

**STATE OF CALIFORNIA**

**Energy Resources**

**Conservation and Development Commission**

<b>In the Matter of:</b>	)	<b>Docket No. 97-AFC-2</b>
	)	
Application for Certification	)	
for the Sutter Power Plant Project	)	
_____	)	

**EVIDENTIARY HEARING**  
**continued**

Monday, November 16, 1998

Evening Session (Session B)

6:30 p.m.

Held at the:

Veterans Memorial Community Building  
1425 Circle Drive  
Yuba City, California

Evidentiary Hearing, Evening Session, November 16, 1998

Reported by:

Nancy and Susan Palmer  
Certified Electronic Reporters

COMMISSIONERS PRESENT

WILLIAM J. KEESE, Chairman

MICHAL C. MOORE, Presiding Commissioner

PARTICIPATING STAFF MEMBERS

GARY FAY, Hearing Officer

SHAWN PITTARD, Advisor to Commissioner Moore

DICK RATLIFF, Counsel for the Agency

PAUL C. RICHINS, JR., Siting Project Manager

GARY WALKER, Facilities Siting and Environmental Protection  
Division

FOR APPLICANT CALPINE

CAROLYN A. BAKER, ESQ., Edson + Modisette

CHRISTOPHER ELLISON, ESQ., Ellison & Schneider

CURT HILDEBRAND, Project Director, Calpine

THOMAS PRIESTLEY, Ph.D., Foster Wheeler Environmental  
Corporation

CHARLENE L. WARDLOW, Environmental Manager, Calpine

ALSO PRESENT

THOMAS LAST, Planning Division Chief, Sutter County

LOREEN R. McMAHON, Environmental Affairs, Western Area Power  
Administration

Evidentiary Hearing, Evening Session, November 16, 1998

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BOB AMAREL

DAVE MASSEY

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Monday, November 16, 1998      6:48 o'clock p.m.

PROCEEDINGS

**HEARING OFFICER FAY:** Let's go back on the record. Before we get started again, continuing with Mr. Ellison's cross-examination of Mr. Walker, we'd like to ask Mr. Massey if he would like to make his comments now. He wasn't here when we called his name earlier.

**MR. MASSEY:** I'm David Massey, and I live on the southeast corner of South Township Road and O'Banion Road. And I have a newer home there.

I have to disagree with the conclusion and recommendation of the Sutter County Community Service District and Dr. Priestley's testimony that there is little effect on visual resources. I feel this project will have a significant negative impact on visual resources.

And I want to make it clear that the photograph identified as Vis-15 does not accurately represent the view from my home. Standing on the road edge, you're definitely lower than my home, my house pad, which I spent a great deal of money to elevate high enough that I would have a view. I built the house with the view in mind.

And, another thing, standing on the road, you're right next to the orchards, so naturally you're not going to -- if you're six feet high you're not going to look over a 12-foot prune tree, so...

I have some other things in regards to the vegetative screening. Number one, it's going to take years for these trees to get up high enough to do anything at all. And I'm skeptical with the high water table out there, in that rice ground. I'm skeptical even with a berm. If they plant them on a berm I'm still skeptical that they are going to get anything to grow. If those roots get down to where the water table is, the trees are going to be stunted or they're going to die for lack of oxygen.

And I don't care what kind of tree they plant, any of the ornamentals that I know of can't stand wet roots. And what could happen is the trees last for six or eight years and then they die. Well, then you start over again and you end up with nothing more than about a 10- or 15-foot tree. Well, that does a whole lot for screening.

And as far as lights, at nighttime that place looks like a Christmas tree. And I just drove up George Washington, which is probably a mile east of Township Road, and you can fairly well see the plant, the existing plant right now with the lighting it has. I can imagine if you get something that's much taller, this other plant is going to be, I think, 145 feet, I could assume it's going to have a lot more lights and it's going to be a predominant feature out there at nighttime and daytime. So I really don't think this is a proper area. It needs to go into an industrial site.

Thank you. That's all I have.

**HEARING OFFICER FAY:** Thank you for your comments, Mr. Massey.

Now before we continue with the cross-examination, I believe Staff has a modification to one of the conditions.

Is that correct, Mr. Ratliff?

**MR. RATLIFF:** Yes. The County asked the Staff and the Applicant if we could modify the verification to Condition Vis-3 concerning night lighting. And the verification change is the first sentence of the verification.

**HEARING OFFICER FAY:** What page is that?

**MR. RATLIFF:** That's page 284 of the FSA.

And what they have asked is that the verification be amended to add the County in to the verification as an entity that receives the Lighting Plan from the project owner so it would read as follows:

"At least 60 days before ordering the exterior lighting, the project owner shall provide the Lighting Plan to the CPM and" -- this is the additional language -- "and to Sutter County Community Services Department for review and approval."

We are in agreement with that change and apparently the Applicant, as I understand it, is as well. So we wanted to make sure that didn't fall in the cracks.

**MR. ELLISON:** No problem. That's fine.

**MR. RATLIFF:** And if I could raise just very briefly a second point. Earlier today we put up a diagram illustrating the comparison of the existing lines with the new lines from KOP 5.

In other words, it was the illustration that we submitted. And on cross-examination I think we learned that there was some discrepancies in the size of the arms on that line. And it wasn't -- I just wanted to emphasize -- it wasn't our intent to misrepresent the dimensions of the new poles.

So what we offer to do is to stipulate with the Applicant, if they wish, to put in their own diagram illustrating those two poles, existing poles, and the new ones with the correct dimensions on it, if those are, in fact, misrepresentative of the arms on the new poles.

**HEARING OFFICER FAY:** Are you interested in submitting a corrected version, Mr. Ellison?

**MR. ELLISON:** We might be able to do that. As an alternative, I was, in fact, going to take this issue up again and just suggest that I believe that the visual depictions in the parties' representative visual testimonies show the actual height and configuration of the poles rather well.

And I think that Mr. Walker stated that that's really what he relied upon, not this latest exhibit that was prepared later. And I think if we stipulate that that's the case that would be sufficient.

**HEARING OFFICER FAY:** Okay.



**MR. RATLIFF:** That wasn't really what we were offering to do. We would offer to substitute in a new diagram showing the representative heights with some dimensions of the two poles, if the Applicant so desires and we can agree on those. And I think we probably could. But we are uncertain that the contrast shown in Vis-12 is as useful as that would be.

**HEARING OFFICER FAY:** And when will that be available?

**MR. RATLIFF:** Well, since the Applicant is the source of our information on this, I was assuming that, if we were to stipulate to such a thing, the Applicant would come forward with a diagram and we would look at it and stipulate to it, if they wanted to do that. If they had a more accurate diagram to put in --

**HEARING OFFICER FAY:** Okay. I don't want to spend on time on this.

**MR. RATLIFF:** Okay.

**HEARING OFFICER FAY:** If we're going to get it, we'll get it on the 1st.

**MR. RATLIFF:** Because we chose that simulation because we thought it was the Applicant's representation of what it looked like. That's fine.

**PRESIDING COMMISSIONER MOORE:** Well, if there's a correction, let's get it on the 1st.

**MR. RATLIFF:** Okay.

**HEARING OFFICER FAY:** All right. Mr. Ellison, anything further on this?

**MR. ELLISON:** No, other than I do want to make clear that in my cross-examination I certainly didn't mean to imply that the Staff had intentionally tried to mislead anyone. I know they did rely upon that document or that diagram that was prepared by Calpine.

But I just want to make clear to everybody that that diagram was prepared by Calpine for a different purpose. And, because it was prepared for a different purpose, it has that scaling issue in it.

**MR. RATLIFF:** Right.

**HEARING OFFICER FAY:** Okay. Let's continue with your cross-examination of Mr. Walker, Visual Resources.

**MR. ELLISON:** Thank you.

CROSS-EXAMINATION, Resumed

Q. (By Mr. Ellison) Mr. Walker, I'd like you now to turn to Figure B-2 at page 315 of the Final Staff Assessment.

**MR. ELLISON:** Incidentally, as we go forward, we have attempted for the convenience of the audience, who may or may not have the Final Staff Assessment -- I think many of you do, and if you do you can follow along, but for those who don't, for some -- although I regret saying not all -- but for most of the figures and tables and things we will be referring to, we have prepared visual overheads that are being presented here as we go along.

Q. (By Mr. Ellison) Mr. Walker, do you have that figure before you?

A. Yes.

Q. Can you briefly just describe for us what it is?

A. This figure represents the factors that Staff considers in arriving at an assessment of significance of an impact, a visual impact, for a project from each Key Observation Point.

On the left-hand side of the diagram it shows the four major categories that Staff looks at in the existing setting that contribute to the susceptibility to visual impact, those being: Visual quality, visual sensitivity, visibility and exposure.

And on the right-hand side, those three factors of contrast, dominance and view blockage, the Staff considers in making an assessment of the severity of visual impact, that is, the changes that the project will actually create.

And then the susceptibility of the setting is considered in light of the severity of the changes caused by the project, to arrive at an assessment of the significance of the impact.

Q. Okay. Now referring to the boxes on the left side, if you're looking at the FSA, and on the top of the chart, if you're looking at the screen, and I'm referring to "Assess Visual Quality, Assess Visual Sensitivity," et cetera. I take it for each KOP you make a judgment as to each of the factors in each of these seven boxes. Is that correct?

A. That's correct.

Q. And then you accumulate the four factors related to susceptibility and you accumulate separately the three factors related to severity. Is that correct?

A. Yes.

Q. With respect to susceptibility, can you turn to Figure B-3 at page 317?

A. (Witness complies.)

Q. Am I correct that having made a judgment about the four factors that contribute to susceptibility, that is, visual quality, visual sensitivity, visibility and exposure, that you then apply those judgments using this table to get a rating for susceptibility?

A. That's correct.

Q. Could you just give us an example of how this table works?

A. Okay.

Q. In fact, let's take a real example. And KOP 5 is the one that we will be discussing. So could you show us with respect to KOP 5 how this table works?

A. Yes. For KOP 5 visual quality was considered to be moderate-to-high. So in this matrix there's readings for medium and readings for high. So there isn't a separate set of sub-boxes for in-between readings, but we will get to that when I show you how they are combined.

In regard to viewer sensitivity, viewer sensitivity was high because of the residences. Visibility, because the poles are -- run adjacent to the road and are close to residences, is considered high.

And viewer exposure is a combination of three factors: Distance, number of viewers and duration of view. Those three factors are combined to come up with the overall viewer exposure that is then transferred to this matrix.

And in this particular case the combination factors of foreground distance, small number of viewers and a long duration of view, viewer exposure is considered moderate-to-high.

So when you consider all four factors, essentially what is -- they are each given equal weight. And the exception to that is when there is a low, a finding of low value in regard to any of those factors. That's why you see so many resulting boxes down here of low, because we consider, when any of those factors, when visual quality is low there is a low susceptibility to visual impact.

