PRESIDING MEMBER'S PROPOSED DECISION
AND COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of: )

Application for )
Certification for ) Docket No.
The Imperial Valley Solar ) 08-AFC-5
Project (formerly Solar Two) Project) Imperial Valley )
Solar, LLC )

CALIFORNIA ENERGY COMMISSION
HEARING ROOM B
1516 NINTH STREET
SACRAMENTO, CALIFORNIA
MONDAY, SEPTEMBER 20, 2010
9:03 A.M.

REPORTED BY:
JOHN COTA

TRANSCRIBED BY:
TIFFANY C. KRAFT, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 12277

CONTRACT NUMBER:
170-09-002

EHLEERT BUSINESS GROUP (916) 851-5976
APPEARANCES

COMMITTEE MEMBERS PRESENT
Jeffrey Byron, Presiding Member
James Boyd, Associate Member
Anthony Eggert, Associate Member

HEARING OFFICER AND ADVISERS
Raoul Renaud, Hearing Officer
Kristy Chew, Advisor
Lorraine White, Advisor

STAFF AND CONSULTANTS PRESENT
Jared Babula, Counsel
Christopher Meyer, Project Manager
Joy Nishida, Staff Biologist
Rick York, Staff Biologist

APPLICANT
Tessera Solar
Sean Gallagher
Ella Foley Gannon
Marc Van Patton

INTERVENORS
CURE
Hossein Alimamaghani
Tom Budlong
Loulena Miles

EHLERT BUSINESS GROUP  (916) 851-5976
<table>
<thead>
<tr>
<th>INDEX</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introductions</td>
<td>2</td>
</tr>
<tr>
<td>Discussion of PMPM</td>
<td>5</td>
</tr>
<tr>
<td>Adjournment</td>
<td>113</td>
</tr>
<tr>
<td>Reporter's Certificate</td>
<td>114</td>
</tr>
</tbody>
</table>
COMMISSIONER BYRON: Good morning, everyone, and welcome to a Presiding Members' Proposed Decision and Notice of Committee Members’ Conference scheduled here this morning at the Energy Commission in Sacramento on Monday, September 20.

I'm Jeff Byron, the Presiding member of the Imperial Valley Solar Project decision. And with me is my Associate member. Good morning, Commissioner Eggert. And our Hearing Officer, Raoul Renaud.

I'd like to thank you all for being here so early this morning on Monday. And we have lots to get through. I'd like to ask if our Hearing Officer would take over and will go through introductions and see if we can finish up by the lunch hour.

HEARING OFFICER RENAUD: Thank you, Commissioner Byron.

I'm Raoul Renaud, the Hearing Officer appointed by the Commission to cover the hearing aspects of this case. And we are here for the Committee conference which was noticed along with the Notice of Availability of the PMPD. The Committee conference is actually an optional proceeding, but the Committees generally try to hold one and sometimes in advance of the Commission vote to give
the parties an opportunity to discuss their comments on
the PMPD.

Before we go any further, let's take introduction
from those who are present, starting with the applicant,
please.

MS. GANNON: Good morning, Ella Foley Gannon,
counsel to the applicant.


MR. GALLAGHER: Sean Gallagher with Tessera
Solar.

HEARING OFFICER RENAUD: Good morning. And on
behalf of staff, please.

MR. MEYER: Christopher Meyer, Project Manager.

And I have Jared Babula, staff counsel.

HEARING OFFICER RENAUD: Good morning. Thank
you.

And on behalf of the Intervenor, California
Unions for Reliable Energy.

MS. MILES: Loulena Miles.

HEARING OFFICER RENAUD: Good morning. Thank
you.

And we have our WebEx system going today so folks
can phone in and participate also on their computer
screens. I see we have some callers. Do we have any

parts, intervenors particularly? I'm thinking of Tom
Budlong, California Native Plant Society or Jose Allen

man. Any of you there?

MR. ALIMAMAGHANI: Hossein Alimamaghani.

HEARING OFFICER RENAUD: Good morning, sir.

Any other intervenors?

All right. Is there anyone else on the phone who

would like to introduce themselves? You don't have to

but --

MR. TAYLOR: Steve Taylor with San Diego Gas and

Electric.

HEARING OFFICER RENAUD: Good morning. Thanks

for joining.

Is there anybody from the Bureau of Land

Management, BLM?

All right. Thank you very much.

Just a little bit of housekeeping. This is --

since this is a noticed proceeding, it is a public hearing

and it is recorded -- stenographically recorded this

morning by a certified reporter who will turn this into a

transcript. So there will be actually -- or actually

quite shortly a written transcript of this hearing on the

Commission website.

Those of you who are participating and wish to

speak, please make sure, first of all, to identify

yourselves when you do speak so the record will be clear
as to who it is, and speak directly into your microphone.

If you're on the telephone, please refrain from any background noise.

If you do have noise in your room where your telephone is, please mute your telephone but don't place us on hold. Because if you do, you might have background music, which we didn't want to hear.

We do have the power here to cut off any caller who is creating a disturbance. So again, please try to be as quiet as the folks here in person are being. We appreciate that very much.

Also, if you have any technical difficulties -- let's see if I have the phone number. I should. I don't think you will. If you let us know if you're having any problems understanding anybody or hearing, I think it should work quite well. It usually does.

COMMISSIONER BYRON: Mr. Renaud, if I may also, I'd like to acknowledge that Commissioner Eggert's Advisor Lorraine White is also at the dais with us this morning. Hopefully my advisor, Kristy Chew, will be here, but she has other responsibilities she'll be in and out fulfilling this morning.

HEARING OFFICER RENAUD: All right. Thank you very much. Good.

The Committee asked that the parties submit
written comments, if any, on the PMPD by September 16th,
which was last Thursday. And we did receive comments from
the applicant, from Commission staff, and from intervenor
CURE. And we do thank you for those.

I think probably the best way to organize things
today is to go topic by topic and to go around the room
and have each party discuss or speak to whatever comments
they wish to speak to. The Committee will also have some
questions about some of the comments.

It appears to me that biological resources
probably has the most comments, and so I propose that we
save that one for last. We'll try to get the other areas
out of the way first.

MR. MEYER: Mr. Renaud, just a brief
clarification. The version that was posted on the web,
I'm trying to verify. It may be incorrect on the staff's
PMPD comments.

The first -- there are two versions. There was
an earlier draft version that may have been attached the
first 18 pages of that. So people could verify that the
version they're working on has -- should only have 106
pages rather than 127. The first 18 may be incorrect and
I believe the version I had in dockets -- the first 18
pages are incorrect. That's being corrected in dockets
and the correct -- the new version. But the staff's
comments in its entirety are in the document. They just
unfortunately start on Page 19.

HEARING OFFICER RENAUD: Okay. Well, the version
I copied is 106 pages.

MR. MEYER: I have 107.

HEARING OFFICER RENAUD: 107. It might be that.
So hopefully it's -- so we are all pretty much looking at
the same document I hope. Well, that's good. Great.
Thank you. All right. I don't think -- did anybody have
any comments or changes for the project description topic?
I don't think so.

All right. Alternatives. I can see that staff's
comments contain some -- first I should say, staff did
have some comments on the introduction. Those are
clerical errors, and we'll certainly take care of those
and we thank you for pointing those out.

Alternatives, staff has pointed out or has some
comments here. I think we would view these as comments
the Committee will take into consideration in preparing
the errata. But you're not proposing -- you're not
pointing out an error or suggesting any changes. But
you're basically --

MS. MILES: Hearing Officer Renaud.

HEARING OFFICER RENAUD: Yes, Ms. Miles.

MS. MILES: I had a comment about the
introduction, actually.

HEARING OFFICER RENAUD: Oh, you do. Okay.

MS. MILES: I noticed the clerical error regarding staff assessments parts A through C, and it was supposed to be changed to 1 and 2. However, after that clause it states, "which were made available for public comment." And I just wanted to point out for the record that there was no noticed public comment period. And that there was no opportunity for written comments on the supplemental staff assessments for the public.

HEARING OFFICER RENAUD: Is that contained in your written comments?

MS. MILES: It is not.

HEARING OFFICER RENAUD: All right. Well, you're saying that the --

MR. GALLAGHER: A was not -- was published after -- you're claiming that what? There wasn't adequate public notice about it?

MS. MILES: No. What I'm saying is that there was no public comment period on the ME supplemental staff assessment for this project. There was a 30-day public comment period on the original staff assessment draft EIS. However, there were a number of significant project changes after that and they were included in the supplemental staff assessment parts one and two. And
there was never a notice 30-day public comment period on
either of those documents.

HEARING OFFICER RENAUD: Well, thank you. We'll
look at that.

Do you have anything else other than what's in
your written comments about the introduction?

MS. MILES: Nothing more than what I just
indicated.

HEARING OFFICER RENAUD: Thank you. So we'll
move on -- we've done introductions. We've done
alternatives. Let's see.

Facility design. Staff's suggestions include a
reference to the -- well, basically some rewording of
Condition of Certification general three.

Applicant, did you have any comments on that
or --

MS. GANNON: We have no objection to the proposed
change.

HEARING OFFICER RENAUD: All right. Thank you.

Looking at the WebEx screen, I see that Mr.
Budlong, you appear to have joined us.

MR. BUDLONG: Finally.

HEARING OFFICER RENAUD: Good morning, sir.

MR. BUDLONG: My computer gave me more trouble.

HEARING OFFICER RENAUD: We're glad to have you,
Mr. Budlong. I'm glad it wasn't our system that was
giving you the trouble.

MR. BUDLONG: It was not your system.

HEARING OFFICER RENAUD: All right. Do we have
anyone from California Native Plant Society?

All right. Thank you, Mr. Budlong, for joining.

What we're doing is going through the written comments
that were submitted by the three parties and we're going
topic by topic. So feel free to chime in whenever you
have something you wish to bring to our attention.

Again, staff has submitted a number of comments
on the greenhouse gases section. I think for the most
part these are suggested rewordings. They aren't
particularly substantive. And we thank you for those.

Is staff or applicant any party -- I'm sorry --
applicant, any of the parties wish to comment on the staff
proposed GHG changes?

MS. GANNON: We agree with your assessment of it.

We think staff is correct in their description of SB 1368,
and we have no objections to those revised changes. We
think that the Committee was correct in the way they
described the CEQA standards of significance and we don't
believe that needs to be changed.

HEARING OFFICER RENAUD: Very good. Thank you
very much.
MS. MILES: Are you going to be coming back to project alternatives? No. Okay.

HEARING OFFICER RENAUD: We have the written comments and we're going through those. You added -- oh, you hadn't added an alternative. Did you want to add something on alternatives?

MS. MILES: Well, I just thought that you would give an opportunity for us to provide a comment on the alternatives section.

HEARING OFFICER RENAUD: I think I might have gone over that quickly. So go ahead.

MS. MILES: Thank you. Appreciate it.

I just wanted to state for the record that CURE is 100 percent in agreement with the staff's concerns regarding the 709 megawatt project that the PMPD proposes to adopt. And that proposal may have -- is significantly different impacts from the alternatives that were analyzed by the staff. And like the staff, CURE was not given an adequate time to review the 709 megawatt project. It was submitted two working days prior to the evidentiary hearings in the applicant's rebuttal testimony on July 21st. And that just was -- we did not have an opportunity to discovery on that. And we did not have an opportunity to have expert review. We did scramble. We tried to do questioning at the evidentiary hearing on that. However,
we do not feel that the Commission should approve this,
nor do we believe that the Commission has the legal
authority to approve it under CEQA, because we believe
that there are new and potentially significant impacts
associated with the removal of the roads and the over land
compensation.

HEARING OFFICER RENAUD: Thank you, Ms. Miles.
That sounds to me like exactly what you put in
your written comments. And --

MS. MILES: For the most part.

HEARING OFFICER RENAUD: I think we aren't going
to take the time today to reiterate what they've written.
If you have anything to add or wish to comment on someone
else's comment, please feel free.

MS. MILES: Like I said, we fully support staff's
comment on that issue well.

HEARING OFFICER RENAUD: Very good. Thank you.
And the Committee isn't intending or planning to
argue back and forth with you folks about your comments
this morning. We understand your comments. We accept
them in terms of being grateful for your comments. We'll
consider them in preparing an errata. But if we don't say
here orally that we disagree or we agree or whatever,
don't take that as a sign of assent. We're here to listen
to your comments and take them back to prepare the errata.
MS. GANNON: And on that issue, the applicant would just say we are in 100 percent agreement with the Commission or the Committee's determination as set out in the PMPD, and for the legal reasons set forth in our briefs, we believe there is adequate support in the record and we support the determination.

HEARING OFFICER RENAUD: Thank you.

All right. Was there anything further on the greenhouse gas section before we move on to air quality? Anybody wish to add anything on greenhouse gases?

All right. Move on to -- well, let's see here. Did anybody wish to comment on the engineering assessment portion of the PMPD which includes facility design, efficiency, reliability, transmission system engineering and transmission line safety and nuisance. I don't think we have any written comments in those areas.

All right. Hearing none, let's move on to air quality. Staff, again, you've submitted in comments and proposed probably your major change is a proposed addition of the paragraph which starts at the bottom of page 8 of staff's comments. Do any of the parties wish to comment on that proposed addition?

MS. GANNON: (Inaudible) has no objection. We had also proposed the same condition which would -- we had stipulated to during the hearings. And this is what this
description is addressing. So we have no objection to the inclusion of this language.

HEARING OFFICER RENAUD: Okay. Let's see. Mr. Meyer, can you clarify for us exactly where that would go? I see a reference here to PMPD, AQ, page 6. Is that -- is that what -- the problem is there's not a page 6. So I wasn't sure where you were proposing that that go. Anybody can chime in if you can help us here.

MR. MEYER: I'll check with the air quality staff and relay back very briefly.

HEARING OFFICER RENAUD: All right. Thank you. That will help.

