

1           HEARING OFFICER KRAMER: Okay. So we have  
2 actually three briefing deadlines, opening, replies.  
3 And the replies is a few days after the September  
4 hearings, if I recall correctly. And, frankly, I just  
5 did that because I didn't want you to feel super jammed  
6 up.

7           MR. CARROLL: Yeah, that worked.

8           MS. FOLK: The only March --

9           HEARING OFFICER KRAMER: Well, it could have  
10 been worse. But if you want we could move the reply  
11 deadline to before the hearings, --

12          MR. CARROLL: No.

13          HEARING OFFICER KRAMER: -- but I'm pretty sure  
14 that's not going to be popular.

15          MS. FOLK: No.

16          MR. CARROLL: I mean this -- I didn't mean to  
17 open up a can of worms at the end of a long day and  
18 this may have sufficed. It seems to me that there is a  
19 meeting of the minds. My only point was that briefs  
20 regarding the special study is somewhat ambiguous  
21 exactly what that entails and it might bleed into areas  
22 that had been previously briefed. And it seems like  
23 everybody is in agreement that that would be okay.

24          HEARING OFFICER KRAMER: It could be a little  
25 bit. I mean what I'm anticipating, I mean just based on

1 the disclaimer the ISO has repeatedly given us that  
2 they're going to analyze one or more portfolios. But  
3 they're not going to say anything about whether these  
4 hypothetical packages of resources can actually be made  
5 effective, can actually be constructed or contracted  
6 for, or whatever. So I expect that there is going to be  
7 a bunch of testimony about that that's separate from  
8 the ISO study and probably a lot of discussion in the  
9 briefs. So until we see the study we can't really know  
10 for sure how exactly it's going to permute out.

11 MS. BELENKY: This is Lisa. I don't know if you  
12 can hear me.

13 HEARING OFFICER KRAMER: You will probably  
14 almost have to -- can we crank her up a little bit?

15 Give it your best loud voice that doesn't hurt  
16 yourself and we'll try to gb you a little more volume  
17 here, but you are faint. Go ahead.

18 MS. BELENKY: Okay, can you hear me now?

19 HEARING OFFICER KRAMER: That's a little  
20 better.

21 MS. BELENKY: Good. Okay, I just wanted to say  
22 I think that the ISO study, it does certainly go to the  
23 alternatives and the overrides, but it kind of goes to  
24 the essential project description as well. So I do  
25 think there is a need to have some flexibility with the

1 second set of briefing because there are ways that  
2 these issues blend together because of the way the CEQA  
3 analysis works. So I am actually agreeing with the  
4 applicant on this that I think we need to have some  
5 leeway because these issues are very connected and you  
6 can't necessarily pull each one out of the briefing  
7 separately. And I am concerned that this separating the  
8 briefing is going to be quite awkward.

9 HEARING OFFICER KRAMER: Okay. Well, I think we  
10 are fine with that approach and, you know, we'll -- I'm  
11 sure if somebody goes crazy and tries to really sandbag  
12 the others, they will -- somebody will call them on it,  
13 call it to our attention. But we have no problems with,  
14 you know, being somewhat flexible about what's in the  
15 briefs. But we don't want to wait for everything until  
16 after the ISO hearing. We are trying to balance our  
17 workload on this and move forward so that we are ready  
18 with the proposed decision at a little sooner than we  
19 would be if we waited until the ISO hearing to start  
20 the briefing cycle.

21 So any questions about the topics that I  
22 explained?

23 And, again, you know, you're free to add to  
24 that. We're just telling you what we are especially  
25 interested in. But, you know, we're also expecting you

1 to have other interests and we're looking forward to  
2 reading those as well.

3 So with that, is there any other housekeeping  
4 item that I have forgotten that anyone can think of?

5 MR. CARROLL: Since I have the opportunity I'd  
6 just like to raise one possibility. Would it be  
7 possible to segregate the public comments in the docket  
8 log into a subcategory, that the docket log has become  
9 almost completely unmanageable, a lot of time spent  
10 scrolling up and down trying to find the document with  
11 the hundreds and hundreds of public comments that have  
12 come in.

