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MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

State Capitol
Room 113
Sacramento, California

Tuesday, November 15, 1994
7:00 p.m.

Janet H. Nicol
Certified Shorthand Reporter
License Number 9764

1 COMMISSION MEMBERS PRESENT

2 Mr. Gray Davis
3 State Controller
4 Chairman

4 Honorable Leo T. McCarthy
5 Lieutenant Governor
6 Commissioner
7 Represented by Ann Mills

6 Mr. Russell S. Gould
7 Director of Finance
8 Commissioner
9 Represented by Theresa Parker

9

10 STAFF PRESENT

10 Michael L. Crow, Deputy Attorney General
11 Cleatta Simpson
12 Robert Hight, Chief Counsel
13 Dianna Jacobs
14 Peter Pelkofer, Senior Counsel
15 Jack Rump
16 Linda Smallwood
17 Jan Stevens, Assistant Attorney General
18 James F. Trout, Executive Officer

15

16 PUBLIC SPEAKERS

17 Freeman House, Mill Creek Watershed Conservancy
18 John M. Iles, Mountain Cascade
19 R.R. Luce, VVCC Inc.
20 Robert C. MacArthur, Northwest Hydraulic Consultants
21 Dan Masnada, CCWA
22 Melvin M. Norman, Tahoe Meadows Association
23 Ralph Philbrick, VVCC Inc.
24 John E. Reuter, UC Davis
25 Christine Rozance, Ski Run Remediation
Bob Sanford, VVCC Inc.
Alfred C. Schmidt, Ski Run Remediation
Phil Seymour, VVCC Inc.
Rosemary Thompson, SAIC
Linda Titherington, Ski Run Remediation
R.J. Titherington, Ski Run Remediation

25

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P R O C E E D I N G S

1
2 COMMISSION CHAIRMAN DAVIS: This meeting of the
3 Lands Commission will come to order.

4 We've concluded our closed session and we'll begin
5 by the secretary calling the roll.

6 CHIEF COUNSEL HIGHT: Chairman Davis.

7 COMMISSION CHAIRMAN DAVIS: Present.

8 CHIEF COUNSEL HIGHT: Lieutenant Governor, Ann
9 Mills.

10 ACTING COMMISSIONER MILLS: Present.

11 CHIEF COUNSEL HIGHT: And Director of Finance,
12 Terry Parker.

13 ACTING COMMISSIONER PARKER: Present.

14 CHIEF COUNSEL HIGHT: Mr. Chairman, for the
15 record, Items C27, C34, C43, C70, C89, C116, C118, C126 are
16 pulled from the agenda, as well as regular Item 129.

17 And we have people to speak on two consent items,
18 No. 78 and No. 67. And we would ask that they be taken off
19 the consent calendar and dealt with after the consent
20 calendar.

21 COMMISSION CHAIRMAN DAVIS: Are they speaking in
22 opposition?

23 CHIEF COUNSEL HIGHT: Yes. 67 we would move to
24 the regular agenda.

25 COMMISSION CHAIRMAN DAVIS: All right. But is the

1 person for the public speaking in opposition to Item 78?

2 CHIEF COUNSEL HIGHT: No. Speaking in favor of
3 it.

4 COMMISSION CHAIRMAN DAVIS: It's on the consent
5 calendar?

6 CHIEF COUNSEL HIGHT: It's on the consent
7 calendar, yes. They would like to praise us and we get very
8 little praise.

9 COMMISSION CHAIRMAN DAVIS: I learned a long time
10 ago when the sale is made keep your mouth shut.

11 All right. Running a risk here. Okay.

12 CHIEF COUNSEL HIGHT: Take the consent calendar
13 minus 67.

14 COMMISSION CHAIRMAN DAVIS: And 78; right?

15 CHIEF COUNSEL HIGHT: Yes.

16 COMMISSION CHAIRMAN DAVIS: And all the other
17 items that you've just deleted.

18 CHIEF COUNSEL HIGHT: Right.

19 COMMISSION CHAIRMAN DAVIS: Is there a motion to
20 approve the consent?

21 ACTING COMMISSIONER PARKER: I move the consent.

22 ACTING COMMISSIONER MILLS: Second.

23 COMMISSION CHAIRMAN DAVIS: It's unanimously
24 approved.

25 CHIEF COUNSEL HIGHT: Let's take 78 first since

1 that is very quick.

2 COMMISSION CHAIRMAN DAVIS: All right. Someone
3 that has the audacity to speak in favor of an item that was
4 once on the consent calendar, so we'll wait with bated
5 breath to hear.

6 MR. HOUSE: Good evening. My name is Freeman
7 House. I'm the director of the Mill Creek Watershed
8 Conservancy in Humboldt County.

9 I'm here tonight hoping to provide you with a
10 little light in what looks like a long evening, by calling
11 your attention to a project that we have been working up
12 with your staff.

13 One of the projects of the Mill Creek Watershed
14 Conservancy is to add 250 acres of old growth forest in
15 Humboldt County to the King Range National Conservation
16 Area, which is de facto jewel of coastal ecological reserve.

17 Working with your staff we're proposing that the
18 State Lands Commission makes available some 6100 acres of
19 timberlands in four parcels in Mendocino County on which to
20 locate timber and equivalent value to the 250 acres, which
21 is owned by Udell River Sawmills, Fortuna, California.

22 The Lands Commission will be paid in fair market
23 value for the logs taken off.

24 I just want to go over the benefits to the public,
25 just take a couple of minutes.

1 The sawmill will get the logs to maintain
2 employment in Humboldt County and the State of California.

3 People of the State and of the United States will
4 gain an invaluable addition to de facto jewel of coastal
5 ecological preservation by developing a THP and open
6 process. We hope to bring the concerned public along in
7 creating a model of excellent forestry.

8 The Lands Commission will gain a steady supply of
9 timber and thus revenues from timberlands through long-range
10 ecological planning.

11 And funding will come from Proposition 70 and
12 hopefully in the President's budget for 1996. We're quite a
13 ways along with that process.

14 So since we do hope to be working with you
15 carefully I took the risk of coming here tonight and
16 bringing your attention to an item that was already on the
17 consent agenda.

18 COMMISSION CHAIRMAN DAVIS: Are there any
19 questions from the members?

20 ACTING COMMISSIONER MILLS: No.

21 COMMISSION CHAIRMAN DAVIS: For the staff?

22 Thank you for coming here and putting up with my
23 abuse for your good work.

24 Now, does anyone from the public care to speak
25 against Item 78?

1 All right. Do we have a motion?

2 ACTING COMMISSIONER MILLS: So moved.

3 COMMISSION CHAIRMAN DAVIS: All right.

4 Second?

5 ACTING COMMISSIONER PARKER: Second.

6 COMMISSION CHAIRMAN DAVIS: The item is adopted
7 unanimately.

8 CHIEF COUNSEL HIGHT: Okay. Let's go to item, the
9 regular Agenda Item 128, which is the Central Coast Water
10 Authority application for a pipeline, water pipeline, across
11 the Lands Commission land adjacent to Vandenburg Village.

12 As you will recall, this item was previously
13 before the Commission.

14 And we have before the Commission tonight a
15 revised pipeline proceeding along the same route as the
16 previous proposed route. This time the proposed modified
17 route is revised to weave through the trees and in places
18 where that is impossible to physically bore under the trees.

19 There is a reduction from 117 trees and 3.2 acres
20 of chaparral to 12 trees and .3 acres of chaparral.

21 Staff believes that this proposal reduces to
22 insignificance the environmental impact upon the
23 Commission's land.

24 This proposal basically has three elements, which
25 we believe will ensure that this project is environmentally

1 sensitive.

2 One, the Commission will have a monitor on site
3 during construction. We will have the authority to stop
4 work at any point that the monitor believes that the
5 operator has strayed outside of the corridor previously
6 approved.

7 Two, that in the event that any oak trees die
8 within five years of construction we will be compensated for
9 them.

10 Three, CCWA has agreed to take whatever steps are
11 necessary to prevent human intrusion into the chaparral.

12 As you will recall it was a major concern before
13 when they were going to cut a 120-foot wide swath through
14 the chaparral.

15 Since it's only now going to be 20 feet behind the
16 homes they will take whatever steps are necessary to prevent
17 that from becoming an area where off-road vehicles and
18 motorcycles or the like use.

19 In the blue notebook before you there are letters
20 in support and opposition.

21 In addition, today we got a letter of support from
22 the State Department of Fish and Game basically saying that
23 this route appears to them to reduce to insignificance the
24 environmental impact.

25 Staff supports the application as presented.

1 And I think it would probably be best to hear
2 first from the Water Authority.

3 COMMISSION CHAIRMAN DAVIS: All right.

4 MR. MASNADA: Thank you. I'll be mercifully
5 brief.

6 My name is Dan Masnada. I'm the executive
7 director of the Central Coast Water Authority.

8 What I would like to do is first mention that the
9 staff report covers in detail the project description and
10 revised impact of CCWA's modified alignment on state lands.

11 We've attempted to be responsive to the State
12 Lands direction made at the August 3rd meeting. We believe
13 we have eliminated virtually all of the substantial
14 environmental impacts using innovative and not inexpensive
15 construction techniques involving three elements.

16 One has to do with manufactured bends in the pipe
17 that will allow the zigzagging between the trees and the
18 Burton Mesa chaparral that Bob Hight just referred to.

19 Secondly, use of tunneling underneath the creek
20 and grove of oak trees that cannot otherwise be passed
21 through without some impact on either the creek or the
22 trees.

23 And, thirdly, the use of narrow construction
24 corridors, as narrow as 20 feet, to further reduce the
25 impact on the oak trees on state lands and particularly

1 behind the houses.

2 I would like to thank staff for their efforts in
3 working with us to achieve what we believe is close as
4 possible to a win-win solution.

5 At this point in time what I would like to do is
6 briefly turn over the mike here first of all to Dr. Rosemary
7 Thompson, who is the project manager and senior biologist
8 with Science Applications International Corporation, our
9 environmental consultant, to make a few comments regarding
10 the environmental impacts.

11 And then, secondly, to John Iles, who is the
12 project manager with Mountain Cascade, our construction
13 contractor that is constructing the pipeline in the area and
14 will be the contractor that will be constructing the
15 pipeline adjacent to Vandenburg Village.

16 Thank you.

17 DR. THOMPSON: My name is Rosemary Thompson. I'm
18 with SAIC.

19 The compromise route has been designed, as you've
20 heard, to minimize environmental impacts and to reduce that.
21 There are several other things we've done including what
22 you've already heard, and that includes to use previously
23 disturbed areas to the extent feasible, particularly on
24 state lands.

25 There are two short areas of coastal scrub that

1 the pipeline would still go through.

2 One of these is on Unocal. It was burned in the
3 recent fire and there are a few little black stubs sticking
4 up.

5 The other area is on private land to the southeast
6 of the homes.

7 And there is also an ephemeral stream near there.

8 There's no riparian forest at the crossing.

9 The scrub impacts are short term because this
10 community can recover within approximately three to five
11 years.

12 Most of the shrubs would not be removed during
13 construction, just over the trench.

14 And going out and inspecting where the
15 construction has already occurred through this type of
16 habitat the shrubs are starting to resprout from the
17 material where the spoils was stored over it and then
18 removed back to put into the trench. So it has a very quick
19 recovery from the material that's still in the ground and
20 the roots.

21 There will also be seedings by native seeds.
22 We've already collected native seeds of these species to be
23 replanted.

24 Top soil storage from the actual trench provides
25 the native seed bank back and we will augment that with

1 additional native seeds.

2 There will be weed control and erosion control
3 during the restoration and access control to prevent people
4 from using the narrow corridor even while we're revegetating
5 it.

6 And one other thing is there is a firebreak that
7 was already recently cut for the fire that we are now using
8 for the pipeline corridor and that will be revegetated as
9 well. And that's on state lands.

10 And lastly the cultural resource surveys for the
11 compromise route have been conducted and there was only one
12 lithics scatter found that has no subservice component, and
13 it is not deemed to be an important site. It's being
14 written up and will be sent through the regular standard
15 procedures of the POR and the SHPO for clearance to allow
16 construction following the procedures that have been put in
17 place for this project.

18 COMMISSION CHAIRMAN DAVIS: Are there any
19 questions?

20 DR. THOMPSON: That's all I have.

21 COMMISSION CHAIRMAN DAVIS: Any questions?

22 Thank you.

23 MR. ILES: My name is John Iles and I'm with
24 Mountain Cascade. We're the contractor currently working on
25 the project.

1 During the design of the realignment I was
2 requested on several occasions to walk through the area and
3 asked for my input into the design parameters of it from a
4 constructability standpoint.

5 And the revised alignment as presented today is
6 something that is constructable, albeit not the easiest
7 method. It is certainly doable.

8 And the input we had during their selection of the
9 how to go around trees and where to locate the pipeline, I
10 believe probably has helped immensely in reducing the
11 impacts to the environment.

12 I was requested to be here to make myself
13 available to any questions you might have concerning the
14 constructability of the pipeline.

15 COMMISSION CHAIRMAN DAVIS: How long do you
16 anticipate it will take to build this pipeline if the
17 Commission approves it?

18 MR. ILES: For the portion behind Vandenburg
19 Village I estimate that it would take in the neighborhood of
20 15 to 20 days.

21 COMMISSION CHAIRMAN DAVIS: And for the balance of
22 the pipeline?

23 MR. ILES: The balance of the pipeline is probably
24 an additional 15 days also.

25 ACTING COMMISSIONER PARKER: I just wanted to ask

1 have you had experience in the past of some of the
2 technology that we're talking about, drilling under trees
3 and laying --

4 MR. ILES: Yeah. It's a normal course of
5 construction in almost every job we do has tunneling or
6 boring on it.

7 I've never done a project where we specifically
8 bored underneath trees to save trees. There have been trees
9 that were within the path where we've bored in the past, but
10 it wasn't the specific reason for the bore.

11 ACTING COMMISSIONER PARKER: Have you returned to
12 those projects at later dates and are the trees in those
13 projects still living?

14 MR. ILES: I personally have not, but I've never
15 heard anybody called up and say, hey, the tree died or
16 anything.

17 ACTING COMMISSIONER MILLS: You were going to bore
18 down, what, some 28 feet; is that correct? Up to 28 feet or
19 how deep are you going to go?

20 MR. ILES: The bore itself from the surface
21 elevation is approximately 80 foot deep where the pit is.
22 And the bore itself is 250 foot long.

23 And it appears that at the lowest point of the
24 creek crossing it is about eight foot below the surface of
25 the creek.

1 ACTING COMMISSIONER MILLS: Have you had a lot of
2 experience boring that deep and that length?

3 MR. ILES: Uh-huh.

4 ACTING COMMISSIONER MILLS: Okay.

5 COMMISSION CHAIRMAN DAVIS: I guess I had one
6 additional question.

7 Is this boring technique relatively commonplace in
8 the industry? Is this something that is done on a
9 widespread basis?

10 MR. ILES: Yes; it is. In the pipeline industry
11 whenever a pipe cross a state highway or railroad tracks or
12 the likes, it's common for the State to require a boring
13 jack or a tunnel underneath the state highway.

14 And the railroads commonly require tunneling
15 operations underneath their railroad tracks.

16 COMMISSION CHAIRMAN DAVIS: Okay.

17 ACTING COMMISSIONER PARKER: Thank you.

18 CHIEF COUNSEL HIGHT: If we can now hear from
19 Mr. Luce.

20 MR. LUCE: Mr. Chairman, Commissioners, my name is
21 Richard Luce. I'm president of the board of the Vandenburg
22 Village Concerned Citizens.

23 We're a group of ordinary citizens dedicated to
24 the protection of our community. We feel we have been
25 invaded by this autocratic giant, CCWA, and our rights as

1 citizens have not seriously restricted.

2 In July of '93 CCWA tried to hide the fact that
3 they were coming through our community and I wonder if they
4 advised the State Lands of their route.

5 It is difficult to respond to the calendar item.
6 We received the document on Friday. And the first glance
7 find it incomplete and incorrect in several places.

8 We have learned much from the CCWA, from their
9 talk and also observation of their pipeline installations.

10 CCWA has indicated they can squeeze their
11 installation to 20 feet if necessary.

12 Harris Grade Road is 20 feet wide at its narrowest
13 point and the shoulders are about 10 feet on each side.

14 On V1B, which we discussed last time, the
15 excursion to the east of the road, if you look at your
16 little maps you can see where we went to the east of Harris
17 Grade Road. It was based on CCWA's assertion that Harris
18 Grade Road was not wide enough.

19 CCWA has now disproved this.

20 Our route utilizes oil service roads from point C
21 to Harris Grade Road.

22 Unocal has concurred in placing the pipeline under
23 the roads and the map will show this route.

24 Thank you, Mr. Hight.

25 CHIEF COUNSEL HIGHT: If I can rephrase your

1 argument.

2 MR. LUCE: Yes, please.

3 CHIEF COUNSEL HIGHT: Basically saying to come
4 across here and down Harris Grade Road.

5 MR. LUCE: Right.

6 And we stick to the oil roads themselves rather
7 than going through any of the chaparral area.

8 And that will be under the road from the HS and P
9 plant all the way down Harris Grade Road to Burton Mesa.

10 This route will not converse any Burton Mesa
11 chaparral and will destroy no oak trees.

12 Since the fire it is even more important that we
13 do not make incursions into the preserve.

14 Let me outline our presentation.

15 We have a short video.

16 Dr. Ralph Philbrick, a noted expert on Burton Mesa
17 chaparral, will present his observations.

18 Bob Sanford, one of our board members, will
19 summarize our position.

20 And our attorney, Phil Seymour, will conclude.

21 We have tried desperately not to bore you at this
22 late hour.

23 And now with the video.

24 Little small, but I hope you all can see it.

25 I'm sorry the audience can't see all this.

1 I'm trying Bob Hight's device here. I'm sorry.

2 (Videotape provided by Mr. Luce was played.)

