MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

State Capitol
Room 113
Sacramento, California

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

Janet H. Nicol
Certified Shorthand Reporter
License Number 9764
COMMISSION MEMBERS PRESENT

Mr. Gray Davis
State Controller
Chairman

Honorable Leo T. McCarthy
Lieutenant Governor
Commissioner
Represented by Ann Mills

Mr. Russell S. Gould
Director of Finance
Commissioner
Represented by Theresa Parker

STAFF PRESENT

Michael L. Crow, Deputy Attorney General
Cleatta Simpson
Robert Hight, Chief Counsel
Dianna Jacobs
Peter Pelkofer, Senior Counsel
Jack Rump
Linda Smallwood
Jan Stevens, Assistant Attorney General
James F. Trout, Executive Officer

PUBLIC SPEAKERS

Freeman House, Mill Creek Watershed Conservancy
John M. Iles, Mountain Cascade
R.R. Luce, VVCC Inc.
Robert C. MacArthur, Northwest Hydraulic Consultants
Dan Masnada, CCWA
Melvin M. Norman, Tahoe Meadows Association
Ralph Philbrick, VVCC Inc.
John E. Reuter, UC Davis
Christine Rozance, Ski Run Remediation
Bob Sanford, VVCC Inc.
Alfred C. Schmidt, Ski Run Remediation
Phil Seymour, VVCC Inc.
Rosemary Thompson, SAIC
Linda Titherington, Ski Run Remediation
R.J. Titherington, Ski Run Remediation
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PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
COMMISSION CHAIRMAN DAVIS: This meeting of the Lands Commission will come to order.

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

CHIEF COUNSEL HIGHT: Chairman Davis.

COMMISSION CHAIRMAN DAVIS: Present.

CHIEF COUNSEL HIGHT: Lieutenant Governor, Ann Mills.

ACTING COMMISSIONER MILLS: Present.

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

ACTING COMMISSIONER PARKER: Present.

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

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

COMMISSION CHAIRMAN DAVIS: Are they speaking in opposition?

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

COMMISSION CHAIRMAN DAVIS: All right. But is the
person for the public speaking in opposition to Item 78?

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

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

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

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

All right. Running a risk here. Okay.

CHIEF COUNSEL HIGHT: Take the consent calendar minus 67.

COMMISSION CHAIRMAN DAVIS: And 78; right?

CHIEF COUNSEL HIGHT: Yes.

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

CHIEF COUNSEL HIGHT: Right.

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

ACTING COMMISSIONER PARKER: I move the consent.

ACTING COMMISSIONER MILLS: Second.

COMMISSION CHAIRMAN DAVIS: It's unanimously approved.

CHIEF COUNSEL HIGHT: Let's take 78 first since
that is very quick.

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

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

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

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

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

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

I just want to go over the benefits to the public,
just take a couple of minutes.
The sawmill will get the logs to maintain employment in Humboldt County and the State of California. 

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

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

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

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

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

ACTING COMMISSIONER MILLS: No.

COMMISSION CHAIRMAN DAVIS: For the staff?

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

Now, does anyone from the public care to speak against Item 78?
All right. Do we have a motion?

ACTING COMMISSIONER MILLS: So moved.

COMMISSION CHAIRMAN DAVIS: All right.

Second?

ACTING COMMISSIONER PARKER: Second.

COMMISSION CHAIRMAN DAVIS: The item is adopted unanimously.

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

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

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

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

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

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

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

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

Three, CCWA has agreed to take whatever steps are necessary to prevent human intrusion into the chaparral. As you will recall it was a major concern before when they were going to cut a 120-foot wide swath through the chaparral.

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

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

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

Staff supports the application as presented.
And I think it would probably be best to hear first from the Water Authority.

COMMISSION CHAIRMAN DAVIS: All right.

MR. MASNADA: Thank you. I’ll be mercifully brief.

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

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

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

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

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

And, thirdly, the use of narrow construction corridors, as narrow as 20 feet, to further reduce the impact on the oak trees on state lands and particularly
behind the houses.

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

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

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

Thank you.

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

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

There are two short areas of coastal scrub that
the pipeline would still go through.

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

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

And there is also an ephemeral stream near there. There's no riparian forest at the crossing.

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

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

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

There will also be seedings by native seeds.

We've already collected native seeds of these species to be replanted.

Top soil storage from the actual trench provides the native seed bank back and we will augment that with
additional native seeds.

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

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

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

COMMISSION CHAIRMAN DAVIS: Are there any questions?

DR. THOMPSON: That’s all I have.

COMMISSION CHAIRMAN DAVIS: Any questions?

Thank you.

MR. ILES: My name is John Iles and I’m with Mountain Cascade. We’re the contractor currently working on the project.
During the design of the realignment I was requested on several occasions to walk through the area and asked for my input into the design parameters of it from a constructability standpoint.

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

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

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

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

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

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

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

ACTING COMMISSIONER PARKER: I just wanted to ask
have you had experience in the past of some of the
technology that we're talking about, drilling under trees
and laying --

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

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

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

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

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

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

And it appears that at the lowest point of the
creek crossing it is about eight foot below the surface of
the creek.
ACTING COMMISSIONER MILLS: Have you had a lot of experience boring that deep and that length?

MR. ILES: Uh-huh.

ACTING COMMISSIONER MILLS: Okay.

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

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

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

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

COMMISSION CHAIRMAN DAVIS: Okay.

ACTING COMMISSIONER PARKER: Thank you.

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

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

We're a group of ordinary citizens dedicated to the protection of our community. We feel we have been invaded by this autocratic giant, CCWA, and our rights as
citizens have not seriously restricted.

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

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

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

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

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

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

CCWA has now disproved this.

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

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

Thank you, Mr. Hight.

CHIEF COUNSEL HIGHT: If I can rephrase your
MR. LUCE: Yes, please.

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

MR. LUCE: Right.

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

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

This route will not converse any Burton Mesa chaparrel and will destroy no oak trees.

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

Let me outline our presentation.

We have a short video.

Dr. Ralph Philbrick, a noted expert on Burton Mesa chaparrel, will present his observations.

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

And our attorney, Phil Seymour, will conclude.

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

And now with the video.

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

I'm sorry the audience can't see all this.
I'm trying Bob Hight's device here. I'm sorry.

(Videotape provided by Mr. Luce was played.)

Mr. Philbrick.

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

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

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

Again from a botanical point of view the Burton Mesa chaparral is a dense, evergreen shrub vegetation that's restricted to the sands of the orca formation of the City of Lompoc.
It's characterized by the perisima manzanita.

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

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

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

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

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

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

There's a long list of plants that are very important, make up the Burton Mesa chaparral, certain
components of it and through its various phases.

