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STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

CALIF. ENERGY COMMISSION
JUN 8 1983
RECEIVED IN DOCKET

BUSINESS MEETING

1516 Ninth Street
First Floor Hearing Room
Sacramento, California

Wednesday, June 1, 1983
10:15 O'Clock A.M.

Reported by: Amber Whitsett
Video/Audio Recording Services, Inc.
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COMMISSIONERS PRESENT

- Charles Imbrecht, Chairman
- Arturo Gandara, Vice-Chairman
- Russell Schweickart, Commissioner
- Karen Edson, Commissioner
- Geoffrey Commons, Commissioner

STAFF PRESENT

- John Geesman, Executive Director
- Mark Urban
- John Chandley
- Bart Gauger
- Gene Mallette
- Luree Stetson
- Ted Rauh
- Ross Deter
- Karen Mathies, Secretary

PUBLIC ADVISER'S OFFICE

- Ernesto Perez
- Gary Heath

EX OFFICIOS

- Bill Foley, PUC
- Gordon Snow, Resources Agency

ALSO APPEARING

- Dennis LaMont, The Pacifica Corp.

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P R O C E E D I N G S

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3 CHAIRMAN IMBRECHT: Okay. We'll call the meeting
4 to order. I notice the presence of a quorum, along with
5 each of our ex officio representatives.

6 I am informed that the presentation on the two
7 load management items will consume a fair amount of time.
8 As a consequence, I am going to move to the item that was
9 added under Item 8, which is the Steeple Hill Project.
10 Pacifica Corporation asked that the presentation on that be
11 made first with Mr. LaMont.

12 Is Mr. LaMont present?

13 Yes. Would you please come forward.

14 MR. CHANDLEY: Mr. Chairman, if I may, I'd like
15 to give some background on this --

16 CHAIRMAN IMBRECHT: Yes.

17 MR. CHANDLEY: And deal with the procedural issue.

18 CHAIRMAN IMBRECHT: Mr. Chandley from our General
19 Counsel's Office.

20 COMMISSIONER GANDARA: Mr. Chairman, I have a
21 question before we get started on this. I was informed that
22 there was an issue as to whether this item was properly
23 noticed or not.

24 MR. CHANDLEY: I intend to address that issue.

25 COMMISSIONER GANDARA: Okay.

1 MR. CHANDLEY: You have before you a claim of
2 exemption filed by Pacifica Corporation, an exemption from
3 the New Residential Building Standards.

4 The original documentation for the claim was filed
5 on February 18th, 1983. We have a letter requesting that
6 exemption, with some supporting documentation. Subsequent
7 to that, additional information was provided in order to
8 complete the claim, and I will introduce each of those
9 letters in a moment.

10 We had originally noticed the -- the hearing of
11 this matter for the last business meeting. Prior to its
12 being heard, there was a request that it be removed from
13 that particular agenda and carried over to the next business
14 meeting, but for a number of reasons, for which I take some
15 responsibility, the notice indicating that that matter was
16 continued until today was not put out.

17 Subsequently, we drafted a notice adding it to
18 this -- today's business meeting agenda. That notice was
19 sent out approximately a week ago, but it was less than the
20 ten days required by the Government Code.

21 We informed the gentleman from Pacific that we
22 would have difficulty in hearing this matter today. He has
23 since submitted to us a letter dated May 25, 1983, in which
24 he states, "As per" -- and this is addressed to Mr. Jim
25 Miwa of the Conservation Division:

1 "As per our telephone conversation regarding
2 the above-referenced project being heard June 1st
3 and your comment about our firm being notified ten
4 days in advance of the hearing date, Pacifica
5 Corporation hereby waives the ten-day notice
6 requirement in order to have our exemption heard
7 on June 1, 1983."

8 I think that adequately takes care of the ten-
9 day noticing requirement in our regulations, which requires
10 that the claimant be given notice of the staff's report
11 ten days in advance.

12 To some extent, it also relieves our concern about
13 the ten-day notice required by the Government Code.
14 However, there are other conceivable or hypothetical
15 interests that also warrant protection under the Government
16 Code and, as a result, I've discussed this problem with
17 Ernesto Perez, the Public Adviser, and we have come up with
18 what I think is a solution that protects all the interests
19 that are -- that are dealt with by the policies in that
20 particular statute.

21 What we propose is that, in fairness to the
22 claimant, Mr. LaMont, that we go ahead and hear this matter
23 today, particularly given his waiver of the ten-day notice
24 requirement, take evidence on it, and to the extent that
25 you feel you are ready to do so, go ahead and take at least

1 preliminary action on it today, but that at that time you
2 give counsel advice on the nature of the decision you wish
3 to make.

4 I will subsequently draft that decision and bring
5 it back to you on the next business meeting consent
6 calendar, which I assure you will be fully noticed, so I
7 hope that satisfies all the interests involved. I think
8 it's agreeable with the Public Adviser's Office, and I think
9 it's agreeable with Mr. LaMont.

10 COMMISSIONER GANDARA: The only question I have,
11 I have no objection to the procedures. This is usually what
12 we've done whenever there has been a question of notice,
13 you know, for the benefit of the Petitioner and other
14 people -- parties that may be present, that we proceed to
15 hear the matter.

16 I am confused what you mean by preliminary action.
17 I mean I can see the Commission can only take one action,
18 and that's final action, and that would have to be at the
19 next business meeting.

20 MR. CHANDLEY: The way I would phrase the notice
21 would be that the Commission has indicated that it intends
22 to rule in a certain way, but that it will take, to the
23 extent that additional testimony is available that could
24 not have been presented today, it will take that testimony
25 or evidence at the next business meeting, but failing that

1 or failing any other persuasive evidence presented at that
2 time, that you would go ahead and finalize or ratify the
3 action that you took today.

4 CHAIRMAN IMBRECHT: Okay. Fine. Thank you,
5 Mr. Chandley.

6 MR. CHANDLEY: Let me --

7 CHAIRMAN IMBRECHT: Let me just indicate that this
8 was a sufficiently, in my view, gray issue relative to the
9 notice requirements in particular, because I think some
10 legitimate arguments could be made that it was an inadvertent
11 error that this item was not carried over. I felt that in
12 fairness to the plaintiff, Mr. LaMont, that we try to
13 expeditiously move towards hearing this matter, since I
14 believe he was under the expectation, and justifiably so,
15 that the matter would be heard today.

16 COMMISSIONER GANDARA: I agree with the intent
17 and the sentiment. I think that's not my problem. My
18 problem is that if we have a procedure set up, for cost-
19 effective reasons, you know, that we need to, you know,
20 comply with those sort of requirements as well, and there
21 was an amendment and an additional notice sent out. How
22 much did that cost to send out?

23 EXECUTIVE DIRECTOR GEESMAN: I don't know the
24 answer to that. I can -- I can find that out for you.

25 CHAIRMAN IMBRECHT: Okay. Fine. Well, I think

1 we'll hear the matter.

2 First we'll ask our staff to make their presenta-
3 tion on the matter

4 MR. CHANDLEY: Mr. Chairman, excuse me, if I may,
5 there are a couple of preliminary matters.

6 Both the staff and Mr. LaMont are going to be
7 probably referring to a number of documents that have been
8 submitted. I'd like to have those entered into the record.
9 I have copies available from the secretariat, and I'd like
10 to have those distributed.

11 The first item that I would like to have marked
12 as Exhibit 1 would be the original request for the claim.
13 It's a letter from Mr. LaMont dated February 18, 1983,
14 sent to Mr. John Geesman.

15 (Thereupon, the above-mentioned
16 document was entered into the
record as Exhibit No. 1.)