3 Mr. Philbrick.

4 MR. PHILBRICK: Good evening. My name is Ralph
5 Philbrick. I'm a botanist in Santa Barbara County. I've
6 been involved with Burton Mesa chaparral issues for many
7 years dating back into the early 1980s in the capacity as a
8 botanist, as a consultant, as a director of the Santa
9 Barbara Botanic Garden, as a member of the Santa Barbara
10 County Planning Commission, and the author and coauthor of
11 several publications dealing with different portions of that
12 area, revegetation, preservation, reducing the impacts and
13 that sort of thing.

14 In a sense most of the area we're talking about is
15 your property so I don't want to belabor the obvious, but I
16 do want to make it very clear that from a botanical point of
17 view this is indeed a really important area.

18 Most of California's rare plants occur in the
19 chaparral, and most of California's rare plants occur on
20 sandy soils, and here we have both, chaparral on sandy
21 soils.

22 Again from a botanical point of view the Burton
23 Mesa chaparral is a dense, evergreen shrub vegetation that's
24 restricted to the sands of the orca formation of the City of
25 Lompoc.

1 It's characterized by the perisima manzanita.
2 It's characterized by the shagbark manzanita. And varieties
3 of ceanothus and a local variety of bush monkey flower and
4 unusual multi-trunk form of the coast live oak and also
5 numerous other sensitive and rare plants that occur in the
6 understory.

7 This is the most significant community of plants
8 in Santa Barbara County.

9 And it's not just a simple here's the list of
10 plants, there they are sort of thing. As you move from one
11 area to another you encounter different combinations of
12 plants.

13 The plants themselves vary with the environment
14 and with their different genetic makeup. And you have
15 crosses, hybridization between different species.

16 It's there's also like interaction. We tend to
17 talk about Burton Mesa chaparral, but there's part of this
18 route that goes through coastal sage, there's part of this
19 route that goes through oak forests, there's part of this
20 route that goes through wetland areas, riparian corridors.

21 And there are different mixtures in all of these
22 different habitats and they're not clearly isolated and
23 separate from each other.

24 There's a long list of plants that are very
25 important, make up the Burton Mesa chaparral, certain

1 components of it and through its various phases.

2 I certainly won't mention all of them, but I would
3 like to highlight ones that are very important to this
4 corridor.

5 You've been hearing about the perisima manzanita.
6 This plant is listed by the California Native Plant Society.
7 It's one of the important shrubs in the Burton Mesa and it's
8 a local endemic to the sand area.

9 Similarly, the shagbark manzanita is not only
10 listed by the California Native Plant Society, but it also
11 has a C-1 listing of the federal government. It's one of
12 the most important shrubs of the Burton Mesa and it's not as
13 abundant as the previous manzanita and it's absent from many
14 parts of the chaparral in the Burton Mesa and it is also
15 restricted to the sandy area there.

16 The California spine flower is another. Now we're
17 talking about a much smaller herbaceous plant, an annual.
18 That's listed by the California Native Plant Society.

19 One of the two ceanothus is very prevalent on this
20 proposed route that you have been considering. That's the
21 coast ceanothus. It's a plant worthy of special
22 consideration. It's one of the more important shrubs in the
23 Burton Mesa chaparral. And it's particularly common in
24 sandy arteries endemic to those regions.

25 A bird's beak plant is on this area more as you

1 get down toward the Burton Mesa Boulevard. It's a plant of
2 considerable botanical controversy. Some specialists will
3 tell you it belongs to this subspecies, some specialists
4 will tell you it belongs in that subspecies.

5 The fact of the matter it's a very variable
6 population and it's much removed from all of its close
7 relatives by occurring there on the Burton Mesa.

8 And there are two subspecies that integrate,
9 perhaps due to hybridization.

10 And one of those subspecies listed by the State,
11 recognized by the federal government and the California
12 Native Plant Society.

13 There is a Lompoc wallflower, which is especially
14 occurring in this area with the oaks, and again it's an
15 endemic of the local sand areas.

16 There's a horkilia, a little member of the rose
17 family, listed by the federal government and by the
18 California Native Plant Society.

19 A Lompoc monkey flower endemic to this area,
20 worthy of special recognition.

21 A very rare yellow flowered form of annual monkey
22 flower, mimulus cecundus, which occurs in this area down
23 close to Merriam Creek.

24 One of several monardellas, which has federal C-2
25 listing and California Native Plant Society Plant listing.

1 Black flowered figwort, recognized by the federal
2 government and the California Native Plant Society, again
3 with populations showing hybridization between different
4 species.

5 My attempt there is to give you an idea, a sample,
6 of how important this plant community is. A lot of that is
7 from a technical point of view. But it is a very beautiful
8 area, especially in the springtime and it's much appreciated
9 by people who come there and live there.

10 Since 1938, 60 percent of this plant community has
11 been lost and there are cumulative losses that are
12 contributed to by all kinds of development, by increase in
13 human use, by the increase in introduced weedy plants that
14 compete for the space and the habitat and erosion, among
15 other causes.

16 So you have outlined before you and you had
17 described briefly at the beginning of your session the CCWA
18 proposed route. This route passes through oak trees. It
19 passes through an area of Burton Mesa chaparral that's in
20 and adjacent to a firebreak, passes through a mixture of
21 coastal sage scrub and Burton Mesa chaparral plants as it
22 approaches Merriam Creek, and then it goes across this very
23 important tributary and riparian corridor area.

24 There are many stations along this. You have a
25 description from your consultant describing different

1 points. I just like to hit a few of these points that are
2 particularly important to me.

3 The receiving bore pit, 12 by 20 feet, 30 feet
4 deep. The excavation to produce that receiving end of the
5 pit will be within the drip line of two very substantial oak
6 trees. These trees have diameter breast hight of 24 to 30
7 inches.

8 Tunneling is probably preferable to trenching, but
9 the pipe that goes in there, the pit that is dug, the soil
10 alteration, all of these factors will alter that root zone.

11 The first thing -- the receiving end of that
12 tunnel, but right near that pit is one very large oak tree,
13 40 inch diameter breast height, and the tunnel goes directly
14 under that.

15 There are going to be, you know, the potential of
16 impacts. You do these kinds of things, you dig these big
17 holes inside the drip line of trees directly under their
18 trunks and so on, and you increase the chances of problems.

19 The oaks, the chaparrel plants are especially
20 subject to fungi and to parasites for wherever there is a
21 break in the root system.

22 And these oaks do occur in the deeper soil areas.
23 Their roots will be penetrating deeper in those deeper
24 soils.

25 And I'm sure that given present technology it's

1 the best way to approach that problem if you had to go
2 there, but the really best way to do it is to avoid that
3 location.

4 After passing under those larger trees that I just
5 mentioned the tunnel will proceed under a number of low,
6 multi-trunked oaks.

7 The firebreak area adjacent to the Vandenburg
8 community, much of it is disturbed. The closer you are to
9 the structures the more disturbance there is.

10 But within that disturbed area you have plants
11 that have the ability to sprout back. You have less
12 competition for like nutrients, moisture and so on and the
13 number of Burton Mesa chaparral plants in the firebreak is
14 very surprising and adjacent to the firebreak it's very
15 important.

16 You have the perisima manzanita, you have mock
17 heather, you have shagbark manzanita. You have oaks. You
18 have the Lompoc monkey flower.

19 As you pass southerly, southeast of the Vandenburg
20 Village community and begin to descend down to the south
21 facing slope approaching Merriam Creek you leave chaparral
22 area and get into coastal sage area.

23 This particular coastal sage as it's mixed with
24 the chaparral is the most important part of the whole
25 pipeline segment that we're discussing this evening.

1 You have some of the plants that I have mentioned
2 before. You have a horkilia in the rose family. You have
3 the shagbark manzanita. You have the coast ceanothus. You
4 have a very interesting succulent douglasii plant that to my
5 observations did not fit the plant usually described for
6 that area. Lompoc wallflower. You have this California
7 spine flower.

8 And that is the location for the yellow flower
9 herbaceous annual mimulus that I described to you earlier.

10 When you got to the creek itself the proposed
11 route does pass between the willows. There's a break in the
12 willows, undoubtedly due to some previous disturbance where
13 the willows have not reestablished themselves.

14 As a matter of fact there is a map that shows kind
15 of an old road corridor that passes through there.

16 So the habitat is still riparian habitat, but
17 putting the pipeline right through there will not impact
18 willow trees in that particular location if they can
19 restrict their activities.

20 But in that area is mock heather.

21 There are Indian rushes that are eight feet high
22 and there are seedling oaks trees.

23 On the other side of Merriam Creek south toward
24 Burton Mesa Boulevard is the location of the bird's beak
25 that we discussed earlier.

1 There's also the California spotted flower, oaks,
2 ceanothus, horkilia and near the road there's the stipe of
3 bunch grass, which in Santa Barbara County is a very
4 important plant to look out for and protect.

5 This location southeasterly of Vandenburg Village,
6 which would definitely be impacted by the proposed route is
7 an area that's been well known and well studied for a long
8 time.

9 It was worked on in a report that I did with
10 Dennis Odian in 1988.

11 It was worked on work that was done by Ann Howell
12 at about that time.

13 It has received recognition for its importance and
14 pristineness.

15 When we did a study for Unocal in 1987 that
16 particular location was recommended as a preserve location
17 for a hypothetical development that Unocal was considering.

18 That whole segment of Burton Mesa chaparral was
19 designated as having the highest quality and the existence
20 of the riparian vegetation adjacent was pointed out as
21 greatly enhancing the overall diversity and biological value
22 of that site.

23 Just a little bit about that Merriam Creek. It's
24 a tributary to Davis Creek. The Merriam-Davis Creek system
25 is one of four riparian creeks of this habitat of this area.

1 The policies as set forth for this project would
2 avoid construction within a live stream going into the
3 wintertime. That will pose a constraint.

4 This whole area of Merriam Creek, the chaparral
5 that I just described to you, was designated by Ann Howell
6 in her City of Lompoc Biological Resources Study as having
7 the highest habitat quality.

8 And your plan for the management of this area has
9 two action items that particularly pertain to this area.

10 One, the highest priority was given for restoring
11 the Merriam-Davis Creek area.

12 And also limitations are placed on access and
13 permanent buffers are to be established.

14 So keep in mind this plan to restore the area to
15 limit access and to have permanent buffers and keep in mind
16 that you want that to be compatible with your action here.

17 If I can distribute these, please.

18 The dark line on this map shows the Harris Grade
19 route right on the road in the north end, extending in an
20 east-west direction.

21 The oak forest is mapped in brown at the north
22 end.

23 The Burton Mesa chaparral is shown in pink.

24 The riparian area are in blue there at Merriam
25 Creek.

1 That is in contrast to the corridor that's shown
2 in the vegetation mapping alongside of the Harris Grade
3 road. So you have a corridor at the Harris Grade Road of
4 pavement, of road shoulders and of disturbed vegetation.

5 You see the lines that parallel the road indicate
6 disturbed vegetation in this map that was done by Dennis
7 Odian, you know, well in advance of this. This was done for
8 Santa Barbara County preparatory to the production of the
9 management plan. That's what was the purpose.

10 So I would just like to say whatever your decision
11 is there are a few general things about mitigation that I'd
12 like to put on the table.

13 First, avoidance is the most important mitigation.
14 I mean, that's what we try to do if there's some organisms
15 there you don't want to damage. Go away from them. Don't
16 try and go under them, through them, or make up for them
17 with dollars or planting someplace else.

18 In the vegetation, in the revegetation plan, which
19 I certainly have to respect for its quality, there is a very
20 short section that talks about wildflower regeneration.

21 I would like to see that if you are revegetating
22 with wildflowers from an aesthetic point of view that these
23 be from seeds that are collected on the site and not
24 contribute to the -- or alter the natural hybridization that
25 goes on in that area.

1 And standard conservative working around the oak
2 tree canopies would put your actions ten feet away from the
3 vegetated canopy. This would apply to the large chaparral
4 shrubs as well. But to work under the canopy is not being
5 cautious.

6 In these documents also we are told that the
7 Burton Mesa chaparral that cannot be restored, and this is
8 true also of riparian wetland habitat, would be replaced in,
9 quote, "at least one to one." Talking about area.

10 In 1989 Santa Barbara County Planning and
11 Development Department was using a ratio of seven to one and
12 this year a EIR for the Burton Mesa proposed a ratio of two
13 to one.

14 So in any event I hope that a lot of emphasis is
15 given to the at least. A one-to-one replacement would not
16 really be satisfactory.

17 You don't put back what you take out. You don't
18 put the quality, you don't put the age of the plants. You
19 don't put the mixture. You don't get all the plants there.
20 You have failures. One to one does not get it done.

21 In summary, the vegetation of the Burton Mesa is
22 valuable.

23 Secondly, appropriate evaluation will show that
24 the Harris Grade Road is biologically preferred as a route.

25 And finally disturbing a paved road corridor is

1 biologically superior to impacting oak forests, Burton Mesa
2 chaparral, rich coastal sage scrub and Merriam Creek.

3 It's my feeling that for you to see that this
4 choice is made appropriately would be -- would make me feel
5 very good in watching you as decision makers and in watching
6 you as stewards of this land.

7 Thank you.

8 COMMISSION CHAIRMAN DAVIS: Thank you,
9 Mr. Philbrick.

10 Any questions from the members?

11 ACTING COMMISSIONER PARKER: I did have a
12 question.

13 The proposed route, if the water district is
14 successful in being able to maneuver around these trees in
15 that sense, let's just put aside the question about whether
16 or not it causes problems to the root systems or whatever,
17 but if they're able to essentially do what they're
18 suggesting they can do there, how -- I presume that what
19 you're saying there's still biological impacts. But from
20 the standpoint of mitigation how much is really left that
21 you have a concern of if they're able to do everything that
22 they say that they're proposed to do?

23 MR. PHILBRICK: Everything that they say, taken at
24 the best, is defined by the flagging system that's on the
25 ground right now.

1 So when you walk through there and see all these
2 trees and shrubs and vegetation that are marked with blue to
3 be lost, that's very unsatisfactory to me as a biologist
4 when I know that there's this other route that won't have
5 that impact going on the road.

6 ACTING COMMISSIONER MILLS: I have a question.

7 Are you saying that no oak trees would be -- would
8 have to be removed if you took the Harris Grade?

9 MR. PHILBRICK: Thank you for bringing that up.

10 Because you've seen papers, undoubtedly, with very
11 large numbers and so on.

12 A lot of those numbers are due to the analyzing of
13 a route that's different than the one on the piece of paper
14 that I passed to you.

15 You analyze an alternative route that departed
16 from the Harris Grade Road at the northern end and went into
17 vegetation that included a lot of oak trees.

18 And my personal feeling -- well, I believe that
19 you have to map the Harris Grade route and you have to
20 document exactly, and the consultants have to write out for
21 you exactly what would be done in each location.

22 My feeling is that if the creativity and the
23 narrowing of the corridor that's being proposed for the CCWA
24 route is applied to the Harris Grade route that there would
25 be no losses.

1 There are three oak trees that are rather close to
2 the Harris Grade Road. Three oak trees that are rather
3 close. But if they're able to narrow and avoid and do all
4 these things in other proposed routes, if they applied that
5 same technique here, I don't see the problem.

6 ACTING COMMISSIONER MILLS: Do you agree or
7 disagree with -- I assume you have walked through and
8 counted the number of blue tag trees. I think there's 17.
9 Do you agree --

10 CHIEF COUNSEL HIGHT: 12.

11 ACTING COMMISSIONER MILLS: 12. That those would
12 be the ones that would be lost? Do you have a higher count
13 or --

14 MR. PHILBRICK: I cannot provide you with a count
15 to challenge other counts.

16 I will tell you that there's one area that's in
17 the northern end of the firebreak behind the community where
18 in the project description it says that the oak trees were
19 not counted and they were included in the count for
20 chaparral.

21 Now, I understand why that kind of thing is done.
22 We have interlocking canopies and the trees are somewhat
23 short and it's easier to say it's chaparral.

24 But I counted very quickly in there, more than 11
25 trees in that stretch of chaparral.

1 They will come out. They're acknowledged that
2 they will come out and they do not appear in those totals.

3 Different, you know -- we'll know after the whole
4 job is done on whichever route what the mortality is, but
5 blue flags, red flags, it doesn't tell you exactly what's
6 going to happen, but different numbers could be presented.

7 ACTING COMMISSIONER MILLS: It's my understanding
8 that seeds were collected on the site for the revegetation.
9 That was one of your concerns.

10 DR. THOMPSON: Yes. The seeds have been collected
11 locally for all of the different shrubs and for the oak
12 trees also.

13 MR. PHILBRICK: I noticed that in the text and I
14 applaud that and that's very good.

15 I was pointing particularly at the section that
16 pertained to the wildflowers and I don't know exactly.
17 There was language that said something about commercially or
18 locally and I was just afraid that it would turn, you know,
19 to the local commercial seed sources to put some pretty
20 poppies or something.

21 DR. THOMPSON: So far we have only been collecting
22 and planning on using locally collected materials.

23 MR. PHILBRICK: Sounds good.

24 COMMISSION CHAIRMAN DAVIS: Any other questions?

25 Next witness.

1 MR. SANFORD: I promise to be brief.

2 I'm Bob Sanford. I'm a member of the Vandenburg
3 Village Concerned Citizens group. I'm also a resident of
4 Vandenburg Village.

5 Before I get into my prepared text I would like to
6 just address a few notes that I made during other
7 presentations, if I may.

8 I know the question was asked how many trees are
9 we speaking of and your staff, of course, responded 12.

10 However, there are more trees involved as
11 correctly reported by CCWA and those other trees happen to
12 be on private lands, I believe, that they will be crossing.