Other than that, let's see. The air quality changes -- there is a change to AQSC 11. This concerns the engines. How does staff -- sorry -- applicant feel about that?

COMMISSIONER EGGERT: This is the same language that we also included in our comments. So we are in agreement with it.

HEARING OFFICER RENAUD: Any party wish to add further about that? Anything else on air quality?

Okay. I said we'd skip over biological resources and come back to that. So it looks to me like soil and water resources would be the next topic. I know this is a topic that's generated a good deal of interest amongst you.
all primarily due to the proposed use of the Boyer Well on a temporary basis. There's a lot to skip through here. So page 84 of staff's comments is where we go. CURE, did you have a written comment on soil and water resources?

MS. MILES: Yes. We did include a written comments.


Well, let's start with the staff comments. Staff's proposed a major deletion of a portion of a paragraph. This is at the top of page 84. I think this is probably due to the fact that the sediment basins are removed. So does anybody have a problem with removing that language?

MS. GANNON: We think it's an appropriate correction.

HEARING OFFICER RENAUD: All right. And CURE is saying no problem.

MS. MILES: That's fine.

HEARING OFFICER RENAUD: All right.

Now, staff has also proposed an additional sentence under impacts and mitigation for construction
erosion. It's the sentence in red there in the middle of page 84. How does the applicant feel about that?

MS. GANNON: We think it's unnecessary. We think there is a discussion of wind diversion in the PMPD as it was drafted. We don't object to it. But we think it's an unnecessary change.

HEARING OFFICER RENAUD: Thank you.

Anybody else wish to weigh in on that? All right.

MS. MILES: We're generally in support of this change.

HEARING OFFICER RENAUD: Okay. Does anybody wish to comment on staff's proposed change in the middle of page 85 with reference to the sediment study by Dr. Chan?

MS. GANNON: Again, we feel that the PMPD's description was accurate and adequate, and we don't see any reason for the change.

HEARING OFFICER RENAUD: Okay. Anybody else wish to comment on that? Thank you.

Now, starting on page 85 of staff's comments, it's being suggested that references to the 709 megawatt alternative be changed to the BLM preferred alternative. Perhaps staff can enlighten us on why you're proposing that change. Because we're just trying to identify which one we're talking about, but you're suggesting we change
the name of the reference.

MR. MEYER: I am sorry. I was looking up the
answer to your original question. I'm sorry I missed the
first part of that.

HEARING OFFICER RENAUD: Oh, for the pagination.

MR. MEYER: We were referencing construction
impacts and mitigation under sub-part 2 for that new

HEARING OFFICER RENAUD: You want me to start
over or repeat the question?

MR. MEYER: If you would.

HEARING OFFICER RENAUD: At the bottom of page 85
of staff's comments begins a suggestion that we change
reference to the 709 megawatt alternative to the BLM
preferred alternative or just the preferred alternative.
And I'm wondering what's the genesis of that suggestion.

MR. MEYER: Basically just for simplicity since
it's the preliminary LEDPA and the final LEDPA may change.
We don't know at this point. At the time of our decision,
the rod I don't believe will be out. So it may end up
very different.

And also staff had just a general concern that as
the applicant develops the technology and limitation based
on megawatts rather than acreage is more appropriate.

HEARING OFFICER RENAUD: Thank you. Appreciate
that staff. Does staff wish -- sorry. Get this straight.

Applicant wish to comment on that?

MS. GANNON: As long as the reference is clear as
to what the project is that is being approved, we don't
have an objection to it.

HEARING OFFICER RENAUD: So we could call it
Fred?

MS. GANNON: If you'd like to call it Fred,
that's good. Sam, I would prefer. That's okay.

HEARING OFFICER RENAUD: Would CURE comment on
that?

MS. MILES: No. I mean, nothing more than we
don't believe that the 709 megawatt project can be
approved until the staff does an analysis of that
alternative.

HEARING OFFICER RENAUD: We understand that's
your position. Thank you.

Now, turning to staff's comments on page 87 --

MS. GANNON: There is at the bottom of 86 they
had suggested deleting language on page 22. And we just
didn't understand why that language would be deleted, what
the intent was.

HEARING OFFICER RENAUD: Thank you. That's a
good question.

Staff, do you wish to enlighten us on that? Does
the language you're proposing to cross out or delete
describes where sun catchers would not be placed with
respect to the washes? And the Committee thought that
was, you know, a good factual clarification to include.
Can you tell us why you'd want to -- you suggest we not
include it? As far as we know, it's correct.

MR. MEYER: I apologize. I'm not clear on what
the technical staff's rationale was. It wasn't clarified
to me as well. So based on what I'm seeing here, it's my
understanding that this is a clear indication of what the
LEDPA is. So I would agree that that information would be
appropriate in the PMPD.

HEARING OFFICER RENAUD: We'll leave it there.
Anybody else wish to weigh in on that piece?

MS. MILES: CURE has nothing on that.

HEARING OFFICER RENAUD: Thank you.
Let's turn to page 87 then. For condition soil
and water two, staff is proposing adding some language to
the effect that the condition limits the use of
groundwater to a period of 36 months from the date of
first construction related ground disturbance.

First of all, maybe staff, you could let us know
what was your thinking behind adding that.

MR. BABULA: I believe it was to just clarify the
limitation, because the language -- it goes with the next
one, soil and water nine, to indicate this limitation of
time as opposed to just long term contract.

HEARING OFFICER RENAUD: Applicant wish to
comment on that?

MS. GANNON: We agree with the six-month
limitation. We thought that was clear from the PMPD. We
don't have an objection to including it into this
condition as well. But we thought it was clear from the
way it was drafted.

HEARING OFFICER RENAUD: All right. Thank you.

Things like that is just extra clarification that can't
hurt.

CURE, anything to add on that?

MS. MILES: I think it definitely helps with
clarity. However, of course, as we say in our comments,
we believe that the Dan Boyer Well is not an appropriate
water source for the project and unless it undergoes
further study.

And in particular, there was one thing I was not
able to add in my written comment due to time. And that's
just as I stated earlier, you know, the supplemental staff
assessments were not circulated for 30-day public review.
And this is one of the changes that was added to the
project after the original staff assessment was released.
And so there's never been an opportunity for public
review, comment, and response on this project change which I think has been the topic of much concern among the local community.

MR. BABULA: I don't -- it's my understanding that a supplemental staff assessment doesn't have any particular 30-day, 15-day review. There's no review period necessary on a staff assessment.

HEARING OFFICER RENAUD: All right.

MS. MILES: But under CEQA, you have significant project changes either before the final -- before the draft EIR -- sorry. Before the project is approved or after the project is approved, you do have to recirculate that. So a public comment period where the public is entitled to comment and receive a response to comments.

HEARING OFFICER RENAUD: Could you cite us to which section of the regulations you're referring to?

MS. MILES: Just if you give me a moment, I will be happy to do that.

HEARING OFFICER RENAUD: Because we're aware of this type of comment period for proposed decisions, proposed rulings, that sort of thing.

MS. GANNON: I think what Ms. Miles is referring to is the need to do a recirculation of the draft very significant changes that indicate a new potentially impact that hasn't been identified. And our view as was
articated in the PMPD, there was no new significant
impacts. Your regulations anticipate that you're supposed
to be making determinations and there would be revisions
in response to the discussion. We think that was
appropriate.

MS. MILES: That is the provision, is the
requirement for re-circulation of any draft EIR or final
EIR. And we --

HEARING OFFICER RENAUD: If it finds --

MS. MILES: All right. Or significant new
mitigation that's required which would of course be
because of the significant new impact. So we put evidence
into the record that we believe there is a significant
impact and staff also came to that conclusion.

HEARING OFFICER RENAUD: All right. Thank you.

While we are on Soil and Water 2, CURE's position
is that that entire Condition of Certification should be
deleted. Does anybody wish to add to that? I think we
understand CURE's position, and I would imagine applicant
would not agree with that deletion.

MS. GANNON: That's correct.

HEARING OFFICER RENAUD: Staff, anything to add
to that? No. All right.

The next Condition of Certification or item for
soil and water would be Condition Soil and Water 9. Staff
is proposing the addition of language referencing a water
purchase agreement or option between Imperial Valley Solar
and Dan Boiler Water Company. What was the reason for
that suggested change, staff?

MR. MEYER: Staff wanted a way of ensuring
compliance with the -- what we believe to be the intent of
the condition of limiting water -- the amount of water
delivered just to give staff an ability to track it as the
project goes forward.

HEARING OFFICER RENAUD: All right.
Applicant, would you wish to comment on this
proposed change to Soil and Water 9?

MS. GANNON: It's similar to Soil and Water 2.
We don't think it's necessary, but we don't object to it.

HEARING OFFICER RENAUD: All right. Okay. And
CURE, with Soil and Water 9, is this proposed condition
you're submitting a replacement for the one in the PMPD?

MS. MILES: That's correct.

HEARING OFFICER RENAUD: All right. Applicant,
would you like to comment on that, please?

MS. GANNON: We do not believe that this
condition as proposed by CURE is consistent with the
analysis or the conclusions made by the Commission and we
would urge you not to accept it.

HEARING OFFICER RENAUD: All right. What is the
reason CURE is proposing to add this language?

MS. MILES: Because we believe that the Seely wastewater treatment facility is the water supply that should be relied upon for the project and the project should not move for the until that facility is operational and providing water for the project.

HEARING OFFICER RENAUD: All right. Thank you.

Staff wish to comment on CURE's proposed Soil and Water 9?

MR. MEYER: No. Staff does not have a comment.

HEARING OFFICER RENAUD: Thank you. All right.

And let's see. Applicant, I think you actually had something on this, too. Yes. Your Exhibit A for Soil and Water 9 proposes some changes to that language.

MS. GANNON: Yes. And this is consistent with what staff was proposing. Page 86 of their comments. And we think this was just -- the way that the sentence reads it's actually not clear the way it is in the PMPD. We think this is a clean up. We think it's the consistent with the intent. As we presented evidence during the hearing, our intent is to use the Seely water as soon as it's available regardless of whether the pipe has been constructed completely at this time because we would like to switch to using recycled water.

HEARING OFFICER RENAUD: Thank you. I think
we'll just take that as suggested clarification to the language that's in the PMPD.

MS. GANNON: That was the intent.

HEARING OFFICER RENAUD: All right. Thank you.

Now, staff, on your comments on page 88, you've proposed to strike the sentence that says that, "project shall not use recycled connection to a recycled water pipeline for project use." What's the reason for that proposal? While you're looking at that, maybe, applicant, do you have a comment on that?

MS. GANNON: I read this as they were trying to clarify the same condition we just talked about, because there was confusing language about how it would relate to the pipeline and whether the use of it had to be pushed off until the pipeline was completed. So I thought we were trying to clarify the same thing that we commented on in our Attachment A.

HEARING OFFICER RENAUD: So it pertains to nine?

MS. GANNON: I believe it does, doesn't it?

MR. MEYER: I think staff may have been unclear as far as what the Committee was trying to prohibit in that sentence and was concerned it would be quite a bit of connection to the future Seely plant.

MS. GANNON: It is in Soil and Water 9, yeah. On page 47 of the PMPD.
HEARING OFFICER RENAUD: Well, let's see. Okay.
I see. All right. So --
MS. GANNON: It's the same thing.
HEARING OFFICER RENAUD: Nobody has a problem
with that? All right. Thank you.
Okay. Let's move on to -- I think the next topic
would be cultural resources then. Staff's proposing a
number of changes to Condition of Certification in the
cultural resources section. We'll just take them number
by number.
Applicant, do you wish to comment on the cultural
one?
MS. GANNON: Maybe if we do talk about these more
collectively, because I have to say I'm confused by these
proposed revisions. I don't understand what the intent of
it is. And we could talk to the specific language of it,
but I was having a hard time formulating a response
because I was confused by the intent.
MR. MEYER: I can give sort of an idea. The
general intent was since under our -- the authority of the
Energy Commission, we can enforce in the compliance unit
compliance with the conditions on the applicant but not on
third parties. So the intent of the re-writes was to make
sure that since they were written by the BLM, who has a
different jurisdiction, different methodology how they
write their conditions, we were trying to re-write them in a format that was enforceable by the Energy Commission to place the restrictions or any conditions on the applicant or project owner/operator rather than on a third party. And that was the basic intent of trying to re-write it. And since it was starting with the condition that wasn't an Energy Commission condition, that's why it got a little difficult for us to do the re-write.

MR. BABULA: Yeah. What I was trying to do was to take these lines that are originally from an NPIS and make them so that compliance would know what to do with them and they were appropriately targeted on what the applicant is to do and -- because occasionally there would be -- because BLM when they wrote it said we'll do this. BLM will be doing this. But we really can't have a direction that directs beyond to do anything. So I tried to make those changes and clear them up.

And I use some of the prior ones that we'd had in other projects like in Genesis, Calico, so forth. So I tried to keep the intent of what the main goal of each of the conditions was from the FEIS so there's consistency. But just to modify it a bit so it fit more into our format. So that was the main goal.

And with the last one, twelve, was just to clarify that a PA would hold if there's conflicts with the
one through 11, just to make sure that it was clear that
if there's conflicts in the conditions one through eleven
with the PA, then the PA would be the document to use. So
that was the main goal.

MR. MEYER: Staff was intent was to not change
the content of the conditions but make them easily
enforceable by the Energy Commission time frames and
things of that nature. And as Jared says, to make sure
that staff's major concern originally that they don't run
into conflict with the PA. And it was clear that that
sort of true up condition that was at the end was clear to
everyone that it applied to every condition that we
wouldn't have to come back for any amendments.

MR. BABULA: The other problem I had was on the
verifications. A lot of times, the FEIS versions didn't
really have real verifications that normally our
compliance folks would look at and say, okay, that's a
verification which we can see that condition as being met.
Sometimes it just said something will happen. There was
no time lines. It was unclear. So I tried to put in some
sort of trigger so that there would be like based on
either starter construction or some sort of time period,
but something that would fit with the condition.

