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BOARD MEETING

STATE OF CALIFORNIA

INTEGRATED WASTE MANAGEMENT BOARD

JOE SERNA, JR., CALEPA BUILDING

1001 I STREET

2ND FLOOR

CENTRAL VALLEY AUDITORIUM

SACRAMENTO, CALIFORNIA

WENDESDAY, APRIL 23, 2003

9:30 A.M.

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

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Linda Moulton-Patterson, Chairperson

Jose Medina

Steven R. Jones

Michael Paparian

Cheryl Peace

Carl Washington

STAFF

Mark Leary, Executive Director

Julie Nauman, Chief Deputy Director

Kathryn Tobias, Chief Counsel

Mark de Bie

Jim Lee, Deputy Director

Rubia Packard

Scott Walker

Edna Walz, Office of the Attorney General

Patty Wohl, Deputy Director

ALSO PRESENT

Jerry Cassesi, Amador County Resident

Vicki Clark, Counsel, Heal the Ocean

Ron Craven, Amador County Resident

Phil Demery, County of Santa Barbara

Andrew Flocchini, Tire Site

Karen Gerbosi, Beebe Family Ranch

APPEARANCES CONTINUED

ALSO PRESENT

Hillary Hauser, Heal the Ocean

Gary Lass, Geologic Association

Whitman Manley, Remy, Thomas, Moose & Manley

Supervisor Gail Marshall, County of Santa Barbara

Sylvia Maxwell Navarro, The Oaks Community

Manuel Pastor, Center for Justice and Tolerance and Community

Randy Pollack, Soap and Detergent Association

Ted Prim, Office of the Attorney General

Rachel Rosner, Center of Justice and Tolerance Community

Martha Segura, Communities for a Better Environment

Don Silaci, Sildon Farms

Lisa Sloan, Santa Barbara LEA

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1 PROCEEDINGS

2 CHAIRPERSON MOULTON-PATTERSON: Good morning and
3 welcome to the April 2003 meeting of the California
4 Integrated Waste Management Board.
5 Please call the roll.
6 SECRETARY WADDELL: Jones?
7 BOARD MEMBER JONES: Here.
8 SECRETARY WADDELL: Medina?
9 BOARD MEMBER MEDINA: Here.
10 SECRETARY WADDELL: Paparian?
11 BOARD MEMBER PAPARIAN: Here.
12 SECRETARY WADDELL: Peace?
13 BOARD MEMBER PEACE: Here.
14 SECRETARY WADDELL: Washington?
15 Moulton-Patterson?
16 CHAIRPERSON MOULTON-PATTERSON: Here.
17 Would you please join me in the pledge of
18 allegiance.
19 (Thereupon the Pledge of Allegiance was recited
20 in unison.)
21 CHAIRPERSON MOULTON-PATTERSON: Thank you. At
22 this time if would you would please turn off your cell
23 phones or pagers, we'd really appreciate that. And also
24 if you would like to, there are a limited number of
25 agendas on the back table and there's also speaker slips.

1 If you'd like to address the Board on an item, please put
2 the item number and give it to Ms. Waddell who's right
3 over here in the green. Thank you.
4 Ex partes.
5 Mr. Jones.
6 BOARD MEMBER JONES: I'm up to date, Madam Chair.
7 CHAIRPERSON MOULTON-PATTERSON: Ms. Peace.
8 BOARD MEMBER PEACE: This morning I said hello to
9 Mark Schleich from Santa Barbara.
10 CHAIRPERSON MOULTON-PATTERSON: And I have none.
11 I'm up to date.
12 Mr. Medina.
13 BOARD MEMBER MEDINA: I'm up to date as well.
14 CHAIRPERSON MOULTON-PATTERSON: Thank you.
15 Mr. Paparian.
16 BOARD MEMBER PAPARIAN: I'm up to date.
17 CHAIRPERSON MOULTON-PATTERSON: Okay. Mr. Jones,
18 did you have a Board member report today?
19 BOARD MEMBER JONES: Just a couple things, Madam
20 Chair. Thank you.
21 I was able to go down to Half Moon Bay and be at
22 the City Council for a presentation of awards to local
23 recyclers. Their diversion rate's at about 46 percent.
24 This took them a while to get there, and so we went down
25 and handed out awards to both citizens and businesses and

1 the hauler, BFI.

2 Then on April 2nd -- I want to thank our staff.

3 We had the single stream recycling workshop. Pat Schiavo,

4 Cara Morgan, your staff -- it was a great workshop. I

5 know there were Board members and all the Board offices

6 were represented that day. It was a very informative

7 workshop, and I think it -- participation was high in the

8 room. We had a lot of people, and I heard a lot of people

9 were on the internet listening. So I think it was very

10 valuable. It was clearly an area that's growing, and I

11 think we really provided a valuable forum to talk about

12 what to do and what not to do and what to look out for.

13 I know I learned a few things.

14 And then I'll let others talk about the recycling

15 content trade show. But I did read in this morning's

16 Waste News that Office Depo has made a nation-wide

17 commitment that all of the paper that they sell in their

18 stores is going to be at a minimum 30-percent recycled

19 content. That's huge. And I think that this state and

20 our stakeholders and the citizens that are demanding those

21 kinds of products have made an impact, and it just opens

22 up more market demand for that recovery product. So

23 congratulations to Office Depo.

24 That will be it, Madam Chair.

25 CHAIRPERSON MOULTON-PATTERSON: Okay. Thank

Mr. Jones.

Ms. Peace.

BOARD MEMBER PEACE: In March I toured Edco disposal facility in Lemon Grove down in my area. I was quite impressed with their public relations, what they do to let all the people that they service know what's going on, where they can take their household hazardous waste. It was just very impressive and maybe we can all learn something from that.

Also I toured the Fallbrook Recycling Facility, and that will be coming up before the Board here pretty soon. I was -- they told me it took almost -- they're just making a few little changes to this recycling facility, and the LEA told me it took almost two years to do that. So that was interesting to find out.

Also I toured Oceanside Glass Tile and found out how they're making tiles out of recycled glass.

CHAIRPERSON MOULTON-PATTERSON: Thank you, Ms. Peace.

Mr. Medina.

BOARD MEMBER MEDINA: Thank you, Madam Chair. I have three items to report on.

First, on April the 3rd along with representatives of the City of San Diego, Department of Environmental Services met with the new mayor of the City

1 of Tijuana and other city officials from that city to
2 discuss waste issues affecting both sides of the border.
3 We had worked closely with the previous mayor in helping
4 the City of Tijuana to site a few landfill. Personally
5 with previously mayor I had visited five potential sites.
6 The City of Tijuana has now decided on a site. And so
7 we're going to continue working with them and with the
8 City of San Diego.
9 The following day, April the 4th, I attended
10 ceremonies held in Tijuana for the signing of the
11 binational border 2012 program. This was signed by
12 representatives of U.S. EPA and also representatives from
13 the Mexican government. Secretary Hickox participated in
14 the ceremony and witnessed the signing of the agreement.
15 One thing to note in the agreement is that there is some
16 very good language in regard to addressing issues of solid
17 waste along the border. The 2012 border program is a
18 ten-year plan to address environmental issues on both
19 sides of the border.
20 On April 10th and 11th I was able to attend and
21 speak at the first binational border conference on the
22 management and disposal of waste tires that took place in
23 now what is Tijuana. Waste tires are a serious problem on
24 both sides of the border, and on the Mexican side they're
25 giving very close attention to this situation.

1 The conference was attended by representatives of
2 the states on the U.S. side of the border Arizona, Texas,
3 New Mexico, California, and by five Mexican border states.
4 I had an opportunity to make a presentation right after
5 the representative of the state of Texas made his
6 presentation. I was initially impressed when the
7 representative from Texas said that they had imposed a $2
8 fee per new tire sold in the state ofTexas and that built
9 up quite a good fund.
10 Then I was kind of taken aback when he next said
11 that the tire program and the tire fund and the tire fee
12 had been done away with because the previous Governor of
13 Texas had thought it best to leave the issue up to the
14 free market system. And so having left it to the free
15 market system, there is no tire problem in Texas according
16 to the representative from that state.
17 After I made my presentation in regard to the
18 formation of the Waste Board and the five-year tire plan
19 and the programs that we have in place in the state of
20 California, the people on the Mexican side and in some of
21 the other states thought that we, in fact, had a model
22 program established. And I know that the representatives
23 from Mexico City, the federal representatives as well as
24 the representatives from the five states, want to work
25 closely with us because they consider us to be a model

1 that can be followed.

2 On April the 14th I participated in the native

3 nations, the environment and the state of California.

4 This it was a conference that was held jointly by U.S.

5 EPA, CalEPA and the border tribes along the border, again,

6 working cooperatively to address issues along the border

7 that effect tribal governments along the border. Received

8 a good response in regard to the efforts that the Waste

9 BOARD has been conducting for some years now in regard to

10 working closely with the tribes.

11 That concludes my report for today.

12 CHAIRPERSON MOULTON-PATTERSON: Thank you,

13 Mr. Medina.

14 Mr. Paparian.

15 BOARD MEMBER PAPARIAN: Thank you, Madam Chair.

16 Just a couple brief things to mention.

17 I had the opportunity in late March to visit the

18 Tracy fire site with Jim Lee, Bob Fujii, Todd Thalhamer,

19 and a number of the contractors and others associated with

20 the clean up there. I want to especially thank Jim, Bob

21 and Todd for showing me around and showing me the good

22 work that they have been able to accomplish so far as well

23 as some of the challenges that remain in dealing with a

24 difficult site like this one. I think that they've done

25 some remarkable things over the last couple years

1 addressing the site, but they do have some challenges
2 remaining. And, hopefully, no more unusual things will
3 emerge from the earth as they conduct their clean ups and
4 they'll be able to progress well with that.
5 I also attended the recycled products trade show.
6 I think our staff deserves a lot of credit for putting
7 that together. And what's especially impressive to me,
8 having attended several have these now, is that they do
9 grow and they do improve every time. And I think that's
10 one of the goals the Board has set out is to draw more
11 participants, more vendors, a wider variety of products to
12 be shown by the vendors. And I think they've really
13 succeeded in accomplishing that.
14 And then the final thing I'll mention is that I'm
15 continuing to work on the electronics waste issue. The
16 national electronic product stewardship initiative, NAPSI.
17 We were going to meet in Chicago a few weeks ago. That
18 meeting got postponed because of some travel restrictions
19 that some of the private companies had on their employees
20 because of international events. Those have since been
21 loosened. And so we are going to have a meeting with
22 states' electronics industry and with some of the other
23 interested parties in Chicago in early May. We're making
24 slow but some progress on the national front there.
25 Then I'm also continuing to work with CalEPA and

1 the Governor's office on the possible efforts at the state
2 level with possible state legislation on electronics
3 waste.
4 CHAIRPERSON MOULTON-PATTERSON: Thank you,
5 Mr. Paparian.
6 And I just want to say how much I appreciate all
7 of the Board members' activities. I had the opportunity
8 to testify at the Budget Subcommittee on our budget, and I
9 was able to tell that committee how hard our Board works
10 serving the entire state of California. So thank you for
11 being in all parts of the state. It's very much
12 appreciated.
13 I also toured the Bradley Landfill before our
14 vote on the regrade.
15 I attended the Governor's meeting on our budget.
16 I also gave opening remarks at the product trade
17 show, and I want to thank Ms. Wohl and Jerry Hart and her
18 whole department. You did a terrific job, and I was
19 really proud, as I know all the other Board members were,
20 of that show. It was great. And as Mike said, it gets
21 bigger and better every year. Thank you.
22 And also I spoke to the Industrial Advisory
23 Council in Long Beach.
24 And with that, I will just say that there will be
25 a ten-minute closed session at the end of today's meeting

1 for the Board.

2 And with that I will turn it over to Ms. Nauman,

3 our Deputy Executive Director.

4 EXECUTIVE DIRECTOR NAUMAN: Thank you, Madam

5 Chair and Board members. I have brief report for you this

6 morning. It's very obvious Mark's not with us this

7 morning. He's over at the capital attending a meeting at

8 the Joint Legislative Audit Committee. The Committee has

9 received a request from Assembly Member Reyes to have the

10 state auditor conduct an audit of the processes used by

11 the Board and local jurisdiction to grant solid waste

12 facility permits. I was listening to it right before we

13 came down here. It was the first item that the Committee

14 has taken up. They were in the middle of the debate when

15 we needed to come down here to start the meeting. I would

16 expect Mark would be back fairly soon and be prepared to

17 fill you in on the outcome of that discussion.

18 We too wanted to comment on the trade show. And

19 as many of you have committed this morning, the fourth

20 annual show was a real success. We had more than 100

21 exhibitors and an attendance of over 1,200. This activity

22 continues to be very well received both by our exhibitors

23 and our attendees.

24 I wanted to share a couple of comments with you

25 from some of the participants. As you know, we provide a

1 survey of the participants and we have some very
2 interesting comments from exhibitors. I'd like to share
3 three of those with you. "We are already busy this
4 morning following up leads from the show and processing
5 orders." "The show provided the right audience to promote
6 our products." "Qualified decision-makers attended." And
7 finally, "Staff was very helpful, always offered to help,
8 and that was much appreciated." The staff from Patty's
9 division will be preparing a summary for you with the
10 final figures and the results and distributing that in the
11 near future.
12 And that concludes the report for this morning.
13 CHAIRPERSON MOULTON-PATTERSON: Thank you,
14 Ms. Nauman.
15 We'll go to our agenda. Items 13, 15, and 38
16 have been pulled from the agenda.
17 Items 11, 12, 17, 21, 32, 40, and 41 were heard
18 at the committee level only.
19 Items 10 -- excuse me -- 2 through 10, 22, 23, 28
20 revised, 36, and 37 are recommended for consent.
21 And at this time if any member wishes to pull one
22 of those, please speak. If not, I'll entertain a motion.
23 Mr. Jones.
24 BOARD MEMBER JONES: Madam Chair, I'll move
25 adoption of the consent calendar Items 2, 3, 4, 5, 6, 7,

1 8, 9, 10, 22, 23, 28, 36, and 37.

2 BOARD MEMBER MEDINA: Second.

3 CHAIRPERSON MOULTON-PATTERSON: We have a motion

4 by Mr. Jones, seconded by Mr. Medina to approve the

5 consent calendar.

6 Please call the roll.

7 SECRETARY WADDELL: Jones?

8 BOARD MEMBER JONES: Aye.

9 SECRETARY WADDELL: Medina?

10 BOARD MEMBER MEDINA: Aye.

11 SECRETARY WADDELL: Paparian?

12 BOARD MEMBER PAPARIAN: Aye.

13 SECRETARY WADDELL: Peace?

14 BOARD MEMBER PEACE: Aye.

15 SECRETARY WADDELL: Moulton-Patterson?

16 CHAIRPERSON MOULTON-PATTERSON: Aye.

17 The consent calendar has been approved. That

18 leaves us with Items 1, revision 2 -- I guess it's Item 1,

19 14, 16, 24, 25, 26, 27, 30, 31 revised, 33 revised, 34,

20 35, 39, and 42 will be heard by the full Board at this

21 meeting.

22 Item 42 which is a discussion -- a workshop on

23 the Bagley-Keene law will be time certain for 1:30 today.

24 We'll be hearing 42 after lunch at 1:30.

25 And with that, we'll go to Item Number 1.

1 Scott -- Mr. Walker, would you please introduce this.
2 MR. WALKER: Thank you. Scott Walker, Permitting
3 and Enforcement Division.
4 Item 1 is consideration of revised full solid
5 waste facilities permit disposal facility for the Amador
6 County Sanitary Landfill, Amador County. This item was --
7 CHAIRPERSON MOULTON-PATTERSON: Mr. Walker, I
8 erred. I'd like to call on the Committee Chair first, and
9 I neglected to do that. I'm so sorry to interrupt you.
10 Mr. Paparian, would you like to give your report?
11 BOARD MEMBER PAPARIAN: Yeah. Thank you, Madam
12 Chair. There is something I wanted to run by the Board.
13 First of all, just in terms of the results of the
14 Committee meeting, we had two items that are coming to the
15 Board. You're about to hear the Amador County item, and
16 in a little bit you'll hear the Tajiguas Landfill item.
17 We took public comment only on the Phase II proposed C
18 and D regulations. And we had a couple of discussion
19 items with direction to move forward on the proposed
20 regulations on landfill closure loans and approval to
21 notice the 45-day comment period for proposed regulations
22 concerning landfill capacity reporting requirements.
23 And then, in addition, we had a couple of
24 informational items. One on solid waste facilities
25 violating state minimum standards, and a report on

1 enforcement orders issued by LEAs between August 2003 and
2 February 2003. And we also discussed the issue of cease
3 and desist orders.
4 Now the item I wanted to bring to the attention
5 of the Committee, next month we're anticipating that the
6 Sunshine Canyon permit will be before us. I wanted to let
7 my fellow Board members and any stakeholders in the
8 audience or listening on the Internet know what our
9 intentions are with proceeding with that permit.
10 Given the high profile of the permit, the intense
11 public interest in the permit, the anticipation is that it
12 will come to the full Board for a full Board discussion.
13 So rather than have a full discussion and vote at the
14 Committee in addition to a full discussion and vote at the
15 Board on this item, what I would like to do is have an
16 abbreviated hearing at the Committee on the Sunshine
17 permit, allow the Committee members to raise issues that
18 they want, you know, further elaboration on or further
19 research on before the Board meeting. We would hear
20 testimony at that point from anybody who wished to
21 testify. But instead of taking a vote at that point, we
22 would have the vote come at the full Board meeting which
23 would be on either May 13th or 14th.
24 Then in addition -- and Mr. Leary may want to
25 comment on this when he comes back in later. Mr. Leary

1 has been working with Gary A-K on exploring whether we can
2 take call-in testimony from the public at either the
3 Committee or the full Board meeting so that folks in the
4 community who are unable to come to Sacramento could have
5 their voices heard by the Board through either audio --
6 probably audio call-in capability. Again, that's not
7 certain yet. Mr. Leary has been working on that with Gary
8 A-K. But that is certainly a possibility that's being
9 actively explored.
10 CHAIRPERSON MOULTON-PATTERSON: Okay. Thank you
11 Mr. Paparian.
12 And before I go to Mr. Walker, I do want to read
13 an announcement that we need to read every time we meet in
14 this room for the month of April.
15 They will be conducting safety preparedness
16 drills that will include evacuating this room possibly.
17 This drill may occur during this meeting. In order to
18 prepare us for unexpected emergencies, we do not know what
19 date or dates or time the alarm will sound. Please look
20 for and note at least two emergency exits. Exits are
21 located inside the public hearing rooms on the first and
22 second floors and in the connecting halls outside the
23 conference rooms within the remainder of the building.
24 If the alarm sounds, evacuate immediately. Take
25 all valuables with you. Do not use the elevators. If you

1 have mobility concerns that would prevent from you using
2 the stairways, please let the host of the meeting know.
3 Ms. McKee, you're the host.
4 And arrangements will be made to have you wait
5 safely in a protected area. You will be directed to a
6 safe stairwell, and an attendant will stay with you until
7 you have heard the all-clear announcement. Follow the
8 meeting host down the stairway to the relocation site.
9 If you are on floors 8 through 25, you would
10 relocate five floors down. If you're on these floors,
11 floors 1 through 7, you will evacuate to Cezar Chavez Park
12 located outside the building and across from directly
13 south of the City Hall. If you evacuate outside of the
14 building, obey all traffic signals and be cautious when
15 crossing the street. Stay at the relocation area until
16 the all-clear signal and the completion of the drill is
17 given. Inside the building the completion of the drill
18 will be announced via the public address system. At the
19 park the all-clear signal will be given from the command
20 center set up on the stage. If you do not hear the
21 announcement, simply stay with and follow the lead of your
22 meeting host.
23 We thank you very much for cooperating.
24 And now this takes us back to the Amador County
25 item, and I'll turn it over to Mr. Walker. Item Number 1.

1 MR. WALKER: Thank you. This item was originally
2 heard at the Permitting and Enforcement Committee and
3 Board meeting in February. The permit time lines were
4 waived, and the item was continued to April. During the
5 February 11th Board meeting, the Board expressed concerns
6 over a very large wood waste pile that would be
7 incorporated in the revised permit boundary. Staff has
8 verified in the field that the wood waste pile has been
9 cleaned up in accordance with state minimum standard and
10 as required by the Board.
11 During the April 7th Committee meeting, staff
12 reported that the financial assurances for closure,
13 post-closure and operating liability require updating in
14 order for staff to present a recommendation of
15 concurrence. This required update was received, and based
16 on the staff's review meets all applicable requirements.
17 The County was -- the applicant or the County was
18 also requested to respond to additional public concerns
19 expressed at the April 7th Committee meeting. The County
20 submitted written responses to those comments dated April
21 11th to Board members and is here and is prepared to
22 discuss the responses at this meeting.
23 Also I'd like to point out that the public has
24 expressed concerns over a number of water quality issues
25 under purview of the Central Valley Regional Water Quality

1 Control Board. Staff has notified the Regional Board of
2 those concerns. And in addition, the Regional Board is
3 holding a public hearing on revised waste discharge
4 requirements for this facility at their regular Board
5 meeting this Friday. This meeting will provide public the
6 opportunity for the water quality concerns to be heard.
7 In conclusion, all applicable findings can be
8 made, and staff recommends adoption of the resolution
9 2003-71 to concur with the issuance of the revised solid
10 waste facilities permitted for the Amador County Sanitary
11 Landfill. Virginia Rosales of the Permitting Enforcement
12 Division is available should the Board request a more
13 detailed presentation of the proposed permit and answer
14 questions. The County and LEA are also present in
15 addition to members of the Committee in opposition to the
16 proposed permit.
17 CHAIRPERSON MOULTON-PATTERSON: Thank you.
18 Any questions before I go to Committee -- I mean
19 public members that would like to speak? I see none.
20 So we'll go to Sylvia Maxwell Navarro of the Oaks
21 Community.
22 MS. MAXWELL NAVARRO: Good morning. Thank you,
23 Madam Chairman and Board members. I'm back again for the
24 people. And I just have one question today. And the
25 question is, who is responsible for the liability if

1 something goes wrong at the landfill? Is it we, the
2 people? Did we not fight a strong enough argument? Is it
3 the landfill operations with their violations? Or is it
4 the Integrated Waste Management Board approving the
5 permit? We, the people, are very concerned as you well
6 know as I have presented it before. We do know the tax
7 payer if -- hopefully, it won't happen. But if it did
8 happen, the tax payer will definitely pay the bill. We
9 just ask that this all be taken into consideration. And I
10 thank you very much for my time this morning.
11 CHAIRPERSON MOULTON-PATTERSON: Thank you, Ms.
12 Navarro.
13 Ron Craven, Amador County resident.
14 MR. CRAVEN: Yes. My name is Ron Craven.
15 I've attended the past three hearings you have
16 held, and I would like to thank the Board for showing
17 caution before issuing the permit. In light of the many
18 past violations as evidenced by your own records and
19 testified by Mr. Cassesi, I wish to highlight the Public
20 Resources Code Section 44300 that states,
21 "The Board may deny the permit for any of the
22 following:
23 "A, the application is incomplete or
24 otherwise inadequate;
25 "B, the application has not complied with

1 Division 13;
2 "The applicant has failed to demonstrate that
3 the facility will meet minimum regulatory
4 standards;
5 "D, the application contains significant
6 false or misleading information or significant
7 misrepresentation;
8 "E, the agency determines the applicant has,
9 during the previous three years, been convicted
10 of or been issued a final order for or more
11 violations to this division or regulations
12 adopted pursuant to this division or the terms
13 and conditions of the permit and the violations
14 were made both by the following criteria: the
15 violations demonstrates a chronic recurring
16 pattern of noncompliance which has been posed or
17 may pose a significant risk to public health,
18 safety, or to the environment."
19 It is our belief that this section gives the
20 Board more than adequate reason for denying the permit.
21 In fact, we believe it is an obligation of the Board to
22 deny this permit. Thank you very much.
23 CHAIRPERSON MOULTON-PATTERSON: Thank you,
24 Mr. Craven.
25 Our last speaker is Jerry Cassesi.

1 MR. CASSESI: Good morning. Thank you, Madam
2 Chair, Board members. I'm just going to take a little bit
3 of your time. I'm not going to go over the violations.
4 We've already done that in the past.
5 What I would like to do is just set the record
6 straight in a couple of areas. When we first started this
7 thing, we were opposed to expansion of that landfill and
8 turning it into a regional landfill. That's what the
9 County proposed. That's what we were opposed to.
10 When we got looking into this thing, we found a
11 tremendous number of ongoing violations year after year
12 after year. It was like a horror story just unfolding in
13 front of us. Everywhere we looked, there were these
14 things that we thought were taken care of that were not
15 taken care of. So we found ourselves in front of you
16 folks saying, "Hey, wait a minute. In essence, these
17 people have continued for years to violate the rules and
18 regulations, and they've continue for years to be allowed
19 to operate." And our contention is those rules and
20 regulations should be followed and should be enforced.
21 For myself, this is probably one of the most
22 frustrating experiences I've had to go through. I'm not a
23 young man, and I've been around. And I've been in the
24 military, and I've been a business owner. I did 32 years
25 with an employer and seven years after I retired with

1 another employer. I've got an impeccable record.
2 But I come to this Board at the last Committee meeting
3 and I was characterized, I believe, as a person who
4 wouldn't be happy regardless of what the answers were and
5 just refusing to accept the county's answers. And that's
6 not the case at all. That is absolutely not the case at
7 all. I know you base your decisions on the information
8 you get from the county and the information you get from
9 your staff. That's what you have to go on. So if there's
10 information out there that you're not getting that you can
11 only get from a person in the public that's seen it, then
12 it's our obligation to bring you that information so that
13 you have the complete picture to base your decision on.
14 And that's why we're here before you today.
15 As far as refusing to accept the county's
16 answers, I'm just going to give you one little example.
17 In the county's response to you dated April the 11th, it's
18 response to some of the concerns I brought up. One of the
19 responses was "Mr. Cassesi stated he was not personally
20 notified even though the nearby Oaks community was
21 notified in April, the meeting that started the whole
22 thing. It is our recollection that Mr. Cassesi was
23 present at that meeting." Well, I was present. But was I
24 present because the county notified me as a resident of
25 that valley? Or was I present because some private

1 citizen took it upon himself to let me know that there was
2 a meeting being held?
3 And that's what we're talking about. It's not
4 that I'm not satisfied with that answer, it's that you
5 should be aware that to my knowledge none of the other
6 residents other than Oak community were notified. I know
7 I wasn't notified and the people I talked to that live in
8 that valley were not notified. Sure, some of us showed up
9 at the meeting, but it wasn't as a result anything the
10 county did. That's just one example.
11 This thing started out from the very beginning.
12 After that April meeting I was told by a person in the
13 county that, "I guess you'll just have to sell your
14 property." And it is really frustrating to see violation
15 after violation after violation and nothing happens. It's
16 just like, "Oh, well, if you fix it, then nothing's going
17 to happen. You're going to get your permit."
18 It's been an eye-opener for me. I never knew
19 this Board exited before I started digging into this
20 thing. I'm amazed. I'm amazed at the things that have
21 gone on at that landfill and continue to go on. And all
22 we can do -- all I can do is just ask you again one more
23 time, probably for the last time you're going to see me,
24 is please do not continue issuing these permits. Please
25 make sure every regulation, every law is enforced.