17 MR. CHANDLEY: The second exhibit that I would
18 ask be marked and entered in the record would be a letter,
19 again from Mr. LaMont, dated February 28, 1983. It has
20 attached to it additional information in support of the
21 claim, and I think both parties will probably be referring
22 to that letter. Again, that letter is addressed to Mr. John
23 Geesman.

24 (Thereupon, the above-mentioned
25 document was entered into the
record as Exhibit No. 2.)

1 MR. CHANDLEY: A third letter which I'd like to --

2 COMMISSIONER SCHWEICKART: Excuse me, John. I
3 just received one that says February 18th, rather than the
4 28th. Is that what you're referring to?

5 CHAIRMAN IMBRECHT: That's No. 1.

6 COMMISSIONER COMMONS: That's No. 1.

7 COMMISSIONER EDSON: That's No. 1.

8 MR. CHANDLEY: Okay. There -- I have a series
9 of letters, Commissioner Schweickart. There's one February
10 18th, February 28th. February 28th would be Exhibit 2.

11 A third letter dated April 26th, again from
12 Mr. LaMont to Mr. John Geesman, that would be Exhibit 3.

13 (Thereupon, the above-mentioned
14 document was entered into the
record as Exhibit No. 3.)

15 MR. CHANDLEY: The fourth exhibit, I would request
16 that you enter the Staff's Report, which is the Memorandum
17 from Ted Rauh to John Geesman, and I believe the date on
18 that is May 26th. That's dated May 26th.

19 (Thereupon, the above-mentioned
20 document was entered into the
record as Exhibit No. 4.)

21 MR. CHANDLEY: And finally, unless there are
22 objections to this, we have a letter sent from Mr. Tom
23 Putnam, who is the Chief of the Single-Family Program of
24 the California Housing Finance Authority, sent to Mr. Bart
25 Gauger. Again, that's dated May 31, 1983, and I would ask

1 that that be marked as Exhibit No. 5 and entered into the
2 record.

3 (Thereupon, the above-mentioned
4 document was entered into the
record as Exhibit No. 5.)

5 MR. CHANDLEY: I think the parties will be
6 referring to each of these documents, so it would be useful
7 to have them before you.

8 CHAIRMAN IMBRECHT: Without objection, those
9 documents will be so enumerated and entered into the record.
10 Mr. Geesman.

11 EXECUTIVE DIRECTOR GEESMAN: I'm advised that
12 the noticing cost is \$1300.

13 COMMISSIONER SCHWEICKART: Mr. Chairman, I do have
14 a slight objection here. None of these materials, but for
15 the Executive Director's Exhibit 4, as listed by
16 Mr. Chandler, were provided to the Commission ahead of time,
17 and yet most of the documents date back prior to the May
18 26th, of that document, and I would like to encourage the
19 staff to be more diligent, especially in matters where we
20 are hearing detailed evidence presented, in presenting these
21 materials and incorporating them in our backup information.

22 MR. CHANDLEY: Yeah. In defense of the staff,
23 Commissioner Schweickart, I'd like to indicate that, as an
24 evidentiary proceeding, it would not be the staff's respon-
25 sibility to distribute exhibits that would be offered by --

1 by another party, and that, to the extent that this parti-
2 cular proceeding is unique, we haven't had to have an
3 evidentiary proceeding, at least a disputed one, on any
4 of these claims before.

5 This is the first opportunity at which any of
6 these could be presented at a hearing record, so --

7 COMMISSIONER GANDARA: I'm confused, Mr. Chandley.
8 You said disputed. Is there, what, a difference between
9 the applicant and the staff here or --

10 MR. CHANDLEY: No. I think we're going to get
11 to that in due course.

12 CHAIRMAN IMBRECHT: Yes.

13 COMMISSIONER EDSON: I'd just like to suggest that
14 we have someone responsible for distributing that. I know
15 that Pacifica Corporation has made some efforts to contact
16 Commissioners, and has been informed that that would be
17 ex parte and improper, so it certainly is not the applicant's
18 fault, either.

19 I suggest that it's the failure of our own internal
20 mechanism.

21 CHAIRMAN IMBRECHT: Okay. Now that we've disposed
22 of those items, Mr. Geesman, did you have a further comment
23 you wish to make?

24 EXECUTIVE DIRECTOR GEESMAN: No.

25 CHAIRMAN IMBRECHT: Yes.

1 MR. GAUGER: Yes, Commissioners. Bart Gauger with
2 the Conservation Division.

3 I'd like to just summarize our findings from the
4 Staff Report, which I believe all of you have. The parti-
5 cular project that we're talking about, the Steeple Hill
6 Project in Ventura County, is a 309-unit, single-family
7 subdivision.

8 The original planning for the subdivision began
9 in September 1978, and at that point preliminary maps were
10 begun for the subdivision. The final map was not filed
11 until May of 1980.

12 At that time there were 622 lots in the subdivi-
13 sion, of which 313 were sold, leaving -- leaving the appli-
14 cation for the exemption with 309 units.

15 This work, which went from September of '78 to
16 May of 1980, was work related to the development of the
17 subdivision, the creation of the lots, and the final sub-
18 division map thereof.

19 In 1980, the claimant began a market study to
20 determine the type of homes to begin. This market study,
21 through 1980 and the design of the buildings which were
22 recommended in that market study, were completed in May of
23 '80. This was May of 1980.

24 In July of '81 the new standards went into effect
25 -- pardon me. I'm sorry. In July of 1981 the new standards

1 were adopted, so this work and the design of the buildings
2 was completed prior to the adoption of the -- of the
3 building standards.

4 In March of '82, or May of '82, for reasons
5 related apparently to the downswing in the economy and the
6 recession in the building industry, the claimant undertook
7 a new market study. This new market study in May of '82
8 was approximately ten months after the adoption of the
9 standards.

10 As a result of the new market study, an architect
11 was commissioned to design new buildings for the subdivi-
12 sion. The work of the architect began in August of '82,
13 approximately one and a half months after the effective
14 date of the standards, and so the contract for new designs
15 has been going on from that point until a plan check sub-
16 mittal, which was in May of this year.

17 So, in summary, the project has gone through
18 several phases, the development of the land, the original
19 plan for a subdivision of single-family homes, a new market
20 study, a new set of plans for -- for smaller homes on the
21 same lots.

22 We believe that -- well, the law requires that
23 in order to qualify for an exemption, substantial funds
24 have been -- have to indicate that substantial funds have
25 been expended in good faith on the planning, design,

1 architecture, and engineering of a specific proposed build-
2 ing before the adoption date of the Energy Building Code.

3 We believe that in this specific instance that
4 the actual design of those buildings was after the adoption
5 date and, therefore, does not meet the criteria set forth
6 in the legislation, so it's the staff's recommendation that
7 the exemption be denied.

8 CHAIRMAN IMBRECHT: All right. Thank you.

9 Any questions of staff?

10 COMMISSIONER COMMONS: Yes.

11 CHAIRMAN IMBRECHT: Yes. Commissioner Commons.

12 COMMISSIONER COMMONS: Have you made a review of
13 the homes, as proposed, from an energy-efficiency stand-
14 point?

15 MR. GAUGER: Yes, we have.

16 COMMISSIONER COMMONS: And could you tell me the
17 differential between the energy under the building standards
18 and the energy under their proposed design?

19 MR. GAUGER: Indications are that the buildings
20 would be from -- there are several models involved -- from
21 an increase of five percent over the standards to a doubling
22 in -- or a hundred percent over the standards in energy use,
23 depending on the particular model and the orientation of
24 that model on a specific lot.

25 COMMISSIONER COMMONS: Do you have an average as

1 to -- for the subdivision as a total? Because it might be
2 five percent on one home and a hundred percent on all, or
3 it might be a hundred percent on one and five percent on
4 the others.