When sensitivity is low, such as workers in an industrial area, we consider them to have a low sensitivity for visual impacts.

When visibility is low, when a project can hardly be seen, we consider the potential -- the susceptibility to be low overall. When exposure is low, say with a short duration, with a few viewers and from distant views, and that's low, then it doesn't matter what the other factors are because that factor alone, being low, means that the susceptibility will be low overall.

So that accounts for most of those low figures in the table.

Now where you have other values they are typically because of essentially an averaging of the other -- of the four values, where there isn't a low value for any one of those four. And that's how you arrive at those numbers -- I mean, excuse me, at those values.

In the particular case it's a little more complicated because there is a moderate-to-high for visual quality and there's a moderate-to-high for viewer exposure. So it is easier to see how that weighting or averaging takes place.

If you look instead in the text of the testimony on Table 5 on page 261, and for Key Observation Point 5 it shows visual quality moderate-to-high and viewer sensitivity high, visibility high, viewer exposure moderate-to-high.

And it's simply an equal weighting of those four. And in this particular case, so as not to overemphasize the susceptibility, since it was halfway between moderate-to-high and high, I called it moderate-to-high rather than being more conservative and going to high as the overall rating.

But that's essentially how this matrix table works, only the matrix table only -- is illustrative of the situation where you have no hybrid values, just high, moderate or low, but it works the same way.

Q. Thank you. With respect to -- is your answer finished?

A. Yes.

Q. Okay. Then I take it that other than perhaps dealing with the effect of hybrid values, once you have made your judgments regarding visibility, exposure, sensitivity and quality, you simply read the appropriate combination of those off this table to get your susceptibility rating?

A. Yes. Because they essentially do allow for that same equal weighted averaging of the four factors. That's how the table was constructed.

Q. Okay. And I think we can move through this fairly quickly with respect to severity. If I take you back to Figure B-2 on page 315, for severity we have three inputs: Contrast, dominance and view blockage. And we accumulate those in a similar fashion using Table B-4 at page 319. Is that correct?

A. Yes. It's a somewhat more complicated process because there are different factors within contrast. There is color contrast, form contrast, line contrast, texture contrast and scale contrast. And those aren't all weighted equally.

I did an extensive review of the literature in terms of how important each of those factors are generally considered to be and came to the conclusion that color, form and line are considered more important than texture and scale contrast. And so those are weighted more heavily.

Q. Okay. Well, I'm going to get into some more detail about those kinds of questions later. But for the moment I just want to confirm that I'm correct, that you do determine severity by taking your inputs for the three severity factors and applying them to this table. Is that correct? By "this table" I'm referring to Figure -- Table B-4.

A. Yes. With the proviso that contrast contains a number of sub-elements.

Q. And now from Table B-3 -- I'm sorry -- Figure B-3 and Table B-4 we have an assessment of susceptibility and severity, correct?

A. Yes.

Q. And turning to Table B-5 at page 322 we have a table which allows us to combine those two to get a reading of whether the overall impact at that Key Observation Point is significant, less than significant or insignificant, correct?

A. That's correct.

Q. For the purposes of my next several set of questions, Mr. Walker, I'm going to refer to Table B-5 and Table B-4 and Figure B-3 as matrices, okay?

And my first question is: Where did you get these matrices? Did you develop them yourself or did you obtain them from some other source?

A. I developed them myself.

Q. And, to your knowledge, has any other public agency used these matrices?

A. No.

Q. The values in these matrices, for example, let's turn to Table B-5, there's a value that if you have a strong visual impact severity combined with a moderate-to-high visual impact susceptibility, that that's a significant impact. That judgment that that's a significant impact,

is that your opinion that you used in developing this table, or did you rely on some authority for that?

A. It's -- the -- it's the result of my consideration of how all the factors involved in severity and susceptibility combine to weigh upon a particular situation. And I considered how much weight that other sources, such as BLM's system and other systems, such as used in some of the basic texts on visual impact analysis use, such as the Smarden (phonetic) book.

Q. But just to directly answer my question, the values in each of these cells in these tables are your opinion as expressed in the tables, --

A. Yes.

Q. -- correct?

A. Yes.

Q. Have these tables and the values that they represent ever been formerly adopted by the Energy Commission in any way?

A. No.

Q. Have they been put out for public comment?

A. No. They have only been reviewed internally by management.

Q. Have they been sent out for any outside of the Energy Commission peer review process?

A. No.

Q. Okay. Mr. Walker, I'm going to return later in the cross-examination to discussions of the method. But what I would like to turn to now is your application of the method in this case and, in particular, your assessment of each of the seven inputs to the matrices.

Let me ask you first to refer to Table 7 at page 264. And my first question with respect to this table is: Do these represent your opinions prior to the mitigation?

A. Yes.

Q. And the proposed mitigation would reduce all of the impacts to less than significant except for KOP 5; is that correct?

A. Considering that Key Observation Points 7 and 8 are no longer being proposed, that's true.

Q. All right. Now I would like you to refer to Figure 5 at page 256. This is a map that represents the first -- or KOPs 1 through 5; is that correct?

A. Yes.

Q. And, as we have been discussing, KOP 5 is the one located at the intersection of O'Banion and South Township, correct?

A. That's the location of the photograph, but it represents travelers up and down South Township Road as well as on O'Banion Road and residences along O'Banion.

Q. Okay. What I would like to first do, since there was some discussion, you criticized Dr. Priestley for inaccuracies in his testimony, I would like to take a look at Figure 5 for a moment.

First of all, if you look at the legend, the black, dark black squares represent nearby homes; is that correct?

A. That's what the legend says.

Q. And is it your testimony that the black squares shown on this represent the locations of homes in the area?

A. No. This is a photocopy of the Applicant's map provided to us as a data response.

Q. Did you rely upon these locations as -- to locate residences?

A. No. I did field checks.

Q. There is no residence at the corner of South Township and O'Banion on the northwest side, as shown here, correct?

A. That's correct.



Q. And there is no residence further up -- the next one further north on South Township, there is no residence there, is there?

A. I think that's correct.

I didn't include reference to either of those residences or nonresidences in my testimony.

Q. And with respect to the residences that you have referred to in your testimony on O'Banion, you have testified that those are located roughly a half a mile east of the corner of O'Banion and South Township on O'Banion, correct?

A. The one -- the two that are in addition to the one at the intersection, yes.

Q. So there are a total of --

A. Three.

Q. Three?

A. Three that have views. Excuse me. There are more homes than that along that area, but the others are either set back into groves or are across the street from existing groves so they don't have views, so they aren't essentially in the viewshed.

Q. Okay. So for the purposes of KOP 5 there are three residences that you are concerned about?

A. Yes.

Q. One of which is located near the intersection and the other two are located approximately a half a mile east on O'Banion?

A. Four-tenths of a mile east.

Q. Okay. And the two on O'Banion are located on the south side of the road?

A. Yes.

Q. And those two residences on the south side of O'Banion are oriented north and south, correct?

A. Yes. Their front windows are on the north side.

Q. So looking out their front windows they would not look down toward the corner of South Township and O'Banion?

A. That's correct. They would look out to the north.

They also, of course, could look to the northwest and northeast from those windows, so they do have views of the Sutter Buttes from those windows.

Q. I'd like to focus on the residence located near the corner of South Township and O'Banion for a moment. And we have had some discussion already about the relationship of this residence to the visual depiction for KOP 5.

How far -- let me just ask it this way, and maybe we can move through this quickly. Can you describe the difference geographically between the location of the visual depiction and the actual location of this residence?

A. By "visual depiction," do you mean the simulation or the photograph from the KOP?

Q. I'm referring to the visual simulations that you relied upon, that are set forth in your testimony.

A. Right. I'd say approximately 150 to 200 feet farther east than the road.

Q. And did you mean farther east than the point at which the --

A. Yes.

Q. -- visual simulation represents?

A. Yes.

Q. So it's about 150 to 200 feet further away from the corner?

A. No. Further away from the road.

Q. Which road, O'Banion or South Township?

A. South Township. East of that point where the photo was taken.

Q. Now we are referring here to the residence nearest the corner, correct?

A. Yes.

Q. How much further than the depiction is the home from the corner, where the corner pole would be?

A. The block on the map is perhaps slightly farther south than the actual site of the home. It's about 600 feet south of the intersection, 5- to 600 feet south -- the home is. This block looks like it's a little more than that.

Q. Okay. Well, I'm not worried about the block on the figure. I simply want to establish for the record your opinion as to the difference between the visual depictions and the actual location of that particular residence.

So with that in mind how much further, again, how much further from that corner pole is the residence than the point of depiction?

A. Well, I'd have to figure it out mathematically. It's the hypotenuse of the triangle against the long side of a triangle. And one side of that triangle being about 600 feet from the intersection, the other side being about 200 feet. And then whatever that hypotenuse distance is from the house to the intersection versus the long side of that triangle. That would be the difference between the two distances. I don't have that figured out in my head.

Q. Do you have any rough estimate that you can give us?

A. Okay. I would say if it's 600 feet from the photo point to the road, to O'Banion Road and the intersection, it's probably about 700 feet from the house. And if it's 500 feet from the point to the intersection it's probably about 600 feet. So I would say 600 to 700 feet to the intersection.

Q. So it's 6- or 700 feet further?

A. No, not further. It's about 100 feet further from the intersection.

Q. Okay. Now for KOP 5 your judgment as to susceptibility was that it was moderate-to-high, correct?

A. That's correct.

Q. And for severity it was that -- it was strong; is that correct?

A. That's correct.

Q. So referring, again, to Table B-5 at page 322, your judgment as to significance results from our being in the intersection of the Susceptibility column, moderate-to-high, and the Visual Impact Severity row of strong; is that correct?

A. That's correct.

Q. And therefore it's true, is it not, that if -- with respect to severity, had the judgment been anything less than strong you would have found, assuming susceptibility is unchanged, that there would be a less-than-significant impact, correct?

A. Yes.

Q. And, similarly, without making any change in your judgment as to severity, had you found that susceptibility was anything less than moderate-to-high you would have also found a less-than-significant impact, correct?

A. Yes.

Q. So it's fair to say that this is in terms of these cells on the borderline of being less than significant?

A. Yes. There are six total cells that result in the significant impact. Three of those cells are on that borderline. So half of the possible cells of significance are on that borderline. This is one of those three cells.

Q. Okay. I want to talk about susceptibility now. If you could turn to Figure B-2 at page 315? Actually let's skip ahead. We can, I think, dispense with this portion and go right to how you did the assessment of visual quality.

Now in your appendices you have set forth both the criteria that you apply to each of these inputs to your matrices and then how you applied those criteria, have you not?

A. Yes.

Q. And for visual quality the statement of your method appears at page 310. And the application of that method to KOP 5 appears at page 332. Is that correct?

