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BEFORE THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

IN THE MATTER OF THE:)
)
REGULAR MONTHLY BUSINESS)
MEETING)
_____)

TRANSCRIPT OF PROCEEDINGS

September 8, 1999

9:30 A.M.

8800 Cal Center Drive
Sacramento, California

REPORTED BY:
Tern L. Emery,
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APPEARANCES:

MR. DANIEL EATON, CHAIRMAN
MR. STEVEN R. JONES, MEMBER
MS. LINDA MOULTON-PATTERSON, MEMBER
MR. DANIEL G. PENNINGTON, MEMBER
SENATOR DAVID A. ROBERTI, MEMBER

STAFF PRESENT:

MR. RALPH CHANDLER, CHIEF EXECUTIVE OFFICER
MS. KATHRYN TOBIAS, LEGAL COUNSEL
MS. LISA DOMINGUEZ, BOARD SECRETARY

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1 SACRAMENTO, CALIFORNIA, SEPTEMBER 8, 1999 - 9:30 A.M.

2 * * * * *

3 CHAIRMAN EATON: Good morning, everyone,
4 and welcome to the September 8th meeting of the California
5 Integrated Waste Management Board. I'm sorry for the
6 delay.

7 Madam Secretary, will you please call the
8 roll.

9 BOARD SECRETARY: Board Members Jones.

10 BOARD MEMBER JONES: Here.

11 BOARD SECRETARY: Moulton-Patterson.

12 BOARD MEMBER MOULTON-PATTERSON: Here.

13 BOARD SECRETARY: Pennington.

14 BOARD MEMBER PENNINGTON: Here.

15 BOARD SECRETARY: Roberti.

16 BOARD MEMBER ROBERTI: Here.

17 BOARD SECRETARY: Chairman Eaton.

18 CHAIRMAN EATON: Here.

19 Okay. Quorum is present.

20 For those of you who may be here for the
21 first time or haven't been here in sometime, if you would
22 like to speak on any item today, there are speaker slips
23 in the back. If you will kindly fill them out and put the
24 agenda item down, bring them up to my left and to your
25 right to Lisa Dominguez, she'll make sure that you get on

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1 the docket and that you're able to speak on the issue that
2 you desire to do so.

3 I'll start on my left and move from left to
4 right. Mr. Pennington, any ex partes to report?

5 BOARD MEMBER PENNINGTON: No, Mr. Chairman.
6 I do not.

7 CHAIRMAN EATON: Mr. Jones.

8 BOARD MEMBER JONES: All mine are up to
9 speed with the exception of hellos only to Victoria
10 Tobiason, Mike Mohajer, Evan Edgar and Al Marino.

11 CHAIRMAN EATON: Ms. Moulton-Patterson.

12 BOARD MEMBER MOULTON-PATTERSON: I received
13 a letter from Tom Foust regarding AB 117, and also Terry
14 Lavelle gave me a California Tire Report.

15 Thank you, Mr. Chairman.

16 CHAIRMAN EATON: Okay. Senator Roberti.

17 BOARD MEMBER ROBERTI: Yes. On the first I
18 of September, Kent Stoddard, Gene Urban, Paul Gladfelty
19 regarding (inaudible) 516 Chesbro and the inert site
20 facility.

21 CHAIRMAN EATON: Okay. And I also said a
22 quick hello to Terry Lavelle as well. In addition to what
23 is in the system, I have also spoken with Dave Ackerman
24 and Paul Gladfelty regarding inerts, also Steve Archibald
25 from Assembly Appropriations and Assembly Rules Committee,

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1 John Waldy regarding the procedure on all legislation, a
2 number of bills that are working their way through, and
3 the chairman of that committee, Bob Hertsberg, also
4 regarding legislation that would affect the Board.
5 Any reports from any members?

6 Mr. Pennington.

7 BOARD MEMBER PENNINGTON: No, Mr. Chairman.

8 CHAIRMAN EATON: Mr. Jones.

9 BOARD MEMBER JONES: No, sir.

10 CHAIRMAN EATON: Ms. Moulton-Patterson.

11 BOARD MEMBER MOULTON-PATTERSON: No.

12 CHAIRMAN EATON: Senator Roberti.

13 BOARD MEMBER ROBERTI: No.

14 CHAIRMAN EATON: I would like to make a few
15 announcements before we begin the agenda. We have a few
16 items that were continued business items from our past
17 meeting today, but first it should be noted that Item B on
18 continued business agenda items, which is the
19 consideration of the appeal of a Clean Up and Abatement
20 Order issued to Edward Joseph Filbin, et al. will be heard
21 at a time certain at 1:30 p.m. this afternoon. So if
22 you're here for that matter, if you'll kindly come back at
23 1:30, it will be a time certain as well.

24 In addition, items that were pulled per
25 various Board Members' requests were Item C, which is

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1 consideration of State Legislation SB 876; Item B is going
2 to be continued to the September 21st-22nd meeting as per
3 our announcement in Quincy. It was put on there due to an
4 inadvertent error; and Item E, which is the 38th Street
5 site plan, staff has said they need further work with the
6 County, but that will be brought back. Is there a time
7 certain on that or are we just going to put it on -- that
8 doesn't need to be continued, Ms. Nauman?

9 MS. NAUMAN: I'll defer to legal counsel,
10 but we're still working with the jurisdiction.

11 CHAIRMAN EATON: Okay. We'll just -- we'll
12 put it back on.

13 MS. TOBIAS: The only difference is when
14 you continue an item, it doesn't have to be renoticed
15 except it will appear on the agenda. If you don't
16 continue it, then it has to be renoticed.

17 CHAIRMAN EATON: Right.
18 There's no consent calendar today, and
19 we'll go right into continued business items and that
20 would be Item A, consideration of a revised waste facility
21 permit for the Palo Alto refuse disposal site, Santa Clara
22 County.
23 My understanding is that there's no report
24 from the Executive Director today.

25 MR. SMITH: That's correct. There will not

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1 be one.

2 MS. NAUMAN: Mr. Chairman and Board
3 Members, Julie Nauman, Deputy Director, Permitting and
4 Enforcement Division. You will recall that you considered
5 this item at your meeting in Quincy a couple of weeks ago.
6 At that time there were a number of questions that were
7 raised, and since then I've had an opportunity to further
8 discuss this individually with Members, and we will just
9 be presenting kind of an abbreviated staff report for the
10 record this morning. Jon Whitehill will make the
11 presentation.

12 MR. WHITEHILL: Good morning, Chairman and
13 Members of the Board. This original permit was issued in
14 1978 and is being revised to reflect changes in design and
15 operation and to establish a new compliance boundary for
16 the monitoring of subsurface migration of landfill gas.
17 This item was continued again from the
18 Board's August 24th Board meeting to allow staff to
19 address concerns with the proposed landfill gas monitoring
20 program. In summary, again, this issue is complicated
21 because the waste extends beyond the permitted boundary
22 onto other areas of the same city parcel of land and
23 because the original perimeter gas detection probes were
24 placed in waste. However, perimeter probes need to be
25 placed outside the waste footprint in order to detect

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1 off-site migration.

2 So this proposed permit will authorize a
3 new compliance boundary which includes the entire City of
4 Palo Alto parcel. The new probes have now been installed
5 outside the waste footprint at the facility property
6 boundary, and the monitoring results document that the
7 perimeter landfill gas levels are well below regulatory
8 standards.

9 As a reminder, at the time the agenda item
10 went to print, staff had not yet completed the findings of
11 conformance with the Integrated Waste Management Plan or
12 verified compliance with financial assurance requirements.
13 Staff have since verified that the approved financial
14 mechanism for closure and post-closure maintenance is
15 adequately funded. Also, staff have since verified the
16 facility is identified and described in the siting element
17 of the Waste Management Plan. However, the daily tonnage
18 numbers of the siting element are inconsistent with the
19 permitted daily tonnage.

20 In conclusion, notwithstanding the Waste
21 Management Plan inconsistency, staff have made all the
22 required findings and recommend adoption of Resolution
23 Number 1999-386, concurring in the issuance of Number
24 43-AM-0001. John Dufrane, representing the LEA, is here
25 to answer any questions you might have and so is the

1 operator.

2 CHAIRMAN EATON: Any questions of staff or
3 the representative from Santa Clara County?

4 I'll entertain a motion.

5 BOARD MEMBER ROBERTI: Mr. Chairman.

6 CHAIRMAN EATON: I'm sorry. Senator
7 Roberti.

8 BOARD MEMBER ROBERTI: I think I'm the one
9 who requested this could be put over. I had a briefing
10 with our staff, and they clearly went over the fact with
11 me that the current stationing of the probes means that
12 there's no way of getting a decent reading on the
13 migration of these gases. So I commend the staff for
14 clarifying to me what is about as complex an issue as you
15 can deal with, and I'll make the motion.

16 CHAIRMAN EATON: Before you do, if I could
17 remind you. Whatever motion -- I remind my colleagues
18 that the new procedure by which counsel and staff have
19 moved to make it easier with regard to appropriate
20 findings and so on and so forth.

21 BOARD MEMBER ROBERTI: Okay. That's here.

22 CHAIRMAN EATON: Yes.

23 BOARD MEMBER ROBERTI: I move Resolution
24 1999-386 with the appropriate findings to indicate that
25 the Board has found the proposed permit to be consistent

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1 with CEQA, in conformance with the intent of the
2 California Integrated Waste Management Plan, meeting all
3 local and state permit requirements, and consistent with
4 state minimum standards and therefore concurs in the
5 proposed permit.

6 BOARD MEMBER PENNINGTON: I'll second that.

7 CHAIRMAN EATON: Senator Roberti moves and
8 Mr. Pennington seconds that we concur in the proposed
9 permit of Resolution 1999-386.

10 Madam Secretary, please call the roll.

11 BOARD SECRETARY: Board Members Jones.

12 BOARD MEMBER JONES: Aye.

13 BOARD SECRETARY: Moulton-Patterson.

14 BOARD MEMBER MOULTON-PATTERSON: Aye.

15 BOARD SECRETARY: Pennington.

16 BOARD MEMBER PENNINGTON: Aye.

17 BOARD SECRETARY: Roberti.

18 BOARD MEMBER ROBERTI: Aye.

19 BOARD SECRETARY: Chairman Eaton.

20 CHAIRMAN EATON: Aye.

21 Senator, I would like to commend you
22 because you are consistent time and time again. As we got
23 to the CIWM Plan, which you referred to many times, you
24 clearly and succinctly explained what that is and I thank
25 you for that.

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1 (Laughter)

2 BOARD MEMBER ROBERTI: And I wasn't going
3 to lecture because -- I'm being contrite on this proposal
4 since -- so when CIWM comes up again, you can be sure I'll
5 give my acronym lecture.

6 CHAIRMAN EATON: All right. As mentioned
7 Item B will be heard at 1:30. C has been pulled. D has
8 been continued to the 21st-22nd of September. E has been
9 pulled. Item Number F, consideration of approval of
10 proposed scoring criteria and evaluation process for the
11 Tire Recycling Grant. Program, continued from last Board
12 meeting. Item F in continued business.

13 MR. FITZGERALD: Mr. Chairman.

14 CHAIRMAN EATON: It's been a while since
15 you got up here and talked? In Quincy you didn't need
16 one.

17 MR. FITZGERALD: Byron Fitzgerald.

18 CHAIRMAN EATON: (Inaudible) you know that,
19 don't you?

20 MR. FITZGERALD: Is that correct?

21 CHAIRMAN EATON: You ought to know.

22 BOARD MEMBER JONES: I think it was the
23 meat for lunch.

24 (Laughter)

25 CHAIRMAN EATON: Go ahead.

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1 MR. FITZGERALD: The next three items are
2 scoring criteria for tire grant proposals. All three of
3 them are reruns, if you will, of previous grant that we
4 had given similar programs. And the first two of them
5 were approved at Quincy for allocation of funds, that's
6 the public education and amnesty grants, and the local
7 government matching grants for enforcement. The third
8 one, which is the playground cover and tracking surfacing
9 grant criteria, has not had funds allocated yet. And that
10 will be coming before the Board hopefully at the next
11 meeting. So without further adieu, I will pass it to
12 Martha Gildart who will cover the first grant.

13 MS. GILDART: Good morning, Chairman and
14 Members. I'm presenting Item F which is the consideration
15 of approval of proposed scoring criteria and evaluation
16 process for the 1999-2000 fiscal year Tire Recycling Grant
17 Program, local public agency playground cover and track
18 surfacing grants.

19 As Fitz mentioned, this is contingent upon
20 the Board's approval of funding at the 21st meeting. If
21 the Board chooses not to fund the program, obviously these
22 criteria will not be used. We are presenting them today
23 so that if the Board does choose to fund the program,
24 we'll be able to get the materials out on the street very
25 quickly so that the local government participants will

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1 have as much time as possible to fill out the application.
2 This will be the fourth cycle of grants
3 offered to school districts and local governments for
4 playground mats and running track surfacing made out of
5 recycled tire rubber. As we have done in the past, we
6 will be evaluating them on a series of criteria which are
7 included in Attachment 1.
8 There are six general review criteria which
9 you have seen in other grant programs recently. We have
10 chosen to assign 20 points to the need criteria. This is
11 in the hopes that a smaller school district that can make
12 a better plea for need of support from the Board may rank
13 a little bit higher than the ones with hired expensive
14 grant writers to do their packages for them.
15 The preference criteria, this year there
16 are four of them, will be five points each. This includes
17 the new requirement on the Board's part for evidence of a
18 green procurement policy, and this is direction the Board
19 has given us earlier where the applicant is to show that
20 they buy recycled and use recycled content materials.
21 We are also continuing the estimated cost
22 per tire to evaluate the cost effectiveness of their
23 proposals, the degree to which a recycling program has
24 been developed by the applicant, and that is the kind of
25 program where they make it possible for their staff, for

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1 the students of the school, to recycle things like cans
2 and bottle and paper and all.
3 And then criteria seven is one that there's
4 been some discussion in the past. The individual
5 political subdivision has not received a Board Waste Tire
6 Recycling Grant in fiscal years '96-'97, '97-'98 or
7 '98-'99. That is included to try to encourage the
8 first-time applicant to this program. Once again, we feel
9 that certain entities are very experienced in writing and
10 applying for grants and do very well inasmuch as the
11 completeness of their application and the arguments they
12 offer for why they should be funded, but we're also trying
13 to reach out to new applicants who may not score quite as
14 well on some of those other points. So this does not cut
15 off anyone who has received a grant before, it merely
16 makes a few points available to the first-time individual.

