

COMMITTEE WORKSHOP  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
Application for Certification ) Docket No.  
for the Mountainview Power ) 00-AFC-2  
Plant Project )

SAN BERNARDINO COUNTY MUSEUM  
2024 ORANGETREE LANE  
REDLANDS, CALIFORNIA

MONDAY, NOVEMBER 6, 2000  
10:00 a.m.

Reported By:  
Valorie Phillips  
Contract No. 170-99-001

COMMITTEE MEMBERS PRESENT

Garret Shean, Hearing Officer

STAFF PRESENT

David Abelson, Staff Counsel

James Reede, Project Manager

David Flores

Dorothy Torres

Michael Clayton, Staff Consultant

Michael Berman, PMC, Staff Consultant

Jeanette McKenna, Staff Consultant

Natasha Nelson, Staff Consultant

Jeff Kauffman, Staff Consultant

APPLICANT

John McKinsey

Kimberly Hellwig

Livingston & Mattesich

George Hall, Plant Manager

ALSO PRESENT

Sara Head, ENSR

Christine Mont

Bill Gorham, Biologist

Tom Andrews, Sierra Design

Maureen Snelgrove, Santa Ana River Corridor Trail

Doug McPherson, U.S. Fish and Wildlife Service

Doug Hedrick, City of Riverside

John Jaquess, City of Redlands

ALSO PRESENT

Robert Reiter, San Bernardino Valley Municipal  
Water District

Doug Herrick, City of Redlands

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

I N D E X

	Page
Proceedings	1
Opening Comments	1
Biology	14
Land Use	81
Cultural Resources	102
Visual Resources	104
Soil and Water	181
Air Quality	190
Other Issues	206
Closing Comments	215
Adjournment	216
Certificate of Reporter	217

1 P R O C E E D I N G S

2 HEARING OFFICER SHEAN: Good morning,  
3 ladies and gentlemen. I'm Garret Shean, I'm the  
4 Hearing Officer on the Mountainview Application  
5 for Certification. This is the third day of a  
6 Committee Workshop. I am here representing the  
7 Committee of Commissioners, that would be  
8 Commissioner Moore and Commissioner Pernell, on  
9 this particular proceeding.

10 Let me explain to you what we've done  
11 for the past two days and are planning to do this  
12 morning and, if necessary, this afternoon. We  
13 have generally been running ahead of our schedule.

14 In this proceeding, we have attempted to  
15 bring some innovations to the usual bureaucratic  
16 way of doing things, and part of that has entailed  
17 the Staff assembling a list of conditions that  
18 have been -- have been used in the prior six or so  
19 cases. We presented that to the Applicant and  
20 offered them an opportunity to agree, in advance  
21 to formal evidentiary hearings, on any of the so  
22 to speak standardized conditions that have been  
23 found by the Staff in its aggregating the list of  
24 prior conditions.

25 This has been a very useful tool for

1 both the Applicant and the Staff, and ultimately  
2 it's going to be useful for the Committee, in that  
3 we know pretty much up front what the Applicant is  
4 agreeing to, and we are pretty much in agreement  
5 as to what the potential impacts are and how  
6 they'll be litigated to a level of insignificance  
7 by the mitigation and conditions that are being  
8 agreed to.

9 For the most part, there are some  
10 wording differences, and a few other minor things  
11 between the Staff and the Applicant. The Staff  
12 has released a written version of its analysis of  
13 impacts and needed mitigation, and in that they  
14 have their own set of conditions, and we're just  
15 essentially trying to reconcile them. So this is  
16 sort of like the end of the month before you pay  
17 next month's bills. We're just going to reconcile  
18 our accounts here, see if we can get the language  
19 straightened out, because it does not appear that  
20 there's a contest over, in any significant way,  
21 over any environmental or other issue in the  
22 proceeding.

23 With that, we have a order of topics,  
24 which will be Biology, and we did discuss Water  
25 Resources and Water Quality in Sacramento, and we

1 have some cleanup there, but we've pretty much  
2 substituted Land Use issues since there have been  
3 new developments with regard to the City of  
4 Redlands and the annexation of the property upon  
5 which the facility is proposed. Then we'll cover  
6 Visual Resources, Air Quality, Cultural Resources,  
7 and then close this with some housekeeping related  
8 to arranging for a hearing on the 16th that will  
9 bring before the Committee a formal record upon  
10 which to make a decision.

11 This is intended to be an informal  
12 setting here. So this is not a formal hearing.  
13 We don't have to address each other in a formal  
14 manner, and the -- we expect an exchange here  
15 which will foster agreements and understanding of  
16 what is going on.

17 With that, if there's anything that the  
18 Staff wants to open up with, or the Applicant,  
19 before we launch into Biology, we can -- we can  
20 hear it.

21 If there are members of the public who  
22 are here to comment, please just raise your hand,  
23 or -- or if you have a question, please just raise  
24 your hand. The microphones that we have here are  
25 for our reporter. They are not for a sound

1 system. I generally have no problem with being  
2 heard, and so -- but if you do want to ask a  
3 question or if you do want to make a comment,  
4 please come forward if you think there is a  
5 problem being heard by us and members of the  
6 audience.

7 With that, Mr. Reede.

8 MR. REEDE: Good morning, members of the  
9 public and Hearing Officer Shean. My name is  
10 James Reede, I'm the Energy Facility Siting  
11 Project Manager for the California Energy  
12 Commission's review of the Application for  
13 Certification.

14 On October 20th, Staff issued a Staff  
15 Assessment which was distributed to the public and  
16 a number of governmental agencies, both local,  
17 state and federal. Subsequent to that there have  
18 been comments received, some within the past 15  
19 minutes, that will be docketed upon my return to  
20 Sacramento.

21 I would first note that the San  
22 Bernardino Valley Municipal Water District and the  
23 Watermaster, Mr. Reiter, delivered a document to  
24 me with comments regarding the water issues, and  
25 it will be docketed. And they have some concerns

1 that for the most part have already been resolved  
2 during the Water hearings up in Sacramento,  
3 specifically the Soil and Water General Condition  
4 Number 13, which they're proposing that we  
5 consider deleting it, and we in fact did agree to  
6 delete that particular condition.

7 In addition, on the Soil and Water  
8 Condition Number 7, they state acquisition of  
9 brine discharge passed in the SARI line should be  
10 an immediate priority to assure capacity  
11 reservation in the disposal system, because  
12 capacity is not unlimited.

13 The additional comments in Mr. Reiter's  
14 letter relate to not so much typos, but  
15 clarifications of responsible parties and other  
16 related matters, so to speak. And as I said, this  
17 will be docketed, and he was kind enough to bring  
18 a number of copies in case the public wants some.

19 I might add that I won't show prejudice  
20 towards Mr. Reiter because my name was misspelled  
21 on the letter, but be that as it may, there are  
22 additional copies if anybody would like one.

23 Secondly, we received a letter from the  
24 U.S. Fish and Wildlife Service, U.S. Department of  
25 Interior, as I said, literally before we sat down,

1       which they will be discussing when we get to the  
2       Biology section. We have Staff here addressing  
3       the Biology section. We have Ms. Natasha Nelson  
4       and Mr. Jeff Kauffman. Addressing Cultural issues  
5       we have Ms. Dorothy Torres and Ms. Jeanette  
6       McKenna. Addressing Land Use issues we have Mr.  
7       David Flores and Mr. Michael Berman. Addressing  
8       Visual Resources we have Mr. Michael Clayton.

9               Those are the Staff members that will be  
10       responding to your questions and presenting the  
11       case.

12              As far as Air Quality, I will be  
13       responding in the absence of Mr. Joe Loyer, who  
14       was the Air Quality engineer assigned to this  
15       particular case.

16              Ready to go.

17              HEARING OFFICER SHEAN: Okay. Anything,  
18       John?

19              MR. MCKINSEY: My name is John McKinsey,  
20       and I'm counsel for the Applicant, Mountainview  
21       Power Company. Also here with me is George Hall,  
22       he's the Plant Manager for the existing facility.

23              We have several consultants here to deal  
24       with several topics, and we came prepared to  
25       address all the issues that are on the agenda.

1 And in addition, Land Use, which we had moved to  
2 today's schedule.

3 The -- well, let me introduce the people  
4 that we have here today.

5 Sara Head is our Project Manager from  
6 ENSR. And behind her is Christine Mont. Then we  
7 have Bill Gorham, our biologist for the project.  
8 And right here we have Tom Andrews, from Sierra  
9 Design, who was prepared -- and is still prepared  
10 to discuss Air Quality issues. And Kim Hellwig,  
11 from my office.

12 And then I also note we have some  
13 representatives from the City of Redlands and San  
14 Bernardino, Bob Reiter, Doug Hedrick, and John  
15 Jaquess.

16 HEARING OFFICER SHEAN: Okay.

17 MR. REEDE: With your permission, Mr.  
18 Shean, or Officer Shean, I'd like Staff to use the  
19 podium for discussions of particular issues.

20 HEARING OFFICER SHEAN: Okay. Why don't  
21 we just launch into Biology. That's number one  
22 for the morning. And I'll just indicate that I'm  
23 working off a sheet that we prepared -- it's --  
24 it's on our Web site -- basically that compares  
25 those standardized conditions with what the

1 Applicant has agreed to and what the Staff has put  
2 in its Staff Assessment. And for the most part,  
3 there is pretty much agreement across the board  
4 here.

5 So why don't we go to wherever there is  
6 something that needs to be reconciled. I assume  
7 that -- as indicated on the note here, the  
8 Applicant didn't specifically agree to BIO-1, but  
9 stated it was --

10 MR. REEDE: Excuse me, Officer Shean.

11 HEARING OFFICER SHEAN: Yes.

12 MR. REEDE: I had an extra copy, if  
13 that's what you needed.

14 HEARING OFFICER SHEAN: Oh, no. I -- I  
15 have it. Thank you.

16 MR. REEDE: Okay.

17 HEARING OFFICER SHEAN: Sure.

18 Appreciate it.

19 Why don't we -- is BIO-1 in?

20 MR. MCKINSEY: We had a couple of  
21 clarification questions on it.

22 HEARING OFFICER SHEAN: Okay.

23 MR. MCKINSEY: The one we -- we thought  
24 that on 374, where it said verification, that  
25 that's a typo. It -- I think it's the beginning

1 of the particular conditions for each one.

2 HEARING OFFICER SHEAN: Right.

3 MR. MCKINSEY: And then on page 376, one  
4 of the ones for all construction locations  
5 references three things, or at least three types  
6 of plans, erosion control, a revegetation, and a  
7 landscaping plan. And we wanted to know if there  
8 might be a way we could get a little more clarity  
9 on what those are.

10 For instance, a landscaping plan is  
11 something we have to do under Land Use with the  
12 City of Redlands, and so that's -- there is a Land  
13 Use condition already. So maybe that would be the  
14 way to say -- I don't know if we have to change  
15 it, if we could just agree that that's what that's  
16 referring to.

17 And then I think the erosion control  
18 plan is pretty clear. The revegetation plan, I  
19 wasn't so sure if it's clear what that is. If  
20 that's been worked out already in our data  
21 requests and data responses, or if -- or if that's  
22 another plan that we need to be developing. That  
23 was embodied in our practices for construction,  
24 and then the revegetation afterwards, which I  
25 think we had put under the -- either the BRMIP or

1 under the general construction practices.

2 MS. NELSON: Right. Under the BRMIP you  
3 -- okay, Natasha Nelson. For the erosion control,  
4 certainly you had indicated a few measures within  
5 your documentation that qualify as erosion  
6 control. For revegetation, that's at the plant  
7 site on the northern side. And for landscaping, I  
8 would agree that the City of Redlands -- okay, the  
9 City of Redlands is under -- under Land Use, is  
10 adequate.

11 MR. BERMAN: I'm Michael Berman, Land  
12 Use. I just wanted to add that the requirement  
13 for the landscaping in the Land Use section is for  
14 a ten foot wide landscaping strip along San  
15 Bernardino Avenue and Mountainview Avenue. So I'm  
16 not sure, I just wanted to make sure that the  
17 biologists understood that.

18 MR. REEDE: James Reede. The  
19 landscaping, proposed landscaping plan is actually  
20 under the Visual Resources conditions.

21 MR. MCKINSEY: Right. We have to do a  
22 landscaping plan under the Visual Resources. And  
23 under Land Use, we're obligated to do the --  
24 the -- you're right, in fact, not -- only the  
25 Land Use only applies to San Bernardino Avenue and

1 Mountainview Avenue, whereas under Visual  
2 Resources it's our entire property. It's a  
3 comprehensive. So maybe the right one to refer to  
4 is the landscaping plan under Visual Resources.

5 MR. REEDE: Right.

6 MS. NELSON: And that's the one where we  
7 were indicating sycamores --

8 MR. REEDE: Correct.

9 MR. MCKINSEY: Right.

10 MS. NELSON: -- would be the correct  
11 planting at that location.

12 MR. REEDE: Correct. Well, actually  
13 there were three different type trees suggested by  
14 the Applicant that are potentially acceptable for  
15 riparian habitats. I believe it was sycamore,  
16 cottonwood, and one other.

17 MR. MCKINSEY: Willows.

18 MS. NELSON: Willows.

19 MR. REEDE: Willows. Okay. Because  
20 eucalyptus isn't appropriate in a riparian  
21 habitat.

22 MS. NELSON: All three of these plans  
23 would need to be a section in your BRMIP, so that  
24 we would understand what you're proposing, and the  
25 compliance project manager could confirm that that

1 was done.

2 MR. MCKINSEY: Okay. That's what I was  
3 kind of getting at, is I thought that the BRMIP  
4 would be embodying all of these issues.

5 MS. NELSON: Yes.

6 MR. MCKINSEY: That that's where it  
7 would show up as a verification. And that's what  
8 it says down below, in addition.

9 Okay, that's fine. That's what we  
10 wanted to make it was, that there wasn't a plan  
11 that somehow we were missing, that we weren't  
12 providing a --

13 MS. NELSON: No, it would not be  
14 separate.

15 MR. MCKINSEY: Okay. Then that was our  
16 only issues on BIO-1.

17 MR. ABELSON: So that BIO-1 is okay now.

18 MR. REEDE: Okay. Now, Officer Shean --

19 HEARING OFFICER SHEAN: Yes.

20 MR. REEDE: The Applicant has stipulated  
21 in the Matrix, but did not stipulate so they --  
22 you now stipulate to Staff's BIO-1, in full.

23 MR. MCKINSEY: That's correct.

24 MR. REEDE: Okay. So BIO-1, 2, 3, 4,  
25 and 5, because they're on -- in agreement, do you

1 stipulate to those five Staff conditions?

2 MR. MCKINSEY: That's correct.

3 HEARING OFFICER SHEAN: Okay.

4 MR. REEDE: Okay. We would then go down  
5 to the California Department of Fish and Game  
6 incidental take permit, which is a standard CEC  
7 Condition 6, which you referenced in the Matrix  
8 but did not stipulate to.

9 MR. MCKINSEY: We didn't stipulate to  
10 it?

11 MR. REEDE: No, you included it in the  
12 Matrix, but you did not include it in the package  
13 of conditions.

14 MR. MCKINSEY: Yeah. Actually, I -- I  
15 thought we had intended to. That may have been  
16 a -- an oversight, and that was why we included it  
17 in the Matrix.

18 MR. REEDE: Okay. So then you do  
19 stipulate to CEC Condition BIO-6?

20 MR. MCKINSEY: Right.

21 MR. REEDE: Standard Condition 6. Okay.  
22 That brings us, Officer Shean, down to the U.S.  
23 Fish and Wildlife Biological Opinion, and I have  
24 the pleasure to introduce Mr. Doug McPherson, from  
25 the Department of Interior, Fish and Wildlife

1 Service, who delivered the letter to me this  
2 morning. And I understand that we will have to  
3 re-number some of the Staff conditions that are  
4 currently listed as 6 through 11, to take into  
5 account CEC standard conditions that were omitted.

6 Would you want to do that now, or --

7 HEARING OFFICER SHEAN: We don't need to  
8 do that now. That's just a housekeeping thing.  
9 But what's the status, then, of the U.S. Fish and  
10 Wildlife Service in their Biological Opinion?

11 MR. REEDE: Doug McPherson.

12 MR. McPHERSON: Good morning. Doug  
13 McPherson, Fish and Wildlife Service.

14 Recently we ascertained that the  
15 prevention of significant deterioration air  
16 permit, which is going to be issued by the South  
17 Coast Air Quality Management District, is actually  
18 a federal permit subject to approval by the EPA,  
19 and that gives us our federal nexus to enter into  
20 informal consultation with the EPA for -- for the  
21 biological issues, endangered species issues.

22 So we do have some -- some additional  
23 details of information that we were looking for,  
24 and we really think most of that can be worked out  
25 through the informal consultation process with the

1 EPA.

2           Some of the details that my people had  
3 asked for is a little more information about the  
4 small section of the gas pipeline impacting delhi  
5 sands. Most of it is within the paved roadway,  
6 and I think everyone's in agreement that that's  
7 not an issue. But there's a small section  
8 apparently that is outside of the paved roadway,  
9 and we'd like to have a little more information on  
10 that.

11           The area of most concern to us is where  
12 the gas pipeline crosses Tippecanoe Avenue, which  
13 is a site recently known to have San Bernardino  
14 kangaroo rat. And we understand that the  
15 Applicant is committed to avoidance, which is our  
16 first choice also, but we're not entirely sure  
17 that that will be possible at this spot.

18           And we see that they've committed to  
19 doing survey protocols and trapping for the  
20 kangaroo rat, but what we're a little concerned  
21 about is by the time they ascertain for sure  
22 whether the rat is there or not, it might be  
23 fairly late in the process to process to process  
24 an incidental take permit, and that would delay  
25 things.

1                   MR. REEDE:  When would you suggest that  
2                   the surveys be performed, then, so that -- well,  
3                   let me ask the question of the Applicant first.

4                   In the event that the proposed project  
5                   gets a final decision rendered by the end of  
6                   January, what is your proposed start of  
7                   construction date?

8                   MR. MCKINSEY:  For the gas pipeline?

9                   MR. REEDE:  For the plant and the gas  
10                  pipeline.  Well, the plant will start undoubtedly  
11                  prior to the pipeline, but because -- well, when  
12                  do you plan to start?

13                  MR. MCKINSEY:  As soon as possible.  So,  
14                  I mean, that's -- that's honestly --

15                  MR. REEDE:  Dates.

16                  MR. MCKINSEY:  -- the truth.  I mean,  
17                  it's really kind of predicated upon the conditions  
18                  and the period of times we have 60 day priors, 30  
19                  day priors, 90 day priors, and things that we have  
20                  to accomplish.  And that's one of the reasons why  
21                  one of the things we've been interested in doing  
22                  is trying to view the gas pipeline, which we  
23                  really don't have to start for another year, as  
24                  something that we can move intelligently through  
25                  in terms of laying out the precise details to

1 accomplish what we're committing to, which is the  
2 avoidance.

3 And -- and in reality, there's a good  
4 chance that the logical way to go is to get the  
5 incidental take permit as a precautionary method  
6 of ensuring that even if we implement all the  
7 avoidance measures, should it still occur, that --  
8 that it's been properly permitted so we don't find  
9 ourselves even trying to do what he's describing,  
10 avoid everything and fail somehow to have -- not  
11 be in violation of the law.

12 But -- but at the same time, this is one  
13 project. And that puts the -- the permitting a  
14 little -- it makes it less clear on exactly how we  
15 can proceed procedurally with initiating site  
16 construction, and still be resolving some of the  
17 permitting or issues related to gas pipeline  
18 construction. In some cases it's not really a  
19 legal issue. We're able to continue to pursue  
20 local details and local plans, while working in  
21 construction in another area. With the federal  
22 nexus issues, it may be that what we have to do is  
23 get everything before we can start anything.

24 That's not necessarily clear.

25 MR. REEDE: So are you saying that you

1 would be starting the survey within the four  
2 months, within the next 60 days --

3 MR. MCKINSEY: Well, we'll start the  
4 survey as soon as we're able to, and it's the  
5 right time to do the survey. Those are the two  
6 issues that --

7 MR. REEDE: Right. Because I realize  
8 there's times of the year that you can't do  
9 certain surveys.

10 MR. MCPHERSON: For some species that's  
11 true, and I'd have to go back and check, but I  
12 think that the kangaroo rat's a year-round  
13 protocol. It involves eight consecutive nights of  
14 laying out traps.

15 MR. MCKINSEY: So that was something  
16 we'd initiate as soon as we can.

17 MR. REEDE: Okay. So within the next 30  
18 days, that should be initiated.

19 MR. MCPHERSON: That would be a logical  
20 to us. What -- what counsel just said is exactly  
21 right, and it's our concern about -- you know,  
22 even though most of our issues involve the gas  
23 pipeline, it's all one permit as far as -- as far  
24 as the EPA is concerned, and we can't really  
25 authorize the plant to go forward before we

1 resolve the issues with the gas pipeline.

2 MR. REEDE: All right. So then it's a  
3 valid statement that within the next 30 days you  
4 will have completed the surveys.

5 MR. MCKINSEY: Hopefully, yeah. Yes.

6 MR. REEDE: Okay.

7 MR. MCKINSEY: But, you know, the -- and  
8 also the larger picture of what we want to  
9 accomplish is -- and it would've been nice if we  
10 could've brought this up -- but we stipulated to a  
11 condition that didn't come up in the Staff  
12 Assessment, and that was that we need to clear the  
13 Fish and Wildlife Service. It comes up in the --  
14 in the Staff Assessment in, I think, the BRMIP  
15 condition, where it indicates that we have to  
16 comply with measures identified in a Fish and  
17 Wildlife letter of concurrence or Section 7,  
18 Biological Opinion.

19 But we anticipated needing to clear the  
20 Fish and Wildlife Service for this very issue, and  
21 for that reason we had stipulated that we will,  
22 indeed, have to achieve those things prior to  
23 starting up construction. And so it becomes our  
24 concern to resolve these issues with the Fish and  
25 Wildlife Service so that we can get this condition

1 completed prior to start of construction. And  
2 that would also enable us to proceed in the Energy  
3 Commission proceeding with our permitting process.

4 MR. MCPHERSON: We saw it that way,  
5 also, that you already had in the -- in the  
6 mitigation measures stipulated that you would  
7 incorporate whatever future conditions were  
8 negotiated through the consultation process, and  
9 you also have it here under unresolved issues on  
10 page 373 to -- to work that out.

11 The other minor details they were  
12 looking for was a little more information about  
13 the reclaimed water pipeline, which we understand  
14 is a separate project by the city, but some people  
15 are interested in knowing if this is a necessary  
16 precedent, or -- of your project, that we need to  
17 understand if there is going to be any endangered  
18 species impacts from the installation of the  
19 reclaimed water main from their treatment plant,  
20 then we'd like some acknowledgment of that.

21 The simplest resolution of that would be  
22 if the entire alignment of this new line is going  
23 to be within the paved street right-of-way, then  
24 clearly it's not really an issue.

25 MR. REEDE: We have a gentleman from the

1 City of Redlands that could perhaps answer that  
2 right now.

3 MR. HEDRICK: It is --

4 MR. REEDE: No, no, you need --

5 MR. HEDRICK: Doug Hedrick, from the  
6 City of Redlands.

7 The reclaimed water pipeline from our  
8 wastewater treatment plant will be completely  
9 contained in the right-of-way, the existing right-  
10 of-way. The roads are mostly paved with something  
11 resembling asphalt, but some of them are falling  
12 apart. They will all be in the right-of-way.

13 MR. REEDE: Okay. So, Doug -- the  
14 other Doug gave you the information. And  
15 hopefully that will have one less item on the  
16 check list of things to do.

17 MR. McPHERSON: I think that should  
18 resolve that particular issue.

19 Then there were a few other little  
20 details that, again, we'd be able to work out  
21 through the informal consultation process, mostly  
22 involving contingency plans, if you're -- they're  
23 proposing to bore under the river. Sometimes  
24 we've run into projects where that turned into a  
25 problem later on. There were frac-outs, and other

1 reasons why things didn't work exactly the way  
2 they were, and we were looking for a little  
3 information about contingencies should they have  
4 problems doing those kind of things.

5 But basically, we, you know, we thought  
6 that the Staff Assessment here was -- was a real  
7 competent job, and that both the Applicant and the  
8 CEC Staff have done a good job addressing the  
9 biological issues. And everything that's left, we  
10 think we can work out through the EPA.

11 HEARING OFFICER SHEAN: Yeah, it seemed  
12 very thorough to us. And thank you very much,  
13 because we -- we knew we had to get you in the  
14 loop, and we appreciate the cooperation of the  
15 Service.

16 MR. MCPHERSON: The EPA permit will  
17 provide us the form to put our -- our final  
18 decision down in writing, so that works out well.  
19 Thank you.

20 HEARING OFFICER SHEAN: Okay. Great,  
21 thank you.

22 MR. REEDE: Officer Shean --

23 HEARING OFFICER SHEAN: So their --  
24 their BIO-5, what -- how do you want to  
25 incorporate that?

1                   MR. MCKINSEY:  Actually, it's BIO-6  
2                   which has the BRMIP.  Would that be the right  
3                   one -- yeah.  On page 379, one of the requirements  
4                   are that the BRMIP has to identify all mitigation  
5                   measures identified in the Fish and Wildlife  
6                   letter of concurrence or Section 7 Biological  
7                   Opinion, if applicable.  That's the way it reads  
8                   now.

9                   Now, we had stipulated to a condition  
10                  that said that, you know, we understood we had to  
11                  accomplish this.  So one way to actually fix this,  
12                  for instance, could be to strike the "if  
13                  applicable".  Or, another way would be to add a  
14                  condition that says that we will accomplish either  
15                  a letter of concurrence or a biological opinion  
16                  prior to -- to construction.

17                  MR. REEDE:  Okay.  So basically, your --  
18                  well, the Applicant's stipulated BIO Condition 5,  
19                  if we added that to the Staff Assessment.

20                  MR. MCKINSEY:  Well, we may not need to,  
21                  is what I'm suggesting.  We may be able to  
22                  accomplish it simply by getting rid of "if  
23                  applicable" from -- from this line in BIO-6.

24                  HEARING OFFICER SHEAN:  In -- in your  
25                  BIO-6.

1                   MR. MCKINSEY: And that -- it's already  
2 there. In other words, we have to have that  
3 before we can submit the final BRMIP. So we have  
4 to have resolved our issues with the Fish and  
5 Wildlife Service --

6                   MR. REEDE: Okay.

7                   MR. MCKINSEY: -- so that we can present  
8 in the final BRMIP all the mitigation measures  
9 that are part of our -- our informal consultation.

10                  MR. REEDE: Okay. So then in BIO-6, if  
11 we strike at bullet four and bullet five and  
12 bullet six, the "if applicables", there would be  
13 no need for the Applicant's stipulated BIO-5.

14                  MR. MCKINSEY: Well, no, not all of  
15 them. Clearly the bullet three, which is Fish and  
16 Wildlife Letter of Concurrence and Biological  
17 Opinion.

18                  MR. REEDE: All right.

19                  MR. MCKINSEY: That's what we're  
20 discussing with Fish and Wildlife.

21                  MR. REEDE: Okay. The next bullet is  
22 the incidental take permit from the Department of  
23 Fish and Game.

24                  MR. MCKINSEY: Right. Now, there's a  
25 question here. As we understand it, Fish and Game

1 has a practice often of -- of having different  
2 levels of incidental take permits. For  
3 instance -- and a lot of companies will get one  
4 when -- I was given an example by Southern  
5 California Gas, where they're going to be near a  
6 creek, and they go ahead and get one, and they get  
7 one very shortly prior to their construction, just  
8 so that if somehow they enter the creek because  
9 they drop some -- something in there, or they need  
10 to go in and inspect some undercrossing of a road,  
11 that -- that they're covered, and that those are  
12 something that they're able to accomplish as kind  
13 of like a -- a very quick and simplistic  
14 incidental take permit. Which would be  
15 different --

16 MR. REEDE: So leave the --

17 MR. MCKINSEY: -- than the nature of an  
18 incidental --

19 MR. REEDE: -- "if applicable" in.

20 MR. MCKINSEY: Right. See, the -- the  
21 thing I'm concerned of --

22 MR. REEDE: Okay.

23 MR. MCKINSEY: -- is that there may be  
24 an incidental take permit that the constructor of  
25 the gas pipeline wants to get as a precautionary

1 measure during construction of the gas pipeline,  
2 that the ramifications have nowhere near the type  
3 of things we're talking about with an incidental  
4 take permit --

5 MR. REEDE: Okay. So we'll --

6 MR. MCKINSEY: -- for the kangaroo rat.

7 MR. REEDE: -- we'll leave that one in,  
8 then.

9 MR. MCKINSEY: That's what we would  
10 like, yeah.

11 MR. REEDE: Okay. And then the next  
12 bullet, for the Federal 404 and State 401  
13 certification, leave that "if applicable" --

14 MR. MCKINSEY: Yeah.

15 MR. REEDE: -- in, also.

16 MR. MCKINSEY: This is a good point that  
17 he raised. You know, we've proceeded under the  
18 assumption that we are boring. And that's pretty  
19 intrinsic to a lot of the plans and the  
20 discussions about impacts that have been made.  
21 And we chose it for that very reason, because it  
22 really reduces a lot of the biological issues that  
23 would be involved in our project, as opposed to  
24 trenching through the Santa Ana River.