A. Yes.

Q. Referring to page 310 you state that, at the bottom, being in the last paragraph, "That a basic premise in the evaluation of visual quality is whether a project will be compatible with the character of the landscape."

And it then goes on for the remainder of the discussion, continuing on to page 312, to talk about predominantly natural settings.

Do you see that?

A. Yes.

Q. Now you have previously testified that the landscape around the power plant is not natural; is that right?

A. Yes.

Q. With respect to the first paragraph under Visual Quality on page 310 you discuss the issue of whether the view is scenic; is that correct?

A. No. I don't see the word "scenic" in that paragraph.

Q. Okay. Well, let me ask the question differently.

You discuss the fact that if there is a -- well, let me just read the statement. You say, "Where publicly-adopted goals, policies, designations and guidelines exist they are given great weight in assessing visual quality. Where they do not exist the analyst relies on experience and judgment to assess visual quality."

Do you see that?

A. Yes.

Q. This would apply, would it not, to a County's judgment as to whether a view was scenic, correct?

A. The first part would apply, yes.

Q. What do you mean by the first part?

A. The discussion of publicly-adopted goals.

Q. So is the essence of the paragraph with respect to a county's judgment of scenic, is it your method then to say that if a county has designated a view as scenic, you give that great weight?

A. Yes.

Q. But if they have not designated it as scenic, you make your own judgment; is that correct?

A. Yes. Based on, as the rest of the paragraph says, the relevant physical properties of the environment, including land form, vegetation, water, color, scarcity and cultural modifications.

Q. Have you ever known a county to make an affirmative finding that a view or -- that a view was "not scenic"?

A. No.

Q. Counties don't make that kind of judgment, do they?

A. Well, not in so many words, but they do make findings in some cases that certain areas are visually degraded, there are visual problems or low visual quality in certain areas.

Q. If a county reaches the conclusion that a view is not scenic, it expresses that judgment by simply not designating it as scenic, correct?

A. No.

Q. Are you aware of any county that has designated a view as not being scenic, made an affirmative finding in its general planning process that these views are not scenic?

A. No, but that's not what you asked me.

Q. Well, it's what I intended to ask you, --

A. Okay.

Q. -- so let me try it again.

A. Okay.

Q. If a county, in its general planning process, was considering which views within the county are scenic and which ones are not, it would be customary for the county to designate the scenic views as being scenic and make no finding with respect to the others, correct?

A. No.

Do you want me to explain?

Q. Please.

A. All right. There's -- from probably almost on any layperson's as well as any technical person's perspective there is a spectrum of scenic value or visual quality in the landscape, and this is true for any county as well as for any individual, that some portions of their jurisdiction they would consider to have the highest scenic quality and some others they would consider to have the lowest scenic value. And there is a wide range of variation in between there.

Typically those jurisdictions give protection to the highest-valued areas, or those that have high user volume, a number of other factors that can be involved.

So simply because an area or a number of areas are not designated and protected as scenic doesn't mean that the county doesn't consider them scenic. They are -- just don't pass that high a threshold for officially regarding them as scenic and protecting them.

Q. So your testimony is that a county can find something to be scenic without a finding; is that what you're testifying?

A. No.

Q. Let's take this down to a more pragmatic level here and let's ask about Sutter County. You have referred at several places in your testimony of the views in the project area, of the Sutter Buttes, as being scenic, correct?

A. Yes.

Q. Did you mean for that to be scenic in the sense of just your opinion, or did you mean that to be scenic in the sense of some County designation?

A. Partly my opinion, but also the fact that there is general expression in County documents about the scenic value of the Sutter Buttes. There is no expression in the County documents that those areas within the County that are not protected by such a designation are not scenic.

Q. That's my point precisely. The County doesn't make a finding that a view is not scenic. It simply makes a finding that some views are scenic.

My question then is this: Is it your understanding that Sutter County has designated all views within the County of the Sutter Buttes as being scenic?

A. No.

Q. Has it designated any view within the viewshed of this project as being scenic?

A. No.

Q. And the County had the opportunity to make that designation, did it not?

A. Yes.

Q. So it would be fair to presume that they chose not to make that designation, given the opportunity, correct?

A. I don't know if they made an active choice not to or if the issue never came up about this particular view and that they simply chose to provide that designation for views considered of high vulnerability, such as along the south base of the Sutter Buttes along Highway 20 where the potential for development could threaten immediate views of the Buttes.

Q. Would it be fair to say that your method -- if there is an affirmative decision by the County that something is scenic is to respect that, but if the County concludes that it is not scenic that you substitute your own judgment?

A. I think that's an inaccurate characterization. Again, simply because a county does not specifically call out an area as scenic does not mean that it considers it not scenic.



Q. Sutter County has considered some particular views of the Buttes within Sutter County as scenic, correct?

A. Yes.

Q. For example, Highway 20, correct?

A. Yes.

Q. And it has not made such a designation for anything in the neighborhood of KOP 5, correct?

A. Correct. But it also has not made such a designation for many other areas in the County that have views that almost, well, any visual analyst would consider scenic.

Q. And so you fault the County for not having designated sufficient areas as scenic; is that your testimony?

A. I don't fault them. They had particular reasons for protecting that area. There is a higher threshold for designating an area as scenic for the County's purposes than there is in making an inventory of visual quality and scenic value throughout the whole County. That would take a lot more staff time and may not wind up having that much import in the long run.

Q. Is there anything that you relied upon in any County document to suggest that it was the County's opinion that the views in the neighborhood of KOP 5 are scenic?

A. No.

Q. And is there anything that you relied upon to determine that the County simply had made no judgment as opposed to having affirmatively decided that those views were not scenic?

A. Is there any document I relied upon?

Q. Yes. Can you point to anything that you know of with the County that would suggest that the County simply hadn't reached the issue as opposed to having considered and decided it wasn't scenic?

A. No.

Q. So your judgment that you are free to substitute your own judgment on that issue is based on the absence of information, correct?

A. Absence of information to the contrary, yes.

Q. Returning again to page 310, at the very bottom, you testify, "It's possible for new structures to be compatible with predominantly natural settings if such settings already contain some structures that are considered compatible and the new structures are similar to the existing structures that do not appreciably change the balance of natural and cultural elements."

Do you see that?

A. Yes.

Q. There are already power lines visible from KOP 5, correct?

A. Do you want an explanation or just a yes/no answer?

Q. The question calls for a yes-or-no answer.

A. Yes.

Q. And the new power -- I take it then that your testimony -- well, let me ask this. The new power structures, the new power poles perform the same function as the existing ones, correct?

A. It depends on which of the existing ones you are talking about. If you are talking about the ones along the Bypass, they perform the same general function. If you are talking about the ones along South Township Road, they perform a different function.

Q. Are you distinguishing distribution from transmission?

A. And the low-level transmission from bulk transmission. Sixty-nine kV lines are not long-distance transmission line; they are local area transmission lines on wood poles typically, as along South Township Road.

Q. So is it your testimony that when you testified that structures could be compatible if the new structures are similar to the existing structures, that these structures are not similar because they have higher voltages?

A. Well, higher voltages entail taller structures. And, in this case, much more complicated structures because of the double-circuit configuration. Therefore, the structures are not similar to the existing structures.

Q. So in order to qualify as similar to the existing structures within the meaning of this criteria, as you apply it, the power poles would have to be essentially identical, the same height, the same configuration, the same voltage?

A. They would have to be similar on similar-appearing structures. They wouldn't have to be identical.

Q. And as to the statement about changing the balance of natural versus cultural elements at the end of that statement, --

A. Yes.

Q. -- there is very little in the neighborhood of KOP 5 that's natural. We have already discussed that, correct?

A. Yes.

Q. So it would be fair to say that we are not changing the balance away from naturalness by putting the proposed transmission line in, are we?

A. Only in the sense that agriculture, agricultural products, although they are modified by human behavior, nevertheless are growing plants and therefore are closer to natural than highly-synthetic, urban structures that are manmade.

Q. So your testimony is that transmission lines are urban structures?

A. No. I didn't say transmission lines were.

Q. Now you refer to urban structures --

A. Transmission lines -- yes, but I was just contrasting the difference on a spectrum from natural to highly urbanized, that agricultural is somewhere in between those two. You might say it's not natural because it's not pristine, but it nevertheless contains natural organisms growing.

Q. Let me ask you to refer to Exhibit 40 which were the visual -- the photographs that Dr. Priestley took -- and specifically Figure Vis-16.

And, again, with respect to visual quality, I would like to ask you: Do you see the distribution poles there that run down O'Banion?

A. Yes.

Q. And this represents the view from the other two residences that you discussed that are relevant to KOP 5, correct?

A. No.

Q. Is it your -- well, let me this: Do you know where the location of this photograph is?

You heard Dr. Priestley's testimony, correct?

A. Yes.

Q. It's taken from O'Banion Road, essentially directly in front of those two residences, correct?

A. Yes.

Q. It's much closer, the view from this figure is much closer to those residences than the point of KOP 5, is it not?

A. I don't understand your question.

Q. KOP 5, as represented by the depictions in your testimony, the visualizations of the power pole --

A. Yes.

Q. -- is made from a specific geographic point, correct?

A. Yes.

Q. Slightly off the corner on South Township, correct?

A. Yes.

Q. Comparing that point to the point where this photograph was taken, this photograph is taken much -- is much closer to those two residences on O'Banion than that point where the visual depictions are, correct?

A. Yes.

Q. Now looking at those distribution poles from this vantage point isn't it fair to say that those existing distribution poles are much more prominent than any of the new transmission poles would be?

A. I can't make that decision because none of the new transmission poles are simulated in this picture.

Q. Well, let's assume based on your testimony that these distribution poles are 50 feet high. And I want to emphasize, we're doing that subject to -- just for the purposes of this cross-examination, but let's --

A. I --

Q. -- assume that they are 50 feet high.

A. I assume they are smaller than that. This is a single-circuit line, and it's only the 12-kV line. Those other poles had the 69-kV line on top of them. I think these are closer to 40 feet.

Q. Well, let me ask you this: You have already testified that the combination pole on the southeast corner of O'Banion and South Township was higher than the pole that you measured, 50 feet, correct?

**MR. RATLIFF:** Pardon me, Chris, just for a clarification. I think we may be confusing the lines on O'Banion in the foreground with the lines on South Township in the background. Is that -- maybe you could ask the question again and address which lines you are asking him to --

**MR. ELLISON:** Okay.

**MR. RATLIFF:** -- to judge.

Q. (By Mr. Ellison) Let me focus your attention, Mr. Walker, in the Figure Vis-16 on the nearest distribution pole. Do you see that?

A. Yes.

Q. Now you have testified that it's approximately four-tenths of a mile from here to the corner of South Township and O'Banion, correct?