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

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

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

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

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

A bird's beak plant is on this area more as you
get down toward the Burton Mesa Boulevard. It's a plant of considerable botanical controversy. Some specialists will tell you it belongs to this subspecies, some specialists will tell you it belongs in that subspecies.

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

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

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

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

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

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

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

One of several monardellas, which has federal C-2 listing and California Native Plant Society Plant listing.
Black flowered figwort, recognized by the federal government and the California Native Plant Society, again with populations showing hybridization between different species.

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

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

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

There are many stations along this. You have a description from your consultant describing different
points. I just like to hit a few of these points that are particularly important to me.

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

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

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

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

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

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

And I'm sure that given present technology it's
the best way to approach that problem if you had to go
there, but the really best way to do it is to avoid that
location.

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

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

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

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

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

This particular coastal sage as it's mixed with
the chaparrel is the most important part of the whole
pipeline segment that we're discussing this evening.
You have some of the plants that I have mentioned before. You have a horkilia in the rose family. You have the shagbark manzanita. You have the coast ceanothus. You have a very interesting succulent douglasii plant that to my observations did not fit the plant usually described for that area. Lompoc wallflower. You have this California spine flower.

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

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

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

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

But in that area is mock heather.

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

On the other side of Merriam Creek south toward Burton Mesa Boulevard is the location of the bird's beak that we discussed earlier.
There's also the California spotted flower, oaks, ceanothus, horkilia and near the road there's the stipe of bunch grass, which in Santa Barbara County is a very important plant to look out for and protect.

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

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

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

It has received recognition for its importance and pristineness.

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

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

Just a little bit about that Merriam Creek. It's a tributary to Davis Creek. The Merriam-Davis Creek system is one of four riparian creeks of this habitat of this area.
The policies as set forth for this project would avoid construction within a live stream going into the wintertime. That will pose a constraint.

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

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

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

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

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

If I can distribute these, please.

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

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

The Burton Mesa chaparrel is shown in pink.

The riparian area are in blue there at Merriam Creek.
That is in contrast to the corridor that’s shown in the vegetation mapping alongside of the Harris Grade road. So you have a corridor at the Harris Grade Road of pavement, of road shoulders and of disturbed vegetation.

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

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

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

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

I would like to see that if you are revegetating with wildflowers from an aesthetic point of view that these be from seeds that are collected on the site and not contribute to the -- or alter the natural hybridization that goes on in that area.
And standard conservative working around the oak tree canopies would put your actions ten feet away from the vegetated canopy. This would apply to the large chaparrel shrubs as well. But to work under the canopy is not being cautious.

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

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

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

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

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

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

And finally disturbing a paved road corridor is
biologically superior to impacting oak forests, Burton Mesa chaparral, rich coastal sage scrub and Merriam Creek.

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

Thank you.

COMMISSION CHAIRMAN DAVIS: Thank you, Mr. Philbrick.

Any questions from the members?

ACTING COMMISSIONER PARKER: I did have a question.

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

MR. PHILBRICK: Everything that they say, taken at the best, is defined by the flagging system that's on the ground right now.
So when you walk through there and see all these trees and shrubs and vegetation that are marked with blue to be lost, that's very unsatisfactory to me as a biologist when I know that there's this other route that won't have that impact going on the road.

ACTING COMMISSIONER MILLS: I have a question.
Are you saying that no oak trees would be -- would have to be removed if you took the Harris Grade?

MR. PHILBRICK: Thank you for bringing that up.
Because you've seen papers, undoubtedly, with very large numbers and so on.

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

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

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

My feeling is that if the creativity and the narrowing of the corridor that's being proposed for the CCWA route is applied to the Harris Grade route that there would be no losses.
There are three oak trees that are rather close to
the Harris Grade Road. Three oak trees that are rather
close. But if they're able to narrow and avoid and do all
these things in other proposed routes, if they applied that
same technique here, I don't see the problem.

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

CHIEF COUNSEL HIGHT: 12.

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

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

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

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

But I counted very quickly in there, more than 11
trees in that stretch of chaparrel.
They will come out. They're acknowledged that they will come out and they do not appear in those totals.

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

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

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

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

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

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

MR. PHILBRICK: Sounds good.

COMMISSION CHAIRMAN DAVIS: Any other questions?

Next witness.
MR. SANFORD: I promise to be brief.

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

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

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

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

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

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

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

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

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

Now if I may.
CCWA has been nonresponsive to the people of Vandenburg Village. The same holds true for the Santa Barbara Planning Commission.

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

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

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

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

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

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

But through it all CCWA has refused.

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

How can you possibly be in a position to render a fair, informed decision without having before you the options and the information on all the routes, including the
superior route, Harris Grade?

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

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

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

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

CCWA did not give you that information tonight.

But guess what? I’m gonna.

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

By nearly everyone except CCWA.

And why is it favored?

Well, I’ll tell you why.
Our Harris Grade route in every respect is environmentally superior to CCWA's route. It follows an already existing disturbed area, the Union Oil and Harris Grade Roads.

It will not degrade the Burton Mesa Preserve.

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

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

That goes away.

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

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

The pipeline construction effort would be greatly simplified.

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

Union Oil has approved the use of the oil field roads in writing. They're the people that would be most impacted by the closure of the road. They said fine, you can use our oil field road and by golly we have no concerns
with the closure of the Harris Grade Road either, because we have an alternate way to get to our shops.

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

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

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

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

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

And request, and I’ll say again, that they seriously investigate other routes and preferably Harris Grade route.

It is environmentally superior.

We are aware also, I want to say, we are aware that CCWA has threatened legal action. We can only observe that you were not impressed on 3 August when they did it and we are convinced that you will continue to protect the
To put it another way, there is no need to go through the preserve. There is an environmentally superior route.

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

Thank you.

Are there any questions for me?

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

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

COMMISSION CHAIRMAN DAVIS: The golf course and down the middle of Vandenberg Village.

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

COMMISSION CHAIRMAN DAVIS: My favorite, by the way, is right down the middle of Vandenberg Village.

Everybody's voted no on the project would have the pleasure of seeing the road torn up.

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

And they are the routes through golf course and
two alternatives through the streets of the village.

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

Staff went down personally and looked at the various options.

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

COMMISSION CHAIRMAN DAVIS: Including Harris Grade?

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

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

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

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

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

COMMISSION CHAIRMAN DAVIS: Do you have any
questions?

ACTING COMMISSIONER MILLS: No.

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

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

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

ACTING COMMISSIONER PARKER: Is not an option.

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

MR. SANFORD: I would have to answer this way. Going through the streets obviously is more environmentally acceptable.

However, in each case you pass through the preserve.