5 MR. GAUGER: That's correct, and it would be a
6 function of which models were put on which lots, because
7 orientation is very critical, and we have not had an oppor-
8 tunity to look at specific models on specific lots.

9 COMMISSIONER COMMONS: What I'm trying to do is --
10 when you say five to a hundred percent, are we talking about
11 a major issue in terms of the amount of energy saved, or are
12 we talking about a small issue?

13 MR. GAUGER: I believe that we're talking of
14 somewhere between 25 and 50 percent above the standard for
15 the whole subdivision.

16 COMMISSIONER COMMONS: How would that compare with
17 homes being built that did not have to come to us with an
18 exemption? Would these be similar to typical homes being
19 built today that were built prior to our having building
20 standards, or are there features incorporated into these
21 homes which would make these homes more energy efficient?

22 MR. GAUGER: I believe the buildings that are being
23 proposed are similar to the buildings built prior to the
24 standard. We -- there's no indication that there was any
25 effort to go from our '78 standards to the '82 standards.

1 COMMISSIONER COMMONS: And what would the cost
2 be in terms of cost per unit of these buildings to make them
3 meet our standards?

4 MR. GAUGER: It could be as high as 2,000 to 2500
5 dollars.

6 COMMISSIONER COMMONS: Two thousand to 2500 dollars
7 per unit? And on an average, if you said twenty-five to
8 fifty, if you take an average of that, that would be 35 to
9 40, or 37.5 percent, what does that translate in this
10 particular weather region, in terms of cost per year to the
11 homeowner on their utility bill?

12 MR. GAUGER: Are you asking the -- the utility
13 savings --

14 COMMISSIONER COMMONS: Yes, if we --

15 MR. GAUGER: -- for that particular building?

16 COMMISSIONER COMMONS: If the home had been built
17 to meet the standards, how much -- how much in that climate
18 zone would have been saved?

19 MR. GAUGER: Approximately half.

20 COMMISSIONER COMMONS: Which is how much?

21 You don't have to provide that to me right now,
22 but --

23 MR. GAUGER: Okay.

24 COMMISSIONER COMMONS: -- before we make a decision
25 I'd like to have an understanding of the impact on -- these

1 homes, I understand, are mainly for low-income -- low to
2 moderate-income people, first-time buyers?

3 MR. GAUGER: First-time buyers I believe is the
4 criteria.

5 COMMISSIONER COMMONS: And they are small homes,
6 so they are oriented -- and this is in Ventura County?

7 MR. GAUGER: That's correct.

8 COMMISSIONER COMMONS: All right. I'd like to
9 know that, so I have an understanding of the economics.

10 MR. GAUGER: Yeah. We do have an analysis -- we
11 do have an analysis of the paybacks of complying to the
12 standards, which has been made available in the past, and
13 it typicall runs from -- for a Package B type of building,
14 which is being proposed here, in the range of 20 years for
15 the payback. That would vary by weather zone, and I don't
16 have the specific documents, but --

17 COMMISSIONER COMMONS: Now, this is a very
18 moderate climate zone, and I guess I'd like, since we're
19 looking at an exemption for a particular project, I'd like
20 to know for the particular area and the size of home that
21 we're looking at.

22 CHAIRMAN IMBRECHT: I have a couple of questions --

23 MR. GAUGER: Yes, sir.

24 CHAIRMAN IMBRECHT: -- I'd like to ask as well.
25 As I read your report, basically there seems to

1 be a -- we'll perhaps hear more of this from Mr. LaMont,
2 but there seems to be a dispute as to the potential
3 increased cost that the claimant would face in the event
4 this exemption were not granted.

5 Apparently the claimant's contention is somewhere
6 between 218,000 up to close to 2 million dollars, and a
7 delay of somewhere between three and 17 months. It appears
8 to me that the staff's conclusion is the delay would be
9 six months and a cost of \$210,000.

10 I guess my question is, on what criteria did you
11 reach the conclusion that \$210,000 did not constitute a sub-
12 stantial cost.

13 COMMISSIONER SCHWEICKART: Mr. Chairman, can I
14 ask for a clarification of your question, or perhaps a
15 slight extension of it, that is, the basis for the conclu-
16 sion of the staff only six months and \$200,000, as well as
17 the issue of whether or not that's substantial.

18 CHAIRMAN IMBRECHT: Fine. I would -- if you'd
19 like to explain your methodology of reaching the conclusion
20 of six months and 210,000 that would be fine, but, in addi-
21 tion, I'd also like to know the premise upon which you
22 grounded your conclusion that that is not substantial.

23 MR. MALLETT: My name is Gene Mallette. I'm a
24 section manager for the section that deals with exemptions
25 in Bart's office.

1 The six months and \$210,000 was based upon staff's
2 assessment, and also contacting other architects, that how
3 long would it take to redesign the particular structures
4 to meet the minimum code requirements, based on some com-
5 pliance paths or compliance approaches.

6 The redesign time really depends on which com-
7 pliance path the claimant expects to pursue, whether it's
8 a point system or the Package B approach. The Package B
9 approach would require him to do many more things than he
10 would have to do for this specific design and this specific
11 location.

12 Consequently, the redesign that staff is talking
13 about is using the point system to come up with a --
14 basically a package for his development, and then applying
15 those measures to the buildings as they are now designed,
16 and it would take approximately four to five months to do
17 that redesign of those particular buildings by the architect,
18 noting here that the original drawings, the original build-
19 ing designs, took eight months by this architect.

20 Now, what we're talking about is a simple modifi-
21 cation to that. It does not require R-19 walls and major
22 impacts and structural redesign of the building, or changes
23 in floor plan. Consequently, the redesign time of four
24 months is fairly reasonable. The --

25 COMMISSIONER COMMONS: Could you be specific as

1 the types of changes you're proposing, please?

2 MR. MALLETTTE: I'm not proposing any changes,
3 Commissioner. The -- we have looked at his buildings and
4 tried to determine what kind of compliance that would be
5 necessary to meet code, and it depends on -- if you use the
6 point system and you try to apply each building to the
7 point system, then it would probably take more design time,
8 because then he has to talk about a specific building on
9 a specific block, and basically 300 redesigns.

10 If he takes and looks at the four orientations
11 and looks at his building, it -- well, you're talking
12 something in the range of double-glazing, 16 percent maxi-
13 mum, as far as glass area; ceiling insulation of R-30,
14 walls of R-11; a shading of the west and south glass, and
15 slightly higher equipment efficiencies.

16 CHAIRMAN IMBRECHT: What's the current glazing
17 in his designs?

18 MR. MALLETTTE: His current glazing ranges from
19 15 to 17.5. The 17.5 percent is on the larger models, one
20 model particularly. The other are below 16, the other
21 three, and they are all single-pane glazing, as proposed.

22 COMMISSIONER COMMONS: Are these units air condi-
23 tioned?

24 MR. LA MONT: No, they are not.

25 COMMISSIONER COMMONS: Do they get credit under

1 our standards for not having air conditioners?

2 MR. MALLETTTE: No, they do not.

3 CHAIRMAN IMBRECHT: Okay. Now, as to your con-
4 clusion that \$210,000 was not substantial --

5 MR. MALLETTTE: The \$210,000 is based on a propor-
6 tion of the claimant's six months to 30-year -- or 30-month
7 delay. We merely took his \$218,000, divided it by the
8 minimum months, and said that's the cost per month for the
9 delay, and applied that to six months.

10 COMMISSIONER SCHWEICKART: And the substantial
11 issue?

12 MR. MALLETTTE: The substantial issue is based on
13 historical exemptions, or the exemptions, the four that you
14 have already approved, which range for a total of seven
15 percent to 13.9 percent of the total project cost, and in
16 this particular application we're talking 3.2 percent as
17 substantial.