1 They've had more than ample chance, more than ample
2 opportunity to make all these corrections.
3 Thank you.
4 CHAIRPERSON MOULTON-PATTERSON: Thank you. And I
5 appreciate very much you coming. This Board takes very
6 seriously public testimony and does take that into
7 consideration when approving a permit. So thank you for
8 being here.
9 Mr. Paparian.
10 BOARD MEMBER PAPARIAN: Thank you, Madam Chair.
11 At the P&E Committee hearing earlier this year,
12 as Scott reported, we did have a number of concerns. The
13 wood pile being very prominent among those. And I know
14 that's been addressed since we brought up that issue.
15 At the most recent meeting we did have some other
16 questions, one of them relating to financial assurance.
17 We didn't have the financial assurance taken care of at
18 that point. It has since been taken care of in
19 intervening time.
20 A number of the issues that have been brought up
21 really, to me, seem under the purview of the Water Board
22 rather than our agency, although a number of the issues
23 that have been brought up relate to the ongoing work of
24 the LEA and the periodic inspections the Waste Board does
25 as well as our evaluations of the LEA to make sure the

1 facility is in compliance and continues to be in
2 compliance.
3 So as this moves forward, as we look to the
4 future, I think it's going to be very important -- I know
5 it's been probably frustrating from Mr. Schuller from the
6 county in dealing with the local residents. But what the
7 county has, what the LEA staff has, what our staff has is
8 a very active, very alert, very committed community that
9 isn't going away and is going to be continuing to be
10 engaged in activities involving the landfill. I think
11 it's very important that all of these folks, the LEA, the
12 county, and the community, even if they disagree, even if
13 they disagree heatedly, to continue to try to come to some
14 agreements, try to come to some understandings, and try to
15 assure that there is a very open information flow between
16 all of them.
17 But in looking at what's been done with the
18 permit, you know, since the first time dealing with the
19 wood pile problem since our last meeting with the
20 financial assurance being taken care of and with the
21 issues, as I see it, that may be out there but really are
22 under the purview of the Water Board, I'm going to be
23 voting in favor of the permit. I don't see an issue here
24 that would cause us to deny this permit. But again, I
25 think it's going to be very important and I'm going to be

1 remembering this landfill moving forward that the county
2 and the LEA maintain their communication with the
3 community and really assure that the issues raised by the
4 community are answered as we move forward.
5 CHAIRPERSON MOULTON-PATTERSON: Thank you,
6 Mr. Paparian.
7 Mr. Jones.
8 BOARD MEMBER JONES: Madam Chair, I'll move
9 adoption of Resolution 2003-71, I guess, Revision 2,
10 consideration of revised full solid waste facility permit
11 disposal facility for the Amador County Sanitary Landfill,
12 Amador County.
13 CHAIRPERSON MOULTON-PATTERSON: I'll second that.
14 So we have a motion by Mr. Jones, seconded by
15 Moulton-Patterson to approve resolution 2003-71, Revision
16 2.
17 Please call the roll.
18 SECRETARY WADDELL: Jones?
19 BOARD MEMBER JONES: Aye.
20 SECRETARY WADDELL: Medina?
21 BOARD MEMBER MEDINA: Aye.
22 SECRETARY WADDELL: Paparian?
23 BOARD MEMBER PAPARIAN: Aye.
24 SECRETARY WADDELL: Peace?
25 BOARD MEMBER PEACE: Aye.

1 SECRETARY WADDELL: Washington?

2 BOARD MEMBER WASHINGTON: Aye.

3 SECRETARY WADDELL: Moulton-Patterson?

4 CHAIRPERSON MOULTON-PATTERSON: Aye.

5 At this time I will turn it over to Mr. Jones who
6 is chair of the Division, Planning, and Local Assistance
7 Committee.

8 Would you like to give a report, Mr. Jones, on
9 your Committee.

10 BOARD MEMBER JONES: Sure, Madam Chair. It will
11 be a quick one.

12 We only heard, I guess, about 11 items. Nine
13 were on consent approved. Five were biannual reviews.
14 Four were SB 1066 time extensions. We had two
15 presentations. One was an update of 1374. And the other
16 were issues related to the accuracy of the disposal
17 allocations at Potero Hills in Fairfield.

18 The work at this Committee is going to be reduced
19 greatly because of the fine work of our staff and
20 especially the Committee members and the Board members. I
21 mean, we got through 586, I think, biannual reviews or
22 extensions, and I want to thank the members of the
23 Committee who came to each one of those Committees
24 prepared, and we moved through an awful lot of business.
25 It is going to slow down. But I think as a result of it

1 slowing down we're going to be getting reviews on progress
2 from jurisdictions that have entered into extensions. I
3 think Mr. Schiavo and his staff have some ideas of some
4 further workshops to help the exchange of information to
5 continue to improve on this process.
6 And that's the end of my report, Madam Chair.
7 CHAIRPERSON MOULTON-PATTERSON: Thank you,
8 Mr. Jones. And I want to thank you for your leadership as
9 Chair of that Committee. I know sitting on it has been a
10 lot of work, and we appreciate very much your leadership.
11 At this time we'll go to the executive
12 administrative and policy part of our agenda. I'd like to
13 call on Mr. Washington, the Chair of that Committee.
14 BOARD MEMBER WASHINGTON: Thank you, Madam Chair.
15 CHAIRPERSON MOULTON-PATTERSON: Let the record
16 show Mr. Washington has been present for quite a while.
17 And did you have any ex partes before you started?
18 BOARD MEMBER WASHINGTON: Yes, Madam Chair. Mark
19 Aprea caught me running down the street like he always do.
20 I would like to say that I think under
21 administrative we had the Bagley-Keene that will be
22 addressed at a later date, and at this point I will just
23 turn it over to our deputy director.
24 CHAIRPERSON MOULTON-PATTERSON: Okay. Thank you.
25 That takes us to item 14, and I'm going to turn

1 this over. This is an update on the contract with the
2 University of California at Santa Cruz to access methods
3 to increase public and community participation in Board
4 processes.
5 And I'll turn it over to Ms. Packard at this
6 time.
7 MS. PACKARD: Thank you, Madam chair. Good
8 morning, Board members. Rubia Packard with the Policy and
9 Analysis Office.
10 Agenda item 14 is an oral presentation to the
11 Board by the University of California, Santa Cruz on the
12 contract that was approved by the Board in 2002 to assess
13 methods to increase public and community participation and
14 Board processes. Today we have Manuel Pastor and Rachel
15 Rosner of the Center of Justice and Tolerance Community
16 which is housed at UC Santa Cruz, as well as Martha Segura
17 from the Communities for a Better Environment.
18 They'll be talking a little bit about EJ,
19 environment justice, and provide some facts. And then
20 they will provide an overview to the Board of their
21 proposed activities as part of this contract and then
22 finally answer any questions you may have.
23 They do have a PowerPoint presentation. And
24 unfortunately, we did not get copies of the PowerPoint
25 made so I can provide you copies of that after the meeting

1 if you're interested.

2 And with that, I believe Rachel Rosner is going

3 to kind of run the show for them. So, Rachel.

4 MS. ROSNER: Thank you very much.

5 MS. PACKARD: You're welcome.

6 CHAIRPERSON MOULTON-PATTERSON: Can you bring

7 that a little closer. Thank you.

8 MS. ROSNER: Is that better?

9 CHAIRPERSON MOULTON-PATTERSON: That's great.

10 MS. ROSNER: Good morning. My name is Rachel

11 Rosner with the Center for Justice and Tolerance

12 Community. To be perfectly honest with you, we had a

13 longer presentation prepared and we're informed this

14 morning we should try to cut it shorter. We're going to

15 do our best to move through the agenda as quickly as we

16 can. We hope it will be a really engaging and interesting

17 presentation for you.

18 CHAIRPERSON MOULTON-PATTERSON: Thank you.

19 MS. ROSNER: What the purpose of today, as

20 Mr. Rubia said, is to give some context to the contract

21 for the upcoming year and talk a little bit about some of

22 the initial data that EJ related to the Board and that

23 will help you get some context. We'll be talking a little

24 bit about the history of EJ. And we're going try to move

25 through quickly. We'll talk about the goals of the

1 contract and talk a little bit about our work plan. Today
2 is really an introduction so that you can lead us, you can
3 hear a little bit about the work, and be prepared for the
4 presentations that will be coming in the next month.
5 So who are we? The Center for Justice Tolerance
6 and Community, I'm a research associate there. And we are
7 an interdisciplinary research center that works towards
8 policy relevant research that addresses the concerns of
9 community-based efforts for social and economic justice.
10 Our work is usually done in collaboration with
11 the community-based organizations that are rooted in
12 low-income communities of color and is specially focused
13 on issues such as work force development, affordable
14 housing, and, of course, environmental justice.
15 I could go through a long list of the projects
16 we've been involved with since our inception three years
17 ago, but what I will do instead is I'll highlight the long
18 standing relationship we've had with Communities for a
19 Better Environment which our associate, our colleague
20 here, Martha Segura, is with us today to help us present
21 to you.
22 This collaboration has been going on for years
23 now and has resulted in pivotal research that the claim
24 that there is disproportionate exposure to environmental
25 hazards in working-class communities of color in the five

1 county Los Angeles area region is even controlling other
2 factors that explain the location and such. So we have
3 been working as researchers in conjunction with organizing
4 to document the cumulative effect of multiple polluting
5 facilities and the affect of this exposure on health.
6 This is one of our main ongoing projects.
7 So to get some context, I'd ask Martha to help me
8 define for you an element of what is environmental justice
9 and give you some history and give you some examples of
10 the different elements of environmental justice for you.
11 And rather than taking time reading them, we'll just leave
12 them posted there. And I'll ask Martha to help me define
13 environmental justice.
14 MS. SEGURA: Good morning, Board. Thank you for
15 inviting us to come here today. I'm Martha Segura, the
16 Southern California Program Director for Communities for
17 Better Environment.
18 We also have an office here in Oakland, and we
19 work on many statewide issues. So I came here today to
20 try to help define environmental justice. And it's only
21 one perspective of many, so I hope it helps just to
22 develop a longer-term definition for the Board.
23 I've come to the, you know, present determination
24 that it's really a place-based issue. And there are many
25 intersections, as you probably well know, with public

1 health, economy, the environment, social and political
2 processes all together to create issues faced by
3 low-income communities and communities of color. But,
4 environmental justice is also a grassroots movement, and
5 it's very resistance based and it comes from a long
6 history of other social movements which when I get more in
7 the history I'll refer to. And it's also about
8 sustainable community participation, and that community
9 participation has been a puzzle to a lot of agencies that
10 we've worked with. So I would like to highlight a few
11 things that I think have made community participation
12 work.
13 When we develop good relationships with agencies
14 and the agencies acknowledge that the community-based
15 organizations are really the outreach mechanism by which
16 public participation is effective, then we see more people
17 coming to the hearings. We see more civic engagement. We
18 see more public awareness and also leadership development
19 to make that participation sustainable. And we've
20 developed really good relationships with some local
21 agencies, like the South Coast Air Quality Management
22 District and CBO like -- CBE, Communities for a Better
23 Environment, to initiate that public outreach and
24 participation. So I think that's a key element of
25 environmental justice.

1 Also with CalEPA there's an advisory counsel of
2 which the Integrated Waste Management Board is a part of,
3 and Romel Pascual is here today to probably affirm that's
4 another mechanism, another level of community
5 participation because on their counsel, CBOs like
6 Environmental Health Coalition, Communities for a Better
7 Environment, also sit on that Board. I think it's also
8 about being involved at various levels of decision-making
9 like at community hearings, on Boards, on advisory
10 counsels until we are all equally participating along with
11 other stakeholders so that all of the voices are heard
12 together.
13 But the reason I think that environmental justice
14 continues to exist is because of really historically
15 defined institutional racism and now in the present the
16 fragmentation of jurisdictional authority that was caused
17 by that institutional racism in the past. And I guess I'm
18 talking about how on a local level some decisions are made
19 that perhaps should really be made at the state level or
20 should be made at a more regional level so that the
21 impacts of the -- on the entire region and for the entire
22 region are made more holistically.
23 And as an example, in the -- I believe it was in
24 1999 one of our causes or campaigns was against La Montana
25 Concrete Recycling Facility in Huntington Park. And the

1 local authority which was the City Council was willing to
2 give a permit to this local private industry for recycling
3 all the concrete from the North Ridge earthquake.
4 California Integrated Waste Management Board sent an
5 advisory memo to the local council stating that it
6 probably would not be a good idea to put a concrete
7 recycling facility 50 feet from a residential
8 neighborhood. The local council, you know, did not listen
9 to the advice of the wise Board members, but then it
10 brought to us the issue, "Well, why is it the council
11 making this decision and why didn't they take the Board's
12 advice?"
13 Well, Senator Martha Escutia then wrote a Senate
14 bill giving the Board jurisdiction over permitting over
15 private concrete facilities. And that really was, I
16 think, a success of that campaign of the many successes
17 that happened. But it was -- it would not have happened
18 if the CBE wasn't there for a sustained challenge and
19 really trying to figure out this jurisdictional puzzle for
20 and with the community.
21 So I think that there are many jurisdictional
22 puzzles like that that the Board and community members and
23 community-based organization are all trying to figure out.
24 And there are some efforts in place, but we still have a
25 long way to go.

1 And I won't go through this whole list of the
2 history of environmental justice because it really isn't a
3 comprehensive list. It's something I came up from my
4 experience and some documents that I have. But I would
5 like to highlight that before every policy action, here
6 there was a community action. So as you can see the civil
7 rights movement and from my perspective here in California
8 the United Farm Workers boycott of the toxic use of
9 pesticides in grapes preceded CalEPA, the Clean Air Act,
10 NEPA, and then have another action like the Mothers of
11 East L.A. and the study of toxic waste and race. And then
12 again, you have many other policy actions that came after
13 that.
14 But I'd like to say I think it really fitting
15 that we're in the Joseph Serna Building today because he
16 was very active with the United Farm Workers. And I read
17 that out there. I'm like, this is really fitting because
18 it feels like you're coming full circle. We're talking
19 about environmental justice today. I've never been at
20 this building. I've never addressed this Board before.
21 So it felt very validating and very comforting to see we
22 are here and we're working on the same cause.
23 The last thing I'd like to note is that recently
24 from 2000 to 2003 there have been many actions taken at
25 the state level and at the local level to include

1 environmental justice policies and action items.
2 The California Air Resources Board approved environmental
3 justice policies. The South Coast Air Quality Management
4 District approved environmental justice enhancement
5 measures. CalEPA Interagency Working Group was developed
6 and the CalEPA Advisory Committee was also developed under
7 environmental justice. And that has really opened the
8 door to have an open dialogue about a lot of the issues
9 that are concerning local community. And I hope that this
10 continues.
11 Thank you very much.
12 CHAIRPERSON MOULTON-PATTERSON: Thank you. I'd
13 just like to say I appreciate so much you being here. And
14 when I leave this Board, I think one of the most important
15 things that I've done is to learn about what the
16 Communities for the Better Environment do and going on the
17 toxic tour that was put together by Mr. Pascual and your
18 group was just a real eye opener. And it really led to a
19 better understanding for me about environmental justice.
20 I'm deeply indebted to your group. I thank you for you
21 coming here today. I appreciate it very much.
22 MS. SEGURA: Thank you.
23 MR. PASTOR: I'm Miguel Pastor. I'm going to be
24 batting clean up here. And actually you'll bat clean up
25 at the end. I'm the Director the Center of Justice

1 Tolerance and Community and have also been researching the
2 environmental justice questions in California for about
3 the last seven years. The research's resulted in about
4 eight academic publications, several reports, and funding
5 from the California Wellness Foundation and the California
6 endowment.
7 (Thereupon an overhead presentation was
8 presented as follows.)
9 MR. PASTOR: What we decided to do as part of
10 this contract is do a preliminary data analysis for
11 California based on the sites that are in the CIWMB
12 jurisdiction. There's already a lot of research
13 establishing a pattern of inequity by race and income for
14 various environmental hazards in California.
15 --o0o--
16 MR. PASTOR: For example, if you look at a map of
17 the toxic release inventory emissions from the U.S. EPA
18 and contrast that with recent demographic data in the
19 state of California, you'll see many of these TRI
20 facilities -- not things you regulate -- just to give you
21 an idea, are actually located in predominantly minority
22 areas. It's also true that relationship with race holds
23 in what is called the multi-variant regression analysis
24 that is when you already account for income and land use
25 and other factors. And you still get a pattern of racial

1 disproportionality in terms of the TRI or toxic release
2 inventory.
3 --o0o--
4 MR. PASTOR: There's also research that we've
5 engaged in on what's called the cumulative exposure in
6 which you take ambient air pollution you see what is the
7 respiratory and cancer risk from. This shows you
8 basically an overlay of those respiratory risks and
9 Southern California looking at the impacts actually in the
10 Los Angeles School District, and you can see a lot of the
11 lowest-performing schools in the most minority areas have
12 had severe air pollution.
13 So while there's a lot of debate whether or not
14 environmental justice inequities hold at a national level,
15 most of even the most conservative critics of the notion
16 of environmental inequities have concluded the case has
17 been made before California largely on the basis research
18 colleagues and I have done. What we decided to get at is
19 whether or not beginning for this contract there's a
20 problem with the CIWMB sites in that regard.
21 --o0o--
22 MR. PASTOR: So what we did is we downloaded your
23 solid waste information system, and part of the exercise
24 of doing that was to ask what a sophisticated
25 community-based organization with research skills be able

1 to do. We geocoded all of your solid waste disposal
2 transfer and waste tires sites. We matched these at a
3 block group level, which is right below the census track
4 with demographic and income variables, and we're going to
5 show you the results of what that looked like today.
6 --o0o--
7 MR. PASTOR: So these are the active and
8 permitted disposal sites in California, contrasted it with
9 the percent that's non-hispanic white. As you can see
10 there's kind of visual correlation. These are your
11 transfer sites and this correlation visually is even
12 higher with the darker green areas which is a percent
13 minority.
14 And these are your waste tire facilities, which
15 Mr. Paparian had just -- I believe Mr. Medina had just
16 been talking about.
17 And then overlaying all three of these -- and you
18 will get this PowerPoint later. And then also, of course,
19 there will be a quiz when I'm done because I'm a
20 professor, and I want to make sure you were paying
21 attention.
22 --o0o--
23 MR. PASTOR: This shows you all three kinds of
24 sites overlay for Northern California.
25 --o0o--

1 MR. PASTOR: This brings us into the Bay Area and
2 shows you the sites being overlaid on the demographics,
3 same demographics.
4 --o0o--
5 MR. PASTOR: This walks you down the state to the
6 central coast and the San Joaquin Valley. You can see
7 some visual correlations there.
8 --o0o--
9 MR. PASTOR: This is Southern California, sort of
10 the king of waste. This is the place I grew up.
11 Actually, we lived pretty close to La Puente Landfill.
12 --o0o--
13 MR. PASTOR: And then this is the various
14 Southern California, San Diego area.
15 So these slides were all geocoded and located on
16 a map in California and contrasted in this case with
17 census track demolition graphs.
18 --o0o--
19 MR. PASTOR: What we really wanted to do was --
20 you have had some previous analytical efforts by the
21 state. We looked them over. They tended to rely on
22 overly-broad definitions of geography and have problematic
23 definition of race or income and some problematic uses of
24 statistics.
25 We decided to set up a tighter geographic focus,

1 redo the race definitions, connect this with the 2000
2 census data, try to control for the variables that should
3 predict the location in these facilities.
4 How did we do this? It's actually very nerdy,
5 but it's kind of cool. We've done it in a way I think
6 will be nice for you.
7 --o0o--
8 MR. PASTOR: This is a part of Contra Costa
9 County. You'll see why we chose it in a minute. There's
10 three different kinds of sites in this particular section,
11 a landfill site, a waste tire site, and a transfer site.
12 These are what is called census tracks. This is what
13 you've used before. But the census tracks are actually
14 quite big, and you can see that if you cut them up into
15 their constituent pieces which are block groups. There's
16 actually a level below that which are blocks, but block
17 groups are the level of geography in which you can attach
18 income. And since income levels matter as well in a
19 location of these hazards at least in terms of the way
20 people debate this, it was necessary to work at a block
21 group level. This is laid on the actual geography of the
22 area. So all of a sudden you see the water coming in on
23 these block groups.
24 --o0o--
25 MR. PASTOR: Then the facilities are actually

1 located on to a map with roads.

2 --o0o--

3 MR. PASTOR: A one-mile buffer, which is pretty

4 standard in environmental justice literature and used in

5 your state audit, is drawn around each of the facilities

6 in the state.

7 --o0o--

8 MR. PASTOR: That is then cut up onto the block

9 groups that we were talking about before that we have

10 demographic and income data.

11 --o0o--

12 MR. PASTOR: The water is cut out primarily

13 because there are very few people who live on water. We

14 actually just got through the Easter weekend. At least we

15 know one person who could have walked on water, at least

16 according to my church. And there are people who do live

17 in water and ports and stuff. But this gives a sense of

18 the census tracks, the census block groups that are

19 affected.

20 --o0o--

21 MR. PASTOR: So what are the basic findings?

22 You'll see them in a minute. The interesting thing is

23 that landfills and solid waste disposal seem to be more

24 equitably located than transfers and waste tire sites.

25 But there are perceptions -- I'll explain why they're

1 there, and they actually have merit in a more complex
2 view.
3 --o0o--
4 MR. PASTOR: This shows you the ethnic
5 distribution within one mile of landfill and solid waste
6 disposal sites in California. And as you can see,
7 basically those demographic distributions are pretty
8 similar in terms of the percent non-hispanic white,
9 African American, Latinos, et cetera, living not within
10 one mile of a landfill or solid waste site and living
11 within a mile of the waste site. The question we'll have
12 later is why is there such a perception of environmental
13 injustice, and you'll be able to see why in a second when
14 we explain it.
15 --o0o--
16 MR. PASTOR: This shows you the ethnic
17 distribution within one mile of transfer sites, much lower
18 percent of non-hispanic whites near the transfer sites.
19 These are disproportionately located in communities of
20 color.
21 --o0o--
22 MR. PASTOR: A very similar distribution even
23 more severe in terms of the relationship between -- for
24 waste tire disposal sites.
25 --o0o--

1 MR. PASTOR: It then shows you per-capita income
2 with the bottom bars being the landfill or solid waste.
3 Second set of the bars being transfer. Top set of bars
4 being waste tires. If we contrast per capita income in
5 each of these cases, income levels are lower within one
6 mile of one of these sites. But again, the landfills seem
7 to have less of a sharp division in terms of income.
8 --o0o--
9 MR. PASTOR: Now, why is that going on? You
10 know, there are a couple of -- why is there still a
11 perception particularly around landfills? There's a
12 couple of different things. And one is perception. This
13 shows you we break into whether or not you're in a block
14 group that is not within one mile of the site. That is
15 within one mile of active site that is not permanent.
16 That would be like the La Montana site in Huntington Park.
17 The second is active and permit. What you can
18 see, the active but not permitted site, the sites people
19 would really like you to clean up that may be under local
20 jurisdictions are disproportionately in minority
21 communities. And so there's a perception problem.
22 --o0o--
23 MR. PASTOR: If you go to the ethnic distribution
24 of the transfer sites, what's interesting here is that the
25 ethnic inequity is most severe for the ones CIWMB has

1 permitted. That's the same thing with waste tire sites.
2 --o0o--
3 MR. PASTOR: Now we also did a fancy thing called
4 the logistic regression analysis. What that means, for
5 those of you who didn't get a Ph.D. in economics, is that
6 what we try to do is to take a look at the probability of
7 whether or not the neighborhood you live in will have one
8 of these sites, trying to control for the different
9 variables, not just looking at cross-section patterns, but
10 trying to say what are the variabilities that should
11 predict where these sites are. One is population density,
12 and the other two that people have looked at are per
13 capita income and percent folks of colors. These are all
14 going in at the same time.
15 This helps get at the landfill dilemma too.
16 Basically landfills and solid waste sites tend to be in
17 areas that are not densely populated. In the state, the
18 less densely populated areas are whiter and higher income.
19 But within those areas, your landfills tend to be more in
20 minority areas. If you look across the board here
21 basically what this is saying -- I guess there's this
22 whole notion of what is it? A 12-step program and the
23 first step is recognizing you've got a problem. There's a
24 problem here both of reality and of perception. And any
25 way in which environmental justice will get addressed by

1 CIWMB may involve both tackling what the reality of the
2 current pattern is -- and this is a pattern that others
3 could easily uncover by doing the same exercise we did and
4 also changing the perception. And part of, again, the
5 perception is there is a series of unregulated,
6 unpermitted sites that CIWMB is probably getting a little
7 bit of blame for too. And those -- particularly with the
8 landfill and disposals to be quite significant.
9 --o0o--
10 MR. PASTOR: We think that doing better outreach
11 and improving community voice could help with both the
12 reality, getting you the information about what needs to
13 happen and the perceptions, that perceptions can be
14 managed. And Rachel will clean us up.
15 CHAIRPERSON MOULTON-PATTERSON: Thank you very
16 much.
17 MS. ROSNER: That was a lot of information, and
18 hopefully we'll have time for some questions. If not
19 today, certainly in the future because that's a lot of
20 data that was just presented to you.
21 But one of the purposes of our meeting here, or
22 presenting here today, was to remind you of the goals of
23 the project review for the whole year. I want to make
24 sure we cover the goals and talk a little about the work
25 plan as well.

1 Just to clarify to you our role at the CJTC is
2 that of facilitator and advisor. What we did today was
3 model that we will be working very closely with community
4 organizations and our community partners to bring their
5 voices and messages to you. That's how we see ourselves
6 as facilitators. We will work to synthesize the findings
7 and provide some final recommendations and reports for
8 you.
9 So the four main goals we hope to accomplish are
10 the first, coordinated cohesive presentations on
11 environmental priorities and concerns related to Board
12 decisions, programs, and activities for community-based
13 environmental organizations at 2002/2003 Board meeting.
14 This is our first meeting so we got started a little bit
15 later, but we hope to ideally finish those meetings by the
16 end of the year, if possible.
17 --o0o--
18 MS. ROSNER: The second goal is advice on methods
19 to increase effective communications between
20 community-based organizations and the Board. And that
21 will also be addressed in many of our presentations to
22 you.
23 The third goal is advice on methods of successful
24 marketing of the Board's programs and activities for
25 environmental justice achievement to identify

1 community-based environmental organizations including a
2 best practices study of environmental justice, outreach,
3 and community relations strategies.
4 --o0o--
5 MS. ROSNER: So what we will be doing is looking
6 across the country to see what other similar Boards have
7 done and has been successful and put that together for you
8 all so that you have some materials and some practices to
9 choose from for your own activities.
10 And then the fourth goal is our final report
11 which will summarize the environmental community-based
12 concerns and priorities on environmental justice and
13 recommendations to the Board about the community-based
14 perspective consideration and effective approaches to
15 address environmental justice.
16 So like I said, we will be synthesizing the
17 materials from the presentation, drawing lessons learned
18 from them, and reporting back to you in a written final
19 document.
20 CHAIRPERSON MOULTON-PATTERSON: Will we have a
21 copy of your presentation today?
22 MS. ROSNER: Yes. We can make that available to
23 you.
24 --o0o--
25 MS. ROSNER: So how we hope to accomplish this is

1 what we've already done, is completed our initial work
2 plan. That's in the fall. And we've already begun
3 identifying key organizations. And this is really kind of
4 like a snow-balling effect as we talk to different groups,
5 they refer us to different groups. And we'll be
6 connecting with all the different networks across the
7 state.
8 We will be asking them to participate in these
9 presentations and meetings, and we really consider that to
10 be an organizing strategy. It's a long way for people to
11 travel. There's logistics involved. We have to really
12 get people interested and feel that they can invest in
13 coming here and to present to you. And so we consider
14 that a large part of the work.
15 Of course, we'll be planning and preparing the
16 presentations and bringing materials and making all this
17 information available to you at the Board meetings. And
18 then as I said, we will be all along documenting and
19 compiling different research on best practices and
20 marketing strategies for the Board. And throughout this
21 we'll be meeting also with staff to be checking in and
22 making sure that everybody's needs are being met.
23 Some of the themes that we hope to be covering in
24 the meetings are around today is historical perspective on
25 environmental justice; board regulating and citing and

1 permitting from the community perspective. Obviously,
2 that's going to be a very central theme. Effective
3 culturally-competent public community outreach strategies.
4 Landfill issues; opportunities and challenges from
5 minority-owned businesses; and linking community
6 perspective to the Board, regional, and other states
7 processes. And these were -- in our work plan these were
8 proposed areas that would be addressed in the different
9 meetings and presentations. We will also be working very
10 closely with the staff and Board and with -- through our
11 discussions with different environmental groups to see
12 what they feel is most relevant and what they really want
13 to be putting forth to you all. So we really hope to
14 revise this to make it as most relevant and most peaceful
15 for you all.
16 --o0o--
17 MS. ROSNER: We were hoping to introduce to you
18 the community participation piece because we understand
19 that that is very, very important to all the work that you
20 do. We're going to cut that out today just because of
21 time. I think we've pretty much used up our time, and we
22 want to have some time for questions if you'd like to do
23 that as well.
24 But just to give you an idea of what we will be
25 working on in the next meetings coming up, we will be

1 looking at the role of community.