25 We don't have any desire to trench

1 through the Santa Ana River, and our perspective  
2 is we would rather rely on engineering ingenuity  
3 to find a way to bore underneath the Santa Ana  
4 River, depending on what we face.

5 MR. REEDE: Okay.

6 MR. McPHERSON: Could I suggest on that  
7 condition bullet -- Doug McPherson, again -- that  
8 you add in the -- maybe the EPA PSD permit, that  
9 is actually our federal nexus? Originally this is  
10 what we thought would be the federal nexus, which  
11 was then being avoided by -- by the boring.

12 MR. McKINSEY: The --

13 MR. McPHERSON: The prevention of  
14 significant deterioration air permit that the EPA  
15 is going to approve. That's -- that's our  
16 understanding of what's going to be our federal  
17 nexus.

18 MR. REEDE: Where -- are you saying an  
19 additional bullet?

20 MR. McPHERSON: Well, no. Maybe you  
21 could just combine it to that one right there,  
22 because this is the same thing, is that the point  
23 of --

24 MR. REEDE: Which one? Which one?

25 MR. McPHERSON: The one about the 404

1 and the 401 permit.

2 MR. REEDE: Okay.

3 MR. McPHERSON: Because this is, I  
4 assume that the point of that bullet is the -- the  
5 federal nexus under which the -- the endangered  
6 species consultation would occur.

7 MR. McKINSEY: No, no. That was there  
8 if we were going to trench, because it would've  
9 been interfering with a navigable waterway --

10 MR. McPHERSON: Right. And that --

11 MR. McKINSEY: -- requiring an Army  
12 Corps 404 permit.

13 MR. McPHERSON: Right, and then we  
14 would've had a federal nexus there. But --

15 MR. McKINSEY: But we would've also had  
16 to have gotten the 404 permit.

17 MR. REEDE: If they trenched, they  
18 would've had to get a 404.

19 MS. NELSON: Or a directional --

20 MR. McKINSEY: Yeah. With the  
21 directional drill we've avoiding the Army Corps of  
22 Engineer 404 permit.

23 MR. REEDE: Right.

24 MR. McKINSEY: And so that's why we --  
25 that was in there. I think this is a generic --

1       this is a -- generic's not the right word, but the  
2       BIO-6 is intended to encompass all the things that  
3       could apply to just about any project, I believe.  
4       Though it's tailored somewhat to ours.  But  
5       there's still a possibility that a 404 and a 401  
6       permit could show up, and we have bigger problems  
7       is that happens.  But -- so that should read if  
8       applicable.

9                 What you're referring to, Doug, is the  
10       idea of what is triggering the federal nexus for  
11       Fish and Wildlife Service.

12                MR. McPHERSON:  That's right.

13                MR. McKINSEY:  And that might be  
14       applicable to put up -- if nothing else, it could  
15       be inserted into the -- the thing requiring the  
16       Fish and Wildlife Service Letter of Concurrence.

17                MR. REEDE:  Which condition is that?

18                MR. McPHERSON:  All right.  Number --  
19       bullet three, you mean?

20                MS. NELSON:  That's the third bullet.

21                MR. REEDE:  Okay.  Now, what were the  
22       words you were saying?

23                MR. McPHERSON:  It's -- it's the Clean  
24       Air Act, the Prevention of Significant  
25       Deterioration permit, the PSD permit, that will be

1 approved by the EPA.

2 MR. REEDE: Okay. So all mitigation  
3 measures identified in U.S. Fish and Wildlife  
4 Letter of Concurrence or Section 7 Biological  
5 Opinion, and --

6 MR. McPHERSON: Well, really, it's just  
7 the mechanism under which those -- those -- that  
8 consultation or concurrence letter occurs.

9 MS. NELSON: And adopted. The EPA has  
10 to adopt it.

11 MR. REEDE: The PSD.

12 MS. NELSON: In the PSD, their measures.

13 MR. McPHERSON: And the conditions as  
14 well, because the conditions that we negotiate  
15 through the consultation is between us and the  
16 EPA, not directly to the -- to the Applicant.

17 MR. McKINSEY: What's triggering this is  
18 -- is the Prevention of Significant Deterioration  
19 Permit. It has been delegated to the South Coast  
20 by the EPA, and as part of the delegation  
21 agreement with the South Coast, the South Coast is  
22 required to inform federal agencies, including the  
23 Fish and Wildlife Service. And they have certain  
24 things in the delegation agreement that they  
25 require Fish and Wildlife Service to be informed

1 of.

2 And what Doug is indicating is that is  
3 the reason why Fish and Wildlife Service is -- is  
4 doing an informal consultation on the project.  
5 And I think where you're heading is that you would  
6 like that in here as -- as an explanation for why  
7 you're being asked, or why you're -- it is  
8 necessary that you provide the informal  
9 consultation.

10 MR. MCPHERSON: Right. It's just what  
11 the -- just the formal nexus that causes it to all  
12 come about.

13 MR. REEDE: Can the Applicant draft some  
14 language that would address Mr. McPherson's  
15 concerns?

16 MR. MCKINSEY: Yeah.

17 HEARING OFFICER SHEAN: All right.  
18 We'll add that to the to do list.

19 MR. MCKINSEY: And earlier we stipulated  
20 to CEC Standard Condition Number 6, which is the  
21 incidental take permit.

22 MR. REEDE: Right.

23 MR. MCKINSEY: And that we think  
24 accomplishes the -- the express requirement that  
25 we have an incidental take permit where it's

1 required, prior to proceeding with construction.

2 So if we're not all lost yet.

3 MR. REEDE: Okay.

4 MS. NELSON: If there was a U.S. Fish  
5 and Wildlife Service Biological Opinion, it would  
6 take 30 days for the California Department of Fish  
7 and Game to review that opinion and to concur with  
8 it. So you may actually go that route, wait for  
9 the Biological Opinion to be released and ask for  
10 a Letter of Concurrence with that opinion.

11 At this point I think California  
12 Department of Fish and Game sees impacts as de  
13 minimus -- they may be able to issue a letter  
14 before the hearing. But that would not preclude  
15 them from also making a letter of concurrence on  
16 the BO, the federal BO.

17 MR. MCKINSEY: So I guess we could  
18 actually try to modify the language in that  
19 standard condition to show that. Right. The  
20 letter of concurrence or --

21 MS. NELSON: Resulting from --

22 MR. MCKINSEY: -- resulting from the  
23 Fish and Wildlife Service.

24 MS. NELSON: -- a federal -- right.

25 HEARING OFFICER SHEAN: Okay. You want

1 to add that to your to do list?

2 MR. REEDE: Okay. On the stream bed  
3 alteration agreement that the Applicant stipulated  
4 to, Staff will accept that one. And it'll be  
5 appropriately re-numbered.

6 HEARING OFFICER SHEAN: Is that what  
7 you'd like to do with your number 6?

8 MR. MCKINSEY: Yes.

9 HEARING OFFICER SHEAN: That's fine with  
10 you?

11 MR. MCKINSEY: That's correct.

12 HEARING OFFICER SHEAN: Okay.

13 MR. REEDE: The final BRMIP, because  
14 they're all in agreement we would need to re-  
15 number. BIO-9, standard condition, the Applicant  
16 showed it in the Matrix, but didn't stipulate to  
17 it.

18 HEARING OFFICER SHEAN: And I think what  
19 we've decided, on the basis of our last meeting,  
20 was that we were going to attempt to genericize  
21 these closure conditions and put them in a --  
22 rather than go topic matter by topic matter.

23 MR. REEDE: Right.

24 HEARING OFFICER SHEAN: Okay.

25 MR. REEDE: Okay. Then on Staff's

1 BIO-7, 8 and 9, because there are identified  
2 endangered species, we generated a condition for  
3 each requiring a survey be performed. Will  
4 Applicant stipulate to Staff Conditions 7, 8 and 9  
5 and 10 on the --

6 MR. MCKINSEY: We wanted to discuss some  
7 of the terminology and -- and the language in  
8 here. In principle, we do. We just want to make  
9 them clear and workable.

10 MR. REEDE: Ms. Nelson, you're back up.

11 MR. MCKINSEY: In 7, which is the  
12 burrowing owl surveys, it indicates a parcel  
13 north, and I think what you're intending to refer  
14 to is the parcel we're constructing on. But we  
15 wanted to make that clear.

16 MS. NELSON: Right. It's your current  
17 fence line for the power plant site, and then you  
18 have a field on the next north parcel. That's the  
19 parcel we're indicating.

20 MR. MCKINSEY: Okay. That's -- we  
21 wanted to make sure it's our construction parcel,  
22 and it wasn't referring to the river area, which  
23 didn't make sense to us.

24 MS. NELSON: No. No.

25 MR. MCKINSEY: Okay. Then the 6.5 acres

1 of land was difficult for us to really assess,  
2 because we didn't have any standard. Our  
3 biologist had -- and you indicate here that --  
4 that CDFG suggested that 6.5 acres of land was  
5 suitable. What we wanted to know is if they had a  
6 standard, if they were kind of just guessing at  
7 what would be about right, or if that's an area  
8 that each burrowing owl typically needs. As we  
9 understood it, it's really not clear because they  
10 tend to move around, and -- and they don't stay in  
11 one place that long, that it wasn't really clear  
12 how we -- how we get at 6.5 acres of land.

13 MS. NELSON: Oh. If a -- if an  
14 identified burrowing owl is found onsite, and it's  
15 identified as nesting, the 6.5 acres of protected  
16 land would need to be put into a bank somewhere.

17 MR. MCKINSEY: Right. What --

18 MS. NELSON: A mitigation bank.

19 MR. MCKINSEY: -- we were trying to  
20 figure out is how we get the 6.5 acres.

21 MS. NELSON: Okay.

22 MR. MCKINSEY: Here you indicated that  
23 that's what CDFG recommends, but we don't have any  
24 stuff that shows that. Was it something that  
25 somebody from CDFG just said verbally, or is there

1 a study, or --

2 MS. NELSON: Okay. Right, okay. Would  
3 you like me to fax over -- who could I fax that  
4 information to?

5 MR. MCKINSEY: Well, presumably our  
6 biologist. But it was, you know, we're asking him  
7 to evaluate whether that's the right number,  
8 and -- of acres, if it's the appropriate amount,  
9 and we just -- we couldn't find any basis to  
10 figure out whether it was or not.

11 MS. NELSON: There's a 1995 --

12 MR. MCKINSEY: Okay. That's -- yeah.  
13 That's -- if you know it --

14 MS. NELSON: That's their standard.

15 MR. MCKINSEY: -- that's fine.

16 MS. NELSON: But let me find -- to make  
17 sure that that's the right citation for that.

18 MR. MCKINSEY: We weren't sure if maybe  
19 Fish and Game had just orally indicated that they  
20 recommended 6.5 acres, or if they've got a study  
21 or something that indicates that's the right  
22 acreage.

23 MS. NELSON: Okay. Do -- does it come  
24 off the top of your head which one that is?

25 MR. KAUFFMAN: The citation?

1 MS. NELSON: Yeah.

2 MR. KAUFFMAN: No, I can't pull up an  
3 exact citation for you.

4 MR. MCKINSEY: But, I mean, is it  
5 actually a study, I guess --

6 MR. KAUFFMAN: It's based --

7 MS. NELSON: Do you want to --

8 MR. KAUFFMAN: Oh, sorry. My name is  
9 Jeff Kauffman, working with Staff.

10 It's based in part on the biology of the  
11 organism, relationship to what's required in part  
12 on foraging to support an active nest site. Now,  
13 the exact number, the organism is widespread, and  
14 the numbers vary according depending on the site  
15 in question.

16 But as to exactly why precisely 6.5  
17 acres, that's an extrapolation based on data on  
18 the utilization of habitat by the organism. We  
19 would have to get back with you on the precise  
20 sources of information on that.

21 MR. MCKINSEY: We may be okay.

22 HEARING OFFICER SHEAN: If you want  
23 whatever he is saying to be part of this -- yeah.  
24 I mean, is fundamentally your question, John, is  
25 did this number come out of the hat?

1                   MR. MCKINSEY: Yeah, that's -- you've  
2 already told us --

3                   HEARING OFFICER SHEAN: Is it the result  
4 of some calculations?

5                   MR. MCKINSEY: -- it didn't, and that's  
6 what we wanted to know.

7                   HEARING OFFICER SHEAN: I mean, sort of  
8 cut to it through all the legalisms there. Where  
9 did they get it, did it sort of come out of the  
10 hat, or is there a calculation involved based upon  
11 some specific information, kind of where, just so  
12 we have a means to establish the -- that the  
13 number has some relation to a deliberated review  
14 of the matter.

15                   MR. MCKINSEY: And actually, I think  
16 we've already got our answer, but Bill --

17                   MR. GORHAM: Okay. This is Bill Gorham.  
18 Just asking for just additional clarification of  
19 the origin of that.

20                   MR. MCKINSEY: I think we're okay.  
21 That's what we -- we weren't -- you hit it on the  
22 head. We just weren't sure if Fish and Game just  
23 said over the phone, you know, 6.5 acres. But  
24 what you're telling us is that actually they have  
25 a study that supports that number, and that's what

1 we wanted to know.

2 HEARING OFFICER SHEAN: Right. Okay.

3 MR. REEDE: I might also add, just as a  
4 footnote, when we were putting in the photovoltaic  
5 plant for SMUD, we had burrowing owl problems to  
6 resolve, and we actually built a number of nests  
7 for them so that we could install the photovoltaic  
8 panels. So there are a number of mitigations  
9 available.

10 MR. MCKINSEY: Yeah. As I understand,  
11 the burrowing owl has adapted pretty well to  
12 humans and industrial life, and that was one, for  
13 instance, why we were concerned that -- that BIO-6  
14 was referring to some off property parcel. And as  
15 we understand it, the burrowing owl has done  
16 incredibly well and saying I don't mind living  
17 next door to a power plant or a tile plant, and --  
18 or a freeway, that they've actually, for some  
19 reason, they tend to be pretty tolerant.

20 MR. REEDE: It's just the wind farms  
21 they have a problem with.

22 MS. NELSON: Yeah. The issue of  
23 protection is not so much that no activity is  
24 taking place next to it. What often happens,  
25 especially up near San Francisco, is there's a

1 plow. Someone'll go in and plow a field. That  
2 would certainly -- they would lose their burrows  
3 and any eggs they've left. That's the level of  
4 protection we're talking, not a reserve dedicated.

5 MR. MCKINSEY: Okay. Under  
6 verification, the third line, it says -- it's  
7 still the first sentence, but it refers to this  
8 measure. And I assume by that you're saying the  
9 final version of the BRMIP, or -- I guess this  
10 measure is referring to I guess the text of BIO-7,  
11 but it wasn't clear.

12 MS. NELSON: Yes. What I'm saying is  
13 that the BRMIP include burrowing owl surveys.

14 MR. MCKINSEY: Okay. Maybe we could  
15 just change it to say the -- the surveys and  
16 activities required by this condition. I'm just  
17 thinking of the compliance people later on that  
18 are looking at that -- this measure, and --

19 MS. NELSON: Okay.

20 MR. MCKINSEY: Because that's what you  
21 were getting it, and that makes sense.

22 MS. NELSON: Uh-huh. So the BRMIP must  
23 just include surveys and activities suggested.

24 MR. MCKINSEY: Yeah.

25 MR. REEDE: And that would be

1 appropriate on 6, 7, 8, 9, and 10.

2 MR. MCKINSEY: Yeah.

3 MR. REEDE: Because that term is  
4 repeated in each of them. This measure.

5 MR. MCKINSEY: Under BIO-8, there's an  
6 odd number of days of 80 days for the  
7 verification. That was one thing that -- most of  
8 them have tended to work with increments of  
9 months, and we couldn't figure out where we got  
10 80. And one of the things that Hearing Officer  
11 Shean has been harping on, we kind of liked it, is  
12 trying to make stuff have enough of a pattern to  
13 it that you're able to organize all the compliance  
14 activities and the dates prior so that you can  
15 actually lay everything out. And having an 80 day  
16 one would -- would stick out like a sore thumb.  
17 And if it's not needed, if we could make it 60 or  
18 90, as appropriate. And then below it actually  
19 references 60 days.

20 MS. NELSON: Right. The survey would be  
21 -- kind of allow everybody to know if you were  
22 going to go into consultation. So I would not  
23 mind at all if that was changed to 90 days. But  
24 the survey should -- has to be turned in before we  
25 can begin evaluating the BRMIP. Because all -- in

1 the BIO Opinion -- these dates actually don't take  
2 into account you receiving a Biological Opinion.

3 MR. MCKINSEY: Right. Exactly.

4 MS. NELSON: These dates were under an  
5 assumption that you would be able to show total  
6 avoidance. You would -- that would allow the  
7 compliance project manager to evaluate for 20 days  
8 your survey results, check in with someone, check  
9 in with U.S. Fish and Wildlife Service, and then  
10 go ahead and look at the BRMIP. So I think these  
11 dates are actually going to have to change.

12 MR. MCKINSEY: Right.

13 MS. NELSON: Knowing now that we do have  
14 --

15 MR. MCKINSEY: Because we're going to  
16 execute the survey in the informal consultation.

17 MS. NELSON: -- you are going to  
18 execute.

19 MR. MCKINSEY: The condition still makes  
20 sense, right? Because it's requiring us to  
21 complete these surveys prior to construction. I  
22 mean, in fact, we're going a step farther and  
23 we're completing them in order to complete our  
24 informal consultation with the U.S. Fish and  
25 Wildlife Service. So maybe that first sentence or

1 two, at least -- almost isn't needed. Because,  
2 see, the third one says at least 60 days prior to  
3 start of ground disturbance, we have to provide  
4 the final version of the BRMIP, which includes the  
5 issues.

6 And we've got another condition which is  
7 requiring us prior to ground disturbance also to  
8 complete our activities with Fish and Wildlife  
9 Service. And, in fact --

10 MS. NELSON: So maybe we should back off  
11 -- it's going -- 180 days before the BRMIP is  
12 released, the project owner shall provide the CPM  
13 with the final survey results, and/or the  
14 biological assessment. And then 60 days prior to  
15 construction.

16 HEARING OFFICER SHEAN: This is all in  
17 the verification; right?

18 MS. NELSON: Yeah.

19 MR. MCKINSEY: Yeah.

20 HEARING OFFICER SHEAN: I think we're --  
21 we have in mind having that verification workshop.  
22 Maybe what should happen here is why don't you  
23 suggest some alternate language that sort of  
24 captures all we're trying to do in the Biology  
25 stuff, and get it to the Staff, and then we'll --

1 we will have had some time to try to come with the  
2 final acceptable version.

3 MR. McKINSEY: Yeah. I need to make  
4 sure I understand. But more importantly, Bill  
5 probably needs to make sure that we understand the  
6 purpose of it.

7 MS. NELSON: The original purpose just  
8 was that we thought the survey would show no  
9 impact, and that you were not going to continue on.  
10 So I was just giving the CPM, the compliance  
11 manager, time to look at that survey and confirm  
12 with other people. You know, people will be gone  
13 for a week, so I wanted to give him two weeks, at  
14 least, check the -- do some fact checking.

15 MR. McKINSEY: So presumably -- well, I  
16 guess what I'm wondering is do we still need it.  
17 The --

18 MS. NELSON: Well, this document in  
19 several places says you are confident no  
20 consultation would occur.

21 MR. McKINSEY: Right.

22 MS. NELSON: So if we strike it here we  
23 also need to strike the text in the Staff  
24 Assessment that says anything that -- about no  
25 consultation.

1 MR. MCKINSEY: No, what --

2 MS. NELSON: And it says --

3 MR. MCKINSEY: Oh, I see what you're  
4 getting at. Okay. So what this means --

5 MS. NELSON: We're looking at it just  
6 from a new timeframe, with new information, so not  
7 everything's going to make sense. But as it  
8 stands --

9 MR. MCKINSEY: Yeah. Actually, I don't  
10 see that this is going to be a compliance problem,  
11 because we're going to be doing the surveys now.  
12 Only this is saying that 80 days prior to  
13 groundbreaking we have to show that Fish and  
14 Wildlife has reviewed the survey results. Even  
15 that, I think we're going to meet. And, in fact,  
16 we're going above and beyond that. So it doesn't  
17 look like it's going to actually be a barrier  
18 timewise. That's what we were worried about, is  
19 that it --

20 MS. NELSON: If you do your clearance  
21 survey this week --

22 MR. MCKINSEY: Right. Exactly.

23 MS. NELSON: -- but you do construction  
24 one year from now, you probably would have to  
25 still do another clearance survey. Because in

1 that one year time --

2 MR. MCKINSEY: Well, yeah. Exactly.

3 MS. NELSON: -- you may end up with an  
4 animal or habitat growth.

5 MR. MCKINSEY: Well, yeah. I assumed in  
6 our BRMIP we're going to have to do clearance  
7 surveys immediately prior, as part of our direct  
8 avoidance strategies.

9 MS. NELSON: So maybe --

10 MR. MCKINSEY: But this was our survey  
11 for assessing the -- the validity of avoidance  
12 strategies, right?

13 MS. NELSON: Right.

14 MR. MCKINSEY: And that we'll then  
15 complete, easily we'll meet these timeframes.  
16 Does that make sense?

17 MS. NELSON: Right. Because you're  
18 validating what action you're going to take well  
19 before 80 days. And you'll be submitting that  
20 information.

21 MR. MCKINSEY: Bill, do you have  
22 anything on this one, on BIO-8? Yeah. Actually,  
23 that was the other one. I don't have it  
24 underlined.

25 MR. GORHAM: Again, this is Bill Gorham.

1 It says preconstruction surveys to be conducted  
2 April --

3 MR. REEDE: Could you state your name,  
4 please.

5 MR. GORHAM: Yeah, Bill --

6 MR. MCKINSEY: He did.

7 MR. GORHAM: -- Gorham. I've done it  
8 twice.

9 Preconstruction surveys would be  
10 conducted April through mid-August. And I thought  
11 there is not -- is there a restriction on the  
12 timing for the trapping surveys for the kangaroo  
13 rat?

14 MS. NELSON: I --

15 MR. KAUFFMAN: Not that I know of.

16 We're not aware --

17 MR. GORHAM: Okay. We didn't think  
18 there were, but --

19 MR. KAUFFMAN: It doesn't migrate.

20 MR. GORHAM: So we thought that that  
21 probably didn't apply.

22 MR. MCKINSEY: So what you are saying is  
23 you would like to delete that sentence, Bill?

24 MR. GORHAM: Yeah.

25 MR. REEDE: Or else modify it,

1       preconstruction surveys may be permitted year-  
2       round, depending upon the data that you get.

3               MR. GORHAM: That would be fine.

4               MR. REEDE: Okay. So rather than delete  
5       the sentence, preconstruction surveys may be  
6       conducted year-round.

7               MS. NELSON: Just so when you do have  
8       your construction window --

9               MR. McKINSEY: Well, that's exactly --

10              MS. NELSON: -- just having that  
11       preconstruction.

12              MR. McKINSEY: Right, exactly. I mean,  
13       as I -- you're talking about in our BRMIP we're  
14       going to have a requirement that we do our  
15       clearance surveys for construction itself.

16              MS. NELSON: I would just say that  
17       dispersal is most likely during those times, and  
18       we know that populations are north of there so  
19       you're most likely to have animals coming into  
20       that area during that timeframe.

21              MR. McKINSEY: Okay.

22              MR. REEDE: Then, John, is it my  
23       understanding that the modifications that we made  
24       to 7 and 8 relating to this measure and timeframes  
25       will be also applicable to BIO-9 and 10?

1 MR. MCKINSEY: Actually, no.

2 MR. REEDE: Or do you have questions on  
3 9 and 10 also?

4 MR. MCKINSEY: For instance, BIO-9  
5 involves plan, which makes sense to have the  
6 seasonal survey time period in there.

7 MR. REEDE: Right.

8 MR. MCKINSEY: Clearly. And there may  
9 be an issue here because the -- Payson's Jewel  
10 Flower survey, if we have to wait until April to  
11 conduct it, and that's a predicate to the entire  
12 project proceeding, then that's really meaning  
13 that we can't commence construction until several  
14 months after that. And yet we're talking about  
15 completing the Fish and Wildlife Service  
16 consultation, because their primary issue species  
17 of concern is the kangaroo rat. I would like to  
18 hear from Fish and Wildlife about their concerns  
19 about the Jewel Flower, because it may be that  
20 this is something that we can do surveys for at a  
21 different point, related to the construction of  
22 the gas pipeline.

23 MS. NELSON: Yeah, there's no -- sorry,  
24 we're just -- and it's a list --

25 MR. MCPHERSON: That's -- that

1 particular plant is not a federally listed  
2 species. It was -- formerly was a species of  
3 concern, but that -- that category doesn't exist  
4 anymore. So until it's listed as threatened, it's  
5 not really part of our consultation.

6 MR. MCKINSEY: Okay. What we were  
7 hoping to be able to say was that we've conducted  
8 surveys on the Jewel Flower, and that we have the  
9 ability to -- to draft a final BRMIP that is  
10 correct, and that we would still need to do  
11 surveys in order to satisfy the Energy Commission  
12 during the April to August time period, in order  
13 to complete the actual BRMIP steps that we'd need  
14 in order to construction of the gas pipeline.

15 MS. NELSON: Okay. This measure, if I  
16 go back in the history, is here because there was  
17 not a survey for Payson's Jewel Flower. If I  
18 could correct your statement.

19 MR. MCKINSEY: Yeah. That's just what  
20 I'm -- to go ahead and --

21 MS. NELSON: Okay.

22 MR. GORHAM: Again, this is Bill Gorham.  
23 That was one flower, or one plant that, among a  
24 whole list there, we missed that one, so that was  
25 one we did not do surveys before. However, there

1 was one sighting of that plant a decade or two  
2 prior, about five miles from the site. It did  
3 come up on the list as having a potential, albeit  
4 a very remote potential of being on the site, but  
5 because we did not do the survey that it was  
6 retained in and needing to do the surveys to make  
7 sure that the protocols were followed.

8 So the expectation is it will not occur  
9 onsite. However, to be consistent, we would do  
10 the surveys, preconstruction surveys, and because  
11 of the flowering period it has to be done at a  
12 specific time.

13 MR. MCKINSEY: So is this an issue for  
14 the gas pipeline or the -- the project facility?

15 MR. GORHAM: It would be the gas  
16 pipeline.

17 MR. MCKINSEY: So my question, is there  
18 a way that we can do this. As I understand it, we  
19 still have the ability right now to draft a final  
20 BRMIP. We could, if anything, we could assume,  
21 you know, we could write in if -- if encountered,  
22 if present. That would allow us to proceed with  
23 construction on the site, following the decision,  
24 and not hold up construction on the site for the  
25 surveys that we would be conducting of April

1 through September for the Jewel Flower.

2 Do you see what I'm trying to -- that's  
3 what I was trying to figure out.

4 MS. NELSON: Yes.

5 MR. GORHAM: That's right.

6 MS. NELSON: Yes. You can begin  
7 construction on the site, but the natural gas  
8 pipeline, before you began construction there,  
9 would require that survey. So the earliest your  
10 construction on the gas pipeline could begin would  
11 be April, after flowering season has started.

12 MR. MCKINSEY: Right. And see, that --  
13 the other one that we want to start is the SARI  
14 line. But once again, this is a gas pipeline area  
15 issue; correct?

16 MS. NELSON: Right. Right now your SARI  
17 line is not touching the bed, as it were, so it's  
18 a stream bed plant.

19 MR. MCKINSEY: Okay. Then what we --

20 MS. NELSON: So you need to -- there  
21 would be a possibility your SARI -- if equipment,  
22 like you said, if you dropped something, and you  
23 need to bring in heavy equipment to take it out.

24 MR. MCKINSEY: So I'm hoping we can  
25 change the verification language, then, of this --

1       this condition.

2                   MR. REEDE: Did I understand Doug  
3       McPherson correctly that he said that the Payson's  
4       Jewel Flower is not an endangered species?

5                   MR. GORHAM: It's not a federal -- it's  
6       not federally listed as threatened, endangered, or  
7       a candidate at this time.