18 CHAIRMAN IMBRECHT: If the assumption of your
19 \$210,000 methodology --

20 MR. MALLETTTE: If that's correct, yes.

21 CHAIRMAN IMBRECHT: -- is accepted, but --

22 MR. MALLETTTE: And if there is no delay beyond
23 the six months to seven months that we've perceived.

24 CHAIRMAN IMBRECHT: Go ahead.

25 COMMISSIONER SCHWEICKART: Are --

1 CHAIRMAN IMBRECHT: No, go ahead, Commissioner
2 Schweickart.

3 COMMISSIONER SCHWEICKART: Mr. Mallette, were
4 there other elements of the delay times, in addition to the
5 architectural work?

6 MR. MALLETT: The delay time that the claimant
7 has such a large range for is based on -- I'll call it a
8 rumor, that the City of Moorpark in Ventura County is going
9 to be incorporated on July 1st.

10 Now, there's a rumor going through the developers
11 and the builders that there will be a moratorium on con-
12 struction, or some kind of moratorium, passed by the City
13 of Moorpark at their first meeting of the Planning
14 Commission, or the City Council, to try to assess the master
15 plan for the city itself, and to further assess for future
16 development.

17 I -- we have talked to the Acting City Manager
18 of Moorpark, we have talked to the Ventura County Planning
19 Director, the -- several staff of the Planning Commission
20 of Ventura County. It all depends on the action of the
21 City Council.

22 None has proposed at this time that a moratorium
23 be done, merely that it may be a possibility.

24 COMMISSIONER SCHWEICKART: If we follow the
25 scenario that there is -- that such a rumored event would

1 in fact occur --

2 MR. MALLETTTE: Yes.

3 COMMISSIONER SCHWEICKART: -- how would it be
4 applied?

5 MR. MALLETTTE: It can be applied in several ways.

6 COMMISSIONER SCHWEICKART: By denial of building
7 permits, or what?

8 MR. MALLETTTE: It could be applied on either one,
9 denial of building permits, it could be applied on denial
10 of new projects being submitted to the Planning Commission
11 for approval. It could go either -- a building permit
12 application or to a new project proposal.

13 COMMISSIONER SCHWEICKART: In my understanding
14 from your materials, and again I'd enjoy hearing from
15 Mr. LaMont, but my understanding from your analysis is that
16 in this particular instance there is no reapplication
17 necessary for the map approvals; is that correct?

18 MR. MALLETTTE: That's correct.

19 COMMISSIONER SCHWEICKART: So that in essence the
20 remaining mechanism, if you will, is the pulling of building
21 permits themselves?

22 MR. MALLETTTE: That's correct.

23 COMMISSIONER SCHWEICKART: And is there some
24 basis, since those permits in large measure would be pulled
25 after the incorporation of Moorpark, in any case, that the

1 circumstance would be any different, with or without an
2 exemption?

3 MR. MALLETT: No.

4 CHAIRMAN IMBRECHT: Commissioner Edson.

5 COMMISSIONER EDSON: As I understand the CHFA
6 commitment, it is an 18-month commitment from the date of
7 the bond sale; is that correct? When -- when does that
8 commitment expire?

9 MR. MALLETT: May 8, 1984.

10 COMMISSIONER EDSON: '84? And also, as I
11 read Mr. Putnam's letter, they have to have the loan
12 packages themselves in order to approve the loans; is that
13 -- am I reading that correctly?

14 MR. MALLETT: Generally the developer would have
15 to have a commitment to the price of the housing and the
16 type of housing and the area -- floor areas of the housing,
17 and a description of the type of building to CHFA for their
18 approval of the project.

19 It does not require working drawings or any kind
20 of --

21 COMMISSIONER EDSON: No, the -- as I read the
22 third paragraph of Mr. Putnam's letter, it says, "The loan
23 commitment is held in reserve for each development, pending
24 transmittal of individual loan packages."

25 Now, is that the buyer?

1 MR. MALLETT: That -- that's the buyer.

2 COMMISSIONER EDSON: So you have to have the
3 houses built and sold; is that correct?

4 MR. MALLETT: That's correct.

5 COMMISSIONER EDSON: Before the end of that 18
6 months.

7 MR. MALLETT: That's correct.

8 COMMISSIONER EDSON: So by May of 1984, these
9 houses have to be on the market and sold.

10 MR. MALLETT: Forty-one.

11 COMMISSIONER EDSON: Forty-one of the 300 units.

12 MR. MALLETT: Right.

13 COMMISSIONER EDSON: That just leaves some ques-
14 tions I think I have for Mr. LaMont.

15 MR. MALLETT: Okay.

16 CHAIRMAN IMBRECHT: Commissioner Commons.

17 COMMISSIONER COMMONS: When we have no air condi-
18 tioning in the units, and this is a fairly temperate climate,
19 a little warm, actually, up there on that hill, can you
20 explain how we are talking about getting as much as 50
21 percent reduction in the building standards, since we're
22 talking now primarily about heating costs, I would think?

23 MR. MALLETT: The reduction would be mainly due
24 to the double glazing, increased attic insulation, and
25 shading of the south and west glass. Granted, shading

1 of south and west glass does not, in this essence, impact
2 on the individual utility payment or bill of the consumer,
3 because there would be no air conditioning.

4 The main requirement for shading and things of
5 this nature in these areas is to prevent the need for air
6 conditioning. The --

7 COMMISSIONER COMMONS: It seems to me, though,
8 that, you know, we all live in a home that just reason
9 would suggest that the 50 percent estimate in a home without
10 air conditioning overstates the amount of energy that would
11 be saved from complying with the standards.

12 MR. MALLETT: The standards would also apply to
13 heating.

14 COMMISSIONER COMMONS: It would only apply to
15 heating in this case, where there's no air conditioning.
16 Is your 50 percent based on the assumption that there was
17 air conditioning in the units?

18 MR. MALLETT: No.

19 COMMISSIONER COMMONS: How do you arrive at this
20 number?

21 MR. MALLETT: It's basically a reduction in both
22 heating and cooling consumptions of 50 percent.

23 COMMISSIONER COMMONS: But there is no cooling
24 in the house.

25 MR. MALLETT: Right. If there's no cooling,

1 then it's 50 percent of heating only.

2 COMMISSIONER COMMONS: All right. So what would
3 that represent, in terms of savings?

4 MR. MALLETT: That's what we'd have to get back
5 to you, Commissioner. We don't have that right now, but
6 we'd have to -- that's the further information that you were
7 asking.

8 COMMISSIONER COMMONS: Doesn't cooling -- doesn't
9 cooling cost more than heating in this area?

10 MR. MALLETT: I would suspect so, yes.

11 CHAIRMAN IMBRECHT: Further questions?

12 COMMISSIONER COMMONS: I have one other question.

13 CHAIRMAN IMBRECHT: All right.

14 COMMISSIONER COMMONS: Do we have any legal options?
15 Are we allowed, if we wanted to, for example, to have double
16 glazing without going back through redesign, or are we
17 required just to grant the exemption or not grant the exemp-
18 tion? Do we have any flexibility?

19 MR. GAUGER: The exemption --

20 COMMISSIONER COMMONS: I'm not proposing any.
21 I'm just interested legally.

22 CHAIRMAN IMBRECHT: Maybe we can ask Mr. Chandley
23 to answer that question.

24 MR. CHANDLEY: Commissioner Commons, as you recall
25 in previous exemption claims, the Commission granted partial

1 exemptions. It went down a possible list of conservation
2 features that would be deemed to comply with the standards,
3 looked at them individually, and for each one determined
4 whether it would be impossible to comply without substantial
5 increases in costs and delays; and it, therefore, required
6 the claimant -- it exempted the claimant from those -- from
7 those requirements for which it would be impossible without
8 those two criteria, and required the claimant to comply
9 with respect to those particular items for which it would
10 not be impossible.