2 --o0o--

3 MR. PASTOR: And along the spectrum we have also

4 of a process -- a model that we're going to be working

5 with to think about community participation. This is sort

6 of an ideal to work towards, and it begins with awareness,

7 continues with effective communication through education

8 and listening, encourages and creates mechanisms for

9 community input, and has institutional support and

10 recognition to do this work, and ultimately will lead to

11 sustained community involvement.

12 --o0o--

13 MS. ROSNER: So really the desired outcome from

14 our perspective for quality and authentic community

15 participation is the that goals, the concerns, and the

16 needs are defined with the community. And if that

17 happens, you'll have community buy-in and trust, a higher

18 level of awareness on all levels and all sides. There

19 will be mechanisms in place and functioning for quality

20 community participation. And there will be ongoing

21 interest and participation.

22 So that's sort of our ultimate goal. And like I

23 said, we are just kind of touching on this today because

24 of time. But we will in the future be going very in depth

25 in our future meetings and presentations.

1 CHAIRPERSON MOULTON-PATTERSON: Thank you very
2 much. I'm sure we'll have questions, comments from the
3 Board members.
4 Mr. Paparian.
5 BOARD MEMBER PAPARIAN: Thank you, Madam chair.
6 I want to thank the presenters for a very
7 informative presentation. There was a lot to digest there
8 of what you developed in a short period of time.
9 From a big picture perspective, you know, this
10 Board and other state agencies continue to struggle with
11 the issue of environmental justice. I know that some --
12 from my conversations with other Board and departments in
13 here, CalEPA, everybody is kind of struggling with the
14 issue. I certainly hope that the contract with U.C. Santa
15 Cruz will help us deal effectively with the issue and
16 certainly be better informed.
17 I had a couple of questions I wanted to explore a
18 little bit. From the presentation -- and this may reflect
19 what we asked for in this contract. But from the
20 presentation it seemed like there was quite a focus on
21 public participation. Certainly something I've been very
22 interested in, very focused on. But improving public
23 participation is one aspect of environmental justice. If
24 we improve public participation, should we also be
25 considering, you know, how to factor environmental justice

1 concerns into the actual decision-making? Or will we be
2 hearing from some of the communities' groups about
3 concerns like that?
4 MR. PASTOR: I think we'll jump and answer these.
5 But definitely, Mr. Paparian, the community
6 groups have been thinking themselves for a long time about
7 this issue. Because one of the things that's interesting
8 is for a very long time the issue of whether or not there
9 was environmental inequity and exposures was not
10 necessarily an accepted fact. But I think what's happened
11 over the last five or six years with the research, with
12 the preliminary research on the sites that are within your
13 purview, it does seem to be an issue within California.
14 So having established that, we are moving to the
15 question of what do we do about that? How do we
16 prioritize or what are the policies? I think that the
17 initial contract called more for public participation
18 generally and those mechanisms than anything else.
19 We, like you, believed it was very important
20 first to establish a base about whether or not that was
21 possible so we wrote into our contract doing a little
22 research piece that we presented to you today. And we
23 will also be asking the public as they present to focus in
24 on the policies, strategies, and recommendations they
25 would make to you with regard to what policy should be and

1 not just simply site by site kinds of issues.
2 I hope that answers your question.
3 BOARD MEMBER PAPARIAN: I know that Title 6 has
4 been used -- not the context of solid waste facility, but
5 I know at least one hazardous waste facility, maybe two,
6 in California have been the subject of Title 6 complaints.
7 From your work with community groups, are we
8 seeing an increase in Title 6 type complaints? Should we
9 be concerned about that in the things that we do at the
10 Board?
11 MR. PASTOR: Can you say something about that,
12 Martha? And then I'll add something.
13 MS. SEGURA: Actually, from our experience we
14 were seeing diminished use of Title 6 complaints because
15 there have been some precedent that have been set at the
16 federal level, sort of disarming the tool for
17 environmental justice organizations. But also because we
18 want to get at the root cause of, you know, the problems
19 in terms of the fragmentation and how do we address those
20 from a real discussion and dialogue with agencies to sort
21 of unify the process to make it more holistic and less
22 fragmented.
23 So we really feel that the solution there is,
24 like I said earlier, participation and decision making at
25 all levels from different community members from different

1 parts of the state.

2 MR. PASTOR: As the concerns have growth about

3 whether or not the Supreme Court will continue its focus

4 on Title 6 as a mechanism which focuses on not necessarily

5 improving -- focusing on intentions but simply on outcomes

6 where they seem disproportionate, people have been moving

7 away from Title 6 as Martha Segura mentioned.

8 One thing I would say I've been writing about

9 this issue for years. I used to be a columnist in the

10 business pages of L.A. Times. I wrote a piece in 1996

11 called "Environmental Equity Makes Business Sense." There

12 are many reasons to do this environmental equity beyond

13 whether or not it's being mandated. It's simply if

14 there's a perception that things are fairer, it makes the

15 process move smoother for everyone who's concerned.

16 So there are good reasons to do it, and there are

17 mandates coming down from the state to consider

18 environmental justice.

19 BOARD MEMBER PAPARIAN: I should especially thank

20 Rubia Packard and Romel Pascual who have helped shepherd

21 this effort on behalf of the Board. So thank you. And

22 I'm certainly looking forward to the continuing the

23 presentations from my alma mater.

24 MR. PASTOR: I noticed you graduated in 1977.

25 MR. PAPARIAN: '77.

1 MR. PASTOR: I teach there now, but I was a
2 student between '73 and '78. We probably know some
3 embarrassing tales about each other from our days as
4 slugs, but we'll explore that later.
5 BOARD MEMBER PAPARIAN: We'll explore that later.
6 BOARD MEMBER WASHINGTON: I was barely born at
7 that time.
8 CHAIRPERSON MOULTON-PATTERSON: Thank you.
9 Mr. Medina.
10 BOARD MEMBER MEDINA: Thank you, Madam chair. I
11 was more than born.
12 I appreciate the presentation today. I also
13 thought we would be remiss if we did not mention the fact
14 that our Board has taken environmental justice very
15 seriously, and I think that's reflected by the
16 presentation today and the award of this contract. And
17 we've also written environmental justice into our
18 strategic plan, our mission statement. We've written
19 environmental justice considerations into our loans and
20 grants, our programs and permits. We have representation
21 on the Governor's Environmental Justice Committee. And I
22 think that the diversity that we have on this Board also
23 speaks very strongly to a commitment to environmental
24 justice.
25 We've funded and carried out a steady on minority

1 communities and the waste stream. We worked with tribal
2 governments and along the border. And in regard to 1066
3 extensions, an example is the City of El Monte which
4 requested an extension because they wanted to make a good
5 faith effort to reach out to the minority communities in
6 their city. And they cited that as one of the reasons why
7 they have not been able to reach their 50 percent
8 diversion of waste, and they were going to make a good
9 faith effort to reach out to those communities.
10 So I think that, again, this Board appreciates
11 your presentation and just want to let you know that
12 there's a deep commitment among the members here to
13 continue to address environmental justice concerns.
14 CHAIRPERSON MOULTON-PATTERSON: Thank you,
15 Mr. Medina. And I think you speak for all of us. Thank
16 you for all your work. At this time we'll take a
17 ten-minute break.
18 (Thereupon a recess was taken.)
19 CHAIRPERSON MOULTON-PATTERSON: Thank you.
20 Mr. Jones, any ex partes?
21 BOARD MEMBER JONES: John Cupps on facilities in
22 San Luis Obispo County.
23 CHAIRPERSON MOULTON-PATTERSON: Thank you.
24 Ms. Peace?
25 BOARD MEMBER PEACE: No. I don't have any.

1 CHAIRPERSON MOULTON-PATTERSON: Thank you. I
2 have none.
3 Mr. Medina.
4 BOARD MEMBER MEDINA: Just a brief chat with
5 Romel Pascual, Jr. from UC Santa Cruz.
6 CHAIRPERSON MOULTON-PATTERSON: Thank you.
7 Mr. Paparian.
8 BOARD MEMBER PAPARIAN: Yes. Steven Bentillo
9 regarding the Phase II C&D regs. Mark Murray, general
10 issues. And I also had a conversation with the three
11 presenters from UC Santa Cruz about their presentation.
12 CHAIRPERSON MOULTON-PATTERSON: Thank you.
13 Mr. Washington.
14 BOARD MEMBER WASHINGTON: Yeah. Only the same
15 ones as Mr. Paparian, the UC Santa Cruz folks about their
16 presentation.
17 CHAIRPERSON MOULTON-PATTERSON: Okay. Thank you.
18 That brings us to Item 16. And, Mr. Paparian, you've
19 already reported. You don't have anything new to say at
20 this point, do you?
21 Okay. We'll go right to Mr. Walker.
22 MR. WALKER: Thank you. Scott Walker, Permitting
23 and Enforcement Division.
24 CHAIRPERSON MOULTON-PATTERSON: We have a number
25 of speakers also.

1 MR. WALKER: Item 16 is revised full solid waste
2 facilities permit disposal facility for the Tajiguas
3 Sanitary Landfill, Santa Barbara County.
4 I'll run through just the staff presentation real
5 quick for you. I know you want to get through the
6 speakers.
7 This item passed the April 7th Permitting and
8 Enforcement Committee on a three-to-zero vote with one
9 additional Board member abstaining.
10 Staff has made all applicable findings in order
11 to recommend concurrence for the proposed permitted.
12 There's one main issue that's raised by parties in
13 opposition. And this has been significantly debated
14 between the experts from the applicant county and the
15 opposition. And we've made sure that the Board member
16 offices had copies of the correspondence.
17 The issue of seismic stability design standards,
18 specifically the maximum horizontal ground acceleration
19 standard -- this is basically the earthquake induced
20 ground motion that you use to design and make sure that
21 your environmental control systems are able to withstand
22 those.
23 Staff's analysis of this issue very briefly is as
24 follows. The Regional Water Quality Control Board is the
25 lead agency on slope stability aspects of landfills, and

1 they have the prescriptive design standards for ground
2 acceleration. After considerable deliberation on this
3 issue and other water quality issues, the Regional Board
4 adopted waste discharge requirements approving the
5 expansion of this landfill on March 21st.
6 The Regional Board has also hired an independent
7 third-party consultant to review slope stability aspects
8 of the facility. Further conversations with the Regional
9 Board staff have confirmed that the third-party consultant
10 has determined that the county's seismic design standards
11 are appropriate. The Regional Board and their consultant
12 will continue to review final plans and stability analysis
13 to ensure compliance as required in the waste discharge
14 requirement. As a final design comes into play in the
15 WDRs, they have additional reviews and approval required.
16 The LEA and the Board -- also the Regional Board
17 has indicated we will be notified in the unlikely event
18 there's any significant changes in the design plan as a
19 result of those reviews.
20 Therefore, in conclusion, staff recommends the
21 adoption of the resolution 2003-229 to concur with the
22 issuance of a revised solid waste facility permit for the
23 Tajiguas Sanitary Landfill, Santa Barbara County. Willy
24 Jenkins of the Permitting and Enforcement division is
25 available to provide a more detailed presentation of the

1 proposed permit and also answer questions.

2 And that concludes staff's presentation.

3 CHAIRPERSON MOULTON-PATTERSON: Thank you,

4 Mr. Walker.

5 And our first speaker we want to welcome

6 Supervisor Gail Marshall, County of Santa Barbara. Thank

7 you for being here.

8 SUPERVISOR MARSHALL: Thank you for having us

9 today. Good morning, Madam Chair, members of the Board.

10 As you know, I'm Gail Marshall. I am the Third District

11 Supervisor from Santa Barbara County.

12 As it turns out, my district encompasses the

13 Gaviota Coast. That's where the Tajiguas Landfill is.

14 Our Public Works Department has prepared a presentation

15 today that's going to speak to the technical issues. I'm

16 going to speak to more of the community-based outreach

17 issues.

18 As a member of the Board of Supervisors, I'm

19 currently the co-chair of what we call our

20 Multi-Jurisdictional Solid Waste Task Force. This is a

21 two-year old task force. It's county-wide in nature and

22 includes all of the cities and special districts in Santa

23 Barbara County. These are also obviously open meetings.

24 The Multi-Jurisdictional Solid Waste Task Force

25 is working on all aspects of the solid waste in Santa

1 Barbara, including reducing our reliance on landfilling by
2 increasing recycling for commercial businesses, green
3 waste and biosolid solutions, household hazardous waste
4 management, construction and demolition, material
5 recycling, and technological -- my tongue always gets
6 wrapped around my teeth on that one -- technological
7 solutions to replace landfilling. Some of these solutions
8 will be implemented obviously sooner than others.
9 The cooperation that we've received to date from
10 the cities in the special districts has been quite
11 remarkable. We are working collaboratively with a mind to
12 address our solid waste disposal needs locally in a
13 responsible and prudent manner.
14 At your subcommittee meeting two weeks ago a
15 member of our community suggested it would be perfectly
16 acceptable to take our trash out of county for disposal.
17 Respectfully, I want to be very clear, it is in no way the
18 preferred option for our Board of Supervisors. This Board
19 is unanimously in favor of local control in order to
20 control costs, now and in the future. My own comment on
21 the subject is that sending our waste elsewhere to
22 somebody else's backyard is completely unacceptable.
23 The expansion of the Tajiguas Landfill has been a
24 subject of significant citizen input over the last six
25 years. As a newly elected member of the Board of

1 Supervisors about six years ago, I participated in a
2 Community Advisory Committee that was designed to build
3 and direct public participation, public dialogue into our
4 analysis of our solid waste future.
5 As a matter of fact, Paul Relis, who's a former
6 member of your Board and lives in the City of Santa
7 Barbara, was a member of that group and was somewhat
8 responsible for my education and hope that technology can
9 be part of the puzzle called solid waste disposal in Santa
10 Barbara County.
11 By initiating community dialogue not only with
12 the Community Advisory Committee but the
13 Multi-Jurisdictional Solid Waste Committee, I feel we've
14 expanded our horizons in a positive way. We've had
15 opportunities to involve the interested public in
16 suggesting ways to give the community a comfort level
17 through, for instance, enhanced water testing and expanded
18 revegetation.
19 The Board of Supervisors directed our staff to
20 develop the project in the back canyon out of the Coastal
21 zone. We reduced the life of the project from 25 years of
22 air space to 15. And we initiated the
23 Multi-Jurisdictional Task Force with the goal of
24 developing an alternative that would minimize our need for
25 landfilling in the future.

1 Currently Santa Barbara County has real diversion
2 of 60 percent of our material out of the waste stream, and
3 we are looking to continue to expand that number through a
4 variety of programs that I've already mentioned. Our
5 recycling efforts in Santa Barbara county were ongoing
6 long before AB 9649. I think this points to the
7 commitment not only to the elected officials in our
8 community but our community members.
9 I'm confident we've established a solid track
10 record through our active listening to the community and
11 participation. We have encouraged every step of the way
12 community participation. Our commitment to the
13 environment has placed us at the leading edge of the solid
14 waste curve, and this project is part of a full system
15 that we have in place to responsibly address solid waste
16 in our county.
17 The Santa Barbara County Board of Supervisors has
18 a very strong environmental track record overall. Several
19 of our members including myself have strong environmental
20 backgrounds. Our Board recently passed an ordinance
21 protecting our native oak woodlands and Savannas. We
22 accomplished this through collaboration and consensus
23 building.
24 Likewise, several years ago we established
25 Project Clean Water well in advance of the requirement of

1 the MPDES permitting process. Again, we did this through
2 building consensus with stakeholder involved. We are
3 invested in our community and with our community.
4 (Thereupon an overhead presentation was
5 presented as follows.)
6 SUPERVISOR MARSHALL: So I'm here today to ask
7 you for a revised solid waste facilities permit for our
8 proposed expansion of the Tajiguas Landfill. As you can
9 see, we have made continual progress in diversion.
10 --o0o--
11 SUPERVISOR MARSHALL: Our diversion rates are
12 based on 2000 numbers.
13 --o0o--
14 SUPERVISOR MARSHALL: We have accomplished those
15 through massive community participation.
16 --o0o--
17 SUPERVISOR MARSHALL: We have -- that's okay --
18 we have an electronic waste collection day.
19 --o0o--
20 SUPERVISOR MARSHALL: We have community education
21 programs.
22 --o0o--
23 SUPERVISOR MARSHALL: We have a coastal cleanup.
24 We have a hazardous waste collection program.
25 --o0o--

1 SUPERVISOR MARSHALL: And we have lots of other
2 programs, Project Clean Water, as I mentioned. We give
3 green awards every year, and we have within our county
4 family something called the Green Team.
5 --o0o--
6 SUPERVISOR MARSHALL: Why do we operate these
7 programs? Because we do reflect the high standards and
8 values reflected by our Board and the community it serves.
9 And now I'll turn this present presentation over
10 to the more technical side with Phil Demery who's in
11 charge of our public works division.
12 CHAIRPERSON MOULTON-PATTERSON: Thank you,
13 Supervisor Marshal.
14 MR. DEMERY: Thank you, Madam Chair, members of
15 your Board.
16 --o0o--
17 MR. DEMERY: The map before you is a map of Santa
18 Barbara County, and the inset shows Tajiguas Landfill.
19 This is regional landfill that serves about 250,000 people
20 within our county. It's located about 26 miles west of
21 the City of Santa Barbara.
22 --o0o--
23 MR. DEMERY: Next picture is -- orientates you.
24 The landfill is associated within a small watershed
25 referred to as Canada de la Pila. A small watershed as

compared to adjacent watersheds that are large enough we have perennial creeks that are supported.

The landfill site was selected because of its remote location, again, 26 miles away and very favorable geology.

--o0o--

MR. DEMERY: The pink area shows the existing footprint of the landfill. It's about 78 acres in terms of air space area.

--o0o--

MR. DEMERY: The expansion area is showing by the red, and it's additional 40 acres. In terms of capacity, it adds another 8.2 million cubic yard of material. And as Supervisor Marshal mentioned, that provides us approximately 15 more years of landfill capacity at our existing diversion rate of 60 percent projected as population increases.

--o0o--

MR. DEMERY: Just real briefly in term public participation in the process and outreach efforts. We've had well over ten scoping hearings throughout our county, including additional hearings in different parts of our community.

--o0o--

MR. DEMERY: We've also provided presentations to

1 environmental organizations, community groups, city
2 councils, newsletters to hundred of stakeholders with
3 informational videos. And of course we publicized all the
4 hearings and videos as well.
5 --o0o--
6 MR. DEMERY: In regard to the outreach effort,
7 obviously we've benefited from the informational campaign
8 receiving letters of support from a broad sector of the
9 community including each of the cities Chambers of
10 Commerce, Multi-Jurisdictional Task Groups, Solid Waste
11 Task Force, and others as well.
12 --o0o--
13 MR. DEMERY: The prepared environmental impact
14 reported by our consultant looked at a number of different
15 environmental impact areas concentrating, of course, on
16 water quality issues and seismic analysis.
17 It was determined by the consultant that there
18 were no water quality impacts and that the landfill
19 seismicly safe. Staff of your Board as well as staff from
20 Regional Water Quality Control Board and the LEA all
21 agreed with these findings. As such, the Board of
22 Supervisors approved the expansion project, certified the
23 EIR. This EIR was not challenged. And as such, have
24 presumed that this document is valid.
25 There have been two areas the commentors have

1 alleged both at the Regional Water Quality Control Board
2 hearing and your P&E hearing before your Board regarding
3 landfill stability primarily around groundwater leachate
4 management and seismic analysis.
5 --o0o--
6 MR. DEMERY: I just wanted to show you a cross
7 section down below. This is an accurate depiction of one
8 foot horizontal scale equals one foot vertical scale. I
9 think one thing to be mindful of, if the scales were
10 different, if you had a greater horizontal scale, say, 10
11 feet horizontal to 1 foot vertical or 50 feet horizontal
12 to 1 foot vertical, we can make this same data -- the
13 cross section becomes more steep and more steep until it
14 looks like the landfill is about ready the fall into the
15 ocean.
16 This is an accurate depiction one-to-one. What
17 immediately pops out is the fact that the area QLF is the
18 landfill. It's a good distance away from the ocean. It's
19 almost a half mile away from the ocean. You see it's
20 relatively flat if you graph this cross section
21 appropriately on a scale that matches.
22 --o0o--
23 MR. DEMERY: The other thing that I mentioned was
24 the commentors at these hearings had mentioned this
25 landfill was under water. We know that's not true. The

1 reason we know that's not true is the fact that when we
2 have horizontal wells that go in from the base of our
3 landfill, a couple hundred feet into the landfill, we've
4 never encountered any water.
5 Furthermore, you may remember back in 1999 we
6 received a bench fill permit from you to give us
7 additional air space as we were working through this
8 process of expansion. The idea of bench filling was such
9 that you strip off existing face. You're able to steepen
10 the face up, and you can fill in the wedge in between the
11 two slopes. Before we did that, we put in three
12 dewatering wells. These three dewatering wells we didn't
13 encounter any water when we drilled the wells. We
14 certainly didn't need to dewater as part of the excavation
15 because we encountered no water. We stripped off the
16 earth. And when we stripped off the earth exposing the
17 original trash, again, no water. We didn't have any
18 problems at all. If this landfill were under water, we
19 would have significant problems when that happened. So
20 again, no water that we encountered at the base.
21 The other issue that's been raised is that of
22 slope stability and seismic analysis. It's mentioned
23 during previous hearings we have eight years of slope
24 stability evaluations producing seven different evaluation
25 reports with different consultants. In utilizing these

1 reports, they've been reviewed by staff of LEA, your Waste
2 Board, and also staff of Regional Water Quality Control
3 Board, and everyone's always reached the same conclusion
4 that this existing landfill as well as the expanded area
5 is safe and stable.
6 --o0o--
7 MR. DEMERY: In our Regional Water Quality
8 Control Board hearing on the WDR, staff has supported our
9 seismic study results. We have current independent
10 review, as Scott has mentioned. This is standard
11 practice. It's not unusual because of our landfill. They
12 do it on all revised WDRs. And as mentioned, it appears
13 at this point in time that this independent reviewer has
14 landed on the same seismic event that we have been using
15 and other consultants have been using over the last eight
16 years. And as such, there's no justification to look at
17 seismic events larger -- which had been alleged by some of
18 the commenters.
19 --o0o--
20 MR. DEMERY: We've also independently looked at
21 landfills that are located neared the epicenters of past
22 earthquakes. We looked at North Ridge, Loma Prieta,
23 Whittier. The magnitudes vary from 6 to 6.9. What we've
24 found is there's been no real reported damage at any of
25 the landfills. And that makes sense because seismic

1 damage is on rigid structures. Landfills are not rigid.
2 They're very flexible. As such, they perform kind of like
3 jello in a bowl. You shake it, and it's going to stay
4 there. And so we would not expect from an engineering
5 geologic perspective that you're going to run into many
6 problems with the landfill in seismic events.
7 In 1997 your Board held a slope stability
8 conference establishing a protocol for dealing with
9 seismic events. I'm here to tell you that we follow those
10 procedures, both in our bench fill and also the expansion
11 area. And our current design for the expansion meets and
12 exceeds those state standards.
13 --o0o--
14 MR. DEMERY: But let's pretend for a moment you
15 throw out eight years of evaluation reports with all those
16 independent consultants and throw out the fact that your
17 staff has reviewed the seismic analysis and throw out the
18 fact that staff of Regional Water Quality Control Board
19 has reviewed that analysis. Throw out the fact that
20 independent reviewer hired by Regional Water Quality
21 Control Board agrees with our analysis. We went through
22 and we looked at a broad spectrum of seismic events that
23 even exceeds what the commentors have asked us to look at.
24 In fact, we ran the numbers all the way up to a
25 magnitude 7.1 earthquake seven miles off our coast. And

1 we had displacement less than three inches on the liner.
2 And again, this is -- our landfill is a half a mile from
3 the ocean. So the fact is we're very comfortable this
4 landfill is stable.
5 --o0o--
6 MR. DEMERY: I just wanted to just briefly go
7 over the fact that other people have looked at this
8 landfill from operational perspective.
9 The Grand Jury looked at this in 1999/2000, and
10 they published in their report they felt we were doing an
11 excellent job keeping the landfill environmentally safe.
12 And it was concluded our landfill was neither visually or
13 environmental polluting.
14 --o0o--
15 MR. DEMERY: We also received a Solid Waste
16 Association of North America award for landfill management
17 excellence. We were indeed the second best landfill
18 operator on the continent. Something we're very proud of.
19 --o0o--
20 MR. DEMERY: Staff from Regional Water Control
21 Board as part of their WDR permit again stress that they
22 didn't feel water quality was threatened. We have
23 appropriate water quality monitoring measures in place.
24 We also agreed at the hearing we're going to do some
25 things to improve our leachate management system with our

1 staff. They also felt that the slopes are safe and
2 seismic analysis will continue into the future. It just
3 doesn't stop when we get all our necessary permits.
4 And we have a falconry program I don't know if
5 you've heard about. We've been able to very effectively
6 deal with seagulls in our landfill. Being a landfill near
7 the ocean, we do have seagulls. We do have an active
8 falcon program. We don't have seagulls in our landfill
9 anymore. It's been very good. It's helped the adjacent
10 ocean water quality off site. The fact of the matter is
11 we received unanimous support from Regional Water Quality
12 Control Board as well as our own local Board of
13 Supervisors.
14 And with that, I'd like to turn this over to
15 Whitman Manley as counsel we've hired from Remy, Thomas,
16 Moose & Manely. He's a partner. And I'd also like to
17 mention before I depart the podium, we're fully prepared
18 to talk about seismic events and ground acceleration. We
19 can talk about Gs and other letters of the alphabet if you
20 want.
21 CHAIRPERSON MOULTON-PATTERSON: Thank you very
22 much.
23 And we have a number of speakers remaining.
24 Whitman Manley, Remy, Thomas, Moose and Manley. Good
25 morning.