8                   MS. NELSON: But the California  
9       Department of Fish and Game, in their Letter of  
10      Concurrence, would have to address the species.  
11      Because the -- the U.S. Fish and Wildlife Service  
12      has given authority of plants over to the state,  
13      for the most part, unless they've listed them. Am  
14      I stating it correctly?

15                  MR. McPHERSON: Our lists don't actually  
16      line up all the time. There's still some concern.  
17      The State of California and the federal government  
18      maintain separate lists, and there are different  
19      implementing mechanisms, as well. And this is --  
20      this is a species that formerly was listed  
21      federally as a species of concern, a category that  
22      no longer exists. So until it elevates to a  
23      candidate species, it's not a -- not that it's not  
24      a concern, because it is a declining species, but  
25      it's not -- we don't have any jurisdiction under

1 the Endangered Species Act over that particular  
2 plant.

3 MR. REEDE: Okay.

4 MS. NELSON: Does that clear your  
5 question, James?

6 MR. REEDE: And -- and just -- but just  
7 to finish the clarification. Is this on the  
8 California Department of Fish and Game's list?

9 MS. NELSON: No, it is not a state  
10 listed species.

11 MR. REEDE: Okay.

12 MS. NELSON: It's only something they  
13 would consider a concern.

14 MR. REEDE:: Okay. But I need to have  
15 it straight in my mind, because I'm not a  
16 biologist. I'm an electrical engineer. If it's  
17 not on the state list, and it's not on the federal  
18 list, why is it on our list?

19 MR. MCPHERSON: Just taking a shot in  
20 the dark, but under the California Environmental  
21 Quality Act, there's a separate definition of rare  
22 and threatened species that includes all listed  
23 species, but also allows other species that could  
24 qualify. Perhaps that's the reason for the  
25 completeness of your CEQA equivalent document.

1 MR. REEDE: Okay.

2 MS. NELSON: They would -- so under CEQA  
3 they would include anything that has been  
4 identified.

5 MR. REEDE: As a --

6 MS. NELSON: And it's as --

7 MR. REEDE: -- species of concern or --

8 MS. NELSON: -- as exhibiting rarity.

9 MR. REEDE: Exhibiting rarity.

10 MS. NELSON: And because California  
11 Native Plant Society has said this plant exhibits  
12 rarity. It's of concern.

13 MR. REEDE: Okay.

14 MR. MCKINSEY: Okay. I think we're okay  
15 if -- if we can change the verification language,  
16 as you were indicating, that it should say 60 days  
17 prior to start. But, see, actually we are going  
18 to be able to provide now the final version of the  
19 BRMIP, which will include the measure. What the  
20 verification language doesn't say right now is it  
21 doesn't link the survey to the gas pipeline  
22 construction.

23 MS. NELSON: Well, in either pipeline  
24 construction, either SARI --

25 MR. MCKINSEY: Well, the SARI we're not

1 going to go in the creek at all, though. Because  
2 we're hanging from the bridge. We don't have to  
3 enter the creek whatsoever.

4 But you're saying that it would still be  
5 a predicate for that, I guess.

6 MS. NELSON: Is there a chance to  
7 actually think about, and talk with our botanist,  
8 who's not present today?

9 HEARING OFFICER SHEAN: Yeah. Well,  
10 since this is a verification matter, although it  
11 might be a condition matter --

12 MR. HALL: Well, if we -- if we, as a  
13 client, are -- we would like to work on the SARI  
14 line expeditiously, not only for the new facility  
15 but to be able to use it for the existing  
16 facility, and these type of requirements, in terms  
17 of timing, would really make that difficult to do.  
18 Especially if we're not going to be actually  
19 entering the creek at all.

20 HEARING OFFICER SHEAN: No, I  
21 understand. You're going to hang this SARI line  
22 from the bridge, or something.

23 MR. HALL: That's correct.

24 MR. MCKINSEY: But still, there's  
25 certainly time to try to figure it out. We were

1 kind of -- I'm probably still confused on how  
2 we're -- why it is we're dealing with this. But  
3 nevertheless, we're more than willing to try to do  
4 whatever is required. But as I understand it, the  
5 -- the survey -- well, no. That's a good issue.  
6 If your botanist, you know, feels that the survey  
7 needs to go on in the Twin Creek channel prior to  
8 us hanging the SARI line on that bridge, that may  
9 be, you know, something that we'll have to haggle  
10 over more.

11 But in terms of the gas pipeline, it  
12 sounds like we're all on the same page, that it  
13 applies -- we're accepting that it applies to the  
14 gas pipeline, and we need to complete the surveys  
15 during the right time period prior to the gas  
16 pipeline construction, and that we know enough now  
17 to complete the BRMIP that would require these  
18 things.

19 So it's just -- it sounds like it's  
20 coming down to the Twin Creek crossing.

21 MR. GORHAM: Well -- again, this is Bill  
22 Gorham. One of the pieces of information is that  
23 it was listed in the California Natural Diversity  
24 database, which is likely how it got onto the sort  
25 of list of plants to look for. Again, I mentioned

1       that the listing there was about five miles from  
2       the project site. It was -- actually, there was  
3       even a question of whether or not the  
4       identification was accurate, not to -- to say that  
5       we don't think it's going to occur there, and it  
6       was on that information, however, just to give a  
7       point of reference. But the expectation is it is  
8       probably not at the site.

9                 That notwithstanding, the surveys will  
10       be done. The question is in the situation with  
11       the SARI line, where -- where the Applicant has  
12       stipulated it will not go into the Twin Creeks  
13       channel, it'll be on the bridge, it sort of  
14       suggests very strongly that the potential for  
15       actually having the plant there and having an  
16       impact is very, very small. Just to sort of put  
17       it in that perspective.

18                MR. REEDE: Okay. So how are we going  
19       to resolve this?

20                MR. MCKINSEY: Sounds like we need to  
21       let the botanists at the Energy Commission hear  
22       what we've been saying, and -- and respond.  
23       Right?

24                MS. NELSON: Right. The botanists will  
25       have to make a decision on the likelihood of it

1 being at Twin Creek, as well as the likelihood of  
2 the Applicant entering the channel at any point,  
3 if there could be any impact to the species.

4 MR. MCKINSEY: So I would think we  
5 probably have to list it as something that's  
6 contested for the evidentiary hearing, and see,  
7 you know, if we can resolve it otherwise.

8 HEARING OFFICER SHEAN: And so this  
9 relates to their BIO-9. But it sounds as if  
10 everyone's expectation is that this is not likely  
11 to show up in the project area.

12 MR. REEDE: Officer Shean, when Staff  
13 did their assessment we made certain  
14 recommendations and arrived at conclusions, our  
15 botanist was part of those conclusions and  
16 recommendations. Are we suggesting that we  
17 materially change from what the condition states,  
18 or are we saying that we want to change the  
19 timeframe? What isn't in concert with the  
20 conclusions and recommendations that were already  
21 drawn?

22 MR. MCKINSEY: The condition itself  
23 references any project activities, and that was --  
24 that's a normative way to describe just about any  
25 potential impacts, is to say any project activity.

1           MR. REEDE:  And you're -- you're saying  
2           it needs to be more specific to the pipeline and  
3           the SARI line.

4           MR. MCKINSEY;  So -- that's what we  
5           would like.  And so then the issue is what did the  
6           botanist entail with Twin Creek, that it isn't  
7           clear in the condition.  And I don't think it's  
8           clear in the -- the actual text of the assessment  
9           whether there was going to be an impact to the  
10          Jewel Flower in -- potential impact in Twin Creek.

11          MR. GORHAM:  Again, this is Bill Gorham.  
12          What I'd recommend, I believe it was -- looking  
13          forward to the Southwestern Pond Turtle, jumping  
14          ahead, for --

15          MR. REEDE:  Could you speak up some?  I  
16          can't hear you.

17          MR. GORHAM:  Yes.  In -- I was looking  
18          for the language in one of these that was talking  
19          about if it's shown that construction on the SARI  
20          line cannot avoid the Twin Creeks channel, if it  
21          is infeasible to be put on the bridge, then other  
22          measures would be implemented.  And that's what I  
23          was looking for right now.  And I was saying if  
24          that's acceptable language that can be put into  
25          this condition as well, then that would take care

1 of -- take care of it.

2 MR. MCKINSEY: Well, I found the -- on  
3 page 373, the Staff Assessment says, surveys for  
4 Payson's Jewel Flower need to be completed at all  
5 stream beds prior to construction.

6 MR. REEDE: Okay.

7 MR. MCKINSEY: So that may be an  
8 indication right there what the botanist's  
9 position is. As I said, though, I don't know if  
10 we can resolve it any further, then it's clearly  
11 something that we may disagree on with the Staff.  
12 And perhaps that isn't the position, you know,  
13 clearly of the botanist, and we're not really at  
14 odds. But it, on paper it looks like we do  
15 disagree about the need to do the survey at Twin  
16 Creek.

17 MR. REEDE: Okay. Let's go on to the  
18 next one.

19 HEARING OFFICER SHEAN: I guess we have  
20 one more there, BIO-10.

21 MR. MCKINSEY: With BIO-10 we had a  
22 request. The Southwestern Pond Turtle, we're  
23 not -- once again, we're not sure that we're  
24 actually going to have any potential impacts to  
25 the Southwestern Pond Turtle because of our

1 construction technique. We're going to hang from  
2 a golf cart bridge that's over a concrete channel,  
3 a concrete lined area adjacent to the -- the  
4 natural little pond area where the Southwestern  
5 Pond Turtle might be present. And in our BRMIP  
6 we're clearly going to have to have, at a minimum,  
7 in order to say that we're not going to have those  
8 impacts, the -- the catch facility underneath  
9 where we're hanging the pipeline in presumably --  
10 there's a reference in here to a silt fence  
11 that -- but we can obviously put something on the  
12 concrete area underneath the bridge that would  
13 prevent, even if somehow anybody drops anything,  
14 there's nothing that's going to impact the water  
15 area.

16 The only other issue would be, I guess,  
17 a noise type. But this is a golf cart bridge that  
18 has golf carts and golfers going over it all the  
19 time, anyway. So what we were hoping to  
20 accomplish by hanging the pipeline from the golf  
21 cart bridge was to avoid an issue of impacts over  
22 the Southwestern Pond Turtle.

23 We still recognize that in our BRMIP we  
24 need to address conditions, and accomplish the  
25 things to ensure that that's the case. But we

1 don't -- in other words, what we're really getting  
2 at is if -- if we do a survey in April to  
3 September and we find a Southwestern Pond Turtle  
4 there, it's not going to -- it shouldn't have to  
5 change anything at all about what we're trying to  
6 accomplish; that we already have set up a  
7 construction plan that will ensure we don't have  
8 impacts.

9           This is, once again, the -- the issue is  
10 that we want to be able to start the SARI line  
11 construction so we can utilize it for the existing  
12 facility this summer. And so the -- we were  
13 actually asking that this condition could be  
14 removed. Or perhaps it can be reworded to  
15 accomplish what I think it's supposed to be  
16 accomplishing, which is to ensure we don't have  
17 any impacts on the Southwestern Pond Turtle.

18           MR. KAUFFMAN: My name is Jeff Kauffman,  
19 again. Regarding the Southwest Pond Turtle.  
20 First of all, regarding the nature of the impacts  
21 to the organism, the organism, just to get you a  
22 little bit of the biology of it. Again, we are  
23 presuming at this point in time that in fact the  
24 specimens seen at that site were, in fact,  
25 Southwest Pond Turtles, though Staff has some

1       doubt in fact that that's -- that was there, based  
2       on the limited information about morphology, and  
3       so forth.

4                In fact, it may be a non-native turtle  
5       from the midwest, in which case the agencies would  
6       love nothing more than having that organism  
7       probably removed from the site.

8                But regarding the biology of the  
9       organism, the Southwest Pond Turtle utilizes open  
10      water features for refuge against predation, as  
11      well as for feeding.  However, there are other  
12      times during its yearly behavioral cycle in which  
13      it has to be out of water.  These include nesting,  
14      which the organism will move from that site to  
15      nest, and secondly, with regard to its periods of  
16      inactivity.

17               So the specifications for mitigation at  
18      the site which include preconstruction surveys,  
19      which include all efforts to minimize direct  
20      impacts to the surface water feature itself,  
21      separate sets of fencing in addition to  
22      construction fencing to keep individuals and  
23      construction equipment out of sensitive bank  
24      areas.  And also importantly, utilization of the  
25      north side of that -- of that location for

1       staging, which has already pre-impacted. Which  
2       means that it is highly unlikely, almost  
3       impossible, more or less, that the organism could  
4       be nesting in these impacted areas, I think  
5       address the issues that the Staff has in the way  
6       of concerns for this -- this organism.

7               HEARING OFFICER SHEAN: And so if I'm  
8       understanding you correctly, then, the mitigation  
9       measures that they propose to do for the  
10      construction would satisfy the -- the need to  
11      protect this species in the event that the survey  
12      found it. So that really, it's -- the  
13      circumstance is already set up so that if the  
14      survey found this, everything is in place to  
15      protect it.

16             MR. KAUFFMAN: That's correct, because  
17      included within the mitigation measures it's  
18      required that the designated biologist coordinate  
19      with the proper agencies upon locating the  
20      organism. And that's standard procedure when it  
21      comes to finding this organism. The organism is  
22      not a listed species. It has periodically been  
23      moved toward that direction with the federal list.  
24      It has not achieved that by either agency or list.  
25      However, it has been a consistent concern that

1 measures be taken not to harm the organism when  
2 one enters sites that are presumed to be occupied.

3 I only point out the biology because I  
4 want to make certain that the mitigation measures  
5 as correctly stated have biological relevance, and  
6 specifically with regard to the fact that we're  
7 talking about alleviating impacts to areas that  
8 are not directly surface water features. Because  
9 the biology of the organism includes areas that  
10 are not actually in the water.

11 MR. ABELSON: Officer Shean, just a  
12 point of clarification. If I understood, John,  
13 what you were saying earlier, it isn't that you  
14 all object to doing the survey. It's that  
15 regardless of what it shows, given what the other  
16 conditions are that are already imposed, you don't  
17 want anything to require further delay in terms of  
18 going ahead with your SARI construction. Is  
19 that -- did I follow that, or did I miss that?

20 MR. MCKINSEY: That's correct. It's  
21 another issue where the survey is specified to  
22 occur between April 1st and September 1st.  
23 Actually, it's not even specified to occur then.  
24 It says spring/summer, and then there's a  
25 construction reference to that time period, I

1 guess, when they're more likely to be migrating  
2 and nesting.

3 But the -- we don't object to doing the  
4 surveys. In fact, obviously we don't object to  
5 doing -- we want to, I think, even do more so, to  
6 just do in advance whatever would be required to  
7 ensure that even if we found them there, that  
8 we're not going to disturb them.

9 MR. ABELSON: So what is it specifically  
10 then, again, about 10 that you wanted -- were  
11 hoping would either be dropped or deleted or  
12 changed?

13 MR. MCKINSEY: Well, I'm not sure that  
14 we need an express condition for it. Because --

15 MR. ABELSON: A condition of doing the  
16 survey?

17 MR. MCKINSEY: To -- for this --  
18 exactly. In other words, this would be something  
19 I would think that's just embodied in our BRMIP,  
20 that we have to ensure that we're not impacting  
21 the Southwestern Pond Turtle. And that would  
22 include a preconstruction survey.

23 If it is this, then we would like it to  
24 clarify when it is that we can conduct this.

25 There's been a lot of ambiguity about, you know,

1 we're hanging a pipe from a bridge, and we're  
2 doing it in a way that we don't have to enter that  
3 area.

4 Now, there is that concrete area  
5 underneath the bridge. It's flat in one area, it  
6 slopes off down towards the water to the south  
7 side, and to the north side there's a -- it tapers  
8 slightly, and then there's an area that's  
9 regularly plowed and disturbed, area of the flood  
10 channel.

11 So I think what you are telling me is  
12 that there is a possibility that the turtle could  
13 be moving over the concrete area, and into that  
14 area of the channel that's plowed, maybe trying to  
15 escape the channel to -- to nest. Is that  
16 correct?

17 MR. KAUFFMAN: That's correct. Right.

18 MR. MCKINSEY: And so then the issue  
19 would be if we were going to go in that area, that  
20 may have been a -- an impact that we weren't  
21 considering, or we may still be okay. But my idea  
22 was that, as I understood it, we're -- we've set  
23 ourselves up so we're not going to have any  
24 impacts to the pond turtle. So even if it is  
25 present, it -- and we can do the survey almost as

1 a way to document whether it's there or not. But  
2 I don't know that the survey is something that we  
3 need to do in order to -- to correctly specify  
4 what our conduct would need to be in order to do  
5 the construction on the SARI line and not have any  
6 impacts on it.

7 MR. ABELSON: And then your other issue  
8 is that -- is the timing issue for the survey?

9 MR. MCKINSEY: Yeah. Well, the -- right  
10 now it says during appropriate season, and in  
11 parentheses, spring/summer.

12 MR. ABELSON: And what are you asking  
13 for instead?

14 MR. MCKINSEY: Well, we would like to go  
15 do the survey now. That would even be simpler.

16 MR. KAUFFMAN: Let me qualify that a  
17 little bit regarding the organism. That timeframe  
18 is the time of generally most activity. However,  
19 with this particular species or subspecies within  
20 this area of the range can generally be active all  
21 year round. I know of an area two weeks ago where  
22 active pond turtles were observed in sites, in  
23 their surface water feature.

24 So I think the -- again, let me state  
25 that the mitigation measures as specified in the

1 issue, I think it's appropriate to assume presence  
2 and then avoidance. I think that's the best  
3 strategy to take, are fine and acceptable to  
4 Staff.

5 The notion of the surveys I think  
6 requires that the -- the designated biologist, in  
7 coordination with the agencies, can work out  
8 the -- the issue regarding the acceptability of  
9 survey work at other times in the year. The  
10 organism is very opportunistic down in this part  
11 of the world, where you can actually achieve  
12 temperatures that would support their metabolism.

13 So I -- I think it's -- really is an  
14 avoidance type approach to make certain that no  
15 unforeseen issues arise. Furthermore, the  
16 mitigations as stated would include, if  
17 necessary, and I doubt this will be necessary, the  
18 temporary removal of the organism from site until  
19 construction work is complete.

20 I don't foresee, even if the area is  
21 supporting the organism, that that would require a  
22 shut-down of operation.

23 MR. ABELSON: So what I'm hearing is it  
24 sounds like -- leaving aside, John, the point of  
25 whether or not it's sort of assumed within the

1 BRMIP, you know, concept, that 10 could stay as  
2 long as the phrase summer -- spring/summer was  
3 somehow modified to allow a more open-ended  
4 timeframe?

5 MR. MCKINSEY: Yeah. I think so.

6 MR. ABELSON: Can we get that right now,  
7 get the language right now?

8 MR. MCKINSEY: Yeah. I think you almost  
9 proposed it. During appropriate season --

10 MS. NELSON: I think it's during the  
11 time when activity is expected.

12 MR. KAUFFMAN: Correct. Without --  
13 without talking about calendar dates.

14 MR. MCKINSEY: So instead of appropriate  
15 season, parentheses, spring/summer, it would say  
16 during a time when activity is expected.

17 MS. NELSON: Right. So a warmer day  
18 instead of a cold day.

19 MR. REEDE: The species is likely to be  
20 detected.

21 MR. KAUFFMAN: Or detectable. The  
22 organism is likely to be detectable. I think that  
23 would be adequate.

24 MR. ABELSON: And I guess there --  
25 there would probably need to be something there,

1 John, as determined by the biologist.

2

3 MR. REEDE: Or a qualified biologist  
4 would have --

5 MR. MCKINSEY: Yeah. The sentence would  
6 read a qualified biologist conduct a survey for  
7 the Southwest Pond Turtle during a time when the  
8 species is likely to be detected.

9 MR. ABELSON: Yeah.

10 MR. KAUFFMAN: That would be adequate.

11 MR. REEDE: Is that adequate?

12 Staff's in agreement.

13 HEARING OFFICER SHEAN: Okay.

14 MR. REEDE: It is -- now stipulate to  
15 acceptance of 10 as revised.

16 Officer Shean, that's all we have on  
17 Biology.

18 HEARING OFFICER SHEAN: So we're left  
19 with BIO-9; right?

20 MR. MCKINSEY: BIO-11 I think is one of  
21 the ones you wanted to move to a closure set.

22 HEARING OFFICER SHEAN: Oh, yes. Right.

23 Is there a problem with that?

24 MR. REEDE: No.

25 HEARING OFFICER SHEAN: Is that

1 agreeable?

2 MR. REEDE: Yes.

3 MR. McKINSEY: Yeah, BIO-9 is the only  
4 issue left.

5 MR. HALL: Even though that area's been  
6 plowed.

7 MR. McKINSEY: Well, it's just the --  
8 the right person isn't here to resolve that. We  
9 just can't resolve it today.

10 HEARING OFFICER SHEAN: Let me -- while  
11 the subject of BIO-9 came up. What would one do  
12 by way of mitigation even if you discovered it for  
13 the -- for this SARI line? What -- what would the  
14 recommendation be with respect to -- I mean,  
15 unless you're going to say that the plant is  
16 directly under that side of the bridge which this  
17 thing is going to be hung on, what -- what  
18 mitigation would be desirable for the area where  
19 the SARI line is?

20 I mean, is it -- isn't that one of  
21 your --

22 MR. McKINSEY; Well basically it's  
23 concrete, and then it's plowed.

24 HEARING OFFICER SHEAN: Right.

25 MR. McKINSEY: And so it's hard to

1 understand what -- what we would do.

2 MR. KAUFFMAN: This is Jeff Kauffman,  
3 again. Generally what happens in situations like  
4 this, with regard to botanical resources, and with  
5 some of -- with some of the zoological resources,  
6 as well, is since it's not a listed species  
7 there's some -- some good faith effort in  
8 recovery. And oftentimes that utilizes simply  
9 collecting seed and providing those seeds to  
10 California Native Plant Society at the right time  
11 of the year, and they can then utilize that  
12 resource in their own efforts for the organism.

13 It would not require setting up mini-  
14 preserves along the site, because that  
15 certainly -- again, this is not a listed species.  
16 Maybe what we call seed banking, collecting the  
17 seed heads and then putting those in a deposit or  
18 a seed repository that may be CNPS is running.  
19 Something like that. In essence, that would  
20 recover the organism at that site, in terms of its  
21 reproduction.

22 HEARING OFFICER SHEAN: Okay. But we're  
23 trying to prevent an impact to this while they're  
24 hanging a pipe off a bridge, right? That's --  
25 that's -- the purpose is to find whether the

1 species is there so that if it is there, we can  
2 avoid an impact. And I guess that's -- that's --  
3 so is your response well, the best way to avoid  
4 the impact is to do a seed collection so that at  
5 some later point this one little plant, or how  
6 many ever there are, which was kind of in harm's  
7 way, but may not have been, had an item, a  
8 construction item fall on top of it, I -- because  
9 you said something like that. We just need to  
10 translate the potential that it's there into what  
11 sort of a mitigation or condition would be  
12 appropriate if it is it, to avoid impact.

13 MR. KAUFFMAN: Correct. And like I  
14 suggested, what most likely would happen in this  
15 particular case would be an agreement through the  
16 designated biologist that the seed head would be  
17 collected, and that would go into a CNPS bank.  
18 The plant itself may or -- depending on the  
19 biology of the organism, may or may not be  
20 preserved, or necessarily preserved. Clearly this  
21 is true for annual species, where it's regenerated  
22 every year.

23 MR. MCKINSEY: The problem is we won't  
24 know whether it's there or not, because it's --  
25 it's a flowering plant you need to wait until the

1 spring to ID.

2 HEARING OFFICER SHEAN: Well, I guess --  
3 but if your designated biologist walks the area  
4 parallel to the bridge, you ought to know whether  
5 it's there. I mean, presumably the impact is  
6 something is going to fall on this, because if you  
7 otherwise are hanging everything off the bridge  
8 and nothing falls into the stream bed, you haven't  
9 impacted the plant. Isn't that right? Am I  
10 missing something?

11 MR. KAUFFMAN: I think the only issue --  
12 I think the only issue pertains to -- not the  
13 bridge itself, that's not an issue with this  
14 particular species. Perhaps for the Southwest  
15 Pond Turtle, because it utilizes the open water.  
16 It has to do with -- it's a potential that could  
17 happen with any kind of activity outside the  
18 bridge staging areas, and so forth, on potential  
19 banks or some -- something indirectly impacting  
20 banks that could support the organism. Not -- not  
21 the actual act of suspending the -- the pipe over  
22 the concrete and/or the water.

23 MR. MCKINSEY: Well, see, the entire  
24 crossing is concrete, and the golf bridge is flush  
25 with the top of the banks. And so the actual

1 banks are, you know, terraced, packed hard gravel  
2 for the golf cart area, and where -- and that part  
3 of it is paved.

4 I guess maybe that's an area that, you  
5 know -- what we're having a hard time seeing is  
6 just where we could impact it at. Almost every --  
7 everything there has been processed, and a lot of  
8 it is paved, preventing anything but some real  
9 struggling, you know, non-native weeds to grow.

10 HEARING OFFICER SHEAN: That's the kind  
11 the usual gardener would want to kill. Right.

12 MR. KAUFFMAN: I suspect, in talking  
13 with the botanist early on with this issue, as  
14 Natasha and I have done, I suspect that the Twin  
15 Creek area will not be the issue of question. I  
16 don't suspect that -- the SARI line will not be a  
17 problem. For the same reason Southwest Pond  
18 Turtle, to a large degree.

19 MR. MCKINSEY: That's what I was getting  
20 at --

21 MR. HALL: The issue is --

22 MR. MCKINSEY: -- we need to talk to the  
23 botanist who wrote that portion.

24 HEARING OFFICER SHEAN: Well, we'll let  
25 you guys talk and we'll put on the list as

1           contested. But other than that, we're -- we think  
2           we've done all this stuff on Biology together;  
3           right?

4                     Okay. Then that's the only matter we'll  
5           continue to the 16th. Great.

6                     MR. ABELSON: And just for protocol  
7           purposes, Mr. Shean, if -- if Staff and Applicant  
8           are able to reach some sort of an accommodation,  
9           how is that to be conveyed and how will that be  
10          then handled on the 16th?

11                    HEARING OFFICER SHEAN: Well, first of  
12          all, I encourage you to do that. And secondly,  
13          let's just do that either by e-mail or telephone,  
14          so that if -- we don't have to have live bodies  
15          down here on the 16th.

16                    MR. ABELSON: I was thinking we need  
17          something in the record to you, or --

18                    HEARING OFFICER SHEAN: Yeah. Just a --  
19          since we have our e-mail power project, that'd be  
20          fine, to myself and -- and to the proof list.

21                    MR. ABELSON: Okay.

22                    HEARING OFFICER SHEAN: Given the time  
23          issues.

24                    Okay.

25                    MS. NELSON: Jeff and I would like to

1 admit this is our first prehearing and hearing  
2 setup, so the process is we'll be speaking with  
3 the Applicant, come up with a letter that would  
4 state these are how we've come into agreement,  
5 that would be submitted then to the two  
6 Commissioners?

7 HEARING OFFICER SHEAN: Through Mr.  
8 Reede.

9 MS. NELSON: Through James.

10 MR. REEDE: Right.

11 MS. NELSON: And physical presence on  
12 the 16th in Sacramento --

13 MR. REEDE: No.

14 HEARING OFFICER SHEAN: No. Right now  
15 we are here --

16 MR. REEDE: On the 16th.

17 HEARING OFFICER SHEAN: -- yeah. Same  
18 place, different time, on the 16th. So the way to  
19 avoid being here --

20 MR. REEDE: If that letter is filed --

21 HEARING OFFICER SHEAN: -- is you guys  
22 work something out, communicate it through Mr.  
23 Reede, and then it's all done.

24 MS. NELSON: Thank you.

25 HEARING OFFICER SHEAN: Okay. Thank

1 you. I mean, I think we're --

2 MR. REEDE: Biology is -- thank you for  
3 coming.

4 HEARING OFFICER SHEAN: -- we're real  
5 close.

6 MR. REEDE: May I do one housekeeping  
7 thing?

8 HEARING OFFICER SHEAN: Sure.

9 MR. REEDE: Some other people have come  
10 in since the meeting started. If you would please  
11 sign in on the sign-in sheets in the back, on the  
12 back table, I would appreciate it.

13 Then is there anyone here from the City  
14 of Redlands Public Works Department? City of  
15 Redlands Planning Department? Okay.

16 We can move to Land Use next, Officer  
17 Shean, if after we take a five minute break that  
18 would be acceptable.

19 HEARING OFFICER SHEAN: Okay. I was  
20 going to say, we want to take a stretch here, then  
21 we'll come back and do the Land Use stuff. Is  
22 that --

23 MR. MCKINSEY: Yeah. That'd probably be  
24 good. We have several people here that I know are  
25 here for Land Use.

1 HEARING OFFICER SHEAN: Sure. Let's  
2 take ten. Now all the Land Use people have  
3 learned all the Biology they ever wanted to know.