17 BOARD MEMBER ROBERTI: First-time
18 application or first-time grant?

19 MS. GILDART: Recipient.

20 BOARD MEMBER ROBERTI: First-time
21 recipient.

22 MS. GILDART: First time in the last three
23 years. They may have applied six or seven years ago for
24 something else, but that would have been before we were
25 doing the playground grants.

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1 Is there are any other questions?

2 CHAIRMAN EATON: Questions?

3 BOARD MEMBER ROBERTI: Mr. Chairman.

4 CHAIRMAN EATON: Senator Roberti.

5 BOARD MEMBER ROBERTI: I want to make sure
6 the preference criteria will be considered at the same
7 time as the other criteria.

8 MS. GILDART: Yes. All the criteria will
9 be considered and evaluated at the same time for a total
10 score.

11 BOARD MEMBER ROBERTI: And we changed our
12 words "recyclable" and "reusable" to "recycled" and
13 "reused."

14 MS. GILDART: There is a bit of an issue.
15 I believe if the Board so directs, we can do that, but
16 that language was pulled out of the action the Board had
17 taken, I believe it was in the June meeting, where they
18 adopted the green procurement policy and the words
19 "recyclable" were used in that policy. I believe if the
20 Board wishes in this case to direct that the language be
21 changed to "recycled," we could do that if legal counsel
22 could --

23 CHAIRMAN EATON: I think that was the
24 direction we gave in Quincy. I may be mistaken.

25 BOARD MEMBER ROBERTI: Yes. I thought we

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1 had. I thought we had. If the Board took that action in .
2 June, I don't think any of us realized -- that we were
3 thinking that recyclable and reusable could mean anything.
4 I thought in Quincy we made the directive.

5 CHAIRMAN EATON: Right. Because the issue
6 was, I think you appropriately said, anything is
7 recyclable.

8 BOARD MEMBER ROBERTI: Right.

9 CHAIRMAN EATON: But I remember in the
10 direction -- but I think we should just sort of reiterate
11 that as well and put it in now.

12 BOARD MEMBER ROBERTI: Yes.

13 MS. GILDART: We can do that.

14 CHAIRMAN EATON: Ms. Moulton-Patterson.

15 BOARD MEMBER MOULTON-PATTERSON: Thank you,
16 Mr. Chair. I would just like to thank the staff and the
17 Board's direction for your outreach to smaller districts,
18 districts with less money. I think this is very important
19 and I thank you.

20 Also, I did have a question. Is there
21 any -- for grant recipients, is there any curriculum that
22 is made available so that students know that they've
23 gotten a playground or gotten help with --

24 MS. GILDART: We do require some kind of
25 signage at the site indicating that it's made with

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1 recycled tires and paid for by a grant from the Board. We
2 could also work with our schools program where we have
3 educational materials that are developed and explaining
4 recycling and why you should do it, and maybe work that in
5 through the system, too.

6 BOARD MEMBER MOULTON-PATTERSON: I think
7 that would be very important for the students to know and
8 thank you.

9 CHAIRMAN EATON: All right. Any other
10 questions of staff? Okay.

11 MS. GILDART: I'll just go on to the next.

12 CHAIRMAN EATON: Absolutely.

13 MS. GILDART: I'm sorry. You have to act.

14 CHAIRMAN EATON: I'll move we adopt
15 Resolution 1999-390 with direction to the staff per
16 Senator Roberti regarding the nonuse of the word
17 "recyclable" and instead put "reused" and "recycled" and I
18 think those were the two words, if I'm not mistaken.

19 BOARD MEMBER JONES: Second.

20 CHAIRMAN EATON: All right. Mr. Eaton
21 moves, Mr. Jones seconds we adopt Resolution 1999-390 with
22 the amended language in place of "recycled."
23 Madam Secretary, please call the roll.

24 BOARD SECRETARY: Board Members Jones.

25 BOARD MEMBER JONES: Aye.

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1 BOARD SECRETARY: Moulton-Patterson.

2 BOARD MEMBER MOULTON-PATTERSON: Aye.

3 BOARD SECRETARY: Pennington.

4 BOARD MEMBER PENNINGTON: Aye.

5 BOARD SECRETARY: Roberti.

6 BOARD MEMBER ROBERTI: Aye.

7 BOARD SECRETARY: Chairman Eaton.

8 CHAIRMAN EATON: Aye.

9 Next. Thank you.

10 MS. GILDART: Item H, this is a very
11 similar item. It's consideration of approval of proposed
12 ranking criteria and scoring process for the 1999-2000
13 fiscal year local government waste tire -- I think I
14 skipped ahead.

15 CHAIRMAN EATON: I think you did. G.

16 MS. GILDART: Yeah. Sorry. Up to then
17 it's the same. Local government, public education and
18 amnesty day grants. This one, once again, we've done in
19 the past. It's where we make monies available to local
20 government to conduct amnesty days and public education
21 campaigns. The education campaigns are directed to the
22 public on how to maintain their tires, proper inflation
23 and rotation to extend the life span, how to properly
24 dispose of the tires, what their requirements are, and the
25 availability of the amnesty day that the Board's grant

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1 will be funding.

2 On amnesty day, people are allowed to bring

3 their tires to a certain site for free drop-off so as to

4 avoid illegal dumping by individuals who change their own

5 tires for instance. These have been very popular in the

6 past. We have many applicants. In fact, I think I

7 remember last year we weren't able to quite fund all the

8 people we would have liked to.

9 This year, the Board has approved \$400,000.

10 These will be matching grants up to \$25,000 apiece. It

11 has the same general review criteria as in the former

12 grant, and that is the need is going to be assigned 20

13 points, there will be the effective methodology,

14 evaluation, budget and completeness.

15 The preference criteria for this grant,

16 once again, will be three items only adding up to 15

17 points. There is a misspelling or mistake in the agenda

18 item where it says 20 possible points. It should be 15.

19 The three preference criteria are the degree to which

20 recycling program has developed and been implemented by

21 the local government entity, and that's the same thing,

22 office paper, cans and bottles, whatever; the estimated

23 cost per tire; and the evidence of a green procurement

24 policy. And we will include the words "recycled" and

25 "reused" in that one also.

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1 If there are any questions.

2 CHAIRMAN EATON: Any questions of

3 Ms. Gildart?

4 BOARD MEMBER PENNINGTON: Mr. Chairman.

.

5 CHAIRMAN EATON: Mr. Pennington.

6 BOARD MEMBER PENNINGTON: I'll move

7 adoption of Resolution 1999-389.

8 CHAIRMAN EATON: With the new language on

9 the evidence of green procurement that was in the previous

10 motion?

11 BOARD MEMBER PENNINGTON: Correct.

12 BOARD MEMBER MOULTON-PATTERSON: I'll

13 second.

14 CHAIRMAN EATON: Mr. Pennington moves and

15 Ms. Moulton-Patterson seconds that we adopt Resolution

16 1999-389 with the additional direction to include the

17 "recycled" and "reused" language in the green procurement

18 section of the preference criteria.

19 Madam Secretary, please call the roll.

20 BOARD SECRETARY: Board Members Jones.

21 BOARD MEMBER JONES: Aye.

22 BOARD SECRETARY: Moulton-Patterson.

23 BOARD MEMBER MOULTON-PATTERSON: Aye.

24 BOARD SECRETARY: Pennington.

25 BOARD MEMBER PENNINGTON: Aye.

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1 BOARD SECRETARY: Roberti.

2 BOARD MEMBER ROBERTI: Aye.

3 BOARD SECRETARY: Chairman Eaton.

4 CHAIRMAN EATON: Aye.

5 All right. Next. Now you can get to H, I

6 believe.

7 MR. FITZGERALD: Mr. Chair, our final

8 presentation will be made by Ms. Diane Nordstrom who will

9 cover the Local Government Matching Grant program, and on

10 this one also we will be considering both the general

11 review and preference criteria simultaneously and will

12 make the appropriate changes in the green side of the

13 equation.

14 MS. NORDSTROM: Good morning, Mr. Chairman

15 and Members of the Board. The item before you is the

16 consideration of approval of the proposed ranking criteria

17 and scoring process of 1999-2000 fiscal year Local

18 Government Waste Tire Cleanup Matching Grant Program.

19 At the August 24th Board meeting, the Board

20 approved the allocation of up to \$1 million for the Local

21 Government Waste Tire Cleanup Matching Grant Program.

22 Today's item is for the approval of the

23 proposed ranking criteria and scoring process necessary to

24 evaluate these applications. The Board concurrence on

25 this item would also direct staff to prepare the notice of

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1 funding availability and mail it to interested local
2 governments. The Local Government Waste Tire Matching
3 Grant Program provides grant funding to local
4 jurisdictions to clean up illegally dumped tires. This
5 will be the third year that the Board has provided funding
6 for this program. The first year the Board allocated
7 \$200,000 and approved funding for eight projects for a
8 total of \$171,000. The second year, the Board allocated
9 \$150,000. However, there were only four applicants that
10 were approved for funding totaling \$51,000.
11 Due to the decline in applicants for this
12 grant program, Board staff is proposing the following
13 changes: Extend the filing period from once a year to
14 continuance filing. This will allow more flexibility for
15 the local governments in preparing and submitting the
16 grant applicants. Also, Board staff is recommending that
17 the maximum amount of funding for each project be
18 increased from \$50,000 to \$75,000 per project and that the
19 amount of the grant match to be changed from 50 percent to
20 75 percent from the Board.
21 As before, the Board also has the option of
22 reducing the amount of the match for the local government
23 on a case-by-case basis. With these changes and an
24 increase in staff outreach to fire districts, code
25 enforcement agencies, and public work agencies, we are

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1 anticipating a greater number of applicants for this
2 program.
3 The proposed scoring criteria is the same
4 as last year except a section was added to the preference
5 criteria which addresses the green procurement policy.
6 Applicants must score 90 points out of the 130 available
7 points to qualify for funding. All applicants will be
8 brought to the Board quarterly on a first-come,
9 first-served basis. If enough applicants are received to
10 make it competitive, then the highest ranking applications
11 will be selected first.
12 This concludes my presentation.

13 CHAIRMAN EATON: Questions of staff?

14 BOARD MEMBER JONES: Mr. Chairman.

15 CHAIRMAN EATON: Mr. Jones.

16 BOARD MEMBER JONES: I don't have any
17 questions. I'll move this resolution. I think we need to
18 get some -- the last item on the amnesty issue and this
19 item on local cleanups I think we need to have a
20 discussion about. As part of the tire report, we talked
21 about maybe within statute being able to work on one-day
22 passes so people can haul more than four tires. One of
23 the issues that came up in San Bernardino, the local code
24 enforcement agent there, was that they are continually
25 finding small piles they would like to be able to clean up

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1 with some of their road maintenance crews. They can't do
2 it because they can't haul them legally.
3 So I think we're allocating a lot of money
4 to go after the problem, but I think we need to facilitate
5 some type of discussion about within statute, can we work
6 with Highway Patrol and locals to come up with a criteria
7 that would allow the issuance of one-day passes or two-day
8 passes to get 10 or 20 tires to a cleanup site instead of
9 five trips at four tires each. Because they're not going
10 to get picked up. It may not be the appropriate item to
11 bring it up, but it seemed pretty germane.

12 BOARD MEMBER PENNINGTON: Mr. Chairman.

13 CHAIRMAN EATON: Mr. Pennington.

14 BOARD MEMBER PENNINGTON: You're saying
15 that the county truck can't pick that up?

16 BOARD MEMBER JONES: Right. County truck
17 or a county contractor that's contracted to clean up
18 illegal dumping can't haul more than four tires or five
19 tires legally.

20 BOARD MEMBER PENNINGTON: You're absolutely
21 right. We need to clear that up.

22 BOARD MEMBER JONES: We had talked about it
23 as part of the tire report, that we needed to work on
24 coming up with some kind of pass that wasn't a blanket but
25 that they could issue in conjunction with the Highway

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1 Patrol to make sure they're notified. But I think it
2 would get us a bigger bang for the buck to get some of
3 these cleanups, both in the previous item and this item,
4 at a lower cost which means more tires are going to be
5 delivered to the specific area.

6 CHAIRMAN EATON: Mr. Fitzgerald.

7 MR. FITZGERALD: We raised this issue with
8 the Highway Patrol last week, and the contact we have over
9 there seemed to think it would be possible to get with the
10 regional Highway Patrol officers when we have these clean
11 up days and inform them this is happening so we don't have
12 this problem with them stopping people that are bringing
13 tires into cleanup locations.

14 I think we can have this one under control
15 fairly quickly and fairly easily, and we'll also look --
16 when we do the regulations, which should be coming up in
17 October, we'll try to put something in the regulations
18 that facilitates this as well. But you're absolutely
19 correct. This is a very important part of the program and
20 something we definitely need to get into.

21 BOARD MEMBER JONES: In my mind, I don't
22 want to see us give a blanket exemption because that's not
23 going to give us -- you know what I mean?

24 MR. FITZGERALD: Yes.

25 BOARD MEMBER JONES: If that jurisdiction

1 issues a permit, then they've got control over where those
2 tires are going to end up because they're going to know
3 who got the permit and determine a destination point for
4 the tires. And I hope that's what you guys are talking
5 about with the Highway Patrol.

6 MR. FITZGERALD: Yes, it is.

7 CHAIRMAN EATON: Okay. Is that the proper
8 course or can we enter into a memorandum of understanding
9 or any of those kinds of documents? There's other local
10 enforcement agencies besides the CHP --

11 MR. FITZGERALD: That's correct. We did
12 have an issue just recently where a local police
13 department stopped. This is something I think we would
14 like to consider when we bring the regulations forward,
15 see if we can do it through the regulatory process.

16 CHAIRMAN EATON: Perhaps maybe prior
17 thereto you explore with the appropriate law enforcement
18 agencies, be it CHP, Deputy or County Sheriffs or local
19 city police, whomever may have jurisdiction, to see what
20 can be worked out. And then in the October meeting, bring
21 back that item through Mr. Jones and maybe we can see.

22 MR. FITZGERALD: Yes. We'll do that.

23 CHAIRMAN EATON: Sort of come to some sort
24 of agreement or whatever we might need to do also to
25 advertise.

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1 MR. FITZGERALD: We'll bring something back
2 then in October.