1 MR. MANLEY: Good morning, Madam Chair, members
2 of the Board. My name is Whit Manley, Remy, Thomas, Moose
3 and Manley. And I have served as environmental counsel.
4 And I'd like to offer a couple of comments on the status
5 of the CEQA process for the project.
6 On August 13th, 2002, a unanimous Board of
7 Supervisors for the county certified the environmental
8 impact report for the Tajiguas Landfill expansion and
9 approved the project. That event, the certification of
10 the EIR culminated -- or was the culmination, I should
11 say, of a multi-year process that generated a very big,
12 thick, complex and comprehensive environmental impact
13 report. That environmental impact report contained a very
14 detailed discussion clearly written but technically
15 complex of necessity of water quality issues, groundwater,
16 surface water quality, and slope stability. There was an
17 extensive analysis of slope stability issues in that
18 document. In fact, as part of the EIR process, your Waste
19 Board staff commented on the slope stability analysis and
20 found and advised the county that the slope stability
21 analysis complied with Title 27.
22 We received a lot of comments on the EIR -- on
23 the draft EIR, including comments asking questions about
24 the slope stability analysis. The final EIR contained
25 detailed response to those comments. And then ultimately

1 that was the record that was presented to the Board of
2 Supervisors in August of 2002, and they certified it.
3 There was no lawsuit filed challenging the
4 environmental impact report. That's an important thing
5 under California law. Under the Public Resources Code as
6 interpreted by the California Supreme Court, an
7 environmental impact report is "conclusively presumably
8 valid" for purpose of CEQA, so held under the Laurel
9 Heights Improvement Association case. And so that
10 analysis is in tact. And I think it's important to
11 recognize that in particular because there was an
12 extensive discussion of slope stability.
13 All the analysis that's gone on since then, the
14 independent third-party review by the Regional Board and
15 so forth, they're all consistent with the analysis that
16 appeared way back in the EIR.
17 So with that, we'd be happy to answer any
18 questions you may have. We appreciate the support of the
19 Committee. We appreciate staff's recommendation, and we
20 ask for your support. Thank you very much.
21 CHAIRPERSON MOULTON-PATTERSON: Thank you. We
22 might have some questions in a moment.
23 We have three more speakers. Lisa Sloan, Santa
24 Barbara County LEA, followed by Hillary Hauser, Heal the
25 Ocean.

1 MS. SLOAN: Good morning, Madam Chair and members
2 of the Board. I'm Lisa Sloan from Santa Barbara County
3 LEA. The LEA has been involved with the process of the
4 Tajiguas expansion permit since the EIR scoping meetings
5 began back in April 1998. The LEA attended many of the
6 numerous public hearings in regard to the project and
7 observed a very thorough public outreach program.
8 The LEA found the permit Application package to
9 meet the requirements of the California Code of
10 Regulations. The LEA proposed a permit consistent with
11 the EIR that was certified on August 13th, 2002. A notice
12 of availability of the proposed permit was mailed to
13 interested parties and stakeholders.
14 The LEA has found the design and operation of the
15 landfill to be consistent with state's standard. This
16 finding is supported by the results of monthly inspections
17 over the past five years at the facility. Violations
18 occurred very rarely and are promptly corrected. There
19 have been no complaints filed with the LEA since 1999.
20 The LEA has found the applicant to be very proactive in
21 maintaining a good record of compliance and to be
22 responsive to suggestions for improvements.
23 The LEA received a letter from the Regional Water
24 Quality Control Board on March 28th, 2003. In the letter
25 the Water Board stated that they find no outstanding

1 violations or enforcement actions concerning the Tajiguas
2 Landfill.
3 This concludes the LEA comments. Thank you.
4 CHAIRPERSON MOULTON-PATTERSON: Thank you very
5 much.
6 We have Hillary Hauser, Heal the Ocean. And the
7 last speaker will be Vicki Clark, Law Office of Victoria
8 Clark, Heal the Ocean.
9 Good morning.
10 MS. HAUSER: Good morning, Madam Chair, members
11 of the Board. I'm Hillary Hauser, the Executive Director
12 of Heal the Ocean in Santa Barbara.
13 Brief comment of where we've come from. Our
14 group, rather than ranting and raving, we hire experts.
15 We've been well supported by the community of Santa
16 Barbara, and we have about -- over 3,000 members. We
17 started about five years ago when I wrote a number
18 editorials. I used to be a newspaper journalist. I've
19 written about the ocean for 30 years. And I wrote with
20 the condition of the beaches in Santa Barbara in an
21 editorial that ran on a Sunday. And that Sunday night I
22 had a call from our U.S. Representative of Congress and
23 our First District Supervisor in Santa Barbara saying,
24 "What do we do about this?" The public was outraged.
25 Santa Barbara has a real problem with closed

1 beaches, bacteria overload. We are the first group in
2 this country -- I went to a Washington caucus -- first
3 group in this country to use DNA in the environment. We
4 cooperated with county agency and environmental health to
5 do this and determine that there was human pollution in a
6 coastal area. We've worked with the county to remove --
7 to get the process started by which septic systems are
8 being removed from 175 homes along seven miles of beach.
9 So we hire consultants. We hire the help we need to get
10 the studies done. Engineering study, we do virus testing
11 in the ocean. We have viruses in the ocean in Santa
12 Barbara.
13 The Tajiguas Landfill came to us as one of our
14 issues because Heal the Bay in Santa Monica's beach report
15 card reported that the beach in front of the landfill was
16 one of the filthiest beaches in Southern California. So
17 we went up there. We hired independent labs. We've done
18 tests in that area. And so that -- we got involved in the
19 Tajiguas process. We have been part of the process that
20 Supervisor Marshall and Phil Demery just talked about.
21 No, we're not in favor of the moving trash out of
22 the county. We've worked at many, many meetings with
23 county staff and Public Works to talk about siting a
24 landfill in the county elsewhere. And these talks
25 basically went nowhere. And so we're faced with the

1 expansion of Tajiguas.

2 We'd like to point out that for a 15-year

3 expansion, the account of money that's going to go into

4 this for 15 years, we have trouble with that idea. We

5 think that Santa Barbara County will -- with this

6 expansion being approved, this is probably what we're

7 going to get for the rest of our human life.

8 Previous speakers -- the environmental justice

9 presentation, other public speaking here has really been

10 focused on public participation. I would like to tell

11 this Board that our experience in the public participation

12 both at the county level and with our regulatory agencies

13 have been really less than wonderful. We have been

14 blessed with funds from a well-to-do public in Santa

15 Barbara that has enabled us to hire experts.

16 And when we have presented this in the public

17 process, we've been smashed, bashed in every single way.

18 The geologists we hired that did explain and bring out

19 from this big huge EIR document to point out that there is

20 groundwater in the trash at Tajiguas has been turned in by

21 the county to the State Geology Board for some

22 inaccuracies.

23 But at the Regional Board hearing that were just

24 referred to a moment ago, nobody said that the landfill

25 was under water. At the Regional Board hearing it was

1 acknowledged by the county that produced its own
2 groundwater map and the Regional Board that there is
3 groundwater problems at Tajiguas. And the Regional Board
4 is right now -- the consideration of monitoring wells to
5 see where the groundwater's going.
6 So then we hired Cotton, Shires which is a
7 reputable seismic firm in Los Altos, and we came to the
8 P&E Committee meeting here and with the PowerPoint
9 presentation. And he was explaining seismic issues. Not
10 one question got asked of him by the Committee here, which
11 did not make us feel very good. It costs us a lot of
12 money to get him here. He presented issues that really
13 needed to be considered.
14 We feel that the Tajiguas Landfill -- we know
15 you're going to grant this permit. We almost didn't come
16 because it's easy to get discouraged with this process.
17 And now we're hearing that, well, you wanted to hear from
18 us about this. Well, so now the question was asked of
19 Mr. Shires of Cotton, Shires. We brought this PowerPoint
20 again to show you briefly. Vicki Clark, our lawyer, will
21 refer to that.
22 But basically in terms of the expansion, there is
23 a plan to put 120 feet of more fill on top of the bench
24 that Mr. Demery in this map showed you. We have real
25 issues with the seismic stability. Our expert disagreed

1 with this conclusion of the county geologists and the
2 county -- and the Regional Board geologist -- which we
3 haven't been that report yet Because we just got hit with
4 this on the way in here today. And so that doesn't give
5 us a chance and our experts a chance to review. We feel
6 blind-sided on many different levels and just smeared
7 along with this.
8 But our expert says -- and Vicki Clark will
9 address this -- that you cannot have a free for all when
10 it comes to analysis methodology. You have to operate, A,
11 hire a consultant that -- I'm going to do probable
12 analysis and use a return -- and so forth. He said under
13 this scenario that's being operated on right now, two
14 landfills in the same seismic study could be designed to
15 substantially different standards. This isn't fair to the
16 operator, nor the public. We have to have the guideline
17 which is why we have codes. We must ask then whose
18 responsibility is it to enforce these codes? If it isn't
19 the State Board, which means your Board, who do we turn
20 to?
21 So although the regional -- the reason the
22 Regional Quality Control Board ordered the third-party
23 review was because of what we presented to the Regional
24 Board. It wasn't done out of a favor.
25 The Regional Board is considering monitoring

1 wells, even though they've approved the permit. The -- so
2 I'm going to wrap this up. The seagulls in Pila Creek and
3 falconry program -- Heal the Ocean has continued to go up
4 there and measure the bacteria levels in peel I can creek
5 which empties into the ocean. It goes through the
6 landfill, empties into the ocean. They're consistently
7 hugely high with bacteria.
8 We're working with Regional Board staff right now
9 to come up with some monitoring program to see what is
10 going on there because it's always high despite the
11 falcons The Pila Creek which is right in the landfill --
12 right -- empties onto this beach. It's still going on.
13 What we really -- we've put into the public
14 process. Our input has been great through the county
15 level, through Public Works, through this Board. And
16 basically we -- I hate to tell you, we haven't got a lot
17 of faith in being heard. And we have -- our experts are
18 being blasted. We are being ignored, and that -- still we
19 will ask this Board for this. All we ask for is that
20 seismic stability issue -- which is a big issue because
21 there was damage in the North Ridge earthquake. There was
22 liners that broke. When we got groundwater problems in
23 Tajiguas anyway, this issue has to be really figured out
24 well.
25 We would like to ask this Board that the seismic

1 stability issues be considered carefully before an
2 expansion of 120 feet is allowed at Tajiguas. For better
3 or worse, I offer this. I would like to have faith in our
4 regulatory agencies. I don't blame the County for wanting
5 to get what they want to get. But our regulatory agencies
6 are our land Boards that oversee this.
7 CHAIRPERSON MOULTON-PATTERSON: Thank you,
8 Ms. Hauser.
9 Vicki Clark.
10 Mr. Washington, did you have a question at this
11 point or did you want to wait?
12 BOARD MEMBER WASHINGTON: I'll wait.
13 CHAIRPERSON MOULTON-PATTERSON: Okay. Thank you.
14 MS. CLARK: Good morning, Madam Chair, members of
15 the Board. I'm Vicki Clark. I'm an attorney in Santa
16 Barbara. I represent the Heal the Ocean.
17 I would just echo a lot of the things that
18 Ms. Hauser just said to you about how frustrating this
19 process has been for us. But what I wanted to point out
20 was you've heard the legal analysis about the CEQA
21 document, and this is not a challenge to us on the CEQA
22 document. We're in a permitting process here. There's
23 information that has become available to us, and we're
24 putting it into the record here. That's all we're trying
25 to do.

1 It was before the Permitting and Enforcement
2 Committee. Unfortunately, I didn't get a chance to bring
3 more PowerPoint presentation copies, but hopefully you can
4 get those afterwards or get those from the Permitting and
5 Enforcement Committee. So basically at the Permitting and
6 Enforcement Committee hearing, our seismic expert got up
7 and did a very good job of, I think, graphically
8 explaining what the historical situation has been for
9 earthquake in the area.
10 (Thereupon an overhead presentation was
11 presented as follows.)
12 MS. CLARK: So they did this map, and there's the
13 landfill. The definition in -- or actually the
14 requirement in Title 27 is that you look at the maximum
15 probable earthquake. And the definition of maximum
16 probable earthquake is -- basically says any of the
17 numbers that they come up with is superceded by any more
18 powerful seismic event that has occurred within a historic
19 time within 62 mile radius of the facility.
20 --o0o--
21 MS. CLARK: So here's the 62 mile radius. In
22 1812 there was a 7.0 to 7.2; 1925, a 6.3; and in 1927, a
23 7.0 to 7.5 earthquake on what is considered the north
24 channel slope fault -- slope channel fault.
25 So they did a deterministic analysis. The number

1 that Santa Barbara County used there was a magnitude of
2 5.5 earthquake on San Ynez which is four miles from the
3 landfill, which comes up with your maximum horizontal
4 acceleration of .24 Gs.
5 Under Title 27, you should be using a 7.0 to 7.2
6 on the north channel slope fault which is seven miles from
7 the Tajiguas Landfill. And that number comes out to be
8 .65 to .69 G.
9 Under a probabilistic analysis, which is the
10 uniform building code, you would get the same kind of
11 number, .63 G. Under the guidelines for evaluating and
12 mitigating seismic hazards in California, which is, I
13 believe, the mining guidelines, you come up with .63.
14 Under federal regulations if you about did
15 probabilistic analysis, you would come up with 1.07. From
16 the documents we received today, that analysis has, I
17 guess, been done by the county. Again, we got it today so
18 we have no way of having our experts determine whether or
19 not they get the same kind of number.
20 And then the Hushman Associates which was a
21 county consultant that did do probabilistic analysis came
22 up with .21. So the numbers that our experts are coming
23 up with are three to five times bigger.
24 --o0o--
25 MS. CLARK: This is basically an overlay which

1 shows these -- this is done under their -- the most recent
2 computer-generated analysis that you can do for these
3 kinds of things. So that's basically the analysis that
4 was performed.
5 And as Hillary said, basically what we're
6 concerned about here is that you're going to be piling
7 another 120 feet of trash on top of 350 feet of trash
8 that's already there. There's water in the trash which
9 would contribute to instability issues. And we're asking
10 that we get this analysis done correctly with the historic
11 seismic event and determine whether or not there really
12 are any issues here. And that is basically what we're
13 asking for.
14 Thank you.
15 CHAIRPERSON MOULTON-PATTERSON: Thank you,
16 Ms. Clark.
17 Mr. Washington had a comment, and then I have a
18 comment. And I see Mr. Paparian's light.
19 BOARD MEMBER WASHINGTON: Thank you, Madam Chair.
20 To staff I want to ask the question about this
21 whole earthquake. At the P&E Committee they did have a
22 person come up and talk about the earthquake, the seismic
23 and all that stuff. Do we have anyone that is not partial
24 toward this whole -- did we bring anything to do an all
25 out -- I guess I'm confused as to there's two sides to

1 this story here. One side they're saying there won't be a
2 7.5 earthquake. They had a 5.5 earthquake. End of
3 story. We can withstand an earthquake. They had someone
4 come in and say, no, that's not true. They showed us a
5 7.2 back in 19- so and so. Do we have somebody that can
6 say to this Board, "Here's the real deal, and we don't
7 take sides with anybody"?
8 MR. WALKER: Well, primarily the third-party
9 consultant from the Regional Board who -- we've talked to
10 the Regional Board about they've reaffirmed the county's
11 analysis.
12 And besides that, it's our technical staff and
13 myself. We've looked at the analysis, and it's
14 appropriate, I think, that -- the county also I think was
15 encouraged to look at some of these higher accelerations.
16 And we looked at those too and determined even if design
17 was done to those higher shaking levels, that analysis
18 still showed they'd be stable.
19 So combination of third party and the internal
20 review with the Water Board and our staff basically
21 our check on each side and the analysis.
22 BOARD MEMBER WASHINGTON: So the slopes can
23 remain stable until the closure of Tajiguas to 2020?
24 MR. WALKER: The slopes have to be stable both
25 during the operation until closure and during the

1 post-closure maintenance period which will go on at a
2 minimum 30 years and probably be much longer than that.
3 BOARD MEMBER WASHINGTON: Thank you.
4 CHAIRPERSON MOULTON-PATTERSON: Thank you,
5 Mr. Washington.
6 Mr. Paparian. Go ahead.
7 BOARD MEMBER PAPARIAN: Thank you, Madam Chair.
8 A couple things. I just wanted to follow up on what Mr.
9 Washington was talking about. Scott, can you
10 differentiate our jurisdiction on the seismic issues
11 versus the Water Board's jurisdiction on the seismic
12 issues?
13 MR. WALKER: Yes. Let me start off by saying
14 that with 1220 in late '97 we used to have a lot more
15 standards and more prescriptive standards in regards to
16 slope stable. Because of 1220, it got shifted over to the
17 Water Board. We still retain a standard that's in our
18 closure -- post-closure standards which is 21145, which
19 requires the operator to ensure slope stability integrity
20 of final slopes to closure standards under both static and
21 dynamic conditions. But it points to the analysis to be
22 conducted -- are pointed to the State Water Resources
23 Control Board sections which they govern and that has the
24 prescriptive requirements.
25 So in cases where, say, the Regional Board may

1 not have looked at something and, you know, we can't rely
2 on their analysis of the prescriptive standard, then we
3 actually would go on the standard and get into it in a lot
4 more detail. And, actually, we can use their prescriptive
5 requirements if we have to.
6 But in this particular case, you know, and in
7 other cases normally we rely on the Regional Board to
8 really get in front of the issue and really take it on and
9 deal with it. By the time it gets to us, then we're
10 reasonably comfortable. We don't have to do a lot more
11 work or hire third-party consultants. So in this
12 particular case that was done.
13 BOARD MEMBER PAPARIAN: We heard a little bit
14 about this in the Committee. But in terms of your
15 understanding about where the Water Board is going with
16 further analysis.
17 MR. WALKER: Yes. The Water Board -- they have
18 the conceptual design which has been approved and adopted
19 for the expansion. In the waste discharge requirement,
20 which is typical, what happens is that as the landfill is
21 developed, it's developed in phases. And they have to
22 submit to the Regional Board for approval for final plans
23 and specifications. This is the real details of the
24 lining systems and the slopes, et cetera, and with that is
25 required additional slope stability analysis.

1 So under the WDRs, there will be many more, you
2 know, iterations of further details and design and the
3 stability analysis that the Water Board will have to
4 review and approve. And then they will also be using
5 their third-party consultant and keeping in touch with us
6 if there's an area that's not expected. That's kind of
7 how the Water Board would work on this project and this
8 expansion as it goes into the design phase and gets more
9 detail.
10 BOARD MEMBER PAPARIAN: If their review shows an
11 issue -- the county presented their information this
12 morning. But if the Water Board review determines
13 something else, that there's an issue that would require
14 some changes in the design of the facility or, you know,
15 whatever, would we see that again?
16 MR. WALKER: Yeah. We've talked to Regional
17 Board, and they have indicated they will -- you know, we
18 have requested the county to keep us informed. So we
19 would see that. And also they all understand that, you
20 know, we have the solid waste facilities permit's
21 concurred with, that clearly if -- the possibility there's
22 some significant change in their design, it possibly could
23 trigger a revision of the permit, and we may need to come
24 back and look at the permit again. In other words, if the
25 analysis comes in and we have to change the slope

1 significantly and change the design because the original
2 conceptual design is not adequate.
3 BOARD MEMBER PAPARIAN: And the issue of water
4 coming in contact with the trash, is that our jurisdiction
5 at all or is that the Water Board?
6 MR. WALKER: We have a leachate standard
7 primarily regarding public contract. But, again, in
8 leachate control standard, we look in Title 27 a lot more
9 the prescriptive design requirements, similar to slope
10 stability in the Walter Board area. We have a leachate
11 control standard that we work with LEA. If there's a pop
12 out of leachate, potential contact, the LEA would cite
13 them.
14 BOARD MEMBER PAPARIAN: I wanted to -- Ms. Clark,
15 I wanted to just ask you. I know your letter pointed a
16 little bit to where our jurisdiction may lie. What I'm
17 hearing from my questioning of Scott, from my knowledge of
18 our jurisdiction, I don't see where we have an issue where
19 the law allows us to question a permit. I'm wondering if
20 you're viewing that differently. The law is very, you
21 know -- really narrows our ability to object to a permit.
22 MS. CLARK: Well, I guess where we are at this
23 point is that, you know, where is it that we do turn? And
24 what agency is it that is going to deal with this?
25 Because we aren't really getting this issue heard

1 anywhere. And I do think that is's within your purview to
2 have your staff take a look at this third-party review.
3 We haven't done it yet because we haven't seen it. And
4 we'll be doing that. And we would probably be going back
5 to the Regional Board and/or your Board to bring up any
6 issues that we see.
7 But it seems that if that third-party reviewer is
8 saying everything is okay, they are not looking at the
9 historical event. And I think it is within the purview of
10 the regulatory agencies to say you need to do this
11 analysis.
12 BOARD MEMBER PAPARIAN: What I'm hearing is that
13 it's really more in the purview of the Regional Water
14 Board. I'm not -- where I'm struggling is I don't see
15 our -- I see them as having the lead on the seismic issue
16 in terms of, you know, taking a look at the information
17 that's being presented. That's what I'm -- and in terms
18 of the water and the trash, it seems like that's their
19 jurisdiction as well.
20 So it seems like the agency where your concerns
21 ought to be heard and dealt with is the Regional Water
22 Board. I'm not trying to pass the buck. I mean --
23 MS. CLARK: Well, that's kind of the feeling that
24 we've got. We're not sure what you guys do if we can't
25 come to you with technical issues uses as well as the

1 Regional Board. So I guess you have to defer to probably
2 what your counsel's going to tell you on that. I'm not
3 your counsel --
4 CHAIRPERSON MOULTON-PATTERSON: Thank you,
5 Mr. Paparian. Were you finished?
6 BOARD MEMBER PAPARIAN: Just at the end I would
7 like to ask our counsel if she's heard anything. But
8 maybe after --
9 CHAIRPERSON MOULTON-PATTERSON: Okay. Go ahead.
10 CHIEF COUNSEL TOBIAS: I'd like to have until
11 after lunch to address that. I didn't see the letters
12 until the hearing this morning. So I need to look at them
13 over the lunch break.
14 CHAIRPERSON MOULTON-PATTERSON: Okay. That's
15 fine.
16 I had a brief comment that I wanted to make, and
17 then we'll come back after lunch. But I do want to let
18 you know we have a time certain with Attorney General's
19 Office at 1:30. So it could be well after that that we
20 would finish this up, unless you would do it very quickly.
21 I just wanted to -- Ms. Hauser, you said you
22 didn't have much faith in this Board. And I just wanted
23 to let you know that my five years on the California
24 Coastal Commission I worked very closely with Heal the
25 Bay, and I have a great deal respect for the organization.

1 I want to let you know I had a 95 percent
2 environmentally correct voting record as rated by the
3 League of Coastal Protection, and I'm very proud of that.
4 But I also know that the Santa Barbara Board of
5 Supervisors has a very good environmental record. And we
6 have a job to do here. And we have to be concerned with
7 waste and the disposal of it. And I think it's admirable
8 that they don't want to ship this out to a
9 less-economically advantaged community. I think that's
10 very admirable. And I just wanted to say that. And I
11 hate to have you have to come back after lunch, but if our
12 counsel needs that time, we'll have to do that.
13 So why don't we come back from lunch at 1:20, and
14 then we can wrap this up hopefully. And then we can go to
15 our 1:30 time certain with Attorney General's Office.
16 But before we go I did want to say publicly that
17 this being Administrative Assistant's Day, I just wanted
18 to publicly thank all the administrative assistants,
19 including the two sitting right up here that do such
20 outstanding work for us. And thank you, and we want to
21 honor you today. So we will have lunch with you.
22 We'll come back at 1:20.
23 (Thereupon a lunch recess was taken.)
24 CHAIRPERSON MOULTON-PATTERSON: I'd like to call
25 our meeting back to order, please. Just while we're

1 getting everyone together, I would like to ex parte for
2 all -- for everyone, the County of Santa Barbara's Public
3 Work Department, the letter we received from Mark E.
4 Shield, Deputy Director, Solid Waste and Facilities
5 Division we all received this this morning. Is that
6 correct everybody has that? Okay.
7 Mr. Jones, do you have any -- or I'm sorry. Is
8 everybody ready? Do you have any ex partes?
9 BOARD MEMBER JONES: I said hello to John Cupps,
10 and that is it. I said hi to the people from Santa
11 Barbara. No discussion.
12 CHAIRPERSON MOULTON-PATTERSON: Ms. Peace?
13 BOARD MEMBER PEACE: No. I have none.
14 CHAIRPERSON MOULTON-PATTERSON: And I have none.
15 Mr. Medina.
16 BOARD MEMBER MEDINA: Just said hello to John
17 Cupps.
18 CHAIRPERSON MOULTON-PATTERSON: Mr. Paparian.
19 BOARD MEMBER PAPARIAN: None.
20 CHAIRPERSON MOULTON-PATTERSON: Okay. Thank you.
21 As I said before lunch, we want to finish up on agenda
22 Item 16 because we do have a time certain at 1:30. And
23 Mr. Washington, do you have any ex partes?
24 BOARD MEMBER WASHINGTON: No, Ma'am.
25 CHAIRPERSON MOULTON-PATTERSON: Thank you. Okay.

1 So we'll go back. And Ms. Tobias, were you ready to
2 report?
3 CHIEF COUNSEL TOBIAS: I'm as ready as I'm going
4 to be.
5 CHAIRPERSON MOULTON-PATTERSON: Thank you.
6 CHIEF COUNSEL TOBIAS: I will say first that it's
7 the position of the Legal Office and I believe the program
8 staff thinks within the jurisdiction of the State Water
9 Regional Board, not the State Water Board. But because
10 there's -- I think the letters from both Heal the Ocean
11 and from the applicant's attorney, Whitman Manley raised
12 this issue, I think it would be good to have something on
13 the record. I don't even want to call it a discrepancy,
14 but an interpretation of the regs. And I will also say
15 that the -- where I believe that the WDRs have been
16 granted at this time, as I think someone said, the process
17 does go on with the WDRs. There is a report that's being
18 done by a third-party consultant to the Regional Board,
19 and so I think that this issue will be continued at the
20 Regional Board level.
21 Nonetheless, the section that we're looking at is
22 in the Water Board's regulations where they define a
23 maximum probable earthquake. And so in their definition
24 they look at several factors. And one of the factors is
25 faults -- "the fault or faults within a 62-mile/100

1 kilometer radius from the facility boundary that may be
2 active within the 100 years following first acceptance of
3 the waste," which is I think what they've talked about.
4 But further down they say, "Nevertheless, the postulated
5 magnitude of the MPE is superceded by any more powerful
6 seismic event that has occurred within a historic time in
7 the area described above."
8 So I think what might be helpful to have on the
9 record is to have the applicant's attorney or their
10 consultant explain how they've dealt with that section so
11 that Board understands the distinction that's being made
12 there on this because I think everything somewhat turns on
13 these interpretations. So if you indulge me to have that
14 on the record, whomever the applicant wants to have
15 describe this, I think it would be important to do that.
16 I've called the Water Board representative in
17 Santa Barbara, and I asked him to page me, but I haven't
18 heard back from him. So I'd kind of prefer to hear it
19 from the Water Board, but I think without the Water Board
20 person it would be good to hear it from the applicant.
21 CHAIRPERSON MOULTON-PATTERSON: Thank you,
22 Ms. Tobias.
23 Would the applicant's attorney please come up or
24 whoever you wish to answer the question. We'll leave that
25 up to you.