HEARING OFFICER RENAUD: So the proposed
deletions of the second -- second and third paragraphs of
cultural have CUL 1 would be in difference to the PA,
basically? Is that the idea of that? That the PA will
cover those details?

MR. BABULA: Right. Because the -- it says
cultural resource (inaudible) shall be conducted by
professionals to meeting these standards, but that would
be something that I think was in other conditions or it
would be deference to the PA because there would be some
standards about who's doing the data collection and that
they're competent.

HEARING OFFICER RENAUD: The PA --

MS. GANNON: I think it's fine to leave it in
there. I think it's a pretty standard condition. But I
don't have any objection to taking it out.

HEARING OFFICER RENAUD: All right.

MR. BABULA: Like, for example, preliminary
determinations of national registry -- this is the second
paragraph that we had taken out -- will be made by the
BLM. So that could be deemed sort of the Energy
Commission as saying the BLM will be doing this. And I
just tried to anticipate compliance folks telling me,
"Where did that come from?"

MS. GANNON: I think that's just stating sort of
what the legal requirement is. They aren't the ones that
make the determination. It's not that they have a
requirement under this Conditions of Certification. It was just -- again I don't have any problem -- I think that is stated in the analysis. So I don't think that is a problem. It doesn't need to be in the conditions.

HEARING OFFICER RENAUD: Okay. Thank you. I think we get the gist of that.

Cultural 2, again, staff is proposing deletion of some language. Would basically the same comments you've made, Jared, apply to these as well?

MR. BABULA: Correct.

HEARING OFFICER RENAUD: Applicant wish to comment on the proposed changes to CUL 2?

MS. GANNON: We have no objection.

HEARING OFFICER RENAUD: Any party wish to weigh in on CUL 1 or KUL 2? All right.

Now, I think we're going to move on to CUL 5 unless anybody wishes to stop and look at CUL 3 or CUL 4. Number 5, in the verification, staff is adding a prior to construction proviso. Maybe staff can enlighten us on that. Page 95.

MR. MEYER: Yeah, that's actually already been addressed through our compliance, but that's a standard condition with the Energy Commission that prior to start of construction we want to make sure that the people that are doing the actual monitoring are qualified to protect
the resource. So and I believe --

MS. GANNON: I believe this has been submitted and reviewed by staff.

MR. MEYER: Right. It's been submitted and reviewed by staff.

HEARING OFFICER RENAUD: So applicant's okay with this?

MS. GANNON: Yes.

HEARING OFFICER RENAUD: Any party wish to comment on that, CUL 5?

I'm going to skip 6 and 7. Again, these look like clarifications, unless anybody wishes to comment on them?

MR. BABULA: A quick thing on it. Applicant is -- they're not (inaudible) now. By the time they're doing these conditions --

HEARING OFFICER RENAUD: Yes. Yes. I think that's a good suggestion is that when we're referencing to the applicant in the conditions should be changed to project owner because you won't be the applicant anymore. All right. I think we've pretty much gotten the cultural issues then.

Anybody wish to add anything further on cultural before we move on?

Hearing none, let's move to land use. All right.
In the discussion -- well, staff has suggested some comments, some changes on land use and looking at page 102 of staff comments suggested language to be added or to replace a reference on page 2 of the land use section. I believe again this is a clarification. Any party wish to say anything about that?

MS. GANNON: No objection.

HEARING OFFICER RENAUD: All right.

And then moving to page 5 and -- pages 5 and 6 of the land use section, there is language in there concerning PMMP. And staff is telling us that we should delete that language. Anybody wish to comment on that? I think staff is suggesting there is an error there. And I think what we'll do is just go check ourselves and see if we agree with you. And if we do, we'll make the change.

All right.

MS. GANNON: I think we believe that staff is correct.

HEARING OFFICER RENAUD: All right. Thank you.

Any party wish to add further on that? Now on page 103 of staff's comments, referring to the land use section at page 10, staff is asking that we add a section -- a sentence stating therefore staff concluded that the proposed project does not qualify as a similar use that can be conditionally permitted in the S2 zone.
What is the reason for that suggestion of staff, please?

MR. MEYER: Staff was trying to be consistent with our previous testimony and information we placed in the record based on information we received from Imperial County. So this shouldn't be any new information.

HEARING OFFICER RENAUD: All right.

MS. GANNON: No, we agree with it. We think that there was sudden debate about this within the county originally. And then they came down saying they couldn't make a similar use finding. So we don't object to this clarification.

HEARING OFFICER RENAUD: Okay. Thank you. Any party wish to weigh in on that?

Okay. Now, finding of fact number two, the staff is suggesting a change to that. Staff, can you explain that one to us, please? Applicant, you wish to?

MS. GANNON: We think this is an accurate clarification of how the CDCA should work.

MR. MEYER: Staff has nothing to add other than the staff comment, which is clear in my understanding.

HEARING OFFICER RENAUD: All right. And again, is a suggested changes to finding number 5. Acceptable to applicant?

MS. GANNON: It is.

HEARING OFFICER RENAUD: It appears to be a
correct change.

Number 6, basically a re-write of the sentence for clarity. Does this look good to the applicant?

MS. GANNON: I think they're clarifying the agricultural lands issue, which I think is fine.

HEARING OFFICER RENAUD: Okay. Good, staff. And deletion of 7, can you tell us what your reasoning is on that one?

MR. MEYER: The original language I think that's based on was we were talking about impacts on the transmission line, not the construction lay down area.

HEARING OFFICER RENAUD: I think that's a good clarification. Applicant?

MS. GANNON: We agree.

HEARING OFFICER RENAUD: All right. Let's talk a little about finding 13. What is the reasoning behind staff's suggestion that the solar power plant is not a conditionally permitted use? That is, it would need a conditional use permit, but factually we know one has not been issued but it could be if the jurisdiction were so inclined. Did you read it that way or did you read it as the Committee declaring that the county has found it to be conditionally permitted and issue a CUP.

MR. MEYER: I think staff's reading was that the S2 zone does not -- that the power plant is not one of the
conditional uses within an S2 zone.

HEARING OFFICER RENAUD: Which leads us to the
finding of inconsistency is the applicant --

MS. GANNON: This goes to the same issue we were
just discussing that there are some power generating
facilities that are allowed in the zone as a conditional
use. There was some debate about whether the scale of a
project could be allowed in the zoning. I think we agree
with staff that because we can't get a confirmation it's
allowed, it's probably appropriate to say that it's not,
and make a finding of inconsistency.

HEARING OFFICER RENAUD: I think what's confusing
here is that the term outside the project a solar power
plant is a conditional -- if it was a one megawatt, the
county might have found it consistent.

MS. GANNON: They have done that on some other
projects. So there was some confusion. But we think with
the land use LORS oversight that is already included in
the PMPD and for the same reasons it's probably --

HEARING OFFICER RENAUD: I think whether or not
the statement is correct, I think fact is it's probably
not necessary to say this because we are finding an
override -- we're in an override situation anyway.

MR. MEYER: And staff would agree.

HEARING OFFICER RENAUD: All right. Any party
wish to add to that, that discussion?

Staff is suggesting I think clarifying language for finding 14.

Applicant wish to comment on that?

MS. GANNON: We're fine with that.

HEARING OFFICER RENAUD: All right. Okay. Now, finding 20, staff is suggesting the deletion of a reference to direct or indirect land use impacts. I think what we're trying to do here is distinguish between directing cumulative. So in 21, we found there are cumulative impacts. But in 20, we're finding that there were no direct impacts. Did staff read it that way or were you reading it a different way? Perhaps you can enlighten us on that.

MR. MEYER: Staff was reading it as the -- as typically indirect or cumulative impacts are considered indirect and from staff's understanding. So that was our reading of it.

HEARING OFFICER RENAUD: All right. Applicant wish to --

MS. GANNON: We think the PMPD is fine as it is.

HEARING OFFICER RENAUD: All right. Well, we'll go back and take another look at that one. Thank you.

Okay. Now staff on conclusion of law 3, you suggested deleting the reference to NEPA. Can you
enlighten us on that?

MR. BABULA: Yeah. It's the -- being in compliance with NEPA would be the BLM doing their appropriate procedures so that they followed NEPA and they have adequate notice and they have basis for their decision. So we felt that any finding -- it's not the project's confirming it. It would be the BLM and the Feds are comporting with what NEPA requires. So we thought it would be appropriate to take that out, because the Commission doesn't need to make a finding that the BLM follow NEPA.

HEARING OFFICER RENAUD: I understand that. I think we were just trying to indicate that we considered NEPA.

Applicant, do you wish to add to that?

MS. GANNON: We think that the document in several places refers to the fact that NEPA was part of the process. We don't have any objection to it either way.

HEARING OFFICER RENAUD: All right. Parties?

No.

Anything further from any party on the topic of land use? No.

Okay. Well, let's move on to traffic and transportation. I think staff is just suggesting a
clarification to language on page 5. You were trying to avoid any possible inference that staff prepared its own cumulative impact analysis regarding traffic

MR. MEYER: That is correct.

HEARING OFFICER RENAUD: Okay. That makes sense.

Applicant?

MS. GANNON: No.

HEARING OFFICER RENAUD: Well then, let's move on to visual resources. The staff suggestion is to remove a portion of Vis 6, Condition of Certification 6 regarding the metal diffusion shield. Staff, you wish to comment on that?

MR. MEYER: Just very simply, we believe that during the evidentiary process that the staff and parties reached an agreement and there was a stipulated removal. So if the applicant might be able to clarify. But that's our understanding.

MS. GANNON: We do. And we thank you for catching it.

HEARING OFFICER RENAUD: So we'll just take out the reference to Item 2.

MS. GANNON: Thank you a lot.

HEARING OFFICER RENAUD: I recall that as well. So thank you for pointing that out.

All right. Before we move on to biological
resources, go back and clean up one thing. In applicant's comments, you've suggest the addition of a Condition of Certification called REL 1, which I take it refers to reliability.

MS. GANNON: That's correct.

HEARING OFFICER RENAUD: What is your basis for that?

MS. GANNON: Our basis for that is that that was something that staff had requested and we had agreed to. We don't -- if the Commission decides not to include it, we have no objection. But we stipulated to it, so we have no problem with it.

HEARING OFFICER RENAUD: A stipulation is a stipulation is correct.

MR. MEYER: That is correct. Staff felt that if the Committee decided not to put the condition in, staff could work with it. But we did agree with the applicant was a good condition.

HEARING OFFICER RENAUD: Any party wish to weigh in on that? All right.

MR. MEYER: Hearing Officer Renaud, something I forgot to mention earlier, more of a global -- I think just an air quality -- we just noticed there was a few places that there is in consistency in the project name between the Imperial, Imperial Valley, Imperial Valley
Solar, or IVS. And we just recommendation since some of
the other projects we noticed some our cumulative analysis
are popping up in the area that if we just use the IVS, it
might eliminate conclusion with other projects, other
renewables.

HEARING OFFICER RENAUD: Would that just be in
the air quality section then or --

MR. MEYER: That is where I noticed it. And
anyone else can add to that. But I was thinking just as a
global change.

HEARING OFFICER RENAUD: Anybody wish to comment
on that?

MS. GANNON: Makes sense.

HEARING OFFICER RENAUD: Very good. Let's see
here. I think that's every thing other than biological
resources. Any party wish to throw anything else in here
before we move to biological resources? Anybody?

All right. Staff has suggested a lot of changes
to biological resources. Let me turn to those. Thank
you. Starts on page 12.

Applicant, have you had a chance to review the
proposed changes from staff?

MS. GANNON: We have.

HEARING OFFICER RENAUD: Okay. And CURE, you
have, too, I take it and you've submitted some proposed
changes as well.

MS. MILES: That's correct.

HEARING OFFICER RENAUD: And we thank you for those. Applicant has as well.

All right. With reference to the speed limit, the PMPD lowered the 25 to 20 and that reflected a judgment of the Committee. You understand that the staff and the applicant had agreed to 25. But your suggestion is simply that was informing the Committee as far as you're concerned you had agreed to 25 and you're making sure we know that.

MR. MEYER: That is correct. Since we did stipulate to that, we felt it was fair to the applicant just to make that clear.

HEARING OFFICER RENAUD: But you understand it's still within the Committee's prerogative to make a different finding?

MS. GANNON: And we had just assumed that you had made a different finding.

HEARING OFFICER RENAUD: And staff does not disagree. Is applicant -- I'm sorry. Any of the other parties wish to bring up anything on the speed limit issue?

MS. GANNON: The only thing that comes in later on one of the comments on it, we had stimulated to
language about doing a study and if it was shown that the higher speed limits were causing a problem in that particular area that it would be re-visited. We did include that language in there. We can get to it when we get to that page. Staff was suggesting putting it in and I think there was just some confusion about where it was located in the PMPD. So I think that it -- that the PMPD was consistent with everything else we had agreed to September 20 instead of 25.

HEARING OFFICER RENAUD: Okay.

MR. GALLAGHER: Ella, you're suggesting that I think that was suggesting one of the reason the Committee might consider going back the 25 is that Bio 9 requires the before and after study some involves some evaluation of impacts in the flat tail and adoption of the additional adaptive management strategies which could result in lowering the speed limit. At that point, it was found that the higher speed limit actually made a difference.

HEARING OFFICER RENAUD: Okay. We'll address nine when we get there. But I understand what you're saying.

All right. Staff is suggesting with reference to pages 34 and 35 of the biological resource section of the PMPD the addition of the word operational and noise impacts to wildlife movement through the project site.
Does applicant have any comment on that?

MS. GANNON: We think that the PMPD's analysis on these issues was correct. We don't think these changes are necessary.

HEARING OFFICER RENAUD: Okay. Staff, you wish to say anything about that?

MS. NISHIDA: Yes. Joy Nishida, Biological Resources.

HEARING OFFICER RENAUD: Thank you for joining us. Appreciate it.