4 (Off the record.)

5 HEARING OFFICER SHEAN: Okay. Why don't  
6 we go back to Land Use, because we have done some  
7 of it, but not all of it.

8 MR. BERMAN: Good morning. My name is  
9 Michael Berman. I'm here to deal with the Land  
10 Use issues.

11 MR. REEDE: Before we get started, just  
12 some clean-up from the previous meeting, or  
13 workshop, on Land Use issues. There was to be  
14 some language changes that the Applicant was going  
15 to provide to Staff on Friday, that we didn't  
16 receive. And with your permission, Officer Shean,  
17 I'd like to resolve those issues and identify what  
18 we've already completed, so that we can focus on  
19 the issues remaining.

20 HEARING OFFICER SHEAN: Okay. Do you  
21 have something, then, with respect to that?

22 MR. REEDE: At Thursday morning  
23 meeting -- at the Thursday morning meeting,  
24 Applicant had stipulated to our Land Use 3 and 4.  
25 Their Land Use 3 was going to be incorporated into

1 the general conditions. The objects near roadway,  
2 they had stipulated to. And where the questions  
3 remained were the development plan approval -- no,  
4 I'm sorry. The development plans. Their Land 1  
5 had been entered into the conditions, the general  
6 and specific plans had been stipulated to that had  
7 been promoted by Staff, and the development plans  
8 was the remaining issue.

9 Is that correct?

10 MR. MCKINSEY: Yeah. As we understood  
11 it, it was 1 and 3, involving where we had to get  
12 approval from the City of Redlands, or pertaining  
13 to City of Redlands requirements. We wanted to  
14 modify the conditions to reflect what the City of  
15 Redlands -- what they're currently trying to  
16 accomplish and -- and keep their options open, in  
17 other words, to serve the City of Redlands  
18 interests, given that these are City of Redlands  
19 ordinances.

20 And I think what we had actually talked  
21 about in Land 1 --

22 MR. REEDE: Your Land 1 or our Land 1?

23 MR. MCKINSEY: Your Land 1, was adding  
24 the phrase at the end of the opening paragraph,  
25 where it says shall, upon request by the City of

1 Redlands. And then in each of the bulleted  
2 paragraphs, following the City of Redlands with up  
3 to. So it would say --

4 MR. REEDE: Up to a half street.

5 MR. MCKINSEY: So it would be up to a  
6 half street, and up to a half street. So that  
7 what that allows is it allows the City of Redlands  
8 to pursue this so that as they resolve how they  
9 want to develop San Bernardino and Mountainview  
10 Avenues, that we're essentially standing by to  
11 complete our obligations pursuant to those  
12 ordinances.

13 MR. REEDE: Okay.

14 MR. MCKINSEY: On Land 3, we had talked  
15 about the same change, essentially.

16 MR. REEDE: When so requested.

17 MR. MCKINSEY: Upon request by the City  
18 of Redlands, and then up to as they require there,  
19 also. So it would be shall, upon request by the  
20 COR. And then in the next paragraph, there's a  
21 for right before a ten foot wide strip, and right  
22 after that word for, f-o-r, would be up to.

23 (Inaudible asides.)

24 MR. REEDE: Okay. My understanding is  
25 that Mr. Berman has an additional slight

1 modification to Land 1 and 3, and then we'll hear  
2 from the city as far as what their desires are.

3 MR. BERMAN: Okay. Well, what we're  
4 suggesting, instead of saying upon request by the  
5 City of Redlands, we wanted to add a third bullet  
6 item, and this is for Land 1, and then probably do  
7 a similar thing for Land 3. It would say  
8 something to the effect that notwithstanding any  
9 provisions to the contrary in the development  
10 agreement, the Project Owner shall install the  
11 required improvements in accordance with  
12 notification and direction received from the City  
13 of Redlands.

14 MR. ABELSON: Let me just explain what  
15 the -- what the thinking was there, just so you  
16 understand what this is about.

17 There's apparently some -- my name's  
18 David Abelson, by the way, for the record.  
19 There's apparently some concern that in the -- in  
20 the development agreement, that certain  
21 obligations that the city would normally carry out  
22 are basically being waived as a function of the  
23 development agreement itself.

24 On the other hand, in this particular  
25 area Applicant specifically wants to do this work

1       when and as directed by the city, and that's why,  
2       in fact, you asked for the clause I think that you  
3       guys were seeking. And so what we're trying to  
4       do, and forgive the legalese, I apologize if it's  
5       a little formalistic that way, but we're just  
6       trying to make sure that whatever is said in the  
7       development agreement is, in effect, overridden by  
8       this so that we understand this is the  
9       controlling language. And that's the thinking  
10      behind that.

11               MR. MCKINSEY: What was it in the  
12      development agreement, do you know, that -- that  
13      would've blocked -- that this would be overriding?

14               MR. BERMAN: There was some language in  
15      there that said notwithstanding anything else in  
16      the agreement, that the City of Redlands wouldn't  
17      implement any of its development requirements that  
18      aren't specifically listed in the agreement. Page  
19      10.

20               MR. ABELSON: I think at worst, John,  
21      it's probably -- what we're proposing is harmless  
22      surplusage. At best, it's specific to the point  
23      that Michael just made. I mean, it's nothing more  
24      than that.

25               MR. MCKINSEY: And we would still have

1 the text we had just put in here?

2 MR. ABELSON: Up at the top, as the  
3 intro? Yeah, that's fine. We're just -- we would  
4 add this bullet basically in both sections, just  
5 to make sure that to the extent of conflict,  
6 basically this one is controlling.

7 MR. MCKINSEY: Okay. That's not a  
8 problem.

9 MR. REEDE: Okay.

10 MR. MCKINSEY: The -- the part that we  
11 hadn't resolved was the verification language to  
12 accomplish this. But before we really try to  
13 resolve that we also ought to hear from the City  
14 of Redlands about -- and that was why, you know,  
15 we had really asked to do Land Use today.

16 MR. REEDE: Right. Okay. Michael,  
17 while the City of Redlands is speaking, can you  
18 make that sentence --

19 MR. ABELSON: He's -- he's --

20 MR. REEDE: No, the sentence that you  
21 just read, there needs to be a new bullet. If you  
22 could write that clearly, then we'll enter it into  
23 the record. Then they can stipulate to it, once  
24 you've written it.

25 And, sir.

1 MR. JAQUESS: Good morning.

2 HEARING OFFICER SHEAN: Good morning.

3 MR. JAQUESS: John Jaquess, from the  
4 City of Redlands Planning Department.

5 I don't have a speech to give at this  
6 particular point in time. We -- we have had a lot  
7 of communication with Michael Berman and with  
8 Mountainview Power on this issue, and we don't  
9 have any problems with the language that's being  
10 discussed, as long as it's understood that the --  
11 and I think this is something Mountainview Power  
12 indicated to us, was -- was true, that if we run  
13 into any difficulties that we can use the CEC as  
14 our -- as our resolution entity, if there is a  
15 need to do that. I don't anticipate that  
16 circumstance.

17 MR. REEDE: To respond to Mr. Jaquess, I  
18 believe we had the conversation that our  
19 Compliance Unit, specifically Mr. Bob Eller, I  
20 believe he's initiated discussions with the City  
21 of Redlands for the city to be our eyes and ears,  
22 and when there is a compliance problem we would  
23 enforce the city's desires.

24 MR. JAQUESS: We -- I'm aware of a  
25 conversation last week with our building official

1 and Mr. Eller in that --

2 MR. REEDE: Right.

3 MR. JAQUESS: -- in that area.

4 MR. REEDE: Right. And --

5 MR. JAQUESS: And building and safety is  
6 part of the department that I'm in, so we would  
7 coordinate closely.

8 MR. REEDE: Okay. And he was sending a  
9 draft agreement for the city to be our compliance  
10 plan monitor, so those steps are in process to  
11 ensure that what you need is what you get.

12 MR. JAQUESS: That would be great.

13 HEARING OFFICER SHEAN: Is that a  
14 concern of yours, that -- or a significant concern  
15 that somehow the -- the -- if I understand  
16 correctly, both cordial and supportive relations  
17 between the City of Redlands and Mountainview, and  
18 do you anticipate needing the strong arm or the  
19 Energy Commission to --

20 MR. JAQUESS: Not necessarily, no.

21 HEARING OFFICER SHEAN: Okay.

22 MR. JAQUESS: I -- I'm just indicating  
23 that we're unfamiliar with your process.

24 HEARING OFFICER SHEAN: Okay. Sure.

25 And I guess I wonder, too, while we're looking at

1 this -- these conditions, like Land 1 and Land 3,  
2 that deal with either a requirement about widening  
3 Mountainview or planting certain landscaping. I  
4 guess my reaction to your added bullet is it's --  
5 it's sort of telling the City of Redlands that in  
6 a development agreement, that they will -- first  
7 of all, does the development agreement have to be  
8 approved by your City Council?

9 MR. JAQUESS: There is an existing  
10 development agreement that has already been  
11 approved between the City Council and Mountainview  
12 Power.

13 HEARING OFFICER SHEAN: And they're  
14 happy with it, right?

15 MR. JAQUESS: Yes.

16 HEARING OFFICER SHEAN: At least the  
17 majority was happy with it.

18 MR. JAQUESS: Yes.

19 HEARING OFFICER SHEAN: Is -- whether or  
20 not -- we aren't telling the City of Redlands how  
21 to go about enforcing its own general and specific  
22 plans, and that they -- that they should be  
23 allowed, if they're satisfied, to direct their own  
24 relationship with Mountainview as opposed to  
25 our -- our having this notwithstanding thing,

1 which I'd just like to address that. So --

2 MR. ABELSON: No, I -- I think, Mr.  
3 Shean, that's not the -- the intent of that  
4 language at all. To the contrary, as I understand  
5 it, and I would defer to Mr. Berman or to the  
6 gentleman from the city if I've got either my --  
7 any of my facts incorrect, but as I understand it,  
8 everybody's in agreement on the bullets and what  
9 needs to be done, in terms of bullets one and two,  
10 basically, what's being talked about in terms of  
11 the basic work.

12 The question is when it would be done,  
13 and who would -- who would make a decision as to  
14 when it -- when it would be done. And the  
15 Applicant's desire was that rather than specify a  
16 particular time now in the -- as a condition of  
17 certification, that, you know, the sidewalks will  
18 be curbed and guttered, or whatever it is, you  
19 know, within two months, that instead, that may be  
20 something that the City of Redlands actually wants  
21 to be involved in -- in the actual decision as to  
22 when that's done, and exactly how it will be done.

23 And we're fine with that. We just were  
24 concerned that there appeared to be some language  
25 in the development agreement that would have

1 perhaps limited, if you just read the development  
2 agreement, the ability of the City of Redlands to  
3 control that issue in any way, and to make sure  
4 that there's no conflict between the two we're  
5 offering this clause.

6 So I don't think this is imposing  
7 anything on the City of Redlands. I think to the  
8 contrary, it's making sure that they do have the  
9 ability that we understand them to want, and we  
10 understand that the Applicant wants them to have,  
11 as well.

12 MR. JAQUESS: And we are satisfied  
13 with -- with what's being proposed, and have no  
14 reason to believe we won't have an excellent  
15 working relationship with Mountainview Power in  
16 the future.

17 HEARING OFFICER SHEAN: Okay. Well, let  
18 me just indicate on a personal note I'm very happy  
19 to be here. One of my law school roommates is a  
20 long-time City of Redlands resident, and my first  
21 exposure to the city was in 1972, and I've always  
22 enjoyed coming down here, and it's a great town.

23 MR. JAQUESS: Well, we're glad you're  
24 here. We appreciate holding your meeting down  
25 here.

1 HEARING OFFICER SHEAN: You bet. We're  
2 happy to be here. And we'll be back in ten days.

3 MR. JAQUESS: I'm sure we will be, too.

4 HEARING OFFICER SHEAN: We like it so  
5 much we'll be back in ten days.

6 MR. BERMAN: I'd like to express my  
7 thanks to Mr. Jaquess. He spent quite a bit of  
8 time with me, helping me understand the city's  
9 regulations, and been very helpful.

10 So the only other outstanding issue  
11 would be, I guess, the timing for Land 3.

12 MR. MCKINSEY: The timing?

13 MR. BERMAN: Yeah. It's a similar  
14 issue, I thought you had wanted the time in Land 3  
15 in the same way as we had discussed for Land 1.

16 MR. MCKINSEY: Yeah. Both Land 1 and  
17 Land 3. We would still need to figure out the  
18 right verification language to accomplish the  
19 enforcement in the right way. Right now it reads  
20 that we have to submit the 10 foot and the 25 foot  
21 under Land 3 within 60 days prior to construction.  
22 And we had discussed that prior to construction we  
23 need to submit that the City of Redlands concurs  
24 with our -- our overall development plan.

25 And then another possibility is we could

1 be obligated within 30 days of the receipt of a  
2 request by the City of Redlands to forward that to  
3 the Energy Commission, and to -- to comply with  
4 their request by executing plans and performing  
5 the changes.

6 MR. BERMAN: And that would be for Land  
7 1, too, because there's a similar verification --

8 MR. MCKINSEY: Yeah, for Land 1 and Land  
9 3. Correct.

10 MR. BERMAN: Right.

11 MR. ABELSON: And both of those are  
12 verification timetable issues?

13 MR. MCKINSEY: Yeah.

14 MR. BERMAN: Do you have that written  
15 out? Let me get very word first.

16 MR. MCKINSEY: I just started writing  
17 one of them now, as we were talking.

18 MR. BERMAN: Could you give it to me in  
19 some written form, because I didn't get the words.

20 MR. MCKINSEY: Yeah.

21 MR. ABELSON: Mr. Shean, you had  
22 mentioned before, you're anticipating a workshop  
23 on verification --

24 HEARING OFFICER SHEAN: You bet.

25 MR. ABELSON: -- so while it would

1 probably be good for Staff and the Applicant to  
2 get their basic agreement down, I guess the way --  
3 the way it's actually going to get codified will  
4 be a function of that workshop.

5 HEARING OFFICER SHEAN: I understand.  
6 This is so -- the intent here is to key it to the  
7 request for the City of Redlands in some  
8 reasonable period so that it's produced, and we  
9 move forward on it. I mean, that's --

10 MR. REEDE: Mr. Berman, if you could  
11 read the new bullets, please.

12 MR. BERMAN: Okay. The new bullet would  
13 say on -- for Land 1, we'd add a third bullet. It  
14 would say notwithstanding any provision to the  
15 contrary in the development agreement, the Project  
16 owner shall install the required improvements in  
17 accordance with the notification and direction  
18 received from the City of Redlands.

19 One note about that is we want to get  
20 the exact correct term for the development  
21 agreement. It is right now, the one copy I have  
22 is called a development agreement, but I want to  
23 add the date right after so it's absolutely  
24 crystal clear.

25 MR. ABELSON: And that would be the same

1 bullet for number 3, then, would be added?

2 MR. BERMAN: The same bullet would occur  
3 for number 3.

4 MR. REEDE: Okay. Thank you, Mr.  
5 Berman.

6 MR. BERMAN: There were a couple  
7 issues --

8 MR. REEDE: Oh, okay.

9 MR. BERMAN: -- just to clean up from  
10 last time, and I wasn't here, and there were a  
11 couple issues raised.

12 One of them was on Land 5, the item send  
13 someone ten copies of the design review, the City  
14 of Rialto. It should've said the City of Colton.  
15 This is the City of Colton issue. So I would  
16 revise the City of Rialto to the City of Colton.

17 And finally, someone had asked what  
18 Public Resources Code Section 25525, that language  
19 is from the California state law regarding the  
20 duty of the California Energy Commission in its  
21 review of these types of applications. And I have  
22 more language on that if you needed it.

23 HEARING OFFICER SHEAN: Well, I think we  
24 wanted to know why -- why it's referred to in each  
25 of these, since my -- my general knowledge of it

1 is that it's the override provision.

2 MR. BERMAN: You're correct. It is the  
3 overriding legislation. I was following a model,  
4 someone else had done the same thing, and it  
5 seemed to make sense to me, so I put it in there.

6 HEARING OFFICER SHEAN: Okay. Well, let  
7 me suggest, since it appears that they are  
8 otherwise complying with, in this case the City of  
9 Redlands general plan, or the specific plan, or  
10 these other things from Rancho Cucamonga or  
11 Colton, that --

12 MR. REEDE: That we strike references to  
13 PRC.

14 HEARING OFFICER SHEAN: -- that we  
15 strike -- strike the references, because it's only  
16 really appropriate in the event that there is a  
17 non-compliance and we're -- and we have made  
18 certain findings.

19 MR. ABELSON: Excuse me, Mr. Shean. The  
20 code section you're referencing again is which  
21 one?

22 HEARING OFFICER SHEAN: 25525.

23 MR. ABELSON: Let me just take -- could  
24 I just take one second and look at that.

25 MR. MCKINSEY: And I've got some

1 verification language that we may be able to  
2 establish with you, or with him.

3 HEARING OFFICER SHEAN: Okay.

4 MR. REEDE: Mr. McKinsey.

5 MR. MCKINSEY: This would be -- at least  
6 I think it would be replacement verification  
7 language for Land 1.

8 Within 60 days prior to start of  
9 construction of Mountainview Power Plant, the  
10 Project Owner shall submit a letter indicating  
11 concurrence with project construction plans by the  
12 City of Redlands. Within 30 days of receiving a  
13 request by the City of Redlands to implement the  
14 improvements outlined in this condition, the  
15 Project owner shall forward such request to the  
16 CPM.

17 I think that would embody the primary  
18 concern of the verification, which is that it  
19 enables the Energy Commission to so monitor the --  
20 the implementation of this condition.

21 Now, the Land 1 also has a request  
22 that -- I think it would entirely replace the  
23 verification in Land 1. In Land 3, the second  
24 paragraph could be partly retained, where it reads  
25 the Project Owner shall construct landscaping, and

1       it should say as requested by the City of  
2       Redlands. And then the rest of it would be fine.  
3       Replacing illustrated in the approved landscaping  
4       plan. That means that once such changes were  
5       implemented for landscaping, that from that point  
6       on you would have to then submit proof annually  
7       that you're maintaining it.

8                 So I'm going to submit those as a  
9       proposal. I've got -- I'll give this to you. We  
10      can copy it. That's, I mean --

11                MR. REEDE: The administration office is  
12      doing copying for us.

13                MR. MCKINSEY: Okay.

14                MR. REEDE: So at this point in time,  
15      Officer Shean, with Land Use conditions agreed  
16      upon by Staff and stipulated by the Applicant, I  
17      would deem this Land Use issue as uncontested, and  
18      accepted by declaration, or testimony by  
19      declaration during the hearing.

20                HEARING OFFICER SHEAN: Okay. That's  
21      fine with me. Fine with the Applicant?

22                MR. MCKINSEY: Yes.

23                HEARING OFFICER SHEAN: Okay.

24                MR. REEDE: Just to clean up the matter  
25      of Biology. With the exception of Biological

1 Condition Number 9, I would ask that all issues  
2 with reference to Biological Resources be deemed  
3 uncontested, and testimony taken by declaration.

4 HEARING OFFICER SHEAN: Correct.

5 MR. MCKINSEY: Concur.

6 HEARING OFFICER SHEAN: Applicant  
7 concurs.

8 MR. REEDE: Okay. Thank you, Mr.

9 Berman.

10 Mr. Flores --

11 MR. BERMAN: Just one --

12 HEARING OFFICER SHEAN: One more.

13 MR. REEDE: Oh.

14 MR. BERMAN: I was also -- I recall now  
15 that there was some concern expressed about the  
16 timing of another one of the mitigation, and I  
17 just want to check that you've got this covered  
18 now.

19 MR. MCKINSEY: Yeah. We had expressed  
20 concerns about something I think we were going to  
21 try and resolve in a workshop on compliance, after  
22 the evidentiary hearings, regarding being able to  
23 implement -- I think this is what you're referring  
24 to -- the portions appropriate as the construction  
25 for the pipeline plays out, you know, to be able

1 to organize it in a logical way.

2 MR. REEDE: Oh, to have the rolling --

3 MR. McKINSEY: Yeah.

4 MR. BERMAN: Now, this was in regard --  
5 with regard to Land 2.

6 HEARING OFFICER SHEAN: Land 2. An  
7 explanation.

8 MR. BERMAN: And you had asked for some  
9 clarification about when this would be  
10 implemented, and my answer is during operation of  
11 the project. So that's okay with you to change  
12 it, correct, to --

13 MR. McKINSEY: Yeah. Where do you  
14 propose that at, after the 25525?

15 MR. BERMAN: Yeah, right after the word  
16 outdoors, I propose to add during project  
17 operations.

18 MR. McKINSEY: Right.

19 MR. REEDE: You're sure that items  
20 stored outdoors during project operations --

21 MR. McKINSEY: That's fine.

22 MR. BERMAN: Oh, let's put it after  
23 roadway instead.

24 MR. REEDE: During project operations do  
25 not exceed six feet in height.

1                   MR. BERMAN: Yeah. And was there  
2 another issue now that --

3                   HEARING OFFICER SHEAN: No. That's it.

4                   MR. REEDE: Thank you, Mr. Berman, Mr.  
5 Flores.

6                   MR. MCKINSEY: I think we were scheduled  
7 to do Visual. I wanted to indicate that the only  
8 issue we have with Cultural is I think what is a  
9 reference to the City of San Jose in one  
10 condition.

11                   (Laughter.)

12                   MR. MCKINSEY: Other than that, we don't  
13 have any Cultural issues, and I don't want to keep  
14 the Cultural folks from the Energy Commission here  
15 any longer than they have to be, especially all  
16 the way through lunch. Unless they have some  
17 other issues.

18                   MS. TORRES: Are you trying to say you  
19 don't want to send your reports to San Jose? Of  
20 course, we'll fix that.

21                   MR. MCKINSEY: So --

22                   MR. REEDE: Well, there appears to be --  
23 well then are you stipulating to all the  
24 conditions?

25                   MR. MCKINSEY: Yes.

1 MR. REEDE: Except for Cultural Number

2 --

3 HEARING OFFICER SHEAN: I'm sorry. If  
4 you're going to address us, then we need to have  
5 you come up. Let's hear first from the Applicant.

6 MR. REEDE: Bear with us. We'll have  
7 lunch soon. And we can resolve this fairly  
8 quickly, then.

9 MR. MCKINSEY: Cultural Number 14 has a  
10 reference to the City of San Jose.

11 MR. REEDE: We'll stipulate to the  
12 change to the City of Redlands.

13 MR. MCKINSEY: Well, it --

14 MS. TORRES: No, I don't think --

15 MR. MCKINSEY: -- probably be the  
16 county, I think, or --

17 MS. TORRES: -- I don't think the city  
18 or the county down here necessarily wanted to  
19 receive copies of all -- any Cultural Resources  
20 reports. San Jose, in a previous case, had  
21 specifically requested. And -- I'm Dorothy  
22 Torres. I'm sorry.

23 MR. MCKINSEY: So we could probably  
24 delete that last, and a person employed by the  
25 City of San Jose.

1 MS. TORRES: Sure.

2 MR. MCKINSEY: So it would read, the  
3 appropriate regional archeological information  
4 centers, period.

5 MS. TORRES: Yes.

6 MR. REEDE: And in this particular case,  
7 we're sitting in it.

8 MS. TORRES: And just for me, would you  
9 clarify, please. You're stipulating to my  
10 language in the SA?

11 MR. MCKINSEY: That's correct.

12 MS. TORRES: Not your condition. Okay.  
13 That's great.

14 MR. REEDE: If you wanted to catch the  
15 earlier flight and she can drop you off, that's  
16 fine.

17 MS. TORRES: I can't -- David's my ride  
18 home.

19 HEARING OFFICER SHEAN: Okay. So their  
20 1 through 16, with that change. Is that -- is  
21 that correct? Their 1 through 16, with that  
22 change, is acceptable to you?

23 MS. TORRES: Yes.

24 MR. MCKINSEY: Yeah. Exactly.

25 HEARING OFFICER SHEAN: Okay.

1           MR. REEDE: With those changes, Officer  
2 Shean -- you kind of caught me off guard. All  
3 Cultural Resources issues are uncontested, and I  
4 would ask that testimony be by declaration.

5           HEARING OFFICER SHEAN: Okay. Applicant  
6 concurs?

7           MR. MCKINSEY: Concur.

8           HEARING OFFICER SHEAN: All right.  
9 We'll take Cultural Resources by declaration.

10          MR. REEDE: With the corrected  
11 locations.

12          HEARING OFFICER SHEAN: Yes, with the  
13 change in Cultural 14.

14          MR. REEDE: The next issue is Visual  
15 Resources, and we have a couple of individuals to  
16 address that area. We have Michael Clayton,  
17 representing Staff. And I apologize to --

18          MS. SNELGROVE: Maureen Snelgrove.

19          MR. REEDE: Maureen Snelgrove, from the  
20 Department of Public Works, Santa Ana River  
21 Corridor Trail Project Manager.

22          MR. CLAYTON: My name is Michael  
23 Clayton.

24          HEARING OFFICER SHEAN: Okay. Why don't  
25 we run through these, then.

1           MR. MCKINSEY: The primary issues that I  
2 think we would need to discuss are the -- the  
3 northern boundary of the property and its  
4 interface with the -- with the Santa Ana Regional  
5 Trail and the interests that Maureen is here to  
6 talk about regarding the trail and its users. And  
7 then I think that the Staff had referenced a  
8 planting along the golf course across the river,  
9 which is another area we need to discuss.

10           Those are the two primary, I think,  
11 areas where we may -- we may be apart or need to  
12 resolve our understandings.

13           HEARING OFFICER SHEAN: Okay. So that's  
14 largely out of Visual 4?

15           MR. MCKINSEY: Visual 4 is the  
16 landscaping screening condition. However, the --  
17 some of the letter -- some of the information that  
18 the Department of Public Works has indicated goes  
19 beyond Visual. Some of it may even go beyond --  
20 even the Visual ones may go beyond 4, for  
21 instance. I'm not sure. It's broader in scope  
22 than -- than simply the -- the landscaping issue  
23 on the border, the northern border of the  
24 property. It may not all be Visual, but -- but I  
25 think at least it's the context we can probably

1 get it in, and try to resolve it.

2 HEARING OFFICER SHEAN: Okay. Is this a

3 --

4 MR. MCKINSEY: This is a copy of a  
5 letter that I just got.

6 HEARING OFFICER SHEAN: That we just --

7 MR. REEDE: Yes, I did get a copy of it.

8 HEARING OFFICER SHEAN: Okay. Everyone  
9 but me. So I -- I mean, I have no understanding  
10 what you're talking about.

11 MR. REEDE: Okay.

12 HEARING OFFICER SHEAN: I mean, I can  
13 just --

14 MR. CLAYTON: Could I just interrupt for  
15 one -- one minute. Is it possible to go through  
16 the VIS-1 through 3 first, so we can just kind of  
17 resolve that and stay in sequence? Because there  
18 are just some minor -- minor points I would like  
19 to clarify, and then we can address VIS-4, which  
20 is the more comprehensive one.

21 HEARING OFFICER SHEAN: Okay.

22 MR. CLAYTON: There was -- in the  
23 Applicant's stipulated conditions, there were a  
24 couple of items that were not included that were  
25 included in in Staff's conditions. And I just

1 wanted to clarify the reason for that. And these  
2 are items which I think are important to be -- to  
3 be kept in.

4 I'm specifically referring to Staff's  
5 discussion of protocol, and it's the second and  
6 third bullets under that protocol list, which  
7 requests a list of each major project structure,  
8 building, and tank, specifying the colors proposed  
9 for them. And then also the third bullet, which  
10 is documentation that a non-reflective finish will  
11 be used on all project elements visible to the  
12 public.

13 Those two points, those specific two  
14 points don't appear to be included in your  
15 conditions, but I think they probably should be.

16 MR. MCKINSEY: Right. We're -- we  
17 stipulate to those.

18 MR. CLAYTON: Okay.

19 HEARING OFFICER SHEAN: That's okay,  
20 then.

21 MR. CLAYTON: Under VIS-2, we saw -- saw  
22 no significant issues with a difference there.

23 Under VIS-3, the -- there are two  
24 things. First of all, on the Applicant's  
25 condition, in the statement of VIS-3, that

1 sentence ends with I think an incorrect word,  
2 which says that viewing areas and illumination of  
3 the facility at night time sky is numbered, and I  
4 think that should read, minimized.

5 HEARING OFFICER SHEAN: I'm sorry.

6 Where are you, again?

7 MR. CLAYTON: I'm on VIS-3, the -- the  
8 Applicant's -- the Applicant's stipulated  
9 conditions, VIS-3, the VIS-3 description. That  
10 sentence, Project Owner shall design and install  
11 all new lighting so that it is not visible from  
12 public viewing areas and illumination to the  
13 vicinity and night time sky is numbered. That  
14 should say minimized.