1 Please identify yourself for the record.
2 MR. MANLEY: My names' Whit Manley. I'm the
3 applicant's attorney, and I'm going to turn it over to
4 Gary Lass, our geologist because he's far more qualified
5 than I to speak to these issues.
6 CHAIRPERSON MOULTON-PATTERSON: Thank you.
7 Mr. Lass. And you had filled out a speaker slip I see
8 here. Thank you.
9 MR. LASS: Madam Chair, members of the Board,
10 Gary Lass. I'm a registered geologist, certified
11 engineering geologist, and certified hydrogeologist in
12 California, President of Geologic Associates. I've been
13 working with the county at Tajiguas for about eight years.
14 With regard to the definition of the MPE, I don't
15 believe it was the intention of Title 27 or the old
16 chapter 15 and then new Title 27 to redefine the MPE. The
17 MPE, or maximum probable earthquake, was defined in 1975
18 by the Division of Mines and Geology.
19 At that time the limit, if you will, put on an
20 MPE is you can come up with a theoretical value, but it
21 can never be less than a historical event. And that is a
22 true representation of the MPE. What's missing from that
23 interpretation is that representation is really fault
24 specific. That is, an event on a specific fault. For
25 example, the north channel slope fault, if you had had an

1 earthquake of 6.1, you could never use an MPE of less than
2 6.1 for that fault.
3 In the way of clarification, it was stated
4 earlier that three earthquakes of magnitude 6.5 to 7.5
5 within the 60-mile radius of the site were all on the
6 north channel fault, that's actually not correct. They
7 were on other faults. In fact, there was one on the San
8 Andreas fault within that radius that was 7.9. You can't
9 apply those as MPEs for the north channel fault because
10 that's very specific to the north channel fault.
11 I don't want to confuse you too much, but in
12 defining the MPE, as we discussed at the Permitting and
13 Enforcement Committee hearings, there's two methods that
14 one could use, the deterministic approach and the
15 probabilistic approach. Deterministically is fault
16 specific. You assign a value for the MPE to the fault,
17 then you calculate ground motion or shaking at a site at
18 some distance from that fault.
19 That's in my mind where the error in application
20 is made assigning a 7 to the north channel fault when even
21 Cotton, Shires Associates in each of their letters in
22 Table 1 where they prefer to the maximum probable
23 earthquake reported as a 6.1 which is probably a true MPE
24 for the north channel slope. That's really a
25 misinterpretation of the definition of MPE to say it

1 should be higher.

2 On a probabilistic approach, which is the

3 approach we took to stability of seismic consideration,

4 all of those earthquakes are considered in the

5 probabilistic, even in the 7.9. It looks at the site

6 shaking specifically and looks at every earthquake within

7 the historical record in defining what you expect to occur

8 on that site. That's why we conclude the probabilistic is

9 a better methodology. And I think Cotton, Shires in their

10 second letter concurred it was a better approach.

11 So with regard to MPE, it's really in my mind as

12 a professional geologist a misinterpretation of the

13 definition. It's not any fault in 60 miles. It's any

14 faults of -- or any earthquake along a specific fault sets

15 a minimum MPE for that fault. I hope that cleared it up

16 and didn't convolute it too much.

17 CHAIRPERSON MOULTON-PATTERSON: Thank you very

18 much.

19 CHIEF COUNSEL TOBIAS: I have one other point I

20 want to make. Even though I said this is in the Water

21 Board's jurisdiction, in Section 21145 have our regs, the

22 area of slope stability that the Board has some

23 jurisdiction over is in the consideration of the closure,

24 post-closure plans that we do. What that does is it says

25 that the slope stability analysis shall be conducted and

1 reported pursuant to the requirements of Section 21750
2 which refers us back to the Water Board's requirements.
3 So that's one of the reasons that I wanted you to at
4 least hear how this is being dealt with. I think that,
5 you know, the regs are -- the Water Board's regs are not
6 as definitive as the consultant is talking about, but I
7 think, you know, that their explanation is a reasonable
8 one and one that the Board can rely on.
9 CHAIRPERSON MOULTON-PATTERSON: Thank you,
10 Ms. Tobias.
11 Mr. Jones.
12 BOARD MEMBER JONES: Thank you, Madam chair. I
13 want to move adoption of Resolution 2003-299,
14 consideration of the revised full solid waste facility
15 permit disposal facility for the Tajiguas Sanitary
16 Landfill in Santa Barbara County.
17 MR. MEDINA: Second.
18 CHAIRPERSON MOULTON-PATTERSON: We have a motion
19 by Mr. Jones, seconded by Mr. Medina to approve resolution
20 2003-229.
21 Please call the roll.
22 SECRETARY WADDELL: Jones?
23 BOARD MEMBER JONES: Aye.
24 SECRETARY WADDELL: Medina?
25 BOARD MEMBER MEDINA: Aye.

1 SECRETARY WADDELL: Paparian?
2 BOARD MEMBER PAPARIAN: Aye.
3 SECRETARY WADDELL: Peace?
4 BOARD MEMBER PEACE: Aye.
5 SECRETARY WADDELL: Washington?
6 BOARD MEMBER WASHINGTON: Aye.
7 SECRETARY WADDELL: Moulton-Patterson?
8 CHAIRPERSON MOULTON-PATTERSON: Aye.
9 Thank you very much.
10 This takes us to Item 42. As you know, this was
11 a discussion of the Bagley-Keene Open Meeting Act. And
12 with the Board's changing members and all, we thought it
13 might be good to have a review. And I wanted to turn it
14 over to our Attorney General's representative, Ms. Walz
15 for her introduction.
16 DEPUTY ATTORNEY GENERAL WALZ: Thank you.
17 Today we have to speak with you on the
18 Bagley-Keene Act, Deputy Attorney General Ted Prim, who
19 has been with the office since 1983, specializing in areas
20 of law concerning conflicts of interest, public records,
21 open meetings, and other ethical issues. He's also the
22 author of publications on conflicts of interest, open
23 meeting, which are relied on public attorneys throughout
24 the state.
25 In 1991 Ted received the very first award of

1 public lawyer of the year award from the State Bar's
2 public law section. Prior to joining the Attorney
3 General's Office, Ted was employed as the Commission's
4 Executive Director for the Fair Political Practices
5 Commission where he was the first state executive officer
6 to receive an award from Commen Cause for distinguished
7 service. He graduated phi beta kappa and magna cum laude
8 from one of my favorite universities, Stanford, and taught
9 there for two years before going on to other practice.
10 He's also married to someone whom Member
11 Washington may know. Mary Ann Johnston is a Deputy County
12 Counsel with the Office of Legislative Counsel. And she
13 has also prior been selected as an outstanding lawyer of
14 the year as the California Lawyer Woman's Association.
15 So I'd like to give to you Ted Prim who will
16 first give you a very brief opening introduction as to the
17 structure of the Public Meeting Act. And then will pose
18 some questions that we think will help you. And I believe
19 that Ted would like you to interrupt at any time with
20 questions.
21 CHAIRPERSON MOULTON-PATTERSON: Thank you.
22 Mr. Prim, we feel very lucky to have you here today to go
23 over this with us. Thank you very much.
24 Mr. Washington.
25 BOARD MEMBER WASHINGTON: Before Ted starts, Ted

1 kept me out of a lot of trouble over at the Legislature.
2 And I really do appreciate that too, Ted. I would go to
3 Ted on conflict of interest. He was very -- as she stated
4 he is top of the class when it comes to conflict of
5 interest, and he can certainly keep you from going there.
6 And I really appreciate, Ted, the years I've worked with
7 you over the Legislature, and how I would call Ted and he
8 was like, "Okay, Carl, I'll get back to you." But I
9 appreciate all your work. Thank you very much.
10 CHAIRPERSON MOULTON-PATTERSON: Thank you,
11 Mr. Washington.
12 Thank you, Mr. Prim.
13 DEPUTY ATTORNEY GENERAL PRIM: Well, a couple
14 things. I appreciate Edna saying all those nice things
15 about me. And I was feeling pretty good when I got the
16 public lawyer of the year award. But they quickly put me
17 in my place because I got a phone call the day it was
18 announced saying -- from the people the Bar Association
19 that had given the award saying they really apologized
20 very much for the press release that went out. And, of
21 course, I had no idea what that was about until I find out
22 they had put it out I was the pubic lawyer of the year
23 award.
24 So anyway, I would just like to take a really
25 brief moment to kind of set the stage for the Bagley-Keene

1 Open Meeting Act. And one of the difficult things about
2 the Bagley-Keene Open Meeting Act is that it causes people
3 to behave in an unnatural fashion. Because of the various
4 rules that the Bagley-Keene Act has, it prevents people
5 from behaving in the way that they ordinarily do in order
6 to be consensus builders and to interact with their
7 colleagues and things. And it puts this structure in the
8 way of people's normal communication patterns. And that
9 is the thing that more often than not frustrates people
10 about having to deal with the Bagley-Keene Act, or in the
11 case of the local jurisdiction the Brown act.
12 I've found if you can put that in perspective, it
13 really helps to understand why some of these rules exist.
14 And there are really two assumptions that are made that
15 underlie the Bagley-Keene Act. The first is that when the
16 Legislature or the people by initiative decide to create a
17 commission or a body, they're making an assumption. And
18 the assumption they're making is they're not opting for
19 the most efficient form of government. If they were,
20 they'd assign a department director, give that person the
21 power, and say make efficient decisions. And that person
22 can go about figuring out how they want to do it.
23 When you opt for a commission, you're immediately
24 saying that what you want is a group of people coming
25 together with a variety of different backgrounds and

1 experiences. And out of that process, which you're going
2 to mandate, you want people to come up with a consensus.
3 That immediately builds in certain kinds of
4 inefficiencies.
5 What the Bagley-Keene Act then does is to layer
6 on one more thing. And it says, when you're coming to
7 this consensus agreement as to what to do, we want to have
8 a seat at the table for the public. And that's really
9 what the Bagley-Keene does. It says, when you all are
10 doing your work as a body to come to decisions, we want
11 the public to be here and to have a role in this process.
12 And if you keep that in mind as we go through things, it
13 makes it a lot easier to stomach some of the rules and
14 regulations that come along with the Bagley-Keene Act.
15 So as Edna said, as we talk about things today, I
16 want to you interrupt. The primary reason is I'm blind.
17 And if you raise your hand, I'm not going to call on you.
18 What you need to do is to speak up when you have something
19 to say. And my goal is as we go through our discussion
20 this afternoon that it be interactive and that you ask
21 questions as you go so that way we'll try to get
22 everything taken care of.
23 I've got some hypothetical questions here.
24 They're basically multiple-guess-type questions, and you
25 should have them too. Have they been passed out to all

1 the Board members?

2 CHAIRPERSON MOULTON-PATTERSON: Yes, they have.

3 DEPUTY ATTORNEY GENERAL PRIM: Okay.

4 What I found is if we work through these 12

5 questions and potential answers under the 12 questions,

6 we'll cover a good portion of the Bagley-Keene Act and

7 hopefully all the questions you have along the way. So

8 let's start with having Edna read the first question and

9 then let's talk about what the answer should be and take

10 our discussion from there.

11 DEPUTY ATTORNEY GENERAL WALZ: The first question

12 is, which committee of the body need not comply with

13 Bagley-Keene?

14 A, a three member advisory committee.

15 B, a two-member committee with delegated

16 authority.

17 C, a two-member advisory committee.

18 And, D, all of the above.

19 DEPUTY ATTORNEY GENERAL PRIM: So I don't know if

20 you all want to look at that and tell me what you think

21 the answer is for starters. Somebody want to take a crack

22 at it?

23 BOARD MEMBER WASHINGTON: All of the above.

24 DEPUTY ATTORNEY GENERAL PRIM: All of the above

25 actually is not right. So let's go through each of them

1 one at a time.

2 BOARD MEMBER WASHINGTON: Ted, that's only

3 because that's what my counsel told me.

4 DEPUTY ATTORNEY GENERAL PRIM: Well, maybe so.

5 We'll see if that's right.

6 The first one is a three-person advisory

7 committee, and that is specifically covered in the law. I

8 guess the first thing to say is that ordinarily what a

9 body is, is any agency that is anybody that's created by

10 statute. That's our main way of finding out who's covered

11 by the Bagley-Keene Act.

12 But then when we have such a body, such as this

13 one, you all can create different kinds of body. The

14 question is when you create these different kinds of

15 bodies whether or not they are covered by the Bagley-Keene

16 Act.

17 The first one is a three-person advisory

18 committee. The law specifically provides that if you have

19 three people established as an advisory committee by some

20 formal action of the body, then whether that's a quorum or

21 not of the body that particular kind of advisory body is a

22 Bagley-Keene body. And they have to go through all of the

23 same notice requirements that the full body itself has to

24 go through. They have -- for Bagley-Keene purposes, they

25 are just as much of a body as is this full commission

1 here.

2 The second kind is the two-person delegated

3 authority committee. Ordinarily, a two-person committee

4 is not going to be covered by the Bagley-Keene Act. But

5 if you have delegated it some kind of authority so it has

6 the ability to make decisions on behalf of a larger body,

7 then that changes. And a two-person body is going to be

8 sufficient. So if you have an executive committee that

9 you designate to have certain authority between commission

10 meetings or something like that, that's going to be

11 covered by the Bagley-Keene Act.

12 BOARD MEMBER PAPARIAN: Can I clarify something

13 on that?

14 If the Board casually but publicly says we'd

15 like, you know, two certain members to try to get together

16 and work out their differences and come back to the Board.

17 DEPUTY ATTORNEY GENERAL PRIM: Well --

18 BOARD MEMBER PAPARIAN: I mean if you have a

19 situation like that, is that subject to --

20 DEPUTY ATTORNEY GENERAL PRIM: Well, you're just

21 telling those two members to go work out their differences

22 and come back to the Board. I assume the Board at that

23 point is still going to be the decision-making body.

24 BOARD MEMBER PAPARIAN: Right.

25 DEPUTY ATTORNEY GENERAL PRIM: In that case I

1 don't think that would constitute a committee. Those two
2 people don't have the authority to do anything other than
3 apparently they've been logger heads and the thought is
4 that if those two members sit down and talk, perhaps they
5 can come to a compromise. They can bring the compromise
6 solution back to the full body, and the full body can
7 decide whether they like it or don't like it or whether
8 they want to modify it. I don't think that would
9 constitute a committee that has a Bagley-Keene requirement
10 attached to it.
11 BOARD MEMBER PAPARIAN: Thank you.
12 DEPUTY ATTORNEY GENERAL PRIM: The third one was
13 a third -- excuse me -- a two-person advisory committee.
14 And because it's only advisory and because it's less than
15 three, then it's not going to be the kind of body that's
16 covered by the Bagley-Keene Act.
17 DEPUTY ATTORNEY GENERAL WALZ: Other questions,
18 or should we go on to the second?
19 CHAIRPERSON MOULTON-PATTERSON: Go on to the
20 second.
21 DEPUTY ATTORNEY GENERAL WALZ: The second
22 question is, which of the following is not a serial
23 meeting or a five-member Board?
24 DEPUTY ATTORNEY GENERAL PRIM: Why don't I stop
25 you there for one second.

1 Most meetings the bodies have are like the one
2 we're having today. We're all here in the same room. We
3 noticed our meeting, and this is clearly covered by the
4 Bagley-Keene Act. One of the areas of most controversy
5 and difficulty is what we call serial meetings which is
6 where we have a meeting where we're not in the same room
7 at the same time, and more importantly, it's not noticed.
8 That's what we're going to talk about here as to which
9 kinds of these communications we've got laid out in this
10 question are going to constitute a serial meeting for
11 purposes of the Bagley-Keene Act.
12 DEPUTY ATTORNEY GENERAL WALZ: A is --
13 BOARD MEMBER PAPARIAN: I don't know if it's
14 going to make a difference on anything you say, but we're
15 a six-member Board, not a five-member Board.
16 DEPUTY ATTORNEY GENERAL PRIM: Right. I
17 understand that. This hypo is set up in terms of five
18 which is a little bit easier to deal with. We can convert
19 it easily enough to six.
20 DEPUTY ATTORNEY GENERAL WALZ: A is when three
21 members discuss business over a breakfast of cereal.
22 B, when member A contacts member B and C.
23 C, when member A contacts member B, who in turn
24 contacts member C.
25 D is when a member of the public contacts members

1 A, B, and C.

2 And finally E is when the executive director

3 individually contacts members A, B, and C to discuss the

4 same topic.

5 (Thereupon there was a fire drill.)

6 CHAIRPERSON MOULTON-PATTERSON: Sorry for the

7 interruption. It doesn't affect us so you can go on to

8 number two.

9 DEPUTY ATTORNEY GENERAL PRIM: Let's hurry.

10 Okay. So let's go through these. Was it something I

11 said?

12 (Laughter)

13 DEPUTY ATTORNEY GENERAL PRIM: The concept of the

14 serial meeting is essentially that a quorum of the body

15 has had a meeting, albeit not in the same place and at the

16 same time. So let's work our way through these.

17 The first one is a serial meeting but only

18 because they're eating Cherrios.

19 The second one I think is the one where we have A

20 contacts B and C. And you think that would be a serial

21 meeting or not, a five-member Board? Did I hear a yes?

22 CHAIRPERSON MOULTON-PATTERSON: Yes.

23 BOARD MEMBER PAPARIAN: Five member, yeah. But

24 six members.

25 DEPUTY ATTORNEY GENERAL PRIM: So for you it

1 would be four people to get to a quorum of the body.
2 Because you're four out of six.
3 So if you have -- let's stick with our ones that
4 are here on the page. If you have a five-member body and
5 one person essentially contacts two other people to
6 discuss a topic that's on the agenda or that's going to be
7 on an upcoming agenda, they are essentially having a
8 meeting in that fashion, not all in one place and one time
9 but they're having the meeting nevertheless in this serial
10 fashion.
11 And again coming back to our model that we talked
12 about at the beginning, the problem with that is that if
13 that's allowed to go on, then three of them have their
14 meeting. They happen to be a majority. And they come to
15 the meeting, they've already had their discussion.
16 They've possibly come to their decision. But they at a
17 minimum exchanged their views and information, and the
18 public's not there. They have no ability to say, "Hey,
19 you're forgetting this important fact" or "you're
20 overlooking this particular information" or "we disagree
21 for this reason." The meeting has, in effect, taken place
22 in secret through this serial process.
23 The next one is a little different, but it's the
24 same kind of thing. Instead of what we call a hub and
25 spoke routine where you have one person making the

1 contact, you have a chain where A's talking to B and B's
2 talking to C. And so out of that same process you end up
3 with a quorum of your body having already basically had
4 their discussion and possibly come to their conclusions
5 without the public being a part of the process.
6 The next one, is that the member of the public --
7 DEPUTY ATTORNEY GENERAL WALZ: Yes.
8 DEPUTY ATTORNEY GENERAL PRIM: -- contacting A,
9 B, and C? And that's different. You want me to talk
10 about it or one of you guys want to talk about why it may
11 be different to have members of the public making the
12 contact instead of one of your own members?
13 The difference is that the public has certain
14 rights of contact with their governmental representatives.
15 And it's not a situation where the body through its
16 membership is agreeing to conduct a meeting. But rather,
17 it's a situation in which these people are having
18 individual contacts.
19 So if I, as a member of the public, choose to
20 contact you individually, you have the ability to tell me
21 either you don't want to talk to me or you'll talk to me
22 over lunch or talk to me for five minutes on the phone or
23 have me into your office and talk to me for a half hour.
24 You get to make your own individual decision on that.
25 As you know, there may be ex parte contact rules

1 that come into play in certain situations. Under the
2 Bagley-Keene Act the fact that you have those individual
3 contacts doesn't mean you're actually conducting a meeting
4 during that time period.
5 Now, if your Chair says, "This is a really
6 important issue coming up and I'd like for each of you to
7 meet with Mr. or Ms. so and so before our next meeting,"
8 that's different. Now we have an orchestrated meeting by
9 the body as opposed to something being initiated by a
10 member of the public and being responded to by individuals
11 on the Board.
12 I think you should be careful about various kinds
13 of individual meetings like that because I think it can be
14 ultimately be problematic for you. But in terms of
15 constituting a meeting under the Bagley-Keene Act when
16 somebody contacts you like that, that doesn't actually
17 constitute a meeting unless somehow the body is agreeing
18 to or orchestrating or acquiescing in a situation by which
19 it's really conducting a meeting in a serial fashion.
20 The last one is the executive director. This one
21 is not 100 percent clear under the Act, but the advice of
22 our office is if the executive director wants to be having
23 these conversations with the members of the body and is
24 going to be on the same topics -- in other words it's --
25 for example, it's like a pre-meeting briefing or there's a

1 big topic coming up and you want to have contact with each
2 member on it, our recommendation is that you do that
3 through a memorandum that all the Board members can see
4 and to the extent that it's not a confidential record
5 under the Public Records Act that the public can share in
6 as well.
7 There is support for the notion that just like an
8 individual member contacting a quorum of the Board, that
9 the executive director doing that is serial meeting as
10 well.
11 (Thereupon a fire alarm drill all-clear
12 announcement was made.)
13 CHIEF COUNSEL TOBIAS: If I could interrupt.
14 Kathryn Tobias. One of the Board members asked you about
15 the six-member Board. I think ours is complicated a
16 little it by the fact we also have committees that would
17 also have a quorum and so that moves it down from that
18 four to a lower number.
19 DEPUTY ATTORNEY GENERAL PRIM: Okay. Are we
20 talking, for example, like a three-person committee? Or I
21 understand you may have four.
22 CHIEF COUNSEL TOBIAS: Right now they're four.
23 They've been various sizes in the past. But right now
24 they're four.
25 DEPUTY ATTORNEY GENERAL PRIM: My thought would

1 be this. If it's a four-person committee meeting -- in
2 other words, you have four members of the committee. When
3 you notice a committee meeting, you really have to notice
4 a Board meeting. I think you can, by explanation,
5 indicate that this even though is being noticed as a Board
6 meeting, in fact, it's going to be a committee meeting and
7 anything done at the committee meeting will ultimately go
8 to the Board.
9 But because you have a quorum of your Board
10 involved -- potentially involved, my recommendation would
11 be that you have to actually notice that as a meeting of
12 the full Board.
13 CHAIRPERSON MOULTON-PATTERSON: Mr. Prim, I'm
14 glad that was bought up because Ms. Tobias had stated her
15 hesitation when I wanted four member committees, and my
16 reasoning at that time was we had a lot of absences. We
17 had different members. And we thought, well, we can't get
18 anything done. And I think you said if we didn't have the
19 full Board, we can't meet. Now I'm thinking that we might
20 have to do some reorganization because I see you're saying
21 that it's almost like a meeting of the full Board.
22 DEPUTY ATTORNEY GENERAL PRIM: Legally, it is.
23 That's correct.
24 CHAIRPERSON MOULTON-PATTERSON: Now what if we
25 had three-member committees and two members were present,

1 a third couldn't be there. Could they still discuss
2 things?
3 DEPUTY ATTORNEY GENERAL PRIM: Absolutely.
4 CHAIRPERSON MOULTON-PATTERSON: Okay. That's
5 important for me to know. Okay.
6 DEPUTY ATTORNEY GENERAL PRIM: That would not be
7 a problem for them to go ahead and do that. And the whole
8 concept behind that is that this is going to be something
9 less than a quorum of the body -- or in this particular
10 case, what the Bagley-Keene's done is said three members
11 is sufficient, irrespective of what a quorum is, can
12 discuss this matter or less than that if they don't all
13 show up. And then it ultimately is going to go to the
14 Board. But it hasn't been prejudiced by having a majority
15 of the Board involved in it in the first instance.
16 Because the real problem is when you have four-member
17 committees out of a six-member Board, if you have four
18 people show up and they bat the issue around and come to a
19 decision in their own mind, they don't even need to have
20 any input from anybody else.
21 CHAIRPERSON MOULTON-PATTERSON: This is a really
22 good clarification. And I take full responsibility for
23 developing them in the way they were developed. However,
24 I was a little unclear on if they could meet and give
25 direction with just two members. But it's a lot clearer

1 to me, and I really appreciate you clarifying that for me.
2 DEPUTY ATTORNEY GENERAL PRIM: Okay.
3 BOARD MEMBER JONES: Mr. Prim.
4 DEPUTY ATTORNEY GENERAL PRIM: Yeah.
5 BOARD MEMBER JONES: All of our committee
6 meetings are noticed. They're noticed with four members.
7 Whether or not it's three members, that's fine or
8 whatever, you know, the Chair has in mind. But it's a
9 noticed meeting where the public gets input. There's
10 usually a motion made at the end of the item, and then it
11 goes to the full Board with a recommendation from the
12 committee.
13 DEPUTY ATTORNEY GENERAL PRIM: Correct. Uh-huh.
14 BOARD MEMBER JONES: So today under the
15 four-member committee issues, they still go for a full
16 vote of the Board. I mean, nothing's done until the
17 Board, and it's in an open meeting so that's not an issue,
18 is it?
19 DEPUTY ATTORNEY GENERAL PRIM: No. The problem
20 is if you notice it as a committee meeting, the member of
21 the public who gets the notice says, "Well, this is just a
22 committee meeting. This is going up to the Board as a
23 whole later on. And it's not a good time for me to make
24 it to that meeting so I'm not going to go since it's just
25 a committee meeting." But if it's a committee meeting

1 that has four members of the Board, it is, if they want to
2 make it that way, de facto, the whole ball game because
3 you've got a majority of the body that's there dealing
4 with it at the committee level. So the person who thinks,
5 "Well, it's just a committee meeting," it may be more than
6 "just a committee meeting" because you've got a quorum of
7 the whole Board involved. It may come to the body, but
8 the last two votes ultimately don't matter. If four
9 people at the committee meeting have come to an agreement,
10 game over.
11 BOARD MEMBER JONES: Under our noticing -- and it
12 was done this way back when this Board was first put
13 together and as long as I've been at this Board, there is
14 in the noticing of committees, it notifies people that the
15 majority of the work will be done at the committee meeting
16 and for them to come prepared to, you know, participate.
17 So I just throw that out as one of our noticing issues
18 because we do --
19 DEPUTY ATTORNEY GENERAL PRIM: Right.
20 BOARD MEMBER JONES: And the Board has always
21 historically said, you know, it could be that a majority
22 of the work gets done at that committee. So come
23 prepared.
24 DEPUTY ATTORNEY GENERAL PRIM: I think that's a
25 good thing to put on there. Because if that's reality,

1 you should tell people that, and I think it makes it a
2 more productive process.
3 CHAIRPERSON MOULTON-PATTERSON: I have a
4 question, Mr. Jones or whoever. Mr. Jones is senior to me
5 so he could answer. Weren't the committees in the past
6 three members?
7 BOARD MEMBER JONES: They were. By statute --
8 CHAIRPERSON MOULTON-PATTERSON: I think I created
9 monsters here by these four-member committees.
10 BOARD MEMBER JONES: Statute said any committees
11 we had have to have a minimum of three members.
12 CHAIRPERSON MOULTON-PATTERSON: Thank you.
13 Any more questions on that topic?
14 DEPUTY ATTORNEY GENERAL PRIM: Because the issue
15 of serial meetings is a big one, if you've got other
16 questions, this is the time to talk about them.
17 BOARD MEMBER PAPARIAN: If we had committees with
18 three members, could all three of them talk privately
19 because they're not a majority of the Board?
20 DEPUTY ATTORNEY GENERAL PRIM: The answer is no.
21 And the reason for that is because they are a committee.
22 They are an entity unto themselves under the Bagley-Keene
23 Act with three members. They're an advisory committee.
24 They're not the full body, but they are an entity that is
25 covered by all of the aspects of the Bagley-Keene Act,

1 just like the full Board is.