MS. NISHIDA: Energy Commission. We had determined that operation noise would not be mitigated and would be considered a consider unmitigable impact. So therefore, we are (inaudible) here operation notice impact of wildlife movement through project site would not be in audible. And part of this is that that the operational noise -- staff concluded it was going to be very noisy and essentially would not be very hospitable habitat for the animals. Therefore, during operations, we probably would not see very much movement through the site while these noisy conditions were taking place.

HEARING OFFICER RENAUD: Okay. Applicant, anything to add to that?

MS. GANNON: Again, we think this was just a difference of opinion, that there was evidence on both
sides of the issue and we assume that the Committee made a
determination.

HEARING OFFICER RENAUD: Thank you. Okay, CURE, anything to add to that?

MS. MILES: We support the staff as analysis on this matter.

HEARING OFFICER RENAUD: All right. Any other party wish to add to that? All right. Now, turning to staff's comments on pages 36 and 37 of the biological resources section, staff proposed an addition of a couple of paragraphs. And this really pertains to the enhancement and rehabilitation of Carrizo Creek and Marsh. It appears to me staff is asking the Committee to insert language that would reference staff's view of the matter but not -- but it isn't -- you're not correcting anything basically. You're asking that we acknowledge staff's information. After I reading that correctly?

MS. NISHIDA: Correct. And also that you definitely consider the original mitigation measure for bio 17.

HEARING OFFICER RENAUD: Applicant wish to --

MS. GANNON: We strongly object to the inclusion of this language and we believe that the PMPD had the correct analysis. There was sufficient evidence in the record to support that determination. And we hope that

EHLEERT BUSINESS GROUP (916) 851-5976
the condition will not be changed.

HEARING OFFICER RENAUD: All right. Thank you.

And CURE, I can tell from your comments that

you're on staff's side with this.

MS. MILES: Yes. And in addition, we submitted

expert testimony at the evidentiary hearing of Dr. Vernon

Blake. But this is not an adequate mitigation measure.

And we also object to this mitigation of using Carrizo

Creek instead of staff's suggested Condition of

Certification Bio 17 because this mitigation of removal of

tamarisk from Carrizo Creek was submitted two days before

evidentiary hearing. And there was not adequate time for

staff or parties to review this new mitigation and view

the necessary discovery and evaluate this proposal and the

problem was not given an opportunity to comment on this

proposal. And we are talking about impacts to federally

endangered species and also state listed species, bighorn

sheep.

So we strongly urge the Committee to adopt our

proposal to use staff's original mitigation.

HEARING OFFICER RENAUD: Okay. Thank you.

Any other party wish to comment on that?

All right. Let's move on then to staff's next

suggestion, which is on page 38, the addition of some

language regarding the plants. And particularly the
outside mitigation -- the mitigation for off site --
sorry -- the off site acquisition of habitat. Staff,
perhaps you can summarize your thinking on this.

MS. NISHIDA: There was some confusion at some
point regarding what -- which species constituted a CMDD
rank one versus a rank two. So part of it was to clarify
this. Also, we -- staff feels that the along project
linears these special status plant species can be avoided.
Can be avoided. So that's part of the reasoning for
inserting some of this language.

HEARING OFFICER RENAUD: All right. Does
applicant object to it?

MS. GANNON: We had agreed to avoidance on the
linears. Where we would like to have clarification is
that's just for the project linears, not just all off site
features. There are lay down areas which are considered
off site features and necessarily we did not agree to or
stipulate the avoidance in those lay down areas.

HEARING OFFICER RENAUD: There is reference to
the lay down areas in the sixth line of your suggested
language. Do you agree with what applicant is saying
about that?

MS. NISHIDA: No.

HEARING OFFICER RENAUD: Because the added
language appears to me to summarize a so-called conceptual
agreement between applicant and staff. Was there such an
agreement of any kind --

Ms. Gannon: We never agreed to construction of
lay down areas.

Hearing Officer Renaud: And what's staff's
position on that? Was there any agreement to the lay down
areas?

Ms. Nishida: Not that I recall.

Hearing Officer Renaud: Mr. Meyer, anything to
add to that?

Mr. Meyer: No. I do not recall the agreement
expanding to the construction lay down areas. I know that
we discussed in great detail the project linears and
avoidance of.

Hearing Officer Renaud: But you're not sure
about the lay down?

Mr. Meyer: I do not recall the discussion going
into the lay down areas. And it's not -- and correct me
if I'm wrong. But I don't believe that we in this
agreement that's talked about here, I don't think we
talked about the lay down areas.

Hearing Officer Renaud: And that agreement was
reduced to writing I take it.

Ms. Gannon: No. There was conceptual agreement.

We proposed conditions based upon that conceptual
agreement. Staff proposed conditions based on this conceptual agreement. There was some difference in those proposals which demonstrate that conceptually we may not have been exactly in the same place.

HEARING OFFICER RENAUD: What about the lay down areas? Is that a problem?

MS. GANNON: It is a problem. The reason we are able to stipulate for the off site linears is because you have a lot of flexibility and placement of the near features. A lay down area is very different.

HEARING OFFICER RENAUD: All right. Well, we'll take that back to consider. We appreciate your comments. Any of the parties wish to add to that? Any other party? Okay. Let's move on then to staff's next comment, which is page 42 to 43. We're suggesting the addition of the wording 881 acres of compensation land. Does that accurately reflect an agreement applicant had?

MS. GANNON: Never.

HEARING OFFICER RENAUD: All right. Staff, do you wish to comment on it?

MS. NISHIDA: We did not agree on the conditions bio 17.

HEARING OFFICER RENAUD: All right. So again, this is going to be something the Committee will need to just recheck, but basically you're in disagreement it was
something we adjudicated?

MS. GANNON: Correct.

MS. MILES: I have a comment. I believe CURE's witness Dr. Velicus (phonetic) is quoted in the PMPD as stating that the weight of the evidence showed that the use of the site is transitory at most. And I just wanted to clarify for the record this he actually was stating that transitory movements are actually very essential part of the range, expansion, for example, and survival of this endangered species. So they need to be able to move from one area to another. And so I just felt this was a mischaracterization of his conclusion.

Additionally, I just CURE definitely supports staff's analysis. We feel that the numbers provided by the CRAM assessment were not reliable data and we submitted expert testimony to that effect at the hearings.

HEARING OFFICER RENAUD: So you're looking at page 42 then I take it?

MS. MILES: So this is PMPD pages 42 to 43 is where it's Dr. Blake is referred to.

HEARING OFFICER RENAUD: As agreeing. Yeah, we'll go back and check the record on that and if a correction is warranted, we'll make it.

MS. MILES: Thank you.

HEARING OFFICER RENAUD: Thank you.
Let's turn then to page 44. CURE, if I ever skip over one of yours, let me know. I'm using staff's page references. Yours are sometimes in the middle of the text and I might miss one. So please let me know if I do.

On page 44, this is getting back to the other issue of basically the extent to which this site is autopsied by the FTHL. Again, it appears to me that staff's proposal here is suggested -- is basically arguing with the Committee's finding. Reiterating staff's information which is in the evidence.

MS. NISHIDA: Yes.

HEARING OFFICER RENAUD: I think we could -- we could acknowledge staff's position on this at least without necessarily agreeing with it. And the Committee may in fact wish to add some language simply setting forth staff's position. But at any rate, this is an issue that was adjudicated and we may flush it out a little bit. We will certainly take a look at it. We thank you.

Applicant?

MS. GANNON: We agree with that analysis, your analysis.

HEARING OFFICER RENAUD: The Committee's analysis. I do want to ask staff a question, though. You've suggested that -- staff's suggested that because the FTHL is a candidate species for federal listing, the
loss would be an unmitigable adverse impact. Does the candidacy effect your thinking on that?

MS. NISHIDA: Definitely it does add weight to our conclusions.

HEARING OFFICER RENAUD: Why is that?

MS. NISHIDA: Well, because of the range -- the 50 percent reduction of range for the species and this -- and also correspondingly, the numbers of Flat-Tailed Horned Lizard which population numbers have gone down due to this developed -- due to the development of the range. Their numbers are going to be compromised. Putting in a 6,000 acre plus site is not going to help them.

MR. MEYER: If I can add a little bit to that.

HEARING OFFICER RENAUD: Yes, please.

MR. MEYER: It started very early on in our process when we started reading the case going back and forth on the listing of the Flat-Tailed Horned Lizard and the direction from the court of appeals. We started having discussions with the other resource agencies including the BLM and the BLM's biologist when was an expert on this species. And in those meetings, we the agencies -- we've shared this with the applicant that we felt that the most responsible way was the look at the species as likely being listed and to be conservative in our treatment of this species. So we did not come out
with recommendations for decision that would within
six months of the decision be not nearly as protective as
the new regulations would be, so since we knew these
things were coming up.

MS. GANNON: If we could respond to that, we
agree with approaching it. It's a level of treatment that
you would with a listed species federally listed species
and we've never on thing to that. We're doing a
consultation for the species with the U.S. Fish and
Wildlife Service. What we have objected to, what we
discuss in our briefs is this new level of significance
for based on some number of take of a listed species.
We've never seen that before. I don't understand how you
reconcile that with the general approach to how you design
level of significance under CEQA. We've discussed this in
our briefs for the legal reasoning, but we don't think
this is appropriate. So that's what we would object to
having the sentence included.

HEARING OFFICER RENAUD: Okay. Thank you. CURE,
you wish to add to that?

MS. MILES: Question. I'd like to add not only
is the species listed because it's losing its range,
but -- and it's declining in numbers but because the range
wide management strategy has not shown to be effective in
recovering the species. And so because the primary
mitigation underlying this project approval would be based
on the range wide management strategy, we don't feel that
that is going to be a full mitigation or effective
mitigation necessarily. And we reviewed the annual
reports that were coming out regarding the implementation
of the range wide management strategy and found that there
isn't evidence that's been effective. And so we believe
that there is an unmitigated significant adverse impact to
the species, and that would (inaudible) mitigation that is
a part of this proposal.

HEARING OFFICER RENAUD: Okay. Thank you. Any
other party wish to comment on this?

All right. Let's see here. Moving to staff's
comments on page 48, you were asking that we put in the
881 acres again. But this is again a re-statement of
staff's position. Okay. Now, I see on page 49 comment is
the addition of Wiggins's Croton to the finding of fact
number six appears to be a correction. Is that
acceptable?

MS. GANNON: That's acceptable.

MS. NISHIDA: Yes. You skipped over 44, 45, 46.

HEARING OFFICER RENAUD: I did. I'm sorry about
that. Thanks for pointing that out. You're right. Okay.

Applicant, would you wish to comment on that?

MS. GANNON: The comment on page 44, we think
that was a typo. So that's -- we have no objection to correcting that.

HEARING OFFICER RENAUD: 45 to 46?

MS. GANNON: 45 to 46, we also propose language to allow for the ground truthing of the phasing numbers and the mitigation numbers. The numbers that were included in the staff's assessment and the supplemental staff assessment were based on the AFC numbers and as well as the calculation that have been provided by the BLM. They were listed as approximation. So we had suggested putting a foot number in to the Flat-Tailed Horned Lizard chart which says these numbers will be based upon the legal descriptions of the areas and will be ground truth. We think that makes more sense than having the Committee try to haggle with whether it should be 6152.8 or whatever the specific number is, we think we can do it through a ground truthing.

HEARING OFFICER RENAUD: Staff, you wish to respond to that?

MS. NISHIDA: In the conditions, we do expect some sort of ground truthing or actually aerial using the use of aerial photography afterwards to determine the final acreage impacts. So what I'm doing here is providing an estimate based on the applicant's latest acreage calculations.
HEARING OFFICER RENAUD: Applicant, your response?

MS. GANNON: We think the (inaudible) that's included in the PMPD is accurate enough. I mean, we're close enough we had some confusion about the way the staff was calculating the off site impacts and what was included in that. Again, we thought the PMPD's numbers that have been consistently used it would be ground truth. And what's important is we've agreed on the ratio of mitigation. We've agreed on phasing and suggested some different types of phasing. But if you stick with what was in the PMPD, there would be a phasing process that's set up and will be adequate to ensure the mitigation is provided based on the actual impacts.

HEARING OFFICER RENAUD: All right. Thank you. Other party wish to add to this discussion? All right. Well, we'll take a look at that and then see what we need to do, if anything.

Let's back at page -- staff's comment with respect to page 48, biological resources section adding the 881 acres. Again, I think that's we already said that is a re-statement of staff's position. Applicant would disagree with it.

MS. GANNON: Correct.

HEARING OFFICER RENAUD: We'll look at it.
Okay. Now we're moving on to some changes proposed by staff to the -- well, let's see. First look at page 54, conclusion of law --

MS. NISHIDA: Excuse me. Did you want to go over page 49, minor -- a minor change.

HEARING OFFICER RENAUD: No. I think that was grammatical typographical issue that we'll deal with. Thank you. Okay. Let's -- suggested change to condition -- conclusion of law number one, staff. What is your thinking behind that, please?

MS. NISHIDA: This is mainly for clarification here. It says that the -- impacts to Flat-Tailed Horned Lizard would not be mitigated below the level of significance and we wanted to clarify notice impacts. We want to include notice impacts and the impacts resulting from the loss of --

HEARING OFFICER RENAUD: Okay. Applicant?

MS. GANNON: We disagree with this proposed change. We believe as described in the PMPD that the significant and unavoidable impacts to the Flat-Tailed Horned Lizard are from project and cumulative loss of the habitat and not related to the loss of individuals and not related to noise. We don't think it's necessary.

HEARING OFFICER RENAUD: CURE, anything?

MS. MILES: We support staff's proposal.
HEARING OFFICER RENAUD: All right. Other parties, anything? Okay. Thank you.

Let's move on then to Conditions of Certification. First one would be Bio 6. Staff has proposed -- again, I see we have the speed limit issue, we've discussed that before. All right. Proposed an additional paragraph --

MS. GANNON: Again, I suggest you look down at the last paragraph before staff comment. That's the same paragraph. So it doesn't need to be added.