In each case, in all three cases, going through the golf course you go through some preserve. Going down Saint Andrews, which is a main artery, you also do get some preserve.

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

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

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

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

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

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

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

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

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

COMMISSION CHAIRMAN DAVIS: The staff disagrees with you.

The Attorney General disagrees with you.

So obviously --
MR. SANFORD: That's fine.
I had a note. I unfortunately disagree with your staff.
But you've been provided a single option in my opinion.
You should be allowed to have choices.
And by golly, and I can read from your book, from the 3 August meeting, each of those chairs asked that there be options.

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

MR. SANFORD: Yes, sir. You bet.

COMMISSION CHAIRMAN DAVIS: This has been a most difficult assignment. We don't like the applicant. They're about as arrogant as you can be. We don't like the homeowners. They're about as uncooperative as you can be.
And but this pipeline is going someplace. And I don't know where, but it's going someplace.

All right. Is there any more questions?
We will have the next speaker.

MR. SANFORD: Thank you.

MR. SEYMOUR: Hello. I'm Phillip Seymour. I'm the attorney for the Vandenberg Village Concerned Citizens. I've been representing them for about a year now.
They're tough, but I think they've been pretty responsible and tried pretty hard to work with everybody here.

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

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

MR. SEYMOUR: After Harris Grade Road?

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

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

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

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

We're trying to give you an opportunity to give us some guidance as where you would like it consistent with the advice we're getting from our staff and from the Attorney General.
MR. SEYMOUR: Precisely.

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

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

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

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

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

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

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

In the ensuing discussions with the county roads department, with members of your staff, with our county officials, a consensus emerged that is technically feasible to go down Harris Grade Road, right down the road, do not go to the right, do not go to the left, just right down the pavement.
The only issue there is cost. That's a fuzzy one, because it's true that we have not had any convincing or reliable figures.

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

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

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

Now, I'll skip ahead to that a little bit.

Originally this pipeline was going to cost 129 million.

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

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

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

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

ACTING COMMISSIONER PARKER: While we're looking
at the map, may I ask a question?

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

MR. SEYMOUR: Pipeline's already there.

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

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

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

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

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

ACTING COMMISSIONER PARKER: Further north there are homes where the pipeline was gone through. My understanding in talking to the Department of Water Resources they have gone through parcels of homeowners and in that sense they also had issues about trees going through their property.
MR. SEYMOUR: If there are homes along the pipeline further north -- well, this is a 140-mile pipeline. Yeah, undoubtedly they have gone through some parcels of private land.

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

Some people have compromised.

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

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

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

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

On this map the original route is the kind of dotted line on the right side and you can see where it
parallels Harris Grade Road.

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

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

And we now have to deal with that problem.

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

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

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

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

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

Harris Grade Road will be renovated after the pipeline construction as a benefit to the county too.
There are no environmental impacts that we can identify along Harris Grade Road.

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

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

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

I think it still remains fundamentally a policy question.

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

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

I think Mr. Philbrick has made it clear that there
is a complex plant community there and the value of it and
the integrity of it cannot be dismissed by simply labeling
impacts significant or insignificant.

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

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

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

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

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

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

You should not allow this land to be used in a way
that you would find appropriate -- inappropriate if you were
someone who was concerned with the welfare of the preserve
and it's value to the community as well as to the entire
We're concerned about the precedent you set here. This proposal has quote, "insignificant impacts," but do you have any formula or guideline you can apply when other people want to build projects that they claim are insignificant in the Burton Mesa Preserve?

I think not.

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

Lastly, comment on the mitigation aspect.

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

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

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

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

If we're allowed to intervene or if we are allowed to file amicus curiae brief we will do whatever we can to support the State Lands to do the right thing to make a
decision based on sound policy of not allowing pipelines through preserves when there are feasible alternatives.

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

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

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

Thank you.

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

CHIEF COUNSEL HIGHT: Yes.

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

It is only because of that reduction to insignificance that the staff recommends the staff proposal
to allow the pipeline to be built in that area.

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

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

ACTING COMMISSIONER PARKER: Yes.

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

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

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

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

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

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

When CCWA did not get the order of immediate possession they then came to us the next week with this
modified proposal.

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

ACTING COMMISSIONER PARKER: Go ahead.

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

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

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

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

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

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

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

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

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

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

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

ACTING COMMISSIONER MILLS: I have a question.

COMMISSION CHAIRMAN DAVIS: Sure.

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

First of all, the bore pit being close to two substantial trees. What’s your reaction? Do you think
given what you understand of the engineering needed that it will put those oak trees in any kind of danger?

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

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

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

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

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

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

And this in my opinion is not the kind of harm that would do any damage to those trees.
ACTING COMMISSIONER PARKER: Dianna, the question that we had asked the homeowners from the standpoint of from your perspective of the routes, the proposed route versus the golf course, the streets, do you have some sense from an environmental standpoint?

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

ACTING COMMISSIONER PARKER: Are there differences --

MS. JACOBS: Pardon?

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

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

You like putting people on the hot seat.

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

ACTING COMMISSIONER PARKER: Disturbed by whom?
MS. JACOBS: I assume the adjacent landowners when Unocal still owned the property and adjacent to Unocal.

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

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

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

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

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

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

Again the pipeline projects that I have experience with that we're undergoing CEQA review right now, you know,
pipelines typically cross hundreds of small streams like this using the trenching method just employed like that, with our fellow agency, Department of Fish and Game, concurring that that's fine.

COMMISSION CHAIRMAN DAVIS: Any other questions?
Okay. Any other questions of Dianna?
I think you answered the question I wanted to ask you about Mr. Seymour's point about whether we blinked or whether --

CHIEF COUNSEL HIGHT: We certainly did not blink.

COMMISSION CHAIRMAN DAVIS: I wanted to commend Mr. Luce. I think he is a very effective and persuasive advocate.
But I don't see that we have any choice before us if there's no biological difference between the three routes.
And if the route presented to us is considerably better than the one that was presented to us last August.
Jan, could you just sort of elaborate on Mr. Seymour's comments on our legal cowardice or courage, as the case may be.

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

COMMISSION CHAIRMAN DAVIS: I want you to know,
when I first because chairman this agency would sue someone
before they would write them a letter a say there was a
problem. I've not known them to be reticent to go to court.
Quite the contrary.

But, anyway, speak to the issue.

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

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

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

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

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

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

Now, it's our position that this authority does
not extend to sovereign lands, but this is a case which is
without very much appellate precedent.
And the interest in pursuing this where a logical and environmentally desirable solution appears to be in prospect before the Commission, it seems to me to be both wasteful and possibly unproductive.

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

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

ASSISTANT ATTORNEY GENERAL STEVENS: Very concise summation.