3 BOARD MEMBER JONES: Mr. Chairman.

4 CHAIRMAN EATON: Mr. Jones.

5 BOARD MEMBER JONES: I would like to move
6 adoption of Resolution 1999-388.

7 BOARD MEMBER PENNINGTON: I'll second.

8 CHAIRMAN EATON: Mr. Jones moves and
9 Mr. Pennington seconds that we adopt Resolution 1999-388
10 with the amended language on the green procurement policy.
11 Madam Secretary, please call the roll.

12 BOARD SECRETARY: Board Members Jones.

13 BOARD MEMBER JONES: Aye.

14 BOARD SECRETARY: Moulton-Patterson.

15 BOARD MEMBER MOULTON-PATTERSON: Aye.

16 BOARD SECRETARY: Pennington.

17 BOARD MEMBER PENNINGTON: Aye.

18 BOARD SECRETARY: Roberti.

19 BOARD MEMBER ROBERTI: Aye.

20 BOARD SECRETARY: Chairman Eaton.

21 CHAIRMAN EATON: Aye.

22 Moving right into the new business agenda
23 items, my understanding is that Agenda Item 2 was pulled
24 at the request of the applicant; is that correct? Or it's
25 pulled no matter. Okay.

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1 Then Item Number 3, consideration of a
2 revised Solid Waste Facility Permit for Escondido Resource
3 Recovery, San Diego County. I should also mention, while
4 we're getting ready, that Item 5, which is the discussion
5 of long-term storage and potential for abuse of ADC, at
6 the request of both the proponents and the opponents of
7 various sides of the issue request that had we actually
8 move that to our September 21st-22nd meeting given the
9 legislative calendar and the fact they're over there
10 trying to advocate or protect their interests on other
11 matters and that they desire to be heard on this.
12 So out of consideration, I think it would
13 be most appropriate that we move that item to the
14 21st-22nd. Sorry for the late notice, but I think it is
15 an important issue on which all sides need to be heard.
16 With that, Item 3.

17 MR. GEBREHAWARIAT: Good morning. Item
18 Number 3 is the -- regards the consideration of the
19 revised Solid Waste Facility Permit for the Escondido
20 Resource Recovery in San Diego County. For the record, my
21 name is Tadese Gebrehawariat for the Permitting and
22 Enforcement Division.
23 As I start my presentation, I would like
24 to introduce two people. Today with us we have
25 Mr. Richard Gilb who is with the San Diego County Local

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1 Enforcement Agency or LEA, and Ms. Victoria Tobiason,
2 General Manager for the Escondido Disposal, Incorporated,
3 and facility operator. Both are here to answer any
4 questions the Board Members may have on the proposed
5 permit.
6 The project allows for several changes in
7 the design and operation of the facility. I will
8 highlight the changes that are germane for the proposed
9 permit. The proposed permit is to allow an expansion of
10 the total approach area of the material recovery and
11 transfer station building which will result in an increase
12 in the overrule design capacity of the facility. It's
13 also to allow an increase in the maximum daily tonnage
14 from 700 to 1500 tons per day.
15 The proposed permit would allow an increase
16 in the level of daily traffic volume at the facility and
17 also allow an increase in the permitted hours of operation
18 by hours of operation by one hour, as well it would allow
19 the receipt and transfer of green waste material at the
20 facility. Furthermore, the proposed permit will also
21 allow the operation of a household hazardous waste
22 collection program at the facility.
23 As we have presented in the table on page
24 3-3 of the agenda item, Board staff have determined that
25 most all of the requirements for the proposed permit have

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1 been met. An Environmental Impact Report with mitigation
2 measures was prepared and adopted for the project.
3 We have highlighted two issues in the
4 agenda item. The first is compliance with the terms and
5 conditions of Solid Waste Facility Permit where the LEA
6 cited the operator for exceeding the daily tonnage limits
7 specified in the permit. Board concurrence with the
8 proposed permit and subsequent issuance by the LEA will
9 correct this violation.
10 The second item we have highlighted is
11 consistency with the non-disposal facility element, or
12 NDFE, and conformance with the County Integrated Waste
13 Management plan or CIWM for the (inaudible) Subsection
14 50001. Staff of the Board's Office of Local Assistance
15 have determined that the proposed permit is not consistent
16 with the description of the facility in the City of
17 Escondido's NDFE.
18 All the staff are here, available to
19 discuss the issue further if it should be necessary.
20 Otherwise, staff recommends that the Board adopt Solid
21 Waste Facility Permit Decision Number 1999-477, concurring
22 with the issuance of Solid Waste Facility Permit Number
23 37-AA-0906.
24 This concludes my presentation.

25 CHAIRMAN EATON: Thank you. Any questions

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1 of staff?

2 BOARD MEMBER PENNINGTON: Mr. Chairman.

3 CHAIRMAN EATON: Mr. Pennington.

4 BOARD MEMBER PENNINGTON: I'll be happy to
5 move Resolution 1999-386 with the appropriate findings to
6 include that the Board has found the proposed permit to be
7 consistent with CEQA, in conformance with County
8 Integrated Waste Management Plan, meets all local and
9 state permit requirements, and meets state minimum
10 standards. Therefore, the Board concurs with the issuance
11 of Permit Resolution 1999-477. Therefore, the Board
12 concludes in the issuance of Permit 37-AA-0906 for the
13 Escondido Resource Recovery facility.

14 BOARD MEMBER JONES: I'll second.

15 BOARD MEMBER PENNINGTON: If anybody didn't
16 understand that, I'll be happy to read it again. I got a
17 little confused because I got the wrong number here.

18 CHAIRMAN EATON: That we adopt Resolution
19 1999-477 with the appropriate findings.

20 Madam Secretary, please call the roll.

21 BOARD SECRETARY: Board Members Jones.

22 BOARD MEMBER JONES: Aye.

23 BOARD SECRETARY: Moulton-Patterson.

24 BOARD MEMBER MOULTON-PATTERSON: Aye.

25 BOARD SECRETARY: Pennington.

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1 BOARD MEMBER PENNINGTON: Aye.

2 BOARD SECRETARY: Roberti.

3 BOARD MEMBER ROBERTI: Aye.

4 BOARD SECRETARY: Chairman Eaton.

5 CHAIRMAN EATON: Aye.

6 Number 4, consideration of revised Solid

7 Waste Facility Permit for Folsom Correctional Resource

8 Recovery Facility.

9 MR. WHITEHILL: Good morning. My name is

10 Jon Whitehill again, of the Board's Permitting and

11 Inspection Branch.

12 The project is a joint venture between the

13 City of Folsom and the Prison Industry Authority to

14 recycle compost the City of Folsom and City of Folsom

15 State Prison's wastestream. This project includes a

16 material separation and recycling facility, a municipal

17 solid waste transfer station, and a mixed waste compost

18 facility.

19 The facility is located on the grounds of

20 Folsom State Prison near Folsom Dam in the City of Folsom.

21 Because of the site's location, the City is not open to

22 the general public. The nearest residential use is half a

23 mile east of the site.

24 This permit was originally issued in 1994

25 and is being revised to reflect the changes in design and

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1 operation, mainly the permitted traffic volume from 19
2 vehicle trips per day to 45 vehicle trips per day. And
3 also, the facility has a new unloading area and a new
4 loading dock and has made other improvements in the
5 equipment used for processing materials.
6 At the time the agenda item went to print,
7 staff had not completed the findings in conformance with
8 the Integrated Waste Management Plan or consistency with
9 the California Environmental Quality Act. Staff has since
10 verified that the proposed permit is in conformance and
11 consistent with the nondisposal element of the approved
12 Integrated Waste Management Plan. Staff have also since
13 verified that the higher permitted traffic numbers were
14 identified and addressed in the original 1992 Negative
15 Declaration.

16 In conclusion, staff has made all the
17 required findings and recommend adoption of Resolution
18 Number 1999-479, concurring in the issuance of Solid Waste
19 Facility Permit Number 34-AC-0002. Terry Kociemba
20 representing the LEA is here to answer any questions and
21 also the operator is here.

22 CHAIRMAN EATON: Someone from the PIA.
23 Well, it's not appropriate to the report, but I sure would
24 like to have a couple of questions asked after we vote on
25 the report that perhaps you could answer with regards to

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1 some waivers that we as a Board have been trying to get
2 for recycled furniture for our various offices, and
3 understanding full well that closing the loop is an
4 important part of our element. I'll try and not mix
5 apples and oranges at the present time I'll entertain a
6 motion right now with regard to this.

7 BOARD MEMBER PENNINGTON: Since I'm a
8 resident of the City of Folsom, I'd like to move on this.

9 CHAIRMAN EATON: You're not conflicted, are
10 you?

11 (Laughter)

12 BOARD MEMBER PENNINGTON: Even though the
13 location is within our most famous gated community.

14 (Laughter)

15 BOARD MEMBER PENNINGTON: I would like to
16 move adoption of Resolution 1999-479 with the appropriate
17 findings to indicate that the Board has found the proposed
18 permit to be in consistent with CEQA, in conformance with
19 the County Integrated Waste Management Plan, meets all
20 local and state permit requirement, and meets state
21 minimum standards. Therefore, the Board concurs in the
22 issuance of Permit Number 34-AC-0002 for the Folsom
23 Correctional Resource Recovery facility.

24 BOARD MEMBER MOULTON-PATTERSON: I'll
25 second.

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1 CHAIRMAN EATON: All right. Mr. Pennington
2 moves and Ms. Moulton-Patterson seconds we adopt
3 Resolution 1999-479 to issue the revised Solid Waste
4 Facility Permit.
5 Madam Secretary, please call the roll.

6 BOARD SECRETARY: Board Members Jones.

7 BOARD MEMBER JONES: Aye.

8 BOARD SECRETARY: Moulton-Patterson.

9 BOARD MEMBER MOULTON-PATTERSON: Aye.

10 BOARD SECRETARY: Pennington.

11 BOARD MEMBER PENNINGTON: Aye.

12 BOARD SECRETARY: Roberti.

13 BOARD MEMBER ROBERTI: Aye.

14 BOARD SECRETARY: Chairman Eaton.

15 CHAIRMAN EATON: Aye.

16 Okay. Seriously, is there someone here
17 from --

18 MR. LINN: Yes. Good morning,
19 Mr. Chairman.

20 CHAIRMAN EATON: Good morning. I know that
21 you're just a messenger. I think it's really important if
22 could you help with us our mission. We know that there's
23 been some discussions, but not only is recycling in terms
24 what you've done within the prison industry important, but
25 the other side of the equation is equally important. And

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1 that's the idea of being able to purchase from you
2 recycled materials, be it furniture and some of the other
3 kinds of things. That's very important for our marketing.
4 I think it's part that if you prosper --
5 and it has been profitable as I understand it, otherwise
6 you wouldn't continue to operate it -- that we who sit out
7 here also, that have the job, and many of those in the
8 audience who come here on a weekly basis asking us why
9 we're not doing more on markets, one of the things that we
10 always have some frustration is with is our fellow agency
11 which we've tried to work with, and especially in terms of
12 some of the other projects. Whatever you could do to help
13 us, we would appreciate it. I don't know if maybe the
14 other Board Members have anything to say, but if you could
15 do that, it would be great. We really need help on the
16 waivers in terms of some of that. I know it's a difficult
17 position, and you may not be the appropriate person.

18 MR. LINN: I'll be happy to take that to
19 our executive staff, as well, if we could get a contact
20 person at the Integrated Waste Management Board that we
21 could work with.

22 CHAIRMAN EATON: Karen Fish, I understand,
23 has had more than her fair share of meetings with various
24 representatives and she is our, I think, Chief
25 Administrator or Physical Officer, and she would be the

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1 individual. We'll make sure that -- Mr. Smith can make
2 sure when she returns that we can get the two of you
3 hooked up and we can go from there. That would be very
4 helpful. I think it's a great partnership and I think it
5 will work well for all of us.

6 BOARD MEMBER JONES: Mr. Chairman.

7 CHAIRMAN EATON: Mr. Jones.

8 BOARD MEMBER JONES: I think as somebody
9 that is pulling material out of the wastestream and trying
10 to find markets for it, you understand the importance of
11 anything that somebody can do to cultivate markets.

12 MR. LINN: Absolutely.

13 BOARD MEMBER JONES: Mr. Eaton is not
14 alone. I think all five Members share that, as well as
15 our staff, that we would like to see the recycled content,
16 not only the waivers, but the pamphlets that you guys put
17 out on what's available, put the recycled content in the
18 front of the page instead of the back of the book. Put it
19 at the front of the book.

20 MR. LINN: I will carry your message
21 forward.

22 CHAIRMAN EATON: Thank you very much.

23 Item Number -- we need to have your name
24 for the record.

25 MR. LINN: I'm sorry.

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1 BOARD MEMBER JONES: Plus then we know who
2 to come find if it don't happen.

3 (Laughter)

4 CHAIRMAN EATON: You notice we said name
5 and not number. That's an important distinction.

6 (Laughter)

7 MR. LINN: My name is Tim Linn, L-i-n-n,
8 Prison Industries Manager.

9 CHAIRMAN EATON: Thank you.

10 MR. LINN: Thank you.

11 CHAIRMAN EATON: Item Number 6,
12 Mr. Levenson.

13 MR. LEVENSON: Good morning, Mr. Chair and
14 Board Members. I'm here on Item Number 6. My name is
15 Howard Levenson with the Waste Prevention and Markets
16 Development Division.
17 In this item we're asking the Board to
18 approve the award of a contract for \$64,900 to Integrated
19 Waste Management Consulting. The purpose of this contract
20 would be to conduct a survey this winter to assess mulch
21 producing infrastructure. The general goals of this
22 survey are to obtain aggregate data so we can benchmark
23 where the industry is in terms of production, get a better
24 understanding of marketing and where the industry is
25 selling its products so we can tailor our efforts and

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1 assist businesses and local jurisdictions in their
2 diversion efforts.
3 As you know, about nine months ago the
4 staff attempted to do this survey directly with the
5 industry and working with CORC, the California Organics
6 Recycling Council. For that reason, we approached the
7 Board in March and requested the allocation of funding and
8 approval of the scope of work for a survey to be conducted
9 by a totally independent third party. The Board approved
10 that at its March meeting.
11 We subsequently issued a request for
12 proposals and received two proposals in July. Of those
13 proposals, one was disqualified and the other one met the
14 minimum qualifications and minimum scoring criteria we
15 established in the request for proposals. The request for
16 proposals contained a couple of mechanisms which I want to
17 highlight that we hope will ensure a much, much higher
18 response by the industry, particularly the development of
19 an industry steering committee which would communicate
20 with various producers regarding a couple of issues. One
21 promoting this is in the interest of the industry, and
22 secondly to ensure producers that their individual data
23 will be masked and aggregated before it ever gets to the
24 Board. As I said, we had one qualified bidder and that
25 was Integrated Waste Management Consulting.