A. From the point the picture is taken, yes.

Q. My earlier question was simply: Isn't this pole much more prominent from this vantage point than any of the new transmission poles would be, and your testimony was you didn't know. Is that correct?

A. I couldn't determine that without seeing a simulation of those poles from this vantage point.

Q. You testified earlier that you had estimated the height of the distribution and transmission poles on South Township by triangulating, correct?

A. Yes.

Q. I'd like to ask you to look at this distribution pole in Figure Vis-16. You know that it's four-tenths of a mile from here to South Township. It's even further as South Township moves north. And just by triangulation give me some estimate of how tall the transmission towers on South Township would have to be to be, from this vantage, as tall as that distribution pole?

And let me add, if it assists you in making this judgment, there are, by your estimation, 50-foot transmission towers running along South Township. And if you look between the two distribution poles on O'Banion you can see one of them, I believe, just barely over the orchard.

A. Now your question was how tall would it have to be?

Q. How tall would the new transmission poles --

A. Oh, have to be --

Q. -- on South Township have to be --

A. To be as tall as this first pole?

Q. To be -- to appear as tall --

A. As tall as this first pole?

Q. -- as this first pole from this vantage point.

A. About 200 feet tall.

Q. And they are not close to 200 feet tall, are they?

A. No.

Q. So isn't it fair to say that from this vantage point that distribution pole will appear to be much more prominent than the transmission poles -- the new transmission poles?

A. Yes. But that's not the key to the impact from those residences. The key to the impact is the impact on the view of the Sutter Buttes from the new transmission line. And that view, although it is obscured here because of the weather that day, can be -- would be better seen from the next picture, Vis-17, that comp- -- that picture, because the Buttes would be seen to the right of that distribution pole and to the left of the Greenleaf structure, out in that blank area. And there are no distribution poles crossing that view of the Buttes.

Q. So is it your testimony that in assessing the visual quality for these residences that you concluded that the new transmission poles on South Township would block the view of these homes of the Sutter Buttes? Is that your testimony?

A. No. That they would --

Q. What are you trying to say --

A. That they would interfere with the view of the Buttes because they would be visible as vertical, individual elements running all along the essentially undulating and horizontal line

of the Buttes; that they would stick up, in some cases, as high as the Buttes, along that stretch.

And, of course, you can't see it from this picture because it's washed out.

Q. It's your testimony, Mr. Walker, that the proposed new transmission poles would stick up from this vantage point, would stick up as high as the Sutter Buttes; --

A. Yes.

Q. -- is that what you're testifying?

A. Yes. Consider that those are only a little over a half a mile away and the Sutter Buttes are over 10 more miles away. If you take the angle and the height you will see that those poles would stick up quite a ways.

As a matter of fact, if you want to get a comparison of the effect, there is in my testimony in regard to KOP 8 a simulation provided by Calpine, Figure 20. And you will see in Figure 20 that the poles simulated by Calpine for us from a distance of about a mile away stick up as high, in several cases, as points along the Buttes, in a number of cases half or more as high as the Buttes. And this is a point a mile away from the proposed transmission line in the simulation.

Now if the point of view were a half a mile away, then those poles would appear much taller than they appear now in this simulation. Therefore they would appear higher against the backdrop of the Buttes.

Q. So it's your testimony that in the direction of the Buttes from these residences the distance to the new transmission towers is half a mile; is that correct?

A. No. It's approximately three-quarters of a mile.

Q. Well, you just testified it was half a mile.

A. No. I said that the homes are about a half a mile away from the transmission line, but that's -- they are actually four-tenths of a mile away. That's straight down O'Banion. But the



view is at an angle off toward the Buttes and therefore it's, again, a hypotenuse, a diagonal view. So it's more like three-quarters of a mile.

Q. I'd like you to refer to Visual Resources Figure 5, please. It's on page 256.

Now if you take the point that we're talking about, which is a half a mile down O'Banion from the corner of South Township and O'Banion --

A. Four-tenths of a mile.

Q. Pardon me. Four-tenths of a mile.

-- there is a scale at the bottom of Figure 5. If you find that point, that's the point we're talking about, correct?

A. Well, I don't have a ruler with me, but I can try to make an estimate.

Okay. I have marked on my map a point approximately four-tenths of a mile from South Township Road.

Q. And you have testified that the Buttes would be located slightly to the left of -- from this vantage point -- slightly to the left of the direction toward the project site; is that correct?

A. Somewhat to the left, yes.

Q. And drawing a line from that point in that direction to South Township and applying it to that scale, what is the distance that you get? It's approximately a mile, is it not?

A. No. I get between six- and seven-tenths of a mile, which is what I said before -- well, actually less than I said before. I said about three-quarters. It's less than that.

Q. Well, in the interest of time let me take you back to -- let's assume that you are correct -- and take you back to Visual Resources Figure 20, that you referred to a moment ago; and ask you to compare the size of the new transmission tower shown in Figure 20 to the distribution lines that one sees in Figure Vis-16 in Exhibit 40.

A. Okay.

Q. Isn't it fair to say that the existing distribution lines in Figure Vis-16 of Exhibit 40, even with your assumptions about the distance, will be considerably larger than the apparent size of the new distribution poles as represented in Figure 20?

A. The new lines are not accurately shown from Figure 20. The distance -- again, there is a horizontal distance from Highway 113 over to the parallel alignment of the proposed -- the then proposed transmission line route of one mile.

So that's over twice as far as away from that line as the homes along O'Banion are away from South Township and the new route of the line. Therefore, considering -- assuming that the angle from this road toward the Buttes is the same angle as the angle from the homes on O'Banion is towards the Buttes, you would have to increase the distance proportionally. So essentially these structures depicted on Figure 20 are about half as tall as they would appear from the homes on O'Banion.

Q. So is it your testimony, Mr. Walker, that the -- referring again to Figure Vis-16 -- that the new transmission towers will be as tall apparently from that vantage point as these existing distribution lines; is that what you're saying?

A. No, I'm not. Nothing like that.

Q. They won't be nearly as apparently tall, will they?

A. No, they will not. But they will be in the view of the Buttes, and that is what is critical.

Q. When you say, "they will be in the view of the Buttes," did you make some estimate as to where the poles would be located to make that judgment, recognizing these poles are going to be 7- or 800 feet apart?

A. Yes.

Q. And how many poles would you estimate would be in the view of the Buttes from this vantage point?

A. I didn't make a calculation of the number, but I could if you would like.

Considering that the Buttes are visible, say even from farther away, such as in my Figure 20, for several miles, just taking the number of poles that are visible in front of the Buttes from Figure 20, KOP 8, there is about 12 poles that are in front of the view of the Buttes in that figure. Because you would be closer to the line, half a mile closer, there would not be as many poles in front of the view of the Buttes from O'Banion Road. I would estimate at about six.

Q. Mr. Walker, referring to Figure B-3 at page 317, if you had assessed the visual quality of KOP 5 as low, meaning you had concluded the project is compatible with the existing character of the landscape and you had kept all of your other assessments the same you would have concluded that there was no significant impact, correct?

A. Yes.

Q. And if you had rated it as moderate-to-low you would have gotten the same result, correct?

A. No.

Q. What result would you have gotten?

A. Well, in that case I would have given equal weight to the four measurements and for the four factors. And, in this particular case, going back to the table in the text, Table 5 on page 261, KOP 5, because your sensitivity is high, visibility is high and viewer exposure is moderate-to-high, if you combine that with a low-to-moderate visual quality, it would have been a moderate -- still a moderate-to-high visual impact susceptibility. But instead of me essentially rounding down from what is now a high moderate-to-high, when you consider those four, it would have been a straight moderate-to-high. No rounding required.

Q. I want to ask you about your judgment on sensitivity. And there your method is described at page 312 and your assessment appears in one sentence at page 333.

Am I correct that your assessment of sensitivity was that it is high?

A. Yes.

Q. Turning to page 312, you describe two different methods of determining sensitivity: One being the direct measure of your attitudes and the other being indirect, correct?

A. Yes.

Q. Did you conduct any survey of the direct attitudes as described on page 312?

A. No.

Q. So you're relying on the indirect measures described at the bottom of 312?

A. Yes.

Q. And do you see the statement at the bottom of 312 being in the second sentence, "Land use is considered a 'useful indicator' of likely viewer response." Do you see that?

A. Yes.

Q. I take it, you looked at land use then as one of the measures of sensitivity?

A. Yes.

Q. And the following statement says, "Use activities associated with designated parks, monuments and wilderness areas, scenic highways and corridors, recreational areas and residential areas are usually highly sensitive."

Do you see that?

A. Yes.

Q. There is a difference between a residential area, as referred to at page 312, and an agricultural area; is there not?

A. It depends upon the agricultural area, whether it's purely used for agricultural or if it has residences in it.

Q. So is it your view that an agricultural area becomes a residential area simply because it has some residences in it?

A. No. It doesn't become a residential area, but the presence of residences typically raises sensitivity.

Q. If you're looking at a designation of "land use," as that term is understood by land-use planners, this is not a residential area, is it?

A. No. But neither is it a commercial area which, as the rest of the paragraph goes on to state, which is generally less sensitive than large-scale industrial or agricultural-processing facility uses.

This is not an agricultural-processing facility or a large-scale industrial use or a commercial use, commercial in the sense of commercial zoning as in light industrial and sales, that sort of a use. This situation with agriculture and some residential uses falls closer to the designation for high sensitivity found with residential areas than it does with commercial and light industrial uses.

Q. All areas that are zoned agriculture generally have some residences in them; do they not?

A. Well, you have given me a contradiction in terms in your question, and I don't know how to answer that. You said "All areas ... generally have."

Q. Okay. Let me restate the question.

Areas that are designated agricultural in their land-use designation commonly have residences in them; do they not?

A. Yes.

Q. And, nevertheless, there is an important land-use distinction between an agricultural area and a residential area, correct?

A. There is in terms of specifically what the land is used for, but not necessarily between visual sensitivity. For instance, as you read off several of the use activities associated with high sensitivity, it included things such as parks, monuments, wilderness areas, but it also included residential areas. There is a vast difference in land use between a wilderness area and a residential area, yet they are both considered to have high sensitivity.

Q. But my question is there is also a difference between a residential area and an agricultural area; is there not?

A. Yes. Yes. I am simply saying because there is a difference doesn't mean they have a different level of sensitivity.

Q. Let me refer you to the next statement in which you just described about describing the sensitivity in stating that, "Commercial uses are generally less sensitive as activities and views are often focused on those commercial activities."

And then it goes on to say, "Large-scale industrial and agricultural-processing facility uses are usually the least sensitive because workers are focused on their work and are often working in surroundings with relatively low visual value."

We have heard public comment about the fact that in this agricultural area people spend a great deal of their time out working; isn't that correct?