HEARING OFFICER RENAUD: Does staff agree with that? That's the way it looks to me, too.

MS. NISHIDA: We agree.

HEARING OFFICER RENAUD: All right. Then on Bio, more speed limit. We'll deal with that.

Bio 10, looks like staff and applicant have some proposals here. I was turning to page 70. Okay. Applicant, you've proposed -- you've got -- I guess proposing an addition of a footnote to the table on page 77 to 78.

MS. GANNON: Correct. And this is going to the issue we were discussing about clarifying how the numbers will actually be ground truth and what will be the basis for the mitigation payments.

HEARING OFFICER RENAUD: Okay. Does staff have
anything to add to that?

MS. NISHIDA: Yes. We would like to see the payments -- the payments are supposed to be phased in so they are the securities are even prior to any sort of disturbance, pre-project or project disturbance. That's why we have this. This is an estimate. But we need to put -- have the applicant put up some securities up front initially before any sort of disturbance, not afterwards.

MS. GANNON: But the disturbance numbers would not be the basis of the mitigation as we are proposing. What we're saying is that we will be getting a legal right and legal access to a certain acreage of land both on the BLM and on private lands that would be the basis for these calculations which are acreage based. So it's not saying we have proposed to have a mitigation paid before ground disturbance. We are saying the numbers can be calculated and based upon the actual areas that we have the legal right to as part of the project size.

MS. GANNON: And that's correct. And this is what I based my estimate on.

HEARING OFFICER RENAUD: So you're in agreement about this language proposed by applicant?

MS. NISHIDA: Not necessarily. I still would like to see -- we still need to have some sort of dollar amount. And what I'm doing is basing this on the
estimated Flat-Tailed Horned Lizard habitat being impacted by each phase.

HEARING OFFICER RENAUD: So you want to have some firm dollar amounts in the condition, whereas, applicant's position is that we all have to determine those once we know.

MS. GANNON: If it has to be paid before ground disturbance but the actual number and the actual payment should be based on the size of the area as a project, that's what we are mitigating for. We think it's fairly simple.

MS. NISHIDA: And this is -- my calculations are based on the size of the area that you have supplied staff.

MS. GANNON: We're just saying there should be a footnote that says it should be ground truth.

HEARING OFFICER RENAUD: All right. I think we understand your position and we'll take a look at that. Does any other party wish to add to that discussion?

All right. Also on Bio 10, staff has got a table -- let's see here. Would this be a new table you're proposing we add?

MS. NISHIDA: Yes. Based on applicant phasing proposal.

HEARING OFFICER RENAUD: All right. Does
applicant wish to comment on the addition of that table proposed by staff?

MS. GANNON: The table is on which page? I'm lost in this.

HEARING OFFICER RENAUD: Page 26 of staff's comments. I guess it would be inserted into Bio 10.

MS. GANNON: I don't think we have a problem of inserting a table as long as again there is a footnote that says that the actuals will be reflective of the areas to be incorporated in each one of those phases.

MR. MEYER: Just a really quick question. Does the applicant anticipate those numbers changing significantly over what staff has at this point that we base these numbers on?

MS. GANNON: The numbers that we saw them I think there's some confusion about the off site features that we're included and where they are impacts to the water line. I think you didn't include it, but I'm not entirely clear. That's not impacting Flat-Tailed Horned Lizard habitat. It's just making sure these are corrected. These numbers do not match up with what our specific numbers that we have. So I think there is just going to have to be ground truthing.

HEARING OFFICER RENAUD: Your focus is based on the off site.
MS. GANNON: The off site, yes.

MS. NISHIDA: I did not include the off site water line along the Evan Hughes Highway. You only included what was on the project site, which was about, what, three acres.

MS. GANNON: For some reason, it's just not adding up. The last week I tried to figure this out and I haven't been able to figure out why your numbers and my numbers are not matching up. But I think this is something that can be easily fixed. We will have specific legal descriptions that set forth acreage. And we will have areas that we will have rights to do work in it for we're going to get limited noticed to proceed from the BLM that will be a legal description which will be just a factual number.

MR. BABULA: How close were the numbers?

MS. GANNON: Within a couple percent. But they're just not lining up. And I don't like when numbers don't line up.

MR. BABULA: How many significant figures then?

MS. GANNON: Well, when you start multiplying by things.

MR. MEYER: Just a brief question. Staff, on Page 25 of our comments, on Bio 10, we suggested some additions as well as a change in the acreage. Did the
Committee have any questions for staff on that?

HEARING OFFICER RENAUD: Well, let's see first if applicant has any comments on the proposed change to language, the open language in Bio 10.

MS. GANNON: We ask that be taken out in our earlier comments and briefs and for the same reasons we would ask it not be included here.

HEARING OFFICER RENAUD: And staff's reasoning for adding that?

MS. NISHIDA: Because the Committee had initially put down -- put on here the paragraph prior to Bio 10. The special status species habitat compensates for mitigation. It lists all these other special status species, the Veron elk, Golden Eagle, American badger, Desert Kit Fox. There's why it was reinserted into this paragraph.

HEARING OFFICER RENAUD: What about the acreage?

MS. NISHIDA: The acreage is --

HEARING OFFICER RENAUD: The change in acreage.

This is -- I'm basing this on -- okay. Let's see. Yes. I'm basing it on the acreages provided by the applicant for the phasing.

HEARING OFFICER RENAUD: The applicant?

MS. GANNON: That goes back to the acreage numbers. I think that we would propose we keep the
acreage numbers the same as they were in the PMPD and that
we put up a mechanism for ground truthing as we've
discussed. In terms of listing the other species, the
analysis that was included in the PMPD recognized that the
Flat-Tailed Horned Lizard mitigation would likely benefit
these species, but was not establishing a performance
standard that these areas had to be included. So that's
why we would suggest it's appropriate to not include them
here in the condition itself.

HEARING OFFICER RENAUD: Thank you very much. I
understand that.

CURE, anything to add on that?

MS. MILES: We support the staff. We believe
that these species, these special status species, should
be recognized and specifically in the mitigation language.

HEARING OFFICER RENAUD: Anything else on that?

COMMISSIONER BOYD: Hearing Officer Renaud, let's
conference.

HEARING OFFICER RENAUD: Okay. On page 27 of
staff's comments, there's a change to the acreage from
6619.9 to 7001.8. Does applicant wish to comment on the
change in acreage?

MS. GANNON: I'm sorry. Can you repeat the
question?

HEARING OFFICER RENAUD: Sure. Staff's change in
the acreage page 27 of their comments, does applicant agree with that?

MS. GANNON: No, we do not agree to it. Again, this is the same thing. I don't understand how they got their numbers there. They're not adding up with our numbers. And we just suggest keeping them as they were in the PMPD and provided those were approximations and they will be trued up.

HEARING OFFICER RENAUD: All right. And let me ask about the truing up the ground truthing and so on. Are you suggesting that the Committee add a provision for that or are you suggesting it's already here?

MS. GANNON: We suggest you put a footnote in that we provide in our comment and we think that gets you there.

HEARING OFFICER RENAUD: Well, okay. Now, your footnote says that the acreage will be confirmed prior to the start of ground disturbance. What would that mechanism be?

MS. GANNON: The mechanism will be that we will have rights in excess to certain areas of land on the BLM land we will be getting limited notice to proceed. For the entire acreage we will have the project site that with have -- that will be a legal description and that will be an acreage associated with it. Within each phase, we will
have a limited notice to proceed which allows us access to
a certain acreage of land. So that acreage of land would
be the basis for the mitigation.

HEARING OFFICER RENAUD: All right. So the
determination of the actual acreage associated with each
phase, would that be made by the applicant?

HEARING OFFICER RENAUD: We would submit the
support that says this is the acreage, this is what we
have right to have access to this and this is the -- this
is what will be involved in this particular phase.

HEARING OFFICER RENAUD: And submit that to whom?

MS. GANNON: To the CPM.

HEARING OFFICER RENAUD: And would the CPM in
your view then would have discretion to address that if
necessary?

MS. GANNON: It has a ratio number and it has a
dollar amount associated with it. So it would just be
correcting the calculation.

HEARING OFFICER RENAUD: In terms of the acreage
though, would that be subject to --

MS. GANNON: Verification.

HEARING OFFICER RENAUD: To verification. All
right.

I know you were conferring, staff. Did you hear
our discussion over here?
MS. NISHIDA: No, I did not.

HEARING OFFICER RENAUD: We're talking about the whole topic of ground truthing and adjustment of acreage. And staff's -- sorry -- applicant's proposal is in the footnote on Bio 10. And we're talking about how would that -- what would the mechanism be. Seeing that applicant would determine the acreage, but it would be subject to verification and submitted to the CPM.

MR. MEYER: I would just a slight -- from thinking as a compliance project manager from the aspect of giving the time frames we're looking at these projects, there's not going to be a lot of time for staff to do anything quickly. And so we're trying to think of a way we can do it.

Also I'd want to make sure that if there is something that is a provision for ground truthing that it is called out for a little bit more obviously than just a footnote. Because we do understand that these numbers have changed a lot. So there's certain number in the PMPD that were numbers that came from the applicant later that didn't have a lot of input from staff because the phasing and everything else is changing a lot. So we do agree there's going some misunderstandings. There's not as much disagreements, but just trying to get down to what the basis for calculating these numbers are.
So staff does agree that we want to get the most accurate information, more accurate clear information to make sure that we're all comparing apples to apples comes in, we agree there should be a provision to make sure that the applicant isn't either over-mitigated or undermitigating for impacts.

HEARING OFFICER RENAUD: All right. Thank you.

That's helpful.

MR. BABULA: I would also agree that probably a footnote is a little too subtle if you're going to have something. It should be stand out a bit more in the condition perhaps to acknowledge that the numbers -- while the scope is what the mitigation is and understanding what the impacts are is set. That's understood. It's fine tuning the exact numbers for the acreage and so forth. So it should be clear that this isn't an issue where, oh, the problem didn't get an opportunity or there would be some new impacts, but taking some range and very narrowly specifying now it's this is the numbers. So probably something in the footnote.

MR. MEYER: Just to clarify when counsel is talking about percentage points or two and 6500 or 6,000 acre project, we're talking about almost 400 acres. So a few percentage points on a project this size do add up pretty quickly.
Also do the compensatory numbers associated with it.

We get your point.

Hearing Officer Renaud, in response to Mr. Meyer's argument as I read those proposed decision, not just this one but all of them and there are an enormous number of compliance conditions that staff is going to have to work on immediately following their approval. So this ground truthing notion, the true up of numbers can also take place afterwards. I'm inclined to agree with staff that we have sufficient compensation set aside at the beginning so that there is no conflict or difficulty in the early approval process. So I think we can find a remedy to this. But I don't want to make a condition that's going to make a burden on the staff at this point.

All right. So --

We can also submit by the close of public comment period, we can submit what we believe are the numbers and the support for it.

Okay.

If that's helpful.

What I'm looking for right now is if there is a place we should add something that's stronger than the footnote? And I think off the top of my head it should be in Bio 10.
MS. GANNON: It should be in Bio 10, yes.

HEARING OFFICER RENAUD: And that's a long, long Condition of Certification. Perhaps in section 3 review and approval of compensation lands prior the acquisition?

MS. GANNON: I think that relates actually to the actual identification and purchase of the lands themselves rather than the -- I think it's more related to the security provisions.

HEARING OFFICER RENAUD: I'll tell you what. While we are moving through things here, why doesn't everybody kind of be keeping an eye out for a good place to put that and perhaps suggest a couple of sentences that we could add to this that would accomplish what everyone is talking about.

MR. MEYER: Staff agrees with the applicant that somewhere around section 5 under the security mitigation, security would be appropriate.

MS. GANNON: Or we have the compensatory mitigation land funds. We have the fund payment and that's where we have the phasing table. So it's probably the right place.

HEARING OFFICER RENAUD: Okay. Good. Thank you. I think maybe the Committee has enough information here. We understand what everyone is talking about and we can come up with something that will work.
All right. Now, moving through the suggested changes to Bio 10 that are suggested by staff, I guess we've dealt with the new table, the additional table. Under Section 4, there is an added proposed language about the possibility that an approved nonprofit organization holds fee title to the land. Does anyone wish to comment on that?

MS. NISHIDA: This was in the original Condition of Certification that the -- that was approved by the applicant.

HEARING OFFICER RENAUD: Okay. Does the applicant agree with that?

MS. GANNON: I am sorry.

HEARING OFFICER RENAUD: Page 29 of staff's comments.

MS. GANNON: We have no objection to that. There was back in paragraph 1 on page 27 of staff's comments, there was the suggestion to remove the requirement that the CPM respond within 30 days of receiving the proposal.

HEARING OFFICER RENAUD: Yes. Thank you.

MS. GANNON: And the reason that we asked for these 30 days initially was if we are trying to make -- are able to purchase land acquisition, the normal process is we're going to get option agreements and we need to have a time period in which we're going to be getting a...
response. Otherwise, obviously there can be considerable funds associated with that.

HEARING OFFICER RENAUD: Can I hear from staff on that, please?

MS. NISHIDA: Given our workload, I'm not certain we'll be able to accommodate the 30 day limit.

HEARING OFFICER RENAUD: What kinds of limit could you accommodate?

MR. MEYER: Applicant is making a good point here. Staff could should be able to turn that around in 45 days, if that's acceptable to the applicant.

MS. GANNON: That's acceptable.

HEARING OFFICER RENAUD: All right. Thank you.

MS. GANNON: Thank you. And there was a similar provision in paragraph 3 on the top of page 29 of staff's condition -- comments.

MR. MEYER: We just want the 15 days. So 15 on that one.

MS. GANNON: Oh, right.

HEARING OFFICER RENAUD: So we're going to change the 30 to 45? You're on page 29.