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1 So with that, staff recommends that the
2 Board adopt or -- approve Option 1 and adopt Resolution
3 1999-391.

4 I would be happy to answer any questions.

5 CHAIRMAN EATON: Any questions of staff?

6 All right.

7 BOARD MEMBER PENNINGTON: I'll move
8 adoption of Resolution 1999-391 to award a contract for
9 \$64,900 to Integrated Waste Management Consulting to
10 assess California's compost and mulch producing
11 infrastructure.

12 BOARD MEMBER JONES: I'll second.

13 CHAIRMAN EATON: Mr. Pennington moves and
14 Mr. Jones seconds that we adopt Resolution 1999-391.
15 Madam Secretary, please call the roll.

16 BOARD SECRETARY: Board Members Jones.

17 BOARD MEMBER JONES: Aye.

18 BOARD SECRETARY: Moulton-Patterson.

19 BOARD MEMBER MOULTON-PATTERSON: Aye.

20 BOARD SECRETARY: Pennington.

21 BOARD MEMBER PENNINGTON: Aye.

22 BOARD SECRETARY: Roberti.

23 Chairman Eaton.

24 CHAIRMAN EATON: Aye.

25 Pull the roll for when the Senator

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1 returns. Thank you very much.

2 Item Number 7.

3 MS. TRGOVCICH: Good morning, Chairman
4 Eaton and Members. I'm Caren Trgovcich, Deputy Director
5 Waste Prevention and Market Development Division.
6 The item before you this morning is
7 consideration of approval of the sustainable building
8 implementation plan, and consideration of approval of
9 proposed scoring criteria and evaluation process for
10 sustainable building grants.

11 This is the implementation plan that's
12 being brought before you as a result of your action last
13 April to approve the green building or sustainable
14 building conceptual plan. Kathy Frevert will be making
15 this presentation, and I would just like to remind you
16 there are two distinct parts here and there are two
17 resolutions accompanying the item.

18 MS. FREVERT: I-Ti. I'm Kathy Frevert from
19 the Waste Prevention and Markets Development Division, and
20 today staff seeks approval for the sustainable building
21 implementation plan which will allow staff to move forward
22 with the long-term vision, goals, and objectives outlined
23 in the plan, and approval on the proposed scoring criteria
24 and evaluation process for the sustainable building grant
25 program.

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1 As Karen just mentioned, this is a
2 follow-up from direction we received by the Board on April
3 27th, 1999 with the approval of our conceptual plan which
4 presented long-term vision and goals in three measures.
5 One, to set up an executive committee; two, to develop a
6 sustainable building grant program; and three, to develop
7 an education program. And staff was asked to report back
8 with implementation plans to support these measures.
9 The sustainable building plan before you
10 contains the long-term vision, goals, and objectives and
11 three short implementation plans designed to carry out the
12 recommended measures in the conceptual plan, and it also
13 includes the scoring process and criteria.
14 I'm going to go through the three elements
15 of the implementation plan starting with the executive
16 committee. \$50,000 was designated for this activity to
17 use as seed money to obtain additional funds. The
18 conceptual plan called for an executive committee to
19 integrate, coordinate, and raise funds for a long-term
20 statewide green building program. Some new developments
21 led us to modify this course of action.
22 Since April, staff have worked on
23 incorporating green building measures into the Capital
24 Area East End project. This will be the largest
25 (inaudible) complex ever built. It's 1.5 million square

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1 feet and it has truly been a ground breaking effort. The
2 Integrated Waste Management Board, California Energy
3 Commission, Department of Health Services, and Air
4 Resources Board have worked jointly with the Department of
5 General Services on incorporating green building practices
6 into the East End project. The road has been a little
7 bumpy at times, but the team has successfully incorporated
8 green building practices into the specifications.
9 An offshoot from this effort has been a
10 series of informal meetings with the same group to figure
11 out how we can incorporate green building practices into
12 all state construction projects. One thing we learned
13 from the East End project is that it was very resource
14 intensive on our part and we need a mechanism to make it a
15 little easier to implement.
16 Efforts are under way to formalize this
17 group through legislation or executive branch vehicles,
18 and we're looking at a tiered approach where, by depending
19 on the size of the building and where it's located and the
20 type, that certain green building practices must be
21 considered. We also expect to work together with the same
22 group of people on prototype or signature buildings. This
23 exciting and worthwhile effort may need additional support
24 in the future as we determine what green building
25 practices should be incorporated into the tiers.

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1 As a result of this group, staff recommend
2 that, with appropriate oversight, this be the vehicle to
3 serve as our executive committee for state government.
4 This, however, is more limited in scope than what was
5 envisioned in the conceptual plan, so staff jointly
6 recommend that another organizational structure compliment
7 the State Government Green Building Task Force.
8 We recommend the creation of a California
9 Green Building Council as a chapter of the US Green
10 Building Council. This council would provide the
11 integration and coordination among the private sectors.
12 Members could tap into the expertise, resources and
13 enthusiasm of a broad group of people from the building
14 industry, architects, contractors, building owners,
15 non-profits, and local governments.
16 Staff recommends that we work actively to
17 participate in formalizing the State Government Green
18 Building Work Group or Task Force and a California Green
19 Building Council. And a further note on the California
20 Green Building Council is we propose using seed money,
21 part of the \$50,000 allotted for this category, to
22 compliment matching funds required in the proposal.
23 Currently we're working on a sustainable development
24 challenge grant through the USEPA to set up and create
25 this California Green Building Council. We have been in

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1 conversations and are working closely with the US Green
2 Building Council on developing this proposal.
3 The other -- the next category or main area
4 is the grant program, the sustainable building grant
5 program, and \$325,000 has been designated for this grant
6 program which, in the scheme of buildings, is a very small
7 amount of money. Staff have worked closely with the grant
8 administration unit and our legal office on developing the
9 proposed process and scoring criteria, and you'll see many
10 similarities with this and the Household Hazardous Waste
11 Grant Program Plan.
12 Staff recommend a modification to the
13 actual plan which limited the grants to under \$25,000.
14 Looking at this more closely and realizing administrative
15 costs of a grant program, staff recommend that we make a
16 general solicitation instead of having an artificial cap
17 at \$25,000. And so Option A, recommended by staff, allows
18 for this general solicitation.
19 On the education program, we have \$125,000
20 designated for it. Staff propose that the education
21 program be implemented primarily through Board staff, but
22 with some contractor support. We also recommend that our
23 expertise is not in architecture or building construction,
24 so we recommend that we have an internship program to
25 recruit architect students or others with appropriate

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1 skills and apply \$60,000 towards this effort. These
2 students could help build the web site and some of the
3 educational materials.
4 We also recommend we use contractor support
5 for developing guidelines that would recommend green
6 building practices by building, type and climate. \$65,000
7 would be allotted for that.
8 In summary, staff recommends approval of
9 Option 1 and adoption of Resolution 1999-328, and approval
10 of Option 1 and adoption of resolution 1999-379.

11 Are there any questions?

12 CHAIRMAN EATON: Any questions?

13 Ms. Moulton-Patterson.

14 BOARD MEMBER MOULTON-PATTERSON: Thank you,
15 Mr. Chairman.

16 I would just like to -- I'm very much in
17 favor of this concept and that I would like to see perhaps
18 next year it be expanded to public schools. I think it
19 would be very timely with the school bond issues that are
20 before us in many areas, and at this point it does not
21 include schools; does it?

22 MS. FREVERT: Schools could be covered in
23 the sense that in developing guidelines, there's nothing
24 to limit us from not creating guidelines to look at what
25 kind of green building practices could be incorporated

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1 into schools. If you're speaking in reference to SB 280,
2 that excludes schools. So from that perspective, schools
3 are not included.

4 BOARD MEMBER MOULTON-PATTERSON: Okay. But
5 you could look at them.

6 MS. FREVERT: In terms of the guidance
7 that's developed, there's nothing to say we can't look at
8 schools as one of the types of buildings that would be
9 evaluated.

10 BOARD MEMBER MOULTON-PATTERSON: Okay.

11 CHAIRMAN EATON: Ms. Trgovcich.

12 MS. TRGOVCICH: To point out as well, this
13 is a very limited amount of funds that are available for
14 the grant program, \$325,000, and it may be that given the
15 limited nature of the funding that the Board would like to
16 revisit providing additional funding in the future and
17 schools could be one area that you may want to target some
18 of those monies out.

19 BOARD MEMBER MOULTON-PATTERSON: Thank you.

20 CHAIRMAN EATON: My understanding is also
21 that there's also a contract concept going around for a
22 model schools program. On the other hand, we welcome you
23 as a Board Member. You have officially now, I believe,
24 seen the challenge that we face as Board Members for the
25 public schools and others, the prisons were here,

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1 constantly trying to chip away. And we welcome your
2 participation because it will be with the state architect
3 and some of the other kinds of things, with mobile
4 classrooms and other things. I think we may be able to do
5 other things with them, but it is a tough challenge with
6 the schools and the autonomy, especially universities and
7 colleges. All right.

8 We have two resolutions. If there are no
9 further questions, I'll move that we adopt --

10 BOARD MEMBER MOULTON-PATTERSON: Excuse me,
11 Mr. Chairman, if I might.

12 CHAIRMAN EATON: Sure.

13 BOARD MEMBER MOULTON-PATTERSON: I did have
14 one other question.

15 On this green building concept, has the
16 Building Industry, BIA, have they been supportive or are
17 they -- have they been involved in talks, at least, that
18 there is a US one now and you're talking about a state
19 one.

20 MS. TRGOVCICH: There's two different
21 entities here. There's the US Green Building Council,
22 which is an organization of which its members are
23 primarily from the private sector that promote green
24 building techniques and practices throughout the country.
25 One of the items that we're pursuing is the establishment

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1 of a California chapter.
2 Separate from that is the Building Industry
3 Association BIA, and we've been working very closely with
4 the Building Industry Association, as well as their
5 training arm, the Building Industry Institute, BII, and we
6 have separate contracts with BII to be able to develop
7 training materials and incorporate that into the trainings
8 that they provide to the contractors, the large
9 contractors throughout the state. Those trainings right
10 now are focused principally on deconstruction, which is
11 how do you take the structures down in a way that promotes
12 reuse and recycling of the materials in those structures
13 at the outset. We will be expanding that effort to look
14 at the green building element in the next cycle.

15 BOARD MEMBER MOULTON-PATTERSON: Thank you
16 very much. You answered my question.

17 CHAIRMAN EATON: All right. I'll move we
18 adopt Resolution --

19 BOARD MEMBER PENNINGTON: Mr. Chairman.

20 CHAIRMAN EATON: Mr. Pennington.

21 BOARD MEMBER PENNINGTON: I just wondered
22 if maybe part of your motion or if we can instruct the
23 staff to come back with a more comprehensive plan on what
24 the BCP and legislation and contract concepts in this area
25 are.

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1 MS. TRGOVCICH: Member Pennington, are you
2 referring in terms of the contract concepts for fiscal
3 year '99-'00 around the model schools as well as the
4 housing industry? And that's certainly something that we
5 could pursue in addition to finalizing how we're going to
6 spend -- this is '98-'99 money.

7 BOARD MEMBER PENNINGTON: Okay.

8 CHAIRMAN EATON: Okay. All right. I'll
9 move we adopt Resolution 1999-328.

10 BOARD MEMBER JONES: I'll second.

11 CHAIRMAN EATON: Mr. Eaton moves and
12 Mr. Jones seconds that we adopt Resolution 1999-328.
13 Madam Secretary, please call the roll.

14 BOARD SECRETARY: Board Members Jones.

15 BOARD MEMBER JONES: Aye.

16 BOARD SECRETARY: Moulton-Patterson.

17 BOARD MEMBER MOULTON-PATTERSON: Aye.

18 BOARD SECRETARY: Pennington.

19 BOARD MEMBER PENNINGTON: Aye.

20 BOARD SECRETARY: Roberti.

21 BOARD MEMBER ROBERTI: Aye.

22 BOARD SECRETARY: Chairman Eaton.

23 CHAIRMAN EATON: Aye.

24 All right. I'll move we adopt Resolution
25 1999-379.

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1 BOARD MEMBER PENNINGTON: I'll second it.

2 CHAIRMAN EATON: Mr. Eaton moves and
3 Mr. Pennington seconds that we adopt resolution 1999-379.
4 Without objection, substitute the previous
5 role call. Hearing no objection, such will be ordered.
6 Before we take a break, Senator Roberti
7 stepped out. Can we go back to Item Number 6 so
8 Senator Roberti can be recorded on the roll.
9 Madam Secretary, please call the roll on
10 Item Number 6. That remains open.

11 BOARD SECRETARY: Board Member Roberti.

12 BOARD MEMBER ROBERTI: Aye.

13 CHAIRMAN EATON: We'll take a short
14 ten-minute break and we'll finish up the remaining two
15 items and then we are going to have a short closed
16 session, break for lunch, and come back at 1:30.
17 Thank you. We'll be back at 10 after
18 11:00.

19 (Brief recess taken.)

20 CHAIRMAN EATON: All right. Back in
21 session. I'll ask any of my colleagues if they have any
22 ex parte communications to report.

23 BOARD MEMBER PENNINGTON: Mr. Chairman, I
24 need to report I spoke with George Larson considering SB
25 550.

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1 CHAIRMAN EATON: Okay.

2 BOARD MEMBER JONES: Mr. Chairman, Evan
3 Edgar. And then when we were up in Quincy, we had a tour
4 of the closed landfill in Plumas County.

5 CHAIRMAN EATON: Gopher Hill.

6 BOARD MEMBER JONES: Gopher Hill, and the
7 Graeagle -

8 CHAIRMAN EATON: Gopher or Golfer Hill?

9 (Laughter)

10 BOARD MEMBER JONES: Gopher.

11 BOARD MEMBER PENNINGTON: There's no golf
12 up there.

13 BOARD MEMBER JONES: And in those tours on
14 both Plumas and Lassen, Mr. Mark Davis, who represents the
15 JPA for Lassen County was in those tours, as was Ernie
16 Gentner, Ricky Ross and Tonya Ross, and I thought, since
17 we're dealing with those issues, I would bring them up.