13 MS. FOLK: Thousands, thousands.

14 HEARING OFFICER KRAMER: I can show you -- if  
15 you want to stay after for a master class in using the  
16 search function, I will --

17 MR. CARROLL: Okay.

18 HEARING OFFICER KRAMER: It's -- frankly, we  
19 are still working on our system. And right now if  
20 you're at the Commission and you're on our internal  
21 network, it's a little easier to do that, but there is  
22 a way that you can use the search function on the  
23 public website to help with that a little. And we can  
24 experiment and see how well it works.

1 MS. CHESTER: I would note that staff does not  
2 have an easier time navigating it through our internal  
3 network.

4 MR. CARROLL: No, I assumed that everybody was  
5 suffering under the same...

6 HEARING OFFICER KRAMER: Well, I know Ms. Chew  
7 would say that when I showed her the internal trick, it  
8 got better, right? Yeah. Unfortunately, that doesn't  
9 help you as a nonmember of the Commission, but there is  
10 something you can do.

11 Anyway, enough of that for now. We will --  
12 Lisa, did you have something?

13 MS. BELENKY: Well, I do actually object to  
14 this being segregated, so I'm glad that you're not  
15 going to do that. Public comment, while it may not be  
16 exactly the same as what the parties put in, is a very  
17 important part of this record and it is part of the  
18 docket, and I would object to it being segregated.

19 HEARING OFFICER KRAMER: Well, no, this is just  
20 a filter you can apply so that you can --

21 MS. BELENKY: Of course, that's fine. You can  
22 apply your own filter to it. That is not what was  
23 asked, and I would object to it being done. It is very  
24 important and this is actually very much an  
25 environmental justice question. It is very important

1 that it is in the docket and that it can be found by  
2 any member of the public when they want to find it.  
3 Segregating those records would be -- I would object to  
4 that.

5 HEARING OFFICER KRAMER: Now, okay, you're --

6 MS. BELENKY: I agree you can filter it. I  
7 agree --

8 HEARING OFFICER KRAMER: You're not -- well,  
9 no, this is a filter that -- that the user simply  
10 chooses to apply when they want to, and that's their  
11 choice.

12 MR. CARROLL: And, just to be clear, I was not  
13 suggesting that the public comments are not important  
14 or that they not be available. All I was suggesting is  
15 that be put into a separate file so that it was easier  
16 to find. Whether you're looking for public comments or  
17 you're looking for other documents, you wouldn't have  
18 so many documents to wade through, but enough said.

19 HEARING OFFICER KRAMER: Okay. So then I think  
20 the next order of business is public comment. See, if  
21 any of the parties are going to leave, though, let me  
22 just tell you that we plan, for the purposes of the  
23 Committee holding a closed session to deliberate on  
24 what we've been listening to, we're going to continue  
25 this meeting to next Friday, August 4th. It will be up

1 in Sacramento. The start time, I believe, will be 10:00  
2 a.m. You know it's the usual admonition: Don't come  
3 because the public portion will be relatively short. If  
4 you want to listen in via Webex, we'll have that  
5 available. However, we are not planning on having a  
6 Spanish Webex, given that for again the duration of  
7 this hearing we have had no persons using the Spanish  
8 Webex. And we've had the same experience when we've  
9 offered it up in Sacramento.

10 But, again, the purpose is primarily for a  
11 closed session. And then of course barring any other  
12 intervening events, the next hearing will be on August  
13 14 -- no, September 14. September 14, I believe. And  
14 that's going to be down here again. We haven't  
15 determined the start time yet, but and then of course  
16 all your briefing deadlines are in the previously-  
17 issued schedule.

18 So with that, we will begin public comment.

19 COMMISSIONER SCOTT: All right. Thanks,  
20 everybody. We just have a handful of folks in the room.  
21 I have just a couple of blue cards. If you are a member  
22 of the public and are wanting to make a comment and  
23 have not filled out a blue card, our advisor is sitting  
24 in there her delightful orange blazer waving at you.  
25 She can get you a blue card and she'll bring that up to



1 me. That's how I know you'd like to make a public  
2 comment.

3 I will start with Mike Stubblefield followed  
4 by Mark Spellman.

5 Oh, okay, Mr. Stubblefield is saying that he  
6 is not going to make a public comment.

7 Are you sure? You're welcome to.

8 Okay, all right. So we will go then to Mark  
9 Spellman, followed by Nancy Lindholm.

10 MR. SPELLMAN: Good evening. First of all,  
11 although I'm sorry to see you again I want to thank you  
12 and your staff for coming down here to hear our  
13 testimonies and continue to hear the technical aspects  
14 of this project for our City of Oxnard.