MS. GANNON: Yes. We're okay with that.

HEARING OFFICER RENAUD: Any party wish to weigh in on this bit?

No. All right. Okay. Going back to the bottom
of page 28, staff's proposing to remove a phrase, "If the
project owner assumes responsibility for acquiring the
compensation lands," does applicant have any concern about
that?

    MS. GANNON: I think if we are not acquiring the
lands, we don't think we should be the one to formally
commit that position proposal.

    HEARING OFFICER RENAUD: What's the staff's
thinking behind removing that phrase?

    MS. NISHIDA: Probably removed that in error.

    HEARING OFFICER RENAUD: All right. We'll
re-insert that. Let's then turn to page 30 of staff's
comments. If I'm skipping anybody else's comments, let me
know. I'm kind of juggling them all here. There are some
on Bio 10. And staff's proposed additional section 6 --
not a section all section 6 -- it's additional language on
section 6, compensatory mitigation land improvements. Has
applicant -- what do you think of that?

    MS. GANNON: We felt that this detail -- level of
detail was not necessary here. We -- this has to do with
the long-term management.

    HEARING OFFICER RENAUD: Maybe we can hear from
staff about what they're thinking was here.

    MS. NISHIDA: If I recall, this was the land
improvements requirement compensatory land improvements.
We're in a different section of the condition and staff felt that this should -- we should be in section 6.

MS. GANNON: This was moving it up from -- this was a reorganization.

MS. NISHIDA: Right.

HEARING OFFICER RENAUD: I see that now.

MS. GANNON: We have no objection to that. That's fine.

HEARING OFFICER RENAUD: Okay. And the proposed change on page 31 adding the language numbers four to six above and long term maintenance and management funding. Acceptable?

MS. GANNON: That's acceptable.

HEARING OFFICER RENAUD: Change to -- looking at page 31 to 32 of staff's comments, the table entitled estimated land acquisition costs per acre or parcel. Applicant wish to comment on that?

MS. GANNON: I think the main difference here is they're just taking out the BLM option, because during the workshop BLM clarified they would not be purchasing land. So we don't have any objections taking that out.

HEARING OFFICER RENAUD: So we probably just remove that entire column.

Now, on the next table, total estimated land acquisition cost. This appears at 73 to 74 of the
resources section of PMPD. Again, we removed the BLM column obviously. And as far as the changes to the figures --

MS. GANNON: Is this an acreage question? It's the same acreage question we've been discussing here. And the only other thing is the partial (inaudible) which is derived from the acreage.

HEARING OFFICER RENAUD: All right. So same issue we've talked about before.

MS. GANNON: Right.

HEARING OFFICER RENAUD: All right.

And then for the long-term management section, which begins on page 75 of the PMPD section, page 33 of the staff's comments, applicant, do you have any comments on that?

MS. GANNON: I think the first language that was removed was put up earlier which we don't have an objection to that. And the long-term management plan, we were trying to clarify that the project owner would be responsible for preparing the plan if we were the ones who were carrying it out. And again, if there is a third party doing this and we were paying them up front, the financing, we shouldn't be responsible for preparing the plan. So it was a clarification we had put in and staff was changing that.
HEARING OFFICER RENAUD: All right. So staff is suggesting that the project owner fund the development of the management plan for the entity that will be managing the lands. Why is staff suggesting that?

MS. NISHIDA: This is how I understood the applicant had stated they would do. Because they felt they did not -- they shouldn't -- they should not write up a long-term management plan that they said they would fund any entity that is going to manage it.

MR. MEYER: We think we're in agreement. They just might be saying the same thing with slightly different language.

MS. GANNON: I think we were having it as an and/or. We would do it for funding for a third party. I think we're in conceptual agreement.

HEARING OFFICER RENAUD: You know, something like this and maybe elsewhere throughout these conditions if the parties feel that it would be helpful to have the opportunity to discuss these in a workshop type of setting, the Committee can order a Committee-sponsored workshop to take place today. Would that -- what do people think about that? Applicant?

MS. GANNON: Today? A workshop today?

HEARING OFFICER RENAUD: Yeah. Right now. We're going to get to an appropriate stopping point.
MS. GANNON: I think we should be able to --
we've probably got like two conditions doing wording on
and I think we can problem resolve this very quickly.

HEARING OFFICER RENAUD: Just by convening a
workshop?

MS. GANNON: I don't think so.

HEARING OFFICER RENAUD: Okay.

MR. MEYER: I think we can probably solve them
faster than getting our seating arranged.

HEARING OFFICER RENAUD: Let's do that then.

What would be the staff's and the applicant's take on the
proposed changes to the long-term management costs
language?

MR. MEYER: Does the applicant have any objection
to the staff's wording? Or do you want to use that as a
starting point?

MS. GANNON: We can use it as a starting point.

Let me just look at this one second. Excuse me.

I think we're okay with your language. See, we
don't need a workshop.

MR. MEYER: We are done.

HEARING OFFICER RENAUD: That's good. Any of the
other parties care or wish to weigh in on that? Staff's
language looks good. I'm seeing nods, by the way, for the
record.

EHLEERT BUSINESS GROUP  (916) 851-5976
Continuing then through Bio 10 on page 35,
applicant, what do you think of staff's proposed changes?

MR. MEYER: Here we had an addition on 34, two
additions --

HEARING OFFICER RENAUD: That's not what you were
just talking about?

MR. MEYER: No.

MS. GANNON: We were just on the management plan,
the cost.

HEARING OFFICER RENAUD: The long-term management
plan.

MS. GANNON: We had discussed doing a first
comment in the first paragraph under 3. We had talked
about doing the par analysis as providing the final
number. And we don't have any objection to that language.

HEARING OFFICER RENAUD: Okay. What about the
big chunk of language there in the middle of page 34?
Again, you see there's reference to the estimate of the
dollar amount per acre and a mechanism for adjusting that.
Staff, do you want to comment on that at all? Tell us
what your thinking was here.

MS. NISHIDA: We wanted to acquire funding for
the long-term management costs. It's been calculated
through a PAR analysis that was initially done by
California Department of Fish and Game $692 per acre in
the Imperial County area. And based on that and taking
the acreage that I calculated for total amount of land
that needs to be compensated for, calculated -- I
calculated an amount that needs to be reflected in the
security.

HEARING OFFICER RENAUD: Does the applicant have
any --

MS. GANNON: I think we're conceptually in
agreement with this. I want to make sure this isn't
intending to say we can clarify it's not saying this is an
additional security amount. The long-term management was
included in the full security amount. So this is trying
to clarify how the long-term management number is going to
be trued up. I have no problem with it. And I think
that's consistent with what we've been intending. But if
you just read this language on its own, it could be read
to sound like there's some additional -- apart from the
total number that's provided in the chart, there could be
some additional money that is necessary. And this doesn't
reference phasing. This doesn't reference anything else.
So I think we need to clarify that.

HEARING OFFICER RENAUD: Can you suggest some
clarification that would address your concerns?

MS. GANNON: Think we should just say it's 692
acres for every of the compensation lands or par and par
like number. And then I think we should take out the
whole thing about security and refer back to the earlier
table, which is going to provide the phasing.

HEARING OFFICER RENAUD: So starting with the
words, "the amount of the required initial payment," take
that out?

MS. GANNON: That's right. Because we've already
said the amount of the required funding is initial is 692.
I think that's fine.

So I think we have to start within the second
sentence that they're adding where they say if
compensation lands will not be identified, the project
owner shall provide initial payment -- I think we have to
say as provided in table X above.

HEARING OFFICER RENAUD: There is a reference to
the compensation mitigation land funds section above.
Does that help?

MS. GANNON: But see, the sentence that I'm very
certain about here is it says if the compensation lands
have not been identified and the analysis hasn't been
cleared, the project owner shall either provide the
initial payment of $4,845,246 calculated 692 acres for the
7,000. That's not what we're proposing to do. We're not
providing four million and change for up front. We are
doing it so used and it will be part of the -- again the
phased security. And so this seems to me to be not consistent with that.

HEARING OFFICER RENAUD: Staff, response?

MR. MEYER: Staff's in agreement with that. The intent is phased. So I think the clarification that the applicant provided staff is okay.

HEARING OFFICER RENAUD: Just so we have the clarification clarified, tell us what you've just agreed to.

MS. GANNON: We're going into the second sentence that was added by staff which is the sentence that beginning, "if compensation lands will not be identified in the power product analysis completed within the time period specified for this payment, the project owner shall" -- shouldn't be either -- "shall provide the security payment provided in table" -- what's the table number? We don't have the table numbers here?

HEARING OFFICER RENAUD: Here's a suggestion so we're not doing this -- working at this level of detail in this hearing. Set forth your proposed language in an e-mail to everybody

MS. GANNON: Okay.

HEARING OFFICER RENAUD: Staff, you can indicate your assent or disagreement in a response to everybody. And that should cover it. We'll include that as a
MS. GANNON: Okay. That makes sense.

COMMISSIONER BYRON: Just so I make sure I understand what we're doing. We're moving towards the phased approach. We want to make sure that the section is clarified and incorporates a phased payment schedule.

MS. GANNON: Correct.

MR. MEYER: That is correct.

MS. WHITE: And that the evidence in terms of security is provided prior to the start of construction for each phase.

MS. NISHIDA: That's correct.

MS. WHITE: So what's referenced on the table on page 26, that would be reflected subsequent in the provisions of that condition

MS. GANNON: Correct.

MS. WHITE: Okay. Thanks.

HEARING OFFICER RENAUD: Okay. Thank you. And for the record in those listening on the phone, that was Lorraine White, Commissioner Eggert's advisor. Thank you. So we'll proceed in that fashion.

Turning to staff's proposed changes to this condition on page 35, before we do that, let's call a ten-minute break here. We've been at it for quite a while here. We'll be back in ten minutes and right now we'll go
off the record.

(Thereupon a recess was taken from 11:12 To 11:29 a.m.)

HEARING OFFICER RENAUD: We're back at the Committee conference for the Imperial Valley Solar PMPD. And we're still slogging our way through Condition of Certification Bio 10.

COMMISSIONER BYRON: Actually, Mr. Renaud, I think we're doing quite well here. I wouldn't characterize it as slogging. Just somebody happened to write an extremely long condition here.

HEARING OFFICER RENAUD: Yeah. Okay. Productively talking. How about that? We're being very productive, and I thank you all for that.

Anyone, what should we address next in this condition? I think we understand the issue on the long-term management costs language. Turning to staff's comments starting on page 35, applicant, would you care to respond to those at all?

MS. GANNON: I think the insertion regarding the interest we have no objection to taking out the CDFG language and withdraw of principle. I think we have no objection to (inaudible) of funds. Seems to be consistent with the normal language relating to long-term management funds. We don't have any objection to that, nor to the
reimbursement fund provisions.

HEARING OFFICER RENAUD: Okay. Thank you. And
the next bullet point, which is 36, there is a change in
the 4.5 million to 4.8 million. Again, I guess we're
looking at the same issue.

MS. GANNON: That's the acreage times the number.

HEARING OFFICER RENAUD: Now, there is a cost
added to call for and process to proposed modified RFP or
RFP of $30,000. Do we know about that?

MS. GANNON: Ask them.

HEARING OFFICER RENAUD: Okay. What is that?

Ask staff.

MS. NISHIDA: This is regarding the REAT, NFWF
table. And this reflects one of their latest updates to
costs if NFWF is going to be involved.

HEARING OFFICER RENAUD: Applicant, anything?
Are you familiar with that at all? Does that sound --
MS. GANNON: I am not. And I know these numbers
are moving targets. They all seem to be moving targets
going one way. And I guess it's sort of when do these get
cemented down. I guess it's when we get the decision
issued. There are true up provisions that are provided
throughout. So I guess -- we don't know if this needed to
add --

HEARING OFFICER RENAUD: We'll look at it and see
what we think. But maybe, Joy, you can tell us where you
get that.

MS. NISHIDA: All right. We've added -- on page 82 of staff comments here, we have REAT biological
resources mitigation compensation cost estimate table.
And if you look on page 83, scan down to NFWF fees, there
is in there calls for and process pre-proposal modify RFP
or RFP, which has a fee one time fee of $30,000.

HEARING OFFICER RENAUD: Okay. No. Ten
referred to there. Somehow in mine I don't have that ten.

Did anybody get footnote ten?

MS. GANNON: No. To the chart you mean?

HEARING OFFICER RENAUD: Yeah

MS. GANNON: We did not either.

HEARING OFFICER RENAUD: Staff, do you have
footnote ten? I'd like to know what this says. Because
it's about this specific number.

MS. NISHIDA: Can I get that to you later?

HEARING OFFICER RENAUD: Okay. Well, we'll get
to that table when we get to page 82. You might find out
between now and then?

MS. NISHIDA: Not if I'm sitting here, no.

HEARING OFFICER RENAUD: All right.

MR. MEYER: We're getting that.

HEARING OFFICER RENAUD: Okay. Good. That would
be great. Let me ask a big question. Is there anything else on Bio 10 that we need to discuss here? I see again not changes in figures, numbers and some additional language in paragraphs four and five on page 38.

MS. GANNON: I guess if staff could just explain the reason for moving the language about the financial assurances from the verification to the condition, why that was necessary

MS. NISHIDA: Since that was already in the condition, we felt it wasn't necessary to put in the verification.

MS. GANNON: I thought you moved it to the condition. I'm asking for the reason for moving it to the condition from the verification.

HEARING OFFICER RENAUD: It does appear more appropriate in the verification.

MR. MEYER: If you look at the first on page 39 of the comments, the last -- second to last paragraph of five, is that what we are looking at?

HEARING OFFICER RENAUD: Well, we're looking at -- no.

MR. MEYER: Sorry. Let me clarify. Are you looking at basically the same language there that's already in the condition we are just moving it?

HEARING OFFICER RENAUD: There and there in the
verification the language has been deleted.