11 COMMISSIONER COMMONS: All right. Then let me
12 address my question, let's assume we did not agree with
13 your assumption that there was not substantial funds
14 expended by the builder and it did meet the criteria to
15 be considered for an exemption, what would be the staff
16 recommendation on those items that the builder should be
17 exempted?

18 MR. GAUGER: Yes. I think we can give you a
19 handout which we would suggest could be incorporated in the
20 building without substantial delay.

21 CHAIRMAN IMBRECHT: Are you finished? All right.
22 Fine.

23 Mr. LaMont, would you care to present your per-
24 spective on this issue?

25 MR. LA MONT: I appreciate the opportunity, in

1 lieu of what's -- what's taken place since February to come
2 before you and share our concerns for the project there in
3 Moorpark.

4 There's a number of things that may be right
5 assumptions or wrong assumptions on our part, but I'd like
6 to share with you kind of chronologically what we've gone
7 through on the project and why we feel so strongly about
8 an exemption process at this particular point in time.

9 You have information before you that gives you
10 statistically, with dates and costs, when the site was
11 purchased, when we had started the processing. Now, one
12 of our concerns is is that, even though we deal with parti-
13 cular dates here in our explanation, there's a process that
14 we go through with the local municipality that starts
15 before that, the dates that we have printed in the documen-
16 tation are approvals.

17 Sometimes these processes take as long as six
18 months to a year on -- on these process times.

19 We had purchased the property in October of '76.
20 Our tentative map process was accomplished, completed and
21 the staff -- the staff report I had noticed refers to it
22 as -- as submitted. This is when the tentative map was
23 accepted, there was a process time that had taken place.
24 That date was September 14th, '78.

25 Our final map was recorded, with conditions, as

1 an RPD, the planned residential development, on May 27,
2 1980, at which time, in the planning process with the
3 County, under that particular zone designation, we are
4 required to submit to the municipality plans for the struc-
5 tural concepts for their approval. That's why we feel so
6 strongly about this total process and total expense. It's
7 not only linked to the building, what we consider an
8 envelope, but in sophistication of zoning and all the
9 processes that a developer goes through, these have to be
10 thought out and worked out with the municipality in sequence,
11 as they process, even from the beginning of the tentative
12 map.

13 There's a position here that I don't particularly
14 agree with, as far as staff is concerned, where they -- the
15 strictest sense is taken toward the development of archi-
16 tecture, planning, engineering, only focused to the envelope
17 itself.

18 One of the problems that we have with that is
19 is that we have to start developing that process of that
20 product much earlier than just hiring an architect or a
21 planner. We need to make sure, from an economic -- from
22 an approval standpoint of the municipality, what our tar-
23 geted area is going to be, not only economically, but for
24 the acceptance of that community. Those are other considera-
25 tions that I don't think are taken into consideration here.

1 Part of what is addressed in the report, which
2 alludes to the -- the denial of the exemption, is the dates
3 and timing back to July 15, 1981. We had seen a decline
4 in the marketplace in the area that we're speaking of in
5 Moorpark and Ventura County, and we became quite concerned,
6 as a developer, with a project that we were -- you know,
7 it's primarily in midstream on, as far as development, and
8 at that particular point in time we had considerable funds
9 expended, at that particular point in time. As a matter
10 of fact, \$5,396,588. Of that, there was an amount -- not
11 nearly that amount, but there was an amount attributed back
12 to establishing an understanding of product and product
13 criteria, at that particular point in time.

14 We had hired a marketing consultant, which is
15 Herb Aist & Associates, which is well known throughout the
16 state, he's used all over the state, and we used that
17 criteria not only with the municipality, but in our planning
18 process for that product.

19 As the economic times changed, the tide changed
20 in that marketplace, we became very concerned and hired
21 Mr. Aist again to prepare for us a specific market study
22 as to where we should be, not only in concern with the
23 community, but economically.

24 When we had received that -- and, by the way, that
25 report was done in March of -- it would have been in March

1 of '81, we had also consulted with an architectural firm
2 for some further studies in conjunction with Mr. Aist,
3 Bates and Pekarek.

4 I addressed that briefly in our correspondence
5 with the staff on April 26, 1983.

6 Our understanding, too, on the dates, in lieu of
7 the activities that have been taking place here in
8 Sacramento, and in light of the energy question, really,
9 as to the direction that we go, it was maybe wrongly con-
10 ceived, but nevertheless conceived, that these dates and
11 times were relieved in the acceptance of the Greene Bill
12 and the timing.

13 Like I say, that may be misunderstood by -- by
14 our part, but as we --

15 COMMISSIONER SCHWEICKART: Excuse me. Could you --

16 MR. LA MONT: Yes.

17 COMMISSIONER SCHWEICKART: Could you say a little
18 more on that? I -- I'm not sure I understood what you said
19 your interpretation of the Greene Bill and its provisions
20 were. I think that's what you were telling us about.

21 MR. LA MONT: Well, it was my understanding that,
22 under the Greene Bill, there was a year's time extension
23 for residential building. When we perceive building as
24 a developer, it's not just going down and applying for a
25 building permit. It's the total process. We were in the

1 process on the project. It was our understanding from
2 interpretations that we had obtained from -- from the bill
3 and from legal staff at CBIA, that we had this -- this time
4 extension in that. The staff's report alludes to the fact
5 that the day is hard and fast on July 15, 1981. That
6 wasn't our belief. That isn't our understanding today.
7 That's one of the reasons why I'm sure somebody's -- there's
8 probably a question in their mind, well, if they knew this,
9 why did they continue to proceed.

10 One of the reasons that we proceeded is that we
11 were under the assumption that we had this time extension.

12 Our concern now with the timing with the municipi-
13 pality in moving forward in the process was a number of
14 things. We not only had the time extension that was --
15 was diminishing. We had a number of local activities that
16 were happening. A vote of incorporation, which will be
17 certified as of July 1 this year.

18 Then there is a new municipality to deal with
19 with new interpretations of -- from the beginning, with
20 zoning to the building permit process and the interpreta-
21 tion of code and enforcement of code at that particular
22 point in time.

23 There are a number of things that we want to
24 share for a mutual understanding of the completion of
25 these processes. Once we had determined that -- by the

1 market study, and we had hired Ken Agid, a marketing con-
2 sultant out of Orange County, then, after the Aist report
3 had told us that, no, the targeted area that we had
4 originally planned for was not there, here's a new targeted
5 area that we need to go with, which was in the area of
6 affordable housing.

7 We then went to -- again to make sure of our
8 position and where we should go directionally to another
9 marketing consultant. He confirmed that information in May
10 of this year, along with that.

11 We had entered into a firm contract with specific
12 design criteria in mind for affordable housing, which we
13 felt we could meet.

14 We also, with that criteria, went to CHFA, the
15 California Housing Finance Authority, and entered into
16 agreements with them, procured financing, because of the
17 bond issues and the timing involved in procuring and being
18 able to provide that finance instrument for affordable
19 housing.

20 In the meantime, through the processes, we knew
21 that, yes, we could very possibly get started with the first
22 increment of the housing, a model complex, and a first
23 release of 25 or 30 houses.

24 One of the difficulties we find with that is that
25 we have 309 lots, and once we build the model complex and

1 our first release, and then we have to come in and initiate
2 a new standard which has what we consider an abrupt change
3 in glazing requirements and energy requirements, it changes
4 the criteria of that development of that product, even to
5 the point that we are required then with this product, or
6 any change in that configuration of product, to go before
7 the municipality under the RPD zoning and seek what they
8 call a minor modification, which allows them an additional
9 look, an exercise, their -- their interpretation of what
10 then they can accept in that community.