15 HEARING OFFICER SHEAN: Well, we'll try  
16 to reconcile between their VIS-3 and --

17 MR. CLAYTON: And what Staff --

18 MR. MCKINSEY: Yeah, we agree. In fact,  
19 for some reason the version I have has minimized.

20 MR. HALL: Yeah, mine says minimized.

21 MR. MCKINSEY: But I think had that on  
22 the errata list, so there must be something else.  
23 But we agree.

24 MR. CLAYTON: Okay.

25 MR. MCKINSEY: So minimize should

1 replace numbered.

2 HEARING OFFICER SHEAN: So is their VIS-  
3 3 okay with you?

4 MR. MCKINSEY: Yes.

5 HEARING OFFICER SHEAN: Okay.

6 MR. CLAYTON: And then under -- excuse  
7 me. And also under VIS-3, under verification, the  
8 Applicant is specifying at least 60 days before  
9 ordering exterior lighting the Project Owner shall  
10 provide lighting plan to the CPM. And in Staff's  
11 condition, we specify 90 days.

12 MR. MCKINSEY: That's fine.

13 MR. CLAYTON: Okay. Then I think  
14 we're -- we agree on this 3.

15 MR. MCKINSEY: And actually we have one  
16 other. The -- the complaint form that I guess  
17 relates to VIS-3, it's on page 273, references  
18 Blythe.

19 HEARING OFFICER SHEAN: Yeah.

20 MR. MCKINSEY: That's pretty minor, but  
21 it is something that should reference us, and it  
22 should be San Bernardino County.

23 MR. REEDE: One additional thing to our  
24 Visual 3, the Applicant had included -- had  
25 included the City of Redlands Planning Department,

1 and we agreed that they should be included in the  
2 review of the lighting plan in our Staff  
3 condition.

4 MR. MCKINSEY: That's fine.

5 HEARING OFFICER SHEAN: Okay. And  
6 again, the turbine roll -- is in an attempt to set  
7 this relatively early in the schedule, but it's  
8 not -- you're not tied to -- I mean, the -- why  
9 don't I ask you guys to express it. Tying this to  
10 the turbine roll is for what purpose? Or what's  
11 your general goal with respect to the timing of  
12 VIS-3?

13 MR. CLAYTON: Well, in terms of  
14 reference to turbine roll, I mean, that's just a  
15 reference, that's previous standard language that  
16 was used. But it's -- it's basically --

17 HEARING OFFICER SHEAN: Okay.

18 MR. CLAYTON: -- in terms of project  
19 start-up.

20 MR. HALL: Now, one -- one thing I'd say  
21 is the same comment we had on the other. The  
22 project, 500 megawatt blocks are going in phases,  
23 and so we may not have all the lighting completed  
24 on the second phase when we roll the first phase.  
25 But the design will be complete. You know,

1 this -- this project's not all constructed to  
2 start it simultaneously.

3 MR. CLAYTON: Right.

4 MR. HALL: So there has to be some  
5 understanding of timing in that context.

6 HEARING OFFICER SHEAN: Let's see. I'm  
7 just trying to see whether we have that in there.

8 MR. MCKINSEY: The turbine roll shows up  
9 in 2 and 4, and 5.

10 MR. HALL: And 3.

11 MR. MCKINSEY: Is it in 3?

12 MR. HALL: Yeah. In 3.

13 MR. MCKINSEY: Oh, it's on the pumping  
14 line.

15 MR. REEDE: So the language isn't  
16 necessarily -- the language isn't really necessary  
17 prior to turbine roll. Is that what you're  
18 saying?

19 MR. HALL: Well, what I'm saying is --  
20 is that if you look at the construction of the  
21 first 500 megawatt block, which is two gas  
22 turbines and a steam turbine, commencing prior to  
23 the construction of the second block, there is a  
24 lead lag situation there. And in the actual  
25 construction process, the first block may be under

1 testing while the second block is still under  
2 construction. And so to say that the lighting is  
3 designed and installed --

4 MR. REEDE: Might not be appropriate.

5 MR. HALL: -- may not be the case.

6 MR. MCKINSEY: Design would be accurate.

7 MR. HALL: Design would be accurate, but  
8 installed may not be accurate. Just because of  
9 the size of the project.

10 HEARING OFFICER SHEAN: Okay. Now, this  
11 is -- that point, however, points up the need for  
12 this project description thing to get completed to  
13 us, because I think there was even a question that  
14 the water people had with part of their portion of  
15 the Staff Assessment included materials that you  
16 pointed out had been abandoned. So if they're not  
17 -- I mean, we don't want the Proposed Decision to  
18 be -- to be about a project that isn't what you're  
19 proposing.

20 MR. MCKINSEY: Well, this -- I agree.  
21 However, here it's also kind of, you know, there's  
22 a lot of cases where we have an opportunity to  
23 improve on traditional language --

24 HEARING OFFICER SHEAN: Right.

25 MR. MCKINSEY: -- to make it work a

1 little better for construction methodologies. And  
2 this is a good example of that. I think this  
3 language has been around. But there -- it's --  
4 I'm not sure. I think we might be able to remove  
5 the installed portion, if the design is -- is  
6 designed such that they're not visible, that  
7 should be what would be fine, wouldn't it?

8 MR. CLAYTON: I don't see a problem with  
9 that. If the design is approved.

10 MR. REEDE: We're on number what, 3?

11 HEARING OFFICER SHEAN: Three.

12 MR. MCKINSEY: So it would be -- VIS-3  
13 would read shall design all lighting, deleting and  
14 install.

15 Now, there's still the timing issue of  
16 turbine roll, and what key event that is.

17 MR. CLAYTON: There's also a -- in VIS-3  
18 -- well, never mind. That's fine.

19 Now, is there -- is there a  
20 clarification needed in VIS-2, with regard to --  
21 where the reference to first turbine roll. And  
22 I'm speaking to the verification under VIS-2.

23 MR. MCKINSEY: No, because it's only  
24 specifications.

25 MR. CLAYTON: Okay. All right. So

1 under VIS-3, we're deleting the words and install,  
2 under the VIS-3 statement.

3 MR. MCKINSEY: Right. In the first  
4 line.

5 MR. CLAYTON: And we're also adding the  
6 City of Redlands to the protocol statement.

7 MR. MCKINSEY: Yeah. VIS-1 may have the  
8 same timing issue. As it reads, it says prior to  
9 first turbine roll the Project Owner shall treat  
10 the project structures, buildings and tanks in  
11 appropriate colors. The next sentence goes on to  
12 talk about a treatment plan.

13 MR. HALL: You could resolve that by  
14 saying prior to the turbine roll of each phase,  
15 because each phase is kind of its own animal.

16 MR. CLAYTON: That's fine.

17 MR. MCKINSEY: Well, verification  
18 doesn't actually refer to turbine roll, too. It  
19 may be --

20 MR. REEDE: Each of the verifications  
21 refer to turbine roll, specifically 2, 3, and 4.

22 MR. MCKINSEY: Yeah, 1 doesn't refer --  
23 in the verification section, it's just prior to  
24 ordering we have to submit a proposed plan. But  
25 it doesn't actually refer to -- to a linkage for

1 treating.

2 HEARING OFFICER SHEAN: Well, first of  
3 all, if you leave that first sentence as it is, it  
4 suggests that prior to the first turbine roll  
5 you'll treat this to minimize visual intrusion.  
6 Well, it almost suggests that after turbine roll  
7 you'd do something different. So it's not what  
8 was intended by the structure of the language.  
9 And we'll play with it, because I think we've  
10 got -- I mean, the intention here is that you  
11 shall treat the project so that at all times  
12 structures, buildings, tanks are in appropriate  
13 colors and hues that minimize visual intrusion.

14 MR. MCKINSEY: Yeah. Maybe removing the  
15 reference to first turbine roll in VIS-1 would  
16 accomplish that. It still obligates the Project  
17 Owner to do those things. And then the treatment  
18 plan is what's the primary item in the  
19 verification path that ensures that that's there.

20 HEARING OFFICER SHEAN: Right.

21 MR. MCKINSEY: I don't know how you feel  
22 about that.

23 MR. CLAYTON: I don't have a particular  
24 problem with that.

25 HEARING OFFICER SHEAN: Okay. The

1 timing is taken care of, the 60 days prior to  
2 ordering.

3 MR. CLAYTON: In the verification we  
4 have the 60 day element there.

5 HEARING OFFICER SHEAN: Right.

6 MR. CLAYTON: That -- I think that  
7 covers it.

8 MR. MCKINSEY: So then VIS-1 would read,  
9 the Project Owner shall treat the project  
10 structures, buildings, and tanks in appropriate  
11 colors or hues that minimize the visual intrusion  
12 and contrast by blending with the surrounding  
13 landscape, and shall treat those items in a non-  
14 reflective finish.

15 Then it goes on to require the plan, and  
16 the plan is part of the thing along with the  
17 ordering dates.

18 MR. CLAYTON: I would agree with that.

19 HEARING OFFICER SHEAN: And how about  
20 the -- let's see, where did we add -- in VIS-3,  
21 was it, in the protocol? Was that what you'd --  
22 because I notice -- I picked up that difference.  
23 Do you want it to read Project Owner shall develop  
24 and submit a lighting plan for the project to the  
25 CPM and the City of Redlands for -- for review and

1 approval. Is that what you're talking about, Mr.  
2 Reede?

3 MR. REEDE: Yes.

4 HEARING OFFICER SHEAN: Does that look  
5 -- does that -- that more closely comports with  
6 yours.

7 MR. MCKINSEY: Right.

8 MR. CLAYTON: I think under VIS-3 that  
9 we have kept in the -- we've kept in the  
10 reference, in terms of the VIS-3 statement, we've  
11 kept in the reference to prior to first turbine  
12 roll, but we deleted the and install --

13 MR. REEDE: Correct.

14 MR. CLAYTON: -- language for  
15 clarification.

16 HEARING OFFICER SHEAN: And again, it  
17 may be that when we go back through some of these  
18 verifications, we'll see that the -- the turbine  
19 roll is merely a marker, a proxy for something  
20 else. And, but that we can accomplish the intent  
21 of the condition maybe by a different proxy,  
22 because we're trying to -- I don't know how many  
23 turbine rolls we have in the total list of events  
24 or triggers, and we're trying to consolidate  
25 those.

1           MR. REEDE: Mr. Shean, we discovered  
2 that there was a mis-numbering of the Visual  
3 conditions. What's shown as Visual Condition 6 is  
4 actually Visual Condition 5.

5           HEARING OFFICER SHEAN: Okay. That's  
6 not a big deal.

7           MR. REEDE: Okay. Well, we needed to  
8 get rid of it, because there's really no  
9 discussion on it.

10           However, in Visual Condition 4, the  
11 Applicant has included provisions for the Santa  
12 Ana Regional --

13           MS. SNELGROVE: River Trail.

14           MR. REEDE: -- River Trail. We would  
15 propose that where it says, at the beginning, the  
16 first sentence of Visual 4, the Project Owner  
17 shall provide landscaping and screening  
18 satisfactory to San Bernardino County Department  
19 of Public Works, Santa Ana River Trail, and the  
20 City of Redlands. Instead of and/or the City of  
21 Redlands.

22           And down in the protocol, we would also  
23 add the Santa Ana River Trail right after the City  
24 of Redlands. Well, San Bernardino County,  
25 Department of Public Works, Santa Ana River Trail,

1 immediately after the City of Redlands and prior  
2 to the Palm Meadows Golf Course.

3 MR. CLAYTON: There are a couple of  
4 other differences between the Applicant's proposed  
5 conditions and -- and what Staff has.

6 The original statement of the VIS-4  
7 condition is -- was somewhat general, because at  
8 that time we did not have input from San  
9 Bernardino County, which would administer the --  
10 the Santa Ana River Trail in this vicinity.

11 The -- there are two areas of concern  
12 with regards to the statement, the Applicant's  
13 statement of VIS-4. Actually, possibly three.  
14 But one of the primary concerns that Staff has is  
15 the specification to the northern boundaries of  
16 the property. Specifically, it's stated under --  
17 in the Applicant's condition that the screen shall  
18 be created along the northern boundaries of the  
19 property. And I think this has -- this sort of  
20 ties in with sort of an overall conceptual concern  
21 that we have in terms of the extent of the  
22 mitigation necessary.

23 It's Staff's opinion that -- that  
24 mitigation along the northern boundary of the  
25 property may not be adequate to -- to completely

1 mitigate the impact, the visual impact on the  
2 trail. The concern is whether or not the  
3 plantings need to extend both east and west of the  
4 property boundary to minimize the impacts to users  
5 of the trail. It's conceivable that there will be  
6 viewing access, access corridors to the site both  
7 east and west of the property boundary, northern  
8 property boundary. And the simulations that we've  
9 seen and the plan that we have previously seen  
10 indicates that the plantings would occur along the  
11 northern boundary of the property site.

12 So we have a -- this is an issue where,  
13 and fortunately we have the county here today,  
14 representative that can possibly speak to that.  
15 That's one issue in terms of the overall extent  
16 necessary for the plantings.

17 The other issue had to do with species  
18 composition. We have recently -- there were  
19 comments provided by the Biological -- CEC  
20 Biological Staff. The Applicant has responded to  
21 those, and I think that very likely eliminates the  
22 concern with regards to species composition,  
23 although here again, we'd like to have the county  
24 comment on the species composition, the proposed  
25 species composition.

1           Then the third element of VIS-4 has to  
2           do with the Palm Meadows Golf Course, which is not  
3           referenced in the -- in the Applicant's condition,  
4           but which -- for which we have identified as a  
5           significant visual impact. And the concern there  
6           is we're in an area where we would -- we would  
7           need offsite mitigation to be able to deal with  
8           that impact, and there is some concern that has  
9           been expressed by the Applicant that the  
10          feasibility of that mitigation may be in question.

11                 We don't have any documentation, Staff  
12          doesn't have any documentation at this point in  
13          time to be able to verify whether or not that  
14          mitigation is feasible or not. But to the extent  
15          that that significant visual impact on the golf --  
16          on the Palm Meadows Golf Course can be mitigated,  
17          it needs to be mitigated on the north side of the  
18          river wash, in close proximity to the golf course.

19                 So those are -- those are sort of three  
20          of the overall issues that we probably need to  
21          discuss here a little bit, and then also to get  
22          the county's input on.

23                 MR. REEDE: Mr. Shean, this is the issue  
24          that we were discussing prior to the start of the  
25          meeting, about how far mitigation efforts would

1 extend east and west along the river trail. And I  
2 believe I drew a -- or you drew a green line on  
3 your -- on your copy of the map. And I think it's  
4 appropriate at this time to have the discussion  
5 with the county, now that Michael has raised the  
6 subject about a potential need for offsite  
7 mitigation to reduce this to something to less  
8 than significant. Or less than potentially  
9 significant.

10 And I -- I think that given the  
11 information that Maureen will be addressing, and  
12 Michael's follow-up comments to that, that it can  
13 be resolved in a timely fashion.

14 HEARING OFFICER SHEAN: Okay. I guess  
15 my point this morning was whether you referred to  
16 the Staff's AFC document or the -- I beg your  
17 pardon, the Applicant's AFC document or the  
18 Staff's Assessment Visual Resources Figure 1.  
19 There's nothing which depicts in an overhead view,  
20 or something like that, the location of the trail  
21 along the Santa Ana River, and the location of the  
22 proposed mitigation that's shown in the mitigation  
23 plan drawings. Either the simulated photographs  
24 or your Figure 19, which is the -- essentially the  
25 planting scheme.

1                   Nor, as you looked at the view from the  
2                   observation point in the golf course, was there an  
3                   indication where any visual screening, if it were  
4                   to occur at all, would be placed along the  
5                   northern side.

6                   So one of the deficiencies, at least  
7                   from the Committee view, for the record, is we  
8                   don't have anything that's reproducible for  
9                   purposes of the decision that would aid us in  
10                  that. Now, I understand, based upon what's been  
11                  discussed here, that there -- there might be an  
12                  issue, and if we were drawing the line that  
13                  constitutes the visual screening on the south side  
14                  of the river, and south of the trail, how long  
15                  that needs to be to effectively screen the  
16                  facility, right? That's one of the -- one of the  
17                  issues.

18                  And I suspect that the question is,  
19                  well, whose property is it, so that even if we  
20                  agreed, there would be a question of how does it  
21                  get in there and who -- who does the work, and  
22                  who's absolved from liability, and other issues  
23                  like that. And then is there -- is there an end  
24                  point, or does this go on basically because of  
25                  somebody's desire to plant the end plus one tree.

1                   Okay. And I guess also, when you talked  
2                   about feasibility on Palm Meadows, am I -- what I  
3                   sort of have -- driving in the same direction,  
4                   that it's a question of it's someone else's  
5                   property that they -- that they would be  
6                   installing the screening on, and whether or not  
7                   Palm Meadows wanted this, and if so, what they  
8                   wanted and where they wanted it, and how --

9                   MR. HALL: There's also a railroad  
10                  right-of-way that goes pretty much in the area  
11                  that is open, because it is a railroad right-of-  
12                  way. And to get permission to plant trees across  
13                  a railroad right-of-way may become somewhat  
14                  difficult.

15                 HEARING OFFICER SHEAN: Okay. Is that  
16                  the -- well, that may be that line -- is there a  
17                  railroad bridge across the --

18                 MR. MCKINSEY: Yes, but it's -- it's  
19                  abandoned.

20                 HEARING OFFICER SHEAN: Okay. And so  
21                  that's that north/south line on -- on these maps;  
22                  right?

23                 MR. HALL: But it's -- it's right in  
24                  line with the visual point taken from Palm Meadows  
25                  Golf Course.

1 HEARING OFFICER SHEAN: Okay.

2 MR. CLAYTON: We'd like to have the  
3 county --

4 MS. SNELGROVE: Can I make a --

5 MR. CLAYTON: -- make a couple of  
6 comments.

7 MS. SNELGROVE: -- a comment. We have  
8 just submitted a grant proposal, and we have the  
9 support of the San Bernardino International  
10 Airport for a trail segment from Waterman Avenue  
11 to Alabama Street. This entails east of  
12 Tippecanoe, renovation of the abandoned railroad,  
13 staging area on the north side of the river near  
14 Palm Meadows, where we will be working with the  
15 people who will be designing entering of the --  
16 the airport as they reconfigure. We're also  
17 looking at doing wetland restoration on the north  
18 side, and possibly the south side of the river.

19 If that answers some of your questions  
20 as to --

21 HEARING OFFICER SHEAN: Well, so it  
22 sounds as if you have something much more  
23 grandiose in mind, in which this would be a  
24 small -- a smaller element.

25 MS. SNELGROVE: Yes. Right. And that's

1 part of our master plan, that is in our master  
2 plan.

3 HEARING OFFICER SHEAN: Okay. And so --

4 MS. SNELGROVE: Maureen Snelgrove.

5 Thank you.

6 HEARING OFFICER SHEAN: And so how would  
7 this all fit in, then, with -- I guess -- so is  
8 the mitigation that Staff is suggesting for the  
9 golf course --

10 MS. SNELGROVE: That would be part of  
11 the -- the airport. Mitigation for the golf  
12 course isn't part of this, as far as I know, not  
13 part of the trail plan.

14 HEARING OFFICER SHEAN: Okay. And the  
15 restoration, did I hear you to say -- you didn't  
16 say restoration of the bridge, but you said  
17 restoration of the --

18 MS. SNELGROVE: No. We are -- we are  
19 looking -- we are -- if we are awarded these  
20 funds, we will be looking at renovating that  
21 railroad truss as a non-motorized crossing of the  
22 river.

23 HEARING OFFICER SHEAN: As a pedestrian  
24 bridge.

25 MS. SNELGROVE: Equestrian/pedestrian.

1       Yeah.

2                   HEARING OFFICER SHEAN:  Yeah.  Non --  
3       non-vehicular.

4                   MS. SNELGROVE:  Uh-huh.

5                   MR. REEDE:  How -- to what distance from  
6       the proposed mitigation to the east and west is  
7       landscaping needed to reduce the visual impacts on  
8       the Santa Ana River Trail?

9                   MS. SNELGROVE:  Do you have those  
10       figures we had discussed?  Someone had proposed  
11       that to me.  We haven't looked at how far down the  
12       river that was -- I believe we were speaking with  
13       your consultant about that plan.  We have not  
14       received photographs of the visual from -- from  
15       east of the trail to the power plant.

16                   MR. REEDE:  Do you have a copy of the  
17       AFC here?  Or could you send somebody over to the  
18       plant to get one?

19                   MR. MCKINSEY:  He has the visual  
20       renderings right there.

21                   MR. CLAYTON:  What we -- what has been  
22       provided in the AFC is basically views of the site  
23       from just -- effectively to the northeast of the  
24       site.  And we also had -- originally we had a view  
25       from immediately to the northwest of the site, up

1 trail. And the concern here is that views from  
2 substantially further east of the site, and also  
3 further west of the site, may have visual impacts,  
4 as well. And specifically, I think probably  
5 more -- a greater concern is east of the site, as  
6 you're approaching, as you're moving west along  
7 the trail --

8 MR. REEDE: You're moving south,  
9 southwest.

10 MR. CLAYTON: You have a south,  
11 southwest view orientation. And from a further  
12 distance away, you will probably -- you'll  
13 probably be able to see the facilities, and  
14 there's a good possibility that you may have a  
15 visual impact occurring along there. When you're  
16 -- when you're approaching from the west, you do  
17 have those existing -- existing industrial  
18 facilities that are there, and do create some  
19 degree of screening.

20 I think the primary concern is probably  
21 approaching from the east. And the question is --  
22 and we have not resolved how far to the east this  
23 impact surfaces.

24 MR. REEDE: Well, you see, the reason I  
25 was asking if somebody had a copy of the AFC was

1 because there was an overhead shot of the plant  
2 site. And that could give you the view shed that  
3 would be needed.

4 MR. CLAYTON: Right. I'm not -- I'm not  
5 sure that it covered far -- I know what -- which  
6 one you're referring to. I don't have a copy of  
7 that.

8 MR. REEDE: See, I have one on my wall  
9 that was blown up from the AFC, that gives you a  
10 perspective of where landscape screens would be  
11 appropriate along the property boundaries, and  
12 approaching from the east.

13 MR. CLAYTON: But I'm not sure that that  
14 image actually captured the area to the --  
15 sufficiently far to the east. I don't think it  
16 did, but I -- I can't be certain about that. It  
17 captured an area at -- I think it was like the  
18 north -- the northeast, I think it was like from  
19 the northwest to south, southeast view, I think.  
20 And I'm not sure that it captured enough of the  
21 trail farther east to be able to --

22 MR. ABELSON: Could I just ask a  
23 clarifying question, based on what I'm hearing. I  
24 heard Staff say that basically there's sort of  
25 three Visual issues that are still pending, as it

1 were. One is the length of the screen, the second  
2 is the content of the screen, and the third is  
3 what to do about the golf course.

4 We're now dealing with the length of the  
5 screen, and what I'm hearing people say is that  
6 neither the county, which is represented here  
7 today, nor Staff, have reached any conclusion as  
8 of this hour as to how long that screen needs to  
9 be.

10 What is our current recommendation in  
11 the -- in the Staff Assessment as to that issue?

12 MR. CLAYTON: Well, as it currently  
13 stands here, the condition is worded somewhat  
14 generally, but it's worded to state that the  
15 landscaping plan will be provided -- a plan that  
16 will be provided that has been approved of by the  
17 county. So in a sense, it's sort of -- because we  
18 didn't have any input from the county at that  
19 point in time, we sort of threw it in their court,  
20 in a sense. Saying that the county needs to make  
21 a determination based on what they plan to do with  
22 the trail, as to how far down they think the  
23 screening needs to occur.

24 MR. ABELSON: So what you said is  
25 basically you kind of left it as a little bit of

1 an open issue, subject to discretion by the  
2 county. And I guess I would turn back to the  
3 Applicant, to John or George, whoever wants to  
4 answer this. Is that -- is that at a level at  
5 which you all are -- are uncomfortable at this  
6 juncture? Are you seeking more specificity, or  
7 what's -- where are we at on that issue?

8 MR. MCKINSEY: The -- frankly, the part  
9 of the Staff Assessment threw us for a little bit  
10 of a surprise, because we had been providing  
11 information on planting on the northern boundary  
12 of the property, and we had not been asked for any  
13 information on planting from the golf course area.

14 MR. ABELSON: No, no, leave the golf --

15 MR. MCKINSEY: And -- but --

16 MR. ABELSON: Yeah.

17 MR. MCKINSEY: So when -- when we looked  
18 at this assessment, I mean, he accurately  
19 described it. It indicates here are four  
20 conditions, and then in addition it has a section  
21 titled additional mitigation. And the section  
22 entitled additional mitigation essentially  
23 indicates that it's not clear to the Staff how  
24 deep the plantings need to be. I don't think it  
25 referred to east/west depths, but it may have.

1       What it referred to was the -- the depth of the  
2       planting corridor, and it indicates a need to  
3       concur with the county. At the time it was the  
4       Flood Control District, but I think we're -- we're  
5       hearing -- and I think, you know, it's the county,  
6       regardless. And the SART trail representative was  
7       here today, and that may be the more accurate  
8       interested party that also has control over the  
9       land there.

10               And our position continues to be to  
11       provide the right resolution to visual impacts,  
12       and the right cooperation, and the right  
13       mitigation.

14               One of the things that's making this a  
15       little difficult is there's a lot of stuff that  
16       just came in. We had not felt that mitigation was  
17       needed from the golf course area, and yet that was  
18       the main thrust of VIS-4. It doesn't even pertain  
19       to our planting area, where we talked about on the  
20       northern boundary, it had to do with another  
21       planting.

22               And our planting on the northern  
23       boundary wasn't expressly incorporated in the  
24       condition, though we understood it -- we can  
25       incorporate it within a landscaping plan. But

1           nevertheless, I mean, we remain very cooperative  
2           and flexible in wanting to figure out how to put  
3           this all together.  And I've just heard some  
4           things today that may be part of the solution.

5                         One of the frustrating things about  
6           providing planting in this area has been that  
7           there's a large chunk of land going right through  
8           the middle of it.  That's the river area that we  
9           don't have control over.  And we didn't have  
10          anybody at the table who could speak for the users  
11          in that area and say, you know, we can accomplish  
12          what you want to accomplish and provide the right  
13          mitigation.

14                        I think we may have that in the form of  
15          the river trail development, especially what she  
16          described with the grant proposal that they've  
17          received.  A lot of this is new, so from a legal  
18          perspective, you have to assure that -- that they  
19          have the authority and control over the property  
20          to execute.  But if they do, they may give us the  
21          ability to plant trees in a lot of areas that  
22          really weren't an option before.  And we're not  
23          opposed to a lot of that.

24                        MR. ABELSON:  Right.  Well, what I'm --  
25          what I'm trying to do, John, is to just get our

1 focus down to the -- to each of the three issues.  
2 And, again, I want to leave the golf course to the  
3 side for a moment. That's a separate visual --

4 MR. MCKINSEY: Well, it's -- no, they go  
5 together, because part of the problem with the  
6 golf course is that the only property that they  
7 control doesn't provide room for trees. It's the  
8 Santa Ana River area that would have to be the  
9 planting area, which, once again, fits right into  
10 an area that they have control over.

11 MR. ABELSON: Right. Right. But what  
12 I'm trying to get at is that based on what the  
13 current condition is, as proposed by Staff in  
14 Staff's Assessment, which in effect is coordinate  
15 with and get the concurrence of the relevant  
16 county agency, the trail folks, as it were, in  
17 this case, on the question of east/west, of the  
18 extent of the -- of the screen. I mean, is that  
19 good enough to get us through that issue and you  
20 guys sit down with them and basically work it out?  
21 Is that -- is that -- or do we need some --

22 MR. REEDE: Because they -- they have to  
23 approve your landscaping plan.

24 MR. ABELSON: Yeah. I mean, that's what  
25 the condition says, basically work out with them

1 and that's -- that's it. Whatever they ask you to  
2 do, that's what you're going to do. And I'm  
3 asking you if that's okay. If it is, then we can  
4 move on to the other two issues, which is depth of  
5 the -- of the planting, and a third issue, which  
6 is what to do about the -- the golf course.

7 MR. MCKINSEY: Well, the -- see, we're  
8 concerned, one, we have to make sure that they  
9 have control and authority over that land to  
10 provide that. Otherwise, we could end up in a  
11 situation where we've got a condition that  
12 obligates us to accomplish something, and then we  
13 can't accomplish it.