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

ACTING COMMISSIONER MILLS: No.

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

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

ACTING COMMISSIONER PARKER: The alternative route
is basically twice as expensive as this modified route?

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

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

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

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

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

And that's why I was really interested in finding
out whether any of these other routes were more preferable, because even though they were more expensive if they were more preferable, even though they cost a little bit more money, I would be willing to pursue that and fight for those and whatever.

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

I don’t know if staff, if that’s essentially what we’ve --

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

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

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

ACTING COMMISSIONER PARKER: This route would cost?

CHIEF COUNSEL HIGHT: The proposed route --

ACTING COMMISSIONER PARKER: The modified.

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

The modified proposed route, the one that is
before you today, will cost 3.6 to 4. So it’s another 600,000 to a million dollars more.

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

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

CHIEF COUNSEL HIGHT: Nine.

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

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

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

CHIEF COUNSEL HIGHT: Yes. The additional.

COMMISSION CHAIRMAN DAVIS: Okay.

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

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

And it is, and maybe you can just reconfirm this, but it’s in the lease work has to stop if the construction
violates any of the terms in the lease.

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

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

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

CHIEF COUNSEL HIGHT: Yes.

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

CHIEF COUNSEL HIGHT: Yes.

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

CHIEF COUNSEL HIGHT: Yes.

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

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

COMMISSION CHAIRMAN DAVIS: So it can't be used
for off-road vehicles?

CHIEF COUNSEL HIGHT: Exactly.

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

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

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

CHIEF COUNSEL HIGHT: Yes.

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

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

SENIOR COUNSEL PELKOFER: In addition to the lease we have a separate mitigation agreement contract with CCWA that allows us to suggest, advise, request, so on and so forth.
Plus they have provided some additional funding to us which is dedicated to exactly those kinds of purposes, to promoting the sanctuary or the preserve as well. And some of that will go for the kinds of things Ms. Parker was referring to, oversight.

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

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

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

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

Do we have a motion?

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

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

So on that basis I would make the motion to adopt
staff recommendation.

COMMISSION CHAIRMAN DAVIS: Ann?

ACTING COMMISSIONER MILLS: I would second that motion.

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

But I would second that motion.

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

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

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

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

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

And based on that, the support of Fish and Game and the advice of staff and the Attorney General, I feel comfortable that we’re acting well within our Public Trust
Doctrine to approve this modified proposed route.

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

So the application is approved unanimously.

CHIEF COUNSEL HIGHT: Thank you, Mr. Chairman.

And let us now go back to Item 67.

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

(Thereupon a short recess was taken.)

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

Could we deal with the last item now?

CHIEF COUNSEL HIGHT: Yes.

COMMISSION CHAIRMAN DAVIS: Expeditiously.

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

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

In spite of the permits by the regional water quality control board, more dredging was done than was
authorized and the material was improperly placed not consistent with the permit issued by the Lahontan board.

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

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

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

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

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

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

The proposal would allow now to do this work while
the lakebed is dry.

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

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

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

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

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

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

This is an opportunity we have to get the people who -- the parties who are involved in the dredging to
undertake the cleanup and to provide the best environmental
treatment for the damage that was done to the lake.

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

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

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

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

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

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

DEPUTY ATTORNEY GENERAL CROW: Mr. Chairman, we
think that it probably can be done this winter, not
necessarily when there's a lot of snow on the ground. We'll
have to look for our window of opportunity when it can be
done before the lake starts to come back up, perhaps closer
to the springtime.
EXECUTIVE OFFICER TROUT: There's three phases to this project.

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

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

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

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

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

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

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

EXECUTIVE OFFICER TROUT: Right.
The most important part is to get the areas that have the fine organic materials taken out as soon as possible.

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

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

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

COMMISSION CHAIRMAN DAVIS: Okay.

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

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

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

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

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

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

DEPUTY ATTORNEY GENERAL CROW: Essentially, yes.

COMMISSION CHAIRMAN DAVIS: Could you just
summarize the benefits of the settlement?

DEPUTY ATTORNEY GENERAL CROW: Well --

COMMISSION CHAIRMAN DAVIS: The policy grounds.

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

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

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

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

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

So the benefits are removing those.

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

Whereas here where the equipment is not -- is essentially working on the dredged spoils, the exposed
dredge spoils itself, we believe the project as designed will not have a significant impact on the environment.

So it’s important to act now.

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

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

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

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

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

COMMISSION CHAIRMAN DAVIS: Okay.

CHIEF COUNSEL HIGHT: Mr. Norman.

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

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

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

Tahoe Meadows has requested for the last six years
that the worst environmental catastrophe in perhaps the
total of Lake Tahoe be corrected and cleaned up.

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

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

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

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

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

It is not possible to change the movement of large
amounts of good if it is not possible to change the movement
as requested under this mediational program of good and
clean sand that is in front of Tahoe Meadows, at this time
approximately 2700 yards or 200 trucks and trailer loads or
they’re using a standard unit of 20. I was using 24 yards
per load. So it would be more.

The other 1700 cubic yards they’re using a
specification of 800 cubic yards.

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

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

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

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

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

Also we have done some of our own survey. Most
areas do not need to be removed to this depth. That will
remove too much good viable sand that cannot be replaced.

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

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

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

MR. NORMAN: I got one --

ACTING COMMISSIONER PARKER: Who sued?

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

MR. NORMAN: Different company. Two contractors
and they can give you the full reports on those. But I can
document --

ACTING COMMISSIONER PARKER: Who fined them?
MR. NORMAN: Who fined them?
ACTING COMMISSIONER PARKER: Yes.
COMMISSION CHAIRMAN DAVIS: The Attorney General's
office. This is being handled through the Attorney
General's office. It's almost the same time. It happened
in I believe '88 or '89.

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

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

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

May I answer any of your questions?

COMMISSION CHAIRMAN DAVIS: I want to pursue this
cconcern you have that 60 percent of the contaminants on the
beach will not be removed.
Maybe I should address that to you, Mr. Hight. Do you agree with that, disagree with that?

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

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

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

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

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

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

We've been providing some consultation to Mike and the State Lands.
I think perhaps what Mr. Norman, and correct me if I'm wrong, is referring to is that they were two areas that were identified in 1992 to contain these elevated concentrations of fines and organics, the type of stuff that literally millions of dollars are spent every year to prevent their accumulation in the lake.

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

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

That area now has been identified to be removed.

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

I think every year things change.

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

And so the idea now is just to, you know, a wrong has been done. The channel was dug. I think it’s an issue
that should be addressed at Tahoe. It’s not specifically
part of this plan. This plan has a narrow focus to it, to
mitigate for that illegal act and the depth position of
materials.