A. Yes.

Q. And isn't it fair to assume that agricultural workers focus on their work as well?

A. Not to the extent that workers in a large-scale agricultural-processing facility would. Those workers are often indoors and they are around heavy equipment and heavy machinery all the time, that's running. And for safety reasons they pretty much have to focus on their work. And they don't have views of the outside.

Farm workers on the outdoors, of course, have to be careful too, but they aren't always actively involved in heavy machinery and they move about seeing the landscape. So it's a very different situation.

Q. Agricultural workers frequently work with heavy machinery; do they not?

A. Yes. But they frequently aren't working with that machinery, too.

Q. That's true for a lot of commercial and industrial uses; is it not?

A. Except the setting within which the agricultural workers are working is very different from the setting and surroundings of industrial, large-scale industrial areas or high-intensity agricultural-processing facilities.

Q. But it's also very different than a residential area where people are not working at all, correct?

My point is, Mr. Walker, there is an important distinction in terms of visual sensitivity between a residential area and an agricultural area. Do you agree or disagree?

A. There is a difference. I don't think it's an important difference.

Q. So you think they're the same?

A. No.

Q. And by rating the sensitivity as high at KOP 5 you are saying that this agricultural area has the maximum possible sensitivity under your method, correct?

A. Well, clearly there is a variety of levels of sensitivity within the categories I have provided. There is a number of different uses considered to have high sensitivity. And this is considered to be one of those, primarily because of the presence of the residences.

Q. Let me repeat the question. It's not a trick question. The highest rating in your method that you can give to visual sensitivity is high. And that is the rating you have given here, correct?

A. Yes.

Q. So if this were in a wilderness area, it wouldn't get any higher rating than you gave it here, correct?

A. Correct.

There is -- it's only feasible to provide a reasonable range of levels of sensitivity as opposed to presenting, say, a hundred different levels for a hundred different activities.

Q. And you don't see agricultural areas as listed in your criteria of any of those areas that are highly sensitive, do you?

A. It's not listed in any of the areas.

Q. Let me digress for just one second and ask you to turn to page 313. Under the number of viewers' paragraph, under viewer exposure, and I recognize this is under viewer exposure and not sensitivity, but at the bottom there is the paragraph -- is the statement, "If only one residence is affected, visual susceptibility is considered to be low."

Do you see that?

A. Yes.

Q. Is that statement correct? Is that the way you intended to present that?

A. Yes.

Q. So you intended to say "visual susceptibility" and not viewer exposure would be low?

A. Yes.

Q. So in this case we have three residences affected, correct?

A. Yes.

Q. But if we had had one residence affected, visual susceptibility, which is the sum of all of these four criteria, would have been low regardless of all the other discussion that we're having, correct?

A. Yes.

Q. How did you decide that one residence would cause the entire visual susceptibility judgment to be low and yet two residences or three residences results in a visual susceptibility rating much higher than that -- well, I'll withdraw the question. Never mind.

A. I'd like to answer, if you don't mind.

Q. The question is withdrawn. Your counsel can ask you on redirect if he wants.

**HEARING OFFICER FAY:** No extra credit answers at this late hour.

**MR. ELLISON:** Yes. That's the reason for withdrawing the question.



**HEARING OFFICER FAY:** I'm going to take this rare opportunity to interrupt the cross-examination. And we will take a brief stretch and try to return in five to seven minutes.

(Brief recess taken from 8:06 p.m. to 8:20 p.m.)

**HEARING OFFICER FAY:** Mr. Ellison, I believe you were entering the final round of your cross-examination.

Q. (By Mr. Ellison) Okay. Are you ready, Mr. Walker?

A. Yes.

Q. Referring again to page 312 of the FSA, for viewer sensitivity you had three choices of ratings: High, medium and low, essentially. Correct?

A. Yes.

Q. And you describe at the bottom of page 312 three different categories of indirect measures, the first being the use activities that we have been discussing: Wilderness areas, scenic highways and corridors, recreational areas and residential areas which are, in your words, usually highly sensitive. And those, I take it, would generally get a viewer sensitivity rating of high; is that correct?

A. Yes.

Q. And then the second category you described are commercial uses. And the third category you described are large-scale industrial and agricultural-processing uses, which you go on to say generally have a low visual value. I assume that the latter, the ones that have a relatively low visual value, would get a rating of low?

A. Yes.

Q. Am I right then that the commercial uses that you describe, which appear to be somewhat in between the two, would get a rating of moderate?

A. Yes.

Q. And what you have essentially decided is that agricultural uses, although they are not identified here, are more akin to wilderness areas, scenic highways and corridors, recreational areas and residential areas than they are to, for example, commercial areas. Is that correct?

A. No. I decided that agricultural areas in combination with residences are high.

Q. In this case in combination with three residences, correct?

A. Yes.

Q. So I take it, if you had an agricultural area with no residences in it, if such a thing exists, then you might equate it as something more akin to a commercial use?

A. Yes.

Q. Okay. Let's move on to visibility. You describe your method at page 313 and your application of the method at page 333. Is that correct?

A. Yes. Yes.

Q. And you rated visibility as high; is that correct?

A. Yes.

Q. Referring to page 313, on visibility, do you see the statement in the third sentence that the smaller -- I'm sorry -- the second sentence, "Visibility can differ substantially between view locations depending on screening and the effect of the location of the visual change in the view. The smaller the degree of screening the higher the visibility usually is and the greater the potential impact is likely to be."

Do you see that?

A. Yes.

Q. Do you agree the houses -- the two residences on O'Banion are substantially screened with respect to their view down O'Banion to the corner of South Township and O'Banion?

A. I'm just trying to make a snap judgment here in terms of the applicability of the term "substantial." There certainly is screening. It's certainly not total. So there is a fair degree of screening.

Q. And with respect to their views toward the remainder of the transmission line going north on South Township and the power plant site itself, there is an orchard between those two residences and the project, correct?

A. Yes. However, at that distance the orchard provides very little screening. It doesn't even screen off the total height of the existing wood pole lines along South Township, so it would screen an even smaller portion of the proposed transmission line along there.

Q. But it would provide some screening; would it not?

A. Yes.

Q. And turning again to page 313 and continuing, do you see the sentence further down, "Angle of view is also important"?

A. Yes.

Q. With respect to the O'Banion homes, the angle of view from these homes is not down O'Banion towards the corner pole, correct?

A. That's correct. The primary view isn't. It would be out the side of the home.

However, as we have talked about earlier, people don't just stay inside their houses. They have views in all directions from their yards.

Q. Let me ask you a question with respect to the home at the corner of South Township and O'Banion. Would it be possible to screen the view of the corner pole as well as the poles continuing north on South Township without blocking the view of the Sutter Buttes from that residence?

And let me be clear. I'm not asking about existing screening. I'm talking about mitigation. Would it be possible to plant some sort of screening to do that?

A. The bottoms of the poles could be screened from view with vegetation without blocking the view of the Sutter Buttes, but the upper portions could not be without blocking a portion of the view of the Buttes unless the poles are moved away from the corner to where they are no longer in the view of the Buttes. And then screening wouldn't be necessary to -- to mitigate impacts on views of the Buttes themselves. The poles would still be in the periphery of the view, however, from that home even if the pole were moved.

Q. And with respect to the corner residence at South Township and O'Banion, the angle of view from that residence, the picture window there, is toward the Buttes rather than directly up South Township, correct?

A. That's correct.

Q. Returning again to page 313 you further down make the statement that "Meteorological conditions can also affect visibility. For example, fog can make a cooling tower plume or stack plume unnoticeable, given particular fog density and the distance from the viewer to the plume."

Do you see that?

A. Yes.

Q. It's true, is it not, that there is from time to time fog in the vicinity of KOP 5?

A. Yes.

Q. In fact, in the wintertime it's fairly frequent, is it not?

A. Yes. For about three months it's fairly frequent. But for about nine months of the year it is very rare. And for about six months of the year it doesn't exist.

Q. And further down on 313 you have the statement that, "Another factor affecting visibility is time of day. Although projects are generally more noticeable during daylight hours, lighting can make project structures and plumes more noticeable at night than during the day."

Do you see that?

A. Yes.

Q. Now your finding regarding significant impact is only with respect to the transmission line, correct?

A. That's correct.

Q. There are no lights on the transmission line, are there?

A. Not that I know of.

Q. Turning to page 333, under "Visibility," you discuss screening. But there is no discussion here of angle of view, is there?

A. No.

Q. And there is no discussion of the meteorological conditions or the fog, is there?

A. No.

Q. And there is no discussion of the time of day or the lighting issue, either, is there?

A. No. I didn't consider any of those factors to be unusual in requiring discussion here, because the angle of view was such that the projects -- the project would, especially the transmission line would be seen from any of those homes in fairly frontal angles of view and time of day. People live at these houses 24 hours a day. So time of day is irrelevant.

And what was your third point?

Q. Meteorological conditions.

A. Yes. No, there isn't a specific mention of them. But, as I just said, the fog is only there in the winter months with any frequency. So that isn't a major factor that would be limiting visibility.

Q. These are all factors described at page 13 --

A. Yes.

Q. -- as being important criteria, are they not?

A. Right. And I did consider them. I just didn't put them down here, because they weren't important factors in the weight of determination.

Q. Incidentally, with respect to all of these criteria that we've been discussing in Appendix B of your testimony, where did you get these criteria?

A. Okay. Again, are you speaking of such things as visual quality, sensitivity, visibility and viewer exposure?

Q. Well, in the interest of time, let me just ask this question: These are your criteria that you apply, correct?

A. I didn't invent them. No. I took them from other sources and I've used them here.

Q. My question wasn't whether you invented them. My question was: These are the criteria that you applied. You, I assume, included Appendix B here because you agree with the statements that are made there, correct?

A. Yes.

Q. So if something's identified as an important factor in Appendix B, it would be appropriate to consider it important in doing the analysis for this project, correct?

A. Yes. And I did.

Q. You just didn't think it was important enough to discuss, correct?

A. Not when it's not a relevant factor. I mean I could have discussed a hundred factors under every subsection of every KOP, but they weren't relevant factors.

Q. Is it your testimony the angle of view, the meteorology and the lighting in this case are not relevant?

A. They are relevant. But, as I said, the angle of view is such that it did not limit visibility. And the time of day, because of residential uses, is 24 hours a day. And so it doesn't limit visibility. It seems redundant to state the obvious like that in an analysis.

Q. For the moment, Mr. Walker, I'm going to skip past exposure. And let's talk about visual impact severity. I'd like you to turn to Table B-5 at page 322.

A. (Witness complies.)

Q. As you testified earlier, you rated the visual impact severity as being strong; is that correct?

A. Yes.

Q. And this is the result of the application of your matrices to your assessments of contrast, dominance and blockage; is that correct?

A. Yes.

Q. Would you turn to Table B-4 at 319?

A. (Witness complies.)

Q. Am I correct in reading this that if any of the severity factors on the left-hand side of this table result in a finding in the strong column that the overall visual impact severity will be strong regardless of what the other severity factors are?