14 MR. ABELSON: Let me make that concrete,  
15 what I just heard you say, if I did understand it.

16 What you're saying is if -- if the trail  
17 folks were to say to you we need you to plant for  
18 another 200 feet in order to screen. And when you  
19 look at the 200 feet in question -- and I'm just  
20 making this up so I can make a specific example --  
21 it turns out that that's not part of the trail,  
22 it's not part of your property, it's some third  
23 party's property, which it is true that that's  
24 what the trail authority wants, but you don't have  
25 control over that property. It's private

1 property.

2 Then you find that -- then you're  
3 concerned that you're being in the situation that  
4 you can't comply with.

5 MR. MCKINSEY: Right. The west area is  
6 more problematic than the east. Because of the  
7 acute angle that the trail comes along and strikes  
8 our property line, to the east the -- there's a  
9 large open area that presumably would be under the  
10 control of -- of the SART development plan.

11 To the west, however, there's a tile  
12 facility that comes right up onto the edge, and  
13 it's currently using -- I mean, it's currently  
14 processing tile right on the edge of the -- of  
15 that existing maintenance road. And if that's how  
16 far their property line is all the way up to,  
17 there may not be any room in that area at all to  
18 plant any trees to the -- to the west.

19 MR. ABELSON: So -- so, okay. So what I  
20 guess I -- I would ask next, then, is that -- I  
21 mean, again, the purpose of this workshop is to  
22 see what closure we can get, to litigate what we  
23 can't agree on, and so on.

24 So it's not clear to me on the issue of  
25 extent of the screen, length of the screen, how --

1       how you get -- how we go to closure on that. I  
2       mean, I understand the concern. I just don't know  
3       how we go to closure on it.

4               MR. MCKINSEY: Well, one thing I think  
5       might help address the west end side is that we  
6       can actually plant on our western boundary of our  
7       property. Originally, that tile storage yard was  
8       going to be there, and that really precluded that  
9       from occurring. But now that we're putting in the  
10      retention pond area there instead, I think we have  
11      the ability to plant down our southern -- our  
12      western boundary. That, because of the acute  
13      angle, might provide the type of screening that  
14      they're interested in.

15             Now, there's another issue that there --  
16      there's a transmission corridor in there that we  
17      may not be allowed to plant under. And so maybe  
18      that would block us from planting right at the  
19      very northern edge there, which would be the  
20      primary spot as people come around that -- the  
21      tile machine and the piles of tile debris, they'll  
22      be looking right through a spot where we would  
23      have to leave a gap for a transmission corridor.

24             You're asking good questions about how  
25      far, you know, how close are we to being able to

1 resolve the -- having a condition that says we  
2 have to have a --

3 MR. REEDE: I think -- I think we're  
4 very close.

5 MR. MCKINSEY: -- a landscaping plan --

6 MR. REEDE: I think we're closer than we  
7 would allow ourselves to believe. And the reason  
8 I say that is because if you look the protocol,  
9 the protocol is saying that the Project Owner  
10 shall submit its landscaping plan to the  
11 Compliance Program Monitor for review and  
12 approval. The submittal shall include evidence  
13 that the plan is satisfactory to the county's  
14 Department of Community and Cultural Services, and  
15 Flood Control District, which is -- should be the  
16 Department of Public Works, Sacramento --  
17 Sacramento -- Santa Ana River Trail.

18 And the --

19 MS. SNELGROVE: Can I -- can I just  
20 clarify that? It's actually Department of Public  
21 Works, Regional Parks.

22 MR. REEDE: Okay. So --

23 MS. SNELGROVE: We're the division. The  
24 Santa Ana River Trail doesn't have its own entity.  
25 It is part of Regional Parks, the project.

1           MR. REEDE: Okay. But my point is that  
2 we've identified a condition that you have to get  
3 approval of the landscaping plan. Regardless of  
4 how long or how far you have to go, you still have  
5 to get approval.

6           MR. MCKINSEY: Well, that's the issue.  
7 Our landscaping plan would be on our property. We  
8 at most could enter into an agreement, or we would  
9 have to obtain property rights in another piece of  
10 property --

11          MR. REEDE: Or if you're on public lands  
12 controlled by the --

13          MS. SNELGROVE: The Flood Control and  
14 Regional Parks.

15          MR. REEDE: -- Flood Control and  
16 Regional Parks, who also has to approve your  
17 landscaping plan. You see, that trail is their  
18 property.

19          MR. MCKINSEY: Well, now, hold on. Let  
20 me -- there's the good question. The landscaping  
21 plan in itself is on our property, and --

22          MR. REEDE: Right.

23          MR. MCKINSEY: -- and having been  
24 annexed into the City of Redlands, the right party  
25 to approve landscaping on our property would be

1 the City of Redlands.

2 MR. REEDE: Correct.

3 MR. MCKINSEY: The right party to  
4 approve plantings and materials in the river  
5 corridor would be the Department of Public Works,  
6 the County of San Bernardino.

7 MR. REEDE: Right.

8 MR. MCKINSEY: They might have to be two  
9 separate plans, is one thing I'm getting at. But  
10 the real resolution might be to set up the right  
11 relationship with the SART development so that  
12 we're contributing the funds agreed upon.

13 MR. REEDE: Oh, they -- they don't like  
14 the term SART.

15 MR. MCKINSEY: To try to accomplish the  
16 development. In other words, I'm -- I'm not  
17 convinced that a landscaping plan might not be the  
18 best resolution. There's a long corridor all  
19 through there with users, and it might be that  
20 with the right monetary contribution, they could  
21 use that a lot more effectively in other areas.

22 The tile yard is really kind of a  
23 problem with that area right there that might  
24 prevent -- one, it's a reason why there's a debate  
25 over the actual visual impacts in the area,

1 because there's pretty ugly existing industrial  
2 use there. I hope the tile yard people aren't  
3 here, and I know they're not. But, I mean,  
4 it's -- it's dusty, it's dirty, it's noisy, and  
5 it's old.

6 So rather than committing to some kind  
7 of laid out line of trees, which may or may not  
8 come to pass, the right way to provide the right  
9 mitigation to the same group of users might be to  
10 give the SART -- excuse me, the Santa Ana Regional  
11 Trail Development group the ability to provide  
12 mitigation throughout that area in ways that could  
13 be most effective.

14 MR. REEDE: And that's what I was  
15 saying. Because basically, they're going to have  
16 to approve whatever mitigation would allow a less  
17 than significant impact.

18 MR. MCKINSEY: Well, there's -- there --  
19 first of all, we've never agreed or conceded that  
20 we have significant impacts along the -- the river  
21 trail. And, in fact -- but our goal is to never  
22 have to have to get into that kind of a debate by  
23 providing planting and -- and a lot of the other  
24 things. The -- if we were to go into evidentiary  
25 hearings on this we would all have to present

1 different presentations on what the visual impacts  
2 are. And -- and then what the right degree of  
3 mitigation is. And the reason why we suggested a  
4 planting on the northern boundary is we thought  
5 that was the appropriate thing to do on the  
6 northern boundary of the property.

7           There's another -- another issue about  
8 visual impacts that involves the -- the key up  
9 from the golf course area. And one of the  
10 advantages of having them here is that they may  
11 provide a resolution that avoids us having to  
12 debate that, also, because they -- they have  
13 control over the property that would allow us to  
14 do that, as well.

15           MR. ABELSON: But John, I find myself  
16 coming full circle one more time, and I apologize  
17 if I'm missing the point that -- that you're  
18 trying to make.

19           The current condition that's being  
20 proposed essentially is get buy-off from the  
21 county and you're home. And I'm simplifying it to  
22 a fault, probably. But that -- that's in essence  
23 what's there on -- on this aspect of the visual  
24 impact.

25           And what I'm asking, what I'm trying to

1 understand is for purposes of today's workshop,  
2 and then the hearing scheduled on the 16th, is --  
3 is that -- is that term, open ended as it may be,  
4 with uncertainties that -- that may be embedded in  
5 it, acceptable to the Applicant, and if not, what  
6 do we need instead that's going to -- or is this  
7 an issue that we're actually going to have to have  
8 some kind of hearing about?

9 MR. MCKINSEY: The solution that may  
10 work -- here's our problem. If we were to concede  
11 to a condition that said we just have to get  
12 approval by the county and we're home free, and  
13 that's now a condition in the permit, and no  
14 offense, because you wouldn't be doing your job if  
15 you weren't trying to get as much money from us as  
16 you could, and that would put us in a situation  
17 where we would have no bargaining position and we  
18 would be really vulnerable to exploitation. Not  
19 that people look at companies as being vulnerable,  
20 but we really would.

21 It would -- the problem that is  
22 presented is this has come in very suddenly, at  
23 the very end. The ideal resolution would be come  
24 to an agreement with the county over -- over what  
25 we're talking about, so that we could then very

1 comfortably, with that broader agreement, accept a  
2 condition like that. But there's a lot of  
3 complications with that.

4 She can't really speak for the Board of  
5 Supervisors, who might have to be the people who  
6 would have to approve such an agreement.

7 MR. ABELSON: Right. No, I -- and all  
8 this --

9 HEARING OFFICER SHEAN: Let me just ask  
10 this, though. If --

11 MR. MCKINSEY: And -- and we would be --  
12 if were to just simply accept that condition now,  
13 we would be relinquishing our right during the  
14 hearings to put on our own evidence about what we  
15 feel are the visual impacts and the required  
16 mitigation.

17 MR. ABELSON: Right. So what's this --  
18 for purposes of deciding what is going to occur at  
19 the hearing is what this workshop is about. What  
20 is -- is the Applicant's view of what we ought to  
21 do with this, at least as of today, in terms of  
22 language. What do you -- I mean, I understand the  
23 point you're making. I'm just trying to  
24 understand what your counterproposal would be as  
25 to where we should be at on this as of the 16th.

1                   HEARING OFFICER SHEAN: Well, let me  
2 just say, from the Committee's perspective,  
3 though, what's pointed up here, is that you have  
4 an onsite mitigation, visual mitigation which  
5 would be entirely within the control of the  
6 Applicant, and subject to the approval of the City  
7 of Redlands, because it's now annexed to that.

8                   Then you have another jurisdiction which  
9 has an interest that basically is upstream and  
10 downstream of that particular chunk of property.  
11 And accepting the fact that as you get farther  
12 from the site, you tend to attenuate the visual  
13 impacts, nonetheless arguably there are some, and  
14 there are complications on the west end in terms  
15 of an existing industrial facility. And, what  
16 they don't want to have is basically a blank check  
17 with regard to what -- what, for example, SART  
18 would determine as part of your bigger scheme  
19 would be an appropriate contribution, a financial  
20 contribution, not a tree planting contribution to  
21 that, and let them decide what to do with the  
22 money.

23                   And I don't know whether or not, you  
24 know, the idea that you might have a condition for  
25 what occurs onsite, a condition for what could

1 occur offsite, and cap that at a contribution no  
2 greater than the expense of putting your onsite  
3 mitigation, because that's going to be a  
4 significant thing you're putting onsite. And I  
5 don't know whether that would satisfy you, but --

6 MR. MCKINSEY: No. One way to  
7 accomplish the resolution we might need is if  
8 the -- if the condition that we stipulate to and  
9 that we take on in here has a cap on it.

10 MR. ABELSON: A dollar cap?

11 MR. MCKINSEY: Yeah. Because then --

12 MR. REEDE: Similar to what he just  
13 said?

14 MR. ABELSON: What he just said.

15 MR. MCKINSEY: Right. Because then we  
16 wouldn't be over a barrel. There -- in other  
17 words -- but the problem with that is that the  
18 Commission would have to feel comfortable that  
19 they've communicated with the county enough  
20 that -- that, you know, essentially, what they're  
21 doing is they're speaking on behalf of the county.  
22 And -- but not really, because the Commission has  
23 the ability to establish what is the right  
24 mitigation.

25 But they're able to put a number on

1 something that I don't think the county could do  
2 in a short period of time because it would have to  
3 be something that would go through the County  
4 Board of Supervisors. And that involves, I think,  
5 some negotiation and discussion. And a lot of  
6 information has come in today from the Santa Ana  
7 Regional Trails interests that we would like to  
8 digest also. And it may be that the right  
9 resolution will be that we can work this out and  
10 it'll be something we will have to deal with in  
11 the evidentiary hearing, but just as to some type  
12 of -- of new presentation of here's the right  
13 condition and the right evidence.

14 MR. ABELSON: Okay. So let me -- let me  
15 see if I'm --

16 MR. CLAYTON: If I could just make just  
17 one quick comment. It seems to me that a lot of  
18 the problem here, a lot of the difficulty is sort  
19 of the -- is in the unknown aspect of what this  
20 impact might be, or what the resolution may need  
21 to be. And it seems that a proper way to sort of  
22 clarify that would be to have a field trip with --  
23 with the county staff, and with the Applicant, to  
24 walk those -- that stretch of the trail there to  
25 see really what -- you know, how far does the

1 impact extend, how significant it is, where are  
2 there appropriate locations to accomplish some  
3 planting, and then based on that, being able to --  
4 to arrive at a conclusion as to, you know, who has  
5 control of that property, what's feasible along  
6 there.

7 I mean, it may be that, in fact, the  
8 amount of mitigation necessary, in terms of  
9 additional extent, might be minimal, and it may be  
10 all within the county's jurisdiction. And it  
11 might -- it might not be as big an issue as it --  
12 as it might otherwise --

13 MR. MCKINSEY: Right.

14 MR. CLAYTON: -- could potentially be.  
15 The point is we're kind of operating in a black  
16 box here, where we don't really know what the  
17 animal is we're talking about. And so that  
18 might -- that, I think, would be an approach, and  
19 at least would clarify the extent of -- of the  
20 issue that we need to resolve, in terms of  
21 potential impact, and would also clarify the  
22 county's ability to -- to be able to accommodate  
23 that mitigation. It may not require additional  
24 funds from the Applicant. It may require just  
25 some additional, you know, minor efforts of tree

1 plantings.

2 MR. HALL: Yeah. We have to be  
3 careful, because there are transmission easements  
4 that are not existing that are easements that have  
5 rules and regulations around what can be done in  
6 them. And, you know, we just can't be put in a  
7 box where we're required to do something that we  
8 cannot physically accomplish.

9 MR. CLAYTON: Right. But I think -- I  
10 think as part of this, I mean, it's kind of like  
11 two steps. I mean, I could see where there's a  
12 sort of a field -- a quick field visit to  
13 ascertain the extent of the potential problem,  
14 where plantings might be appropriate. But then  
15 there also has to be, in a sense, kind of a land  
16 use evaluation to determine either jurisdiction or  
17 ownership, or other land use constraints on the  
18 ability to do anything in those properties --

19 MR. ABELSON: What -- what I'm --

20 MR. CLAYTON: -- and see how that  
21 tracks.

22 MR. ABELSON: -- what I'm hearing,  
23 though, from both Applicant and from Staff on this  
24 -- Mr. Shean, see if you are hearing anything  
25 different -- is that the current general

1 condition, namely comply with what the county  
2 River Trails Association needs and you're done, is  
3 an issue that may actually be acceptable once it's  
4 known with more specificity what that is. But  
5 it's not a condition that the Applicant is  
6 prepared to stipulate to today. And therefore, it  
7 basically is going to remain an issue that's going  
8 to have to be litigated, or in some sense  
9 addressed at the hearing for further clarification  
10 at that time.

11 I'm also hearing Staff recommending  
12 specifically some interim steps that might be  
13 constructive, in terms of seeing how much closure  
14 we can get in ten days. But, John, if I'm hearing  
15 you correctly, you're skeptical that there can be  
16 complete closure in ten days. There's too much --

17 MR. MCKINSEY: No, no. No, there may  
18 be. I think we may be -- that pushing the issue a  
19 little too much for what we can accomplish at this  
20 very moment.

21 MR. ABELSON: Today.

22 MR. MCKINSEY: Or even before lunch,  
23 which is overdue.

24 HEARING OFFICER SHEAN: Yeah. It might  
25 be that we just need to --

1 MR. ABELSON: Hunger is no excuse.

2 MR. MCKINSEY: For instance, we may be  
3 able to go out there while the rest of you are  
4 eating --

5 MR. ABELSON: I was going to suggest at  
6 lunchtime we go out there and --

7 MR. MCKINSEY: -- and look around, and  
8 try to come even closer to a condition that just  
9 resolves a few more terms we've got to put in  
10 there, and that's all we have to resolve next  
11 week.

12 MS. SNELGROVE: That won't be possible.  
13 Our trails coordinator is unavailable. He's in  
14 Victorville today, and I don't have the authority  
15 to say how far and -- and what length.

16 We would certainly be very willing -- we  
17 haven't had a chance really to discuss any of  
18 these issues, so we would certainly be willing  
19 to -- to arrange a time when we could sit down and  
20 discuss, and -- and view the trail, and go out.

21 MR. MCKINSEY: See, the -- candidly, you  
22 know, the situation we're in is -- is we're at the  
23 -- near the final stages of trying to clarify  
24 what's the -- what the project is going to entail,  
25 and what it's going to provide for the surrounding

1 area. And that does require us to move incredibly  
2 fast, or delay the project, or stick to our -- our  
3 more, you know, direct evidentiary ability to  
4 assert what we believe is the project, that --  
5 that's the right mitigation.

6 MS. SNELGROVE: I -- I won't make any  
7 promises, but I could pull together the  
8 appropriate people from Flood Control, and within  
9 the county. I know what we're doing on that  
10 project. I could have a meeting scheduled very  
11 shortly. There is a possibility that some of  
12 these issues could be resolved fairly quickly.

13 MR. ABELSON: Well, see, sort of what we  
14 do in Biology, we had this one outstanding issue  
15 on the flower. And so basically, we left the  
16 record today as unresolved. And everybody knows  
17 that you guys are all going to sit down and try to  
18 work that issue out, which everybody thinks will  
19 be worked out, that particular one.

20 It seems to me we're in the same  
21 situation on the Visual, but maybe with not quite  
22 as much certainty that we'll actually get a  
23 position of complete concurrence by the 16th. But  
24 at minimum, there has to be further meetings,  
25 further discussions, and maybe a further site

1 visit.

2           So what I'm suggesting, for purposes of  
3 today, is just agree that there's, you know, that  
4 it's not an issue that's been resolved, and it  
5 therefore would be heard. And in the interim  
6 period, everybody'll try to get together, have  
7 trail walks, whatever they need to do to see how  
8 much closure we can get. And I just don't see how  
9 we're going to get any further than that, unless  
10 I'm mishearing something.

11           MR. MCKINSEY: No, I agree. The one  
12 thing that would require us to go much further,  
13 though, would be the Energy Commission's  
14 willingness to essentially act as the broker for  
15 the agreement. See, if we were doing this and we  
16 had months, we could propose a plan to the County  
17 Board of Supervisors, get it approved, and -- and  
18 would provide that. We can't.

19           So the only other way would be if -- if  
20 the Staff is willing to essentially act as -- as  
21 the broker for what the county requires, what the  
22 county wants, and be -- and be willing to put that  
23 into a condition. Then I think it's very feasible  
24 that we might be able to reach it, because the  
25 people that count in the county, I think we can

1 get their input and their feedback, and we could  
2 come to an agreement.

3 And the only way we could do it in time  
4 for our evidentiary hearing would be if we can  
5 embody it into a condition that -- that specifies  
6 certain terms, and providing the appropriate  
7 approval.

8 Now, as we all know, what we could do  
9 then is go into a condition that -- that says  
10 these are the terms, and --

11 MR. ABELSON: Subject to approval by the  
12 -- by the county.

13 MR. MCKINSEY: Subject to approval by  
14 the county. If the county refuses to approve it,  
15 then we would be into a -- a phase where we're  
16 essentially trying to, as what's happening in  
17 Metcalf, trying to override a county decision.  
18 Which isn't a pretty thing.

19 And so it takes a certain degree of --  
20 of how well the county is able to communicate, how  
21 comfortable the Staff is with what they think they  
22 understand about what the county wants, and how  
23 comfortable we are that we're all kind of on the  
24 same page, because that can turn into a really  
25 ugly mess that may not be the -- the right

1 resolution.

2 HEARING OFFICER SHEAN: Well, can I ask  
3 you, with respect to your larger plan. How  
4 does -- how does an extensive planting along the  
5 southern portion of the river, where we're talking  
6 about, fit in to what you had in mind? I mean --

7 MS. SNELGROVE: We have landscape plans  
8 that have pretty extensive native plantings on the  
9 --

10 HEARING OFFICER SHEAN: These are  
11 existing plans.

12 MS. SNELGROVE: Yes. On the south side  
13 of the Santa Ana River Trail, so it would be on  
14 the non-river side of the Santa Ana River Trail.  
15 And we do have -- in our master plan there is a  
16 buffer zone for that -- for that planting.

17 HEARING OFFICER SHEAN: And in terms of  
18 east and west of either the plant site or this  
19 railroad bridge crossing, can you -- that's where  
20 you have this extensive native tree replant?

21 MS. SNELGROVE: Right. Our -- our  
22 planting repeats itself throughout the entire  
23 river. It's all native vegetation.

24 HEARING OFFICER SHEAN: Okay.

25 MR. CLAYTON: Also, one other

1 clarification point. Beyond the sort of  
2 immediate boundaries of the property, Applicant's  
3 property, I would anticipate that the types of  
4 planting that we're talking about are like gaps,  
5 filling gaps, because there is existing vegetation  
6 along the south side of the bank. So we're not  
7 really talking about a long, large corridor of  
8 planting, but in terms of where there are gaps in  
9 existing -- in vegetation that allows view  
10 corridors to the site. So we're -- I think we're  
11 really talking about plugging gaps, and it's a  
12 question of where are those gaps and how extensive  
13 are they, and do we have capability to do that.

14 MR. MCKINSEY: Once again, I'll say, one  
15 of the advantages of -- of the SART trail is --  
16 it's come up before, is, you know, what if there  
17 isn't any mitigation for a gap for a particular  
18 spot, but the same user group is on that entire  
19 trail area, then the plant, the mitigation can be  
20 in other areas. Which is suitable, it's an  
21 offsetting type of situation for the trail users.

22 So, I mean, there's some advantage to  
23 once again having the flexibility of -- of their  
24 project, because that can provide mitigation that  
25 might not have been feasible before.

1 HEARING OFFICER SHEAN: Well, and -- but  
2 the -- the planting plan that was arrived at for  
3 your site is essentially going to create across  
4 the northern boundary of your site a -- as high --  
5 if I look at it correctly, as high a wall of trees  
6 as fast as they can grow. Is that --

7 MR. MCKINSEY: That's correct. But --

8 HEARING OFFICER SHEAN: How does that  
9 comport with your --

10 MS. SNELGROVE: Well, our concern is  
11 that it's not -- non-native vegetation. I think  
12 they originally had proposed eucalyptus.

13 HEARING OFFICER SHEAN: Oh, yeah. And  
14 that's -- that's out. That's --

15 MR. REEDE: Right, and they've --  
16 they've dropped that.

17 HEARING OFFICER SHEAN: -- gone.

18 MS. SNELGROVE: Right. And I haven't  
19 seen a revised plan. This is it, but we haven't  
20 received it in our office.

21 HEARING OFFICER SHEAN: But is that  
22 the -- I'm sorry. Is that the general idea of  
23 what this revegetation plan is going to be, is to  
24 create a -- an interrupted but largely continuous  
25 vegetative screen of --

1 MS. SNELGROVE: Yes. Uh-huh.

2 MR. ABELSON: Of native -- of native --

3 MS. SNELGROVE: Yes, of native  
4 vegetation.

5 HEARING OFFICER SHEAN: Of native -- of  
6 native species. Okay. Whether or not there's a  
7 facility behind them.

8 MR. REEDE: Is it possible to make sure  
9 that she gets sent a copy of your proposed tree  
10 species? I think it's now sycamore, cottonwood,  
11 and --

12 MR. MCKINSEY: Willow.

13 MR. REEDE: -- and willow.

14 MS. SNELGROVE: And I can get -- we have  
15 a list already.

16 MR. MCKINSEY: And that was -- well,  
17 that is what we had developed from our biologists.  
18 Actually, not even ours, the Staff biologists had  
19 given us, the CEC Staff had said these trees would  
20 be acceptable because they're native.

21 MS. SNELGROVE: Okay. And I can compare  
22 that to what we have existing.

23 HEARING OFFICER SHEAN: All right. It  
24 seems to me we ought to take a blood sugar break  
25 to think about this a little bit more. But I'm

1 beginning to like the idea that if the Staff has  
2 got -- I mean, either the offsite and -- and your  
3 property thing should be planned as part of a  
4 whole, which I like a little bit better because I  
5 think you guys would like to know that something  
6 isn't occurring just on their property that is  
7 sort of not -- that doesn't comport with your  
8 overall scheme, right. So that would not be a  
9 good idea.

10 Yet they have property control for that,  
11 and they -- the idea is they spend their money  
12 there, and get trees, and maybe the rest of the  
13 idea is they authorize some money to go to  
14 whatever agency is going to implement your  
15 revegetation plan so that it -- it can add to the  
16 mitigating effect of what's there, but based upon  
17 your bigger plan. Is that --

18 MS. SNELGROVE: Uh-huh. That sounds --

19 HEARING OFFICER SHEAN: That would be  
20 ideal for you, if -- or under these circumstances?

21 MS. SNELGROVE: That, I mean, that  
22 sounds acceptable to me. I would, of course, have  
23 to go back and speak to our trails coordinator.

24 MR. ABELSON: Mr. Shean, before we  
25 actually break for lunch, I think the Project

1       Manager thinks there can maybe just be a break  
2       period with one final piece of clean-up.

3               HEARING OFFICER SHEAN:   Okay.

4               MR. REEDE:   Well, I just want to make  
5       sure that Staff is then directed to work closely  
6       with Public Works in the next week to come up with  
7       a plan for a particular condition.

8               HEARING OFFICER SHEAN:   Well, you can't  
9       leave them out.

10              MR. REEDE:   Well, that -- that the  
11       Applicant could potentially live with.

12              MR. MCKINSEY:   You know, the most  
13       important part, and it -- really, it's just as  
14       much in the Energy Commission's interest as it is  
15       in our interest -- is that it be something that  
16       will satisfy the ultimate decision maker in the  
17       county, because the county has to approve the use  
18       of that land.

19              Now, that's what I was getting back.  If  
20       -- if they've already been given the ability -- in  
21       other words, if there's a single decision maker in  
22       the county that has the ability to say it's okay  
23       to plant a tree here, here, and here, that doesn't  
24       have to go to the county board again.  Then we  
25       have the ability to accomplish a lot.

1                   MR. REEDE:  You're talking about a  
2 ministerial act, then.

3                   MR. MCKINSEY:  Right.  And I -- I don't  
4 know --

5                   MS. SNELGROVE:  We -- we have authority  
6 from our Board of Supervisors to develop the Santa  
7 Ana River Trail.  When we are doing planting, we  
8 have to meet with our flood control district to  
9 say this is where we are putting trees, and that's  
10 all that is, is a meeting.  And they say well,  
11 that may impact us here or there.  But we do have  
12 authority to do planting --

13                  MR. REEDE:  So they have the --

14                  MS. SNELGROVE:  -- and --

15                  MR. REEDE:  -- ministerial authority to  
16 approve a particular condition.

17                  MS. SNELGROVE:  Uh-huh.

18                  MR. MCKINSEY:  Yeah.  No, that -- once  
19 again, it's in -- it's in your interest that you  
20 don't propose a condition that ends up not being  
21 officially approved, because it ends up having to  
22 go to the board or something.

23                  MR. REEDE:  Well, I'm sure Maureen, when  
24 she goes back and talks with her hierarchy, will  
25 let it be known that, you know, we need to be able

1 to have her boss or her boss's boss approve X, Y,  
2 Z, for it to be binding upon you.

3 MR. MCKINSEY: Well, yeah. In fact, any  
4 -- the condition, as it's written, says, you know,  
5 approval by -- in this case it would say the  
6 Department of Public Works --

7 MR. REEDE: Regional Parks.

8 MR. MCKINSEY: -- Regional Parks. So  
9 the question is who is that person, what authority  
10 do they have. That would be --

11 MR. REEDE: Would that be Thomas Potter?

12 MR. MCKINSEY: -- something we'd be  
13 really interested in making sure --

14 MS. SNELGROVE: Yes, that would be Tom  
15 Potter. He's the Chief of Regional Parks.

16 MR. MCKINSEY: -- the condition gives  
17 resolution that should also be just as much of an  
18 interest in the Commission, so we don't have  
19 something that boils over afterwards because the  
20 right person had -- that was told they had the  
21 authority has the authority. And it sounds like  
22 that may be there.

23 MR. ABELSON: So what I hear you saying,  
24 John, on this issue, and I think we can close this  
25 one out, is two things. One, if we can write the

1 general blank check condition, as it were, with  
2 reference to the proper authority who actually has  
3 the ability to make the decision, that's in  
4 everybody's interest.