18 CHAIRMAN EATON: Ms. Moulton-Patterson.

19 BOARD MEMBER MOULTON-PATTERSON: None,
20 thank you.

21 CHAIRMAN EATON: And I also have to report
22 with Mr. Jones, Tonya Ross, Ricky Ross, Mark Davis, and
23 Ernie Gentner on tour although it was a publicly noticed
24 meeting. I don't believe that we had to, but just to be
25 on the safe side.

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1 BOARD MEMBER JONES: Just because he's
2 sitting there.

3 BOARD MEMBER PENNINGTON: Let me just say
4 that I was on the tour.

5 CHAIRMAN EATON: Absolutely, but I do
6 believe it was publicly noticed. All right.
7 Item Number 8.

8 MR. BISSINGER: Good morning, Board Members
9 and Chairman Eaton. My name is Eric Bissinger with the
10 Office of Local Assistance.
11 The item before you is a request from
12 unincorporated Plumas County to correct their disposal
13 amounts in their current 1998 base area. When
14 unincorporated Plumas County completed their solid waste
15 generation study, they had no weight scales at the County
16 disposal facilities. At the time disposal was estimated
17 by using volume to weight conversion factors and
18 projecting disposal amounts for years 1995 and 2000.
19 In '95, Plumas unincorporated began
20 exporting their wastes to a facility equipped with weight
21 scales, and this produced a 5,000-ton increase in disposal
22 amounts, and this increase remained constant through the
23 years 1996, 1997 and '98.
24 The jurisdiction performed an analysis
25 based on Board approved methods. Specifically they used

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1 Method B-3 of Agenda Item 32 and calculated the average
2 annual increase of disposal from 1995 to 1998 and added
3 this amount back to the original base year.
4 Board staff has determined that the request
5 has been adequately documented and is in general
6 consistent with the previous Board standards for accuracy.
7 That concludes my presentation, and Lassen
8 County is here to answer any questions, and me also.

9 BOARD MEMBER PENNINGTON: 4r. Chairman.

10 CHAIRMAN EATON: Mr. Pennington.

11 BOARD MEMBER PENNINGTON: I'll move
12 adoption of Resolution 1999-351 to approve the correction
13 to the previously approved source reduction and recycling
14 element for Plumas County.

15 BOARD MEMBER JONES: I'll second.

16 CHAIRMAN EATON: Mr. Pennington moves and
17 Mr. Jones seconds that we adopt Resolution 1999-351 to
18 correct the base year for unincorporated Plumas County.
19 Madam Secretary, please call the roll.

20 BOARD SECRETARY: Board Members Jones.

21 BOARD MEMBER JONES: Aye.

22 BOARD SECRETARY: Moulton-Patterson.

23 BOARD MEMBER MOULTON-PATTERSON: Aye.

24 BOARD SECRETARY: Pennington.

25 BOARD MEMBER PENNINGTON: Aye.

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1 BOARD SECRETARY: Roberti.

2 Chairman Eaton.

3 CHAIRMAN EATON: Aye.

4 CHAIRMAN EATON: We'll hold the role and
5 Senator Roberti, who will come down very shortly, I'm
6 sure.

7 Item Number 9.

8 MR. BISSINGER: The next item before you is
9 a Regional Agency Agreement between the City of Susanville
10 and unincorporated Lassen County forming the Lassen
11 Management Regional Solid Waste Management Authority.
12 Public Resources Code Section 40970 allows
13 cities and counties to form a regional agency for the
14 purpose of meeting waste diversion goals set by Assembly
15 Bill 939. In addition the JPA will share program
16 implementation efforts. Board staff and legal counsel
17 have reviewed this Regional Agency Agreement and
18 determined that all statutory provisions and PRC and
19 Government Codes have been met.

20 Therefore, staff recommend approving the
21 formation of the Regional Agency Agreement between the
22 City of Susanville and Lassen County. And Lassen is here
23 for this one, actually, not for the last one.

24 CHAIRMAN EATON: All right. Any questions
25 of staff?

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1 BOARD MEMBER JONES: Mr. Chairman. .

2 CHAIRMAN EATON: Mr. Jones.

3 BOARD MEMBER JONES: I just -- In my

4 briefing I had asked the question about -- Lassen County

5 has been a little tardy on their compliance plan that this

6 Board approved, that they would have certain documents in

7 front of us by March or -- February or March of this year.

8 We haven't seen them yet. I'm wondering where we're at

9 with that. Is that going to happen? I know Mr. Davis is

10 new to this position. I'm hoping he was put there because

11 this is -- the County understands they're tardy.

12 MR. DAVIS: I'm Mark Davis. I'm with

13 Lassen Regional Solid Waste Management. I really can't

14 give you an update on that. Right now we're just trying

15 to get the foundation of the whole structure going.

16 As far as I'm concerned, we're back in

17 1988, 1990. AB 939 was just coming out. Our

18 infrastructure needs to be built up, our documents need to

19 be up-to-date. There's a number of issues which we're

20 working on. We're beating them back like a wild fire one

21 item at a time.

22 For the City and the County, the request

23 for JPA is the first step. I'm the first person that's

24 walked into the area and started dealing with solid waste

25 issues on a sole basis. Previous people who worked on the

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1 solid waste issues had other priorities and other jobs and
2 that was a sideline for them. So with their other job
3 tasks and the Board's directions and -- what can I say?
4 They're standing on how they perceive solid waste issues.
5 Things were not put on a high priority.
6 So anyway, I'm here to put them on a high
7 priority. I've received some encouragement from our
8 board. It's a new board, the JP Board, and we're going to
9 do everything we can to get these things done as quickly
10 as we can. We're a small area and we're a small staff so
11 we won't be able to do it very fast.
12 To answer your question, I really can't say
13 at this time. I would love to come back in and request
14 another compliance schedule so that we can get that up to
15 my speed so that we can work out some sort of a schedule
16 and then move forward with that. I would really -- I
17 really can't address the old issues and the old compliance
18 schedule.

19 MR. BISSINGER: But it was my understanding
20 that you have a consultant working on some of the data.
21 MR. DAVIS: We're hiring people right now,
22 and I've got authorization to go with other consulting and
23 take care of other permitting issues and so forth. But
24 again, I just can't give you an overall report on how the
25 old compliance schedule stands.

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1 BOARD MEMBER JONES: Okay. Mr. Chairman.
2 CHAIRMAN EATON: Mr. Jones.
3 BOARD MEMBER JONES: For a little history
4 for some of our newest Board Members, we had 536 cities
5 and counties that were supposed to have these plans in by
6 1995, I think; and at some point in '97, we sent out
7 letters saying look, you know, we've been nice enough,
8 we've been trying to help you, we're going to set a date
9 for a hearing or do a compliance plan. And there were
10 quite a few that entered into compliance plans to get
11 these documents done.
12 And then as a result of that, we had four
13 jurisdictions within that 536 that just flat didn't get it
14 done and they came forward, and two of them delivered the
15 documents the day before our hearings. Two didn't. All
16 four got fined. We waived the fine on one small one. We
17 minimized, but irregardless, we tried to protect the
18 integrity of the 536 or 532 that complied. And I think
19 that -- I don't have a problem with this JPA issue, but I
20 think that we need to get some kind of an update on which
21 of the ones that are on compliance schedules have failed
22 to meet the compliance schedule. And then, Mr. Chairman,
23 whatever the appropriate mechanism is to have an item to
24 bring them all down or whatever the direction of this
25 Board wants to be as far as determining.

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1 I don't think it's fair to this Board or
2 the other jurisdictions that have met the mandate that
3 people that entered into compliance schedules with us and
4 didn't comply with that, I don't think we can just
5 minimize that. I think we need to bring this back up to
6 the top of the page. And I don't necessarily want to know
7 why, I want to know when it's going to be done out of
8 fairness for everybody else that's had to do it.
9 With that --

10 CHAIRMAN EATON: Currently. If I may ask.
11 Are they on a compliance schedule, yes or no?

12 MR. BISSINGER: Yeah, but the time has
13 passed.

14 CHAIRMAN EATON: Okay. How far past are
15 they?

16 MR. SCHIAVO: The original -- Pat Schiavo
17 of the Diversion Planning Local Assistance Division.
18 The original date for compliance was in
19 February, later February. There's actually, I believe,
20 six jurisdictions that are still outstanding. And we are
21 preparing a draft letter that we want to shop around to
22 the Board Members to have you take a look at, but we're
23 proposing to take action on those jurisdictions.

24 CHAIRMAN EATON: Now, obviously the issue
25 of the Regional Agency will have some impact upon this;

1 correct?

2 MR. BISSINGER: Yeah.

3 CHAIRMAN EATON: So should we be approving
4 this given the fact that the contingency says if the REA
5 is abolished or doesn't happen, then each goes back to
6 their respective (inaudible) waste management plan. So
7 are we getting -- what would be the proper course? Keep
8 this as a JPA and bring a separate compliance action
9 against the County, or do we tie our hands that if we
10 approve this, we can't bring it because of the fact the
11 agency has been formed? I'm looking for guidance here
12 before we get ready to act upon it.

13 MR. BISSINGER: The City of Susanville has
14 some problems itself and just incorporated with delinquent
15 documents. The City of Susanville will be here on the
16 21st and we're recommending a compliance schedule there
17 for the program implementation.

18 BOARD MEMBER PENNINGTON: But approving the
19 Regional Agency Agreement will aid them in meeting their
20 obligations; correct?

21 MR. BISSINGER: Yes.

22 BOARD MEMBER PENNINGTON: It makes it
23 easier for them to come within compliance, if we do this.
24 If we didn't do this, it would make it more difficult.

25 BOARD MEMBER JONES: Mr. Chairman.

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1 CHAIRMAN EATON: That's the question I was
2 seeking. The fact of the matter is one of them has -- I'm
3 sorry. Mr. Jones.

4 BOARD MEMBER JONES: No. Well, you had
5 brought up something that I need to get a little more
6 information on. The formation of a new agency, does that
7 bring them back to square one where -- I mean is there --
8 is there a new agency so now the agency is not -- hasn't
9 violated the compliance order?

10 MR. DAVIS: That would be nice.

11 (Laughter)

12 BOARD MEMBER JONES: You don't want to
13 hear my motion?

14 (Laughter)

15 MR. BLOCK: If I may.

16 CHAIRMAN EATON: Mr. Block from the Legal
17 Office.

18 MR. BLOCK: Elliot Block from the Legal
19 Office.

20 Essentially the direction or the Board's
21 decisions on how to enforce the law specifically, of
22 course, also including any fines that it may want to issue
23 is essentially within the Board's discretion to carry that
24 out as they wish. The compliance order was solely within
25 the Board's discretion. Essentially the Board decided to

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1 give certain conditions, one of which was the schedule
2 that would be put out. The Board would allow some
3 additional time because the Board determined the goal was
4 to get those documents done rather than simply fines.
5 So if the Board -- and you can make that
6 very explicit today. In a sense it's already been
7 explicit. If you wanted to make it more explicit, you
8 certainly could. That's up to the Board, how you want to
9 do that.
10 So if the Board wants to specify and make
11 that very clear, that approving the JPA is in no way
12 taking the jurisdictions off the hook from that compliance
13 order, you can do that. That is up to your discretion.
14 There's nothing in the statute that would prevent from you
15 doing that.
16 My understanding actually is that
17 essentially what we were doing was taking the two
18 jurisdictions, City of Susanville and unincorporated
19 Lassen County, and essentially putting them together in
20 terms of measuring compliance and also for getting the
21 documents done. So essentially it's assuming that
22 responsibility as opposed to starting from square one. If
23 there is any concern that would somehow be ambiguous, I
24 think you can make that clear today, that that's exactly
25 how you want this to be treated. And that's potentially

1 the issue, I suppose, for the City and County. That
2 creates an issue for them, but you've got that ability to
3 make that clear that that is -- it's not so much a
4 condition of approving the Regional Agency Agreement, but
5 that's the direction you're taking.

6 CHAIRMAN EATON: Ms. Tobias.

7 MS. TOBIAS: I guess the two things that
8 might be clarified. Number one, there's nothing in the
9 JPA or the agreement itself that would either be it
10 previous compliance orders or anything like that, and
11 number two, I see that in the analysis it does say that
12 the JPA has basically decided how to allocate penalties
13 that are lodged against it, which I assume is fairly
14 normal for a JPA. It sounds like that.
15 I guess my question is if we issue
16 compliance orders to these jurisdictions now, will the
17 compliance orders and lack of compliance be assessed back
18 against each of the jurisdictions or will it be assessed
19 against the JPA.

20 MR. BLOCK: The statute would provide if
21 there were any fines, say, a few months down the road,
22 depending on how the Board wanted to proceed or later,
23 depending on how you wanted to proceed, the fine is issued
24 against the regional agency, and the regional agency
25 decides on its own how to allocate within.

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1 MS. TOBIAS: Even though those
2 jurisdictions, prior to this time, compliance orders were
3 against them each individually or how were they --

4 MR. BLOCK: What happens is when the
5 jurisdiction decides, because it's their choice to ask,
6 when they decide they want to do that. One of the
7 conditions of them doing that is the regional agency will
8 now be the jurisdiction, if you will, that measurements
9 are made against and that the Board looks at in terms of
10 whether compliance has been done or not. And essentially
11 the idea it simplifies compliance for the jurisdictions
12 because they view themselves as one region on opposed to
13 individual jurisdictions.

14 It simplifies the Board's role in seeing
15 what the jurisdiction has done because you're dealing with
16 one entity. What the JPA does internally, if enforcement
17 action is taken, it's their own issue to allocate that.

18 MS. TOBIAS: Could the Board choose to
19 approve the JPA but say that lack of compliance and
20 enforcement would go back against the individual
21 jurisdictions?