A. That's correct.

Q. Now referring to Table 6 at page 262, this table summarizes your findings as to various severity factors; does it not?

A. Yes.

Q. Let me ask you one sort of digression question. In my reading of your testimony, Mr. Walker, it appeared to me that there might, depending upon interpretation, be some discrepancies between your description of your findings in the appendices and the designations here in Table 6. Am I correct in assuming that we should rely upon Table 6, because that's part of the main body of your testimony that these assessments reflect your judgments?

A. Not necessarily. If there are discrepancies we should work them out and decide what -  
- the basis of them.

Essentially, if there is a discrepancy, the text should prevail, because the text was -- the analysis was set down on paper. And this table simply summarizes what was done in the text, in the appendices. So if there's an error, it's most likely in the table.

Q. Well, in the interest of time, let me -- if we have time, I'm going to come back to this. But I'm trying to hold to the time that the Committee has here.

Let me ask you this. And again in the interest of time, let's see if we can skip past some questions here. Can you identify for us, from Table 6 or from your appendices, whichever you think is appropriate, which of these severity factors triggered your finding that the overall severity was strong?

A. Yes. There are three factors. And there is an error on Table 6. Looking back at the text that's on page 344 to 345, it states in the first full sentence on page 345 that, "In summary, in regard to existing structures, the proposed poles would cause high contrast in regard to form and scale; moderate contrast in regard to color and texture; and low contrast in regard to line."

So the values in Table 6 in regard to structures, contrast of structures, should be high for both form and scale. And on the table here they show moderate in regard to form and moderate in regard to scale. So those "M's" should be made "H's."

So then there are three factors that lead to the severity factor of strong in this particular instance, referring back again to the table in Appendix B on methodology, Table 4, which designates how these levels play out in terms of severity scores.

For a high form contrast, there would be a severity score of strong. And for a high scale contrast, there would be a severity score of weak.

So the two factors then that independently would lead to a severity score of strong are the form contrast and the co-dominant scale contrast. So those are the two reasons then that would lead to actually a visual impact severity score of very strong, not just strong.

Q. So you're saying that your testimony, as presented in Table 6, is incorrect?

A. Yes. I've just corrected it for you. Structure, form contrast should be high; structure, scale contrast should be high; and visual impact severity should be very strong. And, therefore, that plays into Visual Resources Table 7, the second column under Visual Impact



Severity and Key Observation Point 5 should be very strong, rather than just strong. But the final column of Impact Significance, of course, just remains significant.

But in terms of your questions earlier in regard to where this significant impact fell on the range of impacts in relation to Appendix B, now with a very strong -- let's see. That's on page 332, Table B-5, instead of falling into that marginal box that you had asked about before, it now falls into the less than marginal box, of more strong impact than a marginal impact, because it now has a very strong severity and a moderate-to-high susceptibility.

Q. Are you done?

A. Yes.

Q. You described scale contrast as being co-dominant. Did you mean scale dominance?

A. Let me see. Scale dominance is co-dominant.

Q. So the three factors that trigger the strong or very strong, as you've now corrected it, finding would be spatial; dominance, scale dominance; and form contrast -- I'm sorry. What was -- which was the contrast one?

A. It was contrast as to form, yes.

Q. Okay. Those are the three; is that correct?

A. Let's see. Actually there are only two. It's scale dominance and form contrast.

Q. Okay. Well, let's talk about scale dominance. Could you briefly -- what is "scale dominance"?

A. (Pause while witness peruses documents.)

Q. I'm not asking for any particular words, Mr. Walker. I just want to set the scene here for everybody who's not as well versed in this as you are. If you could just give us your quick description of "scale dominance," I think we can move on.

A. Okay. Basically "scale dominance" is a measure of the size of an object in comparison to the field of view and in comparison of -- the size of an object in comparison to what part of the setting it would occupy.

Q. With respect to scale dominance, did you base your judgment at KOP 5 of scale dominance on Figure Vis-12?

A. Insofar as it's representative of views not only from that point but also points all along South Township Road for two miles north of that point.

Q. Is that a yes or a no? Did you base it on that view?

A. Not just from that one point. I mean, I looked at that simulation to see what the scale dominance was at that particular point. And I also considered how it would be traveling farther up South Township Road. And essentially it doesn't change, because the poles remain quite dominant in the view all the way up that road.

So, yes.

Q. Scale dominance is greatly affected by the distance of the observer from the object; is it not?

A. It can be. It -- it depends more upon the location in the field of view than just the size of the object, because it depends upon whether you have a panoramic view or an enclosed view. There are a lot of factors involved. But certainly distance from an object is important.

Q. I'd like you to refer to Figure Vis-16 of Exhibit 40 and also to Figure Vis-17.

A. (Witness complies.)

Q. With respect to the residences on O'Banion at KOP 5, you testified earlier that the location of these photographs is much closer to those residences than the point at the -- for the depiction of Figure Vis-12. Do you recall that?

A. Yes.

Q. Wouldn't it be fair to say that the scale dominance for those residences on O'Banion would be very different from their actual point of view than the point of view of Figure Vis-12?

A. (Witness peruses document.) Certainly the assessment of scale dominance would be different because the situation is different, the actual determination of the level of scale dominance. In this case the new poles would be substantially farther away from the residences. However, they are spread out in a line across the panoramic view. And because of that, that increases their scale dominance effect.

Instead of just seeing, say, a pole or a couple of poles at the corner, as we talked before, they would probably be a half a dozen poles strung out in front of the Sutter Buttes there. And in the context of what's visually prominent and focused on, the view essentially is of the Buttes right now. And the view then would be of the Buttes plus a half a dozen transmission poles sticking up in front of the Buttes.

So it's considered co-dominant in terms of scale dominance.

Q. So it's your testimony that even from the point of view of Figure Vis-16 and Vis-17 that these transmission towers would have a scale dominance of co-dominant? Is that your testimony?

A. Not visual. Figure Vis-16, because that's looking essentially west down O'Banion road, not toward the Buttes, but in the view from Vis-17 looking northwest toward the Buttes, I would say that's true.

Q. How far away would these transmission towers have to be, in your opinion, Mr. Walker, for them to no longer be co-dominant?

A. It depends upon how tall or how large other features in the view are. In this particular situation, the -- as we discussed before -- as I discussed before, the poles would be approximately as tall as the Buttes in many -- along many points there. So they're co-dominant.

Q. From that vantage point, would you describe those transmission towers as being in the foreground, the middle ground, or -- I forget what your third, more distant category is. You'll have to remind me.

A. Background.

Q. -- background.

A. Middle ground, which is between a half-mile and a mile.

Q. Let me ask you to refer to page 313 of your testimony.

A. (Witness complies.)

Q. Under "Viewer Exposure Distance," you describe foreground, middle ground and background. Do you see that?

A. Yes.

Q. And you describe background or long range --

A. Right.

Q. -- as being -- in the last sentence, "Long range distances are dominated by the horizon and major land forms."

Do you see that?

A. Yes.

Q. Can you turn to Figure 20, please?

A. In my testimony?

Q. Yes.

A. (Witness complies.)

**PRESIDING COMMISSIONER MOORE:** What page are you on, counsel?

**MR. ELLISON:** I'm on Visual Resources Figure 20. And unfortunately mine is separated from the testimony, so I can't... It's the visual depiction from KOP 8. They're not page-numbered so...

**PRESIDING COMMISSIONER MOORE:** Thank you.

Q. (By Mr. Ellison) Have you found that depiction, Mr. Walker?

A. Yes.

Q. Now, Mr. Walker, you earlier directed my attention to Figure 20 as being somewhat representative of what the view, in your opinion, of the transmission towers from the two residences on O'Banion might look like. Do you recall that?

A. No. What I said was that this view, even in this view the poles are as tall as some parts of the Buttes and are half as tall or more in the rest of their view across the Buttes.

Whereas, from Key Observation Point 5 the poles would be substantially taller since the distance is only about half as far from the viewer to the poles.

Q. And you testified, in your view, that the distance from -- in Figure 20 to the poles was approximately a mile at the nearest point?

A. No, not the -- not in the view. I said that the perpendicular distance from Highway 113 to the road down which the poles travel is about a mile. But the diagonal view would then be about -- between a mile and a quarter, mile and a half.

Q. Would it be fair to say in Figure 20 that this is a view that is dominated by the horizon and the major land forms of the Sutter Buttes?

A. (No verbal response.)

**HEARING OFFICER FAY:** Mr. Walker, are you capable of answering the question?

**THE WITNESS:** Yes.

**HEARING OFFICER FAY:** Please do so.

**THE WITNESS:** The Sutter Buttes definitely are dominated in this view. However, the poles in the view, which aren't all at that distance, as one moves toward the left in the photograph, the poles become closer and larger and are within mid-range views, or border on mid-range, anyway.

Q. (By Mr. Ellison) So I take it, to summarize, that it's your testimony that although you relied upon Figure Vis-12 to assess scale dominance as representative of the views in the area, that were you to have used the view from these, Vis-16 or -17, you would have reached a co-dominance conclusion?

A. On -17, yes.

Q. So although distance, as you acknowledged earlier, is an important factor in scale dominance, the fact that we've moved four-tenths of a mile further away from the transmission tower as its closest point, it wouldn't change your conclusion about scale dominance?

A. Well, of course within every category there's a range of values. And from the closer residence, from the photo in Figure Vis-12 in the Applicant's testimony versus Figure Vis-17 in the Applicant's, although the distance is farther away, as I mentioned, the fact that a number of poles can be seen not foreshortened as from KOP 5, but strung out along the viewshed, viewscape, in front of the Sutter Buttes, makes scale dominance from that view also co-dominant, as I said, with the Buttes. They are essentially as tall as the Buttes are.

Q. And the Buttes are a major land form; are they not?

A. Yes.

Q. And would you agree that the horizon would be easily seen in any of these views that we're discussing with the exception of Figure Vis-12, perhaps?

A. What do you include within "any of these views"?

Q. Well, let's focus on Vis-17.

A. Yes, the horizon could normally be seen. On this day you can't really see the horizon because of the bad weather.

Q. And would it be true that this view, even after the proposed project is added, would be dominated by the horizon and the major land form of the Sutter Buttes?

A. I think it -- the transmission poles would be co-dominant with the Buttes, again, because they would appear all across the view and would be seen in front of the Buttes and appear as tall as the Buttes.

Q. Under your method, Mr. Walker, a finding of co-dominance for scale dominance by itself, regardless of any other severity factor, would trigger a severity finding of strong, correct?

A. Yes.

Q. I want to digress for a minute and just take a look around this room. Would you consider, let's say, this chair over here that I'm pointing to that has the green coat on it, would you consider that to be, in terms of scale dominance, from where you're sitting right now, to be co-dominant?