2 BOARD MEMBER PAPARIAN: As a committee Chair,

3 there are some things I consider process-oriented, some

4 things I consider substance-oriented. Process thing might

5 be, you know, would it be convenient to schedule a

6 time-certain item at a certain time? Or would it be

7 convenient this month versus another month? Or if we're

8 having an informal presentation, who do you think we ought

9 to have come and make presentations from other state

10 agencies or from the public? Is that kind of stuff

11 covered or --

12 DEPUTY ATTORNEY GENERAL PRIM: I liked all of

13 them up to the last one better. We have generally said

14 that those kinds of sort of preliminary procedural types

15 of issues, what days are people available to meet on, what

16 city are you available to meet in, some of those kinds of

17 issues in order to just call a meeting, that those kinds

18 of things are generally outside of the prohibitions of the

19 Act.

20 The issue of, you know, who should speak and talk

21 to us about particular subjects and in some sense be our

22 information sources on a topic, that gets -- that starts

23 getting more towards substantive issues. So that one I

24 think is a matter of some additional concern. So without

25 something more concrete, it's hard for me to say on that

1 one. But you need to think about that one. But the other
2 kinds of things I think generally are viewed as being
3 outside the purview of the Act.
4 CHAIRPERSON MOULTON-PATTERSON: Mr. Washington.
5 BOARD MEMBER WASHINGTON: Ted, if there's three
6 members on a six-member Board and we want to talk about an
7 agenda item with the opposing and supporting parties on
8 both sides, can we do that? If three members want to talk
9 about an agenda item on a six-panel Board, can those three
10 members talk to both sides which is considered the public?
11 DEPUTY ATTORNEY GENERAL PRIM: It's difficult,
12 and here's the problem. If we stipulate that we have
13 three people on the Board which is not a quorum that are
14 going to go off and meet on this particular topic, and
15 we're not talking about a Committee here now, that in and
16 of itself doesn't violate the Act if it's not a noticed
17 meeting.
18 But then the other three members of the body have
19 got to be really well behaved because the problem is that
20 if one more person somehow gets involved, then we do have
21 a problem. And so the difficulty when you explain to
22 people, for example, that there's not a serial meeting so
23 long as less than a quorum are involved, the difficulty
24 becomes containing it. A, B, and C meet on this topic and
25 now D and E also meet on this topic. They're not

1 together. But we've got five members of the Board now
2 fully engaged. Or take the worst part, you got A, B, and
3 C doing something and D, E, and F meeting with other
4 people on it. Now we've got the full six members of the
5 Board fully immersed in this topic, and the public is
6 nowhere to be seen.
7 And that gets to be a difficult issue. And it
8 gets to be one when an agreed party gets wind of that, you
9 know, they tend to get upset, and you get lawsuits filed
10 and bad stories written in the press and things like that
11 sometimes. So that's why I say it's a difficult issue.
12 There is a way where you can technically, legally do it,
13 but you're on some thin ice as you proceed through that
14 process.
15 BOARD MEMBER WASHINGTON: I thought you let me
16 off the hook. I thought I could take three on top of the
17 roof of the building and make it happen. But I see I
18 can't even do that because the other three might be in the
19 basement.
20 CHAIRPERSON MOULTON-PATTERSON: Mr. Prim, I have
21 a question. I think now is as good a time as any,
22 especially on these serial meetings. We each have
23 advisors, non-voting advisors. Does this law apply to
24 them?
25 DEPUTY ATTORNEY GENERAL PRIM: Well, that's

1 another difficult question. Let me tell you what we've
2 said in the past. And the question, I think, becomes a
3 difficult issue to determine which side of the line your
4 situation falls on. And I'll probably leave it to you all
5 to make that decision as to which side it falls on.
6 Just as we've said that in a five-member Board,
7 A, B, and C can't get together and talk about an issue
8 either on the phone or in the same room because it's going
9 to be either an improper meeting or an improper serial
10 meeting. We've also said they couldn't conduct meetings
11 through representatives. So if it's instead of A, B, and
12 C meeting, they send their representatives to get together
13 and hash something out, they're having a meeting. That's
14 another kind of a serial or intermediary type of meeting.
15 So in the case of your advisors and the kind of
16 meetings they're having, if they are -- certainly if
17 they're acting as representatives of the Board members in
18 trying to gather information or discuss issues or solve
19 problems, come to decisions, any of those kinds of things,
20 then I think that my concern would be that you may have a
21 problem in that situation.
22 That certainly doesn't mean that representatives
23 or staff can't ever talk or ever get together on anything
24 because I think they probably have other functions. But
25 you can't do indirectly through your representatives what

1 you can't do directly yourself.

2 CHAIRPERSON MOULTON-PATTERSON: So in a sense if

3 our advisors at this time have advisors' meetings -- and

4 it's my understanding there's no deliberations. They just

5 go over the structure of the agenda, would you recommend

6 them not having those? Would you remember those be

7 publicly noticed? Or is there not a problem as long as

8 there's not deliberations? I know that's hard.

9 DEPUTY ATTORNEY GENERAL PRIM: That's hard to

10 answer in the abstract.

11 My concern is what those meetings look like and

12 what's happening in them. And if they are essentially

13 long-arm meetings of the Board members, then I think it's

14 a problem. If they serve a different function, then they

15 may not be a problem.

16 So I mean, I'd be happy to work with you or work

17 with Kathryn to try to figure out in a specific situation

18 kind of what the functions are and what these things look

19 like and to try to figure out what side of the line

20 they're on. But it's difficult to draw you a bright line

21 here that's going to work and in a situation where I don't

22 really, you know, know --

23 CHAIRPERSON MOULTON-PATTERSON: I understand.

24 DEPUTY ATTORNEY GENERAL PRIM: -- factually how

25 it works.

1 CHAIRPERSON MOULTON-PATTERSON: Thank you. Any
2 other questions before we go on to number 3?
3 BOARD MEMBER JONES: I do, Madam Chair.
4 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones.
5 Sorry.
6 BOARD MEMBER JONES: On briefings, there was a
7 time when Board members -- I've sat on this Board for
8 about six-plus years. We used to get briefed on each of
9 the categories, the five categories or six categories that
10 our staff was broken into on specific agenda items. We
11 didn't deliberate. We were given the information. But
12 what it allowed was a better understanding of an item
13 prior to committee meetings from the standpoint of
14 educating members. And it was helpful from the standpoint
15 that you were able to be in a pretty safe environment
16 where if you're an egomaniac like me, you don't want
17 anybody to know you don't have all the answers. So you
18 ask the questions and try to get a better understanding of
19 not only what is driving the issue, but what some of the
20 questions might be. And all the members had those
21 meetings independently.
22 And then we went into committee, and it was
23 usually reported that during the briefing, Board Member
24 Jones asked if it was a pertinent issue, something they
25 felt needed to be really dealt with. And then it seemed

1 to enhance the operation of the Board -- of the Board
2 members. So I'm not talking about this group of Board
3 members. I'm going back because we stopped doing this in
4 '98 or '99.
5 CHAIRPERSON MOULTON-PATTERSON: '99.
6 BOARD MEMBER JONES: '99, I think. And I'm
7 wondering because we tried to do briefings in different
8 situations. And, you know, quite frankly, you know, I
9 don't know enough about Bagley-Keene. I know that I don't
10 want to get in trouble. I know I don't want to do
11 something to break the law or appear to be breaking the
12 law. But I also don't want to be controlled by others
13 that want to control situations.
14 And so I'm wondering, are individual briefings
15 with a group of staff a violation of Bagley-Keene if those
16 pertinent issues are disclosed as part of the presentation
17 of the item at a committee meeting?
18 DEPUTY ATTORNEY GENERAL PRIM: What our office
19 has said is that they may be. And therefore, our
20 recommendation is that you don't have them, but you do
21 those things in a memorandum or you do them for everybody
22 in some kind of a noticed setting.
23 And the concern is basically, again, that you
24 have a part of the meeting process that takes place in a
25 serial fashion without the public's ability to participate

1 in it. So you're able to say -- first of all, the staff
2 person's able to say to you, "Mr. Jones, let me tell you
3 what's really going on. This is what this thing's about.
4 This is what's the interest. Here's what I think they the
5 really sticky issue is. You might want to be concerned
6 about this. Watch that." And then you ask a couple of
7 questions and they provide a couple of answers.
8 And out of this whole process we're basically
9 doing a portion of the deliberation process on how we're
10 going to reach a decision. And interested members of the
11 public who may agree or disagree with those
12 characterizations who may want to add additional
13 information to your consideration process are closed out
14 of the process.
15 And so again, it's a way in which there's a
16 portion of the meeting that's happening without the
17 involvement of the public. So it's -- there's not a court
18 case that's directly on point with that. We can't say
19 100 percent that it's a problem. In some cases it may not
20 be. But there's a definite concern in our office so that
21 we've taken a position -- for example, the little
22 publication that you've got on the Bagley-Keene guide,
23 we've said where executive director wants to speak to a
24 majority of the members on the single topic, the best
25 thing is to put it in writing so everybody can see it.

1 That's one of those places which I think is
2 difficult and is frustrating because I understand why you
3 want to have that meeting. I know why it's helpful to
4 you. And I understand that there's no bad or evil motives
5 in that process. But when you look at it from the
6 perspective of the public, they're getting shortchanged on
7 their description of the process. So that's where the
8 concern comes in.
9 BOARD MEMBER JONES: Thanks.
10 BOARD MEMBER PEACE: So if I would like to have a
11 briefing with staff, can I have that briefing if I ex
12 parte them?
13 DEPUTY ATTORNEY GENERAL PRIM: I don't think the
14 ex parte -- there the ex parte concept doesn't figure into
15 the Bagley-Keene process. The fact that you've said --
16 and, again, now we are supposing that this staff briefing
17 is happening with a quorum of the body. If a staff
18 briefing is only happening with two members of the body,
19 for example, then it's not a problem.
20 The problem in your case is if the ticket gets to
21 be four or if you're talking a three-person committee, it
22 gets to be two. Depends on the body. Are we talking
23 about the full body or are we talking about the committee?
24 We have to do our calculation in each instance as to where
25 the quorum is. So it's when you get a quorum involved in

1 these serial communications, that's when we start to have
2 a problem. Because basically we're saying that a portion
3 of the meeting is taking place in these unnoticed
4 situations.
5 DEPUTY ATTORNEY GENERAL WALZ: You are saying if
6 an individual member wants to bring in a staff or group of
7 staff for a personal briefing, that's not an issue?
8 DEPUTY ATTORNEY GENERAL PRIM: That's not an
9 issue if it's one Board member doing it. The problem is
10 when you have a quorum of the Board members wanting to do
11 the same thing.
12 CHIEF COUNSEL TOBIAS: Or a quorum of the
13 committee.
14 DEPUTY ATTORNEY GENERAL PRIM: Or a quorum of the
15 committee.
16 CHIEF COUNSEL TOBIAS: The first person to get
17 your request in with a staff person can do that. And the
18 second person might be able to do that. I'm assuming that
19 was a quorum of the committee. So third person and fourth
20 person and fifth person, and the sixth person can't do
21 that.
22 DEPUTY ATTORNEY GENERAL PRIM: Right. And in our
23 situation what we've said -- for example, is if you start
24 to get the request from a host of members, the best way to
25 do it is try to address them all by some fashion such as

1 memo or some noticed premeeting or orientation. There's
2 nothing that says that you can't have a week before each
3 meeting or three days before each meeting or whatever some
4 kind of a noticed teleconference meeting or something like
5 that when you, say, want to give you an alert, "Here
6 what's coming. Here's the issue on the agenda. Here's
7 the situation. Here's the groups that are interested.
8 Here's what you need to think about," or whatever. It's
9 just if you're going to do that for everybody, then you
10 need to do it in a proper vehicle, either through a
11 noticed meeting or through a document that would then be
12 disclosed as part of your meeting package for the public
13 as well as your Board members. That's our recommendation.
14 BOARD MEMBER WASHINGTON: Ted, whose
15 responsibility would it be if two Board members had their
16 individual meetings with staff and a third Board member
17 didn't know they had their meeting? Would it be up to the
18 staff to tell the Board member "We can't meet with you
19 because we've already met two Board members?"
20 DEPUTY ATTORNEY GENERAL PRIM: That would be our
21 thought at that point that staff should take that
22 responsibility because they are essentially acting as the
23 hub in this hub and spoke series of communications with
24 the Board members.
25 CHAIRPERSON MOULTON-PATTERSON: And I do -- just

1 as a bit of history from my perspective, I do think there
2 are problems because staff is put in a bad position when
3 they are constantly pulled in by Board members and giving
4 Board members information, and I think there's been
5 pressure -- I'm not saying anyone on this Board. But in
6 the past there had been certain pressure that staff would
7 just withdraw their ideas. And so that's -- why not just
8 ask everything in a public setting is my thought. But
9 that's my opinion.
10 DEPUTY ATTORNEY GENERAL PRIM: You all are
11 permanent. You're not part-time commissioners? You're
12 full time?
13 CHAIRPERSON MOULTON-PATTERSON: Full time.
14 DEPUTY ATTORNEY GENERAL PRIM: There's nothing --
15 I don't know how often you meet, but there's nothing that
16 says you can't have a whole lot of meetings or have a
17 whole bunch and cancel if there's not a need. But there's
18 a --
19 BOARD MEMBER WASHINGTON: Staff will like that,
20 Ted, a whole bunch of meetings.
21 DEPUTY ATTORNEY GENERAL PRIM: I understand. But
22 there is a tendency to make the meetings big events that
23 are scheduled on an occasional basis. And if you have
24 full-time Board members or a need for a lot of interaction
25 or communication, it may be the way to handle that under

1 the Bagley-Keene Act where you're able to have a whole lot
2 more exchange of views.
3 CHAIRPERSON MOULTON-PATTERSON: Patty Wohl, one
4 of our deputy directors has a comment.
5 DEPUTY DIRECTOR WOHL: I just wanted to clarify.
6 This is for noticed Board items. There is an opportunity
7 if something is noted on a Board agenda to have
8 discussions with Board members. Is there a
9 differentiation?
10 DEPUTY ATTORNEY GENERAL PRIM: Well, the way that
11 we usually handle that is to tell people -- let's back up
12 here. The statute talks about reaching a consensus. It
13 talks about serial communication for the purpose of
14 reaching a consensus. Our interpretation of that is when
15 you're dealing with an agenda item the reason why people
16 communicate is to ultimately build a consensus.
17 We've also said that if it's not an agenda item
18 but you know it's going to be an agenda item shortly, that
19 essentially it's the same process. It just hasn't reached
20 the point of being noticed. But you know it's out there
21 and you know it's an issue and you know that at some point
22 you need to get a handle on that issue and that the Board
23 ultimately needs to reach a consensus. If we have an item
24 you know is going to be on the agenda in the relatively
25 near future, that communication about those items are what

1 would constitute serial meetings.

2 So to answer your question, you know, it depends

3 on what kind of item it is and where it fits into the

4 process in terms of being something that's ultimately

5 going to be coming before the body and is going to be the

6 subject of this reaching of a consensus.

7 CHAIRPERSON MOULTON-PATTERSON: Thank you. Any

8 other questions before we go on to number 3?

9 DEPUTY ATTORNEY GENERAL WALZ: 3.

10 DEPUTY ATTORNEY GENERAL PRIM: I like this last

11 part a whole lot better. You're doing more of the talking

12 and asking all the questions. Now that people are feeling

13 more comfortable, let's everybody speak up as we go along.

14 DEPUTY ATTORNEY GENERAL WALZ: 3, which of the

15 following is necessary to hold a teleconference meeting?

16 A, notice.

17 B, ability of public to comment on each agenda

18 item.

19 C, physical access by members of the public to

20 reach each remote site.

21 D, all of the above.

22 DEPUTY ATTORNEY GENERAL PRIM: Let me give you a

23 hypo and see what you think. We have a situation where

24 you want to have a teleconference meeting and you have a

25 situation where members -- it's inconvenient to travel or

1 they don't want to travel or whatever. And so we have one
2 member calling in from their vacation cabin and one member
3 calling in from an airplane phone, and we have another
4 member at home. Do we have a problem having a
5 teleconference meeting in that situation?
6 BOARD MEMBER PAPARIAN: Is it okay if the public
7 can call in to the same phone line?
8 DEPUTY ATTORNEY GENERAL PRIM: That's an
9 interesting question. There's nothing that specifically
10 addresses whether or not that's ultimately satisfactory.
11 And I think we may get to a point that you can provide
12 additional access for the public, and that can be a good
13 thing. It doesn't relieve you, though, of your
14 obligations to still conduct the teleconference meeting in
15 the manner required by law. So a person calling in --
16 having the ability to call in does not relieve you of your
17 other obligations.
18 CHAIRPERSON MOULTON-PATTERSON: Wouldn't it be a
19 problem -- the person on the plane because the public
20 wouldn't be there?
21 DEPUTY ATTORNEY GENERAL PRIM: Well, and someone
22 at home.
23 CHAIRPERSON MOULTON-PATTERSON: If it was posted.
24 DEPUTY ATTORNEY GENERAL PRIM: That's the
25 question. What the law requires is that you notice each

1 remote meeting site and that there be access by the public
2 to that meeting site and that they have the opportunity to
3 fully monitor and participate in the meeting in the same
4 way that they would if they were at this site, for
5 example. So you can do it from your home, but then you've
6 got to notice your home. And your home's got to be
7 accessible and that may include ADA issues also. And you
8 have to have the ability for them to be able to get to
9 your home to be able to listen and participate in the
10 meeting. We recommend people don't do them from home.
11 They do them from a state building or public conference
12 room or something like that.
13 DEPUTY ATTORNEY GENERAL WALZ: What if you were
14 to notice the AT&T number as the location of the meeting?
15 DEPUTY ATTORNEY GENERAL PRIM: At that point --
16 as I say, we may get to that. A lot of them say that's a
17 satisfactory resolution. And I think that people believe
18 there's something to being able to see people at the
19 meeting and not just be electronically hooked up to them.
20 So unless the law's amended, we would have to conclude
21 that as good as that is as an option, it doesn't relieve
22 you of your responsibility to have each of the sites where
23 your commissioners are present noticed and fully
24 accessible.
25 CHAIRPERSON MOULTON-PATTERSON: So is the answer

1 all of the above?

2 DEPUTY ATTORNEY GENERAL PRIM: All of the above

3 is the answer right now. It's not to be noticed. People

4 have to be able to participate, and they have to have

5 physical access.

6 BOARD MEMBER PAPARIAN: We have a related -- do

7 you want to ask the question?

8 EXECUTIVE DIRECTOR LEARY: Ted, this is Mark

9 Leary, Executive Director. We're on this brink of new

10 technology. The Board is very proud of its accomplishment

11 in the information technology area. And they are

12 seriously considering -- in fact, maybe very soon

13 providing access remotely to members of the public and

14 video conferencing them into our Board meetings and

15 possibly into our committee meetings.

16 Given proper notice about the location, those

17 remote locations -- and obviously the Board members will

18 all be most likely here and accessible and will be

19 noticed, it seems to me we're in the clear as far as

20 compliance with Bagley-Keene. But I thought I'd double

21 check while we're on the subject.

22 DEPUTY ATTORNEY GENERAL PRIM: Yeah. I think

23 if -- let's start with the easiest one. If they had all

24 of your Board members here, you can always provide

25 additional ways for the public to access your meetings.

1 And that's not a problem under the Bagley-Keene Act. So I
2 know of one Commission, for example, has been doing a 800
3 meeting. So they're all in Sacramento in their meeting
4 room, but a person can access it anywhere in California
5 from a telephone. It's terrific.
6 That doesn't come under the provision of the
7 Bagley-Keene because the Commissioners are all in one
8 place. The problem is when your Commissioners are in
9 remote locations. Those remote locations have to be
10 accessible to the public in the ways we've talked about.
11 So it sounds to me like your system would be terrific and
12 work great.
13 CHAIRPERSON MOULTON-PATTERSON: Great. That's
14 good to know. 4.
15 DEPUTY ATTORNEY GENERAL PRIM: Should we do about
16 the teleconference meeting?
17 DEPUTY ATTORNEY GENERAL WALZ: 4, which of the
18 following is an incorrect statement?
19 DEPUTY ATTORNEY GENERAL PRIM: I think that needs
20 to say -- something got left out there. An agenda shall
21 contain -- which is the incorrect statement about the
22 following an agenda shall contain?
23 DEPUTY ATTORNEY GENERAL WALZ: Which of the
24 following is an incorrect statement about what an agenda
25 should contain?

1 A, the name of a person to answer questions about
2 the agenda.
3 B, a brief general description of all items to be
4 considered in open session.
5 C, a description of no more than 20 words about
6 each closed session item.
7 And D, the agenda must designate the order in
8 which items will be considered.
9 DEPUTY ATTORNEY GENERAL PRIM: Okay. Somebody
10 want to take a crack at this one? Which one is an
11 incorrect statement about the agenda? No brave folks up
12 there.
13 Well, C is the one that most people bite for, but
14 C is not answer. People tend to think that because you
15 have an item noticed for closed session that you don't
16 have to give a description. And it's a little bit unclear
17 as to exactly what you have to say about closed session.
18 But they are still subject to the general notice
19 requirements. It's just because it is in closed session
20 you usually have to say less about it because in providing
21 your agenda description you're not required to disclose
22 any of the confidential information.
23 The way they handle that in the Brown Act is that
24 the Legislature actually sets out form notice
25 requirements, form notice templates, I'll call them, for

1 sessions and said to the legal Legislative bodies, "You
2 can go just go through and notice your closed session by
3 filling in the blanks and checking these boxes." There
4 isn't that in the Bagley-Keene Act. It just says you have
5 to provide specific written notice of the business you
6 intend to discuss or transact. So -- and the general
7 meeting requirement is that you need to give a
8 description, and you generally need not make more than
9 20 words to do it. That's for both open and closed
10 session meetings.
11 So it is, for example, generally not satisfactory
12 to say "personnel," period. You need to talk about
13 whether it's a hiring decision or whether it's a
14 disciplinary situation.
15 And if you look to the template notice provisions
16 of the Brown Act for guidance, which is what I recommend
17 people do because it gives an idea what the Legislative
18 put its stamp of approval on, it will say things such as
19 in many situations that are not related to discipline then
20 say the hiring situation or that you designate the
21 position in question, for example. So it does set out the
22 kinds of things that the Legislature thought were
23 appropriate for notice.
24 Four is the actual correct answer here. There
25 isn't anything that requires that you say what order

1 you're going to take things up in. Agencies and bodies
2 usually do that because it's helpful to themselves and to
3 the public. But you're not required to, and we'll talk
4 later about what you may or may not do that may bind you
5 in some of those situations.
6 Any other questions?
7 CHAIRPERSON MOULTON-PATTERSON: Mr. Prim, I do
8 have another question about the closed session. You know,
9 having been under the Brown Act as a School Board member
10 and as a counsel member, I was used to a little bit --
11 whether they did the numbers or whatever, you know,
12 something like if you were talking about possible
13 litigation with Wal-Mart or something, should we be doing
14 more of that? I mean --
15 DEPUTY ATTORNEY GENERAL PRIM: Well, yeah. The
16 law specifically says in the case of litigation that
17 generally you need to put that in the case name. Now,
18 sometimes there isn't a case because you're meeting to
19 decide to initiate one, in which case then you just
20 indicate you're meeting to consider litigation.
21 CHIEF COUNSEL TOBIAS: But there is an exception.
22 Ted, do you want to talk about that?
23 DEPUTY ATTORNEY GENERAL PRIM: Yeah. Where it
24 would compromise settlement or serve as process. Is that
25 what you're thinking of?

1 CHIEF COUNSEL TOBIAS: Right.
2 DEPUTY ATTORNEY GENERAL PRIM: That's why I said
3 generally you need to put that on.
4 CHAIRPERSON MOULTON-PATTERSON: I understand.
5 But if it's some ongoing -- what are some of our famous
6 cases?
7 CHIEF COUNSEL TOBIAS: Wesley.
8 DEPUTY ATTORNEY GENERAL PRIM: If you have a
9 ongoing case and you're going to discuss it or think
10 you're going to discuss it at a meeting, you would
11 ordinarily on your agenda.
12 CHAIRPERSON MOULTON-PATTERSON: Thank you.
13 BOARD MEMBER JONES: We never notice -- we notice
14 we may have a closed session.
15 CHAIRPERSON MOULTON-PATTERSON: I think we should
16 notice more.
17 BOARD MEMBER JONES: Absolutely.
18 DEPUTY ATTORNEY GENERAL PRIM: You probably need
19 to do a better job of that part then. Okay.
20 Anything else on this one?
21 CHAIRPERSON MOULTON-PATTERSON: I don't see any
22 other lights.
23 DEPUTY ATTORNEY GENERAL PRIM: Okay. Let's try
24 the next one here.
25 DEPUTY ATTORNEY GENERAL WALZ: The next one is 5,

1 an agenda must clearly designate,
2 A, which are for discussion and which are for
3 action or vote.
4 B, the approximate time of any planned lunch
5 break.
6 C, the website where the agenda is posted.
7 And E, none of the above.
8 DEPUTY ATTORNEY GENERAL PRIM: Okay. I'll start
9 with the first one. You think you need to put what's for
10 discussion and what's for action?
11 CHAIRPERSON MOULTON-PATTERSON: Yes.
12 DEPUTY ATTORNEY GENERAL PRIM: You don't. You
13 can. And my recommendation would be that if you do --
14 particularly in the case if you label something for
15 discussion, then you shouldn't take action on it because
16 you've told the public this is not an action item. This
17 is just a discussion item. So if you're going to label it
18 as a discussion item, you're putting the public on notice
19 that nothings final's going to happen on that. And,
20 therefore, if it's not a good day for me to attend, I'm
21 not going to be precluded from making my argument or
22 having my ability to influence the decision at some point
23 down the road. So you're not required to put those things
24 on an agenda. But if you do, then you're bound by them.
25 Now, if you say action and you don't take action,

1 that's not a problem. But if you say it's discussion and
2 then you decide you want to do more than discussion, I
3 think that you have a potential problem where someone can
4 challenge you.
5 CHAIRPERSON MOULTON-PATTERSON: What about lunch?
6 DEPUTY ATTORNEY GENERAL PRIM: Nothing that says
7 you need to put your lunch breaks on there.
8 CHAIRPERSON MOULTON-PATTERSON: That's good.
9 DEPUTY ATTORNEY GENERAL PRIM: Again, you can put
10 an estimate on there as to when you're going to take
11 lunch, and that's fine. But there's nothing that says
12 that you have to put it on there or you're going to be
13 bound by it. But what's the other one?
14 DEPUTY ATTORNEY GENERAL WALZ: General public
15 comment period.
16 DEPUTY ATTORNEY GENERAL PRIM: It says the time
17 of the general comment period?
18 DEPUTY ATTORNEY GENERAL WALZ: The approximate
19 time.
20 DEPUTY ATTORNEY GENERAL PRIM: There's nothing
21 that says that you have to have a designated general
22 comment period. And we'll talk more about that a little
23 bit.
24 DEPUTY ATTORNEY GENERAL WALZ: The website where
25 the agenda is posted.