22 I don't know if that's something the Board
23 wants to do. So if it is, we may want to talk about it
24 more. If it's not, then --

25 CHAIRMAN EATON: I don't have any

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1 preconceived notion of anything. I don't have a problem
2 with an agency forming. What I do have a problem with is
3 if we get caught in a situation. As long as we know what
4 we're doing when it does go into it, somehow three months,
5 four months from now, we have the regional agency come
6 forward and they say we formed this agency and that was
7 before, and we didn't have the documents then and we had a
8 compliance order that we just failed to adhere to. But
9 now that's all sort of been wiped off because we have a
10 new agency and we're going to get back on.
11 That makes it difficult for those other
12 jurisdictions that have had to come in, and all I'm trying
13 to do is frame out the issues. And I don't know if the
14 Board has made up their minds. The question is the
15 compliance order was issued how long ago?

16 BOARD MEMBER JONES: Two years ago.

17 CHAIRMAN EATON: 24 months plus 6 months.
18 We're 30 months past the time. I'm not saying fines or
19 not fines, but I think it is somewhat encumbent upon the
20 Board not to just let compliance orders just sit idle and
21 allow them to float in free air, especially since we've
22 been very generous to Lassen County in many other arenas.

23 MS. TOBIAS: I think what you might want
24 to do

25 CHAIRMAN EATON: Grants and other things.

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1 Mr. Gentner is here quite a bit.

2 MS. TOBIAS: What you might want to do is
3 make it clear in your motion that the Board's approval of
4 the JPA in no way affects enforcement that might be taken
5 in the future based on the compliance plans that were done
6 by the individual jurisdictions.

7 BOARD MEMBER JONES: Mr. Chairman.

8 CHAIRMAN EATON: Mr. Jones.

9 BOARD MEMBER JONES: What is their name of
10 this compliance order? Is there a title for these
11 compliance orders or is "compliance order" enough for the
12 record to deal with this issue?

13 MR. BLOCK: Depending on the wording you
14 would want to use. They were just called compliance
15 schedules, actually. The compliance schedule for -- was
16 it the City or is it the County? I forgot.

17 BOARD MEMBER JONES: Lassen County --

18 MR. BLOCK: Siting element.

19 BOARD MEMBER JONES: -- unincorporated.

20 Mr. Chairman. Some language that you all
21 have a lot better handle on than I do might be at the end
22 of this resolution. Or as part of the "now, therefore, be
23 it resolved," we could add, or wherever appropriate, "The
24 approval of this Resolution 1999-491 does not affect the
25 compliance schedule with Lassen County which was to be

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1 completed by February 1999 and to this date has not been
2 delivered to the CIWMB." Would that satisfy? Does that
3 work?

4 Mr. Chairman.

5 CHAIRMAN EATON: Mr. Jones.

6 BOARD MEMBER JONES: I would like to make a
7 motion to adopt Resolution 1999-491, the consideration of
8 staff recommendation of Lassen County Regional Agency
9 Formation Agreement for the City of Susanville and the
10 unincorporated Lassen County and to add, as part of the
11 now, therefore, at the end of the -- now, therefore, be it
12 resolved that the Board hereby approves the Regional
13 Agency Agreement for the City of Susanville and
14 unincorporated Lassen County. The approval of this
15 Resolution 1999-491 does not affect the compliance
16 schedule with Lassen County which was to be completed by
17 February 1999 and to this date has not been delivered to
18 the CIWMB.

19 CHAIRMAN EATON: Okay. Second?

20 BOARD MEMBER MOULTON-PATTERSON: Second.

21 CHAIRMAN EATON: Mr. Jones moves and
22 Ms. Moulton-Patterson seconds we adopt Resolution Number
23 1999-491 with the added language of Mr. Jones which he
24 read into the record.

25 Madam Secretary, please call the roll.

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1 BOARD SECRETARY: Board Members Jones.

2 BOARD MEMBER JONES: Aye.

3 BOARD SECRETARY: Moulton-Patterson.

4 BOARD MEMBER MOULTON-PATTERSON: Aye.

5 BOARD SECRETARY: Pennington.

6 BOARD MEMBER PENNINGTON: Aye.

7 BOARD SECRETARY: Roberti.

8 BOARD MEMBER ROBERTI: Aye.

9 BOARD SECRETARY: Chairman Eaton.

10 CHAIRMAN EATON: Aye.

11 Okay. I would greatly appreciate whatever
12 you could do, you can work with our staff. I know you're
13 new, but it is important to all of us here that we kind of
14 get going and move into the right direction. I know
15 that's your intent as well.

16 BOARD MEMBER JONES: I don't think this
17 hurts it. I think it reinforces.

18 MR. DAVIS: That was my operating mode,
19 anyway. I have no objection with those -- I have no
20 problem with that.

21 BOARD MEMBER JONES: Thanks.

22 CHAIRMAN EATON: Item 10 has been pulled.
23 We still have one remaining item which is at 1:30. I do
24 have -- I do have one remaining item for public comment
25 from Mr. Dennis Calson from Solano County. Is he here

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1 still?

2 MS. NAUMAN: We don't think he's --

3 CHAIRMAN EATON: He's not here. Great.

4 That's fine.

5 (Laughter)

6 CHAIRMAN EATON: He wanted to speak on the

7 ADC issue and it would have been unfair.

8 Anyway, I want to go back to Item Number 8.

9 The roll is still open for Senator Roberti with regard to

10 an item. He came back in. If you could call the roll on

11 Item Number 8.

12 BOARD SECRETARY: Board Member Roberti.

13 BOARD MEMBER ROBERTI: Aye.

14 CHAIRMAN EATON: That completes this

15 portion of today's Board meeting. We will go to closed

16 session.

17 BOARD MEMBER ROBERTI: Mr. Chairman.

18 CHAIRMAN EATON: Senator Roberti.

19 BOARD MEMBER ROBERTI: In checking my mail

20 I would like to ex parte receipt from the Redwood

21 Rubber --

22 CHAIRMAN EATON: LLC.

23 BOARD MEMBER ROBERTI: -- LLC, their

24 journal, New Opportunities in Rubber Recycling.

25 CHAIRMAN EATON: Thank you.

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1 We will recess until 1:30 at which time we
2 will take up the item of consideration and appeal of a
3 Clean Up and Abatement Order issued to Edward Joseph
4 Filbin, et al.
5 I'm going to close session now and recess
6 until 1:30 back here. Thank you.

7 CHAIRMAN EATON: Welcome back, everyone.
8 Hopefully you had an enjoyable lunch. I'll start with my
9 left. Mr. Pennington, any ex partes to report over the
10 lunch hour?

11 BOARD MEMBER PENNINGTON: No, Mr. Chairman.

12 CHAIRMAN EATON: Mr. Jones.

13 BOARD MEMBER JONES: No, Mr. Chairman.

14 CHAIRMAN EATON: Ms. Moulton-Patterson. I.

15 BOARD MEMBER MOULTON-PATTERSON: Thank you.

16 This morning, I spoke just briefly congratulations call
17 which was given to me by Dennis Carpenter who represents
18 people before this Board, and also Randy Smith, who I
19 believe represents Waste Management.

20 CHAIRMAN EATON: Senator Roberti.

21 BOARD MEMBER ROBERTI: None for me,
22 Mr. Chairman.

23 CHAIRMAN EATON: I just have one, Evan
24 Edgar. All right.

25 Per our agenda, Agenda Item B which was

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1 scheduled for this afternoon is now before us. I believe
2 Mr. Chandler will begin the proceeding.
3 Mr. Chandler.
4 MR. CHANDLER: Good afternoon, Mr. Chairman
5 and Members. Bob, if I could ask you to start the tape
6 but mute it, please.
7 For the record, I am Ralph Chandler,
8 Executive Director of the California Integrated Waste
9 Management Board.
10 It was nearly one year ago to the day that
11 if you turned on your local evening news channel, you
12 would have seen coverage of what is now known as the
13 Royster tire fire, a twenty-acre, two and a half million
14 waste tire illegal disposal site. As you can see from
15 this footage, it was a dark day for the residents of the
16 Central Valley from Stockton to Modesto. I would submit
17 it was also a dark day for the Integrated Waste Management
18 Board as we saw our efforts literally go up in smoke,
19 efforts to bring Mr. Royster's illegal tire storage
20 operation into compliance with applicable state law and
21 regulation.
22 However, today, we're not here to discuss
23 the Royster tire site but the Filbin tire storage site.
24 played this footage only as a visual reminder of the
25 tremendous environmental consequences inherent in the

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1 improper storage and accumulation of waste tires.
2 Before I begin my brief opening remarks,
3 let me review the relevant documents you should have
4 before you today related to this item. First of course is
5 the staff agenda item. Mr. Chairman, you just can refer
6 to Agenda Item B. It is followed by attachment 1, which
7 is a state inspection report of the site conducted by my
8 staff on September 2nd, 1999.
9 Attachment 1 is followed by attachment 2
10 comprised of a report by staff stipulating to the public
11 health and environmental impacts from the Filbin tire pile
12 site, both in its current static state as well as the
13 threat to the public and the environment should a tire
14 fire occur at this site. Fourth would be the brief
15 prepared for myself by McDonough, Holland and Allen with
16 exhibits. And fifth would be a copy of the respondent's
17 brief with exhibits prepared by the law firm of Landels,
18 Ripley and Diamond.
19 The order has been provided to you under
20 separate cover. If you wish an additional copy of the
21 order, copies are available from your secretary, Lisa
22 Dominguez. I will just say that I will also make a
23 concerted effort that we ask the law profession to
24 consider double-sided copies as a practice in the future
25 and certainly make these a smaller package.

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1 With that aside, let me begin by saying on
2 July 20th, 1999, as the Director for the Board, I issued
3 Clean Up and Abatement Order Number 99-92 requiring
4 Mr. Filbin to remediate the largest legacy tire pile in
5 the state of California. On August 31st, 1999, I amended
6 the Order after I and my attorneys met with Mr. Filbin and
7 his attorneys.

8 The pile is commonly known as the Filbin
9 tire pile. It's located near the town of Wesley,
10 California. It consists of approximately 40 acres, twice
11 the size as the Royster site, and according to staff's
12 latest estimate, contains approximately 69,000 tons of
13 discarded waste tires, nearly three times the size of the
14 Royster site.

15 I seek in the Order to compel the
16 respondents, Mr. Filbin, first to acknowledge
17 responsibility for this situation; second of all, to
18 submit a workable remediation plan setting forth the
19 manner in which the entire pile will be remediated in 12
20 months; and three, provide security to assure financially
21 that the remediation of the pile will be accomplished.
22 should also note that the Order also prohibits further
23 tire deliveries of any size or type, requires a 24-hour
24 security patrol and ongoing compliance with all fire
25 suppression requirements.

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1 The continuing threat to the public,
2 health, safety and environment that the Filbin tire pile
3 imposes, including devastating environmental damage and
4 health threats should the tire pile be ignited,
5 necessitates this Order. Accordingly, I have issued the
6 Order under the provisions of Public Resources Code
7 Section 42845(a), which empowers the Board to order any
8 person who, and I quote, 'Stores, stockpiles, or
9 accumulates waste tires, to clean up those waste tires or
10 abate the effects thereof, or in the case of threatened
11 pollution or nuisance takes other necessary remedial
12 action.

13 Members of the Board, fundamental to the
14 Board's enforcement power is the recognition that
15 landowners are responsible under the law for the
16 remediation of illegal or unpermitted disposal sites.
17 Contrary to what you may hear from Mr. Filbin's attorney,
18 I ask that you not lose site of this basic principal.
19 Landowners are responsible under the law. That has been
20 and remains the policy of this Board.

21 Finally, my Order states that Mr. Filbin or
22 his representatives may request an opportunity to address
23 the Board, and they have indicated the desire to do so.
24 If there are any questions for me, I will
25 take them now. Otherwise, I will turn the podium over to

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1 Mr. Trapp, counsel for Mr. Filbin.

2 CHAIRMAN EATON: Any questions of

3 Mr. Chandler?

4 Okay. Mr. Trapp.

5 MR. TRAPP: Mr. Chairman and Members of

6 the Board, my name is Thomas Trapp. I'm a partner with

7 Landels, Ripley and Diamond in San Francisco, and I will

8 represent Mr. Filbin and the other respondents to Clean Up

9 and Abatement Order 99-92.

10 I would like to thank the Board and the

11 Executive Director for the opportunity to address you

12 briefly today on the matter of the Clean Up and Abatement

13 Order 99-92. I'll address the legal points briefly and I

14 would also like to give a report to you on the steps that

15 the respondents are taking currently, voluntarily to

16 remediate the tire pile.

17 I guess I should apologize at the outset

18 for not having a dramatic video to show you, but perhaps

19 that may be part of the point, that there is no dramatic

20 video of the Filbin tire pile as there is the Royster, and

21 I don't want to debate distinctions between Royster and

22 Filbin and I want to get to the point.

23 Staff makes much of there being a nuisance

24 at the Filbin site, and that is not the point legally.

25 The legal point is much simpler, and I don't want to

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1 belabor it. The issues, I think, are framed in the brief
2 that has been submitted to you and the memoranda filed by
3 staff and counsel.
4 The difference is the simple one. Staff
5 believes that Public Resources Code Section 42845
6 authorizes the issuance of a Clean Up and Abatement Order
7 against landowners on whose land tires are stored,
8 stockpiled or accumulated. Contrary to Mr. Chandler's
9 statement just to you recently, the respondents do not
10 assert, have never asserted, that landowners are not
11 responsible as a matter of general law or as a matter of
12 Civil Code Nuisance Law for nuisances on their land.
13 What respondents argue here is that under
14 this statute, this Board does not have authority to issue
15 a Clean Up and Abatement Order to a landowner who does
16 not, in the words of the statute, store, accumulate, or
17 stockpile tires.
18 There's an important difference between
19 whatever remedies you may have available to you or the
20 Attorney General may have available to you under the Civil
21 Code or General Nuisance Law under this statute because
22 this statute makes landowners liable for penalties in
23 addition to abatement. And that is an important
24 difference, and that is why respondents seek here today to
25 point out to you that this statute is narrower than

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1 General Nuisance Law, it is narrower than the Civil Code,
2 and in our view, none of the respondents store, stockpile,
3 or accumulate. They are landowners, current or former
4 landowners, and are no longer in the business of storing,
5 stockpiling, or accumulating tires, and therefore, are not
6 subject to a Clean Up and Abatement Order under Section
7 42485.

8 There are such laws in the environmental
9 filed that can make current owners or former owners of
10 hazardous substances liable for the remediation of
11 hazardous substances or dangerous conditions. A statutory
12 scheme that comes to mind is the state and federal
13 Superfund Law, and the legislature has shown in that kind
14 of statute or others, that if they want to make a current
15 landowner liable under a certain statutory scheme, they
16 know how to do that.