13 The total number I'm not sure of, but it seems
14 like it's in the neighborhood of 25 or more.

15 I have a couple of more things that I've jotted
16 down during these conversations and I guess I would like to
17 start with something like this.

18 We have tried to tell CCWA where to go, to no
19 avail.

20 I give you credit, State Lands Commission. You
21 told them where they couldn't go on 3 August, and that's
22 through our preserve.

23 Why is it necessary that they must go under trees
24 and creeks? There is no need. There is a better route.

25 Now if I may.

1 CCWA has been nonresponsive to the people of
2 Vandenburg Village. The same holds true for the Santa
3 Barbara Planning Commission.

4 And I say to you, State Lands, please let me
5 explain, and if I don't you'll demand it of me.

6 On 3 August 1994 you asked CCWA to examine in
7 greater detail other routes. You were not the first to do
8 so.

9 Early in 1993 residents of Vandenburg Village
10 recommended other routes, including the Union Oil and Harris
11 Grade route.

12 And on two occasions, two separate occasions, the
13 Santa Barbara Planning Commission specifically suggested to
14 CCWA, hey, how about investigating the Union Oil Harris
15 Grade route. Use it for your pipeline.

16 That letter is in your exhibits that you have
17 before you.

18 As a matter of fact there were other people that
19 recommended a similar thing.

20 But through it all CCWA has refused.

21 I guess that bothers me a little bit, as you can
22 probably tell, and I suspect that it bothers you as well.

23 How can you possibly be in a position to render a
24 fair, informed decision without having before you the
25 options and the information on all the routes, including the

1 superior route, Harris Grade?

2 The only option offered once again, I might say,
3 is the CCWA proposed route. You took exception to that
4 before and I suspect you will again tonight.

5 While it may be true this time that this revised
6 recommended route has less environmental impact than before,
7 it remains essentially the same route that you previously
8 disapproved.

9 Does that imply that if you disapprove it again
10 that CCWA can go back, save another tree and reapply?

11 During your 3 August meeting you specifically
12 requested information on other routes.

13 CCWA did not give you that information tonight.

14 But guess what? I'm gonna.

15 Our suggested Union Oil Harris Grade route is
16 supported by Vandenburg Village residents, the local
17 supervisor of Santa Barbara County, local environmentalists
18 knowledgeable about the preserve, and you heard one this
19 evening, the Union Oil Company, who would be impacted
20 because we may have to close a road, and as I mentioned
21 before, the Santa Barbara Planning Commission. And there's
22 others.

23 By nearly everyone except CCWA.

24 And why is it favored?

25 Well, I'll tell you why.

1 Our Harris Grade route in every respect is
2 environmentally superior to CCWA's route. It follows an
3 already existing disturbed area, the Union Oil and Harris
4 Grade Roads.

5 It will not degrade the Burton Mesa Preserve.

6 And when the roadways are used it does not destroy
7 any chaparral, any trees or other plant or animal habitat.

8 It has the least impact on people and would
9 alleviate the concerns of homeowners in the vicinity of the
10 CCWA proposed pipeline.

11 That goes away.

12 Environmental approval would be easy. It's
13 already a disturbed area.

14 Mitigation, if necessary at all, will be a
15 minimum.

16 The pipeline construction effort would be greatly
17 simplified.

18 And I know you'll hone in on this one, but I'm
19 going to say it. This reduce installation cost. And I
20 guess I have to add per foot, even though we know this route
21 is 5,000 feet longer, so it will cost more.

22 Union Oil has approved the use of the oil field
23 roads in writing. They're the people that would be most
24 impacted by the closure of the road. They said fine, you
25 can use our oil field road and by golly we have no concerns

1 with the closure of the Harris Grade Road either, because we
2 have an alternate way to get to our shops.

3 The Department of Fish and Game and also Fish and
4 Wildlife Service should have no concerns with this route.

5 The extra lands will probably cost a few more
6 dollars. However no meaningful support of cost data has
7 ever been provided by CCWA despite our numerous requests for
8 these statistics.

9 Before you you have an exhibit and I for one
10 cannot explain that matrix of money that they have got up
11 there for costing. You'll have to ask CCWA to explain it.
12 I couldn't, nor could others that I consulted.

13 Even if the cost is greater the CCWA route would
14 be small or the cost would be small compared to the great
15 piece of land that you would be protecting.

16 We believe that you will find CCWA's proposed
17 route unacceptable, just as you did on 3 August.

18 And request, and I'll say again, that they
19 seriously investigate other routes and preferably Harris
20 Grade route.

21 It is environmentally superior.

22 We are aware also, I want to say, we are aware
23 that CCWA has threatened legal action. We can only observe
24 that you were not impressed on 3 August when they did it and
25 we are convinced that you will continue to protect the

1 preserve.

2 To put it another way, there is no need to go
3 through the preserve. There is an environmentally superior
4 route.

5 And I guess I would like to say that it's in your
6 hands, and we believe in darn good hands.

7 Thank you.

8 Are there any questions for me?

9 COMMISSION CHAIRMAN DAVIS: I'd like to ask the
10 staff to respond to the point that we did ask the proponents
11 to investigate the possibility of using Harris Road. What
12 happened?

13 ACTING COMMISSIONER PARKER: And two other routes,
14 the routes in the golf course.

15 COMMISSION CHAIRMAN DAVIS: The golf course and
16 down the middle of Vandenburg Village.

17 CHIEF COUNSEL HIGHT: Yes. We asked them to
18 consider that.

19 COMMISSION CHAIRMAN DAVIS: My favorite, by the
20 way, is right down the middle of Vandenburg Village.
21 Everybody's voted no on the project would have the pleasure
22 of seeing the road torn up.

23 CHIEF COUNSEL HIGHT: CCWA originally applied to
24 the Commission for what is shown on the map as V6, V7 or V8.

25 And they are the routes through golf course and

1 two alternatives through the streets of the village.

2 They chose not to apply for the Harris Grade Road
3 option.

4 Staff went down personally and looked at the
5 various options.

6 The cost was the primary factor in not pursuing
7 the other options.

8 COMMISSION CHAIRMAN DAVIS: Including Harris
9 Grade?

10 CHIEF COUNSEL HIGHT: Yes. Harris Grade is
11 between three and five million dollars more than the
12 proposed route.

13 Through the golf course or through the streets is
14 at least a million dollars more.

15 We've tried to hone these numbers down and the
16 best we have are these ranges.

17 At that point we still weren't convinced until
18 they came back with a modified proposal, which we believe
19 eliminates the environmental damage to the Commission's
20 land, and that's why those other proposals are not on the
21 table.

22 They did not complete the application, complete
23 the necessary environmental engineering work in order to
24 bring those to you.

25 COMMISSION CHAIRMAN DAVIS: Do you have any

1 questions?

2 ACTING COMMISSIONER MILLS: No.

3 ACTING COMMISSIONER PARKER: I think I just want
4 to ask the question that we asked last time.

5 Mr. Sanford, if you can speak for your group, if
6 not, to the extent Harris Grade Road is not an option --

7 MR. SANFORD: If Harris Grade Road is not an
8 option?

9 ACTING COMMISSIONER PARKER: Is not an option.

10 And the other two routes through the golf course
11 or down the streets are other options that we talked about
12 as a Commission, does the homeowners have any further
13 feeling about either of those two routes as being preferable
14 to the proposed modified route?

15 MR. SANFORD: I would have to answer this way.

16 Going through the streets obviously is more
17 environmentally acceptable.

18 However, in each case you pass through the
19 preserve.

20 In each case, in all three cases, going through
21 the golf course you go through some preserve.

22 Going down Saint Andrews, which is a main artery,
23 you also do get some preserve.

24 As well as there was another option to go through
25 Oak Hill. I believe there is some preserve that you would

1 penetrate.

2 Obviously we do not want our lives disrupted by a
3 pipeline, a 39-inch pipeline, by the way. Lots of
4 construction equipment.

5 And even though this was discussed before, we did
6 not vote for this state water.

7 And it is being run, if you will, through our golf
8 course, through our streets, or through our preserve, our
9 back yards.

10 It is important that we do in fact save this
11 preserve.

12 It's unnecessary. There is no need. It is a
13 little further to go the recommended route, but it is
14 absolutely the best route.

15 And I -- it's a matter of dollars. Which is more
16 important? The few bucks or disrupting people's lives
17 and/or destroying our preserve or part of our preserve?

18 And when I say our, I don't mean just the village
19 residents, it's your preserve as well.

20 It's just unnecessary. There's no reason. No
21 call for it.

22 COMMISSION CHAIRMAN DAVIS: The staff disagrees
23 with you.

24 The Attorney General disagrees with you.

25 So obviously --

1 MR. SANFORD: That's fine.

2 I had a note. I unfortunately disagree with your
3 staff.

4 But you've been provided a single option in my
5 opinion.

6 You should be allowed to have choices.

7 And by golly, and I can read from your book, from
8 the 3 August meeting, each of those chairs asked that there
9 be options.

10 COMMISSION CHAIRMAN DAVIS: And I said at that
11 meeting there will be a pipeline. That pipeline is going
12 in. And the question is where, not if.

13 MR. SANFORD: Yes, sir. You bet.

14 COMMISSION CHAIRMAN DAVIS: This has been a most
15 difficult assignment. We don't like the applicant. They're
16 about as arrogant as you can be. We don't like the
17 homeowners. They're about as uncooperative as you can be.

18 And but this pipeline is going someplace. And I
19 don't know where, but it's going someplace.

20 All right. Is there any more questions?

21 We will have the next speaker.

22 MR. SANFORD: Thank you.

23 MR. SEYMOUR: Hello. I'm Phillip Seymour. I'm
24 the attorney for the Vandenburg Village Concerned Citizens.
25 I've been representing them for about a year now.

1 They're tough, but I think they've been pretty
2 responsible and tried pretty hard to work with everybody
3 here.

4 What they haven't been willing to do is to agree
5 that this proposed route is a reasonable thing to do.

6 COMMISSION CHAIRMAN DAVIS: Nor have they ever
7 been able to agree what their second choice is. Never.

8 MR. SEYMOUR: After Harris Grade Road?

9 COMMISSION CHAIRMAN DAVIS: Right. You can't get
10 them to give you a second choice. We've asked them five or
11 six times.

12 MR. SEYMOUR: If you ask me that question I will
13 tell you there is not a second choice as far as our
14 community is concerned.

15 And the reason is these people, some of them live
16 next to the proposed route, they're not willing to say this
17 pipeline should be put in front of their neighbor's house or
18 on the golf course.

19 COMMISSION CHAIRMAN DAVIS: The pipeline is going
20 in. Stop being in a state of denial. The pipeline is going
21 in.

22 We're trying to give you an opportunity to give us
23 some guidance as where you would like it consistent with the
24 advice we're getting from our staff and from the Attorney
25 General.

1 MR. SEYMOUR: Precisely.

2 I read the transcript of the last meeting. I
3 couldn't be here for that meeting.

4 I wanted to tell you what we've done to try and
5 solve this problem since then.

6 At that time we had the alternative V1B and there
7 were some problems with that alternative. This goes
8 partially along Harris Grade Road, but it had a loop out
9 through a disturbed area and also through some oaks trees.

10 Since that time we went out and we actually looked
11 at the pipeline that was being built along Union Oil roads
12 north of Vandenburg Village.

13 And what we discovered is without even trying they
14 were actually building the pipeline in a 40-foot wide
15 corridor.

16 That convinced us that it could probably be built
17 along Harris Grade Road also.

18 We also discovered that the county had suggested
19 they do that back in 1993.

20 In the ensuing discussions with the county roads
21 department, with members of your staff, with our county
22 officials, a consensus emerged that is technically feasible
23 to go down Harris Grade Road, right down the road, do not go
24 to the right, do not go to the left, just right down the
25 pavement.

1 The only issue there is cost. That's a fuzzy one,
2 because it's true that we have not had any convincing or
3 reliable figures.

4 COMMISSION CHAIRMAN DAVIS: The homeowners willing
5 to pick up the additional cost?

6 MR. SEYMOUR: No. I see no legal mechanism for
7 transferring the cost to them.

8 The cost will have to be paid by the people who
9 are benefiting from the pipeline.

10 Now, I'll skip ahead to that a little bit.
11 Originally this pipeline was going to cost 129 million.

12 The bids that have come in on the contract saved
13 them over \$17 million. In fact the bid that came in for the
14 20-mile segment between Vandenburg Village and Buellton,
15 which includes this area, was 10.2 million below estimated
16 cost. So they're not hurting for funds.

17 And the extra cost isn't going to impact the
18 feasibility of the pipeline at all.

19 What they were hoping to do was to save a little
20 money here.

21 Incidentally, the Harris Grade route is a lot
22 closer to the original proposed route that was designed by
23 State Department of Water Resources back in 1990. I'll show
24 you a map which shows the original route.

25 ACTING COMMISSIONER PARKER: While we're looking

1 at the map, may I ask a question?

2 Are you aware of any homeowners' concerns
3 regarding the placement of this pipeline in other areas
4 outside of Vandenburg Village, further up the line, any
5 other homeowner concerns?

6 MR. SEYMOUR: Pipeline's already there.

7 ACTING COMMISSIONER PARKER: But during the
8 placement of the pipeline are you aware of any other
9 homeowner groups that had concerns and complaints?

10 MR. SEYMOUR: No. No. Further south there was
11 some people who --

12 ACTING COMMISSIONER PARKER: You're not aware of
13 any other homeowners that had concern and in that sense if
14 there were any mitigation efforts to basically take care of
15 homeowner concerns?

16 MR. SEYMOUR: I'm not completely sure I understand
17 the question.

18 There aren't any homes near the pipeline anywhere
19 else, except a few --

20 ACTING COMMISSIONER PARKER: Further north there
21 are homes where the pipeline was gone through. My
22 understanding in talking to the Department of Water
23 Resources they have gone through parcels of homeowners and
24 in that sense they also had issues about trees going through
25 their property.

1 MR. SEYMOUR: If there are homes along the
2 pipeline further north -- well, this is a 140-mile pipeline.
3 Yeah, undoubtedly they have gone through some parcels of
4 private land.

5 I've been consulted by people in San Luis about
6 counties and farmers who are hopping mad about it and when
7 the pipeline actually gets there some time next year.

8 Some people have compromised.

9 I'm not aware of any situation which they are
10 coming this close to the homes.

11 ACTING COMMISSIONER PARKER: My understanding is
12 from talking to the Department of Water Resources that in
13 other cases where there have been homeowners who have been
14 impacted and concerned that in those cases there has been no
15 mitigation efforts. They have essentially gone through
16 directly where they had proposed to and, you know, there has
17 not been any proposals to do any trenching or any other
18 efforts to essentially appease those particular homeowners.

19 So I just wondered whether or not you had anything
20 that was different than what I have heard in that regard.

21 MR. SEYMOUR: I have no information on it at all.
22 It certainly doesn't sound like an admirable way of doing
23 business if that has been what they're doing.

24 On this map the original route is the kind of
25 dotted line on the right side and you can see where it

1 parallels Harris Grade Road.

2 When CCWA decided to redesign the route in 1991
3 they had the option of just going over to Harris Grade Road.
4 It would have been a simple thing to do then.

5 And that's why, quite frankly, we're not
6 sympathetic to the complaints they have about changing the
7 route now. We feel like they've made their own bed and they
8 refuse to listen to anybody. They have been stubborn.

9 And we now have to deal with that problem.

10 And I realize it creates an additional burden for
11 you to have to put the onus on them to correct that passive
12 state.

13 For our part we don't feel particularly
14 unreasonable about asking that the mistake be corrected.

15 I don't think our county government feels
16 unreasonable about it at this point.

17 What's emerged in Santa Barbara County is a
18 consensus that this route should be taken over to Harris
19 Grade Road and go down Harris Grade road.

20 Now, we understand that's going to have an
21 additional increment of cost, which means more jobs and more
22 unemployment -- or more employment if you like to consider
23 that end of the economic benefit.

24 Harris Grade Road will be renovated after the
25 pipeline construction as a benefit to the county too.

1 There are no environmental impacts that we can
2 identify along Harris Grade Road.

3 There are a few narrow places where they're going
4 to have to go narrower than 40-foot corridor and then there
5 are some wider places where there's disturbed vegetation, no
6 environmental significance, which could be used in stack
7 spoils and provide additional space they need for
8 construction.

9 I understand the difficulty and the problem that's
10 been created here for the Commission.

11 CCWA is offering what looks like a compromise and
12 also they're suing you. They have made it clear that if
13 that's the only avenue they have to get what they want
14 that's the avenue they're willing to use.

15 I think it still remains fundamentally a policy
16 question.

17 Should this route go through a designated
18 environmental preserve or should it go by another route if
19 one is available? And we think we have shown that one is
20 available.

21 If there is ever a place where a zero tolerance
22 policy is appropriate it is in land that you own in a
23 sovereign capacity, that has been designated as an
24 ecological preserve.

25 I think Mr. Philbrick has made it clear that there

1 is a complex plant community there and the value of it and
2 the integrity of it cannot be dismissed by simply labeling
3 impacts significant or insignificant.

4 The neighbors are concerned about impacts upon
5 themselves, but we've gone beyond that quite a bit.

6 If it strictly selfish interests that was driving
7 us I think we would have all concluded it wasn't worth it a
8 long time ago.

9 We have a preserve that is valued by the entire
10 Vandenburg community and by the entire county.

11 When CCWA went back and said well, maybe we will
12 take the pipeline through the golf course or through the
13 streets, there were a few individuals that said, no, we
14 would rather have it over by the -- away from our homes, but
15 over by our neighbors.

16 But the vast majority of the Vandenburg Village
17 community has said go over to Harris Grade Road, this is the
18 rational and fair and just thing to do.