15 My name is Mark Spellman. I'm a longtime  
16 homeowner and a resident of Ventura County. I'm very  
17 active in our community. And because I care about our  
18 community, I'm here tonight.

19 I work in downtown Oxnard with Laser  
20 Broadcasting. We're a minority-owned, Spanish-language  
21 media company. I'm on the board of directors with the  
22 Oxnard Chamber of Commerce. I'm on the board of  
23 directors with the Oxnard Downtime Improvement District  
24 and a director with the Rotary Club of Oxnard. I have

1 proudly served this community in some capacity for many  
2 years.

3 I'm proud of the relationships that I have  
4 business leaders, civic leaders, community leaders, and  
5 members of the community that are less fortunate than  
6 ourselves. I take pride in being a Ventura County  
7 resident; I wouldn't want to live anywhere else.

8 I'm here tonight on my own time to show the  
9 support for a project that I feel is very important to  
10 our community. It's a project that is a bridge, hence  
11 the project's name, Puente. It's a bridge for needed  
12 energy at a time when renewable generation at this  
13 point is not consistently reliable. Accordingly, as we  
14 transition to a clean-energy future, we need a  
15 flexible, fast-starting, and efficient facility that  
16 can start on demand to ensure that our electricity  
17 supply remains stable and reliable.

18 I also believe in this project because it will  
19 create jobs and contribute millions of dollars of much  
20 needed revenue for the City and it will make our  
21 beaches more beautiful and more accessible than most  
22 residents of Oxnard have seen in their own lifetime.

23 I'm also a big fan of the people at NRG. They  
24 too care about this community. Aside from supplying  
25 Oxnard with city power, NRG takes an active role in

1 being a part of our community through helping our youth  
2 in the greater Oxnard Boys and Girls Club. NRG also  
3 takes an active role in many of our City's special  
4 events, including our City's annual Earth Day event,  
5 our annual Cinco de Mayo event, and the California  
6 Strawberry Festival here in Oxnard. These community  
7 events take place in Oxnard where many of our community  
8 members come and have a great time with their friends  
9 and family.

10           NRG is a true member of our community. They  
11 care about making impacts that will help our Oxnard  
12 community grow and succeed. NRG did not build these  
13 existing power plants, they inherited them. The Puente  
14 Project before you will provide much needed city  
15 revenue. It offers a flexible, efficient approach to  
16 meet our power needs and, upon its approval, will also  
17 lead to the demolition of two existing power plants on  
18 Mandalay Beach.

19           This project has always been the best possible  
20 solution for our county's energy concerns. I have  
21 witnessed the benefits that NRG has provided this  
22 community and thoroughly studied the facts of this  
23 project, therefore I strongly feel your staff should  
24 recognize NRG is a good partner to our Oxnard community  
25 and approve this project. Thank you for your time.

1 COMMISSIONER SCOTT: Thank you.

2 I have Nancy Lindhold, followed by Daniel  
3 Chavez, Jr.

4 And as she's walking up, I will note that  
5 Daniel Chavez, Jr. is the last blue card that I have. I  
6 know there's just a few folks in the room, but if you  
7 do want to make a public comment please be sure to fill  
8 out a blue card and let us know.

9 Please go ahead.

10 MS. LINDHOLM: Yes. Good evening. My name is  
11 Nancy Lindholm. I am longterm resident of Oxnard and  
12 the CEO of the Oxnard Chamber of Commerce. I have  
13 attended many public hearings and have voiced the  
14 Chamber's support for the importance of this project  
15 for our City's future. Tonight I will share with you  
16 what I hope will be my final comments on the project.

17 Puente will provide not only Oxnard but our  
18 entire coastal community with safe and reliable power.  
19 As the City of Oxnard continues to grow, so will the  
20 demand for more power for businesses and residents  
21 alike. This project reduces the space on Mandalay Beach  
22 by retiring the current outdated units and replacing  
23 them with a smaller, more efficient power plant. The  
24 Puente Project, as we have learned, due to its fast

1 start time will also only need to operate when  
2 necessary.

3 As you gather the comments on this project,  
4 hopefully final comments, I will ask that you please  
5 consider what this project will provide. Power is a  
6 need in any area. We don't have many alternatives to  
7 ensure Oxnard and our coastal community have the power  
8 they can depend on. Thank you.