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

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

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

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

The actual dredging was considerably below that.
I don’t think that staff would have recommended
that based on what we know today, but of course we weren’t
involved in it at that time.

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

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

CHIEF COUNSEL HIGHT: Correct.
COMMISSION CHAIRMAN DAVIS: One point that troubles me, why should we -- I guess we're not rewarding, but we basically are not -- well, we are improving the environment that was damaged through actions that we didn't permit.

CHIEF COUNSEL HIGHT: Correct.

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

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

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

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

ASSISTANT ATTORNEY GENERAL STEVENS: Yes.

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

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

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

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

CHIEF COUNSEL HIGHT: Yes.

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

CHIEF COUNSEL HIGHT: Correct.

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

CHIEF COUNSEL HIGHT: Yes.

COMMISSION CHAIRMAN DAVIS: Why is it deeper?

What commercial purpose was advanced by making it deeper than what we would have approved or what purpose -- why is it deeper?

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

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

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

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

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

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

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

EXECUTIVE OFFICER TROUT: I understand the
Chairman.

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

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

We're working on that now.

And at that time we would provide a global
solution that provide for the state, for the public, for the
use of these resources a steady income. We're not at that
point yet, and will probably be in the springtime.

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

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

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

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

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

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

ACTING COMMISSIONER PARKER: What --
COMMISSION CHAIRMAN DAVIS: Still have the benefit of coming in --

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

COMMISSION CHAIRMAN DAVIS: Low tide.

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

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

EXECUTIVE OFFICER TROUT: It runs all year.

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

EXECUTIVE OFFICER TROUT: I believe so; yes.

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

CHIEF COUNSEL HIGHT: This is the lakebed. And as the water receded then you had to cut a deeper trench into the surface of the lake to get the --
EXECUTIVE OFFICER TROUT: The ring on the bathtub went down so he needs more under the keel when the lake is down.

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

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

CHIEF COUNSEL HIGHT: About 150,000.

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

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

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

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

And we're just trying to focus on one right now, on one small piece and that is to try and take advantage of
the low lake level to correct this problem.

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

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

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

EXECUTIVE OFFICER TROUT: I frankly --

CHIEF COUNSEL HIGHT: You have to purchase sand.

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

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

There have been -- there's a history of the channel dredging here near the Tahoe Queen has operated at Ski Run Marina for 10 to 15 years. There were other tour
boats there before then and there were other dredged channels that were not as long or as deep, perhaps, but they still had a negative environmental impact on the shoreline.

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

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

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

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

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

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

And it’s not an alternative that the staff is recommending at this point.

COMMISSION CHAIRMAN DAVIS: Okay. Next witness.

Thank you, Mr. Norman.

CHIEF COUNSEL HIGHT: Mr. Schmidt.

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

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

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

I would like to start by commenting on that.

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

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

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

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

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

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

The negative declaration that is before you	onight in my opinion is bad for the State, for the people
in the state for a number of reasons and should not be
approved in its present form.
These reasons are as follows.

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

This proposed settlement does none of those things.

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

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

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

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

Nowhere is there any recognition that spreading the dredged spoils on top of the original sand bottom will
mean spreading a lot of fines and rock that are still mixed in with the dredged spoils.

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

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

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

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

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

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

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

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

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

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

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

   It is also obvious to me that even the minor
remediation that has been proposed cannot be accomplished by
December 10th or 15th of this year as a result of the early
winter, ten inches of snow that's on the ground and the ice
that covers the shallow water in the project area.
In conclusion I recommend that you not approve a negative declaration for this project and require a proper study of impacts and alternatives and costs under CEQA.

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

Thank you.

ACTING COMMISSIONER PARKER: A question.

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

MR. SCHMIDT: Regularly.

Not the Conservancy, but the others.

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

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

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

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

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

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

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

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

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

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

Consequently anything which you do to upset the
equilibrium of the shore zone like removing vast quantities
along with a little bit of surface muck or digging a big
channel and leaving it there to fill in naturally, the
natural fill-in will come from the erosion of the back
beaches.

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

COMMISSION CHAIRMAN DAVIS: Any questions?

ACTING COMMISSIONER PARKER: No.

COMMISSION CHAIRMAN DAVIS: Thank you very much.

MR. SCHMIDT: Thank you.

COMMISSION CHAIRMAN DAVIS: Next witness.

EXECUTIVE OFFICER TROUT: Christine Rozance.

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

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

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

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

The site in my own mind certainly includes the
dredged area as well as that debris which was dredged out of the channel.

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

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

The channel itself was not of concern.

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

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

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

It also is a health and recreation hazard. As Mr. Schmidt mentioned, there were two drownings in 1988. In
the spring of this 1994 year there were two more near
drownings. It is a very hazardous area.

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

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

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

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

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

COMMISSION CHAIRMAN DAVIS: Any questions?

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

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

It’s to clean up the siltations and the organic
materials that have formed in that interior basin to haul those away to, you know, take whatever clean sand there is and make productive use of that.

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

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

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

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

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

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

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

The inner marina channel is full of organic fines. And I just heard from Lahontan staff yesterday a very toxic material.

And as a matter of fact they're considering separate enforcement agency irrespective of any permit
issued to Lake Tahoe Cruises to do this remediation project, because of the recent chemical test reveal that this area has real significant pollution problems, water pollution problems.

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

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

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

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

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

COMMISSION CHAIRMAN DAVIS: Any questions?

ACTING COMMISSIONER MILLS: One more question.
I apologize if you are repeating this, but it's hours late and I'm fading here, can you clarify for me when the lessee's contract is up from renewal will we at that point be looking at the environmental impact of the channel and be able to take action at that point?

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

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

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

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

COMMISSION CHAIRMAN DAVIS: Okay. Any other questions?

Okay. Next witness.

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

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

I don't want to take your attention away from the aerial photograph that you're looking at now.
ACTING COMMISSIONER MILLS: The more recent photograph, is that considered a high lake level?

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

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

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

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

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

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

COMMISSION CHAIRMAN DAVIS: Okay.

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

I'm very concerned that this cleanup doesn't address the channel itself, but only the silt and the
dredging remains from that channel.

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

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

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

CHIEF COUNSEL HIGHT: No.

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

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

So that the problem will continue and be ongoing as long as you're allowing the Tahoe Queen to come in and
have that access through the very shallow shelf area up to
the beach. It's going to continue to stir the muck that it
has continually created.

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

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

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

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

Either one of those two alternatives would clearly
stop the stirring of the muck and shoreline.
It would also make it much safer for children and operators of small boats and restore the people's legal right-of-way along the shore of Lake Tahoe.

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

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

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

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

CHIEF COUNSEL HIGHT: It's --

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

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

MS. TITHERINGTON: It's considerably worse.