11 That process can take anywhere from a month to
12 two and a half, three months.

13 We have dealt with the municipalities in that area.
14 It's very, very difficult at this point, not knowing exactly
15 what the position of the new City of Moorpark is. What
16 we've been striving to do is to have our plans accepted,
17 go through our exemption process, so that we can present
18 to a community a project intact that would be ongoing, that
19 wouldn't have to be reconsidered.

20 We would be in for a plan check of the plans. We
21 would be able to continue with the development. There
22 wouldn't be any necessity for these kinds of delays for the
23 future.

24 The cost impacts from an interest-carry standpoint
25 on the dollars that we've expended to date are huge. We

1 have into the project now over \$6.5 million, and we have
2 not pulled the building permit.

3 The area -- we have talked with the supervisors,
4 we've talked with government officials in the area, as far
5 as what their perception of our plan, our product for the
6 community, in an affordable way, is, and they want very
7 much that kind of project in the Moorpark area, because it
8 definitely meets a large need there.

9 We also, in talking with staff and -- and under-
10 standing of -- I haven't had an opportunity this morning
11 to read the letter from CHFA, but I had a conversation
12 with Mr. Putnam yesterday, and -- primarily about our con-
13 cerns of where we are from a time standpoint, where we're
14 at with the project, and what their response is. It was
15 my feeling in conversation with the staff that -- that CHFA
16 would be willing to help us out, per se, with any extended
17 cost beyond what we had already planned for, as far as
18 standards were concerned, if we were imposed with other
19 regulation.

20 Mr. Putnam's comment yesterday to me on the phone
21 was, is, "Well, we would be willing to look at it. Our
22 concern is is that you are in a specific targeted area."
23 We had gone through that at the time of the processing of
24 the CHFA financing. We are concerned that we not get too
25 far drawn off of that target area, as far as being able to

1 provide affordable housing. Our concerns --

2 CHAIRMAN IMBRECHT: Did he give you any para-
3 meters as to what their view would be, as to --

4 MR. LA MONT: He -- he would not specifically --

5 CHAIRMAN IMBRECHT: -- increased cost?

6 MR. LA MONT: -- commit to an amount. He said
7 that once there was a resolution as to where we were, they
8 would be willing to look at that. He would not make a
9 commitment as to how much they would allow or disallow.
10 His concern was, though, that it couldn't be very much,
11 because we're right on the borders with the CHFA. The
12 targeted area that we're trying to meet is from 102,000 to
13 125,000, in the price range.

14 In taking the plans and consulting with our sub-
15 contractors and suppliers, we have found that if we had to
16 go back and redesign to comply with the standards, it would
17 add an additional 26 to 38 hundred dollars per unit hard
18 cost. That's just in providing materials to comply with
19 the new standards. That isn't carry or any other financing
20 at that particular point in time.

21 Some of the timing in -- I don't want to belabor
22 the point with the project, but timing becomes very, very
23 crucial in dealing with the many agencies that we deal with
24 on approvals for projects these days.

25 I also noticed in the -- in the report, the staff

1 report, that comments about plan check, they comment that
2 a plan check was entered into primarily on May 23rd. Our
3 originaly submittal was at May 2nd. The County provides
4 us a check list, and they are very diligent in meeting that
5 check list and getting all of the different agencies and
6 fees paid prior to acceptance of any materials back in the
7 plan check.

8 I think that that's a prerogative of a local
9 municipality, as to how they function in that area, but
10 where it concerns us is timing. It takes a great deal of
11 time to come before them. Our permits have been typed and
12 accepted into the plan check process.

13 Now, I don't want that to be perceived as just
14 a -- a little thing, when you take into consideration from
15 May 2nd to May 23rd, there's a considerable amount of days
16 just for one -- what would seemingly be a fairly simple
17 process, that -- that becomes a very significant -- parti-
18 cularly with the timing that we have to deal with -- a
19 crucial item.

20 Again, one of the reasons that I see the staff
21 looking at -- you know, not accepting the exemption process
22 is the timing. I hope that I've sufficiently explained our
23 dilemma and our situation in dealing with it, and I see that
24 is somewhat different.

25 CHAIRMAN IMBRECHT: Let me ask, in the event that

1 your application for an exemption were denied, my under-
2 standing is that another option available to you would be
3 to go and pull the permits on each of your units by June
4 15th, which would then allow you clearly to qualify under
5 the terms of the Greene Bill. I believe that's an accurate
6 statement.

7 What would be the cost implications for you, and
8 have you contemplated that action?

9 MR. LA MONT: We have contemplated that, and we
10 could, you know, from a cost consideration, it's a couple
11 of hundred thousand dollars in plan checking permit fees
12 at this particular point in time. I haven't sat down --
13 we had not done the -- the plotting for the entire project,
14 so it would be very difficult to, at this point, give you
15 anything but just a ball park figure, and it would be over
16 a couple of hundred thousand dollars just in those fees
17 alone, let alone the school fees and the flood fees and the
18 water fees, and all those that have to be paid up front.
19 That's just plan check and permit fees.

20 Plus, we only have an opportunity if we pull
21 those permits to function within a 180-day process, which
22 we would be allowed a one-time extension of 180 days.
23 Economically, it would not be feasible for us to pull all
24 309 building permits, because those building permits then
25 would become delinquent or expired from lack of performance.

1 It would not be economically feasible in the market to go
2 to a lender and ask him to finance a project, nor would
3 CHFA talk to us about an additional commitment on financing
4 for the 309.

5 That's why, very honestly and very straight-
6 wardly --

7 COMMISSIONER SCHWEICKART: Before you go on,
8 sir --

9 MR. LA MONT: Yes.

10 COMMISSIONER SCHWEICKART: Did you say for the
11 309 or for the 41, with regard to CHFA?

12 MR. LA MONT: For 309. Right. We have a commit-
13 ment for 41.

14 COMMISSIONER SCHWEICKART: No, I'm sorry. "Right"
15 didn't get it. I'm asking, were you referring, when you
16 said CHFA, to 309 or to 41?

17 MR. LA MONT: No. I was referring to the addi-
18 tional -- we have 309 minus the 41. It would be very diffi-
19 cult, being that we have not performed on the commitment
20 that we already have for 41 units, to go to them now and
21 say we want an additional 230-some --

22 COMMISSIONER SCHWEICKART: Well, but I think --
23 I think the question partly underlies Chairman Imbrecht's
24 question, or if it doesn't it certainly represents my
25 question then to you.

1 Is there any particular reason, if the issue is
2 the CHFA commitment, that you would not move ahead by
3 pulling 41 permits, and move ahead on those -- on the con-
4 struction of those first units, and that would not, as
5 I read the numbers, at \$500 per permit, amount to 200,000
6 but, rather, about \$20,000.

7 It sounds about right for the size of a block of
8 permits that a substantial builder pulls.

9 MR. LA MONT: Commissioner Schweickart, one of
10 the difficulties with that is that we find ourselves build-
11 ing a product under, you know, Title 20, these -- these fit
12 that requirement, and then after that date, being put in
13 a position where we would have to meet a new standard,
14 which would change physically those structures that we
15 would be modeling.

16 See, a merchant builder or developer buys a
17 piece of ground, develops it, puts product on it, estab-
18 lishes a model complex to show his product, and then sells
19 from that in an incremental stage over a period of three
20 to four years of that project at whatever the market will
21 allow at that particular point in time.

22 If we build under the present regulations, if I
23 hypothetically went and got the 41 building permits, we
24 could build those 41 under present-day code without any
25 consideration to the new energy standards. July -- June 15th

1 this year, when they come into effect, any further building
2 permits that I would want to take out for that project, I
3 would have to then comply with the new standards. There's
4 a disparity between what the product that we would be
5 required to build then than what we built initially with
6 the 41.