1 DEPUTY ATTORNEY GENERAL PRIM: That you've got to
2 have. The law now requires that you do your agenda, and
3 on your agenda it says where the website is where your
4 agenda is posted. And then you have to have your agenda
5 posted on a website. That is a new requirement of the law
6 in the last couple of years.
7 BOARD MEMBER JONES: I have a question. They're
8 doing Bagley-Keene to keep the public informed. You go
9 into a meeting. You -- I'm not saying this Board. You
10 don't say when the public can have its general comment.
11 You look in the room, the room's empty. You call for
12 general comment. At the end of the meeting when people
13 aren't there, you don't need to call for public comment.
14 Have you satisfied the law?
15 DEPUTY ATTORNEY GENERAL PRIM: Well, I'll jump
16 ahead here.
17 BOARD MEMBER JONES: It just sounds like it's a
18 contradiction.
19 DEPUTY ATTORNEY GENERAL PRIM: I'm going to give
20 away the answer to a future question, unfortunately, here.
21 The Act does not require that you have a public comment
22 period. I would recommend that you do. And the law says
23 that not withstanding the general agenda notice
24 requirements that you can take comments from the public on
25 any item under your jurisdiction whether it's noticed or

1 not, so long as you don't take any action on it.

2 But unlike the Brown Act which says every agenda

3 shall contain a period for public comment on any item,

4 under the jurisdiction of the Bagley-Keene Act does not

5 say that. It merely says you're not precluded from taking

6 public comment on unnoticed issues. If you have an agenda

7 with noticed items on it, then the public is entitled to

8 be able to participate on each of those agenda items.

9 Does that clarify that issue then?

10 BOARD MEMBER JONES: Yeah.

11 BOARD MEMBER PAPARIAN: Just a follow-up on that

12 last statement. Often we'll have a situation where 20 or

13 30 members of the public want to comment on the item, and

14 we limit the comments to two minutes or three minutes

15 each. Any problem with that?

16 DEPUTY ATTORNEY GENERAL PRIM: No. I don't think

17 there is a problem if you're fair-handed and reasonable

18 about how you do it. Then you should be okay. You've got

19 a fair amount of discretion in that area, but you are

20 allowed to participate on each agenda item.

21 CHAIRPERSON MOULTON-PATTERSON: Okay.

22 DEPUTY ATTORNEY GENERAL WALZ: Number 6, if there

23 is a need for immediate action and the Board wishes to add

24 an item to the agenda, how much notice in advance of the

25 meeting must be given? We have some options, 10, 48 and

1; right?

DEPUTY ATTORNEY GENERAL WALZ: You got it.

DEPUTY ATTORNEY GENERAL PRIM: You know your normal notice requirements is 10-day notice. There is a special meeting provision in the Act so that in certain limited cases where you make certain findings you can do special meetings in the 48-hour time period.

There's also a provision that says where there's a need for immediate action and the need came to the attention of the body after the 10-day agenda had been sent out, that an item can be then added to an agenda 48 hours ahead of time, so long as you take a particular kind of notice. And that is you have to notify all the national wire services about the item that it's going on the agenda.

So that's what this question is aimed at focusing on, is that where exigent circumstances occur, there are ways to either have a special meeting in certain situations or to add things to an existing agenda, if you can jump through all the appropriate hoops.

Next one.

DEPUTY ATTORNEY GENERAL WALZ: Which of the following is not a right of the public?

A, notice.

B, public comment on items not on the agenda.

1 C, access to records and material.
2 And D, participation in each item on the agenda.
3 DEPUTY ATTORNEY GENERAL PRIM: Come on, guys.
4 You can do it.
5 BOARD MEMBER WASHINGTON: B.
6 DEPUTY ATTORNEY GENERAL PRIM: B. Right.
7 DEPUTY ATTORNEY GENERAL WALZ: 8, which of the
8 following is a true statement?
9 Members of the public may sometimes attend a
10 closed session.
11 B, the public has prompt access to written
12 materials provided to the body prior to a meeting.
13 C, a body may require members of the public to
14 sign in as a condition of speaking at a regular meeting.
15 And, D, if no member of the public is present, a
16 body may adjourn the meeting from a closed session.
17 DEPUTY ATTORNEY GENERAL PRIM: We do have a
18 problem we have to talk about today unfortunately. Let's
19 take these one at a time, though I think each of these
20 needs a brief description. What is the first one?
21 DEPUTY ATTORNEY GENERAL WALZ: Members of the
22 public may attend a closed session.
23 DEPUTY ATTORNEY GENERAL PRIM: You can't have
24 semi-closed meetings and let certain members of the public
25 into that meeting. There may be a situation with an

1 employee in the closed session. And they're not really
2 considered to be a member of the public because they're
3 the subject of the potential disciplinary action. But you
4 can't have partially closed meetings. Meetings are either
5 opened or meetings are closed.
6 Second one was?
7 DEPUTY ATTORNEY GENERAL WALZ: B is the public
8 has prompt access to written materials provided to the
9 body prior to a meeting.
10 DEPUTY ATTORNEY GENERAL PRIM: Right. When a
11 majority of your Board members are sent records by your
12 staff in connection with a meeting, the public then has
13 prompt access to those records as well unless they are
14 exempt from disclosure under the Public Records Act. But
15 assuming that there's not a reason why it's exempt, then
16 they actually have the ability to get prompt access to
17 those in proximity to the time they're provided to the
18 Board members.
19 A lot of people don't realize that. They think
20 the public's not entitled to get the record until they get
21 to the meeting. But this -- if they've been provided to
22 the Commission early, the statute provides that the
23 members of the public are also entitled to get prompt
24 access to those records.
25 The third one?

1 DEPUTY ATTORNEY GENERAL WALZ: C, a body may
2 require members of the public to sign in as a condition of
3 speaking.
4 DEPUTY ATTORNEY GENERAL PRIM: Yeah. I guess I
5 have two concerns here. One, the sticker I'm wearing that
6 tells my name is essentially a registration requirement
7 and prevents me from coming to this meeting and either
8 watching anonymously or testifying anonymously. We have
9 advised in light of 9/11 that it's not a violation of that
10 provision. In fact, it says people can't be required to
11 register to take their information in order to get access
12 to the building so long as that information has not been
13 communicated to the people at the meeting. So I thought
14 that we had a general understanding on this. It might
15 bare some additional communication. I talked to the
16 general counsel of the agency about this at one point.
17 Not Kathryn, the overall EPA agency, Debra Barns.
18 Yeah. So I think we'll do that again to see if
19 there's a way to not compromise the security issues which
20 are legitimate with the rights of the public not to have
21 to identify themselves when they come to meetings. It
22 doesn't specifically in the Act talk about the speaking
23 issue. But because it says that you don't have to
24 register in order to attend meetings, we can't come up
25 with a reason why a person shouldn't be able to still

1 voice their views. The body can give that whatever weight
2 they want if the person doesn't wasn't to identify
3 themselves.
4 But if we have a hypothesis, a situation where a
5 person doesn't want to give their name for legitimate
6 private security but still may have a compelling story to
7 tell a Board or Commission that that Board may want
8 to hear, notwithstanding the fact that the person hasn't
9 identified themselves.
10 So our advice would be that people not be
11 required to identify themselves to either attend or to
12 speak at a meeting.
13 DEPUTY ATTORNEY GENERAL WALZ: And finally if no
14 member of the public is present, a body may adjourn the
15 meeting from a closed session.
16 DEPUTY ATTORNEY GENERAL PRIM: The law provides
17 that when you come out of a closed session -- you've got
18 to go into closed session from an open meeting, and you've
19 got to come out of closed session. You cannot adjourn
20 directly from a closed session.
21 CHAIRPERSON MOULTON-PATTERSON: Even if no action
22 is taken?
23 DEPUTY ATTORNEY GENERAL PRIM: Even if there's no
24 action taken. Even if there's no public in your public
25 room.

1 DEPUTY ATTORNEY GENERAL WALZ: 9, which answer is
2 incorrect? You may hold a closed session to review the
3 performance of,
4 A, a fellow Board member.
5 B, the executive director.
6 C, a career executive assignment.
7 D, all other employees.
8 DEPUTY ATTORNEY GENERAL PRIM: A, you may not
9 hold a closed session to talk about fellow Board members.
10 It's an employee exception. The executive director --
11 it's interesting. But when the law was amended, it talks
12 about particular institutional exempt which is the
13 institutional exempt provided for each Board or
14 Commission, that position at least is considered to be an
15 employee. That was in response to an opinion that our
16 office had written many years ago that distinguished
17 between officers and employees saying that the executive
18 director of the California Transportation Agency was an
19 officer and not an employee, and therefore, the employee
20 exception did not apply. They added it in so that at
21 least certain exempts are clearly now employees. CEAs
22 notwithstanding their higher rank are still considered to
23 be employees for purposes of the employee exempts.
24 CHAIRPERSON MOULTON-PATTERSON: Okay.
25 DEPUTY ATTORNEY GENERAL WALZ: Which answer is

1 incorrect with respect to a closed session to consider
2 charges against an employee?
3 A, must provide specific written notice to the
4 employee 24 hours prior to the meeting.
5 B, the notice must inform the employee of his or
6 her right to require the meeting to be conducted in open
7 session.
8 C, after the open session, the body may
9 deliberate in closed session.
10 D, the employee must choose to open the session
11 or attend the closed session.
12 DEPUTY ATTORNEY GENERAL PRIM: Yes. The one that
13 is not true that the employee does not have the right to
14 make it a closed session. The employee has the right to
15 make it an open session. The body can still deliberate
16 after the open session on what it wants to do. But the
17 employee does not have the right to close a session.
18 Okay. We're almost done folks.
19 DEPUTY ATTORNEY GENERAL WALZ: 11, which answer
20 is incorrect? When a body concludes a closed session, it
21 must,
22 A, reconvene in open session.
23 B, announce action only if any decision has been
24 made to appoint employee or dismiss an employee.
25 C, announce any action taken in closed session.

1 DEPUTY ATTORNEY GENERAL PRIM: We talked earlier
2 about how everybody has to reconvene into open session
3 after a closed session. So that was a correct statement.
4 And the other correct statement there is B, that
5 the statute requires that you announce any action taken in
6 a closed session to hire or fire, but it does not at the
7 present time go beyond that into other kinds of decisions.
8 So it's a limited requirement under Bagley-Keene to
9 announce actions that were taken at the closed session.
10 DEPUTY ATTORNEY GENERAL WALZ: 12, which of the
11 following does not apply to the pending litigation
12 exception?
13 A, the sole purpose is to confer with the
14 agency's attorney.
15 B, after closed session must reconvene in open
16 session.
17 C, must report action taken.
18 D, attendance is limited to necessary persons.
19 E, the taking of minutes is required.
20 DEPUTY ATTORNEY GENERAL PRIM: The one that's not
21 true is the required to announce your actions.
22 The two that I specifically want to mention here
23 is that the purpose of a session is to confer with your
24 attorneys. So you can't have a closed session on a
25 litigation matter without your attorney present. Just

1 because you want to talk about legal issues on the case or
2 whatever, the attorney needs to be present and involved
3 because that's the purpose of the closed session.
4 The other thing is is that closed sessions should
5 be limited to necessary folks. So people who have a
6 purpose to be there in the closed session are the ones
7 that should be there. And other folks that don't have a
8 purpose to go in the closed session generally shouldn't be
9 there.
10 Those are the 12 questions that I picked out to
11 try to take us on a tour of the primary provisions of the
12 Bagley-Keene Act. I hope it's served that function. If
13 you have additional questions at this time, I'd be happy
14 to --
15 CHAIRPERSON MOULTON-PATTERSON: While everyone's
16 thinking if they have additional questions, I want to
17 thank you so much. We see some errors we might have been
18 making, and we'll correct those. And your questions have
19 been very good in bringing up a lot of very pertinent
20 questions, as far as I'm concerned. And it was very
21 important for me, for all of our Board members to hear
22 your interpretation at the same time. So I thank you very
23 much.
24 Any questions?
25 DEPUTY ATTORNEY GENERAL PRIM: Let me add one

1 other thing.

2 The little booklet that we provided you, a handy

3 guide to the Bagley-Keene, it has two parts to it. The

4 first 13 or 14 pages are text. And I would recommend to

5 each of you that you take probably 20 minutes or so it

6 takes to read that, just to sit and read through that

7 because I think that it will reinforce some things we

8 talked about today. It also will act as a resource for

9 you in the future if you have questions. You can go and

10 see what we've written.

11 We've tried to cover most of the major topics in

12 the Bagley-Keene Act, and we also put the citation to the

13 statutory provisions in there. And then following that

14 you have the actual text of the law itself or you can look

15 and see how things read. But it's really the text part

16 before the blue sheet of paper that I think it's intent

17 was to write it for Board members and to provide them with

18 basic guidance on how the Bagley-Keene Act operates. So

19 we hope it will serve that function for you as well.

20 CHAIRPERSON MOULTON-PATTERSON: Any other

21 questions? I don't see any. And again I want to thank

22 you on behalf of all of us, Mr. Prim.

23 And Edna, thank you so much for your introduction

24 and your help during this presentation. Thank you. And

25 thank you, Katherine, for all of your cooperation on this.

At this time we'll take a ten-minute break.

(Thereupon a recess was taken.)

CHAIRPERSON MOULTON-PATTERSON: We still have about ten items so I'd like to get started.

Mr. Jones, do you have any ex partes?

BOARD MEMBER JONES: George Larson and John Cupps.

CHAIRPERSON MOULTON-PATTERSON: Thank you.

Ms. Peace.

BOARD MEMBER PEACE: No. I'm up to date.

CHAIRPERSON MOULTON-PATTERSON: Thank you.

I'm up to date.

Mr. Medina.

BOARD MEMBER MEDINA: None to report.

CHAIRPERSON MOULTON-PATTERSON: Thank you.

Mr. Paparian.

BOARD MEMBER PAPARIAN: Yeah. I talked to Randy Pollack regarding on our agenda. Chuck Helgut regarding Sunshine Canyon in open meeting. And I talked to John Cupps about open meeting.

CHAIRPERSON MOULTON-PATTERSON: Mr. Washington.

BOARD MEMBER WASHINGTON: I have none.

CHAIRPERSON MOULTON-PATTERSON: Okay.

Before we begin the Waste Prevention and Market Development, I'll call on Mr. Medina to give his report.

1 I thought I'd call on Mr. Leary to report about his
2 attending the joint Legislative Audit Committee this
3 morning.
4 EXECUTIVE DIRECTOR LEARY: That's exactly what it
5 was, Madam Chair. Thank you for allowing me this brief
6 opportunity, and I will be brief.
7 I think most of the members know we were invited
8 to participate in the Joint Legislative Audit Committee on
9 the -- in response to a member's request -- a member of
10 the Legislature's request to audit the Board's permit
11 process, waste facility permit process. That was about
12 all the specifics we got until we showed up this morning.
13 As it turns out, it was Assemblymember Reyes'
14 request for the audit, and it had much to do with the
15 Board's history involvement with the Crippin site, and
16 that being the stair step for her to suggest that the
17 Board's process ought to be audited. And basically all
18 aspects of the audit of the permitting process.
19 It is -- many of you will recall it rings
20 somewhat very similar to the audit the Board endured, for
21 lack of a better word, back in the year 2000. I testified
22 in support -- not -- I testified in the interest of trying
23 to give the Committee the full perspective of the Board's
24 involvement with the Crippin site particularly light of
25 the Board's passage of the C&D regulations.

1 And my fundamental perspective that I shared with
2 the Committee -- it wasn't in opposition of Reyes'
3 request. It was simply to offer as information to the
4 Committee that the Board has, in fact, passed a very
5 comprehensive package of regulations that is now waiting
6 consideration from the Office of Administrative Law. And
7 although I wondered if it was really worth the Committee's
8 resources and the state auditor's resources to devote that
9 kind of effort to a situation that has been remedied
10 largely by the passage of these very comprehensive
11 regulations.
12 I want to express my appreciation for both Board
13 Member Washington, who surprised me and showed up
14 alongside and supported my testimony, and also Justin
15 Malan of the California Conference of Directors of
16 Environmental Health also offered a perspective in support
17 of the fact that this issue is behind us. The Board's
18 dealt with it. It really isn't good use of the state
19 auditor's time to further audit the Board's action.
20 Some clarifying questions were asked by some of
21 the members. They didn't have a quorum of the Committee
22 when they talked to us so there wasn't an opportunity to
23 take a vote.
24 Subsequent from our departure from the front
25 table, a quorum arrived. A motion was made, and a second,

1 and roll call was basically held up open.

2 I left to come back here. Of course, Carl left

3 to come back to sit in at the start of the Board meeting.

4 Carol stuck around for a while. She ultimately left

5 before the 13 members of the Committee voted. We have

6 come to find out since then we're on a nine to two vote.

7 They narrowed the scope of the audit to deal with strictly

8 the permitting of the Crippin site as well as an

9 evaluation of the permitting of another C&D site to be

10 picked by the state auditor somewhere in the state. And

11 the audit will go forward on that nine to two vote.

12 So we were stratagizing, Julie and I, earlier

13 about -- we were building on our past relationship with

14 the State Auditor's Office. We're going to meet with them

15 in a proactive manner very shortly, provide them all the

16 information they could possibly need. Reinforce the fact

17 we have an existing relationship with those folks and had

18 a good constructive working relationship two years ago and

19 hope to go from there and make it as

20 resource-less-intensive as possible for both them and us.

21 CHAIRPERSON MOULTON-PATTERSON: What is the

22 approximate cost of an audit like this?

23 EXECUTIVE DIRECTOR LEARY: It was based on

24 Assemblymember Reyes' original letter. The state auditor

25 takes that letter and request and costs it out. They

1 estimate it was somewhere in the neighborhood of $175,000
2 for the auditor to do that audit.
3 CHAIRPERSON MOULTON-PATTERSON: Well, I thank you
4 very much Mr. Leary and Mr. Washington for being there and
5 also thank Mr. Malan.
6 It's interesting in these times of financial
7 crisis that this is going forward because I do feel that
8 you have addressed some of the problems. But obviously --
9 who were the two members that voted against it, do you
10 know offhand?
11 BOARD MEMBER WASHINGTON: McClintock and Jackson,
12 I believe.
13 CHAIRPERSON MOULTON-PATTERSON: And Jackson.
14 Thank you.
15 BOARD MEMBER WASHINGTON: Madam Chair.
16 CHAIRPERSON MOULTON-PATTERSON: Washington, yes.
17 BOARD MEMBER WASHINGTON: Let me -- I certainly
18 want to thank Mark. He did a fabulous job. And I simply
19 went up to ditto everything Mark already said.
20 But what I want to make sure to the members of
21 their Committee -- I told them they're wasting $175,000
22 because what they don't find in this audit is exactly what
23 we're asking for right now. We're already moving in that
24 direction. And I have a personal conversation outside of
25 the room with Sarah Reyes about that. I said, "Sarah, I

1 just think it's a bad move. I don't think you need to do
2 an audit. What we need is statutory authority to do some
3 of this stuff you want to do."
4 You constantly saying -- and some of the
5 comment's she made toward this Board was offensive
6 comments. Such as, "The Board should have paid for it
7 because it was their responsibility." Those kinds of
8 things I got offensive about. And I kind of mentioned it
9 to her. But what I said to the members of the Committee
10 is that we need statutory authority. And until you do
11 that, no matter how many audits you do to this Board in
12 terms of any of those sites, until we have the authority
13 to do anything about it, it's going to always remain the
14 same.
15 So whatever her issues are, those are her issues
16 now because I'm the representative who represents the
17 assemblymembers over here. I'm telling her se need to do
18 what she want to do. For some reason she just wants to do
19 these audits. And you know, Godspeed to all of them over
20 there. But I tell you, once the Speaker and those guys
21 find out the money is going down the drain like that,
22 they're going to be hard-pressed to continue to do things
23 like that.
24 CHAIRPERSON MOULTON-PATTERSON: Thank you, Carl.
25 I really appreciate that, and I think we can certainly

1 hold our head very high in our handling of our response to
2 the Crippin fire. And we got personal letter from the
3 Mayor saying what a fantastic job. They had never dealt
4 with a Board that had done such a great job. So anyway,
5 we're real proud of that.
6 Any other comments? Board members? Okay.
7 Then on Waste Prevention and Market Development.
8 Mr. Medina is Chair of that Committee. And I'll turn it
9 over to him for a report before we go to the items.
10 BOARD MEMBER MEDINA: Thank you, Madam Chair.
11 From the Market Development division this is a
12 summary of the action taken of their items. We heard two
13 items of redesignation of RMDZ that were placed on
14 consent. These items were Item 22, the Agua Mansa RMDZ
15 the regional market development zone; and 23, Ventura
16 County regional marketing development zone. Those zones
17 were extended for another ten years.
18 Another item that was placed on the consent
19 calendar was number 28 that dealt with the completion of
20 the 97, 98 rigid plastic packaging container compliance
21 agreements for various companies.
22 Items 24, 25, 26, 27, and 30 enjoyed fiscal
23 consensus from the Committee.
24 Item 24 dealt with the consideration of the
25 contractor for the revolving loan services.

1 Item 25 had to do with the consideration of
2 awards for reuse assistance grants.
3 Item 26 had to do with the scope of work and
4 contractor for the motion picture industry sustainability
5 contract. And I'm very pleased that this is going
6 forward.
7 Item 27 was for the selection of a contractor for
8 the conversion technologies life cycle and market impact
9 assessment.
10 Item 30 was the consideration of grant awards for
11 the California Youth Authority for recycled rubber
12 product.
13 There was no action taken on Item 29 due to lack
14 of possible candidates for the contract. The Committee
15 gave direction to the staff to work with colleagues and
16 the university on an interagency agreement. Staff will
17 present this item in June.
18 Finally, for the Market Development Division we
19 heard Item 31 that dealt with the emergency regulations
20 regarding civil penalties against manufacturers for
21 noncompliance with the rigid plastic packaging container.
22 This item will be heard today by the full Board.
23 From the Special Waste Division the following
24 items were placed on the consent.
25 Item 36, consideration of the request exempt tire

1 enforcement grants from the permit checklist requirements.
2 Item 37, approval of criteria for the waste tire
3 playground cover grant program.
4 The following items enjoyed fiscal consent.
5 Item 33, consideration of a contractor for the
6 fleet manager training program on used oil.
7 Item 34, grant awards for the used oil recycling
8 nonprofit grants.
9 Item 35, scope of work and contractor for the
10 community-based social marketing pilot.
11 And Item 39, approval of new sites for
12 remediation of the waste tire and abatement program.
13 Two items were heard by the Committee only.
14 Item 32, a report from OEHHA on tire fire smoke.
15 And Item 40 was a report on the Sonoma waste tire
16 sites.
17 Item 38 dealt with the consumer education tire
18 survey and marketing research contract which was pulled as
19 the contractor needed more time to complete the survey.
20 This will be presented in May or June.
21 Item 41 was the development of the revised
22 five-year plan which was approved by the Committee on a
23 three to one vote and will be heard by the entire Board at
24 its May meeting. However, I will be reserving my comments
25 regarding the five-year tire plan until this matter is

1 heard before this full Board.

2 That concludes my report.

3 CHAIRPERSON MOULTON-PATTERSON: Thank you,

4 Mr. Medina.

5 Now I'll turn over to Ms. Wohl for Item 24.

6 DEPUTY DIRECTOR WOHL: Good afternoon, Madam

7 Chair, Board members. I'll be presenting all these items

8 myself in the interest of time. But staff is available if

9 you have any questions.

10 Agenda Item 24, consideration of contractor for

11 the recycling market development revolving loan program

12 for foreclosure services.

13 This is a contract award in an amount up to

14 $10,000 for foreclosure services for the RMDZ loan

15 program. It will provide us with the needed services to

16 assist in recovering assets of loan businesses going into

17 default. Quality Loan Services, Corporation was the sole

18 bidder on this contract. This item received committee

19 consensus. Staff recommends the Board adopt Resolution

20 2003-248.

21 CHAIRPERSON MOULTON-PATTERSON: Mr. Medina.

22 BOARD MEMBER JONES: That's fine.

23 CHAIRPERSON MOULTON-PATTERSON: Mr. Medina.

24 BOARD MEMBER MEDINA: Madam Chair, I'd like to

25 move Resolution 2003-248, consideration of contractor for

1 the recycling market development revolving loan program
2 for foreclosure services RMDZ sub-account fiscal year
3 2002/03.
4 BOARD MEMBER JONES: Second.
5 CHAIRPERSON MOULTON-PATTERSON: We have a motion
6 by Mr. Medina, seconded by Mr. Jones to approve Resolution
7 2003-248.
8 Please call the roll.
9 SECRETARY WADDELL: Jones?
10 BOARD MEMBER JONES: Aye.
11 SECRETARY WADDELL: Medina?
12 BOARD MEMBER MEDINA: Aye.
13 SECRETARY WADDELL: Paparian?
14 BOARD MEMBER PAPARIAN: Aye.
15 SECRETARY WADDELL: Peace?
16 BOARD MEMBER PEACE: Aye.
17 SECRETARY WADDELL: Washington?
18 BOARD MEMBER WASHINGTON: Aye.
19 SECRETARY WADDELL: Moulton-Patterson.
20 CHAIRPERSON MOULTON-PATTERSON: Aye.
21 25.
22 DEPUTY DIRECTOR WOHL: Agenda Item 25,
23 consideration of awards for a joint offering of the reuse
24 assistance grants for fiscal years 2002/03 and 2003/04.
25 This item also received Committee consensus. Staff

1 recommends approving the proposed awards and adopting
2 Resolution Number 2003-249 to award six grants, five fully
3 and one partially. And it directs staff to return to the
4 Board upon approval of fiscal year 2003/2004 budget so
5 that the remaining applicants with passing scores can be
6 considered for award.
7 CHAIRPERSON MOULTON-PATTERSON: Mr. Medina.
8 BOARD MEMBER MEDINA: Madam Chair, I'd like to
9 move Resolution 200-249, consideration of awards for a
10 joint offering of the reuse assistance grants for Fiscal
11 Year 2002/2003, 2003/2004.
12 BOARD MEMBER JONES: I'll second.
13 CHAIRPERSON MOULTON-PATTERSON: Motion by Medina,
14 seconded by Mr. Jones. Please substitute the previous
15 roll call without objection.
16 Number 26.
17 DEPUTY DIRECTOR WOHL: Agenda Item 26,
18 consideration of the scope of work and contractor for the
19 motion picture industry sustainable contract. This item
20 awards $150,000 to UCLA to incorporate sustainable
21 practices into the motion picture industry. This item was
22 passed unanimously in both the Special Waste and Market
23 Development Committee and the Budget and Admin Committee.
24 Staff recommends the Board adopt Resolution
25 2003-250 and 2003-251.

1 CHAIRPERSON MOULTON-PATTERSON: Thank you.
2 Mr. Medina.
3 BOARD MEMBER MEDINA: Madam Chair, I'd like to
4 move 2003-250, consideration of scope of work for the
5 motion picture industry sustainability contract, IWMA fund
6 Fiscal Year 2002/2003, contract concept number 30, and
7 used oil fund Fiscal Year 2002/03, contract concept number
8 0-39.
9 BOARD MEMBER JONES: Second.
10 CHAIRPERSON MOULTON-PATTERSON: We have a motion
11 to approve Resolution 2003-250 by Mr. Medina, seconded by
12 Mr. Jones.
13 Please substitute the previous roll call.
14 Mr. Medina.
15 BOARD MEMBER MEDINA: Madam Chair, I'd like move
16 Resolution 2003-251, consideration of the contractor for
17 the motion picture industry sustainability contract, IWMA
18 fund, Fiscal Year 2002-2003, contract concept number 30,
19 and used oil fund, and Fiscal Year 2002/03, contract
20 consent number 0-39.
21 BOARD MEMBER JONES: Second.
22 CHAIRPERSON MOULTON-PATTERSON: Motion by Medina,
23 seconded by Jones.
24 Substitute previous roll call without objection.
25 Number 27.