19 We understand that you have a public trust
20 responsibility to consider everybody's interest, but I don't
21 think that excludes the interest of being a good neighbor.

22 You should not allow this land to be used in a way
23 that you would find appropriate -- inappropriate if you were
24 someone who was concerned with the welfare of the preserve
25 and it's value to the community as well as to the entire

1 state.

2 We're concerned about the precedent you set here.

3 This proposal has quote, "insignificant impacts,"
4 but do you have any formula or guideline you can apply when
5 other people want to build projects that they claim are
6 insignificant in the Burton Mesa Preserve?

7 I think not.

8 I think it's a slippery slope, one you do not want
9 to start on if you can avoid it.

10 Lastly, comment on the mitigation aspect.

11 Frankly, when the lawsuit was filed to condemn
12 your land we saw a lot of the starch go out of your staff
13 because before they were telling us they were going to hang
14 pretty tough on insisting a better alternative be
15 identified.

16 And I can understand their concern about
17 litigating a relatively novel issue in a strange court a
18 long way from Sacramento where CCWA may appear to be the
19 home team and they are the outside state force.

20 We don't believe it is that way. We move to
21 intervene in that action.

22 And I know the judge and he's a fair-minded judge.

23 If we're allowed to intervene or if we are allowed
24 to file amicus curiae brief we will do whatever we can to
25 support the State Lands to do the right thing to make a

1 decision based on sound policy of not allowing pipelines
2 through preserves when there are feasible alternatives.

3 It's not an inconsiderable offer. We have been
4 through -- I've been through a few of these cases. None are
5 precisely like this.

6 If you're worried about the precedent, as your
7 staff clearly is, of losing a case like this, I have to ask
8 you what is the precedent of folding in a case like this
9 merely under the threat of litigation?

10 If a local agency, which is not elected but exists
11 strictly of appointees, can come in and take a state
12 ecologic preserve, let the court decide that. If that is
13 the law I will be amazed. But if it is let the court decide
14 that. Don't let it be decided here just by being overly
15 cautious or afraid to stick to principles.

16 Thank you.

17 COMMISSION CHAIRMAN DAVIS: Okay. Do you want to
18 bring to the Commission's attention staff's position?

19 CHIEF COUNSEL HIGHT: Yes.

20 Mr. Chairman, despite the eloquent prose of the
21 opponents, it is still the staff's position that the
22 pipeline, as modified, reduces to insignificance the
23 environmental impacts on the Commission's land.

24 It is only because of that reduction to
25 insignificance that the staff recommends the staff proposal

1 to allow the pipeline to be built in that area.

2 We believe that it is a good proposal and one that
3 does not harm and will ultimately benefit the Commission's
4 land.

5 COMMISSION CHAIRMAN DAVIS: What about
6 Mr. Philbrick's concern about plant life?

7 ACTING COMMISSIONER PARKER: Yes.

8 CHIEF COUNSEL HIGHT: We will have Dianna Jacobs,
9 our staff biologist, answer those.

10 But I'd like to basically say Mr. Philbrick's
11 explanation of the plant life there is one of the reasons
12 that the staff recommended that the Commission take this
13 land.

14 And we believe that this pipeline can be built in
15 such a fashion as to not harm that plant life.

16 ACTING COMMISSIONER PARKER: Can I ask a question
17 before you start?

18 Mr. Seymour's comment about staff folding before
19 the -- when the CCWA started to sue us, it's my
20 understanding that their proposed alternative route came
21 after.

22 CHIEF COUNSEL HIGHT: That's correct. That's
23 correct.

24 When CCWA did not get the order of immediate
25 possession they then came to us the next week with this

1 modified proposal.

2 And absent the modified proposal we would be
3 recommending to you that we fight tooth and nail. But we
4 believe this is a win. So that's why we recommend it.

5 ACTING COMMISSIONER PARKER: Go ahead.

6 MS. JACOBS: I'm Dianna Jacobs, the staff
7 ecologist with the State Lands Commission.

8 Bob almost stole my thunder by saying that what
9 Mr. Philbrick had to say was exactly why we took this
10 property in the first place.

11 And I was on staff at that time. In fact I used
12 his paper as well as the other botanist he mentioned, Ann
13 Howell, for our consideration of taking this in the first
14 place.

15 And I totally agree with just about all he had to
16 say about its unique value and importance.

17 It's with that context and my experience and also
18 my experience with the State Lands Commission in general, we
19 are the lead agency for several pipeline, large interstate,
20 natural gas pipelines and have been in the past.

21 And looking at this regionally as well in a larger
22 context of how pipelines are built in general, I'm totally
23 satisfied that this is going to result in almost no impacts
24 that are of any significance.

25 Reminding everyone that the CEQA process was

1 played out and there were found to be no significant impacts
2 that was fully mitigated then this project came back,
3 basically because of our responsibilities under the Public
4 Trust Doctrine asking for more.

5 And they, the applicant, has really delivered
6 quite a lot more than that is standard for these kind of
7 projects.

8 As far as intruding on the preserve, again I've
9 satisfied myself that we're utilizing this route we
10 utilized -- I say we because I was out there walking it and
11 sort of picking the route myself -- utilizes disturbed
12 areas, including the previous pipelines, the firebreak that
13 was cut, and the disturbed area behind the homes.

14 And it really if you look at the map it skirts the
15 edge of the preserve and does not really intrude into it.

16 So, you know, as far as in my opinion we do
17 fulfill what we set out to do and keep the preserve
18 protected.

19 ACTING COMMISSIONER MILLS: I have a question.

20 COMMISSION CHAIRMAN DAVIS: Sure.

21 ACTING COMMISSIONER MILLS: While you're up here,
22 I just wanted to ask you about a couple things that
23 Mr. Philbrick mentioned.

24 First of all, the bore pit being close to two
25 substantial trees. What's your reaction? Do you think

1 given what you understand of the engineering needed that it
2 will put those oak trees in any kind of danger?

3 MS. JACOBS: Right. Mr. Philbrick mentioned that
4 a rule of thumb for oak trees is that you try not to disturb
5 what is called the dripline, which is the edge of the tree
6 canopy.

7 I did some research into scientific literature
8 with arboriculture and where tree roots grow and how close
9 you can get with trenching that it won't produce any harm.

10 And while that is a real rule of thumb that is
11 primarily used as a homeowner's guide and if you can, in
12 reality trenching can occur at least halfway back from the
13 canopy. I found that one reference to that. Between the
14 canopy and the trunk.

15 And in looking at where it would fall it would
16 impact the edge of the dripline of a number of trees that
17 are growing together and the roots of several, but the outer
18 edge of it.

19 And some of those trees have already been pruned.
20 There's some quite large limbs that were cut off and they
21 don't seem to have suffered any harm.

22 And this of course happens all the time when
23 sewers are put in and sidewalks.

24 And this in my opinion is not the kind of harm
25 that would do any damage to those trees.

1 ACTING COMMISSIONER PARKER: Dianna, the question
2 that we had asked the homeowners from the standpoint of from
3 your perspective of the routes, the proposed route versus
4 the golf course, the streets, do you have some sense from an
5 environmental standpoint?

6 MS. JACOBS: Biologically the Harris Grade Road is
7 a tiny bit better, from what I know, because, you know, the
8 impacts we're talking about as far as --

9 ACTING COMMISSIONER PARKER: Are there
10 differences --

11 MS. JACOBS: Pardon?

12 ACTING COMMISSIONER PARKER: Are there differences
13 from the standpoint of the streets, through the village, the
14 golf course, versus the proposed modified route? Is the
15 proposed modified route better or worse than the golf course
16 or the streets?

17 MS. JACOBS: This is, I've been wrestling with
18 this while listening to testimony.

19 You like putting people on the hot seat.

20 Let me say one thing that has not been brought out
21 is that the area behind the homes is already disturbed.
22 Mr. Philbrick mentioned that it is kind of recovering
23 already on it's own a little bit. This would be actively
24 revegetating some of that already disturbed area.

25 ACTING COMMISSIONER PARKER: Disturbed by whom?

1 MS. JACOBS: I assume the adjacent landowners when
2 Unocal still owned the property and adjacent to Unocal.

3 And the fire cut, the fuel break that was cut in
4 the recent fires about 600 feet long and 60 feet wide and
5 it's almost, if my figures are right, that's about
6 three-quarters of an acre that also be revegetated that
7 would not otherwise be revegetated.

8 We're getting down to splitting such fine hairs as
9 is it a tiny minus or a tiny plus? It's, you know, this
10 scale is just so small that it, you know, there's almost no
11 difference.

12 COMMISSION CHAIRMAN DAVIS: They're essentially,
13 from an environmental perspective, the routes are
14 essentially the same?

15 MS. JACOBS: Biological standpoint. I'm not
16 speaking to fuel costs and recreational disturbance or any
17 other things that might go into environmental balancing.

18 The creek crossing, as Mr. Philbrick mentioned, is
19 between where the willows are, the woody vegetation.

20 And his opinion appeared to be a previous clearing
21 and the fact that it's fully vegetated is typical in that it
22 will fully revegetate in a matter of few years because of
23 the moisture there.

24 Again the pipeline projects that I have experience
25 with that we're undergoing CEQA review right now, you know,

1 pipelines typically cross hundreds of small streams like
2 this using the trenching method just employed like that,
3 with our fellow agency, Department of Fish and Game,
4 concurring that that's fine.

5 COMMISSION CHAIRMAN DAVIS: Any other questions?

6 Okay. Any other questions of Dianna?

7 I think you answered the question I wanted to ask
8 you about Mr. Seymour's point about whether we blinked or
9 whether --

10 CHIEF COUNSEL HIGHT: We certainly did not blink.

11 COMMISSION CHAIRMAN DAVIS: I wanted to commend
12 Mr. Luce. I think he is a very effective and persuasive
13 advocate.

14 But I don't see that we have any choice before us
15 if there's no biological difference between the three
16 routes.

17 And if the route presented to us is considerably
18 better than the one that was presented to us last August.

19 Jan, could you just sort of elaborate on
20 Mr. Seymour's comments on our legal cowardice or courage, as
21 the case may be.

22 ASSISTANT ATTORNEY GENERAL STEVENS: Yes,
23 Mr. Chairman, to the extent we can discuss the case.

24 COMMISSION CHAIRMAN DAVIS: I want you to know,
25 when I first because chairman this agency would sue someone

1 before they would write them a letter a say there was a
2 problem. I've not known them to be reticent to go to court.
3 Quite the contrary.

4 But, anyway, speak to the issue.

5 ASSISTANT ATTORNEY GENERAL STEVENS: Nor were we
6 several weeks ago.

7 I think as indicated we have recommended this
8 solution as the settlement of litigation as well as a policy
9 decision on the part of the Commission. Obviously the
10 policy is the Commission's, the legal advice is our
11 function.

12 And we feel that it's a desirable resolution of
13 what is in effect a condemnation action filed by the CCWA.

14 As indicated, there are several different laws in
15 effect here.

16 The Commission is given stewardship over its land
17 and public trust responsibilities, and obviously is carrying
18 those out.

19 On the other hand the Legislature has authorized
20 the members of the CCWA collectively to file actions in
21 eminent domain and has given them the authority by statute
22 to obtain immediate possession of property.

23 Now, it's our position that this authority does
24 not extend to sovereign lands, but this is a case which is
25 without very much appellate precedent.

1 And the interest in pursuing this where a logical
2 and environmentally desirable solution appears to be in
3 prospect before the Commission, it seems to me to be both
4 wasteful and possibly unproductive.

5 And that's the reason that we recommend settlement
6 that's offered here.

7 COMMISSION CHAIRMAN DAVIS: So just to paraphrase
8 your comments, do you think we have essentially won the war
9 here, but just got a positive result and the legal issues
10 are sufficiently unclear that were we to lose we would be
11 forfeiting a positive result for a much less preferable
12 result than we rejected in our last hearing?

13 ASSISTANT ATTORNEY GENERAL STEVENS: Very concise
14 summation.

15 COMMISSION CHAIRMAN DAVIS: All right. Are there
16 any questions?

17 ACTING COMMISSIONER MILLS: No.

18 I would just want to add that the Lieutenant
19 Governor, for the record, he was also extremely prepared to
20 go to court.

21 And he was fully briefed on this matter earlier
22 today. He couldn't, unfortunately make it tonight. But
23 we've had extensive -- I've had extensive discussions with
24 him and he with staff.

25 ACTING COMMISSIONER PARKER: The alternative route

1 is basically twice as expensive as this modified route?

2 CHIEF COUNSEL HIGHT: The Harris Grade Road
3 alternative is; yes.

4 ACTING COMMISSIONER PARKER: I remember last time,
5 Mr. Chairman, we talked about this and it was certainly one
6 of my considerations and I felt very good that night going
7 home and thinking about being able to put off the thought of
8 losing 117 trees, and was concerned about this issue of cost
9 being perhaps an alternative that maybe within that million
10 dollars.

11 We're now talking, and again this is I've spent
12 time trying to talk to outside people besides the staff to
13 get some sense about how this project has been progressing
14 and whether or not these cost estimates that the water
15 district might be proposing were in fact, you know,
16 reasonable ones.

17 And I guess now to hear that this alternative
18 route, which essentially addresses the issue of the
19 biological impacts, but would cost to go another route twice
20 as much, causes me concerns about if we are the trust
21 responsibility, forcing those water users to essentially pay
22 for double the expense of a route, you know.

23 I would have -- I could have felt differently if
24 it was some minor amount.

25 And that's why I was really interested in finding

1 out whether any of these other routes were more preferable,
2 because even though they were more expensive if they were
3 more preferable, even though they cost a little bit more
4 money, I would be willing to pursue that and fight for those
5 and whatever.

6 But it causes me real concern and essentially
7 requiring homeowners in this area, absent us doing this to
8 homeowners in any other area, to pay twice the cost.

9 I don't know if staff, if that's essentially what
10 we've --

11 COMMISSION CHAIRMAN DAVIS: Are we satisfied
12 that -- is this the staff's estimate what the costs would
13 be?

14 CHIEF COUNSEL HIGHT: Staff, Pete Johnson of our
15 engineering staff, spent a day plus with CCWA's engineer and
16 that's -- we don't agree, but we agree upon a range.

17 And Harris Grade is minimum of three million to
18 five million more than this route.

19 ACTING COMMISSIONER PARKER: This route would
20 cost?

21 CHIEF COUNSEL HIGHT: The proposed route --

22 ACTING COMMISSIONER PARKER: The modified.

23 CHIEF COUNSEL HIGHT: The original route was going
24 to cost \$3 million.

25 The modified proposed route, the one that is

1 before you today, will cost 3.6 to 4. So it's another
2 600,000 to a million dollars more.

3 Then on top of that is the three to five million
4 to go down Harris Grade Road.

5 ACTING COMMISSIONER PARKER: So it would cost six
6 to nine.

7 CHIEF COUNSEL HIGHT: Nine.

8 COMMISSION CHAIRMAN DAVIS: And the staff feels
9 confident that the additional expense is in the three to --

10 CHIEF COUNSEL HIGHT: To five million dollar
11 range; yes.

12 COMMISSION CHAIRMAN DAVIS: The additional cost is
13 in the range of three to five million?

14 CHIEF COUNSEL HIGHT: Yes. The additional.

15 COMMISSION CHAIRMAN DAVIS: Okay.

16 ACTING COMMISSIONER MILLS: I think one of the
17 things that the Lieutenant Governor was very concerned about
18 was first he was -- he was moved by the fact that there was
19 substantial -- there was substantial mitigation with the
20 modified route.

21 But he was very concerned that the terms that CCWA
22 agreed to limiting the swath of land to 20 feet and
23 protecting the trees at all costs would be enforceable.

24 And it is, and maybe you can just reconfirm this,
25 but it's in the lease work has to stop if the construction

1 violates any of the terms in the lease.

2 CHIEF COUNSEL HIGHT: Yes. We have construction
3 plans. They are incorporated into the lease. There is a
4 survey description. Dianna has walked it, knows where it
5 is.

6 During construction if they move from that survey
7 description we can stop work immediately and force them back
8 into the survey lines.

9 COMMISSION CHAIRMAN DAVIS: There was also some
10 reference to protecting, limiting access --

11 CHIEF COUNSEL HIGHT: Yes.

12 COMMISSION CHAIRMAN DAVIS: -- of off-road
13 vehicles and everything else and so forth.

14 CHIEF COUNSEL HIGHT: Yes.

15 COMMISSION CHAIRMAN DAVIS: Whatever swath has to
16 be cut through the remaining chaparral.

17 CHIEF COUNSEL HIGHT: Yes.

18 COMMISSION CHAIRMAN DAVIS: Is that done through
19 the use of the person that is on site on a 24-hour basis?

20 CHIEF COUNSEL HIGHT: Yes. When the project is
21 completed we will evaluate with CCWA what needs to be done
22 to fence, barricade, further protect in the sense to keep it
23 from being a road. And that will be done by the personnel
24 on site.

25 COMMISSION CHAIRMAN DAVIS: So it can't be used

1 for off-road vehicles?

2 CHIEF COUNSEL HIGHT: Exactly.

3 ACTING COMMISSIONER PARKER: There's going to be
4 some management of that from a standpoint that that will be
5 something that will be reviewed over a period of time,
6 that's part of the contract is that isn't just that they
7 would come back in six months and look, they would
8 continue --

9 CHIEF COUNSEL HIGHT: Yes. It's ongoing
10 management and responsibility in that regard.

11 ACTING COMMISSIONER PARKER: And there's built
12 escalation clause for if there is more mediation needed
13 because of concerns that that would be provided by the water
14 district?