7 From a marketing standpoint, we would have a
8 very difficult time convincing a buyer at that particular
9 point in time, looking at the product that we're modeling
10 from, and saying, well, we have to meet new standards, so
11 that's the reason for the difference in the structures.
12 You see what I'm saying?

13 COMMISSIONER SCHWEICKART: Um-hum.

14 MR. LA MONT: If -- if then we were -- you know,
15 and it's really our attempt to come and share and -- the
16 exemption process openly with the Commission, with this
17 particular problem. We could very easily go out and take
18 out as many permits. That doesn't really solve the problem
19 for that project, okay, because of what we perceive as that
20 -- that disparity in product.

21 CHAIRMAN IMBRECHT: You would in effect be faced
22 with building two sets of models --

23 MR. LA MONT: Absolutely.

24 CHAIRMAN IMBRECHT: -- under those circumstances.

25 MR. LA MONT: Yes.

1 CHAIRMAN IMBRECHT: Commissioner Commons.

2 COMMISSIONER COMMONS: Mr. LaMont, on the recom-
3 mended measures for a Pacifica exemption that were passed
4 out by staff, providing glazing were changed to 20 percent,
5 and that the thermal mass were 25 percent of first -- of
6 the first floor, are there any items on here that would
7 create a difficulty for you, and do you have any idea as
8 to the cost of implementing those measures and what the
9 impact on the energy savings would be?

10 MR. GAUGER: Commissioner, might I point out that
11 the maximum glazing in any of his models currently is only
12 17.5 percent. It ranges from 15 percent to 17.5 percent.

13 CHAIRMAN IMBRECHT: Basically, the question,
14 Mr. Lamont, is on that -- on that list, assuming you could
15 accommodate the existing glazing patterns of your models,
16 let's say, up to 17.5 percent, would you be able to accommo-
17 date those other items and --

18 MR. LA MONT: I --

19 CHAIRMAN IMBRECHT: -- what would be your reaction
20 to a partial exemption, based upon that?

21 MR. LA MONT: I -- I have had some conversation.
22 I think we would very much be willing to sit down and resolve
23 that, yes, and look at some alternatives, and providing --
24 as long as we can reach a happy medium to provide a -- an
25 affordable product there that would keep us within the

1 target area of the CHFA constraints that we have to deal
2 with.

3 The glazing requirement, if that was left, that
4 would be very helpful.

5 CHAIRMAN IMBRECHT: Staff, does that assume
6 double-pane?

7 MR. GAUGER: Yes, it does.

8 COMMISSIONER SCHWEICKART: Let me try and get
9 some facts out here. First of all, I'd like to understand
10 this list that the staff provided us. Does this list
11 represent that menu of changes which apply to this specific
12 project, and the models that have been developed by Pacifica,
13 would bring them into full compliance with the standards?

14 MR. GAUGER: Near compliance, but not full com-
15 pliance. We looked at the items -- we looked at the plans
16 and tried to identify those areas where the changes could
17 be made at this point without redesign of the building or
18 major architectural changes.

19 COMMISSIONER SCHWEICKART: Well, I guess I don't
20 understand. Did this list -- this list then was developed
21 on the -- by the staff, on the basis of changes which
22 could be made, which would improve the energy efficiency
23 and would not cause delays?

24 MR. GAUGER: Essentially, yes.

25 COMMISSIONER SCHWEICKART: Rather than changes

1 which could be made to the project which would bring it
2 into compliance.

3 MR. LA MONT: That's correct. This list would
4 not bring the buildings into complete compliance.

5 COMMISSIONER SCHWEICKART: Including compliance
6 with an averaged -- okay, that's all right. This would not
7 bring it into budget within this climate zone. Is that
8 what you're saying? If the --

9 MR. GAUGER: Yeah. It would not meet the average,
10 using the averaging concept.

11 COMMISSIONER SCHWEICKART: If we assume that
12 these models are average on the four cardinal directions.

13 MR. GAUGER: Right. It would not quite make that
14 budget, but very close.

15 COMMISSIONER SCHWEICKART: All right. Let me --
16 let me understand, then, given that it still doesn't, in
17 your estimation, quite bring it to full compliance, let me
18 nevertheless understand from Mr. LaMont whether the numbers
19 that you mentioned, in terms of the costs -- I believe you
20 said 2800 to 3500 dollars?

21 MR. LA MONT: Twenty-six to 38 hundred is --

22 COMMISSIONER SCHWEICKART: Twenty-six to 38 --

23 MR. LA MONT: Right. That --

24 COMMISSIONER SCHWEICKART: -- represent what's
25 on this list, or whether that's a separate list that you

1 ran an assessment on.

2 MR. LA MONT: This -- that is a separate list,
3 in conjunction with taking the B package then and analyzing
4 it between the B package and the passive point system.

5 COMMISSIONER SCHWEICKART: All right. Let me --
6 let me ask, if you could, if we could just go down this
7 list, and if you could point out the approximate expense
8 involved here, because it seems to me, first of all, that
9 if we take the first item glazing area, in some areas you're
10 above and some areas you're below 16 percent, so let's call
11 that one a wash.

12 Double glazing, instead of single glazing --

13 COMMISSIONER EDSON: Can I ask one additional
14 question as you go through this? And that is to indicate
15 which of these requirements would require you to go back
16 for some additional approval locally.

17 MR. LA MONT: I'll try -- do you want me to try
18 and address that as we go item by item?

19 COMMISSIONER EDSON: If it's possible, yes.

20 CHAIRMAN IMBRECHT: Please. Please.

21 MR. LA MONT: Okay. Let's take the glazing and
22 let's hypothetically say that just as they're drawn and
23 presented --

24 COMMISSIONER SCHWEICKART: Double -- just specify
25 double glazing.

1 MR. LA MONT: -- you know, for a plan check at
2 this point, and just specify the dual glazing, over and
3 above what we had planned for for the smallest unit to the
4 largest unit, we're talking about a cost of \$500 to \$900
5 additional cost for the one plan to the floor plan. Those
6 are costs that I --

7 COMMISSIONER SCHWEICKART: All right. By the way,
8 I'd like the staff to give me a -- their response as to the
9 approximate cost as well, so -- I don't mean right now, but
10 I'd like to go through the list, and I'd like to have some
11 understanding that there is --

12 MR. GAUGER: Could I just point out --

13 COMMISSIONER COMMONS: Let's respond as they do
14 it. It's easier to follow.

15 COMMISSIONER SCHWEICKART: All right.

16 CHAIRMAN IMBRECHT: Is that a reasonable estimate
17 in your view?

18 MR. GAUGER: We looked up the estimated costs that
19 were presented at the time standards were adopted, while
20 the discussion was going on.

21 At the time of adoption, the staff estimated the
22 cost of compliance to be \$3,053, which his estimate of
23 26 to 38 for Package B means his estimates and ours appear
24 to be very close, at least -- you know, as an average, we
25 were in the middle.

1 So his first estimate of the cost of complying
2 to a Package B is -- is very reasonable, based on what we
3 had in our mind when we adopted it.

4 COMMISSIONER SCHWEICKART: Yes, but what we're
5 finding, Bart, frankly, is that the costs are in fact less,
6 and I'd like to proceed down this list. Is the glazing
7 cost approximately correct, in your expert opinion?

8 MR. GAUGER: That sounds reasonable.

9 COMMISSIONER SCHWEICKART: All right. Let's go
10 to ceiling insulation. What's currently planned in these
11 houses?

12 MR. LA MONT: Okay. Let me -- I tried to do my
13 homework, as much as I could, before coming here. I'm not
14 used to doing this every day, so bear with me, but I do
15 have a bid that should be in our office. I confirmed the
16 information yesterday with Premiere Aluminum Products in
17 Gardena. They're the ones that have -- that we found very
18 competitive in their products, and we have used for a
19 number of years.