9 COMMISSIONER SCOTT: Thank you.

10 I have Daniel Chavez, Jr.

11 MR. CHAVEZ, JR.: Good evening. My name is  
12 Daniel Chavez, Jr., a born-and-raised resident of the  
13 City of Oxnard.

14 The last time that I addressed this Commission  
15 and the staff it was during an election year and I was  
16 a candidate for City Council. Part of that was trying  
17 to reach out to the community on all levels and part of  
18 that was to express my concerns about this project,  
19 about how many of our residents in the City of Oxnard,  
20 that is the largest in the county, and sixteenth-  
21 seventeenth largest city in the state of California has  
22 over 70 percent Latinos.

23 The concerns were that, and these are concerns  
24 that I brought up to my own City Council, was that we  
25 lack well-paying jobs in the City of Oxnard. We do not

1 have a sufficient amount of jobs in the City of Oxnard.  
2 The problem with that brings that many of our youth  
3 have staycations instead of vacation, where they are  
4 having their parents at work all hours of the day just  
5 to barely make it by. Because of those concerns, NRG, -  
6 - I have visited the property, toured it, toured the  
7 proposal project.

8 In my opinion, I related it to my profession  
9 as a transit operator from L.A. County. Our older buses  
10 in the mornings take longer to get set up. You have to  
11 run them for about 30 minutes before they can actually  
12 be pulled out of the yard because they're old. The  
13 parts, you can't find them anymore. Our maintenance  
14 staff tries to rebuild them, but many times they just  
15 break down.

16 Now our new buses, where many of the operators  
17 refer to them as the Cadillac of transit operations,  
18 can start up in seconds and you just pull right out of  
19 the yard. So I took my profession and related it to  
20 this project because this is what the project was  
21 presented, that the current infrastructure takes  
22 forever to get started and the new infrastructure is  
23 smaller and it's supposed to be rapid.

24 Now I will not say that I support, I will not  
25 say that I oppose this project. What I will say is that

1 my main priority is the quality of life for our  
2 residents.

3 As stated by one of the previous speakers, NRG  
4 has been part of this community for a number of years.  
5 When you look at many of our flyers for our events and  
6 the large icon is NRG. So, please, your decision not  
7 only affects the City of Oxnard but it does affect the  
8 state of California as well. Thank you.

9 COMMISSIONER SCOTT: Thank you.

10 Mr. Stubblefield, did you change your mind?

11 MR. STUBBLEFIELD: I changed my mind.

12 COMMISSIONER SCOTT: Okay, please come on up.

13 MR. STUBBLEFIELD: Chair, members, public, my  
14 name is Mike Stubblefield. I'm the air quality chair of  
15 the Los Padres Chapter of the Sierra Club. I'm also a  
16 member of the statewide Sierra Club California Energy  
17 Climate Committee. But my comments are mainly my own.

18 My wife and I were the plaintiffs in a --  
19 well, not plaintiffs, but we filed a lawsuit in the  
20 late eighties against then-owner of Mandalay Bay at  
21 Ormond Beach because we wanted them -- we wanted to  
22 force them to install selective catalytic reduction  
23 technology to reduce their NOx emissions. They refused  
24 to do so. They appealed it at every level. In the end,  
25 they lost, we won. They had to do it, and it reduced

1 their NOx emission so much that it brought us into  
2 compliance with federal although not state NOx  
3 regulations for the first time in the history of this  
4 town.

5 I live in a largely Latino community,  
6 unincorporated neighborhood called El Rio, so it's not  
7 in south Oxnard, but its constituency is very similar,  
8 and I have lived there for 25 or 30 years. And I must  
9 say that my view as a white guy is that this town has  
10 been used as an energy dumping ground for way too long.  
11 We have not one, not two, but three fossil-fuel-fired  
12 power plants. Now, granted, two of them, Ormond Beach  
13 and Mandalay Bay, are slated to shut down by the end of  
14 next year. However, we got a new one from Edison seven  
15 or eight years ago, despite vociferous efforts by all  
16 of us to stop it. So we do have a peaker. We don't even  
17 need another peaker. I don't know where this idea comes  
18 from.