17 My point is this statute is not one of
18 those schemes and this statute would have to be amended in
19 order to have that kind of effect. That is our legal
20 argument in brief and in sum.

21 What I would like to report on now is that
22 legal challenges and legal disputes aside, the respondents
23 have indicated that they are willing to take steps to
24 remediate the tire pile, with the understanding which we
25 have achieved with your staff and counsel, to voluntarily

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1 remediate the tire pile at this time in light of the
2 failure of the former actual operator to do so.
3 We have discussed the preliminary approach
4 that respondents would like to take to remediate the tire
5 pile with Mr. Chandler and staff, and we understand from
6 that discussion that any plan has to meet at least three
7 criteria, that is that the reduction will have to be done
8 by multiple streams.
9 When we went into that meeting we had
10 filled Mr. Chandler in on a pending business proposal and
11 transaction whereby the current waste tire-to-energy
12 facility operator, Modesto Energy Limited Partnership,
13 would more aggressively burn the tires down, but we
14 understand that is not -- that alone as a step is not
15 acceptable to staff and it will have to be multiple stream
16 production and we have taken steps to achieve that. We
17 understand further it must be a financially assured
18 remediation plan and it must be reasonably prompt. And we
19 know the staff is looking at 12 months there.
20 To accomplish meeting those criteria, the
21 respondents were and have been already in negotiations
22 with Modesto Energy Limited Partnership. Modesto Energy
23 Limited Partnership has expressed a need for more space to
24 conduct their operation. In connection with granting them
25 more space, there are negotiations to sell the land to

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1 Modesto Energy Limited Partnership and have them take
2 responsibility for a more aggressive reduction of the tire
3 pile, which they have indicated they are willing to do.
4 They've indicated, according to Mr. Filbin's business
5 attorney, that they want to be, quote, a major player in
6 reduction of the tire pile." That is ongoing.
7 Secondly, Mr. Filbin is in discussions with
8 a company called MSI International, which is a subsidiary
9 of ESOR Consulting Engineers headquartered in Houston
10 which, based on our preliminary research, appears to be a
11 large, financially viable, sound engineering firm who has
12 indicated through a San Diego tire shredding facility that
13 they are interested in taking a very large share of the
14 pile, if not all the pile itself. Those discussions are
15 preliminary. I don't want to be optimistic, but the
16 initial work there looked like they would be able to have
17 a prompt workdown of the pile through a short preparation,
18 and there are discussions going on about whether to bring
19 a shredder to the facility or ship the tires to the San
20 Diego facility.
21 Third, Mr. Filbin is in contact with and is
22 in the process of selecting a qualified technical
23 consultant to help with all of this, and we have
24 tentatively identified Geosyntech, a firm known to this
25 Board and did a waste tire report for this Board, in

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1 particular Chris Gesonit, who has in turn identified for
2 us TAG Resource Recovery and Terry Gray.
3 Finally, in connection with financial
4 assurances, we are in discussions with financial
5 environmental and permanent liability insurance brokers
6 that our firm goes to quite frequently, J&H March and
7 McClennan, particularly Greg Schultz (phonetic), to
8 explore what kind of financial assurance mechanisms would
9 be available for a remediation plan to work the pile down.
10 In the event that MSI or someone else working this is
11 deemed not to be financial viable, on a financial means
12 test alone, there are vehicles available in the insurance
13 market today, either an annuity or funding managed by a
14 financially viable party coupled with cost overrun
15 environmental insurance vehicles that appear to be
16 available.
17 We will continue to report to staff on our
18 progress in coming up with a remediation plan, and we
19 would as soon simply do that and spend the time and money
20 on doing that rather than simultaneously litigating with
21 the Board over the legal validity of the Order.
22 So our request today very simply is set out
23 in our brief because we do not think that the Board has
24 legal authority to issue this order, but simply to not
25 issue this order or revoke the issuance of the Executive

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1 Director, or at a minimum, hold off for a period of 30
2 days and see what kind of voluntary compliance efforts the
3 respondents are able to achieve.

4 That concludes my formal presentation. I
5 would be happy to answer any questions as best I can.

6 CHAIRMAN EATON: Is there any questions of
7 Mr. Trapp?

8 BOARD MEMBER JONES: I have a couple,
9 Mr. Chairman.

10 CHAIRMAN EATON: Mr. Jones.

11 BOARD MEMBER JONES: The plan that
12 Mr. Filbin has come up with to remediate this whether it
13 be through multiple streams, one stream, whatever, is
14 going to be funded entirely by Mr. Filbin?

15 MR. TRAPP: Who is going to do the funding
16 has not been worked out yet. There would have to be
17 contributions by a number of parties. It would not be
18 Mr. Filbin alone as currently contemplated. We have had
19 discussions with Mr. Chandler and have communicated back
20 to MELP Mr. Chandler's very clear communication to us is
21 that the State is not going to pay MELP to burn the tires
22 again. To the extent that MELP thought that was coming,
23 we have effectively -- that message was heard, received,
24 and passed on by Mr. Chandler.

25 BOARD MEMBER JONES: I read your brief.

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1 was a little bit -- I wondered about a couple of issues.
2 One would be who does Mr. Filbin, or yourself representing
3 Mr. Filbin, consider to be the responsible party here for
4 these tires?

5 MR. TRAPP: I think the responsible party
6 here is Oxford and/or MELP. They are the owners and
7 technically still the operators. Although Oxford, as
8 everybody knows, is actually not operating any longer.

9 BOARD MEMBER JONES: And the Nuisance Order
10 that was entered into between the Attorney General back in
11 '97 -- I'm sorry.

12 MR. TRAPP: Early '90.

13 BOARD MEMBER JONES: '90, and Mr. Filbin
14 clearly exposed that he had a liability to clean up this
15 property.

16 MR. TRAPP: Under General Nuisance Laws.

17 BOARD MEMBER JONES: And he has in fact
18 used that as testimony in prior meetings over this
19 facility. And when we put the first Clean Up and
20 Abatement Order on Oxford Tire, Mark Kirkland and
21 Mr. Filbin, he kept going back to the original compliance
22 order. Has that compliance order been met?

23 MR. TRAPP: I have discussed that with
24 Mr. Filbin and his business attorney. My understanding is
25 that consent order with the Attorney General from the

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1 1990s has been complied with and they are in compliance
2 today.

3 BOARD MEMBER JONES: Because that --

4 MR. TRAPP: That's one of the reasons we
5 would question whether there is, in fact, a nuisance
6 there. That was the gravamen of that action and it was
7 settled with a consent order with specific actions to be
8 taken and they have been taken. For example, fire service
9 agreements have been entered into and including up to
10 yesterday, actually, the Board received a letter from MELP
11 stating that everyone is in compliance with that
12 agreement. I would question whether there was actually --

13 BOARD MEMBER JONES: But it also included
14 the removal of the tire pile.

15 MR. TRAPP: That I don't recall.

16 BOARD MEMBER JONES: That hasn't been met
17 with, I don't think. There's still a tire pile. And
18 that's what Mr. Filbin kept telling this Board, was that
19 there was time that he had to clean up that pile. So he
20 clearly took ownership in his own testimony in past
21 actions about his Clean Up and Abatement Order that he was
22 given by the Attorney General and the fact that he had met
23 it.

24 So I was a little bit concerned about some
25 of the brief that kind of suggested that everybody else

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1 had an obligation here and not --

2 MR. TRAPP: I think our brief is just
3 directed to responsibility under this particular statute.

4 BOARD MEMBER JONES: The time frame that
5 all of these actions are supposed to take place, is there
6 a time frame along with this plan?

7 MR. TRAPP: We are working to get a plan
8 together within 30 days. The time frame within which the
9 tire pile could be worked down is currently unknown to me.
10 We understand the goal is 12 months. MSI has actually
11 indicated that might be achievable, but I don't want to be
12 too optimistic about what MSI can and can't bring to the
13 table here because we haven't had full discussions on it.

14 CHAIRMAN EATON: Any other questions?

15 Mr. Trapp, I have just a couple of
16 questions. Interesting argument that you raise.

17 The individual that you represent,

18 Mr. Filbin, et al., and I think you represent --

19 MR. TRAPP: I represent all of the named
20 respondents.

21 CHAIRMAN EATON: Okay. Great. There's no
22 dispute that they are the owners of the land on which
23 these tires --

24 MR. TRAPP: There is a dispute. Three of
25 them are not owners, two are. The trust and the Cal-Neva

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1 Ranch Company, LLC, are the owners of the two parcels in
2 question currently. The others are former owners.

3 CHAIRMAN EATON: With regard to -- is it
4 your contention that none of the tires that exist there
5 today were ever brought upon that property by any of the
6 respondents today?

7 MR. TRAPP: No. That is not my contention.

8 CHAIRMAN EATON: So in other words, they
9 did from time to time, some of the respondents bring tires
10 onto the property?

11 MR. TRAPP: Historically, yes.

12 CHAIRMAN EATON: Historically. So that's
13 why -- but your contention, then, is that through a series
14 of business transactions that they did not assume or they
15 relinquished legal ownership of those tires.

16 MR. TRAPP: Yes.

17 CHAIRMAN EATON: All of those tires.

18 MR. TRAPP: Yes. All of those tires.

19 CHAIRMAN EATON: Do you know of any action
20 that was taken by any of the respondents to bring an
21 action for the eviction or the removal of those tires
22 since they are not legally owners but yet are on the
23 property that is owned by those respondents?

24 MR. TRAPP: There has not been a formal
25 eviction action taken by the owners. My understanding of

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1 the current tenancy relationship between the owners, which
2 would be either the trust or the LLC and Oxford, is that
3 that lease has essentially lapsed but there has not been a
4 formal eviction.

5 CHAIRMAN EATON: I'm trying to get at your
6 logic for --

7 MR. TRAPP: Right. I'm following you
8 somewhat.

9 CHAIRMAN EATON: Been known to take a
10 couple of wrong turns or left turns, as they say. At this
11 point are you aware of any of the -- are there any
12 additional tires being brought onto the property?

13 MR. TRAPP: I believe that Modesto Energy
14 does have tires coming on there.

15 CHAIRMAN EATON: But none of the
16 respondents themselves.

17 MR. TRAPP: None of the respondents, no.

18 CHAIRMAN EATON: Do you believe -- hold
19 that. I'll wait for the other attorneys to see what their
20 response might be.

21 I don't have any further questions.

22 BOARD MEMBER PENNINGTON: Mr. Chairman.

23 CHAIRMAN EATON: Mr. Pennington.

24 BOARD MEMBER PENNINGTON: I would like to
25 make it clear that part of what you are proposing that may

1 occur to remediate the pile, part of that is to sell the
2 land to MELP?

3 MR. TRAPP: That was a -- is a connecting
4 factor that would make MELP interested in working the pile
5 down. They want the land, and we want to assure that the
6 tire pile is worked down.

7 BOARD MEMBER PENNINGTON: And when they
8 sell the land, that doesn't mean that they will buy the
9 pile?

10 MR. TRAPP: Well, to some extent Modesto
11 Energy already owns some or all of the pile. They would
12 buy the underlying land and be the operator and the
13 landowner. They will then be a storer, accumulator,
14 stockpiler and landowner.

15 BOARD MEMBER PENNINGTON: That confuses
16 me. I thought that you said that Cal-Neva Ranch and the
17 trust were the owners of the pile.

18 MR. TRAPP: No, no. They're the owners of
19 the land, not the tires.

20 BOARD MEMBER PENNINGTON: That's right.
21 Oxford is the owner of the pile.

22 MR. TRAPP: Oxford and/or MELP.

23 BOARD MEMBER PENNINGTON: Okay.

24 CHAIRMAN EATON: If the respondents'
25 contention is that they do not own the subject tires, then

1 you help me walk through the maze that if you sell the
2 land, somehow -- how does that assist us in our task since
3 you are claiming that you don't own the tires, that MELP
4 would get the land, and they're buying the problem by
5 buying the land?

6 MR. TRAPP: As part of that transaction,
7 they would agree in exchange for receiving the land to
8 work the tire pile down, part of which they already own.

9 CHAIRMAN EATON: But there's a lot of tires
10 out there.

11 MR. TRAPP: There are a lot of tires out
12 there.

13 CHAIRMAN EATON: I don't believe that they
14 own all of them, at least the last I checked. What I'm
15 trying to do is I'm trying to find the logic there. How
16 does that transaction help us?

17 MR. TRAPP: Be the actual --

18 CHAIRMAN EATON: How did they get
19 possession or ownership of the pile through the land
20 transfer or any other mechanism?

21 MR. TRAPP: I think they get the land
22 through the land transaction, and they get the tires as an
23 ancillary agreement to that, to the extent they don't own
24 them but we believe they do.

25 CHAIRMAN EATON: Who would negotiate the

1 ancillary agreement since you said that it's neither of
2 the respondents that you represent?

3 MR. TRAPP: We would have to clearly make
4 sure that whatever interest Oxford has is relinquished as
5 part of that so that MELP takes ownership and
6 responsibility for working the pile down.

7 CHAIRMAN EATON: And the reason for the
8 question, we're looking for certainty here. Obviously you
9 know the history.

10 MR. TRAPP: Obviously you're looking for
11 certainty and financial assurance.

12 CHAIRMAN EATON: Absolutely. One follows
13 directly from the other. But I think what I'm looking at
14 is trying to figure out how -- unless there's some other
15 business arrangement with Oxford and/or whomever the
16 succeeding entities might be of Oxford, how then can you
17 assure this Board that you could even get the
18 relinquishment of that ownership in that property if your
19 contention is that it's not your tires is true?

20 MR. TRAPP: I think the task before us on
21 this plan was to do just that, to get the assurances and
22 show the contracts and legal agreements for the staff that
23 this is a viable plan with all the legal arrangements in
24 place, and behind that, some financial assurances to make
25 sure the money is there to do whatever needs to be done.

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1 CHAIRMAN EATON: Any further questions?