15 CHIEF COUNSEL HIGHT: Yes.

16 COMMISSION CHAIRMAN DAVIS: I'd like to make sure
17 that clause is in the contract. If our people feel more
18 steps should be taken that we have a right to insist upon
19 that assuming the costs of those steps --

20 CHIEF COUNSEL HIGHT: Yes. We have that in the
21 clause and Peter --

22 SENIOR COUNSEL PELKOFER: In addition to the lease
23 we have a separate mitigation agreement contract with CCWA
24 that allows us to suggest, advise, request, so on and so
25 forth.

1 Plus they have provided some additional funding to
2 us which is dedicated to exactly those kinds of purposes, to
3 promoting the sanctuary or the preserve as well. And some
4 of that will go for the kinds of things Ms. Parker was
5 referring to, oversight.

6 COMMISSION CHAIRMAN DAVIS: This is above and
7 beyond the 50,000 or part of the 50,000?

8 SENIOR COUNSEL PELKOFER: This is a sum
9 approaching 200,000 which they will provide to us for that
10 purpose and we will be working with the County of Santa
11 Barbara to develop the preserve, if you wish, and part of
12 that will be oversight of these things as well.

13 So, you know, it's actually going to enhance what
14 exists now in many respects.

15 COMMISSION CHAIRMAN DAVIS: Okay. All right. Any
16 other questions?

17 Do we have a motion?

18 ACTING COMMISSIONER PARKER: I wish that there
19 were a better solution, but as you said, Mr. Chairman, we
20 will have a pipeline.

21 And I don't know that there is -- it doesn't
22 appear to be an option available to us that satisfies all
23 the interests, including the ratepayers, other than what we
24 have before us.

25 So on that basis I would make the motion to adopt

1 staff recommendation.

2 COMMISSION CHAIRMAN DAVIS: Ann?

3 ACTING COMMISSIONER MILLS: I would second that
4 motion.

5 But I do also want to add that the Lieutenant
6 Governor was, to put it mildly, puzzled that CCWA did not
7 pursue the Harris Grade Road originally and also puzzled
8 that they did not propose the modified plan earlier on, and
9 that we could have avoided some time and a few steps.

10 But I would second that motion.

11 COMMISSION CHAIRMAN DAVIS: All right. I have
12 reluctance too, but we have many interests to balance here.

13 The people in the surrounding communities voted
14 for this pipeline. They're entitled to have it.

15 We have done our best to accommodate competing
16 interests here, which as you can tell from my earlier
17 outburst has been extraordinarily frustrating.

18 CCWA is not going to win any popularity contests,
19 I can assure you of that.

20 For whatever reason, self-interest or economies,
21 they have made a proposal that is far more environmentally
22 sound than their original proposal.

23 And based on that, the support of Fish and Game
24 and the advice of staff and the Attorney General, I feel
25 comfortable that we're acting well within our Public Trust

1 Doctrine to approve this modified proposed route.

2 I'm not wild about it, but we have to make a
3 choice, and that's the choice we're making.

4 So the application is approved unanimously.

5 CHIEF COUNSEL HIGHT: Thank you, Mr. Chairman.

6 And let us now go back to Item 67.

7 ACTING COMMISSIONER PARKER: Bob, how long will
8 this take?

9 (Thereupon a short recess was taken.)

10 COMMISSION CHAIRMAN DAVIS: Okay. Could we deal
11 with -- thank you, gentlemen and ladies.

12 Could we deal with the last item now?

13 CHIEF COUNSEL HIGHT: Yes.

14 COMMISSION CHAIRMAN DAVIS: Expeditiously.

15 EXECUTIVE OFFICER TROUT: Mr. Chairman, Item 67 is
16 a proposal of settlement of litigation and will result in
17 the cleanup of improper dredging done on state lands in 1987
18 and 1988.

19 The project, while authorized by the Lahontan
20 Regional Water Quality Control Board and the Tahoe Regional
21 Planning Agency, was not approved nor were applications
22 submitted to the Corps of Engineers or to the State Lands
23 Commission.

24 In spite of the permits by the regional water
25 quality control board, more dredging was done than was

1 authorized and the material was improperly placed not
2 consistent with the permit issued by the Lahontan board.

3 In 1990 the State Lands Commission and the Corps
4 of Engineers filed suit against the dredgers, the operators
5 of the boat that was going to use the channel, and the
6 upland owner to compel cleaning up of this mess and to
7 provide for fines and penalties.

8 In the intervening time we've tried to work out a
9 solution that would give us the results we were looking for
10 without putting the firm out of business, particularly the
11 firm which was operating the Tahoe Queen.

12 As a result of that we have before you tonight a
13 proposed settlement of litigation that would provide for the
14 removal of fine silts and organic material that has built up
15 in ponds created as a result of improper disposal of the
16 dredged material.

17 It also would require the regrading of the
18 shoreline to disburse the sand along the shoreline.

19 And would, third, clean up the interior marina
20 area which has been isolated from the lake.

21 This work was originally done as a result of the
22 years of drought and the lowering of the lake levels. It
23 was to provide continued access to the shoreline for this
24 cruise boat.

25 The proposal would allow now to do this work while

1 the lakebed is dry.

2 If we don't undertake this work relatively quickly
3 that opportunity will be lost, we will lose the opportunity
4 to capture the organic material and others, and it will be
5 disbursed through the lake and we will not be able to work
6 in the area without creating sediments and turbidity in the
7 lake.

8 COMMISSION CHAIRMAN DAVIS: How long does it take
9 to do the work?

10 EXECUTIVE OFFICER TROUT: It should take three to
11 four weeks to do the work.

12 If it's approved by the Commission tonight and
13 approved by the regional board, this part of it approved by
14 the regional board on Friday, the work should be done by the
15 21st of December.

16 ACTING COMMISSIONER PARKER: Jim, could they do
17 this given the snows that are happening now?

18 EXECUTIVE OFFICER TROUT: We believe they can,
19 provided the lake doesn't come up. The ice itself should
20 not provide any difficulties except in the area possibly of
21 the turbidity screen and we think there are other
22 alternatives to prevent stuff in the marina from getting out
23 into the lake.

24 This is an opportunity we have to get the people
25 who -- the parties who are involved in the dredging to

1 undertake the cleanup and to provide the best environmental
2 treatment for the damage that was done to the lake.

3 This is not a global solution. There are other
4 problems related to the area.

5 COMMISSION CHAIRMAN DAVIS: Let's assume that for
6 whatever problems caused by weather or fate it can't be done
7 before the winter, would you still be recommending approval?

8 EXECUTIVE OFFICER TROUT: I don't think so. If it
9 can't be done then the advantages of this settlement are
10 probably not there. The damage will have been done. The
11 material will be disbursed by the rising lake. And we will
12 not have the opportunity to move this sand up in front of
13 the beach of Tahoe Meadows.

14 COMMISSION CHAIRMAN DAVIS: What happens if we
15 approve it and then it can't be done?

16 EXECUTIVE OFFICER TROUT: Then I think we would
17 have to resolve that.

18 Maybe I can ask Mike Crow, of the Attorney
19 General's office, to comment on that.

20 DEPUTY ATTORNEY GENERAL CROW: Mr. Chairman, we
21 think that it probably can be done this winter, not
22 necessarily when there's a lot of snow on the ground. We'll
23 have to look for our window of opportunity when it can be
24 done before the lake starts to come back up, perhaps closer
25 to the springtime.

1 EXECUTIVE OFFICER TROUT: There's three phases to
2 this project.

3 The first two phases are important to be done
4 while the lake is dry.

5 The third phase, which is the cleanup of the
6 interior marina, can be done at a later time. And we're
7 trying to get this work out in the lakebed done during this
8 window that we've built into this settlement.

9 ACTING COMMISSIONER PARKER: When is the best time
10 to do this if you could do this during the year?

11 EXECUTIVE OFFICER TROUT: The best time would have
12 been in September or October, but that window was just not
13 available to us. We didn't have this settled.

14 ACTING COMMISSIONER PARKER: Is it expected that
15 if this couldn't be done until next September or sometime in
16 the distance that there would be more or less damage than
17 what happened by last winter when the lake came up or the
18 previous year before that?

19 EXECUTIVE OFFICER TROUT: If the lake rises to
20 this level without this work being done then this material
21 will be disbursed throughout the lake and contribute to
22 the --

23 ACTING COMMISSIONER PARKER: Did that not happen
24 in previous years, previous winters? Is that the issue?

25 EXECUTIVE OFFICER TROUT: Right.

1 The most important part is to get the areas that
2 have the fine organic materials taken out as soon as
3 possible.

4 The other areas can be dealt with later, although
5 the recontouring of the other material of the remaining
6 dredged spoils that are there should be done as soon as
7 possible after the fine materials are taken out. But it
8 wouldn't necessarily have to happen the day after.

9 But we feel that we have a detailed work plan and
10 a monitoring plan and the State Lands will have a project
11 manager on site, who will have authority to, and there's
12 built-in flexibility into the plan, that he can order work
13 stop or he can order to start, he can order different kinds
14 of equipment depending on various conditions. That's built
15 into the detail of the plan.

16 We realize that if it's muddy or something out
17 there it may require smaller equipment or equipment that's
18 able to work in those kind of conditions.

19 COMMISSION CHAIRMAN DAVIS: Okay.

20 ACTING COMMISSIONER PARKER: Mr. Chairman, not to
21 beat this issue to death, and I apologize, but going back to
22 sort of the timing of this issue before us now, as far as
23 the lake coming up, now, my presumption would be that if the
24 lake were to come up that it would meet its highest point
25 sometime in the spring because of runoff.

1 EXECUTIVE OFFICER TROUT: Right.

2 ACTING COMMISSIONER PARKER: So is this something
3 that working on it now as opposed to sometime after the
4 first part of the year but before the spring runoff occurs?
5 I'm just trying to figure out time wise. Is it really that
6 we have to deal with it now as opposed to it wouldn't really
7 be that much difference in benefit of either now or, you
8 know, March to work on this from the standpoint that it's
9 really going to be the spring runoffs that's going to make
10 the lake come up and in that sense make it more difficult to
11 work on?

12 Again, I apologize if I'm not -- if this doesn't
13 make some sense, tell me.

14 DEPUTY ATTORNEY GENERAL CROW: We just want to
15 deal with it. We want to have the flexibility to deal with
16 it when we can. And the more time we have, the better.

17 The other thing is that we have a trial date of
18 January 10th and that is pretty solid. And so we have to
19 either --

20 COMMISSION CHAIRMAN DAVIS: So we would be
21 authorizing you, if we approve the settlement, to do this
22 work at whatever time the staff felt or the contractor felt
23 was appropriate between now and the spring runoff basically?

24 DEPUTY ATTORNEY GENERAL CROW: Essentially, yes.

25 COMMISSION CHAIRMAN DAVIS: Could you just

1 summarize the benefits of the settlement?

2 DEPUTY ATTORNEY GENERAL CROW: Well --

3 COMMISSION CHAIRMAN DAVIS: The policy grounds.

4 DEPUTY ATTORNEY GENERAL CROW: The detriment
5 caused by the spoils has, I think there's four major
6 factors.

7 The first is the areas, the ponded areas that trap
8 the organic materials that normally would be disbursed
9 throughout the lake.

10 The second is the fact that these dredge spoil
11 mounds interfere with the normal littoral sediment process.

12 The third is that they represent a hazard to
13 navigation when the lake does come back up. We're afraid
14 that boats will run aground and things like that.

15 Fourth is it's an aesthetic eyesore essentially
16 and it's definitely not a natural part of the scenic beauty
17 of that area.

18 So the benefits are removing those.

19 And the problem with the lake coming back up is
20 then if we want to remove them we're dealing with equipment
21 working in the water and then that raises a question of
22 significant impact in which we have to do, we probably have
23 to do an environmental impact report.

24 Whereas here where the equipment is not -- is
25 essentially working on the dredged spoils, the exposed

1 dredge spoils itself, we believe the project as designed
2 will not have a significant impact on the environment.

3 So it's important to act now.

4 And one of the problems we have that in the last
5 two years the lake has fluctuated very dramatically with
6 either extremely dry or extremely wet winters.

7 And the problem is trying to, you know, keep up
8 with the changes in the lake, to design a project that keeps
9 up with the changes in the lake.

10 COMMISSION CHAIRMAN DAVIS: Okay. Is there
11 anything else you want to add, Mr. Hight?

12 CHIEF COUNSEL HIGHT: No. I think that adequately
13 sums up the staff's position.

14 We have five speakers who desire to be heard on
15 this subject.

16 COMMISSION CHAIRMAN DAVIS: Okay.

17 CHIEF COUNSEL HIGHT: Mr. Norman.

18 COMMISSION CHAIRMAN DAVIS: Can we try to keep our
19 comments to three minutes? We'd sure appreciate that.

20 MR. NORMAN: Mr. Chairman, members of the
21 Commission, my name is Melvin Norman. I'm president of the
22 Tahoe Meadows Association.

23 We as an association requested that this dredging
24 not be allowed in the first place.

25 Tahoe Meadows has requested for the last six years

1 that the worst environmental catastrophe in perhaps the
2 total of Lake Tahoe be corrected and cleaned up.

3 Because of the low lake level we do have a special
4 condition in which this can happen.

5 The proposed mediational situation is not that
6 correction. It's less than a slap on the hand for something
7 that has happened.

8 The sand that was lost to the deep water can never
9 be recovered, nor is there enough sand to totally fill the
10 illegal canal, which is in completely different location
11 than the small ditch that was originally supposed to be
12 dredged.

13 It is now much to the north of the original ditch
14 and out in front of Tahoe Meadows. Long-term accumulated
15 and short-term environmental problems were created by this
16 illegal dredging and these items are not being addressed
17 adequately to Tahoe Meadows' wishes.

18 Tahoe Meadows was not kept informed, nor were
19 these papers and other proper notification of any of this
20 meeting given to us. We should have had 20 days. We did
21 not. We probably had ten.

22 It is not possible to change the movement of large
23 amounts of good if it is not possible to change the movement
24 as requested under this mediational program of good and
25 clean sand that is in front of Tahoe Meadows, at this time

1 approximately 2700 yards or 200 trucks and trailer loads or
2 they're using a standard unit of 20. I was using 24 yards
3 per load. So it would be more.

4 The other 1700 cubic yards they're using a
5 specification of 800 cubic yards.

6 That will come out of the marina, certainly needs
7 to be cleaned up. There is a lot of good sand in there that
8 should be salvaged and put back into the lake and cleaned.

9 Tahoe Meadows also requests that a control of this
10 and monitoring system to this process if it goes ahead at
11 least that would be much better than the other one.

12 They were supposed to move 5,500 cubic yards.
13 They probably moved 50,000 cubic yards. Any inspector that
14 doesn't know that close to the proximity of what's going
15 should not be doing so.

16 The amount of contamination on the beach that
17 remain after the attempted cleanup of the two small spots
18 that they plan on removing is probably maybe 60 to 80
19 percent still remaining on the beaches.

20 The idea of what the court has to find out if
21 they should remove two foot of sand over this whole area or
22 six inches of sand in order to remove the contaminants has
23 been requested. We went out personally with some of the
24 staff.

25 Also we have done some of our own survey. Most

1 areas do not need to be removed to this depth. That will
2 remove too much good viable sand that cannot be replaced.

3 All monies derived from this dispute, as small
4 amounts as they are, should certainly remain into that area
5 for cleanup, not be disbursed to the United States or the
6 State or anything else as far as recovery, if we are going
7 to settle for this small amount.

8 Other incidents happened approximately at this
9 same time where 1,000 yards of dirt or sand was pumped
10 toward the lake. These two individuals were fined \$50,000
11 almost immediately as soon as they could be forced through
12 the courts within a year. They were given six months each
13 in a halfway house and the homeowners association
14 responsible for hiring those two individuals was fined
15 \$100,000. This is on the north shore right across -- the
16 very minor thing in comparison of what we have in front of
17 us at Tahoe Meadows.

18 COMMISSION CHAIRMAN DAVIS: Was this the same
19 people or was it different?

20 MR. NORMAN: I got one --

21 ACTING COMMISSIONER PARKER: Who sued?

22 COMMISSION CHAIRMAN DAVIS: Was it the same
23 company that was fined or was it a different company by the
24 north shore?

25 MR. NORMAN: Different company. Two contractors

1 and they can give you the full reports on those. But I can
2 document --

3 ACTING COMMISSIONER PARKER: Who fined them?

4 MR. NORMAN: Who fined them?

5 ACTING COMMISSIONER PARKER: Yes.

6 COMMISSION CHAIRMAN DAVIS: The Attorney General's
7 office. This is being handled through the Attorney
8 General's office. It's almost the same time. It happened
9 in I believe '88 or '89.

10 But anyway, all we're seeing is we've been waiting
11 for six years to try to get this mess cleaned up. And I
12 find out very lately along this line that this type of thing
13 is going on.

14 What has happened is not most likely going to be
15 acceptable to Tahoe Meadows and we would quite possibly have
16 legal intervention.

17 The project achieves perhaps a short-term
18 advantage. Accumulated and long term it is disaster to
19 Tahoe Meadows if you leave that ditch there and you leave
20 the spoils spread out all the rest of the way in front of it
21 like it is.

22 May I answer any of your questions?

23 COMMISSION CHAIRMAN DAVIS: I want to pursue this
24 concern you have that 60 percent of the contaminants on the
25 beach will not be removed.

1 Maybe I should address that to you, Mr. Hight. Do
2 you agree with that, disagree with that?

3 CHIEF COUNSEL HIGHT: I need to ask, I guess,
4 Mike.

5 DEPUTY ATTORNEY GENERAL CROW: Well, the staff did
6 a site inspection last week and we did notice that there
7 were some of those contaminants spreading out away from the
8 outer pond area.

9 And we have addressed that in the work plan. We
10 will be working on those areas as well in terms of removing
11 the fines, that fine organic materials that are there.

12 A lot of the fine organic materials that have
13 wound their way down the beach we think would occur there,
14 would have occurred there anyway. And we see this kind of
15 evidence in other areas of the south shore.