MR. MEYER: I think it was in five, taking it out of the verification made sense. You're saying that paragraph --

HEARING OFFICER RENAUD: Adding it to five, removing it from the verification. It looks to me like verification type of language. If there is a good reason for moving it, we'd like to hear about it.

MR. MEYER: I guess I'm confused. We didn't actually -- we moved it from the verification.

HEARING OFFICER RENAUD: Yeah.

MR. MEYER: But we moved it from within the condition to another part of the condition.

MR. BABULA: It's on the top of page 39.

MR. MEYER: If you look at the -- just you have six just above the verification. Five just above that.

You'll see that language in there.

MS. GANNON: It still seems to me language that is appropriate in the verification. I see what you're saying it was in multiple places. But it seems to me it should be in the verification it's appropriate verification language rather than condition language or it would be more appropriate?

MS. NISHIDA: Usually verifications determine a timeline. And I could see the last sentence that we
struck in that paragraph from that verification project
owner or improved third party shall complete and provide
written verification, blah, blah, blah, within 18 months.
That probably should stay within the verification. But
the rest of it, I struck it mainly because it's elsewhere
in the condition.

MR. MEYER: So basically what staff did, you're
right, part of it should be verification. We just moved
it from one part of five up to a different part of five in
the condition. But since up in five, we have the project
owner shall provide financial assurances to the CPM with
copies of the documents to BLM. With that language
already in there, can the first part of five can staff
agree that we move that to verification? Because it says
it already has the requirement for those assurances. And
then we just clarify in the verification that what we're
looking for --

HEARING OFFICER RENAUD: Okay. Staff is okay
with the language in the first part of five, striking that
addition and putting it back into the condition -- back
into the verification.

MR. MEYER: Right.

MS. GANNON: Thank you. And also on the bottom
of page 38 of staff's comments in the last paragraph,
there was the language that was deleted that if there was
nesting of mitigations obtained as well as in coordination with Bio 17 and you were suggesting to delete that language.

MS. NISHIDA: Yes. And in Bio 17, we point out that what we get -- what compensation lands are required through Bio 10 will apply to Bio 17 as well and will be reduced.

MS. GANNON: So I guess the nesting is important for security purposes. For the provision of security?

HEARING OFFICER RENAUD: Ms. White has clarification.

MS. WHITE: If I might, just backing up a little bit. On five, are you also agreeing, staff, then to take out the provision which requires CPM approval in consultation with CDFG and BLM on the form of the securities? Because if you delete that section on the top of page 39 and also do not add it in the paragraph, the first paragraph there were five, you don't have CPM approval.

MS. NISHIDA: Correct. So for that -- for that section that staff initially lined out we'd like that portion to stand -- not stand, but to remain, yes.

MS. WHITE: But the specific timing requirement of the 18 months and such would go down on the verification?
MS. NISHIDA: Correct.

MS. WHITE: Is that what you were talking about?

MS. NISHIDA: Correct.

MS. WHITE: So ostensibly, you want to just keep the area that struck on the top of page 39?

MS. NISHIDA: Correct.

MS. WHITE: Not add what's on the bottom of page 38?

MS. NISHIDA: Yes.

MS. WHITE: And keep the last comparison since in the first area struck under the verification regarding time?

MR. MEYER: Yes.

MS. WHITE: Is that what I'm understanding was just agreed so?

MR. MEYER: Maybe I'm misunderstanding. I think what we're saying is the financial -- the financial assurance can be provided to the CPM in a form of language on the top of page 39. I think we agree that that was more of a verification as far as how we would comply with what's stated previously on the top of condition five -- part five of that condition where it says the project owner should provide the financial assurances to the BLM, CDFG, et cetera. But you are correct that the language as far as prior to submitting the security to the CPM, the
project owner shall obtain CPM approval in consultation.

I believe that should stay in there.

So the only thing that we would be deleting is the financial assurance down to security in the top of page 39. Staff agrees that that should be deleted, but from prior to submitting through form of security we would request that that's left in.

HEARING OFFICER RENAUD: All right. I think we understand the positions here and can address this. Thank you.

Page 40, we have had -- oh, we have footnote ten.

MR. YORK: My name is Rick York. I'm a biologist at the Energy Commission.

I have brought a somewhat more recent table. I hate to -- try not to confuse here. The table that Joy used did not have a footnote 10. It has a footnote nine which is associated with the line item that was being discussed.

MS. NISHIDA: Okay. Footnote nine, this is regarding the pre-proposal modified RFP or RFP processing. Footnote nine says, "if determined necessary by REAT agency if multiple third parties have expressed interest for transparency and objective selection of third party to carry out acquisition."

HEARING OFFICER RENAUD: Well, are we going to
get a table in here somehow that have foot notes that line up with the numbers? Now, you have one that's got nine footnotes.

MS. NISHIDA: Right.

HEARING OFFICER RENAUD: And the one that we've gotten the staff corrections has ten numbers but only eight -- the text of only eight.

MS. NISHIDA: Right. And what happened is -- this looks like it got cut off.

HEARING OFFICER RENAUD: All right. Well --

MR. MEYER: Staff will provide a corrected table.

HEARING OFFICER RENAUD: We need a corrected table.

MR. BABULA: In this table I don't see a footnote. I see if you look on the actual little numbers, there's no footnote nine in the number nine. There is a nine down in the bottom. But it may be the numbers got shifted.

HEARING OFFICER RENAUD: All right. Well, we need this table cleaned up obviously. From what you read, it sounds like the $30,000 is kind of a placeholder, not a direct -- not a certain amount or even a certain item at all. Did you --

MS. GANNON: Think if we go with the NFWF fees, we're going to have to pay whatever the NFWF fees are. I
I think that -- I don't think there's any reason to -- YY it is a line item in the table. It's in the earlier table which we used and it's on this table which we're not going to use for this project. But it is a set amount.

HEARING OFFICER RENAUD: We'll leave it at that.

MS. GANNON: Do we get a response to why the nesting language was taken out on page 38? I am sorry.

HEARING OFFICER RENAUD: No.

MS. NISHIDA: No.

HEARING OFFICER RENAUD: Why do you want to take that out?

MR. MEYER: Okay. It sounds like the staff -- the reason it was struck, it wasn't in our original condition. I think there may have been something that was added by the Committee and my question for staff would be if we object to that addition. And staff does not object to the addition. It's just we were trying to get it back to how the condition was originally written by staff.

MS. GANNON: And we think it's appropriate to clarify I think this was just supposed to be in there to help clarify what the money could be used for. And again, if there is nesting of those mitigation, it's appropriate to say that money could be used to satisfy every one of those conditions or in furtherance of satisfaction of those two conditions.
HEARING OFFICER RENAUD: All right. Well, what I see -- it looks to me like it was not in staff's proposed condition, but in the one we received from applicant. And that's why it's there. But anyway, everybody is okay with it, so we will un-delete that.

Let's move on then to staff's proposed addition on page 40 of the comments. Does that appear okay to applicant?

MS. GANNON: The language regarding the alternatives in lieu fee program, we are in agreement with including it in the PMPD. I guess our only question is -- and we know this was in the supplemental staff assessment prior to this and we didn't discuss this. But whether there was a need to have to go back to the Commission for approval if it's a program that's approved by CDFG. And we were utilizing a program that was approved (inaudible) if there is a need to go back to the Commission.

HEARING OFFICER RENAUD: I take just the fact that it's in here means that you don't.

MS. GANNON: So we just have to notify which is what you think this says.

HEARING OFFICER RENAUD: Yes.

MS. GANNON: Okay.

HEARING OFFICER RENAUD: Ms. Miles.

MS. MILES: I just wanted to add that in SBX 834

EHLERT BUSINESS GROUP  (916) 851-5976
there is a provision 2069(F) which does say that the —
actually, what this law does is it's financing mechanism.
It allows the applicant to use an alternative means of
complying with mitigation requirements. But it's simply a
financing mechanism and it does not excuse the lead
agencies requirement to ensure that all of the provisions
of CEQA are still met. And so I would urge you to look at
that Q section 2069(F) and specifically (F)(2). And I
believe that this provisions needs to be in here as a
result of that language.

HEARING OFFICER RENAUD: All right. Anything
from staff on that? All right. Thank you. I think we're
done with Bio 10 then, unless anybody has any further, any
parties? No. All right. Let's move on to 11. I think
we addressed the speed limit issue already. And the
Committee knows what to do about that or has no questions
about that. And staff's next comment is on 17. Did you
have an item before that?

MS. MILES: No.

HEARING OFFICER RENAUD: All right. I don't
think applicant did either. No. Okay.

So moving on to 17. This is mitigation of
bighorned sheep foraging habitat. Is there a significance
to the blue and red as opposed to just red which we've had
heretofore? Staff? Is this a different person or
MR. MEYER: I think counsel that was working on
this one had a color fetish. Yes, it was not signifying
anything. It doesn't mean anything to us.

HEARING OFFICER RENAUD: All right. Good.

Staff, does -- does staff as proposed changes to this Bio
17 propose anything other than staff's disagreement with
the Committee's finding?

MS. NISHIDA: That's correct. And we have our
comments on page 36 and 37. Is that it? They're
somewhere. We do have our comments on those.

MR. BABULA: So it's nothing different than what
we previously discussed?

HEARING OFFICER RENAUD: Applicant wish to
comment on this?

MS. GANNON: As we previously discussed, we agree
with the analysis and conditions included in the PMPD and
we urge you to retain them.

HEARING OFFICER RENAUD: All right. Thank you.
I do want to ask staff about the proposed change
for addition on page 54 of staff's comments. This is
still on Bio 17. What is your thinking behind that
proposed addition?

MS. NISHIDA: Is this the after all the bulletin
points?
MS. NISHIDA: You know, unfortunately --

HEARING OFFICER RENAUD: It's just a moving of language.

MS. NISHIDA: It's just a moving of the previous paragraph. I just wanted to just break it off there. It should have been bulleted as well. My mistake.

HEARING OFFICER RENAUD: So we don't do that.

All right. And staff has proposed to delete the first paragraph of the verification. What is the thinking there?

MS. NISHIDA: Well, this is the bring us in line with what we originally proposed for Bio 17.

HEARING OFFICER RENAUD: Okay. So again, it reflects staff's differing opinion with the Committee --

MS. NISHIDA: Correct.

HEARING OFFICER RENAUD: All right. Anything further on Bio 17 before we move on?

CURE, I see you've proposed --

MS. MILES: Basically we agree with staff's changes.

HEARING OFFICER RENAUD: Okay. I see. Okay.

All right. Good. Let's move on then to 19.

 Applicant, are you -- do you have anything to say about these proposed changes to Bio 19?
MS. GANNON: Overall, I think that staff is trying to get to the same place as we are. There was again a conceptual agreement and there seems to have been the translation of it has not been perfect. I think that the overall agreements that we made with staff was a gradance of 75 percent of the list one species and the mitigation ratio at three to one and the mitigation was two to one and the avoidance complete avoidance of the List 1 and List 2 for the off site linears. And then there is a ground disturbance areas that the laid out discussed which we discussed previously which we did not stipulate to to avoidance completed in those areas. I think that the way that the condition was written in the PMPD did reflect this. There was some confusion base of the division of those sections A, B, and C, with A relating to the species that had been located during earlier surveys and B and C addressing how species that were found in the fall survey would be handled. But it's in C where they talk about the avoidance plans and the management plans that will be included and those are where the 75 percent is referenced. So it's not entirely clear that that also pertains to the plans that are discussed in section A. So we don't have any objection. We can talk to each of these. We don't have any objection to clarifying those avoidance measures also apply to the
plants that were previously found. Does that make sense
to staff?

HEARING OFFICER RENAUD: All right. So now there
is a -- the sub-part H seed collection has been deleted.

MS. NISHIDA: And that has been moved elsewhere.

HEARING OFFICER RENAUD: All right. Fine. And
on page 62, beginning on page 62 of staff's comments,
again, it looks like we've deleted it and re-inserted some
language here. Is there a change there, staff?

MS. NISHIDA: This was just to again -- just to
break off this one section. It was originally section C
and staff's proposed (inaudible) 19 wanted to separate
that out from B.

HEARING OFFICER RENAUD: Okay. Thank you for
that comment.

MR. MEYER: Hearing Officer Renaud, just a quick
question before I lose my place. At the beginning of the
condition first on the first bullet and I believe on a few
places after that on this page 57 at the last part of
number one (inaudible) a biologist, staff recommends the
deletion of "as practicable." Staff does not have an
objection to having some provision of sort of feasibility
if it's defined and what that is. Otherwise, from a
compliance standpoint, it becomes unenforceable. So we
don't -- we're not against the concept, but we would
prefer that there's some sort of performance standard if
we are going to have an out clause on the condition.

HEARING OFFICER RENAUD: All right. We'll look
at that. Thank you. I think we don't need to discuss
that one further.

MS. GANNON: And part of the language that you
did remove like on page 58 and several other places
throughout this condition, we were trying to define some
of the practicability or when avoidance would not be
required and it was making the finding where avoidance
will not allow for long-term viability of the species we
would not be avoiding them. And we think that's still an
appropriate standard to include to have the avoidance be
meaningful.

HEARING OFFICER RENAUD: I think the Committee
understands the general issue here about keeping things
both enforceable but also allowing for reason. And we'll
look through it with that eye -- an eye for that.

Now, on page 63 under item 2, staff has proposed
some additional language. Applicant, what do you think of
that?

MS. GANNON: For the 75 percent avoidance, we
agree with that.

HEARING OFFICER RENAUD: Right. Next one under
two.
MS. GANNON: Under two, project linears, with agree with.

Construction lay down areas, we do not. And the staff has proposed this exception to this avoidance. We don't object to having additional exceptions put in there. But it seems that if there is going to be exceptions to when avoidance has to happen, they should be consistent.

HEARING OFFICER RENAUD: Okay. I think we understand that. Thank you.

Any other party wish to weigh in on this?