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

COMMISSION CHAIRMAN DAVIS: So it's like come to
here or something?

CHIEF COUNSEL HIGHT: Yes.

COMMISSION CHAIRMAN DAVIS: The beach --

CHIEF COUNSEL HIGHT: Has moved out.

FROM THE AUDIENCE: Excuse me, Mr. Chairman.

COMMISSION CHAIRMAN DAVIS: Keep some structure here.

Were there any more questions of this witness?

Do you have other comments to make?

MS. TITHERINGTON: My only comment is to say that some of the issues that I brought up are not to be addressed this evening. I just urge you not to come to a settlement that might be in the best interest of the Tahoe Queen and not to the best interest of anyone else who might enjoy Lake Tahoe.

COMMISSION CHAIRMAN DAVIS: Let me ask this question.

Does the issue before us tonight preclude this Commission at some subsequent point of requiring either a pier to be built or use of this channel --

CHIEF COUNSEL HIGHT: Is stopped.

COMMISSION CHAIRMAN DAVIS: Is stopped.

CHIEF COUNSEL HIGHT: No. It does not.

So it will refocus more clearly and crisp as to what the staff's proposal is, the issue before us is to
approve the settlement, to smooth down the dredger piles to
prevent the contamination to the lake and the hazard that it
will create when the lake level increases. That's the
issue.

The Commission sued them to remove the dredged
spoils and that's the issue before us today and that's the
settlement that is here today does that.

EXECUTIVE OFFICER TROUT: Mr. Chairman.

COMMISSION CHAIRMAN DAVIS: Let me make it clear.

Who had to come in and get a permit to allow the
Tahoe Queen to use this channel?

CHIEF COUNSEL HIGHT: The --

COMMISSION CHAIRMAN DAVIS: Upland.

CHIEF COUNSEL HIGHT: The upland -- we will have a
lease with --

ACTING COMMISSIONER PARKER: The upland
concession?

CHIEF COUNSEL HIGHT: Right.

COMMISSION CHAIRMAN DAVIS: When is that coming
up?

EXECUTIVE OFFICER TROUT: We are working on that
now. The problem is that the upland has been in bankruptcy
and the prior owners had to take it over and we have been
working with the people that are involved.

COMMISSION CHAIRMAN DAVIS: This little sublease
is just running around and this Tahoe Queen just doing its
own thing without anyone giving it permission to do it?

CHIEF COUNSEL HIGHT: That's correct. And that's
why --

COMMISSION CHAIRMAN DAVIS: Do we have the
jurisdiction to stop them? I'm not saying we should do
that, but do we have the authority to stop them from coming
on the channel?

EXECUTIVE OFFICER TROUT: They're using a float --

COMMISSION CHAIRMAN DAVIS: What do you say, Jan?

ASSISTANT ATTORNEY GENERAL STEVENS: To the extent
that you -- it would be subject to whatever rights they have
acquired in the marina and the upland, I guess, basically.
They have a right to navigate in the waters of the lake.
It's when they dock that you have a handle on the situation.

ACTING COMMISSIONER PARKER: So we can preclude
them from docking?

ASSISTANT ATTORNEY GENERAL STEVENS: Yes. You own
the land.

CHIEF COUNSEL HIGHT: Yes.

EXECUTIVE OFFICER TROUT: In answer to the
Chairman's question, the calendar item particularly provides
that this project does not constitute Commission approval or
waiver of future review of the channel location or its
continued maintenance or its environmental impact. We're
focusing only on this window to do the remediation and
reserving all other issues.

COMMISSION CHAIRMAN DAVIS: I gather the channel
was caused by the lake dropping?

CHIEF COUNSEL HIGHT: The need for the channel was
caused by the lake dropping, otherwise there would be no
need for the channel.

COMMISSION CHAIRMAN DAVIS: If we get a lot of
rain --

CHIEF COUNSEL HIGHT: The whole problem goes away.

Yes.

So pray for rain.

COMMISSION CHAIRMAN DAVIS: Okay. But --

DEPUTY ATTORNEY GENERAL CROW: After Christmas.

CHIEF COUNSEL HIGHT: After Christmas, after they
do the work.

COMMISSION CHAIRMAN DAVIS: So it's understood
that you can tell from our questions that we're not happy
about this?

CHIEF COUNSEL HIGHT: Yes. We understand,
Mr. Chairman.

COMMISSION CHAIRMAN DAVIS: And we don't want to
be railroaded into continued use of this channel by anything
we do here tonight.

CHIEF COUNSEL HIGHT: Yes. And that's completely
understood. They’re two different pieces and that piece is not before you today.

COMMISSION CHAIRMAN DAVIS: What is the cost to construct a pier? Does anyone have any estimate?

EXECUTIVE OFFICER TROUT: I certainly haven’t looked at that.

ACTING COMMISSIONER PARKER: Let me add to what the Chairman is suggesting.

It seems that many, to some to extent, the comments that the homeowners have made tonight would be the same kinds of things that we would discuss when this lease comes back to us. And that’s --

COMMISSION CHAIRMAN DAVIS: Assuming there’s some application made, but it’s not clear to me that someone is going to make one.

CHIEF COUNSEL HIGHT: The existing pier is in bankruptcy, so that we will deal with that either by --

COMMISSION CHAIRMAN DAVIS: That’s on the other side of the north shore?

CHIEF COUNSEL HIGHT: No. Here.

EXECUTIVE OFFICER TROUT: This area right -- this is where the Queen lands at this float. This is on state lands and was under lease to the upland.

The Commission has total discretion as to whether they want to keep that there. If you don’t allow that, then
there's no place for the Queen to dock and this channel can be filled in or it could silt in naturally.

The homeowners are concerned as to if it fills in naturally where is it coming from? Off of their beach. And that's something we have to take a look at.

DEPUTY ATTORNEY GENERAL CROW: Mr. Chairman, the property is currently owned by -- the upland property is currently owned by a person named Michael Phillips, who foreclosed on it out of bankruptcy. He obtained it from the previous bankrupt owner.

And he currently has an incomplete application into the Commission and the Commission staff is working on that trying to get the application complete. And that is in the works.

CHIEF COUNSEL HIGHT: That will be back to you in the next few months.

DEPUTY ATTORNEY GENERAL CROW: I think a pier is one of the alternatives that is being contemplated by the upland owner at this time.

There would be a lot of planning that would have to go into that and a lot of environmental work. The TRPA regulations governing seek a threshold value from the Tahoe basin come into play when someone constructs a 1800-foot long pier out into the lake.

So that might be a problem.
But those are some of the issues that would be addressed in the Commission application.

ACTING COMMISSIONER MILLS: Question.

But the bottom line is that if we were to go with the staff recommendation we cut off no options?