16 There is several, what are they, outfalls from
17 adjacent urban areas that come, some come through Tahoe
18 Meadows and there's others up and down the south shore, and
19 those all contribute to the organic fines that are being
20 pushed into the lake.

21 MR. REUTER: If I can add to that. My name is
22 John Reuter. I'm a research ecologist for UC Davis and
23 director of Tahoe Interagency Water Quality program.

24 We've been providing some consultation to Mike and
25 the State Lands.

1 I think perhaps what Mr. Norman, and correct me if
2 I'm wrong, is referring to is that they were two areas that
3 were identified in 1992 to contain these elevated
4 concentrations of fines and organics, the type of stuff that
5 literally millions of dollars are spent every year to
6 prevent their accumulation in the lake.

7 Since 1992 it seems every year the site changes,
8 which is not unexpected. Different years the lake comes up
9 a little bit, other years it comes up a lot.

10 I think since the last major field investigation
11 we have been up there recently and we have identified an
12 area to the east of these spoils where there now is about
13 anywhere from a one- to three-inch layer of fine materials
14 that are deposited as part of the new revised work plan on
15 the basis of site inspection we had with Mr. Norman and
16 other members of the Meadows group.

17 That area now has been identified to be removed.

18 I think that point, the point that year to year
19 the project changes is really one of the major motivating
20 factors for getting the project done now.

21 I think every year things change.

22 The problem that we identified in the fall of 1991
23 are being just intensified.

24 And so the idea now is just to, you know, a wrong
25 has been done. The channel was dug. I think it's an issue

1 that should be addressed at Tahoe. It's not specifically
2 part of this plan. This plan has a narrow focus to it, to
3 mitigate for that illegal act and the depth position of
4 materials.

5 So in our estimation what we have to do is get rid
6 of these fines and recontour.

7 COMMISSION CHAIRMAN DAVIS: Let me ask you, Bob,
8 would the Commission have granted a permit for this dredging
9 if an application had been made?

10 CHIEF COUNSEL HIGHT: In all likelihood, yes. The
11 other agencies --

12 EXECUTIVE OFFICER TROUT: I think you have to go
13 back. The project that was approved by Lahontan and TRPA
14 would have gone to 6219, which was a reasonable project, we
15 thought.

16 The actual dredging was considerably below that.

17 I don't think that staff would have recommended
18 that based on what we know today, but of course we weren't
19 involved in it at that time.

20 CHIEF COUNSEL HIGHT: The other agencies looked at
21 it at the time. I think that we would have agreed with them
22 had we seen it and authorized the dredging.

23 EXECUTIVE OFFICER TROUT: The same dredging they
24 authorized, not what was actually done.

25 CHIEF COUNSEL HIGHT: Correct.

1 COMMISSION CHAIRMAN DAVIS: One point that
2 troubles me, why should we -- I guess we're not rewarding,
3 but we basically are not -- well, we are improving the
4 environment that was damaged through actions that we didn't
5 permit.

6 CHIEF COUNSEL HIGHT: Correct.

7 COMMISSION CHAIRMAN DAVIS: Why aren't we throwing
8 the book at this person?

9 He acted illegally, he had no authority to do
10 this.

11 CHIEF COUNSEL HIGHT: We think in the process of
12 the settlement we are mitigating that which was done,
13 bringing it back to square one.

14 The Attorney General, Jan, if you have any --

15 ASSISTANT ATTORNEY GENERAL STEVENS: Yes.

16 Basically the two purposes I think of the action
17 are to first of all to restore the environment to the
18 condition that existed prior.

19 COMMISSION CHAIRMAN DAVIS: That's not really
20 true. The dredging, the tunnel is still going to be there;
21 right?

22 ASSISTANT ATTORNEY GENERAL STEVENS: But the harm
23 will have been removed or ameliorated in a major way.

24 COMMISSION CHAIRMAN DAVIS: Although we probably
25 would have permitted the tunnel if we were asked? A

1 portion?

2 CHIEF COUNSEL HIGHT: Yes.

3 ACTING COMMISSIONER PARKER: But it will be deeper
4 even after this mitigation?

5 CHIEF COUNSEL HIGHT: Correct.

6 ACTING COMMISSIONER PARKER: Then we have approved
7 and TRPA and Lahontan had approved when they provided a
8 permit?

9 CHIEF COUNSEL HIGHT: Yes.

10 COMMISSION CHAIRMAN DAVIS: Why is it deeper?
11 What commercial purpose was advanced by making it deeper
12 than what we would have approved or what purpose -- why is
13 it deeper?

14 EXECUTIVE OFFICER TROUT: It allowed the Queen to
15 come in at even lower elevations of the lake than were
16 contemplated earlier.

17 I'd also like to respond also, in the Fleur de Lac
18 case to which Mr. Norman, I think, makes reference, they
19 were fined \$50,000 at least from the State standpoint.

20 The Lahontan board got in, they didn't have a
21 permit from Lahontan up there.

22 And this individual now is going to pay \$100,000
23 between the state and federal government and also spend
24 150,000, 100 to 150 thousand dollars to do the remediation.

25 Second, as one of the parties that was involved in

1 negotiating this, one of our concerns was that this
2 operation not be put out of business because there are 80
3 employees involved with the operation of the Tahoe Queen in
4 the wintertime and perhaps as many as 120 in the summertime.

5 We have been on site, we have reviewed the
6 operation, we've looked at the company's financial
7 statements and --

8 COMMISSION CHAIRMAN DAVIS: Why don't we take a
9 percentage of their ongoing gross? I mean, I understand you
10 have to balance these. I don't want to put people out of
11 work, particularly, but I don't want to reward people for
12 doing something that we wouldn't have given permission to do
13 something in the first place.

14 EXECUTIVE OFFICER TROUT: I understand the
15 Chairman.

16 And one of the things that's involved, this
17 operator that did this is not a lessee of the Commission nor
18 is he becoming a lessee of the Commission.

19 His operation is a sublease of the upland
20 operation which has -- which lease has expired or needs
21 renewal, I don't know which.

22 We're working on that now.

23 And at that time we would provide a global
24 solution that provide for the state, for the public, for the
25 use of these resources a steady income. We're not at that

1 point yet, and will probably be in the springtime.

2 But right now the purpose of bringing this project
3 to you is to take advantage of the low lake levels and to
4 correct this environmental problem now and deal with the
5 rest of it in proper process as we deal with the upland
6 procedure.

7 COMMISSION CHAIRMAN DAVIS: Well, what do you
8 propose to do with the upland procedure?

9 EXECUTIVE OFFICER TROUT: The upland operator will
10 require a lease and the Tahoe Queen people will require a
11 state-approved sublease.

12 As part of that lease we will construct a fee
13 schedule that will provide for the State to be compensated
14 for the public trust resources that are being used and
15 provide, as typical of our leases, provide an income source.

16 COMMISSION CHAIRMAN DAVIS: And we can wrap in
17 that any other monies that would otherwise have been imposed
18 as a fine beyond the \$50,000?

19 EXECUTIVE OFFICER TROUT: The amount that we had
20 originally looked at \$250,000 fine. In lieu of that we're
21 talking about \$100,000 in cash and doing of the remediation
22 project, which is expected to come up to the 150,000. So in
23 effect this individual will be paying approximately \$250,000
24 in fines and costs.

25 ACTING COMMISSIONER PARKER: What --

1 COMMISSION CHAIRMAN DAVIS: Still have the benefit
2 of coming in --

3 EXECUTIVE OFFICER TROUT: He will still have the
4 benefit of doing that.

5 COMMISSION CHAIRMAN DAVIS: Low tide.

6 EXECUTIVE OFFICER TROUT: While he has the benefit
7 there are also employed individuals that also will have the
8 benefit of having a job. And that was part of my
9 consideration in bringing this to you.

10 COMMISSION CHAIRMAN DAVIS: Well, you're presuming
11 that if they couldn't come in at low tide that they wouldn't
12 be able to keep the employees that they take on in the
13 winter. I assume low tide is in the winter?

14 EXECUTIVE OFFICER TROUT: It runs all year.

15 COMMISSION CHAIRMAN DAVIS: Why does the depth, if
16 they have employed 80 people during the winter, I assume
17 that was before this dredging began they were employing 80
18 people?

19 EXECUTIVE OFFICER TROUT: I believe so; yes.

20 COMMISSION CHAIRMAN DAVIS: Is the -- I mean, I'm
21 not familiar with the Lake Tahoe. Is the ground built up so
22 that periodically you have to dredge it?

23 CHIEF COUNSEL HIGHT: This is the lakebed. And as
24 the water receded then you had to cut a deeper trench into
25 the surface of the lake to get the --

1 EXECUTIVE OFFICER TROUT: The ring on the bathtub
2 went down so he needs more under the keel when the lake is
3 down.

4 ACTING COMMISSIONER PARKER: What would it cost if
5 we had to essentially mitigate this ourselves, if we were
6 not able to essentially negotiate the settlement? What
7 would it cost us?

8 EXECUTIVE OFFICER TROUT: We would anticipate it
9 would cost about the same.

10 CHIEF COUNSEL HIGHT: About 150,000.

11 COMMISSION CHAIRMAN DAVIS: But we would probably
12 fill in, more than likely, the entire trench.

13 EXECUTIVE OFFICER TROUT: That would require a
14 complete environmental impact report, which will have to be
15 done prior to the upland leasing project. We don't know
16 whether that's a good thing to do or not. It hasn't been
17 looked at.

18 There's alternatives of a pier. There are other
19 alternatives.

20 There are concerns that these fine materials
21 that's getting on the beach is coming from the South Tahoe
22 sewers and that's a much larger project that needs to be
23 looked at.

24 And we're just trying to focus on one right now,
25 on one small piece and that is to try and take advantage of

1 the low lake level to correct this problem.

2 There are a lot of issues that have to be looked
3 at, but they're not as critical in the time frame as this
4 low lake level.

5 ACTING COMMISSIONER MILLS: One of the concerns
6 that Mr. Norman, I believe, raised is that once you disburse
7 this sand, I take it you're going to also be shipping out
8 some of it, you lose that. What if you get to the point
9 where in the later review you decided it makes a lot of
10 sense to fill in the trench, where do you get the sand to do
11 that?

12 CHIEF COUNSEL HIGHT: At that point you would have
13 to --

14 EXECUTIVE OFFICER TROUT: I frankly --

15 CHIEF COUNSEL HIGHT: You have to purchase sand.

16 EXECUTIVE OFFICER TROUT: I don't know if this is
17 possible, but possibly even recover some from deeper parts
18 of the lake. I mean, this all has to looked at from an
19 environmental standpoint.

20 DEPUTY ATTORNEY GENERAL CROW: The preferred
21 alternative in that situation would be to let the channel
22 fill in naturally and the previous channels have.

23 There have been -- there's a history of the
24 channel dredging here near the Tahoe Queen has operated at
25 Ski Run Marina for 10 to 15 years. There were other tour

1 boats there before then and there were other dredged
2 channels that were not as long or as deep, perhaps, but they
3 still had a negative environmental impact on the shoreline.

4 As a matter of fact Tahoe Meadows brought a
5 lawsuit against the owner of Ski Run Marina in 1975, the
6 State was not a party to that lawsuit, and got an injunction
7 from the El Dorado County Superior Court requiring that any
8 dredged material from future channel dredging projects be
9 placed in the lake east of the channel in order to replenish
10 their beaches.

11 And that also the court recognized there were
12 other contributing factors to the problem with Tahoe Meadows
13 beaches and that included the marina itself.

14 The very fact that the marina was there and the
15 jetties that were constructed at the mouth of the marina,
16 this is not an in-lake marina, it's an out-of-lake
17 artificial marina, and it requires jetties where it hits the
18 shoreline of the lake in order to keep it from filling up
19 with sand.

20 So that judge recognized that there are a number
21 of other problems.

22 And again I think the most fundamental point to
23 emphasize is that this project is to address what the
24 problems created by the Lake Tahoe Cruise's dredging were,
25 and to do it in an environmentally and economically feasible

1 manner.

2 And we realize that there are long-term problems
3 that are caused by a number of factors. And one of them is,
4 you know, there is the channel is a factor, but that is not
5 within the scope of this project and it's not an alternative
6 that this Commission has to address, legally address in
7 certifying this negative declaration.

8 And it's not an alternative that the staff is
9 recommending at this point.

10 COMMISSION CHAIRMAN DAVIS: Okay. Next witness.

11 Thank you, Mr. Norman.

12 CHIEF COUNSEL HIGHT: Mr. Schmidt.

13 MR. SCHMIDT: My name is Al Schmidt. I live at
14 720 Haine Road, Hillsborough, California.

15 My family has been a property owner in Tahoe
16 Meadows for over 65 years. And as such we are part-owners
17 of some of the beach lots.

18 Mr. Davis raised the question a minute or two ago
19 about whether the State Lands Commission would have approved
20 the channel had the application come to it.

21 I would like to start by commenting on that.

22 First of all, Lahontan held a hearing on this
23 without notifying anybody in Tahoe Meadows that the hearing
24 was to take place.

25 Secondly, Lahontan did the same thing. I happened

1 to have been told of it about quarter of 5:00 the evening
2 that the hearing was to be held over in Bridgeport, Mono
3 County, and immediately put a call through and managed to
4 reach somebody at Lahontan and they refused to postpone the
5 hearing to give us a chance to participate.

6 My feeling is that this channel or canal is of
7 such major importance that a responsible agency such as
8 yours would have insisted on a complete environmental impact
9 report and addressed it properly at that time.

10 I can only speculate, but I'm almost positive that
11 you would have turned it down.

12 My interest in this beside being a Tahoe Meadows
13 property owner is that I have actively participated in the
14 beach erosion committee of the board of directors for about
15 eight years. And I've been following this very closely,
16 including having even talked with Mr. Thiemann before the
17 dredging started and having offered to help him on an
18 emergency basis to get a pier instead of going ahead with
19 the dredging.

20 So I won't take too much of your time. I'm going
21 to get right to the point.

22 The negative declaration that is before you
23 tonight in my opinion is bad for the State, for the people
24 in the state for a number of reasons and should not be
25 approved in its present form.

1 These reasons are as follows.

2 First, the suit brought by the State in 1990 calls
3 for the removal of the dredging spoils in the remediation of
4 the site, meaning to my way of reading it the entire site.

5 This proposed settlement does none of those
6 things.

7 Secondly, the offense consisted of dredging a huge
8 channel or canal through state lands and depositing dredged
9 spoils on state lands without a permit.

10 Yet nowhere is the obvious alternative considered,
11 putting the dredged spoils back where they came from. It is
12 like letting the perpetrators of the great train robbery off
13 with a slap on the hand and letting them pollute.

14 The excuses offered that filling the channel would
15 put Lake Tahoe Cruises out of business, yet no analysis is
16 made of other possible docking locations that Lake Tahoe
17 Cruises has discussed with us and that we have reported to
18 staff.

19 Nowhere does this settlement mention the
20 controversial nature of this project or of the two drownings
21 and two near drownings that have been caused by the huge
22 deep channel coming into shore through a prime swimming
23 area.

24 Nowhere is there any recognition that spreading
25 the dredged spoils on top of the original sand bottom will

1 mean spreading a lot of fines and rock that are still mixed
2 in with the dredged spoils.

3 Nowhere is there any recognition of the liability
4 that the State will assume for future drownings and the
5 future of the Tahoe Meadows beaches by allowing this channel
6 to remain.

7 Nowhere is there any recognition that erecting a
8 barrier to prevent future drownings will create a navigation
9 hazard and make people in row boats and canoes go out to
10 deep water to get around it.

11 Nowhere is there any recognition of the financial
12 cost of either the illegal dredging or of the proposed
13 solution on the property owners in Tahoe Meadows.

14 Nowhere is there any analysis of the relative cost
15 of filling in the channel versus the cost of remediation
16 that the staff is proposing.

17 From my own analysis as a registered professional
18 engineer in the State of California and from several
19 discussions that I've had with knowledgeable people, I
20 believe that filling in the channel could be done in an
21 environmentally acceptable manner at a lower cost than the
22 remediation that has been proposed.

23 Nowhere has there been any recognition that the
24 channel and the dredging spoils are a geologic problem and
25 sedimentology problem and not just a biological and water

1 quality problem.

2 We believe that geologists who have studied the
3 wave littoral drift patterns in this area for the State
4 Lands Commission would not want to see the channel remain.

5 Nowhere is there any recognition of the future
6 erosion of the Tahoe Meadows beaches and the effect on the
7 endangered Tahoe yellow crest by leaving the channel.

8 Nowhere is there any recognition of the effect
9 that the proposed short-term remediation will have only
10 historical significance of Tahoe Meadows as a historical
11 region under the State Office for Historic Preservation and
12 the National Register for Historic Preservation.

13 Beaches are certainly a very important part of our
14 protected area and the fact that this erosion has come close
15 to undermining some of the historic buildings, the property
16 owners have had to put in barriers to stop erosion is
17 something which is very important to us.

18 It is obvious to me that this subject is far too
19 controversial for a negative declaration, needs a proper
20 analysis under CEQA.

21 It is also obvious to me that even the minor
22 remediation that has been proposed cannot be accomplished by
23 December 10th or 15th of this year as a result of the early
24 winter, ten inches of snow that's on the ground and the ice
25 that covers the shallow water in the project area.

1 In conclusion I recommend that you not approve a
2 negative declaration for this project and require a proper
3 study of impacts and alternatives and costs under CEQA.

4 The lake during the -- or having seen the lake go
5 up and down a number of times during the six years that we
6 have been waiting for something to happen, I see no
7 advantage in rushing into a bad solution at this time.