A. No.

Q. What would it be?

A. Subordinate.

Q. And if I were to locate myself and go sit on the floor right behind that chair, right up next to it, two feet from it, from my point of view, what would it then be in terms of scale dominance?

A. You're looking straight at it. It would be dominant.

Q. So where you choose to look at the project from makes a tremendous difference, does it not, in your assessment of scale dominance?

A. Yes.

Q. And your assessment of scale dominance by itself triggers a strong finding of severity, if it's co-dominant or dominant, correct?

A. Yes.

Q. So by selecting a view of KOP 5 at the corner of South Township and O'Banion, where the transmission line happens to be, you're virtually guaranteed a finding of strong severity; have you not?

A. That point wasn't selected for that purpose. The point was selected because there are travelers up and down those roads and there are residences along those roads. That's why it was chosen.

Q. But the actual point in the visual simulations of Vis-12 does not accurately represent the view from the residences on O'Banion, does it?

A. No, because it was an attempt to capture the whole area, both the view down the road and, to the best of our ability, the residence. But we didn't go on private property to try to obtain a picture there. We used public property.

And in terms of your question as far as guaranteeing a high scale dominance value from that point, if we had picked any point farther north along South Township Road toward the project, any of those points would have resolved in high scale dominance, because we would have been within foreground views of a trans- -- or at least one transmission pole, if not more. So it wouldn't have really mattered precisely where we picked for that KOP.

Q. As long as you picked a KOP that was located very near to one of the transmission poles, correct?

A. Correct. And the reason that was picked is because that's where people are and people will be. They'll be traveling up and down that road.

Q. The majority of the residences that we have been talking about are not located at that intersection. They're located at four-tenths of a mile east; are they not?

A. That's correct.

Q. And in your testimony regarding significance, you've focused on the residences, have you not?

A. I focused on both travelers and residences.



Q. But your finding of significance is based on the residences; is it not?

A. No. It's based on both.

Q. Can you show me where in your testimony with respect to KOP 5 you have found that the travelers are significant?

A. That's not the kind of terminology I use at all in terms of viewers. I don't view viewers as either significant or nonsignificant.

Q. Well, I'll tell you what. Let me withdraw that question and direct your attention to page 279. This is in the effectiveness of mitigation, at the very end of your testimony.

A. (Witness peruses document.)

Q. Under pole placement, where you discuss the transmission line, under your conclusions about the effectiveness of mitigation with respect to the transmission line, you divided the discussion into pole placement and the alternate route. The alternative route, I assume, is the westerly route that you originally proposed and later withdrew your support of, correct?

A. Actually that's routes -- and it discusses both the revised route proposed by the Applicant following South Township and then west of O'Banion, as well as the alternative route that Staff proposed directly west from the plant.

Q. My point is, though, that for the discussion of the effectiveness of mitigation on the route that we are now discussing, the discussion would appear under pole placement; would it not?

A. Yes.

Q. And there you'll find the statement, in the second sentence, "However, this" -- the first sentence discusses how mitigation can be provided for residences by the placement of poles.

And then in the second sentence, you say, "However, this measure is not technically feasible for some residences, because the residences are far enough from the

poles that such pole placement cannot be far enough apart to achieve the mitigation objective."

Do you see that?

A. Yes.

Q. Was there any discussion of the travelers as opposed to the residences in this concluding paragraph?

A. No. That's because pole placement was proposed by the Applicant to mitigate impacts on views in front of residences. And that's the context in which I evaluated it. It was never intended by the Applicant or perceived by myself to be a mitigation for travelers.

Q. You would agree, would you not, that someone traveling along South Township or O'Banion would only be in a close proximity to these transmission poles for a brief period of time?

A. Well, these aren't freeways and travel speeds are not freeway speeds. So because the poles are along South Township for two miles, they would see these poles for, say, three to four minutes. In terms of travel time, that's quite a long time for travelers to see a particular feature.

Q. Compared to a residence, it's not very long, is it?

A. No. But that's never -- never the case. One never compares view times for travelers with view times for residences, in terms of an expectation that they will be the same. That would be impossible. It will never happen.

Q. That wasn't my question. With respect to just the residences, if you were to ignore, for a moment, the travelers on the roads, since there are two residences east on O'Banion and only one residence near the corner, if you were to select the view that's most representative of those three residences, would it not be correct to pick one that would be east on O'Banion as opposed to down by the corner?

A. I suppose you could say it was more representative because there were two instead of one, yes.

Q. Do you consider O'Banion or South Township to be heavily-traveled thoroughfares?

A. No.

Q. If you select a viewpoint which is very near to the project and, therefore, obtain a scale dominance of co-dominant or dominant and, therefore, obtain a severity finding of strong, that would substantially increase the likelihood of an overall significance finding compared to selecting a location that was more distant from the project; would it not?

A. Yes.

Q. And if, under your method, you find a significant impact at any KOP, then you find a significant impact for the project as a whole, do you not?

A. Yes. Because KOPs don't just represent a point in space. As I described earlier, they represent an area that that KOP represents around them.

And in the case of KOP 5, as I stated earlier, it represents views of travelers all up and down South Township Road, as well as the residences along O'Banion.

Q. And you've also testified that -- never mind. Strike that.

If I could get you to turn to page 314? At the bottom paragraph there you discuss this issue of using each Key Observation Point versus some sort of overall perspective.

Do you see that?

A. Yes.

Q. And you make the statement that the -- "Therefore, the visual impact of a project is determined for each Key Observation Point, not from an overall perspective that masks the specific impacts."

Do you see that?

A. Yes.

Q. If you make a finding of significance at any Key Observation Point, your findings at the rest of the Key Observation Points are irrelevant; are they not?

A. Not necessarily, because it may be possible to mitigate the impacts from particular Key Observation Points, as has been done in this project from several Key Observation Points, particularly with respect to the power plant, but not to be able to mitigate them from a particular Key Observation Point, such as the Key Observation Point 5.

Q. If you make a finding of a significant impact at any -- at a Key Observation Point, and it's not mitigated, then you're going to find that there is a significant visual impact regardless of what you found at any other Key Observation Point, correct?

A. Correct.

Q. And so in that respect, the other Key Observation Points don't matter to your conclusion; is that correct?

A. They don't cause the overall finding of significance to be less than significant.

Q. So isn't it fair to say that under your method, that your method masks the impact of all those other Key Observation Points, other than the one that you found to be significant?

A. Not at all. The masking occurs in the opposite situation, where an overall perspective is used and ignores the impacts of particular Key Observation Points and uses some sort of a black box approach to try to come to a conclusion of no significant impact and ignores the impacts on particular Key Observation Points. And even if one averaged all the Key Observation Points' impacts and say, well, or took a majority vote and say there's seven and three were less than significant -- or three were more -- less than -- I'll say three were not significant and four were, well, then, you'd find there's significance. And if three were and four weren't, you'd say it's not significant.

I can't find any such application or a methodology like that to be credible.

Q. Under your method -- let me give you a hypothetical, two hypotheticals. In hypothetical one, you've analyzed a project from, let's say, 10 Key Observation Points. And

you have found them all to be significant. You found significant impact on all 10 Key Observation Points.

Do you have that in mind?

A. Yes.

Q. In hypothetical two, you've analyzed this project, the same project, from the same 10 Key Observation Points. But in hypothetical two, your conclusions are different. In nine of the Key Observation Points you found no significant impact, but in the tenth one you found a significant impact. Do you have these two hypotheticals in mind?

A. Yes.

Q. Your method would not distinguish the one from the other, would it, with respect to your overall finding of significance?

A. No. And part of the reason for that is that -- just as there is some decision point made in terms of whether an impact is significant or insignificant, either from a Key Observation Point approach or from an overall approach, there's also a range within what's significant.

There can be an impact that you'd consider is -- that is sufficient to call it significant, but it's not as severe as it might be. But then on the farther end of that scale, even though it's still just called significant, the impact could be much more severe. So there -- it's not all black and white. I mean there's a full range of impacts. And so there's -- within "significant," yes, one might say that an impact is significant from one Key Observation Point in one situation and from 10 Key Observation Points. In another one might say the actual impact overall or the severity of the impact is greater with the 10 Key Observation Points. That doesn't mean it's not significant with the one. It just means that there's more impact after it's already significant. You're just piling more impact. And it doesn't mean that -- you know, you've already crossed the threshold.

Q. Does that complete your answer?

A. Yes.

Q. Under the overall approach, however, one would weigh and balance the impacts at all of the observation points, correct?

A. It depends on what you mean by "overall." If you use Mr. Priestley's approach of overall, meaning looking at the overall viewshed, then I'm not certain how one would -- how he would view the impacts from individual Key Observation Points. It's not clear whether he added up the impacts, the significance and nonsignificance.

Well, obviously in his case he didn't find any of them to be significant. So it was clear -- it was easy. But if he had found some to be significant, I don't know what he would have done in terms of coming to an overall conclusion. It's not clear from his methodology what to do.

Q. You testified earlier that if there is only one residence affected that overall visual susceptibility would be low. That's at page 313. Do you recall that?

A. Yes.

Q. What's the basis for your conclusion that one -- let me ask this: If you have two residences, would it also be low?

A. Well, the number of viewers would be low, but the overall viewer susceptibility would not necessarily be low.

Q. Did you mean visual susceptibility?

A. Yes.

Q. So if I have one residence; I stop looking at visibility and exposure and all those other four factors, and I jump immediately to the conclusion that overall susceptibility is low, correct?

A. The way I carry out my work, I typically look at all the factors. In the case of the one Key Observation Point that I concluded finally, there was less than significant impact because it was only one residence. That was Key Observation Point 4. I did that upon

further consideration that although there were two residences in that area, one of them did not have views of the power plant, because it was set back into the orchard.

So that's why I came to the conclusion that susceptibility would be low. So impact would be low, less than significant.

Q. That's not my question. My question is simply this: You've testified in your written testimony and confirmed that you intended to say, "If only one residence is affected, visual susceptibility is low"?

A. Yes.

Q. And if I refer to Table B-5 at page 322, a finding of visual impact susceptibility of low means that there would be a less-than-significant impact regardless of whatever the finding was on visual impact severity, correct?

A. Correct.

Q. So if I have only one residence at a KOP, I jump to the conclusion that there is a less-than-significant impact without analyzing anything else, correct?

A. Yes.

Q. Now what about if I have two residences?

A. No.

Q. And if the second residence and the KOP I select for it happens to be located right next to one of the transmission towers, such that I got a scale dominance of dominant or co-dominant and, therefore, a visual sever- -- I mean a severity of strong, I would be likely to find a significant impact, correct?

A. Could you clarify what you meant when you said one or one of two? I didn't understand what you meant there.

Q. My question assumes that this second residence that we've added to the hypothetical --

A. Where is the first residence in relation to the project?

Q. Let's assume that the two residences are side-by-side --

A. Okay.

Q. -- and that the KOP that you select to represent them is located right next to a transmission pole for the project, such that the scale dominance in that circumstance would be either dominant or at least co-dominant, correct?