CHIEF COUNSEL HIGHT: Correct. Correct. You know, one more time, all the staff recommendation does is takes care of the dredged disposal problem.

EXECUTIVE OFFICER TROUT: And the only reason we bring it to you tonight is simply that the window is now and we can take advantage of it or not and then deal with the rest of the problem.

COMMISSION CHAIRMAN DAVIS: Okay. Thank you very much.

One last witness or not?

CHIEF COUNSEL HIGHT: Yes.

Titherington. I was aware I couldn’t get it twice.

Because of the hour, if you could keep your comments brief.

ACTING COMMISSIONER PARKER: Particularly from the standpoint if there’s something -- I appreciated the comments that were new information or new suggestions.

MR. TITHERINGTON: All my fire has been taken at this point.
The only thing that I have are two concerns.

Since I am a homeowner in Tahoe Meadows I have watched and I’ve enjoyed the beach in the wintertime and Tahoe Queen uses a pontoon boat and has used a pontoon boat very effectively. So that when the water has gone down, the Tahoe Queen cannot come in that canal that was dredged it then has its clients go out in the boat.

The other thing that my major concern, I’m sure my friends over here are concerned about it as well, if you do allow Phase 1 and 2 to be completed and the sand is taken away from our beach there and the marina and we will then be creating a hole and the sand from Tahoe Meadows will be moving towards that area and essentially degrading our beach. It’s my only concern.

COMMISSION CHAIRMAN DAVIS: What would you have us do? We have to do something about this.

MR. TITHERINGTON: One of the alternative ways of dealing with this is have these people pull the sand up and stuff that they have, the fines and what not, wash the sand on site and replace it.

I know it’s costly but we’re not the ones who dug the trench.

What they’re proposing is to pull all of this stuff out and haul it up into the mountains and leave it there and essentially creating a basin and then that sand,
through the wave action of the water, will then be coming away from Tahoe Meadows and going towards the marina. We'll be losing our beach.

COMMISSION CHAIRMAN DAVIS: Is there any way they can use the sand, deposit the sand somewhere?

CHIEF COUNSEL HIGHT: To bring it back?

COMMISSION CHAIRMAN DAVIS: To keep the beach from eroding?

CHIEF COUNSEL HIGHT: We need to ask, I think, our erosion experts from UC Davis.

Can the sand be stockpiled or used to replenish the beach?

MR. MacARTHUR: Bob MacArthur. I'm working with State Lands as a consultant. I'm a civil engineer and I specialize in beach processes.

Very succinctly, the sand under the presently proposed short-term mitigation plan that you're looking at this evening calls for removal of the fine materials in the deep pocket areas, number one, and from the beach front area.

But then recontouring the remaining sands into the location immediately in front of Tahoe Meadows projects property here, not removing the sand, but to recontour it on the lake bottom so that the littoral processes will move it onshore, offshore and laterally along the shore.
It does not address the issues at all of the existence of the channel and the likelihood of some of those sands if they are to move from the east to the west will in fact deposit in that channel. The channel remains.

But that's an issue from what I understand legally beyond the concept of the definition of the project we're talking about this evening.

Number one, the sands are not being removed. The fine materials are being removed. Those are not from the lake, they came from other processes. They contain organic materials, potentially harmful in nutrients. They will be removed. The area will be recontoured.

As the lake comes up then you remove the barrier beach, lake side from the beach, to allow the littoral processes to redistribute those sands near the beach.

COMMISSION CHAIRMAN DAVIS: The sand is not being taken up in the mountains?

MR. MacARTHUR: No. The materials that perhaps has been confused being removed would be those small quantities of materials in the inner marina, which is a complete and separate component of this study.

I think a lot of people are confusing the existence of the dredged channel with the previous existing kind of ancient marina.

The materials that are being removed from the
marina contain very very high concentrations of toxic materials as Lahontan has discovered and they have known for quite some time.

The sole purpose of removing those are to get them out of any location where there would be any possibility of them short-circuiting into the lake.

It’s not going to provide an access channel from the lake into the marina. They’re not to puncture through there.

It’s merely to take those toxic materials out of the lake so that under high water a big flush came through, they wouldn’t just bounce into the lake.

Those materials will contain small volume of sands probably. The cost to clean those sands to the level of presently required for replacement on the beach is astronomical and the volume of sand that would be reclaimed from there is minute.

So the problem, the proposed plan for Phase 3 is simply remove that material, get it out of the lake.

Phases 1 and 2 remove the fine materials that are in the dredged spoils area that are now exposed, take those out, redistribute the sands, do not remove them from the lake.

It does not remove that channel. The channel is a different issue.
I'd like to state one other thing for your consideration.

When the dredging was performed it may not have been performed according to the definitions and requirements of the permits.

Had the lake stayed at the level that it was when the dredging was performed and perhaps returned to the higher level, this issue would have become much less of a concern than it is today.

The lake is presently in a situation that's extremely unique with respect to the history of the lake levels being very very low.

Regardless of what goes on today or does not go on today within this window of opportunity, we can pretty much guarantee from a scientific perspective that there will be tremendous alterations to water quality as well as the littoral beach processes as the lake comes back up and attempts to reestablish some sort of equilibrium with the lake and the beach process that goes on.

Unfortunately, Tahoe Meadows will in fact see fairly dramatic beach rearrangement, resculpting and things going on.

That is going to occur whether or not these materials remain or whether they go away or whatever, because -- and so will remaining portions of south shore
from all the way from the marina to the east.

COMMISSION CHAIRMAN DAVIS: These are just the natural processes?

MR. MacARTHUR: These are natural processes, because the lake is so out of balance at this moment in time.

Just to recap.

We feel that it's essential to remove under this narrow window of opportunity those fine materials that can be deleterious to the land if they are in fact resuspended under the oncoming high wave energies that will occur.

Remove only those materials, do them efficiently and carefully. Resculpt the sands in such a way that you try to best contour them to account for the anticipated processes so that you try to redistribute those materials uniformly along the Tahoe Meadows beach area, not to starve those beaches in any way possible.

It does not address the channel.

COMMISSION CHAIRMAN DAVIS: Okay. Any further questions?

We got to have some -- this has got to end.

I'm giving you 15 seconds. Go ahead.

MR. SCHMIDT: What I'm afraid of is that if the 150,000 or so is spent on the wrong cleanup at this time it will not be available to do a proper cleanup in a future
date.

    Thank you.

COMMISSION CHAIRMAN DAVIS: That's an interesting point, but we have -- it's unclear whether we can achieve a settlement.

CHIEF COUNSEL HIGHT: At a future date.

COMMISSION CHAIRMAN DAVIS: Whether we win or whether we lose.