1 DEPUTY DIRECTOR WOHL: Agenda Item 27,
2 consideration of contractor for conversion technologies
3 life cycle and market impact assessment contract. The
4 contract is for the amount of $824,199 to research
5 Triangle Institute International to evaluate life cycle
6 environmental aspects and market impacts related to
7 potential development of conversion technologies in
8 California for AB 2770.
9 Staff recommends the Board approve Option 1 and
10 adopt Resolution 2003-252 revised.
11 CHAIRPERSON MOULTON-PATTERSON: Mr. Medina.
12 BOARD MEMBER MEDINA: Madam Chair, I'd like to
13 move Resolution 2003-252, consideration of contractor for
14 converse technologies life cycle and market impact
15 assessment contract, Fiscal Year 2002/03, AB 2770
16 appropriation in the amount of $824,199 for research
17 funds.
18 BOARD MEMBER JONES: Second.
19 CHAIRPERSON MOULTON-PATTERSON: Motion by Medina,
20 seconded by Jones to approve Resolution 2003-252.
21 Please substitute the previous roll call without
22 objections.
23 Number 30.
24 DEPUTY DIRECTOR WOHL: Agenda Item 30,
25 consideration of grant award to the California Youth

1 Authority for recycled rubber product.

2 This grant is in the amount of $150,000 to the

3 California Youth Authority to incorporate the resilient

4 rubberized flooring and anti-fatigue matting manufactured

5 from 100 percent recycled tire -- California tires. This

6 item received consensus at the Committee level. Following

7 direction from the Special Waste and Market Development

8 Committee, staff has already met with the Department of

9 Corrections. Initially, it looks like there will be

10 transferability of this concept from the Youth Authority

11 to Corrections. And, in fact, they're very interested in

12 implementing a pilot of their own.

13 Staff recommends that the Board approve Option 1

14 and adopt Resolution 2003-272.

15 CHAIRPERSON MOULTON-PATTERSON: Mr. Medina.

16 BOARD MEMBER MEDINA: Madam Chair, I'd like to

17 move Resolution 2003-272, consideration of grant award to

18 the California Youth Authority for recycled rubber

19 products, Fiscal Year 2002/03 tire recycling management

20 fund in the amount of $150,000.

21 I'd also like to point out that we made a special

22 point in the Resolution that projects incorporate

23 California waste and used tire materials.

24 BOARD MEMBER JONES: Second.

25 CHAIRPERSON MOULTON-PATTERSON: Motion by Medina,

1 seconded by Mr. Jones.

2 Please substitute the previous roll call.

3 Next item.

4 DEPUTY DIRECTOR WOHL: Agenda Item 31,

5 consideration of adoption of emergency regulations

6 regarding assessment of administrative civil penalty

7 against product manufacturers for noncompliance with the

8 ridged plastic packaging container RPPC law.

9 As you are aware, public hearings are anticipated

10 to begin this summer for the 1997 through 1999 compliance

11 years. Upon approval by the Board, staff will send these

12 regulations to the Office of Administrative law for

13 approval. Contained in these emergency regulations is the

14 penalty structure to be used by the Administrative Law

15 Judge and the Board to assess penalties. The penalty

16 structure incorporates that changes that were agreed to at

17 the interested parties meeting and the Special Waste and

18 Market Development Committee meeting.

19 Staff recommends that the Board approve Option 2

20 which includes these specified changes and adopt

21 Resolution 2003-273 revised.

22 CHAIRPERSON MOULTON-PATTERSON: Thank you. We

23 have speaker slip by Randy Pollack, Soap and Detergent

24 Association.

25 MR. POLLACK: Madam Chair, members of the

1 Committee, Randy Pollack on behalf of the Soap and
2 Detergent Association. Initially, we were opposed to the
3 emergency regulations, but we have had extensive meetings
4 with both the staff, legal counsel, and also at the
5 Committee level last week. We have resolved our concerns.
6 We have removed our opposition. I've also talked with the
7 Grocery Manufacturers Association, and the American
8 Chemistry Council, and they have removed their opposition.
9 CHAIRPERSON MOULTON-PATTERSON: Thank you for
10 being here.
11 Mr. Medina.
12 BOARD MEMBER MEDINA: Madam Chair, I'd like to
13 move Resolution 2002-273, revised consideration of
14 adoption of emergency regulations regarding assessment of
15 administrative civil penalties against product
16 manufactures for noncompliance with the rigid plastic
17 packaging container law.
18 BOARD MEMBER JONES: I'll second.
19 CHAIRPERSON MOULTON-PATTERSON: We have a motion
20 by Mr. Medina, seconded by Mr. Jones to approve Resolution
21 2003-273 revised.
22 Please substitute the previous roll call with no
23 objection.
24 BOARD MEMBER JONES: Madam chair.
25 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones.

1 BOARD MEMBER JONES: I want to thank Mr. Pollack
2 for -- he had opposed it. They worked through it. He
3 comes up and at least tells us. We have a lot of times
4 people don't tell us anything. So he sat through a long
5 time to tell us you were in favor of these regs. I
6 appreciate that.
7 CHAIRPERSON MOULTON-PATTERSON: I appreciate
8 that. Thank you, Mr. Jones.
9 Moving on to Special Waste, Mr. Medina's already
10 given his report. So I'll turn it over to Mr. Lee.
11 DEPUTY DIRECTOR LEE: Thank you, Madam chair.
12 Good afternoon, Board members. My name is Jim Lee. I'm
13 with the Special Waste Division.
14 Item 33, consideration of California State
15 University Long Beach's contractor for the fleet manager
16 training contract, Fiscal Year 2002/2003, used oil fund
17 contract concept number 0-41.
18 Staff proposed that CSU Long Beach be awarded up
19 to $80,000 as a contractor for this contract. This item
20 is recommended for consent by the Special Waste and Market
21 Development and Budget and Administration Committees.
22 Staff recommends that the Board approve Resolution
23 2003-232.
24 CHAIRPERSON MOULTON-PATTERSON: Thank you. I got
25 a little wet there. Sorry. Mr. Medina.

1 BOARD MEMBER MEDINA: Madam Chair, I'd like to
2 move Resolution revised 2003-232, consideration of the
3 California State University of Long Beach contractor for
4 the fleet manager training contract, Fiscal Year
5 2002/2003, used oil fund contract concept number 0-41 in
6 the amount of $80,000.
7 BOARD MEMBER WASHINGTON: Second.
8 CHAIRPERSON MOULTON-PATTERSON: We have a motion
9 by Mr. Medina, seconded by Mr. Washington.
10 Please call the roll.
11 SECRETARY WADDELL: Jones?
12 BOARD MEMBER JONES: Aye.
13 SECRETARY WADDELL: Medina?
14 BOARD MEMBER MEDINA: Aye.
15 SECRETARY WADDELL: Paparian?
16 BOARD MEMBER PAPARIAN: Aye.
17 SECRETARY WADDELL: Peace?
18 BOARD MEMBER PEACE: Aye.
19 SECRETARY WADDELL: Washington?
20 BOARD MEMBER WASHINGTON: Aye.
21 SECRETARY WADDELL: Moulton-Patterson?
22 CHAIRPERSON MOULTON-PATTERSON: Aye.
23 Number 34.
24 DEPUTY DIRECTOR LEE: Item 34, consideration of
25 the grant awards for the used oil recycling nonprofit

1 grant program this cycle for Fiscal Year 2002/2003.
2 This item is recommended for consent by the
3 Special Waste and Market Development and Budget and
4 Administration Committees. Staff recommends the Board
5 approval Resolution 2003-234.
6 CHAIRPERSON MOULTON-PATTERSON: Mr. Medina.
7 BOARD MEMBER MEDINA: Madam Chair, I'd like to
8 move Resolution 2003-234, consideration of approval for
9 the grant awards for the used oil recycling nonprofit
10 grant program, fifth cycle, for Fiscal Year 2002/2003.
11 And those awards are going to the following:
12 Community Action Commission of Santa Barbara County,
13 186,333; Solono Recyclers, Inc., 299,914; Community
14 Services and Employment Training, Inc. in the amount of
15 194,569; Community Environmental council in the amount of
16 the 199,725.20; Santa Monica Bay Restoration Foundation in
17 the amount of $195,650; Save our Shores in the amount of
18 $299,839; Boys and Girls Club of Tustin $114,332; Heal the
19 Bay, $199,932; Partnership for Environmental Progress,
20 $168,597; Sports Car Club of America, 275,776.55; the
21 Ecology Action of Santa Cruz, $299,964.88; CA 4 WDC,
22 Conservation and Education Foundation, Inc., 239,565, for
23 a grand total of 2,674,197.63.
24 BOARD MEMBER WASHINGTON: Second.
25 CHAIRPERSON MOULTON-PATTERSON: We have a motion

1 by Mr. Medina, seconded by Mr. Washington.
2 Please substitute the previous roll call without
3 objection.
4 That takes us to Item 35.
5 DEPUTY DIRECTOR LEE: Item 35, consideration of
6 the scope of work and contractor for the community-based
7 social marketing pilot to increase used oil recycling
8 participation, Fiscal Year 2002/2003, used oil contract
9 concept number 0-33.
10 Staff proposes the scope of work be approved and
11 that California State University San Marcos be awarded
12 $120,000 and the contractor for this contract. This item
13 is heard by the Special Waste and Market Development
14 Committee and the Budget and Administration Committee. We
15 recommend it for consent. Staff recommends that the Board
16 approve Resolutions 2003-233 and 2003-274.
17 CHAIRPERSON MOULTON-PATTERSON: Thank you.
18 Mr. Medina.
19 BOARD MEMBER MEDINA: Thank you, Madam chair.
20 I'd like to move Resolution 2003-233, consideration of the
21 scope of work for community-based social marketing pilot
22 to increase used oil recycling participation, Fiscal Year
23 2002/2003, used oil fund contract consent number 0-33.
24 BOARD MEMBER WASHINGTON: Second.
25 CHAIRPERSON MOULTON-PATTERSON: We have a motion

1 by Mr. Medina, seconded by Mr. Washington to approve
2 Resolution 2003-233. Please substitute the previous roll
3 call. Resolution 2003-274.
4 Mr. Medina.
5 BOARD MEMBER MEDINA: Thank you, Madam Chair.
6 I'd like to move Resolution 2003-274, consideration of
7 approval of California State University San Marcos as
8 contractor for the community-based social marketing pilot
9 to increase used oil recycling participation Fiscal Years
10 2002/2003, used oil fund contract consent number 0-23 in
11 the amount $120,000.
12 BOARD MEMBER WASHINGTON: Second.
13 CHAIRPERSON MOULTON-PATTERSON: Motion by Medina,
14 seconded by Washington.
15 Please substitute the previous roll call.
16 DEPUTY DIRECTOR LEE: Excuse me, Madam Chair. I
17 just want to double-check on the number for the --
18 CHAIRPERSON MOULTON-PATTERSON: 274 -- I'm sorry.
19 Did I misspeak on that one? We did 233 first.
20 DEPUTY DIRECTOR LEE: I think it should be 234.
21 CHAIRPERSON MOULTON-PATTERSON: Oh, mine says
22 274.
23 BOARD MEMBER MEDINA: My says 274 as well.
24 DEPUTY DIRECTOR LEE: My mistake. The correct
25 number is 274, which you did vote on.

1 CHAIRPERSON MOULTON-PATTERSON: Please substitute
2 the previous roll call without objection. I think we said
3 that. Okay.
4 Number 39, our last item.
5 DEPUTY DIRECTOR LEE: Item 39, Consideration of
6 approval of new sites for remediation under the waste tire
7 stabilization and abatement program. Staff proposed that
8 12 projects identified in the agenda item in the
9 resolution be approved for clean up. The item was heard
10 and recommended for consent by the Special Waste and
11 Market Development and Budget and Administration
12 Committees.
13 Staff recommended the Board approve Resolution
14 number 2003-235.
15 CHAIRPERSON MOULTON-PATTERSON: Mr. Medina.
16 BOARD MEMBER MEDINA: Madam Chair, I'd like to
17 move Resolution 2003-235, consideration of approval of the
18 new sites for remediation under the waste tire
19 stabilization and abatement program. And those sites are
20 the Peg Leg Waste Tire Site, the A.J. Ranch Waste Tire
21 Site, the North Nash Hill Waste Tire Site, the North Nash
22 Hill II Waste Tire Site, the North Nash Hill III Waste
23 Tire Site, the Erma Andrews Waste Tire Site, the Norman
24 Gunn, the West Needles Waste Tire Site, the Birmingham
25 Terminal Waste Tire Site, the Amos Dixon, the Marrone

1 Waste Tire Site, and the Manasero Waste Tire Site.
2 CHAIRPERSON MOULTON-PATTERSON: Okay. We have a
3 motion by Mr. Medina, seconded by Mr. Washington to
4 approve Resolution 2003-235. Please substitute the
5 previous roll call without objection.
6 At this time we have general public comment, and
7 I have some speakers today. Thank you for your patience.
8 And I believe they wanted to speak on Item Number 40 That
9 was heard at the Committee level only.
10 First one is Don Silaci.
11 Good afternoon.
12 MR. SILACI: Good afternoon, Ms. Chairman, Board
13 members. My name's Don Silaci. Dairyman from South
14 Sonoma County that has a tire problem.
15 As many of you know -- and I'm sure you've all or
16 most of you have visited my property over the past 11
17 years this has been going on. I'm here today to speak
18 about a couple of things.
19 As many of you know, this started back in the
20 late 50s when my father was a member of the Sonoma County
21 Soils Conservation Service which was a federal
22 organization. At that time my father seeked advice from
23 the Soil Conservation Service on some erosion problems we
24 were having in the back of our ranch. At that point in
25 time, Soil Conservation Services recommended that we place

1 tires in those erosion washes, which my father did.
2 30 years later, laws have changed. People
3 change. We get a notice of violation. And I believe it
4 was 1992 or early '93. For 11 years we've been discussing
5 the problem, what remedies we'd use to solve the problem,
6 working with you people in good faith, submitting
7 correctional active plans. We've submitted three. We
8 have neither received any comments or suggestions or
9 approval on any of these action plans.
10 We've been working with the Sonoma County RCD
11 since day one on this problem. I have some -- I've had
12 some optimistic times over the past 11 years of possibly
13 resolving this, and then all of a sudden we're back to
14 square one. Whether that's because of staff changes or
15 Board member changes -- I can understand that happening.
16 Because if I was sitting here in your position and was in
17 a new Board position, I would want to know everything
18 that's going on before I make a decision. So I understand
19 your side of it. But I've been sitting out there for
20 11 years trying to find out or trying to remedy this
21 situation, and we're no further than we were 11 years ago.
22 And I hope from what I've been hearing that in the June
23 meeting there might be some kind of decision made.
24 I have two other things that bother me. One of
25 your staff people came up one day when he was visiting the

1 ranch, got right in my face, put his finger up to my chest
2 and said, "We're going to come in and clean this problem
3 up and put a lien on your ranch." I thought I had two
4 choices. I opted to take the second choice. And I said
5 to the man, "You might as well take the ranch," and walked
6 away. Another staff person came up and said, "Why don't
7 you sell it?" I said, "I can't sell it. Because if I
8 sold it and I paid the price to clean the tires up, I'd
9 walk away with next to nothing."
10 I took the scenario that was placed in front of
11 you and went to my bank or my accountant and said, "This
12 could happen. Where does it leave me when it's all said
13 and done?" Basically they said, "You can operate your
14 dairy." The bank said, "You can operate your dairy, your
15 feed loans. You can operate. But if you ever wanted to
16 build another barn or go for long-term loans, you're going
17 to talk to the state and take a second behind the state."
18 So when all that's said and done, the options are
19 probably going to be lose the ranch and be forced to sell
20 the business because you can't operate without the land.
21 We need all the land we have to operate our dairy and run
22 our heifers and grow our feed.
23 I have a son that in 2000 came into partnership
24 with me in the business. He has a young son with another
25 one on the way. I worry about his future until this

1 problem is solved one way or the other.

2 So hopefully this will be resolved in a positive

3 way where neither my business or property will be in

4 jeopardy. And also I have two letters here from Senator

5 John Burton and Assemblywoman Pat -- excuse me -- Pat

6 Wiggins in support of our process for non-recovery costs

7 for the clean up. I have copies for the Board members if

8 you would like them.

9 I thank you for the time, and I appreciate the

10 opportunity to speak in front of you.

11 CHAIRPERSON MOULTON-PATTERSON: Thank you very

12 much. And I certainly understand your impatience. I'm

13 impatient too. And I did not think we were back at square

14 one. I think we've made some progress. And if any staff

15 members made those remarks to you, they certainly

16 shouldn't have. It doesn't represent this Board's

17 thinking. And I have assured -- I received a letter from

18 Senator Burton, and I certainly have assured him this

19 Board is willing and able to take care of this problem,

20 and we want to work with you. And I don't want to speak

21 for the Special Waste Committee I'm not on, but I very

22 sincerely want this to be taken care of.

23 Mr. Jones, did you have anything to say or

24 Mr. Medina on this item?

25 BOARD MEMBER MEDINA: Madam Chair, we took this

1 up at the Special Waste Committee. We asked staff to give
2 us a complete report on this by the next Committee
3 meeting, at which time it will be going to the full Board
4 for consideration. So some of us are new at this Board.
5 We're not previously familiar with the full history of
6 this. And so there is a sense of urgency for us to deal
7 with this matter and so --
8 CHAIRPERSON MOULTON-PATTERSON: I appreciate
9 that.
10 BOARD MEMBER MEDINA: We expect a very complete
11 report from staff before we take this up for
12 consideration. Several of us have had an opportunity to
13 go out and visit the tire sites. A number of members of
14 the Board also had an opportunity to attend the forum out
15 in Sonoma in regard to this matter. So we are prepared
16 tho move forward on this in a timely manner.
17 CHAIRPERSON MOULTON-PATTERSON: Thank you.
18 Mr. Andrew Flocchini.
19 DEPUTY DIRECTOR LEE: Madam Chair, one comment
20 before the index -- the speaker goes up.
21 Again, I share your concerns. Like, say, to the
22 staff did make the comments that allegedly were made, they
23 were, I agree with you, totally inappropriate. And I'll
24 definitely get to the bottom of that situation.
25 CHAIRPERSON MOULTON-PATTERSON: Thank you,

1 Mr. Lee.

2 MR. FLOCCHINI: Good afternoon.

3 CHAIRPERSON MOULTON-PATTERSON: Hello.

4 MR. FLOCCHINI: I've got a story basically like

5 Don's about our tire site. It was put in in the early

6 '70s for erosion control. If it was taken out now, the

7 hill would probably wash down. I think some of you have

8 seen the site.

9 CHAIRPERSON MOULTON-PATTERSON: Yeah. I think we

10 all have.

11 MR. FLOCCHINI: It was put in, like I say, in

12 early '70s. And county-wide recommended practice for

13 using tires. They were free. There was no money

14 exchanged for the tires, and they work real well.

15 The county was with us at that time, and I hope

16 the government officials are still with us now about

17 taking care of this problem because it was put in in good

18 faith.

19 And since -- another thing, since the fire -- the

20 tire fires in different areas, now our sites have become a

21 hazard which it wasn't on our part for this problem. They

22 were put there for the erosion control.

23 We just want something done or stay the way they

24 are. We don't care. But we don't like to pay for taking

25 them out because we put them for good intention. It

1 wasn't a tire pile for making profit like some places are.
2 They were put in way before that for erosion control.
3 That's about it. Just I hope you understand our feelings
4 about it. Thank you.
5 CHAIRPERSON MOULTON-PATTERSON: Thank you for
6 being here.
7 Karen Gerbosi of the Beebe Family Ranch.
8 MS. GERBOSI: Good afternoon. My name is Karen
9 BeeBe Gerbosi, and my brother and sister and I own the
10 property where one of the Sonoma County Legacy
11 Agricultural tire sites is located.
12 We wish to lend our support of the efforts that
13 will be undertaken by staff to provide the Board with a
14 menu of possibilities and resolution alternatives for the
15 Sonoma County tire sites as directed by the Special Waste
16 and Market Development Committee during its April 8th
17 meeting.
18 On our own and with no expectation of being
19 reimbursed, we have retained experts that are undertaking
20 several projects on our property. These experts have
21 already conducted a topographical survey and prepared
22 mapping that defines the limits of our tire sites. Using
23 this survey information, they have begun to quantify the
24 amount of tires on our site. Additionally, a biological
25 study and wetlands delineation are currently in process

1 and the hydrology and soil stability studies are
2 scheduled.
3 We have contracted heavy studies and information
4 prepared at our own expense. The information that our
5 expert is developing will describe the divers conditions
6 present on our property, and we believe it would be useful
7 for Board staff to contact our experts so staff can have
8 the benefit of our experts' efforts and knowledge and the
9 information they are preparing. So we invite staff
10 working on this project to contact me about the studies
11 and efforts of our efforts. This would be a way for staff
12 to expand the technical and scientific information
13 available to them and to validate proposed alternatives.
14 We know that staff wishes to make every effort to
15 have this project provide responsible and effective
16 alternatives that can be successfully implemented.
17 Toward that end, we wish to reinforce several
18 aspects we feel must be addressed. First, any
19 alternatives will need to have flexibility to fit the
20 various environmental circumstances. An alternative that
21 would work for parts of our site probably would not work
22 for the Flocchini brothers' site where some tires have
23 been covered by a small landslide several years ago.
24 Additionally, adaptability needs to be
25 incorporated into the alternatives to properly accommodate

1 unforeseen problems that very likely will occur in the
2 field during implementation.
3 Second, staff will need to engage with
4 representatives of the various agencies that also have
5 responsibility with regard to these sites. Among these
6 are California Fish and Game, U.S. Fish and Wildlife, U.S.
7 Army Corps of Engineers, California Water, the Sonoma
8 County LEA for California EPA, Sonoma County Fire
9 Services, and the Sonoma County PRMD for permitting.
10 And third, I expect staff will need to conduct
11 further site visits as well as have interviews with
12 individual Sonoma County tire site property owners.
13 This seems like it will actually be a very
14 challenging project to bring this to Committee in just six
15 weeks on the 10th of June. I'm here today to reaffirm our
16 commitment to working with the Board on this challenging
17 matter. And I believe the request and suggestions I've
18 made support the Board's objectives.
19 We support the California Integrated Waste
20 Management Board in its continued use of its authority and
21 resources to accomplish solutions that will satisfy state,
22 federal, county, and regional agencies as well as the land
23 owners and any other concerned parties.
24 We believe this alignment will allow for suitable
25 solutions that will not cause field damage, disrupt water

1 flow and wildlife, or result in the return of soil erosion
2 problems.
3 We appreciate your efforts with this very
4 challenging situation. And thank you very much for your
5 time and consideration.
6 CHAIRPERSON MOULTON-PATTERSON: Thank you.
7 MS. GERBOSI: Do you have any questions?
8 CHAIRPERSON MOULTON-PATTERSON: Any Questions?
9 Thank you very much for being here. We
10 appreciate it and we look forward to working with you.
11 MS. GERBOSI: Thanks.
12 CHAIRPERSON MOULTON-PATTERSON: Ms. Peace.
13 BOARD MEMBER PEACE: I want something to put on
14 the agenda for next time. Yesterday on the Board members
15 should have C&D transfer and processing and a disposal and
16 a municipal solid waste processing comparison chart. I
17 hope you all had time to look at it. If you do look at
18 it, you can see there are some real inequities and
19 inconsistencies that defy common sense. I would like --
20 and I'm sure this is not what the Board intended. I would
21 like it put on the May Board meeting for discussion. And
22 I'd like to put it on the agenda for the May Board meeting
23 so we can discuss this.
24 CHAIRPERSON MOULTON-PATTERSON: Please do so.
25 BOARD MEMBER JONES: Madam Chair.

1 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones.
2 BOARD MEMBER JONES: I got a copy of that list.
3 I think it's an incomplete piece of work from our legal
4 staff because it doesn't go on to explain how
5 site-specific conditions are put on all permits that have
6 full permits. So you're comparing apples to oranges. So
7 as long as it's going to come out, I think it needs to
8 come out with a full disclosure of why we did those
9 things. Because clearly in my view, it doesn't defy the
10 imagination. It is a weakness in the registration tiers
11 that we took care of by putting them in this state minimum
12 standards that you can't do under a registration under
13 tier. There is no ability to add a condition for
14 protection. So as long as they do a full disclosure, I
15 have no problem with that discussion.
16 CHAIRPERSON MOULTON-PATTERSON: That's why I
17 think it's good we have a discussion so we're all having
18 the same information. I'd like to see that come forth in
19 May.
20 BOARD MEMBER PAPARIAN: Madam Chair, as long as
21 we're talking about what to consider on that agenda item,
22 we also permit and have inspection programs related to
23 tire facilities. I think that should be part of that
24 discussion as well.
25 CHAIRPERSON MOULTON-PATTERSON: Okay.

1 Mr. Leary.

2 EXECUTIVE DIRECTOR LEARY: I would be happy to
3 try to comply with the breath and depth of these requests.
4 I'm worried about your ability to pull it all together
5 before May. Today is our internal deadline for finalizing
6 the May, both Committee and Board agendas. And we also
7 have a Special Committee meeting, our special meeting on
8 May 8th to discuss the overall permitting process that may
9 shed some light or invite some of the questions that
10 you're all raising as part of this item.

11 So if you wouldn't mind, I'd be happy to meet
12 your request on the June meeting, given that with the
13 understanding that maybe some things that occur on May 8th
14 during that special workshop will be productive in this
15 light.

16 CHAIRPERSON MOULTON-PATTERSON: Maybe I don't
17 understand. But I thought Ms. Peace just wanted to have
18 it on for discussion, and so we can go from there and get
19 the ball rolling.

20 Is that correct? Or am I speaking for you?

21 BOARD MEMBER PEACE: To have staff here to answer
22 some questions.

23 CHAIRPERSON MOULTON-PATTERSON: We can add a
24 title certainly. Well, with Mr. Paparian's add-on I was
25 concerned about the comprehensiveness of the presentation.

1 We can certainly have a discussion and add it as an oral
2 presentation item. The difficulty would be developing the
3 agenda item itself. But if you're comfortable relying
4 what's already provided to you --
5 CHAIRPERSON MOULTON-PATTERSON: We understand.
6 As long as we have it on for discussion, and we can go
7 from there if we need more information. Okay.
8 Deborah?
9 EXECUTIVE DIRECTOR LEARY: I waived to our
10 coordinator who will add that title.
11 CHAIRPERSON MOULTON-PATTERSON: Thank you, Ms.
12 Peace. We will be today going into closed session. The
13 Board will move into closed session under the personnel
14 exemption 11126(a)(1) or -- I'm not sure. And we will
15 come out and adjourn in open session. Thank you very
16 much.
17 (Thereupon the Board recessed into closed
18 session.)
19 CHAIRPERSON MOULTON-PATTERSON: There was no
20 action taken in the closed session, and I'd like to
21 adjourn our board meeting.
22 (Thereupon the California Integrated Waste
23 Management Board adjourned at 4:23 p.m.)
24
25 CERTIFICATE OF REPORTER

1 I, TIFFANY C. KRAFT, a Certified Shorthand
2 Reporter of the State of California, and Registered
3 Professional Reporter, do hereby certify:
4 That I am a disinterested person herein; that the
5 foregoing hearing was reported in shorthand by me,
6 Tiffany C. Kraft, a Certified Shorthand Reporter of the
7 State of California, and thereafter transcribed into
8 typewriting.
9 I further certify that I am not of counsel or
10 attorney for any of the parties to said hearing nor in any
11 way interested in the outcome of said hearing.
12 IN WITNESS WHEREOF, I have hereunto set my hand
13 this 5th day of May, 2003.
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