19 Currently, 40 percent of our energy is in this  
20 state is being generated by renewables. The governor  
21 and the legislature are adamant about getting to total  
22 renewables as soon as possible. On top of that, some of  
23 the natural gas-fired power plants, like the one in the  
24 valley, isn't even ten years old and it was shut down  
25 because of lack of use. And then many of you who might



1 read the L.A. Times might have read journalist Ivan  
2 Penn's article about the fact that California has such  
3 a glut of fossil-fuel-generated electricity on its  
4 grade that some days it can't even give it away to  
5 Arizona and Nevada's grids, so we pay them to take it.

6 Now think about, put all this together and  
7 tell me if it's not absolutely less than absurd to be  
8 considering building any new fossil-fuel-powered plants  
9 anywhere. But even if that -- you could convince  
10 someone like me that it's necessary, you cannot  
11 convince me that it's fair in the Moorpark subarea,  
12 which goes from Moorpark all the way to Santa Barbara,  
13 to always put those fossil-fuel-fired power plants in  
14 Oxnard.

15 Now I understand the first two because we  
16 didn't know better then and we used ocean water to cool  
17 those plants, but this new plant is not going to be  
18 ocean dependent. It's not going to have once-through  
19 cooling. So I suggest you really give this some serious  
20 thought. I think we're going down a bad road here and  
21 it's going to have a bad ending. And this thing, even  
22 if it does get built over the objections of virtually  
23 everybody in town, it's going to get shut down from  
24 lack of use, and we'll have to shut it down just like

1 all the others. We need to be looking ahead, not  
2 backwards. Thanks very much.

3 COMMISSIONER SCOTT: Thank you.

4 Those were all of the blue cards that I have.  
5 Just double checking that there is no further public  
6 comment here in the room.

7 Okay, with that we will close public comment  
8 in the room. I am now going to go -- and we didn't call  
9 on the Spanish Webex yesterday or today because there  
10 was nobody on the line. So let's go to the English  
11 Webex and find out whether or not we have any folks who  
12 would like to make a comment there. Standby, you are  
13 now unmuted. If you would like to make a comment,  
14 please go ahead and speak up.

15 You are unmuted and if you would like to make  
16 a comment from the Webex or from the phone, now is your  
17 opportunity. We're listening.

18 Okay, going once. Going twice. Okay, we're  
19 going to close the public comment from the Webex and  
20 the phone, having heard none.

21 Before we adjourn our hearing, I just wanted  
22 to say thank you so much to the parties for their  
23 thoughtful and engaged participation in our second  
24 round of evidentiary hearings, to all of the members of  
25 the public who came and joined us over the last two

1 days and really engaged with us, let us know what they  
2 think. It was great public comments. I'd love to say  
3 thank you very much to our court reporter, who has done  
4 a terrific job, and to our awesome translators who have  
5 been translating everything we've said over the last  
6 few days, so thank you so much for that.

7 I'd also like to thank the Oxnard PD and  
8 Security who have helped us out over the last couple  
9 days and to the City of Oxnard for hosting us here  
10 again in this lovely auditorium.

11 And with that, unless Commissioner Douglas has  
12 any closing remarks, or our Hearing Officer.

13 HEARING OFFICER KRAMER: Okay, so we are  
14 continuing this meeting to Friday, August 4th,  
15 beginning at 10:00 a.m. It will be at our Hearing Room  
16 A in the Energy Commission building in Sacramento. I  
17 will be posting a notice here and the other places that  
18 are required by law and also we will send it out to the  
19 docket. It probably will come through tomorrow morning.

20 Again, it's primarily for the purpose of a  
21 closed session. So please do not travel all the way  
22 from down here up to Sacramento. If you want to listen  
23 in, Webex is the perfect tool for that.

24 So with that, we are adjourned.


25 (The hearing was recessed at 7:13 p.m.)

## REPORTER'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 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 7th day of August, 2017.

A handwritten signature in dark ink, appearing to read "Eduwiges Lastra", is written above a horizontal line.

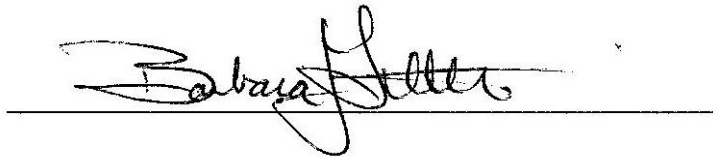
Eduwiges Lastra  
CER-915

**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 7th day of August, 2017.

A handwritten signature in cursive script, appearing to read "Barbara Little", is written over a horizontal line.

Barbara Little  
Certified Transcriber  
AAERT No. CET\*\*D-520