A. Yes.

Q. And that would trigger a finding that severity was strong, correct?

A. Yes.

Q. And if I look at your Table B-5, a finding that visual impact severity is strong, there's at least two cells out of five in the strong row that would result in a significant overall conclusion for that KOP, correct?

A. Yes.

Q. And under your methodology, a finding of significance at any KOP means a finding of significance for the entire project, correct?

A. Yes.

Q. So by adding the second residence to this hypothetical, I've jumped from the conclusion that there is no significant impact --

A. No, not -- not significant -- well, to a less than significant impact, if you look at my terminology.

Q. Under CEQA --

A. Okay.

Q. -- a less-than-significant impact is the same as a finding that there would not be a significant impact, correct?

A. Yes.

Q. So for the purposes of CEQA, by adding the second residence, I've jumped from the conclusion that there is not a significant impact under your method to the conclusion that there is, correct?



A. I wouldn't characterize it as jumping, but there is that change, yes.

Q. Did you base this judgment about the number of residences and their importance on your own opinion, or did you rely upon some other authority?

A. I relied upon other authority.

Q. Could you identify that?

A. Consultation with Staff Counsel in regard to court cases on point.

Q. So it's your understanding that the law requires you to make this distinction between one residence and two?

**MR. RATLIFF:** I think I have to object on the grounds that I believe it calls for a legal conclusion. I think the witness has answered the question. He relied on the advice of counsel.

**MR. ELLISON:** Well, my question is not asking him to make the legal conclusion. I agree with you that that would be -- my question is simply: Does he understand that it is a legal question.

Q. (By Mr. Ellison) It's your understanding --

A. Yes.

Q. -- that you are bound by the law to make this distinction?

A. I wouldn't say "bound by the law," but that the law provides guidance about how to proceed.

Q. Now you've testified in your written testimony that your method that we've been discussing is derived from the Bureau of Land Management's method; is that correct?

A. I think what my testimony said was that it incorporates elements of the Bureau of Land Management's methodology, but that it varies in a number of ways.

Q. Does the BLM VRM use the same matrices that your system does, using "matrices" the way I described it earlier?

A. No. It uses matrices, but the matrices they use are not identical to the ones I use.

Q. In developing those matrices, we've discussed the seven inputs; the four into susceptibility and the three into severity. You recall that, don't you?

A. Yes.

Q. Did you base your decision to compose the matrices of these seven inputs on some other agency practice, or was that your decision?

A. It was my decision based upon my review of the literature and the importance generally accorded to each of the factors discussed in the literature.

Q. And would it be fair to say generally that you've given those -- each of those inputs equal weight?

A. The four factors in regard to susceptibility were given equal weight. The three factors in regard to severity were not given equal weight.

Q. So, for example, visual quality, which you describe on page 310, as a basic premise in the evaluation of visual qualities, whether a project will be compatible with the character of the landscape. So the question of whether the project is compatible with the character of the landscape is only one of seven factors that you consider, correct?

A. Well, I consider a lot more than seven factors. But it's one of the four factors within visual susceptibility and one of the total of seven in combination of visual susceptibility and visual severity.

Q. And you testified that those four factors are given equal weight?

A. Yes.

Q. So the fact that the project could be compatible with the character of the landscape could be overridden by any of the other three susceptibility criteria?

A. No. A project's compatibility with the landscape isn't determined by looking at existing visual quality. It's looked at -- looking at the factors within the setting that include visual quality, viewer sensitivity, viewer exposure and visibility, as well as the number of

factors, including the three main categories of factors of contrast, dominance and view blockage in terms of severity to determine the significance of an impact.

**PRESIDING COMMISSIONER MOORE:** Mr. Ellison, as I indicated, it's now 9:30. And we can do one of two things. I'll give you up to 15 minutes to wrap up your questions or we can start to close this up and pick them up at our next hearing. But I won't go past 15 to 10:00.

**MR. ELLISON:** Okay.

**PRESIDING COMMISSIONER MOORE:** And I leave that to your discretion since you have the floor.

**MR. ELLISON:** Okay. If -- with the Committee's indulgence, I'd like to take just a minute or two to discuss with Dr. Priestley where we are.

**PRESIDING COMMISSIONER MOORE:** Good.

(Brief break taken from 9:31 p.m. to 9:36 p.m.)

**PRESIDING COMMISSIONER MOORE:** All right. I have had a discussion with counsel for the Applicant. And he suggests to me that he still has a fair number of questions that he needs to ask of Staff.

My compatriot, Commissioner Keese, has questions of his own. I have questions of my own. And that's all before we ask the Intervenors if they have questions and before we allow redirect.

What I suggest to you is that we either book ourselves in for the whole evening, or we, as gracefully as I can do this, truncate this right now and come back and pick up from this point at our next meeting. And I am going to choose to do that.

I'm not trying to cut anyone off, least of all my colleague, who has waited patiently to ask him questions. And then Staff I know would like to redirect on some of these points.

So with that, I'm going to take the heat for making the call here and say that we are back in our regular schedule on --

**HEARING OFFICER FAY:** December 1.

**PRESIDING COMMISSIONER MOORE:** December the 1th? December the 1th. And we will pick up where we left off at that time at 9:00 a.m. And I won't adjourn just yet. But we'll pick up at that point. And we have some weighty matters still to go through. And I promise that everyone who has sat so patiently through this will be heard and the Committee will take your testimony to heart. I promise.

Mr. Fay has a couple of announcements that he'd like to make. And then...

The supplemental testimony that's called for in the Committee Order should be filed at close of business on the 24th of this month.

So let me ask Commissioner Keese if he has any closing comments that he'd like to make before we depart.

**COMMISSIONER KEESE:** It's been a hunk of heaven.

**PRESIDING COMMISSIONER MOORE:** I think the quote that he is searching for is the age-old, "It's been real and it's been fun, but it ain't been real fun."

Well, it's a process of discovery for all of us. And, albeit, it can be tedious but, frankly, I'd rather have that and have the public interest served as completely as possible than not. No one will ever accuse us of making a decision behind closed doors or without adequate public input. We promised that, and we're delivering.

With that, I'm sorry --

**MR. ELLISON:** Commissioner, before we adjourn I do have two minor housekeeping matters.

**PRESIDING COMMISSIONER MOORE:** Yes, Mr. Ellison.

**MR. ELLISON:** The first being we had agreed, on the assumption that we would finish the adjudicated issues today, to file briefs on the 24th. I would suggest that it

would be now appropriate to change that date, and we can work that out. But I want to call that to the Committee's attention.

**PRESIDING COMMISSIONER MOORE:** I understand.

**MR. ELLISON:** Am I safe in assuming the briefs are not due on the 24th?

**HEARING OFFICER FAY:** Yes. And why don't you and Counsel for the Staff communicate with me and we'll see what is realistic, because there's going to be a lot of information coming in after the 1st. And so obviously the 23rd would be premature.

**MR. ELLISON:** Okay.

**PRESIDING COMMISSIONER MOORE:** And so I'd like -- if that's acceptable, let's do that. I don't think we need to work that out right here on the record.

**MR. RATLIFF:** (Nodding head up and down.)

**MR. ELLISON:** That's fine. I just wanted to --

**PRESIDING COMMISSIONER MOORE:** We'll get an order out.

**MR. ELLISON:** -- make sure I didn't have to run home and write a brief.

**PRESIDING COMMISSIONER MOORE:** Mr. Fay, would you describe for the audience the nature of the product that Mr. Ellison has just indicated, a brief?

**HEARING OFFICER FAY:** What the briefs would do would be to try to pull together the record, especially on this subject, because this is the primary subject that's being adjudicated, that is, being disputed between the parties. It has to be decided by the Committee.

The briefs would summarize the parties' argument with reference to the record, to the transcript, which isn't yet prepared. It would give page and line, so that the decisionmakers can -- if they agree with the argument presented in the brief, they could go right to that portion of the record, or if they're not sure what their opinion is, they can weigh the arguments in the brief and have a shorthand reference to the record.

So it's a wrap-up, in essence. And now that the Farm Bureau has intervened, they will be served with a copy of any briefs that are filed.

**PRESIDING COMMISSIONER MOORE:** You had a second point, Mr. Ellison.

**MR. ELLISON:** Yes, I did. I just wanted to clarify, when are we taking up the issue of air quality?

**HEARING OFFICER FAY:** I anticipate that air quality will still be on December 1st. My guess right now is that we would begin with the conclusion of your cross-examination of Mr. Walker and then move into the presentation of the DOC --

**MR. ELLISON:** Okay.

**HEARING OFFICER FAY:** -- and the witnesses on air quality.

**MR. ELLISON:** That's fine. Well, I just wanted to know when to have our air quality people here.

**HEARING OFFICER FAY:** December 1st is a long day. What hasn't been? We'll start at 9:00 and go until there's nobody standing.

**PRESIDING COMMISSIONER MOORE:** Mr. Amarel.

**MR. AMAREL:** We sit out here from time to time and some of us do have other schedule. And I was wondering about when you think the question, part of this, that we were going to ask tonight would come up on the 1st, what part of the day it may --

**PRESIDING COMMISSIONER MOORE:** What part of the day. If we start at 9:00 and assume that Mr. Ellison is finished and Staff redirect is finished in approximately an hour, and that I'm wrong by a hundred percent, then --

**MR. AMAREL:** No. I'm just looking for a stadium.

**PRESIDING COMMISSIONER MOORE:** About eleven o'clock.

**MR. AMAREL:** Okay.

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**PRESIDING COMMISSIONER MOORE:** All right. With that, thank you all for coming. And we're adjourned.

(The Evidentiary Hearing adjourned for the day at 9:44 o'clock p.m. to resume December 1, 1998, at 9:00 a.m.)

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**CERTIFICATE OF REPORTER**

I, **SUSAN PALMER**, a duly-commissioned Electronic Reporter of **Palmer Reporting Services**, do hereby declare and certify under penalty of perjury that I have recorded the foregoing **EVIDENTIARY HEARING in the matter of the Application by Calpine for Certification for the Sutter Power Plant Project**, which was held and taken in **Yuba City, California, Veterans Memorial Community Building**, on the **16th day of November 1998**.

I also declare and certify under penalty of perjury that the aforementioned transcript was transcribed under my direction, a Certified Reporter and Transcriber by the American Association of Electronic Reporters and Transcribers, Number 00124, and that same was proofed by Nancy Palmer, AAERT Certificate Number 00121; and that the foregoing pages constitute a true and accurate transcription of the aforementioned hearing.

I further certify I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in the outcome of said hearing.

Dated this **17th day of November 1998** at Manteca, California.

**SUSAN PALMER**  
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