5 Number two, if we know who that entity  
6 is, and between now and the 16th the parties can  
7 sit and figure out what's actually involved, then  
8 either we can be more specific -- then either we  
9 can be more specific on the 16th, or that general  
10 condition with the right name plugged in can, in  
11 effect, become an acceptable condition to the  
12 Applicant, one of the two.

13 MR. MCKINSEY: Right.

14 MR. ABELSON: Either of which leaves the  
15 possibility that this issue actually may be closed  
16 in a positive way by the 16th.

17 HEARING OFFICER SHEAN: When you say  
18 blank check, do you mean a non-capped check?

19 MR. ABELSON: Well, I was using that  
20 phrase because as it currently stands, that's the  
21 way it is. And you've proposed, Officer Shean,  
22 you've proposed a cap as one solution --

23 HEARING OFFICER SHEAN: Well, it may be  
24 that that's --

25 MR. ABELSON: -- it may or not be a

1 capping issue. It may be a more specific --  
2 plannings issue. I don't know what the right  
3 solution is, because people haven't talked yet.

4 MR. REEDE: Okay. And basically come up  
5 with a condition that defines parameters of the  
6 extent to which the Applicant would have to meet.

7 MS. SNELGROVE: That sounds acceptable.  
8 I think we definitely need to --

9 MR. REEDE: Okay. And we need to --

10 MS. SNELGROVE: -- sit down and --

11 MR. REEDE: -- we need to finish that by  
12 the 14th. Well, no, the 13th, preferably.

13 MR. MCKINSEY: Yeah.

14 MR. ABELSON: And did I understand that  
15 there were three issues, the way it was originally  
16 explained, which was the -- the length of the  
17 screen, the nature of the screen, and --

18 MR. REEDE: And that would address that.

19 MR. ABELSON: -- and the -- and the golf  
20 course. And I understand that the length and the  
21 golf course issues get into are we going to look  
22 for offset packages that people have control over,  
23 and what's the cost of those packages.

24 On the -- the nature of the screen, I  
25 believe that issue, subject to verification, has

1 actually been addressed, namely that you all  
2 apparently originally proposed eucalyptus and it's  
3 been -- you've now modified it to be the  
4 indigenous stuff, and it's just a matter of the  
5 county seeing that and confirming that that's  
6 correct.

7 MR. REEDE: And saying where it would  
8 need to go to minimize any impacts.

9 MR. ABELSON: Okay. So that's it, I  
10 guess, for -- for Visual for today.

11 HEARING OFFICER SHEAN: Well, let me  
12 just ask. What does this do for the golf course  
13 and --

14 MR. ABELSON: I think it's the same  
15 issue, which is where can you get -- I mean, the  
16 issue is where can you get offsets, assuming you  
17 don't have control.

18 MR. MCKINSEY: Well, see, they -- they  
19 do, though.

20 MR. REEDE: Yeah.

21 MR. ABELSON: Right.

22 MR. MCKINSEY: They -- they have control  
23 over that area.

24 MR. REEDE: The river trail does. The  
25 golf course doesn't.

1 MR. MCKINSEY: Okay, that --

2 MR. REEDE: And in --

3 MR. ABELSON: But in -- what I'm hearing  
4 -- what I'm understanding is coming out of this,  
5 and the reason that you're excited and positive  
6 about what you're hearing, is you're saying look,  
7 if there's a greater -- if there's a greater plan  
8 for visual improvements, a river trails plan, that  
9 we can basically look at offsetting impacts some  
10 where -- where people do have control, and the  
11 same issue presumably is going to be the argument  
12 is going to be the solution, assuming there  
13 actually is a -- an ownership issue right at the  
14 golf course, I suppose there's going to be -- I  
15 guess I'd have to turn to you, Michael, and ask if  
16 that's true.

17 Can -- can they -- assuming there is  
18 actually a control issue, a land use control  
19 issue, do we routinely look at offset packages  
20 where we say well, look, okay, yeah, there is an  
21 impact here at the golf course. There's nothing  
22 much you can do about it because it's owned by X,  
23 and he doesn't want to sell.

24 MR. REEDE: The parking at the golf  
25 course.

1                   MR. ABELSON: Yeah, the parking lot.  
2           But if you -- but if you'll acquire two more acres  
3           of visual screen somewhere else, we'll deem that  
4           that's an offset. Is that something we do in  
5           Visual, as -- as a Staff position?

6                   MR. CLAYTON: That can be one -- one  
7           solution. I mean, the -- the problem at the -- at  
8           the golf course, actually, I mean, the mitigation  
9           for the impact for the golf course would actually  
10          pretty -- pretty minimal. I mean, we're talking  
11          maybe -- maybe four or five trees, I would think,  
12          of the right species. They could probably deal  
13          with most of that -- that visual impact, and there  
14          is some flexibility in terms of -- in terms of  
15          where those trees might get planted.

16                   It might, you know, the offset issue  
17          might be if we can't accomplish the mitigation for  
18          the impact as viewed from the clubhouse, for  
19          example, that there might be -- and if -- if the  
20          golf course concurs with that, it might be  
21          possible to simply plant in exchange a few more  
22          trees along their southern boundary, or their  
23          southern perimeter, within the golf course  
24          property that would -- because there are some view  
25          gaps from the -- some of the greens further west

1 that, well, okay, we couldn't resolve the impact  
2 to the clubhouse, but we can -- we can reduce the  
3 impact to some of the greens further -- further to  
4 the west by planting within the area that is  
5 controlled by the golf course, if -- if the golf  
6 course so desired -- so desired that.

7 HEARING OFFICER SHEAN: Well, now, have  
8 the golf course people come to us, or have we gone  
9 to them? And have they discussed with you --

10 MR. CLAYTON: I have not heard anything  
11 from the golf course. I had -- the assumption was  
12 that they were on -- on the list to receive the  
13 documents for comment. I believe, in talking with  
14 other Staff, that that was -- that distribution  
15 was requested, although I don't -- I can't confirm  
16 it.

17 MR. REEDE: They were mailed -- we  
18 mailed out 125 of them. Some people received them  
19 late, and I resolved that with the mail room.  
20 Others have had them since the 23rd of October,  
21 yet one, two, three, four, five people were here  
22 from different agencies.

23 They have had their opportunity to read  
24 it and to comment. But the fact that they haven't  
25 read it or commented does not forfeit their right

1 to complain about it, which happens many times.

2           However, I think on this particular  
3 Visual issue, we need to move forward with  
4 resolving the concerns of Regional Parks, and work  
5 closely with them to develop a condition that we  
6 can come back with that addresses Applicant's  
7 needs, CEQA needs, and Regional Parks' needs, to  
8 mitigate to as low a level as possible any  
9 potential impacts.

10           HEARING OFFICER SHEAN: Okay. But we  
11 have -- we -- there is -- first of all, is this a  
12 private or a municipal?

13           MR. REEDE: Private.

14           HEARING OFFICER SHEAN: Okay. And we  
15 haven't heard from anybody there, is that right?

16           MR. CLAYTON: I haven't seen any  
17 comments from them.

18           MR. ABELSON: Well, but --

19           HEARING OFFICER SHEAN: Okay.

20           MR. ABELSON: -- but understand,  
21 Officer, that we've said, you know, you need to  
22 plant some stuff to be done with this. What I --  
23 where I'm trying to get at for closure for the  
24 purposes of today is that what I understood the  
25 Applicant to be saying back is, well, you know,

1 the promise of the place -- the specific place  
2 you've recommended, we're not sure we're going to  
3 be able to actually get in there and -- and do  
4 that. And so that issue, like -- like the river  
5 trail issue, basically is something that people  
6 are going to have to sit down and figure out in  
7 the next ten days whether there's an alternative  
8 that -- that's okay.

9 And it sounds like there probably is.  
10 That's kind of the sense I'm getting from  
11 everybody, that this is probably something that  
12 can be worked out. But we're not -- we're not  
13 going to be able to work it out today.

14 MR. CLAYTON: I mean, the mitigation of  
15 the golf course, I mean, it's -- it's possible  
16 that there might be within the -- within the  
17 county's jurisdiction a way to -- to address that  
18 issue. If it turns out that -- that based on the  
19 limitations of their jurisdiction we can't  
20 eliminate that impact, that then that might kick  
21 into the, you know, talking with the golf course  
22 folks about mitigating differently.

23 MR. REEDE: But -- but let me get  
24 something straight first. Okay, the airport's now  
25 owned by the county; correct?

1 MS. SNELGROVE: No.

2 MR. HALL: It's owned by a separate  
3 authority.

4 MR. REEDE: Okay. So -- oh, it's owned  
5 by the County of San Bernardino Airport Authority,  
6 or the San Bernardino Airport Authority as a joint  
7 powers agency.

8 MR. HALL: San Bernardino -- which is a  
9 joint powers between the county and several  
10 cities.

11 MR. REEDE: The golf course is owned by  
12 the Airport Authority, and the Airport Authority  
13 has not responded to any of the letters over the  
14 duration of this application. So the likelihood  
15 of them responding right now has a very low  
16 confidence level. But that does not alleviate the  
17 concern. However, it has the potential, if they  
18 don't act by tomorrow as intervenors, they've  
19 abrogated their right to intervene. Is that  
20 correct, Mr. Shean?

21 HEARING OFFICER SHEAN: Well, we put --  
22 yeah, we put tomorrow as the date for  
23 intervention. I guess my -- my concern is, is  
24 that are we --

25 MR. REEDE: I might also add that we

1 worked very closely with the FAA and they, in  
2 consultation with the Airport Authority to  
3 determine that there were no problems with the  
4 height of the stacks, so they did at least respond  
5 to the FAA. But for some reason, they haven't  
6 responded --

7 HEARING OFFICER SHEAN: Sure. But the  
8 problem for the Committee is this. We -- we are  
9 proposing a mitigation measure that is for the  
10 benefit of the golf course people. And they're  
11 not here, they don't give any indication that they  
12 have notice, or that they understand what the  
13 potential impact is, so -- and we haven't talked  
14 to them in a way to assure that they've been in  
15 that loop.

16 It could be that they don't care at all,  
17 and we're the only ones who care. Or it could be  
18 if they knew, they would care, and they could care  
19 similarly to what we care.

20 MR. REEDE: Then I would suggest that I  
21 instruct Staff to contact the manager of the golf  
22 course.

23 HEARING OFFICER SHEAN: Well, they ought  
24 to at least see the -- the pictures, but the  
25 problem is that we're very late in the game here.

1 This is -- this thing was filed in May. And we're  
2 in November.

3 MR. REEDE: But we've been mailing  
4 public notices to --

5 HEARING OFFICER SHEAN: Okay. I  
6 understand. Okay.

7 MR. REEDE: So, yeah, it's not that they  
8 haven't been informed.

9 MR. ABELSON: Well, they may be happy  
10 with the solution. It's just the Applicant isn't  
11 happy with the solution at the moment, because the  
12 solution may not be -- may not be that easy to  
13 effectuate.

14 HEARING OFFICER SHEAN: But you  
15 understand, once the Committee releases its  
16 Proposed Decision, if that's the first shot  
17 they've got at this, say we didn't know anything  
18 about it, and now we want to -- we'd like to try  
19 to do that ahead of our evidentiary proceeding --

20 MR. REEDE: Right.

21 HEARING OFFICER SHEAN: -- and -- and  
22 deal with this --

23 MR. REEDE: I'll take the action item of  
24 finding whoever is in charge of the golf course,  
25 and --

1 MS. SNELGROVE: I'll help you after.

2 MR. REEDE: Okay. Well, perhaps Maureen  
3 can bring them into the discussion.

4 MS. SNELGROVE: I'd be willing to bring  
5 them into our discussion when we sit down with the  
6 Regional Parks, because we are -- we are beginning  
7 discussions with them regarding that north side of  
8 the -- of the Santa Ana River at the trestle  
9 bridge, because we're looking at doing staging  
10 area development in that area. So we've begun  
11 discussions with the airport.

12 HEARING OFFICER SHEAN: Now, a staging  
13 area would be what, like a parking lot for people  
14 to --

15 MS. SNELGROVE: It's a five acre trail  
16 head with parking for equestrian and for regular  
17 parking. It's a very small park area --

18 HEARING OFFICER SHEAN: Okay. So you're  
19 like going to have parking --

20 MS. SNELGROVE: -- wetland restoration.

21 HEARING OFFICER SHEAN: -- restrooms,  
22 that kind of stuff.

23 MS. SNELGROVE: Yes. Right. So I would  
24 be very happy to find that person and bring them  
25 in to the meeting.

1                   MR. REEDE: Thank you. And we can  
2 expect that there will be a meeting, if nothing  
3 more than a conference call, by the end of this  
4 week, with some resolution by the 13th.

5                   MS. SNELGROVE: If you want a trail  
6 walk, it's going to have to be --

7                   MR. REEDE: Well, I don't -- I don't  
8 need the trail walk.

9                   MS. SNELGROVE: For the Visual?

10                  MR. REEDE: Well, he's Visual Staff.

11                  MR. ABELSON: You mean you personally  
12 don't need the trail walk.

13                  MR. REEDE: I -- I personally don't need  
14 the trail walk, nor could make the trail walk  
15 after just having knee surgery. So --

16                  MR. ABELSON: But a trail walk is  
17 important.

18                  MR. REEDE: Yeah, the trail walk is  
19 important, and I -- Michael, have you done the  
20 trail walk already?

21                  MR. CLAYTON: Not to the full extent  
22 that -- that we're talking about here. Because  
23 we're talking about -- I've been down to the trail  
24 in the vicinity, immediate vicinity of the project  
25 site, but not to the full extent that -- potential

1 impact area.

2 HEARING OFFICER SHEAN: Okay. Well, I  
3 guess we're going to have to --

4 MR. REEDE: Well, just -- just one more  
5 quick question. Would you feel confident -- your  
6 plane doesn't leave until what?

7 MR. CLAYTON: Well, I can do it today.  
8 My plane leaves in the morning.

9 MR. REEDE: Okay. Well, yeah, that  
10 would be fine. Because the trail is open.

11 MS. SNELGROVE: Yeah. Oh, it --

12 MR. REEDE: Okay if --

13 MR. MCKINSEY: Actually, it's not. No,  
14 it's not.

15 MS. SNELGROVE: It's not. I have to --

16 MR. MCKINSEY: You have to have  
17 permission from --

18 MS. SNELGROVE: -- I have to get keys  
19 from Flood Control.

20 MR. MCKINSEY: -- like -- we have a key,  
21 for instance, at the plant, also. But it's  
22 actually still like controlled by the Flood  
23 Control District.

24 MS. SNELGROVE: If I'm with you, we can  
25 go on the trail.

1                   MR. MCKINSEY: Well, yeah. In fact,  
2 we -- we have permission from Flood Control to go  
3 on, too.

4                   MR. REEDE: Okay. Well, then if you'd  
5 please take Michael, and let's work to resolve  
6 this issue as quickly as possible. And I will put  
7 our resources to resolve the issue.

8                   Okay. So -- go.

9                   MR. MCKINSEY: I just wanted to indicate  
10 --

11                   HEARING OFFICER SHEAN: Well, let's not  
12 just leave it --

13                   MR. MCKINSEY: -- we haven't discussed  
14 VIS-5.

15                   HEARING OFFICER SHEAN: -- that the golf  
16 course people are guessing.

17                   MR. MCKINSEY: This has all been about  
18 Visual 4.

19                   MR. REEDE: Right.

20                   MR. MCKINSEY: We haven't discussed  
21 Visual 5. Which may be really simple, except it's  
22 a City of Redlands related issue.

23                   MR. REEDE: All right.

24                   MR. MCKINSEY: And that is we -- the  
25 condition is the Project Owner shall comply with

1 the City of Redlands requirements regarding walls  
2 and signs. It says we have to submit a plan for  
3 walls and signs that has to be approved by the  
4 City of Redlands. We don't have an issue with  
5 that, as long as the City of Redlands doesn't have  
6 an issue with that. I just don't know if they're  
7 prepared to enforce walls and signage type plan  
8 issues or not.

9 We essentially don't plan any signs  
10 whatsoever, and we've indicated that a few times.  
11 And so it's pretty easy for us to say we're not  
12 putting any --

13 MR. REEDE: Right. It was also  
14 indicated in Land Use. The CPM that Bob Eller  
15 proposed to your Director of Public Works, I  
16 believe it was, or whoever they spoke to in your  
17 particular office, John, they'd be getting money  
18 to either hire or retain consultants in the event  
19 that your staff couldn't handle it. Basically,  
20 you're talking about an inspector.

21 MR. MCKINSEY: What I'm concerned is  
22 that I don't know if the City of Redlands -- it's  
23 another one of those ordinances, I just don't know  
24 how they go about wanting to enforce that type of  
25 an ordinance or not. As long as -- as the --

1                   MR. REEDE: I think we need to let John  
2 answer that, then.

3                   MR. MCKINSEY: -- as long as the person  
4 appointed by the City of Redlands is going to have  
5 the ability to adequately say yea or nay to the  
6 plan, that's -- that's what we want to make sure.

7                   MR. REEDE: : Okay. Well, I think John  
8 can answer that.

9                   MR. JAQUESS: John Jaquess, City of  
10 Redlands. I'm not sure that I know what the  
11 concern is. We certainly would have no problem  
12 reviewing the plans and acting on them for walls  
13 and signs, if they were involved or required. If  
14 there are none proposed, then it would be very  
15 easy to -- to address that.

16                   MR. MCKINSEY: Yeah, right now  
17 there's -- there's no plans to replace existing  
18 sign or to put any additional walls.

19                   MR. JAQUESS: Well, we have no problem  
20 reviewing that.

21                   MR. REEDE: Okay. So are you willing to  
22 stipulate to 1, 2, 3 and 5?

23                   MR. MCKINSEY: Yeah.

24                   MR. REEDE: Okay. Officer Shean, I  
25 would ask that Visual Conditions 1, 2, 3, and 5 be

1 considered uncontested and --

2 MR. MCKINSEY: We made some changes to  
3 1, 2, and 3.

4 MR. REEDE: Oh, yeah. Including the  
5 changes made to include the City of Redlands, to  
6 drop out wording in Visual 3 --

7 MR. CLAYTON: We had dropped some  
8 wording in Visual 1, as well.

9 MR. REEDE: And Visual -- and Visual 1.  
10 That they be considered uncontested as revised,  
11 and that testimony be by declaration.

12 HEARING OFFICER SHEAN: Okay. With the  
13 concurrence of the Applicant, that's the way we'll  
14 do those.

15 MR. MCKINSEY: Concur.

16 MR. REEDE: Okay. I'd like to -- I  
17 think we can go through Air Quality fairly  
18 rapidly, and then conclude the hearings for this  
19 afternoon.

20 Thank you -- may I have one of your  
21 cards, please, Maureen?

22 MR. MCKINSEY: Do we also need to  
23 address Soils and Water still, too? We had made  
24 some proposed changes. They've responded to  
25 those.

1 MR. REEDE: Pardon me?

2 MR. McKINSEY: I believe we have Soils  
3 and Water to readdress, also, with our text that  
4 we've sent back and forth on those conditions.

5 MR. REEDE: Do you have the latest --

6 MR. McKINSEY: Yeah.

7 MR. REEDE: -- copy of it? Because I  
8 don't.

9 HEARING OFFICER SHEAN: Those are 1 and  
10 3? Soils 1 and 3?

11 MR. REEDE: Okay. We'll go to Soils 1  
12 and 3, then.

13 And we had already said that Soils 13  
14 was to be deleted.

15 MR. McKINSEY: The changes that they  
16 sent back to us on 1 and 3 -- let me find my copy  
17 real fast. I believe they were acceptable. On --  
18 yeah. We're in concurrence on Soil and Water 1  
19 and Soil and Water 3.

20 MR. REEDE: Okay.

21 MR. McKINSEY: There was something that  
22 was raised today that we kind of mentioned, but we  
23 got a letter today from the municipal water, which  
24 I think has now left, but they had indicated that  
25 they thought 13 should be deleted.

1                   MR. REEDE: Yeah. And we were in  
2 agreement with that. That's not a problem.

3                   MR. MCKINSEY: Well, I don't -- are your  
4 -- is your Water Staff in agreement with that?  
5 I'm just making sure, because --

6                   MR. REEDE: Yeah, the Water Staff had  
7 agreed to 13.

8                   MR. ABELSON: Fourteen.

9                   MR. MCKINSEY: No.

10                  MR. REEDE: Oh, to 14.

11                  MR. MCKINSEY: Thirteen is the one that  
12 we had discussed last week, that involves us  
13 trying to assess what we're doing with the middle  
14 aquifer. And we were saying before that we feel  
15 like, first of all, that legally speaking, we're  
16 really not obligated to do that. It's a non-  
17 adjudicated aquifer, and we can tap a well in  
18 there and use it. So we should be treated like  
19 any other user.

20                  But nevertheless, we were trying to  
21 cooperate to provide -- to kind of address the  
22 concerns they had. And I think what we see in the  
23 letter from Municipal Valley Water District is  
24 just that, that they say 13 seems to be trying to  
25 treat us as something that we're not obligated to

1 be treated as, that we should be treated like any  
2 other water user. Which means we can tap in a  
3 well and use water, so be it, until it becomes an  
4 adjudicated aquifer where everybody has a certain  
5 degree of water rights.

6 MR. REEDE: Now, Soil and Water 13 was  
7 the one where we dropped the part about  
8 reimbursing impacted well owners?

9 MR. MCKINSEY: Right. Well, we -- we  
10 proposed language back, and then the Staff has  
11 given us language back. And it's pretty close to  
12 what we want.

13 MR. REEDE: May -- may I see that copy,  
14 please?

15 MR. MCKINSEY: But what I'm -- what I'm  
16 concerned about is earlier today we had indicated  
17 on the record that 13 was being deleted --

18 HEARING OFFICER SHEAN: Yeah.

19 MR. MCKINSEY: -- because that's what  
20 the Municipal District wanted, felt that it should  
21 be in, and I --

22 MR. REEDE: Well, they're asking us to  
23 please consider it.

24 MR. MCKINSEY: Right.

25 MR. ABELSON: Yeah. Your -- John, your

1 point is a good one. I think, Jim --

2 MR. REEDE: I -- I was thinking 14 when  
3 I said --

4 MR. ABELSON: What was said on the  
5 record was we had already agreed to do that, and I  
6 think it was just a reference to a different -- a  
7 different provision. So we'll retract that at  
8 this point.

9 MR. MCKINSEY: The -- the language in  
10 there, in 13, it's pretty close to what we want.  
11 We -- we've read it a couple of times. The  
12 most -- there's still one sentence that we're a  
13 little concerned it's still a little too vague  
14 about what's being asked of us to do.

15 MR. REEDE: And what is that -- which  
16 sentence is that?

17 MR. MCKINSEY: But it may be okay.  
18 Well, the sentence basically says, at the end,  
19 that we need to compensate if we have any  
20 significant impacts. And that's the big change  
21 from the way 13 was originally written. It was  
22 implying all impacts. And we agree significant.  
23 The only problem we have now is we put in the  
24 middle aquifer wells, we do the testing, and it's  
25 not clear, you know -- you know, the testing shows

1 maybe there's some effect, what's going to be the  
2 threshold for what's a significant impact or not.

3 MR. REEDE: Well, actually we're --  
4 saying compensate any longer. I'm saying Project  
5 Owner shall mitigate for any significant adverse  
6 impacts.

7 MR. MCKINSEY: Right. Well, that --  
8 that's either -- well, like, say we pay for people  
9 that had to move their well bowls because levels  
10 have gone lower, based on our pumping. But it  
11 doesn't say that. It just says significant  
12 impacts. It doesn't say what those would be.

13 MR. REEDE: The determination of  
14 significant impacts I believe is already defined,  
15 or is it not, in the rules of procedures or --

16 MR. ABELSON: Well, sure. In general,  
17 examples are given of what -- but ultimately,  
18 there is -- there's some degree of judgment call  
19 involved.

20 MR. MCKINSEY: Right. And, see, I'm  
21 concerned we'll have a condition that two years  
22 from now requires the compliance unit --

23 MR. REEDE: Well, that's a verification,  
24 that's not a condition.

25 MR. MCKINSEY: Well, it's part of the

1 verification for Condition 13, that once we do  
2 these things, that we then need to --

3 MR. ABELSON: I think what we need to do  
4 on this one, since it's obviously a -- an ongoing  
5 discussion between you and the technical staff, is  
6 we need to defer it off of today. They're not  
7 here, and -- and see what further closure or  
8 remaining issue there is tomorrow.

9 MR. REEDE: Okay.

10 MR. MCKINSEY: Well, the -- here's the  
11 legal issue I have. We're interested in having a  
12 decision that is effective, and the Staff is  
13 required to completely assess significant impacts.  
14 If they find significant impacts, you know, go  
15 through the CEQA requirements, Warren-Alquist  
16 requirements for mitigation.

17 This could be implying that there's some  
18 undetermined significant impacts out there. And I  
19 don't know that that's actually quite what we want  
20 to accomplish, either. That's a, you know, as  
21 we've said before, we -- we went to the middle  
22 aquifer because we think it's a positive impact.  
23 Everybody's abandoning the middle aquifer. It's  
24 water nobody wants, and -- and now we've found a  
25 way to use it. And, in fact, we may be

1 stabilizing the flow of the two plumes in the  
2 area. We're clearly removing the contaminants  
3 from the water by using it. And -- and we're, in  
4 effect, abandoning our rights to the lower aquifer  
5 while -- while the potable users are turning to  
6 the lower aquifer. So it was a really good  
7 solution.

8           And what Condition 13 is kind of now  
9 turning into is we need to -- we're not clear  
10 whether or not we have significant impacts to the  
11 middle aquifer. And -- and once we figure out  
12 whether we have significant impacts to the middle  
13 aquifer or not, this is in the future, after  
14 approval, we need to provide, quote, mitigation.  
15 And I don't know if legally we're meeting a  
16 threshold that's good enough for that. We may  
17 need to have to specify what would be the  
18 triggering point so that it's clear in the  
19 decision that mitigation is being provided.

20           MR. ABELSON: What I suggest what we do,  
21 John, is, first of all, I understand your point.  
22 I would feel more comfortable if you -- your staff  
23 and Lorraine talk a little further about whatever  
24 the current amount of difference is, if any. If  
25 there still remain some along the lines of what

1       you've just talked about, I'd like to maybe have a  
2       conference call with Lorraine on the phone, and we  
3       can talk about it back at the office. Because I  
4       want to be sure and hear --

5               MR. MCKINSEY: Right. In fact --

6               MR. ABELSON: -- Staff's viewpoint of  
7       the issue, as well.

8               MR. MCKINSEY: What I'm addressing is  
9       that -- that I think there is a potential for a --  
10      something that -- that you may have to provide  
11      input on. Even -- I think we've been pretty able  
12      to work out the agreement. I don't have -- see a  
13      problem. What I'm concerned is that what we work  
14      out also has to withstand a legal scrutiny to  
15      comply with the Warren-Alquist Act.

16              HEARING OFFICER SHEAN: And I suggest  
17      you get the Water Staff to read the comments on  
18      page 4 of the letter, because it --

19              MR. ABELSON: Right.

20              HEARING OFFICER SHEAN: -- seems pretty  
21      clear here that the district is not excited about  
22      the idea -- the idea and discussions about well  
23      interference and levels, and this, that and the  
24      other, and in two instances they say considering  
25      well interference to be an adverse impact in this

1 sole case may well set a foundation for needless  
2 studies and litigation in the future. That's a  
3 comment on page -- commenting on the text in -- on  
4 page 416.

5 MR. REEDE: Yeah, I'm seeing that.

6 HEARING OFFICER SHEAN: And then  
7 commenting on the text on 420, it says, payments  
8 suggested set a bad precedent that may well  
9 interfere with good overall basin management.

10 So make sure they see that.

11 MR. REEDE: Okay. Well, Staff -- Staff  
12 will get this one before they have their  
13 conversation.

14 MR. ABELSON: And let's just commit to  
15 be sure and talk. Hopefully, now -- you may want  
16 to know that Friday's a holiday for the state, at  
17 least, and we're due to be down here over the next  
18 -- a week from Thursday --

19 MR. REEDE: Yeah, the 16th.

20 MR. ABELSON: Okay. So obviously we  
21 want to get some kind of a call in, if you guys  
22 still are -- have outstanding issues.

23 MR. REEDE: We can -- it can be worked  
24 on from our --

25 MR. ABELSON: Staff should -- Staff

1 should read this, there's no doubt about it.

2 And -- and then that may affect their view of the  
3 issue.

4 MR. MCKINSEY: Okay. So that -- so 1  
5 and 3 are --

6 MR. REEDE: Okay.

7 MR. MCKINSEY: -- we stipulate to their  
8 changes to our changes, and --

9 MR. REEDE: So 13 is the only --

10 MR. MCKINSEY: -- 13, there may be a  
11 little more resolution. I don't anticipate it  
12 really being a problem. It's --

13 MR. REEDE: So 13 is the only remaining  
14 item on Water. The rest are considered  
15 uncontested and testimony will be by declaration.