ACTING COMMISSIONER PARKER: What was the 50,000 that we were getting in fines, where will that go?

EXECUTIVE OFFICER TROUT: Where would the money go? Basically to recover staff costs that have been invested in this, in Mr. MacArthur, Mr. Reuter and ourselves.

COMMISSION CHAIRMAN DAVIS: Where are you going? You recapture your salaries, is that what you're saying? Shouldn't have said that in front of the Governor's person.

ACTING COMMISSIONER PARKER: I think that our deficit problem has just been solved.

EXECUTIVE OFFICER TROUT: Happy to help.

CHIEF COUNSEL HIGHT: While this isn't a perfect solution, Mr. Chairman, the staff, despite the testimony, still recommends the settlement as the best way to deal with the problem we have at hand before us today and we'll deal
with the next problem in the next ensuing few months.

COMMISSION CHAIRMAN DAVIS: Okay. Do I have a

motion?

ACTING COMMISSIONER PARKER: Just to take one more

moment.

Is there some ability on our part, because I think

if we -- speak for myself -- want to do this, but I'd like
to have some assurances that we're going to be able to get
at the core issue and that's to deal with the boat.

And I'd like, I guess I'm more comfortable with
doing so if I felt that we were going to come to some
closure on that issue in some time in the, you know, really
near future.

And if this thing is going to drag on for six

months or a year, given how long it's gone on, I think I'm

uncomfortable with that or I'd like to suggest that we might

want to do something that to give them some ultimatum of

after such and such a date they don't have the ability to
dock or whatever to use our land. You know what I'm getting

at, to get this settled.

COMMISSION CHAIRMAN DAVIS: Make it a condition of

the motion.

EXECUTIVE OFFICER TROUT: Unfortunately, they're

not directly connected, but certainly that instruction --

COMMISSION CHAIRMAN DAVIS: Can't we make a motion
saying that we approve this staff recommendation for
negative declaration, but if the work is not completed by
say March 15th that permission for the Delta Queen to dock
is hereby revoked?

  Can we legally do that?

  ASSISTANT ATTORNEY GENERAL STEVENS: I'm not sure
you can.

  I think a separate motion indicating the
Commission's intentions with respect to a comprehensive
evaluation of the uses to which their land is put would be
quite appropriate.

  But we would prefer to see the settlement dealt
with in one action and any further plans of the Commission
dealing with use of its State-owned bed dealt with
separately, at the same time if you'd like.

  They're certainly related and I think they're
within the calendar item.

  COMMISSION CHAIRMAN DAVIS: Why don't you make two
motions, separate motions?

  ACTING COMMISSIONER PARKER: I'm prepared to make
a motion for the staff recommendation. I guess it's a
matter of what should be the second motion.

  CHIEF COUNSEL HIGHT: Let me give you a suggestion
that the second motion be that the staff come back to you in
four months, six months with either a report, lease -- or
I'm trying -- I'm looking for some kind of a specific that you can tie the anchor to, so to speak.

COMMISSION CHAIRMAN DAVIS: Revoke the permission for the Delta Queen to land or take away the little dock.

EXECUTIVE OFFICER TROUT: That's exactly the appropriate action, because there's a lease application before the staff at this point. It's not complete.

One of two things will happen. Either they'll make --

ACTING COMMISSIONER PARKER: Go ahead, Jim.

EXECUTIVE OFFICER TROUT: There's a few more pieces before we can consider it, but one of two things would happen.

Either that lease application will be perfected and an environmental treatment will be given and we can report that to the Commission.

The other thing is if they don't perfect that then we would come to the Commission and ask for authority to eject the float, and which is now in a carryover status, and prevent any further use of the state lands.

I mean that's what's before us.

ACTING COMMISSIONER PARKER: Staff have a recommendation about whether four to six months would be better? I sort of like to make it four months, but I'm open to six.
It seems to me the motion would be that if we
don't have an application before us in four months that we
would rescind the ability for the Queen to use the dock.

CHIEF COUNSEL HIGHT: That's fair.

ACTING COMMISSIONER PARKER: And I make the
motion.

COMMISSION CHAIRMAN DAVIS: This is basically like
a month-to-month carryover?

CHIEF COUNSEL HIGHT: Yes.

COMMISSION CHAIRMAN DAVIS: How long has this been
carrying on?

CHIEF COUNSEL HIGHT: Year or two.

FROM THE AUDIENCE: Sometime during the last
summer we got the application. The original lease expired
about two years ago.

EXECUTIVE OFFICER TROUT: Because of bankruptcy
we've had difficulty dealing with it.

COMMISSION CHAIRMAN DAVIS: Is the Delta Queen a
big money maker for the State Lands Commission?

CHIEF COUNSEL HIGHT: No.

COMMISSION CHAIRMAN DAVIS: Not much?

CHIEF COUNSEL HIGHT: No.

COMMISSION CHAIRMAN DAVIS: Okay. Make your
motion.

ACTING COMMISSIONER PARKER: I think I've made
them. I made two.

COMMISSION CHAIRMAN DAVIS: Make the first one.

ACTING COMMISSIONER PARKER: First motion is to adopt the staff recommendation on the negative declaration.

CHIEF COUNSEL HIGHT: Yes.

ACTING COMMISSIONER MILLS: Second.

COMMISSION CHAIRMAN DAVIS: That's unanimously approved.

ACTING COMMISSIONER PARKER: Second motion is to ask that if the staff bring, if there is a completed application --

CHIEF COUNSEL HIGHT: If there isn't a completed application within four months that automatically staff --

COMMISSION CHAIRMAN DAVIS: Permission to use the, what is it called?

CHIEF COUNSEL HIGHT: Pier.

ACTING COMMISSIONER PARKER: The docking.

CHIEF COUNSEL HIGHT: Yeah. The pier, the wharf, the float.

ACTING COMMISSIONER PARKER: Is rescinded.

CHIEF COUNSEL HIGHT: Is rescinded.

COMMISSION CHAIRMAN DAVIS: Okay.

ACTING COMMISSIONER MILLS: I'll second that motion.

COMMISSION CHAIRMAN DAVIS: That's unanimously
approved.

CHIEF COUNSEL HIGHT: Thank you.

COMMISSION CHAIRMAN DAVIS: We're adjourned.

Thank everyone for their patience. Thank the homeowners for coming down from Tahoe.

(Thereupon the hearing was adjourned at 10:10 p.m.)
CERTIFICATE OF SHORTHAND REPORTER

I, JANET H. NICOL, a Certified Shorthand Reporter of the State of California, do hereby certify that I am a disinterested person herein; that I reported the foregoing hearing in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, or in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of December 1994.

Janet H. Nicol
Certified Shorthand Reporter
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