2 Mr. Pennington.

3 BOARD MEMBER PENNINGTON: I'm still hung up
4 on the ownership of this pile. How about MELP? My
5 understanding of it was that there is -- that they are
6 permitted to have about 400,000 tires in a tire delivery
7 area. And it's always been my belief, and I think this
8 Board's belief, that that tire pile did not belong to MELP
9 and that MELP had no right to go and take any tires off of
10 it. Now when did that tire pile all of a sudden become --

11 MR. TRAPP: That fact that you have
12 uncertainty about that shows that you're paying attention
13 to the record here. I have uncertainty about it as well.
14 My understanding of the transaction that
15 led to that is that the transaction between the Filbins,
16 Oxford and MELP, whereby there were continued deliveries
17 by Filbin Tire Collection, which was then later bought by
18 Oxford, and the old tires were left in place but were
19 deemed conveyed as part of that transaction to MELP; that
20 new tires were delivered, but they were in a way deemed to
21 be from the old pile, and that over time the ownership of
22 that pile has transferred under that contractual
23 arrangement. Whether it has all transferred is not even
24 clear to me.

25 What I do know from the settlement

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1 agreements that resulted from those contracts is that the
2 respondents have disclaimed and do not have any ownership
3 interest in those tires. But I can't tell you today what
4 the exact quantity is between Oxford and MELP.

5 CHAIRMAN EATON: Any other questions of
6 Mr. Trapp?

7 BOARD MEMBER PENNINGTON: Thank you,
8 Mr. Chairman.

9 CHAIRMAN EATON: If you wouldn't mind just
10 standing by --

11 MR. TRAPP: I'd be happy to.

12 CHAIRMAN EATON: -- in case to give you
13 an opportunity as well. Now I understand we're going to
14 hear from

15 MR. CHANDLER: If I could, Members. I
16 would like attorneys for the staff, David Post, to speak
17 to some of the questions, specifically this question on
18 enforced legal authority of the Board to issue this order.

19 MR. POST: Good afternoon. I'm David Post
20 of McDonough, Holland and Allen, and as you know, we
21 represent the Director at this hearing.
22 Let me say to begin with that the issue is
23 responsibility. That's the issue, and it is the key, I
24 think, to what you have to do today. It is a concept
25 unfortunately that is more elusive than it ought to be in

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1 this situation. In all due respect, Mr. Trapp's brief and
2 his comments today are all really designed to avoid
3 responsibility that we believe the landowner, the Filbins,
4 have in this situation.

5 Now, I believe that his initial remarks
6 didn't discuss as much as they should have, tire
7 suppression, vector control and those sorts of things.
8 You have before you a staff report that says they were out
9 there, I believe, last week and the site was virtually
10 abandoned, there was no fire suppression controls, no
11 vector controls, and so on.

12 Again, it all relates back to who is
13 responsible for minding the store, who is responsible for
14 minding the tire pile. Mr. Trapp said that -- I believe
15 he put it that Mr. Filbin was going to voluntarily take
16 some steps to resolve this problem, that he was
17 voluntarily going to negotiate with the various parties
18 that he described. The key word is voluntary. He wants
19 volunteers to come in and take responsibility for this.
20 Again, the key is responsibility.

21 We don't believe that Public Resources Code
22 Section 42845 lacks and does not provide the authority,
23 does not fail to give the Board authority to order the
24 landowners in this case to abate this nuisance, to clean
25 up this pile.

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1 We disagree with the legal interpretation
2 that they've given to the Code provision. Of course, the
3 court will decide that. That's the place in which we
4 ought to debate this and not before the Board, but let it
5 be said that our position is that the word "person" is
6 broad enough to assume the landowner in this case and the
7 words "stores," "stockpiles," and "assumes, " "discusses,"
8 and intends to include those who provide a place for
9 tires, those who provide a facility for the storage of
10 tires, and doesn't necessarily just refer to the person
11 who happens to be at the moment to be stockpiling or
12 storing or accumulating tires at that moment or this
13 place. So it does assume the landowner.
14 Now, of course we're also cognizant that
15 the Board, if it does go to court to enforce its rights,
16 is not going to be confined to the statute. Mr. Trapp
17 discusses the statute because by discussing the statute,
18 he can avoid the issue of responsibility again. He simply
19 says the statute doesn't go far enough, the statute
20 doesn't make the landowner responsible in this situation.
21 So we're back to responsibility again. Obviously if the
22 Board goes to court, it's going to use all the tools
23 available to it. It's not going to confine itself to the
24 Public Resources Code necessarily.
25 For more than a hundred years in this

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1 country and in this state you've had the authority to make
2 landowners strictly liable for cleaning up public
3 nuisances. It's a sound public policy and it's one that's
4 been endorsed by the courts for years. And I find it very
5 hard to believe that when they enacted this particular Act
6 back in 1989, they intended to keep from the Board and not
7 empower the Board with the same tools and the same powers
8 that people of governments have been using for more than a
9 hundred years.

10 I don't believe that to address
11 comprehensively the tire problem that we've got in this
12 state that they meant to withhold that power. We have a
13 difference on the interpretation of the statute. We think
14 that the Clean Up and Abatement Order was properly issued.
15 We believe that you ought to endorse it and that it was an
16 appropriate approach to the situation.

17 Without an acknowledgement of
18 responsibility or alternatively a judgment of
19 responsibility in the court, the State has no bargaining
20 power. You can see by the discussion today what happens
21 when you don't have that bargaining power. All of the
22 discussion focuses on responsibility and it shouldn't.
23 Instead it should focus on whether or not the plan to
24 clean it up is adequate, whether it's adequately financed,
25 whether it's workable; and instead it gets into this murky

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1 area of who's responsible and is it a limited liability
2 company, and who sold the tires and sold the land and all
3 that sort of thing. And that's the way the court action
4 will go until somebody acknowledges responsibility for
5 this problem.

6 I ask you, is it sound policy to waive the
7 right to require an acknowledgement of responsibility? I
8 don't believe it is. Is it sound policy to negotiate from
9 a position of weakness? Will the State do well to give up
10 its power, to require the responsibility be exercised by
11 the landowner in this case, and who, in fact, created the
12 pile to begin with, profited from it, encouraged it,
13 applied for the permit?

14 There are endless involvements that this
15 particular landowner has had with respect to this pile for
16 years. I don't think that would be sound policy. Is it
17 sound policy to rely upon Mr. Filbin's offer to provide
18 volunteers to clean up this pile? Again, where is the
19 State going to be 30 days from now? Where is the State
20 going to be in negotiating with these volunteers if
21 they're not assuming responsibility for the mess? They're
22 going to be negotiating, and these people are going to be
23 talking about the State can kick in some money and maybe
24 we can do this and do that.

25 The point is we have to have an

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1 acknowledgement of responsibility. That's what this order
2 is doing. That is what we have to do in order to satisfy
3 the law and satisfy the Board, and we think that you ought
4 to press forward with this.

5 Perhaps, I think the Board would be in a
6 worse position in 30 days than it is today because the
7 Board will not have supported a perfectly good and
8 perfectly sound and reasonable order that's been issued by
9 your Director that says these people have to get going
10 after years and years of not doing enough about this and
11 acknowledge responsibility and provide the financial
12 assurance, provide the vector control, provide the fire
13 suppression, provide a plan that's workable, and clean
14 this pile up in 12 months, which can be done.

15 I think that once responsibility is
16 assumed, then we can focus properly on what we ought to be
17 talking about and that is how to do this. Unfortunately,
18 at this point I think the plan is just about as smoky as
19 that stuff you saw on the television screen a few moments
20 ago. And you saw it. As you got into it, it got very
21 murky, very smoky.

22 MELP doesn't own it. MELP maybe owns some
23 of the tires, but my understanding was, and I thought the
24 position in the brief that they filed was, that the
25 Filbins sold the tire pile back to the original Oxford

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1 Tire Recycling outfit, the one that went bankrupt. They
2 sold the tires. They're not their tires. Now all of a
3 sudden it's not clear whose tires they are.
4 Again, this is an issue of responsibility.
5 We think it's the Board's responsibility to support this
6 Order, and once it does so and once it doesn't grant any
7 more time, then things will start falling into place. And
8 if they don't, we'll go to court, get a judge to decide
9 this, we'll get the judge to use the laws that have been
10 around a long time, we'll get declaratory relief, get some
11 decisions that will impose responsibility where it ought
12 to be.

13 CHAIRMAN EATON: Thank you, Mr. Post. Any
14 questions of Mr. Post?

15 BOARD MEMBER JONES: I --

16 CHAIRMAN EATON: Mr. Jones.

17 BOARD MEMBER JONES: One, I agree with you
18 on the responsibility issue, but I'm a little bit -- I'm
19 wondering on the issues of ownership on this land. This
20 was land that was bought by, it looks like three brothers
21 and their wives back in the '70s. And Ed and Mary Filbin
22 ended up buying out the other brothers, it looks like
23 through the paper trail, and it stayed in the ownership of
24 Edward and his wife from 1982 through March 10th of '82
25 through March 19th of this year when they transferred it

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1 to another company that they owned; correct? The - - and
2 they only transferred, I guess, those parcels that are
3 involved in the actual tire storage and that surrounding
4 area.

5 But they're the executors of this revocable
6 trust. And then they sold it to another entity of theirs
7 which is the Cal-Neva Land Company. Now, they're named as
8 owners of every one of those companies.

9 MR. POST: Right.

10 BOARD MEMBER JONES: So the reason I asked
11 the question about responsibility of the tires was because
12 those tires were put on the ground by Ed Filbin
13 originally. Especially -- it's kind of ironic, when we
14 went out to judge the tire pile, we found out that tires
15 don't hold their -- even close to their shape, and we had
16 misjudged the size of the pile because tires have been put
17 on there in the '70s and the '80s were in fact probably an
18 inch and a half to two inches thick instead of six to
19 eight inches because of the sheer mass of the material
20 that was put on top of them. They're still on this site.

21 MR. POST: They're --

22 BOARD MEMBER JONES: No matter if we want
23 to call it Ed and Mary Filbin, Ed and Mary Filbin's
24 Revocable Trust, or Ed and Mary Filbin's Cal-Neva Limited
25 Partnership. They own them all.

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1 MR. POST: One would ask if there's
2 adequate consideration for those transfers. Those
3 transfers came on the heels of the abandonment by the
4 second OTR, the new OTR. So one wonders why those
5 transactions took place, why those transfers took place,
6 and whether they're supported by adequate consideration.
7 Now, as a lawyer I know that there are Code
8 sections in our law that state that there is a
9 constructive fraudulent conveyance if in fact there's
10 inadequate consideration and the transfer is made solely
11 for the purpose of avoiding one's creditors. So without
12 prejudging this, it makes one rather suspicious that there
13 are these transfers. And then you go out there and find
14 that nobody is minding the shop.
15 Again, it's an issue of responsibility.
16 don't think you can do indirectly what you can do
17 directly. Remember, if you keep your eye on the ball, the
18 point is under the law, the landowner is strictly
19 responsible to clean up the public nuisance. So all these
20 transfers I don't think really get you away from the
21 ultimate point, and that is the person who owns the land
22 is responsible. Culpability is not necessary, but in this
23 case there's plenty of evidence of culpability.

24 BOARD MEMBER JONES: Thank you.

25 CHAIRMAN EATON: Any questions of Mr. Post?

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1 Okay.

2 Mr. Trapp, do you care to even make a

3 response?

4 MR. TRAPP: I'll stand on the record,

5 rhetoric aside.

6 CHAIRMAN EATON: Okay.

7 BOARD MEMBER JONES: Mr. Chairman.

8 BOARD MEMBER PENNINGTON: Mr. Chairman.

9 CHAIRMAN EATON: Mr. Pennington.

10 BOARD MEMBER PENNINGTON: Do we have more

11 people here?

12 CHAIRMAN EATON: I do not have any speaker

13 slips. I don't believe that Mr. Chandler has any closing

14 statements at all. I think the issue is before us.

15 MR. CHANDLER: I really don't. I think as

16 you indicated, Mr. Chairman, the issue before you is they

17 have asked you for an opportunity to address you. You

18 have granted that opportunity.

19 I would ask that you consider Resolution

20 1999-499 which would ratify my Order, but obviously it's

21 for your deliberation.

22 Thank you.

23 BOARD MEMBER PENNINGTON: Mr. Chairman.

24 CHAIRMAN EATON: Mr. Pennington.

25 BOARD MEMBER PENNINGTON: As the senior

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1 member of this Board and as the former Chairman when we
2 started this effort to clean up this tire pile, it would
3 be my privilege to move adoption of Resolution 1999-499,
4 that affirms and ratifies Clean Up and Abatement Order
5 1999-92, issued July 1, 1999, and the first amended Clean
6 Up and Abatement Order Number 99-92, issued August 31st,
7 1999.

8 CHAIRMAN EATON: Okay.

9 BOARD MEMBER JONES: Mr. Chairman.

10 CHAIRMAN EATON: Mr. Jones.

11 BOARD MEMBER JONES: I would second that
12 motion.

13 CHAIRMAN EATON: Mr. Pennington moves and
14 Mr. Jones seconds that we ratify and affirm Clean Up and
15 Abatement Order Number 1999-92 and first amended Clean Up
16 and Abatement Order Number 99-92 issued August 31st, 1999,
17 as contained in Resolution 1999-499.

18 Madam Secretary, please call the roll.

19 BOARD SECRETARY: Board Members Jones.

20 BOARD MEMBER JONES: Aye.

21 BOARD SECRETARY: Moulton-Patterson.

22 BOARD MEMBER MOULTON-PATTERSON: Aye.

23 BOARD SECRETARY: Pennington.

24 BOARD MEMBER PENNINGTON: Aye.

25 BOARD SECRETARY: Roberti.

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1 BOARD MEMBER ROBERTI: Aye.

2 BOARD SECRETARY: Chairman Eaton.

3 CHAIRMAN EATON: Aye.

4 Thank you, ladies and gentlemen. That

5 completes our agenda for today, and I'll see you back here

6 on the 21st, I believe, in which we should have two long

7 days of agenda items and hopefully we can move quickly

8 through that.

9 Thank you very much for your patience

10 today. Thank you.

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4 I, Tern Emery, CSR No. 11598, a Certified
5 Shorthand Reporter in and for the State of California, do
6 hereby certify:

7 That the foregoing proceedings were taken down
8 by me in shorthand at the time and place named therein
9 and were thereafter transcribed under my supervision;
10 that this transcript contains a full, true and correct
11 record of the proceedings which took place at the time
12 and place set forth in the caption hereto.

13

14

15 I further certify that I have no interest in
16 the event of this action.

17

18

19 EXECUTED this 19th day of OCTOBER, 1999.

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TERRI EMERY