8 Thank you.

9 ACTING COMMISSIONER PARKER: A question.

10 Have you over the six-year period had discussions
11 with Lahontan, TRPA or the Tahoe Conservancy?

12 MR. SCHMIDT: Regularly.

13 Not the Conservancy, but the others.

14 ACTING COMMISSIONER PARKER: I'm interested in why
15 you would not have spoken to Tahoe Conservancy as another
16 state agency.

17 MR. SCHMIDT: Because I guess I haven't met
18 anybody there and I haven't felt the need.

19 I thought that having had extensive talks with
20 John Short over two years ago about the advantages of
21 filling in the channel, and two years ago water, lake water
22 was just as low as it is now, could have been done just as
23 easily, especially early in the summer when it was warm,
24 when you could actually work to cleanup the surface deposits
25 and muck selectively without having to dig up a lot of good

1 sand along with it.

2 ACTING COMMISSIONER PARKER: So you have talked
3 with people at TRPA and Lahontan?

4 MR. SCHMIDT: Yes. In talking with TRPA, one of
5 the things that I found was a list of the people who had
6 been notified prior to their hearing when they proposed the
7 project.

8 And I read the whole list of some 300 names and
9 there was no one in Tahoe Meadows that was included.

10 ACTING COMMISSIONER MILLS: You're interested in
11 filling the channel completely?

12 MR. SCHMIDT: Very definitely. As a means of
13 restoring the entire bottom to its original condition.

14 The geology, the sedimentology, the wave action,
15 the littoral drift, is a very complicated subject.

16 And study that was performed for the State Lands
17 Commission by Professor Robert Osborne of the University of
18 Southern California, a number of people in that department,
19 showed that the sand that we have there is a very special
20 grain size and they conclusively proved that this sand in
21 the shore zone had come from the back beaches.

22 Consequently anything which you do to upset the
23 equilibrium of the shore zone like removing vast quantities
24 along with a little bit of surface muck or digging a big
25 channel and leaving it there to fill in naturally, the

1 natural fill-in will come from the erosion of the back
2 beaches.

3 This is why I mention that it bothered me the fact
4 that the consultants on this project so far had been
5 biologists, that there have been no geologists or
6 sedimentologists.

7 COMMISSION CHAIRMAN DAVIS: Any questions?

8 ACTING COMMISSIONER PARKER: No.

9 COMMISSION CHAIRMAN DAVIS: Thank you very much.

10 MR. SCHMIDT: Thank you.

11 COMMISSION CHAIRMAN DAVIS: Next witness.

12 EXECUTIVE OFFICER TROUT: Christine Rozance.

13 MS. ROZANCE: My name is Christine Rozance and I
14 am a property owner in Tahoe Meadows.

15 And I am here to speak out against the adoption of
16 this proposed negative declaration and remediation
17 settlement.

18 I'm not going to go over some of the same points
19 that I think have been well covered, but I do have some
20 serious concerns I want to bring to your attention.

21 I do agree with Mr. Schmidt that in my reading of
22 what was sought through the initial litigation, which was
23 started in 1990, remediation of the site was part of the
24 objective.

25 The site in my own mind certainly includes the

1 dredged area as well as that debris which was dredged out of
2 the channel.

3 I feel that the agenda here of considering only
4 the cleanup of that material that was put into the beach and
5 the shoreline is inadequate treatment of this problem.

6 I am very concerned that back in 1991 when the
7 State asked for an investigation of this they were
8 specifically asking for only an investigation of the
9 environmental impact of that material which was put outside
10 of the dredged channel.

11 The channel itself was not of concern.

12 The channel, the reputable investigators who
13 reported, by my reading of your document that supports this
14 meeting tonight, were not asked to look into the
15 environmental impact of the channel itself.

16 The channel itself represents a severe
17 environmental impact in the lake, although I don't have the
18 documents here to prove it. It certainly should have been
19 looked into.

20 The channel itself is in addition to being
21 environmentally unsound certainly is an insult to the
22 contour of the lake shore and is not a part of the natural
23 lake shore.

24 It also is a health and recreation hazard. As
25 Mr. Schmidt mentioned, there were two drownings in 1988. In

1 the spring of this 1994 year there were two more near
2 drownings. It is a very hazardous area.

3 It also disrupts the usual shoreline of activities
4 and light craft use in that area.

5 To separate the looking at the environmental
6 impact from looking -- of the debris that was removed from
7 the channel and looking at the channel itself seems to me to
8 be a contrived and artificial investigation.

9 And as I say it is documented here that that went
10 back as far as 1991.

11 Finally I will close that I believe the Phase 3 of
12 the settlement, which involves the dredging of an inland
13 marina, is completely out of line and has nothing to do with
14 the remediation of the insult that already occurred.

15 I cannot see how more dredging will remediate the
16 problem that was created by the dredging.

17 COMMISSION CHAIRMAN DAVIS: Any questions?

18 ACTING COMMISSIONER PARKER: Bob, can you speak to
19 this issue of the additional dredging in the Phase 3 portion
20 of the settlement?

21 EXECUTIVE OFFICER TROUT: Well, Phase 3 isn't
22 dredging. It's removal from the already constructed marina,
23 which was constructed on the upland. In other words, beyond
24 the control of the Commission.

25 It's to clean up the siltations and the organic

1 materials that have formed in that interior basin to haul
2 those away to, you know, take whatever clean sand there is
3 and make productive use of that.

4 But that's Phase 3 in the project. And it's off
5 of state lands but it's designed to also prevent that
6 material from flowing into the lake.

7 How that material got there is that there is a
8 storm sewer that empties out into that marina basin and
9 that's a big problem.

10 COMMISSION CHAIRMAN DAVIS: Do you think the storm
11 sewer was responsible as opposed to the channel?

12 EXECUTIVE OFFICER TROUT: Yes. As to this inner
13 basin, absolutely.

14 COMMISSION CHAIRMAN DAVIS: Do you have any
15 thoughts on that?

16 MS. ROZANCE: I haven't seen a connection drawn
17 with this as remedial action for the dredging of the channel
18 as we are discussing it tonight.

19 DEPUTY ATTORNEY GENERAL CROW: Let me try to
20 address that.

21 The inner marina channel is full of organic fines.

22 And I just heard from Lahontan staff yesterday a
23 very toxic material.

24 And as a matter of fact they're considering
25 separate enforcement agency irrespective of any permit

1 issued to Lake Tahoe Cruises to do this remediation project,
2 because of the recent chemical test reveal that this area
3 has real significant pollution problems, water pollution
4 problems.

5 And so this is the Phase 3 cleanup was the purpose
6 of it is designed to mitigate, sort of have an off-site
7 mitigation for some of the impacts created by the original
8 dredging that we cannot mitigate because once the dredging
9 occurs those impacts happen. Once the dredging happened
10 those impacts occurred.

11 So it's sort of trying to have a additional
12 mitigation for the project and those kind of remedies are
13 implemented all the time in these kinds of situations.

14 When you can't remedy totally 100 percent the
15 actual damage of the original project you require that the
16 perpetrator to do something off-site in some other area as
17 part of the overall -- the remedy to have some net
18 environmental benefit from the remedial action projects.

19 So this is sort of a cumulative thing we have
20 tacked onto the Phase 1 and 2 project.

21 And the inner marina channel is a source of much
22 of the fine organic material that goes out into the lake and
23 winds up in these dredged spoil areas.

24 COMMISSION CHAIRMAN DAVIS: Any questions?

25 ACTING COMMISSIONER MILLS: One more question.

1 I apologize if you are repeating this, but it's
2 hours late and I'm fading here, can you clarify for me when
3 the lessee's contract is up from renewal will we at that
4 point be looking at the environmental impact of the channel
5 and be able to take action at that point?

6 EXECUTIVE OFFICER TROUT: Maintenance of the
7 channel would be part of this project.

8 ACTING COMMISSIONER MILLS: Okay. That's what I
9 wanted.

10 COMMISSION CHAIRMAN DAVIS: To include the
11 possibility of filling it in or --

12 EXECUTIVE OFFICER TROUT: That would be an
13 alternative that we would look at is sort of no-project
14 alternative or the filling in of the channel or allowing it
15 to fill in naturally. I mean, those are two separate
16 options.

17 COMMISSION CHAIRMAN DAVIS: Okay. Any other
18 questions?

19 Okay. Next witness.

20 CHIEF COUNSEL HIGHT: Mrs. -- I hope I get this
21 right -- Titherington.

22 MS. TITHERINGTON: My name is Linda Titherington.
23 I'm also a homeowner in Tahoe Meadows.

24 I don't want to take your attention away from the
25 aerial photograph that you're looking at now.

1 ACTING COMMISSIONER MILLS: The more recent
2 photograph, is that considered a high lake level?

3 MS. TITHERINGTON: No. The lake is at a extremely
4 low level right now.

5 ACTING COMMISSIONER MILLS: There's no water --
6 where does the water stop now? Well out?

7 MR. NORMAN: Those pictures, the pictures, the one
8 on the right is 1983 prior to the dredging. The one on this
9 side is 1989.

10 The trench as it was went straight out Ski Run
11 before.

12 And if you look at the picture that is in your
13 right hand it goes off out in front of Tahoe Meadows at a
14 different angle. And the proceeds from that large ditch
15 completely annihilate this ditch that's there on this one,
16 in 1983.

17 We have a series all the way through, but those
18 are the two before and after.

19 COMMISSION CHAIRMAN DAVIS: Okay.

20 MS. TITHERINGTON: As those aerial photographs
21 clearly show there's a lot of build-up of sand bars and
22 ridges in the shallow area that is the shelf that extends
23 out away from the whole beach area in South Lake Tahoe.

24 I'm very concerned that this cleanup doesn't
25 address the channel itself, but only the silt and the

1 dredging remains from that channel.

2 But in addition to that I'm very concerned that it
3 appears that the Phase 3 would open the channel, which is
4 now closed, but open the channel to the very toxic pool, I
5 hesitate to call it an inland marina because it really does
6 just look like a muck puddle.

7 And to dredge that open so that it could have then
8 free flow of water into the Lake Tahoe I think is very
9 foolish. I don't understand this -- I can understand
10 cleaning it up. I don't understand opening it to the fresh
11 water of the lake.

12 COMMISSION CHAIRMAN DAVIS: We're not making that
13 decision today.

14 CHIEF COUNSEL HIGHT: No.

15 MS. TITHERINGTON: The way I read your report it
16 says that you're going to dredge it down or they were going
17 to clean out two feet of sand, which would then bring it
18 down below the water level, so it would be flushing water
19 into the lake.

20 But I'm very heartened by your awareness of the
21 different concerns that this channel was done illegally and
22 the cleanup is not addressing the cause of the problem.
23 It's only addressing the result of the problem.

24 So that the problem will continue and be ongoing
25 as long as you're allowing the Tahoe Queen to come in and

1 have that access through the very shallow shelf area up to
2 the beach. It's going to continue to stir the muck that it
3 has continually created.

4 Additionally, I have nothing against the Tahoe
5 Queen per se. I think it's an asset to the lake. And I've
6 used the marina with my children and with neighbors'
7 children down there for their other facilities, the
8 parasailing and paddle boats.

9 It is very clear as a consumer standpoint that
10 when you are down there the Queen takes precedent over
11 safety, over public access to public water. They deny
12 right-of-way to canoeists and paddle boats going across
13 their channel.

14 They insist that children in canoes go all the way
15 out to the dropoff, they call it, and out around the deep
16 water rather than being able to skirt the perimeter of the
17 lake, which is their legal right.

18 I do not understand why they cannot shuttle, why
19 the Tahoe Queen could not use a shuttle. They have a
20 pontoon boat that they beached, they docked off our beach or
21 moored off our beach for years. Why they can't use that
22 pontoon shuttle to shuttle out to deep water and just have
23 the Queen moored out there, or build a pier?

24 Either one of those two alternatives would clearly
25 stop the stirring of the muck and shoreline.

1 It would also make it much safer for children and
2 operators of small boats and restore the people's legal
3 right-of-way along the shore of Lake Tahoe.

4 COMMISSION CHAIRMAN DAVIS: You make some good
5 points. Most of them are not before us today.

6 ACTING COMMISSIONER PARKER: Are those things, the
7 alternatives that have been raised, are those options to
8 talk about when this lease --

9 CHIEF COUNSEL HIGHT: Yes. They will all be
10 issues that will be considered on the renewal.

11 COMMISSION CHAIRMAN DAVIS: This is pretty
12 dramatic. If I assume that this is '89, if the situation is
13 only worsened since then or has it improved since '89?

14 CHIEF COUNSEL HIGHT: It's --

15 EXECUTIVE OFFICER TROUT: In your left hand is '82
16 and '89 is your right hand.

17 COMMISSION CHAIRMAN DAVIS: But I mean for those
18 of you that have seen it recently, is it fair --

19 MS. TITHERINGTON: It's considerably worse.

20 EXECUTIVE OFFICER TROUT: Except the picture in
21 your left hand, the water is considerably -- the back -- the
22 water line where the water hits the shore of the lake is
23 considerably out further so that those piles that are
24 showing there are dry.

25 COMMISSION CHAIRMAN DAVIS: So it's like come to

1 here or something?

2 CHIEF COUNSEL HIGHT: Yes.

3 COMMISSION CHAIRMAN DAVIS: The beach --

4 CHIEF COUNSEL HIGHT: Has moved out.

5 FROM THE AUDIENCE: Excuse me, Mr. Chairman.

6 COMMISSION CHAIRMAN DAVIS: Keep some structure

7 here.

8 Were there any more questions of this witness?

9 Do you have other comments to make?

10 MS. TITHERINGTON: My only comment is to say that
11 some of the issues that I brought up are not to be addressed
12 this evening. I just urge you not to come to a settlement
13 that might be in the best interest of the Tahoe Queen and
14 not to the best interest of anyone else who might enjoy Lake
15 Tahoe.

16 COMMISSION CHAIRMAN DAVIS: Let me ask this
17 question.

18 Does the issue before us tonight preclude this
19 Commission at some subsequent point of requiring either a
20 pier to be built or use of this channel --

21 CHIEF COUNSEL HIGHT: Is stopped.

22 COMMISSION CHAIRMAN DAVIS: Is stopped.

23 CHIEF COUNSEL HIGHT: No. It does not.

24 So it will refocus more clearly and crisp as to
25 what the staff's proposal is, the issue before us is to

1 approve the settlement, to smooth down the dredger piles to
2 prevent the contamination to the lake and the hazard that it
3 will create when the lake level increases. That's the
4 issue.

5 The Commission sued them to remove the dredged
6 spoils and that's the issue before us today and that's the
7 settlement that is here today does that.

8 EXECUTIVE OFFICER TROUT: Mr. Chairman.

9 COMMISSION CHAIRMAN DAVIS: Let me make it clear.

10 Who had to come in and get a permit to allow the
11 Tahoe Queen to use this channel?

12 CHIEF COUNSEL HIGHT: The --

13 COMMISSION CHAIRMAN DAVIS: Upland.

14 CHIEF COUNSEL HIGHT: The upland -- we will have a
15 lease with --

16 ACTING COMMISSIONER PARKER: The upland
17 concession?

18 CHIEF COUNSEL HIGHT: Right.

19 COMMISSION CHAIRMAN DAVIS: When is that coming
20 up?

21 EXECUTIVE OFFICER TROUT: We are working on that
22 now. The problem is that the upland has been in bankruptcy
23 and the prior owners had to take it over and we have been
24 working with the people that are involved.

25 COMMISSION CHAIRMAN DAVIS: This little sublease

1 is just running around and this Tahoe Queen just doing its
2 own thing without anyone giving it permission to do it?

3 CHIEF COUNSEL HIGHT: That's correct. And that's
4 why --

5 COMMISSION CHAIRMAN DAVIS: Do we have the
6 jurisdiction to stop them? I'm not saying we should do
7 that, but do we have the authority to stop them from coming
8 on the channel?

9 EXECUTIVE OFFICER TROUT: They're using a float --

10 COMMISSION CHAIRMAN DAVIS: What do you say, Jan?

11 ASSISTANT ATTORNEY GENERAL STEVENS: To the extent
12 that you -- it would be subject to whatever rights they have
13 acquired in the marina and the upland, I guess, basically.
14 They have a right to navigate in the waters of the lake.
15 It's when they dock that you have a handle on the situation.

16 ACTING COMMISSIONER PARKER: So we can preclude
17 them from docking?

18 ASSISTANT ATTORNEY GENERAL STEVENS: Yes. You own
19 the land.

20 CHIEF COUNSEL HIGHT: Yes.

21 EXECUTIVE OFFICER TROUT: In answer to the
22 Chairman's question, the calendar item particularly provides
23 that this project does not constitute Commission approval or
24 waiver of future review of the channel location or its
25 continued maintenance or its environmental impact. We're

1 focusing only on this window to do the remediation and
2 reserving all other issues.

3 COMMISSION CHAIRMAN DAVIS: I gather the channel
4 was caused by the lake dropping?

5 CHIEF COUNSEL HIGHT: The need for the channel was
6 caused by the lake dropping, otherwise there would be no
7 need for the channel.

8 COMMISSION CHAIRMAN DAVIS: If we get a lot of
9 rain --

10 CHIEF COUNSEL HIGHT: The whole problem goes away.
11 Yes.

12 So pray for rain.

13 COMMISSION CHAIRMAN DAVIS: Okay. But --

14 DEPUTY ATTORNEY GENERAL CROW: After Christmas.

15 CHIEF COUNSEL HIGHT: After Christmas, after they
16 do the work.

17 COMMISSION CHAIRMAN DAVIS: So it's understood
18 that you can tell from our questions that we're not happy
19 about this?

20 CHIEF COUNSEL HIGHT: Yes. We understand,
21 Mr. Chairman.

22 COMMISSION CHAIRMAN DAVIS: And we don't want to
23 be railroaded into continued use of this channel by anything
24 we do here tonight.