16 And if I might move to the Air Quality  
17 conditions, and this will close out the hearing.  
18 With your permission, sir.

19 HEARING OFFICER SHEAN: Sure.

20 MR. REEDE: We have received a revised  
21 Preliminary Determination of Compliance from South  
22 Coast Air Quality Management District. In  
23 addition to the Staff's 3 conditions, we will be  
24 incorporating all the conditions which to my  
25 understanding have been agreed to with the Air

1 Quality Management District by the Applicant.

2 And so by reference, I would add the --  
3 the South Coast Air Quality Management District's  
4 Preliminary Determination of Compliance dated  
5 November the 2nd, 2000, and all the conditions  
6 attached thereto.

7 Additionally, Staff intends to add  
8 additional Air Quality conditions relating to the  
9 CEC standards that are already shown, that are  
10 applicable. Some will not be applicable, most of  
11 them will be. Which Air Quality conditions that  
12 are shown does the Applicant have concerns or  
13 questions about?

14 MR. MCKINSEY: The conditions in the  
15 Staff Assessment. We -- we want to -- we do have  
16 some issues and concerns, and I don't think we're  
17 necessarily off the same page as Staff regarding  
18 the -- the so-called soot filters condition. And  
19 then in addition, we have some --

20 MR. REEDE: You're talking about the  
21 soot filters on the construction equipment?

22 MR. MCKINSEY: Right. There's been some  
23 position advocated by the Air Resources Board, I  
24 believe, that Staff is adopting in some of the  
25 other proceedings that will probably get

1 incorporated into ours, as to the wording of that  
2 condition. So that's one that's not resolved.

3 Also, within the PDOC, Tom Andrews can  
4 explain that we have another couple of changes  
5 that are going to get incorporated, and it sounds  
6 like the Staff doesn't have a problem with them,  
7 the Air District doesn't, that probably -- we'll  
8 probably have to do the evidentiary hearings with  
9 the PDOC on the record with something where the  
10 changes can make it into the Proposed Decision  
11 with supplementary testimony. They're pretty  
12 minor, but -- but -- and, in fact, I think they're  
13 almost points where the Staff is -- the South  
14 Coast has said yes, we meant to have those in  
15 there but we couldn't put them into the PDOC  
16 because we had to go talk to somebody first.

17 And some of them -- Tom, do you want to  
18 go over the main one, the --

19 MR. ANDREWS: Yes, Tom Andrews, Sierra  
20 Research.

21 In the District's, in the South Coast  
22 District's PDOC, there is -- we have four minor  
23 issues. We've already -- I don't think these will  
24 be a big problem to get changed, so I'll just go  
25 over them really briefly with you.

1           The first is -- it appears in two places  
2           in the PDOC. One is Section H of the Equipment  
3           Description. The other is in PDOC Condition 99-7,  
4           where there's a NOx emission limit of 75.15 pounds  
5           an hour for all four gas turbines during start-up.  
6           I think that's a typo. That should be 75.54  
7           pounds an hour.

8           MR. REEDE: What did you say it was?

9           MR. ANDREWS: It's currently 75.15  
10          pounds an hour. It should be corrected to 75.54  
11          pounds an hour.

12          MR. ABELSON: A funny typo. Do you have  
13          some reason to think that's --

14          MR. ANDREWS: It's just that that number  
15          was never -- the number that's in there right now  
16          was never discussed before. So it's so close,  
17          that leads me to believe they just typed in the  
18          wrong decimal at the end.

19          MR. REEDE: Okay. Number 3 is --

20          MR. ANDREWS: This is Condition 63-1 in  
21          the PDOC. As written right now, that is monthly  
22          emission limits for each gas turbine. What we  
23          have requested, and the purpose of those limits  
24          are to limit monthly emissions to match the  
25          emission reduction credits that have been obtained

1 for the project.

2 And what we've requested, and the  
3 District is considering, is to rather than have a  
4 monthly emission limit for each gas turbine, to  
5 have a limit, a combined limit for the four units,  
6 a monthly emission limit.

7 So rather than a monthly limit on each  
8 gas turbine, it would be a limit on the combined  
9 emissions from the four gas turbines. The  
10 District staff has written that in that type of a  
11 limit before, a combined limit, in other permits,  
12 so it's been done before by the South Coast  
13 District. The District staff right now is just  
14 checking with their legal counsel --

15 MR. ABELSON: They call that bubbling  
16 the plant.

17 MR. ANDREWS: Yeah. And it's actually a  
18 -- it's not for the entire plant, it would just be  
19 combining units, essentially, a bubble for several  
20 units. They've done it before, and they're just  
21 making sure that that's going to be okay with  
22 their -- their district staff.

23 MR. MCKINSEY: And it's only for  
24 purposes of offsets. Bubbling has another  
25 connotation with respect to limits, but this is

1 just for purposes of our -- our offsets; correct,  
2 Tom?

3 MR. ANDREWS: Correct. That's the  
4 purpose of the limit itself. It was -- limit just  
5 to ensure compliance with the amount of offsets,  
6 emission offsets that were obtained.

7 MR. REEDE: Okay. And the fourth --

8 MR. ANDREWS: Lastly, it's a -- it's on  
9 the same condition, Condition 63-1 of the PDOC.  
10 There's a minor math problem in the -- in the way  
11 it's written right now. Right now, there's a CO,  
12 a monthly CO limit for each gas turbine of 8,610  
13 pounds per month. That should be, or we are  
14 requesting, if they're going to stay with the per  
15 limit -- per gas turbine limit, we want that to be  
16 8,617 pounds a month for CO. And I'll explain the  
17 reason, what's happening there.

18 Secondly, for PM10, currently the limit  
19 is 7,725 pounds a month per gas turbine.

20 MR. REEDE: Seven --

21 MR. ANDREWS: That's 7,725 for PM10.  
22 And we're requesting that be 7,744.

23 The reason for the difference is that  
24 the Air District uses a software program to write  
25 monthly emission limits. That software program

1 can only take whole numbers. So when you round  
2 the numbers the way they're being forced to by  
3 their software, they're unable to come up with a  
4 monthly number that matches the amount of offsets  
5 obtained for the plant.

6 They think they can deal with this by  
7 simply writing in the proper number, rather than  
8 using their software. So they believe it is  
9 something they can deal with.

10 MR. REEDE: Okay. Now, you didn't  
11 explain the first item, Section H, you said there  
12 was a problem with it but you didn't tell me what  
13 the problem was.

14 MR. ANDREWS: The same problem for  
15 Section H as for Condition 99-7. This is the  
16 difference between 75.15 pounds and 75.54 pounds.  
17 That number appears in two different places in the  
18 PDOC.

19 And that's all of the issues.

20 MR. REEDE: Okay.

21 MR. McKINSEY: And that leaves us with  
22 the topic we left unresolved, about the cumulative  
23 impacts analysis.

24 MR. REEDE: Just what I was going to  
25 bring up. Did the Air Quality District provide

1       you the necessary information this past Friday, as  
2       they had promised?

3               MR. ANDREWS:  We have not received  
4       anything yet, and I have not heard anything from  
5       CEC Staff that they had, as well.

6               MR. REEDE:  Okay.

7               MR. ANDREWS:  The --

8               MR. REEDE:  Well, the CEC Staff -- well,  
9       I'll find out where it is tomorrow morning.

10              MR. ANDREWS:  The Air District had  
11       promised that by Friday, last Friday.

12              MR. REEDE:  Oh, yeah.  They --

13              MR. ANDREWS:  And that was actually, I  
14       believe, pushed a week.  They actually thought  
15       they could get it done sooner, but --

16              MR. REEDE:  Well, I wasn't there Friday  
17       afternoon to see it, nor was my Air Quality  
18       engineer.  So tomorrow morning I'll check and find  
19       out where it is, because they're closed today,  
20       anyhow.

21              MR. ANDREWS:  Right.

22              MR. REEDE:  Okay.  With that, I'd like  
23       to continue the -- the Air Quality testimony until  
24       the evidentiary hearing, when we've been able to  
25       incorporate all of the South Coast conditions with

1 the comments that they've made, that the  
2 Applicant's made today, and including those CEC  
3 standard conditions that no objection has been  
4 raised to.

5 HEARING OFFICER SHEAN: And which ones  
6 are those? The ones that appear in here?

7 MR. REEDE: Okay. On your comparison,  
8 okay. The CEC standard conditions on the left.

9 HEARING OFFICER SHEAN: Yes.

10 MR. REEDE: And the PDOC conditions --

11 HEARING OFFICER SHEAN: So you want all  
12 of those, 4 through 18?

13 MR. REEDE: Well, 4 through 18, plus the  
14 PDOC conditions.

15 HEARING OFFICER SHEAN: Understood.

16 MR. REEDE: Okay. Now, there was one  
17 question on the soot filters before. I asked them  
18 to stipulate to that.

19 MR. MCKINSEY: Correct. There's a -- I  
20 don't think the condition that's in there now is  
21 the condition -- it's certainly not the condition  
22 that we want in there, and I don't think it's the  
23 one the Staff wants in there, either.

24 MR. REEDE: Okay. Well, then if you'll  
25 stipulate to everything else, we'll withhold that

1 one. So all the issues -- all the conditions are  
2 stipulated to by the Applicant, with the exception  
3 of Staff Condition 2-C, as in Charlie. Yeah, C-2,  
4 2-C -- I mean, C-2. And that will be resolved, or  
5 reported resolved at the hearing.

6 So all conditions are uncontested and I  
7 ask that testimony be by declaration, except for  
8 Condition C-2.

9 MR. MCKINSEY: And in theory, the --  
10 actually, I don't think there's going to be any  
11 issue with the Staff with the four minor changes.

12 MR. REEDE: Well, if the numbers -- if  
13 the numbers are incorrect, those will be corrected  
14 as part of our iteration.

15 HEARING OFFICER SHEAN: Well, let's do  
16 this. Let's have the declarations prepared, and  
17 just have your Air Quality -- I mean, unless you  
18 have clearly resolved it prior to the hearing,  
19 bring the Air Quality people here and we'll make  
20 sure we've crossed all the t's and dotted all the  
21 i's.

22 MR. REEDE: Okay. Not a problem.

23 HEARING OFFICER SHEAN: Between  
24 yourselves. And what's going to happen with this  
25 cumulative stuff?

1                   MR. REEDE: As soon as we can get the  
2 information from South Coast, we will issue our  
3 revised Air Quality document. And when I say  
4 revised Air Quality document, Air Quality Staff  
5 Assessment, I mean one that literally incorporates  
6 all of the PDOC's conditions, plus the other  
7 applicable general conditions.

8                   HEARING OFFICER SHEAN: Well, what --  
9 what if -- and now I guess we've got to cover  
10 this. They have in their document the AFC, and  
11 their analysis that based upon the types of  
12 sources that the level of sources that they've  
13 checked, that don't include that out of this  
14 database, no cumulative impacts. Am I not correct  
15 on that? Okay.

16                   You guys have --

17                   MR. REEDE: Well, they'll be providing  
18 an analysis to us, and then we'll look at it and  
19 see if it's done correctly.

20                   HEARING OFFICER SHEAN: But you're  
21 looking for another level of emission sources,  
22 right?

23                   MR. REEDE: We're looking at other  
24 stationary emission sources.

25                   HEARING OFFICER SHEAN: Okay. And

1       having not had that, am I correct that there is --  
2       that there is no -- there are no conclusions with  
3       respect to cumulative?

4               MR. REEDE:  Correct.  There's no  
5       conclusions because we have not had the  
6       information relating to additional stationary  
7       sources or proposed stationary sources in this  
8       sector of the air basin.

9               MR. MCKINSEY:  And this is where I had  
10       indicated before that we won't necessarily agree  
11       with that assessment.  But --

12              HEARING OFFICER SHEAN:  Well, I guess --

13              MR. MCKINSEY:  -- we want to provide  
14       whatever we can, if we can provide it.  But it,  
15       you know, we feel that we've already provided a --

16              HEARING OFFICER SHEAN:  Sure.  The first  
17       question is --

18              MR. MCKINSEY:  -- an adequate cumulative  
19       analysis.  But if it's possible for us to provide  
20       a different one, and we can get the data, we're  
21       more than willing to do it.

22              HEARING OFFICER SHEAN:  If we're here --  
23       between now and the 16th, you don't get the data  
24       that supports the level of analysis you want to  
25       perform, what are you going to do?

1                   MR. REEDE: Then we have to go with what  
2 there is. Or by default, you determine that the  
3 Applicant's level of analysis is acceptable.

4                   HEARING OFFICER SHEAN: Okay. I mean,  
5 that leaves us --

6                   MR. MCKINSEY: The concern that I may  
7 have with that is we've got an Air District  
8 Preliminary Determination of Compliance, and  
9 that's a significant portion of the Staff  
10 Assessment that I would think the Staff would want  
11 to have released. And what I heard, I think, was  
12 that we're going to hold up the -- the -- in other  
13 words, we might -- I don't know if we can go into  
14 the evidentiary hearing without a Final Staff  
15 Assessment in Air. Maybe we can. I'm not too  
16 sure what the procedural rule is that says there  
17 has to be a Staff Assessment. So --

18                   HEARING OFFICER SHEAN: The -- the  
19 regulation is just a report. It doesn't say a  
20 preliminary and a final report. It just says a  
21 report. And I think -- the approach I would have  
22 on this is that they -- they've requested what  
23 they've requested, and you've made a good faith  
24 effort to obtain it, and our -- our discovery  
25 rules don't require your doing more than that.

1 I'm not trying to get you off the hook in terms of  
2 that, nor the District. But if it ends up that  
3 the information is unavailable by the 16th, they  
4 have to choose what they're going to do.

5 MR. MCKINSEY: Well --

6 HEARING OFFICER SHEAN: And they -- they  
7 could choose to say well, we -- we think the  
8 analysis that doesn't include this information  
9 captures enough that we have a confidence in  
10 concluding there are no cumulative impacts. Or,  
11 they may, in their best professional opinion,  
12 suggest something else, and the Committee's --

13 MR. MCKINSEY: Well --

14 HEARING OFFICER SHEAN: -- got to deal  
15 with that.

16 MR. MCKINSEY: -- what I was going to  
17 suggest was, you know, we have to take the data  
18 and then do the analysis, also. And so even if  
19 the data does finally show up from the South  
20 Coast, when it finally shows up from the South  
21 Coast, there's still going to be a little delay in  
22 us completing it. That -- I would say that the  
23 Staff, you know, we've given it a analysis, and  
24 we're committing to providing them this other  
25 analysis they want as soon as we're possibly

1 capable of providing it. But that the Staff may  
2 be able to complete at least some form of a -- of  
3 a testimony commenting on the PDOC --

4 MR. REEDE: Yeah. We can -- we can --

5 MR. MCKINSEY: -- and --

6 MR. REEDE: -- we can incorporate all of  
7 that. It's just that we didn't want to have to do  
8 it twice.

9 MR. MCKINSEY: Right.

10 MR. REEDE: We didn't want to have to  
11 issue two revisions to the Staff Assessment. If  
12 necessary, we'll issue the one that does not  
13 include the cumulative impacts, with the Hearing  
14 Officer and the Committee aware that it does not  
15 include cumulative impacts.

16 MR. MCKINSEY: The -- what I guess I'm  
17 getting at is that at the evidentiary hearings, we  
18 would put on evidence of cumulative impacts, based  
19 on the analysis that we've already done. That  
20 doesn't mean we wouldn't be willing to put on  
21 additional at another hearing, or just in written  
22 supplementary testimony following the evidentiary  
23 hearings. But that -- that we feel that at this  
24 point we can go forward with a complete analysis  
25 in Air.

1                   And I don't know what happened, if the  
2                   Staff, in effect, doesn't provide evidence in a  
3                   particular area, like cumulative impacts, what the  
4                   -- the issue is there. But what I'm asking, I  
5                   guess, is for the Staff to -- to, you know, do --  
6                   hold out as long as they can, but, if possible, to  
7                   provide at least the preliminary cumulative  
8                   impacts analysis so that at the evidentiary  
9                   hearings we can address that. And then maybe what  
10                  we need to do is supplementary testimony regarding  
11                  how it changes, or -- and details that we bring  
12                  out in the supplementary cumulative analysis.

13                  MR. REEDE: Well, that may be well be  
14                  the way to go. I don't want to say let's play it  
15                  by ear, but let's see how it plays out, based upon  
16                  the information that we requested that the Air  
17                  District provide us this past Friday.

18                  MR. MCKINSEY: Right. I just -- I don't  
19                  have confidence in the Air District providing it  
20                  in any promised time, and so I'm assuming the  
21                  worst case is we're not going to get it in time  
22                  for the evidentiary hearings.

23                  MR. REEDE: We'll see.

24                  HEARING OFFICER SHEAN: Well, and we can  
25                  hold the record open. And I guess the --

1                   MR. REEDE: It may very well be  
2 necessary to hold the record open for that.

3                   HEARING OFFICER SHEAN: But we do have a  
4 Preliminary Determination of Compliance in other  
5 than these four items. Do want to -- for it to  
6 get in the record, we could -- I don't know, there  
7 are a couple of ways to do it, I guess. But  
8 the -- I guess a stipulation between the parties  
9 that it be accepted as if presented by a  
10 representative of the district would suffice. So  
11 we're not hauling somebody in here.

12                   MR. McKINSEY: Right.

13                   HEARING OFFICER SHEAN: Okay. All  
14 right.

15                   MR. REEDE: Those are all the issues  
16 that we have for the workshop, sir.

17                   HEARING OFFICER SHEAN: Okay. So we're  
18 basically down to this Air Quality matter we just  
19 discussed, which -- which includes the cumulative  
20 and Condition C-2.

21                   MR. REEDE: Right.

22                   HEARING OFFICER SHEAN: Then we have in  
23 Visual, Visual 4, and the discussion that's going  
24 to occur with respect to the combination of SART  
25 and --

1                   MR. MCKINSEY: I would add that we've  
2                   received comments from the county, through the  
3                   Department of Public Works, Regional Parks,  
4                   regarding other aspects of the project besides  
5                   Visual. And I had mentioned that before, that the  
6                   letter we received goes beyond that. They address  
7                   some landscaping materials related issues that I  
8                   don't think are Visual. They address the Twin  
9                   Creek Channel pipeline hanging from the golf cart  
10                  bridge. They address some water supply issues  
11                  regarding our use of waste discharge water that  
12                  they're suggesting that they might go to use some  
13                  of it for a -- a wetlands habitat restoration.

14                  MR. REEDE: One --

15                  MR. MCKINSEY: Let me just finish the  
16                  list. Some interest in the levee that's going on,  
17                  the levee changes that might have to occur as part  
18                  of the Santa Ana Trail. An interpretative stop  
19                  adjacent to the power plant on the Santa Ana  
20                  Regional Trail. And, finally, the final comment  
21                  is about the Tippecanoe, and it references the  
22                  potential for it to be hung, and that is actually  
23                  no longer an issue so that should resolve that, is  
24                  that it's actually going to be diagonally bored  
25                  underneath Tippecanoe, so there won't be any issue

1 with hanging from the Tippecanoe Bridge.

2 Now, these go, as I said, you know,  
3 they're pretty broad in scope, and I think we want  
4 to cooperate with them to address them and meet  
5 them. And this isn't, I don't think, the forum  
6 that we can accomplish it in, because they're  
7 coming in pretty late and a lot of these issue  
8 areas are fairly resolved.

9 But we may propose some changes that are  
10 positive aspects, or we may not, in some of these  
11 areas that I think the Staff would agree to. So  
12 there might be -- or, I mean, I -- our goal is not  
13 to ignore these inputs, even though they're coming  
14 in very late. And that means we have to be a  
15 little accommodating to accomplish that.

16 HEARING OFFICER SHEAN: Okay. So you're  
17 just suggesting that as one of the items that we  
18 include on the 16th is a response to --

19 MR. MCKINSEY: Right.

20 HEARING OFFICER SHEAN: -- the letter  
21 from the county.

22 MR. MCKINSEY: And it may even be a  
23 stipulative like cooperation of what we agree  
24 and -- and that type of thing.

25 MR. REEDE: I had some questions

1 relating to the Public Works letter. The water  
2 supply habitat restoration. Currently, no  
3 wastewater is going to the -- the Santa Ana River.

4 MR. MCKINSEY: That's correct.

5 MR. REEDE: It is supposed to be a zero  
6 discharge facility; correct?

7 MR. HALL: That is correct.

8 MR. MCKINSEY: That's correct. What  
9 they're talking about is that they would like to  
10 utilize our wastewater to do a wetlands  
11 restoration.

12 MR. HALL: I think that may be a problem  
13 in terms of water quality for the basin, because  
14 it's going to be a high brine waste.

15 MS. SNELGROVE: We would want to look  
16 at, in our development of wetland restoration, or  
17 creating the settling ponds, or however that would  
18 -- because you have an invaluable source of inland  
19 wastewater for us, if we're doing wetland  
20 restoration. So in constructing our wetlands, we  
21 would look at ways of handling that water and  
22 processing it, possibly.

23 MR. HALL: As long as we don't get --  
24 get afoul with the Santa Ana Regional Water  
25 Quality Control Board, we'd be more than happy to

1 supply whatever water you wanted. But we  
2 didn't -- we don't want to have to be at cross  
3 purposes here.

4 MR. REEDE: And that might be a matter  
5 of negotiation regarding landscape issues.

6 MR. MCKINSEY: Correct. The -- this  
7 might be a brief time to say also that we're  
8 receptive to the idea of an interpretative stop on  
9 the Santa Ana Regional Trail adjacent to the power  
10 plant.

11 And the issues regarding the Twin Creek  
12 Channel are fairly interesting. What they point  
13 out is that their -- they may require replacement  
14 of the Twin Creek Channel bridge, the golf cart  
15 bridge, in order to accommodate the trail usage.  
16 And I think I can understand why, because of the  
17 design of that area right now. Presumably, that  
18 would be something that would occur, it really  
19 would be a replacement of that and a replacement  
20 of our water pipe. I don't think it would be  
21 linked to our project legally. It would be a  
22 separate project. It might be annoying if we put  
23 in a water pipeline and then we have to -- and  
24 then it turns around and gets replaced with a new  
25 one on a new bridge.

1                   But -- but even that isn't prohibitive.  
2                   The fact we're putting a water pipeline, it's not  
3                   like it's a natural gas pipeline or some kind of  
4                   hazardous, it's a water pipeline. So it should be  
5                   fairly easy to -- to maneuver it to a new bridge.  
6                   That also involves the golf course, which -- I  
7                   don't know what entity the golf course is.

8                   MR. HALL: The City of Riverside.

9                   MR. MCKINSEY: It's the City of  
10                  Riverside. And so, you know --

11                  MS. SNELGROVE: Well, the golf course is  
12                  City of San Bernardino.

13                  MR. HALL: Yeah, but the land is owned  
14                  by Riverside.

15                  MR. MCKINSEY: Right. So --

16                  MS. SNELGROVE: Right. But we were  
17                  also, I mean, we could also look at, at the time  
18                  that you're putting in the pipeline, of doing the  
19                  bridge renovation at that time.

20                  MR. MCKINSEY: Yeah. See, that we  
21                  wouldn't be able to do, because that would be  
22                  really a much broader scale project, and where all  
23                  the impacts would have to be incorporated into  
24                  here. It would -- it would be more likely that we  
25                  would simply have to move our water pipeline to

1 the new bridge, if we put in a new bridge.

2 MS. SNELGROVE: Well, if -- if we were  
3 given those timelines of when you were doing that,  
4 then we could also work -- I mean, that is an  
5 issue --

6 MR. MCKINSEY: Well, actually --

7 MS. SNELGROVE: We -- if there are  
8 revisions to your plan we haven't received them.  
9 I have only had the -- the original one that was  
10 sent out. If there were any revisions, I haven't  
11 received any.

12 MR. REEDE: You're talking about the  
13 supplement?

14 MR. MCKINSEY: Well, you know, we  
15 originally were hanging from the Twin Creek.

16 MS. SNELGROVE: Right, but you had  
17 mentioned the -- the pipeline being done on a  
18 diagonal?

19 MR. MCKINSEY: Correct.

20 MS. SNELGROVE: We were never -- I mean,  
21 if -- if that is in a document, we haven't  
22 received a document that has those revisions.

23 MR. REEDE: You did receive the Staff  
24 Assessment; correct?

25 MS. SNELGROVE: Right. And that's what

1 these --

2 MR. REEDE: And that's -- that --

3 MS. SNELGROVE: -- and that's what these  
4 notes are taken from.

5 MR. REEDE: Okay. Because in their  
6 supplement --

7 MR. HALL: Some of the verbiage is  
8 incorrect --

9 MR. MCKINSEY: In the Staff Assessment,  
10 some of it refers to the wrong -- we discussed  
11 that in the first workshop. But --

12 MR. REEDE: Right.

13 MR. MCKINSEY: -- but what happened, I  
14 mean, actually you could address this better, but  
15 the process involves submitting an application and  
16 then responding to -- to the Staff's data  
17 requests, and -- and in the -- in that process is  
18 where we had agreed not to trench underneath the  
19 Santa Ana River, but to diagonally bore under it  
20 in order to avoid biological impact issues with  
21 the Santa Ana River. So that, in effect, we're  
22 entering the ground and exiting the ground outside  
23 of the levees, entirely, in adjacent lot areas, so  
24 that we have no impact on the Tippecanoe area.  
25 It's -- of the Santa Ana River itself, going

1 underneath that.

2 And so the material that explains that  
3 kind of comes in piecemeal through the process of  
4 data requests and data responses over the past  
5 four to five months. In other words, when we  
6 originally submitted the project, and in the  
7 supplement I think it was just listed as an  
8 alternative. But the original idea was to trench,  
9 and that was something we have changed.

10 MR. REEDE: In other words, there'll be  
11 no trenching at all.

12 MS. SNELGROVE: Right. We were more  
13 concerned that it was going to be hung. Because  
14 we have a clearance, we have a ramp going under  
15 Tippecanoe.

16 MR. REEDE: Right. And --

17 MR. MCKINSEY: Yeah. When we had  
18 originally proposed it, we had three  
19 alternatives --

20 MR. REEDE: -- yeah, it was going to be  
21 hung. But then --

22 MR. MCKINSEY: -- trenched, diagonal, or  
23 bore and hang. And the hanging was rejected  
24 simply because whoever built the new bridge, it's  
25 brand-new and they didn't want a pipeline being

1 constructed hanging on it at all.

2 MR. REEDE: I think that's it, Mr.  
3 Shean.

4 HEARING OFFICER SHEAN: Okay. So --

5 MR. REEDE: Just to wrap up. The issue  
6 with the Department of Public Works, discussions  
7 will begin as quickly as possible and we should  
8 have something wrapped up by the 13th.

9 HEARING OFFICER SHEAN: Or 10:00 o'clock  
10 on the 16th.

11 MR. REEDE: Either way.

12 HEARING OFFICER SHEAN: Yeah. Okay.  
13 Now, just so everyone knows sort of what the  
14 Committee is planning. In the notice of the  
15 evidentiary hearings we've asked anyone who is  
16 going to present evidence upon which you want us  
17 to rely to get us an electronic version of that,  
18 because we're -- we're going to use -- we're going  
19 to use that. It isn't just a typing convenience.  
20 The decision is modeled in an electronic design on  
21 CD, and we'd like to have this stuff. Plus we're  
22 also going to -- we have multiple uses for it.

23 And the only other thing is that project  
24 description. So it -- essentially, the  
25 completion of our work is dependent upon receipt

1 of that.

2 Other than that, I guess we'll just see  
3 everybody down here ten days hence.

4 MR. MCKINSEY: We have a public hearing  
5 tonight at 6:00; correct?

6 HEARING OFFICER SHEAN: We do. I  
7 suggest, since we've had no indication -- the  
8 Public Adviser had requested that, okay. We've  
9 had no indication that anyone proposes to attend.  
10 I've basically released the Staff to go back to  
11 Sacramento, if they choose to, and I'll do the  
12 same for you.

13 I will remain here, or come back at  
14 6:00, be here. If someone shows up, rather  
15 than -- even the reporter doesn't need to be  
16 here. I will report any comments that are  
17 received and will put them out on the proof of  
18 service. But if you want to stay, you can stay.

19 I don't think there's -- it's going to  
20 serve any good purpose, however.

21 MR. MCKINSEY: Okay.

22 HEARING OFFICER SHEAN: Thank you all  
23 very much. Appreciate it.

24 (Thereupon the Committee Workshop was  
25 concluded at 2:20 p.m.)

CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Workshop; that it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of November, 2000.