Looking at the top of page 64, staff's language eliminates the practicable avoidance and substitutes complete avoidance. Applicant accept that language?

MS. GANNON: We accept the language that that had been included previously. The retained that this does include a performance standards for how practicability is going to be defined which is again partial (inaudible) of whether the avoidance would allow for the meaningful retention of the avoided species. And that's the same discussion as before.

HEARING OFFICER RENAUD: I think we understood your position on that.

MR. MEYER: Just a supplemental question. Was "achieve" a word that we added in there?

HEARING OFFICER RENAUD: That would achieve a
MR. MEYER: I'm just wondering if that should have been underlined and we forgot it or if that was part of the original condition.

HEARING OFFICER RENAUD: Yes. It probably was.

You're right. Okay. All right. Good.

Now, now at the bottom of the page 64, this may be what you were referring to before Mr. Schneider that says "mitigation shall include seed collection." I noticed you deleted a provision regarding seed collection on page 59 of your comments. So --

MS. NISHIDA: This is -- I eliminated from 59 and it had been also restated in number five. So I eliminated the other one.

HEARING OFFICER RENAUD: All right. Do we still have the seed collection details somewhere?

MS. NISHIDA: Yes.

HEARING OFFICER RENAUD: All right.

MS. GANNON: And we can just clarify in the other seed collection provision, we did have the exception that seed collection was required where I think this is consistent with our stipulation where it was allowed with timing.

MS. NISHIDA: Right.

MS. GANNON: And the concern is we can't go and
do seed collection right now, because we don't have the right grants from the BLM. So we had talked about that it wouldn't be required per species before we couldn't do it before Phase IA or B as needed for the construction.

MS. NISHIDA: I got the impression that 1B was going to be later. Phase IA was going to be -- was going to be starting this fall and going into next year. So --

MS. GANNON: Our concern is that the collection timing for these species obviously varies per species. So we're looking at a full year. And that's the way the current schedule is set. We may be in 1B before that time period is up. So we were trying to define practicality here to recognize within the first year of construction seed collection and may not be possible for the activities that will be occurring.

HEARING OFFICER RENAUD: So basically we're talking about whether or not to include the word available. Is that really what we're --

MR. BABULA: I think they want to put back in and 1B.

MS. GANNON: And 1B, yes.

MR. BABULA: This is on page 65, top paragraph. Because I guess our understanding was this only one 1A would be of concern and that by the time 1B comes around they would have time to collect. But they indicated that
may not be the case.

MS. GANNON: Correct.

HEARING OFFICER RENAUD: Staff's position on that is not to do that?

MR. MEYER: Just a clarifying question. Given the type of development you're doing on the project where you're avoiding many of the areas and you are just basically moving disturbance to the pedestals rather than avoiding the entire environment, is there a problem with seed collection outside the areas you're immediately impacting?

MS. GANNON: We think where it's feasible to do this, we don't have a problem with doing it.

HEARING OFFICER RENAUD: Okay. So we're not talking about doing any seed collection. You're just saying that you would ask that there wouldn't be a requirement for seed collection in those areas that are being actively developed.

MS. GANNON: Within the first year.

HEARING OFFICER RENAUD: Okay.

MS. GANNON: Yes.

HEARING OFFICER RENAUD: But you would be doing seed collection within the first year in areas that are not directly impacted by construction activities on those?

MS. GANNON: Within the first year, correct. So
that obviously for fall species we wouldn't be doing
collection until next fall. But as feasible, we would be
doing it. But what makes this problematic is the prior to
construction language and then the exclusion of 1B.

HEARING OFFICER RENAUD: Okay. Thank you.

All right. Is there anything further on
Condition of Certification Bio 13? I see there are some
Any further on Bio 19? In particular, I'm wondering about
the mitigation security issue on page 70 prior to the
start of ground disturbing project activity. Applicant
have a comment on that?

MS. GANNON: I will be providing the language
earlier that relates to the long-term
management funding and I think we would cross check to see
that that's consistent with this language.

HEARING OFFICER RENAUD: All right. And I think
that also goes over to the verification. The language in
the PMPD a big on page 73 was saying that the security had
to be provided as described above. And staff is proposing
to ensure language security adequate to acquire
compensation mitigation lands or take the habitat
enhancement. I guess our concern would be here that that
may not therefore allow for the nesting, which was
contemplated in the PMPD analysis and language. Or we'd
like to make sure it does explicitly allow for that.

HEARING OFFICER RENAUD: Where is this again?

MS. GANNON: On page 73 of staff's comments under verification, the middle of the page.

HEARING OFFICER RENAUD: Staff, why did you want to add that language?

MS. NISHIDA: We do have item number four, page 67. We do have the allowance for the nesting of mitigation here.

HEARING OFFICER RENAUD: Well, that was already in the condition.

MS. GANNON: I think what we're concerned about is the nesting of mitigation but also the nesting of security.

HEARING OFFICER RENAUD: So staff, again, what's your reasoning for adding this language in the middle of page 73?

MS. NISHIDA: Okay. In case the rare plant habitat acquisition is not satisfied with acquisition through Bio 10, that's why we wanted to break out the security for the rare plants.

MS. GANNON: We think this goes down to this is a decision again that you were adjudicating earlier.

HEARING OFFICER RENAUD: Very good. We'll take it back. Thank you. Now, on page 74, staff has proposed
deleting a -- about the status and distribution study.

Applicant, do you have a response to that?

MS. GANNON: We agree with that.

HEARING OFFICER RENAUD: Okay. Anything else on Bio 19 then?

MS. GANNON: Not from the applicant.

HEARING OFFICER RENAUD: Bio 19, anything?

MS. MILES: Not from CURE.

HEARING OFFICER RENAUD: Let's move on to staff's new Condition 22. Applicant, want to tell us what you think about this?

MS. GANNON: We think that the PMPD's language about phasing and nesting is appropriate. We would urge the Commission to -- Committee to stay with the language that is as it is described in each one of the conditions. We think that this is -- we found the way this language is proposed is confusing and hard to refer back and to relate to the other conditions. We think it's cleaner and better to retain the approach that has been adopted by the Committee.

HEARING OFFICER RENAUD: All right. And staff, what's your reasoning? I see your comment here that you're trying to -- looks like you're trying to be helpful.

MS. NISHIDA: Yes. This is very similar to what
is being used for Calico.

MS. GANNON: And for the record, we have not agreed to it in Calico either.

COMMISSIONER BYRON: Can the staff speak to whether or not this alternative condition is being used in any other proposed decisions?

MS. NISHIDA: There are these phasing -- phasing Conditions of Certification for other projects. Ivanpah has something but not quite, and I believe Blythe has something which brings in the phasing. But they're all different. And this is most similar to Calico. In fact, Calico was used as the model for this one.

COMMISSIONER BYRON: As I understand it as an alternative condition whether or not the applicant agrees to it, they're not required to use this condition; correct?

UNIDENTIFIED SPEAKER: The opening paragraph says, "As an alternative to providing mitigation of security, et cetera, the project owner may elect" --

MS. GANNON: But I think the way that if you read all of the comments together they were striking out the posing and the nesting provisions and a lot of the other conditions and placing it here. So I think that the way I read it was the proposal was we either provide everything up front, we don't phase at all, or we go with this...
language. Is that what you're intending?

MR. MEYER: Maybe I misunderstood your question.

COMMISSIONER BYRON: Go ahead and repeat it, because it's a good question.

MS. GANNON: The way I was reading this was Commissioner Byron was saying this is an alternative. And what you're really proposing is this an alternative to the phasing and nesting that was included in the PMPD and this would be another option that would be exercised to phase the security and to address the mitigation needs. I don't think we would have an objection to it.

But again, we felt that the phasing and nesting was appropriate with the PMPD and superior to this.

MR. GALLAGHER: But your question was, ELLA, if I may restate, virtually your other language taking out the other phasing and nesting language in Bio 10 and Bio 17 and Bio 19 --

MS. GANNON: So this was the override.

MR. GALLAGHER: And in those conditions just leaving it as you pay all the security up front. And the only way you would do phasing is through this new condition. I think that the question was wasn't that the way you sort of framed the issues? So this wasn't really an alternative way of doing phasing. It's the way to do phasing as an alternative to do all the mitigation
security up front. And if the answer to that question is yes, then we think it's as Ella said, it's cleaner and more straight forward to retain the structure of the PMPD rather than separating it all in this new condition.

HEARING OFFICER RENAUD: I think at least me, I still don't understand staff's motivation here. Why is this here? This is completely new for this case. The phasing proposed conditions in your brief wasn't in there. I mean, so what is this about?

MS. NISHIDA: Okay.

COMMISSIONER BYRON: I suggest you look at your staff comment.

MR. BABULA: I did look at that. It wasn't very helpful.

MR. MEYER: Basically was written by the counsel that was working with biology that as unfortunately not here the moment. Generally to try to work a way through the compliance unit for them to be able to enforce the whole phasing options so they're trying to find a way that it would allow the Energy Commission as compliance unit post certification to make sure that all of the various phasing requirements were actually complied with rather than having it spread throughout the very long bio condition. So that was the intent.

HEARING OFFICER RENAUD: As we understand it
though, it is spread throughout. Right? And then we're
adding this other layer. There was not a wholesale
removal of those provisions from the conditions.

MR. MEYER: That's correct.

MS. GANNON: That's correct.

HEARING OFFICER RENAUD: Anything further from
applicant or anybody?

MS. GANNON: No. Again, I think we object to
many of the details in here. I don't know if there is any
reason of going into it.

HEARING OFFICER RENAUD: I think the Committee
has enough information here on this one. Thank you.
Okay. Well, that seems to conclude our run
through staff's comments. Let's see. CURE, were there
any of your comments that we did not touch upon or would
you like to expand upon?

MS. MILES: This is sort of a bit of a summation,
but it does include a few new facts. I'm concerned about
a number of impacts that were identified after the staff
assessment was released, the initial staff assessment.
And this include impacts to flat-tailed horn Lizard
movement corridors, impacts related to the water supply
and the proposed new water supply, the Dan Boyer Well.
Also since the replacement of the staff assessment, it was
determined by the agencies and by staff and in the PMPD
itself that there is a significant impact to foraging habitat for Peninsular bighorn sheep, which is an endangered species.

And in addition, in the initial staff assessment, there was no mitigation included for impacts to cultural resources, which are significant and unmitigable. So I just wanted to point out that the public has never had an opportunity to comment on these and receive a response to comment as would typically occur. And as is required by CEQA and in addition to that, there are the new alternatives, the 709 megawatt configuration and the big horn mitigation for tamarisk removal. Those were not included in the initial staff assessment. And in addition, they were not analyzed by staff, and we feel that in addition to violating CEQA's requirements these changes be recirculated for public comment. We also think that in particular the 709 megawatt reconfiguration and the tamarisk removal proposal need to be analyzed by staff subject to Commission regulation Section 1742. And so we believe that this project is not ready to be approved.

HEARING OFFICER RENAUD: Thank you.

Anyone else here wish to state anything before I ask the parties who are on the phone?

MR. MEYER: Just very brief just to let people know I've developed some additional comments on the PMPD
and in the cultural resource section which I will send an
e-mail to all parties simply correcting -- it was when the
BLM vote the original suggested condition they just
referred to the CEC in general. But we just want to
replace the -- CEC with CPM, so it doesn't require a
business meeting for these issues.

MS. GANNON: We would support that change.

MR. MEYER: We'll e-mail that out to all parties
in a few minutes.

HEARING OFFICER RENAUD: Thank you, Mr. Meyer.

And the applicant.

MS. GANNON: On behalf of the applicant, we would
like to thank the Committee for all the work on this
project and for the PMPD and for going through the
conditions today. It's obviously been a challenging
process for all of us, but I think that the PMPD decision
is a sound and well supported decision and we appreciate
all of your effort.

HEARING OFFICER RENAUD: Thank you.

Mr. Budlong, I see you're still there. Do you
have anything to state to the Committee with respect to
the PMPD?

MR. BUDLONG: Yes. I'm still here. No, I have
nothing more to add.

HEARING OFFICER RENAUD: Thank you for your
Mr. Allen McDonney, are you still there?  
MR. MC DONNEY: Yes, sir.

HEARING OFFICER RENAUD: Have anything to add to the proceedings here?

MR. MC DONNEY: No, sir. Thank you. It was very educational, and I'm looking for in future to see what's going to happen. Thank you.

HEARING OFFICER RENAUD: Thank you.

Anyone from California Native Plant Society on the line? All right. Thank you.

At this point, we will accept public comment. This will be an opportunity for members of the public who have been participating or listening in to address the Committee briefly. Is there anyone here in the room in Sacramento who would wish to comment?

Seeing none, is there anyone on the phone who would wish to comment to the Committee? If you want to just go ahead and start. No one. All right.

Thank you. We do appreciate everyone's comments on the PMPD here. The process now will take the Committee back to its offices to consider these comments and prepare a document which we will call an errata. The errata will contain any changes that the Committee decides are appropriate to make to the PMPD. And the errata and the
PMPD together would then be presented to the full Commission for a vote on the project the September 29th business meeting. The public comment period is still open. Feel free to submit your comments as to parties. We did ask that the party's comments be submitted by September 16th and you did comply with that. We appreciate that very much. I think --

MS. MILES: Just to clarify. I believe you asked for initial comments; is that correct?

HEARING OFFICER RENAUD: Yes. Meaning that if you had comments in response to the comments of others, then you would be able to respond to those.

All right. And with that, I think we'll adjourn.

Thank you.

(Thereupon the hearing concluded at 12:26 p.m.)
CERTIFICATE OF REPORTER

I, TIFFANY C. KRAFT, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported electronically by JOHN COTA, and thereafter transcribed into typewriting by me, Tiffany C, Kraft, a Certified Shorthand Reporter of the State of California.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of September, 2010.

JOHN COTA
Electronic Reporter

TIFFANY C. KRAFT, CSR, RPR
Certified Shorthand Reporter
License No. 12277