25 CHIEF COUNSEL HIGHT: Yes. And that's completely

1 understood. They're two different pieces and that piece is
2 not before you today.

3 COMMISSION CHAIRMAN DAVIS: What is the cost to
4 construct a pier? Does anyone have any estimate?

5 EXECUTIVE OFFICER TROUT: I certainly haven't
6 looked at that.

7 ACTING COMMISSIONER PARKER: Let me add to what
8 the Chairman is suggesting.

9 It seems that many, to some to extent, the
10 comments that the homeowners have made tonight would be the
11 same kinds of things that we would discuss when this lease
12 comes back to us. And that's --

13 COMMISSION CHAIRMAN DAVIS: Assuming there's some
14 application made, but it's not clear to me that someone is
15 going to make one.

16 CHIEF COUNSEL HIGHT: The existing pier is in
17 bankruptcy, so that we will deal with that either by --

18 COMMISSION CHAIRMAN DAVIS: That's on the other
19 side of the north shore?

20 CHIEF COUNSEL HIGHT: No. Here.

21 EXECUTIVE OFFICER TROUT: This area right -- this
22 is where the Queen lands at this float. This is on state
23 lands and was under lease to the upland.

24 The Commission has total discretion as to whether
25 they want to keep that there. If you don't allow that, then

1 there's no place for the Queen to dock and this channel can
2 be filled in or it could silt in naturally.

3 The homeowners are concerned as to if it fills in
4 naturally where is it coming from? Off of their beach. And
5 that's something we have to take a look at.

6 DEPUTY ATTORNEY GENERAL CROW: Mr. Chairman, the
7 property is currently owned by -- the upland property is
8 currently owned by a person named Michael Phillips, who
9 foreclosed on it out of bankruptcy. He obtained it from the
10 previous bankrupt owner.

11 And he currently has a incomplete application into
12 the Commission and the Commission staff is working on that
13 trying to get the application complete. And that is in the
14 works.

15 CHIEF COUNSEL HIGHT: That will be back to you in
16 the next few months.

17 DEPUTY ATTORNEY GENERAL CROW: I think a pier is
18 one of the alternatives that is being contemplated by the
19 upland owner at this time.

20 There would be a lot of planning that would have
21 to go into that and a lot of environmental work. The TRPA
22 regulations governing seek a threshold value from the Tahoe
23 basin come into play when someone constructs a 1800-foot
24 long pier out into the lake.

25 So that might be a problem.

1 But those are some of the issues that would be
2 addressed in the Commission application.

3 ACTING COMMISSIONER MILLS: Question.

4 But the bottom line is that if we were to go with
5 the staff recommendation we cut off no options?

6 CHIEF COUNSEL HIGHT: Correct. Correct. You
7 know, one more time, all the staff recommendation does is
8 takes care of the dredged disposal problem.

9 EXECUTIVE OFFICER TROUT: And the only reason we
10 bring it to you tonight is simply that the window is now and
11 we can take advantage of it or not and then deal with the
12 rest of the problem.

13 COMMISSION CHAIRMAN DAVIS: Okay. Thank you very
14 much.

15 One last witness or not?

16 CHIEF COUNSEL HIGHT: Yes.

17 Titherington. I was aware I couldn't get it
18 twice.

19 Because of the hour, if you could keep your
20 comments brief.

21 ACTING COMMISSIONER PARKER: Particularly from the
22 standpoint if there's something -- I appreciated the
23 comments that were new information or new suggestions.

24 MR. TITHERINGTON: All my fire has been taken at
25 this point.

1 The only thing that I have are two concerns.

2 Since I am a homeowner in Tahoe Meadows I have
3 watched and I've enjoyed the beach in the wintertime and
4 Tahoe Queen uses a pontoon boat and has used a pontoon boat
5 very effectively. So that when the water has gone down, the
6 Tahoe Queen cannot come in that canal that was dredged it
7 then has its clients go out in the boat.

8 The other thing that my major concern, I'm sure my
9 friends over here are concerned about it as well, if you do
10 allow Phase 1 and 2 to be completed and the sand is taken
11 away from our beach there and the marina and we will then be
12 creating a hole and the sand from Tahoe Meadows will be
13 moving towards that area and essentially degrading our
14 beach. It's my only concern.

15 COMMISSION CHAIRMAN DAVIS: What would you have us
16 do? We have to do something about this.

17 MR. TITHERINGTON: One of the alternative ways of
18 dealing with this is have these people pull the sand up and
19 stuff that they have, the fines and what not, wash the sand
20 on site and replace it.

21 I know it's costly but we're not the ones who dug
22 the trench.

23 What they're proposing is to pull all of this
24 stuff out and haul it up into the mountains and leave it
25 there and essentially creating a basin and then that sand,

1 through the wave action of the water, will then be coming
2 away from Tahoe Meadows and going towards the marina. We'll
3 be losing our beach.

4 COMMISSION CHAIRMAN DAVIS: Is there any way they
5 can use the sand, deposit the sand somewhere?

6 CHIEF COUNSEL HIGHT: To bring it back?

7 COMMISSION CHAIRMAN DAVIS: To keep the beach from
8 eroding?

9 CHIEF COUNSEL HIGHT: We need to ask, I think, our
10 erosion experts from UC Davis.

11 Can the sand be stockpiled or used to replenish
12 the beach?

13 MR. MacARTHUR: Bob MacArthur. I'm working with
14 State Lands as a consultant. I'm a civil engineer and I
15 specialize in beach processes.

16 Very succinctly, the sand under the presently
17 proposed short-term mitigation plan that you're looking at
18 this evening calls for removal of the fine materials in the
19 deep pocket areas, number one, and from the beach front
20 area.

21 But then recontouring the remaining sands into the
22 location immediately in front of Tahoe Meadows projects
23 property here, not removing the sand, but to recontour it on
24 the lake bottom so that the littoral processes will move it
25 onshore, offshore and laterally along the shore.

1 It does not address the issues at all of the
2 existence of the channel and the likelihood of some of those
3 sands if they are to move from the east to the west will in
4 fact deposit in that channel. The channel remains.

5 But that's an issue from what I understand legally
6 beyond the concept of the definition of the project we're
7 talking about this evening.

8 Number one, the sands are not being removed. The
9 fine materials are being removed. Those are not from the
10 lake, they came from other processes. They contain organic
11 materials, potentially harmful in nutrients. They will be
12 removed. The area will be recontoured.

13 As the lake comes up then you remove the barrier
14 beach, lake side from the beach, to allow the littoral
15 processes to redistribute those sands near the beach.

16 COMMISSION CHAIRMAN DAVIS: The sand is not being
17 taken up in the mountains?

18 MR. MacARTHUR: No. The materials that perhaps
19 has been confused being removed would be those small
20 quantities of materials in the inner marina, which is a
21 complete and separate component of this study.

22 I think a lot of people are confusing the
23 existence of the dredged channel with the previous existing
24 kind of ancient marina.

25 The materials that are being removed from the

1 marina contain very very high concentrations of toxic
2 materials as Lahontan has discovered and they have known for
3 quite some time.

4 The sole purpose of removing those are to get them
5 out of any location where there would be any possibility of
6 them short-circuiting into the lake.

7 It's not going to provide an access channel from
8 the lake into the marina. They're not to puncture through
9 there.

10 It's merely to take those toxic materials out of
11 the lake so that under high water a big flush came through,
12 they wouldn't just bounce into the lake.

13 Those materials will contain small volume of sands
14 probably. The cost to clean those sands to the level of
15 presently required for replacement on the beach is
16 astronomical and the volume of sand that would be reclaimed
17 from there is minute.

18 So the problem, the proposed plan for Phase 3 is
19 simply remove that material, get it out of the lake.

20 Phases 1 and 2 remove the fine materials that are
21 in the dredged spoils area that are now exposed, take those
22 out, redistribute the sands, do not remove them from the
23 lake.

24 It does not remove that channel. The channel is a
25 different issue.

1 I'd like to state one other thing for your
2 consideration.

3 When the dredging was performed it may not have
4 been performed according to the definitions and requirements
5 of the permits.

6 Had the lake stayed at the level that it was when
7 the dredging was performed and perhaps returned to the
8 higher level, this issue would have become much less of a
9 concern than it is today.

10 The lake is presently in a situation that's
11 extremely unique with respect to the history of the lake
12 levels being very very low.

13 Regardless of what goes on today or does not go on
14 today within this window of opportunity, we can pretty much
15 guarantee from a scientific perspective that there will be
16 tremendous alterations to water quality as well as the
17 littoral beach processes as the lake comes back up and
18 attempts to reestablish some sort of equilibrium with the
19 lake and the beach process that goes on.

20 Unfortunately, Tahoe Meadows will in fact see
21 fairly dramatic beach rearrangement, resculpting and things
22 going on.

23 That is going to occur whether or not these
24 materials remain or whether they go away or whatever,
25 because -- and so will remaining portions of south shore

1 from all the way from the marina to the east.

2 COMMISSION CHAIRMAN DAVIS: These are just the
3 natural processes?

4 MR. MacARTHUR: These are natural processes,
5 because the lake is so out of balance at this moment in
6 time.

7 Just to recap.

8 We feel that it's essential to remove under this
9 narrow window of opportunity those fine materials that can
10 be deleterious to the land if they are in fact resuspended
11 under the oncoming high wave energies that will occur.

12 Remove only those materials, do them efficiently
13 and carefully. Resculpt the sands in such a way that you
14 try to best contour them to account for the anticipated
15 processes so that you try to redistribute those materials
16 uniformly along the Tahoe Meadows beach area, not to starve
17 those beaches in any way possible.

18 It does not address the channel.

19 COMMISSION CHAIRMAN DAVIS: Okay. Any further
20 questions?

21 We got to have some -- this has got to end.

22 I'm giving you 15 seconds. Go ahead.

23 MR. SCHMIDT: What I'm afraid of is that if the
24 150,000 or so is spent on the wrong cleanup at this time it
25 will not be available to do a proper cleanup in a future

1 date.

2 Thank you.

3 COMMISSION CHAIRMAN DAVIS: That's an interesting
4 point, but we have -- it's unclear whether we can achieve a
5 settlement.

6 CHIEF COUNSEL HIGHT: At a future date.

7 COMMISSION CHAIRMAN DAVIS: Whether we win or
8 whether we lose.

9 ACTING COMMISSIONER PARKER: What was the 50,000
10 that we were getting in fines, where will that go?

11 EXECUTIVE OFFICER TROUT: Where would the money
12 go? Basically to recover staff costs that have been
13 invested in this, in Mr. MacArthur, Mr. Reuter and
14 ourselves.

15 COMMISSION CHAIRMAN DAVIS: Where are you going?
16 You recapture your salaries, is that what you're saying?

17 Shouldn't have said that in front of the
18 Governor's person.

19 ACTING COMMISSIONER PARKER: I think that our
20 deficit problem has just been solved.

21 EXECUTIVE OFFICER TROUT: Happy to help.

22 CHIEF COUNSEL HIGHT: While this isn't a perfect
23 solution, Mr. Chairman, the staff, despite the testimony,
24 still recommends the settlement as the best way to deal with
25 the problem we have at hand before us today and we'll deal

1 with the next problem in the next ensuing few months.

2 COMMISSION CHAIRMAN DAVIS: Okay. Do I have a
3 motion?

4 ACTING COMMISSIONER PARKER: Just to take one more
5 moment.

6 Is there some ability on our part, because I think
7 if we -- speak for myself -- want to do this, but I'd like
8 to have some assurances that we're going to be able to get
9 at the core issue and that's to deal with the boat.

10 And I'd like, I guess I'm more comfortable with
11 doing so if I felt that we were going to come to some
12 closure on that issue in some time in the, you know, really
13 near future.

14 And if this thing is going to drag on for six
15 months or a year, given how long it's gone on, I think I'm
16 uncomfortable with that or I'd like to suggest that we might
17 want to do something that to give them some ultimatum of
18 after such and such a date they don't have the ability to
19 dock or whatever to use our land. You know what I'm getting
20 at, to get this settled.

21 COMMISSION CHAIRMAN DAVIS: Make it a condition of
22 the motion.

23 EXECUTIVE OFFICER TROUT: Unfortunately, they're
24 not directly connected, but certainly that instruction --

25 COMMISSION CHAIRMAN DAVIS: Can't we make a motion

1 saying that we approve this staff recommendation for
2 negative declaration, but if the work is not completed by
3 say March 15th that permission for the Delta Queen to dock
4 is hereby revoked?

5 Can we legally do that?

6 ASSISTANT ATTORNEY GENERAL STEVENS: I'm not sure
7 you can.

8 I think a separate motion indicating the
9 Commission's intentions with respect to a comprehensive
10 evaluation of the uses to which their land is put would be
11 quite appropriate.

12 But we would prefer to see the settlement dealt
13 with in one action and any further plans of the Commission
14 dealing with use of its State-owned bed dealt with
15 separately, at the same time if you'd like.

16 They're certainly related and I think they're
17 within the calendar item.

18 COMMISSION CHAIRMAN DAVIS: Why don't you make two
19 motions, separate motions?

20 ACTING COMMISSIONER PARKER: I'm prepared to make
21 a motion for the staff recommendation. I guess it's a
22 matter of what should be the second motion.

23 CHIEF COUNSEL HIGHT: Let me give you a suggestion
24 that the second motion be that the staff come back to you in
25 four months, six months with either a report, lease -- or

1 I'm trying -- I'm looking for some kind of a specific that
2 you can tie the anchor to, so to speak.

3 COMMISSION CHAIRMAN DAVIS: Revoke the permission
4 for the Delta Queen to land or take away the little dock.

5 EXECUTIVE OFFICER TROUT: That's exactly the
6 appropriate action, because there's a lease application
7 before the staff at this point. It's not complete.

8 One of two things will happen. Either they'll
9 make --

10 ACTING COMMISSIONER PARKER: Go ahead, Jim.

11 EXECUTIVE OFFICER TROUT: There's a few more
12 pieces before we can consider it, but one of two things
13 would happen.

14 Either that lease application will be perfected
15 and an environmental treatment will be given and we can
16 report that to the Commission.

17 The other thing is if they don't perfect that then
18 we would come to the Commission and ask for authority to
19 eject the float, and which is now in a carryover status, and
20 prevent any further use of the state lands.

21 I mean that's what's before us.

22 ACTING COMMISSIONER PARKER: Staff have a
23 recommendation about whether four to six months would be
24 better? I sort of like to make it four months, but I'm open
25 to six.

1 It seems to me the motion would be that if we
2 don't have an application before us in four months that we
3 would rescind the ability for the Queen to use the dock.

4 CHIEF COUNSEL HIGHT: That's fair.

5 ACTING COMMISSIONER PARKER: And I make the
6 motion.

7 COMMISSION CHAIRMAN DAVIS: This is basically like
8 a month-to-month carryover?

9 CHIEF COUNSEL HIGHT: Yes.

10 COMMISSION CHAIRMAN DAVIS: How long has this been
11 carrying on?

12 CHIEF COUNSEL HIGHT: Year or two.

13 FROM THE AUDIENCE: Sometime during the last
14 summer we got the application. The original lease expired
15 about two years ago.

16 EXECUTIVE OFFICER TROUT: Because of bankruptcy
17 we've had difficulty dealing with it.

18 COMMISSION CHAIRMAN DAVIS: Is the Delta Queen a
19 big money maker for the State Lands Commission?

20 CHIEF COUNSEL HIGHT: No.

21 COMMISSION CHAIRMAN DAVIS: Not much?

22 CHIEF COUNSEL HIGHT: No.

23 COMMISSION CHAIRMAN DAVIS: Okay. Make your
24 motion.

25 ACTING COMMISSIONER PARKER: I think I've made

1 them. I made two.

2 COMMISSION CHAIRMAN DAVIS: Make the first one.

3 ACTING COMMISSIONER PARKER: First motion is to
4 adopt the staff recommendation on the negative declaration.

5 CHIEF COUNSEL HIGHT: Yes.

6 ACTING COMMISSIONER MILLS: Second.

7 COMMISSION CHAIRMAN DAVIS: That's unanimously
8 approved.

9 ACTING COMMISSIONER PARKER: Second motion is to
10 ask that if the staff bring, if there is a completed
11 application --

12 CHIEF COUNSEL HIGHT: If there isn't a completed
13 application within four months that automatically staff --

14 COMMISSION CHAIRMAN DAVIS: Permission to use the,
15 what is it called?

16 CHIEF COUNSEL HIGHT: Pier.

17 ACTING COMMISSIONER PARKER: The docking.

18 CHIEF COUNSEL HIGHT: Yeah. The pier, the wharf,
19 the float.

20 ACTING COMMISSIONER PARKER: Is rescinded.

21 CHIEF COUNSEL HIGHT: Is rescinded.

22 COMMISSION CHAIRMAN DAVIS: Okay.

23 ACTING COMMISSIONER MILLS: I'll second that
24 motion.

25 COMMISSION CHAIRMAN DAVIS: That's unanimously

1 approved.

2 CHIEF COUNSEL HIGHT: Thank you.

3 COMMISSION CHAIRMAN DAVIS: We're adjourned.

4 Thank everyone for their patience. Thank the
5 homeowners for coming down from Tahoe.

6 (Thereupon the hearing was adjourned
7 at 10:10 p.m.)

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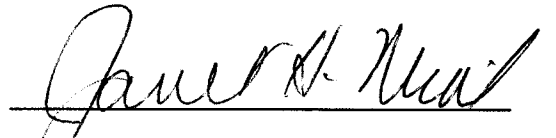
CERTIFICATE OF SHORTHAND REPORTER

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I, JANET H. NICOL, a Certified Shorthand Reporter of the State of California, do hereby certify that I am a disinterested person herein; that I reported the foregoing hearing in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, or in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of December 1994.


Janet H. Nicol
Certified Shorthand Reporter
License Number 9764