20 These are the costs and the cost range that they
21 quoted me for that project, so those are costs that, you
22 know, we would rely on to construct with.

23 CHAIRMAN IMBRECHT: Fine. Thank you.

24 COMMISSIONER EDSON: Would going to double glazing
25 require any kind of new approval?

1 MR. LA MONT: No. I don't believe it would.

2 COMMISSIONER SCHWEICKART: Okay. So the incremen-
3 tal ceiling insulation cost?

4 MR. LA MONT: The ceiling insulation I had checked
5 out with the United California Insulation. That runs
6 pretty uniformly between 200 and 290 -- almost 300 dollars,
7 so there's -- you know, there's -- if you want to split it
8 down the middle, and, you know --

9 COMMISSIONER SCHWEICKART: Two-fifty.

10 MR. LA MONT: -- \$235, or, you know, per plan.
11 They run pretty uniformly --

12 COMMISSIONER SCHWEICKART: And that's the incre-
13 mental cost above what you're currently planning.

14 MR. LA MONT: That's right.

15 COMMISSIONER SCHWEICKART: All right. And --

16 MR. LA MONT: That's over and above what we have
17 planned for in --

18 CHAIRMAN IMBRECHT: Were you planning R-19? Was
19 that what was --

20 MR. LA MONT: Yes. We were planning R-19. That's
21 the increase from the R-19 to the R-30.

22 COMMISSIONER SCHWEICKART: All right. And, again,
23 Staff, can you confirm that that's approximately -- that
24 sounds right --

25 MR. GAUGER: That sounds reasonable.

1 COMMISSIONER SCHWEICKART: -- from what I did in
2 my house.

3 COMMISSIONER EDSON: Any -- any government
4 approval required for that trade?

5 MR. LA MONT: No. No governmental approval for
6 that.

7 COMMISSIONER SCHWEICKART: Wall insulation?

8 MR. LA MONT: Wall insulation, we had planned
9 R-11 in the plan.

10 COMMISSIONER SCHWEICKART: So there's no change
11 there.

12 MR. LA MONT: There's no change there.

13 COMMISSIONER SCHWEICKART: Okay. So that's a
14 wash. No slab edge insulation required.

15 South shading, we're looking at Levelor blinds
16 or an overhang. Is that a change required in terms of over-
17 hang there?

18 MR. LA MONT: Well, one of the difficulties we
19 have with the shading coefficient in looking at it and try-
20 ing to tie it down to a number, and I had tried talking
21 with several people about providing the sun screen on the
22 outside, looking at a drape material or a louvelaire on
23 the inside. We really have a problem, from a marketing
24 standpoint and an acceptance standpoint, with complying with
25 that as a performance item. There is some --

1 COMMISSIONER SCHWEICKART: People object to over-
2 hangs, sir?

3 MR. LA MONT: To somewhat, yes. On the houses
4 already we have, depending on the orientation, we already
5 have quite a large overhang in the front elevation, which
6 covers the windows. The plans are colonial design, mid-
7 western, mideastern farm house approach, with the beveled
8 siding, so on, so forth.

9 The overhangs extend from six foot to nine feet
10 beyond the building wall on that front elevation. On the
11 side walls where we have very little overhang, we have
12 tried to keep the minimum -- the windows to a minimum size
13 for that.

14 The reason I commented about people finding it
15 objective, regardless of the size of the glazing, when
16 that overhang is extended beyond a couple of feet, they
17 find that the shading really darkens the house. Now, what
18 we find people doing is -- is mechanically offsetting that
19 natural light that would be coming through with some type
20 of lighting, incandescent, or whatever.

21 COMMISSIONER SCHWEICKART: All right. But I'm
22 looking here at the cost --

23 MR. LA MONT: Yeah.

24 COMMISSIONER SCHWEICKART: -- the incremental cost
25 to comply with the standard, and I'm still looking for an

1 approximate number of what would be required in order to
2 bring the shading coefficient to .36 --

3 MR. LA MONT: Okay.

4 COMMISSIONER SCHWEICKART: -- on south and west.

5 MR. LA MONT: I'm trying to get to that. I think
6 taking into consideration that, you know, with -- as I
7 understand the staff's interpretation on this, is taking
8 a house and setting it out with no influence of any other
9 house or -- or terrain, or planting, or whatever. In the
10 RPD zoning, we will have houses with setbacks of five foot
11 from the property line, with only a ten-foot separation
12 between dwellings, so really what I'm getting at is you
13 have a natural shading situation with certain exposures,
14 not all exposures, but with certain exposures, just by the
15 fact of the house next door to it.

16 With the terrain that we have --

17 COMMISSIONER EDSON: Excuse me for just one minute.

18 MR. LA MONT: Yes.

19 COMMISSIONER EDSON: I know that we've been renew-
20 ing issues like this in the Implementation Advisory
21 Committee, and we recently distributed a notice to building
22 officials that I think may have addressed this issue. Let
23 me ask the staff to comment.

24 MR. MALLFTE: That particular notice indicated
25 that if there was an obstruction on a west --

1 COMMISSIONER EDSON: An adjacent -- a building,
2 or terrain.

3 MR. MALLETTTE: An adjacent -- a building or hill
4 or mountain, whatever. Then -- and if that obstruction
5 went up to a line that extended from the top of the window
6 at an angle of 45 degrees up from the horizon in a westerly
7 direction, then that would be considered shaded, to meet
8 the shading requirement in the west facing.

9 COMMISSIONER SCHWEICKART: Okay. So where -- in
10 other words, where there is real shading --

11 MR. MALLETTTE: Where there is real shading, they
12 are allowed not to have it, yes.

13 COMMISSIONER SCHWEICKART: -- then it has been
14 accounted for.

15 MR. MALLETTTE: Yes.

16 MR. GAUGER: I might point out, also, that the
17 optimal overhang in this zone is around two and a half feet,
18 30 inches, so we're talking of --

19 COMMISSIONER SCHWEICKART: Okay.

20 COMMISSIONER EDSON: I just wanted to --

21 MR. GAUGER: So where that type overhang --

22 COMMISSIONER EDSON: I just wanted to, Mr. LaMont,
23 make sure you understood that, because that is a very
24 recent development that you might not be aware of.

25 MR. LA MONT: I was not aware that that was where

1 the Commission was.

2 COMMISSIONER SCHWEICKART: So you do get credit
3 for adjacent buildings where in fact they do shade. Now --

4 MR. LA MONT: Yes, sir. One of the difficulties
5 that, you know, in what I'm trying to explain and get, you
6 know, down to a bottom line on this particular issue is
7 it's very difficult, then, to attach a cost. The screening
8 per window, we find a lack of understanding, quite frankly,
9 from the people that are providing those kinds of screens
10 interiorally.

11 We find that in getting -- trying to get a con-
12 sensus from people that know this product that it is very,
13 very difficult to affix that type of screen on the outside,
14 a sun screen that would meet your requirements here that
15 people would live with.

16 The fear is, is that, yes, we can comply with
17 that, but when the people buy, moving in -- buy the house,
18 close their escrow, they take the unit off because they
19 don't get the natural light. They put it in the garage.
20 It either gets run over by the car or the bike, or whatever,
21 it never gets reinstalled.

22 I think there's some natural assumptions that
23 people are going to drape their windows. They are going
24 to use louveleers or drapery materials, or they're going
25 to deal with that as they perceive their living environment.

1 COMMISSIONER SCHWEICKART: Yes, sir. We assume
2 that that will be the case, and some people will run their
3 air conditioner to where it's 65 degrees, and others will
4 run it at 80 degrees, and some people will heat their
5 house to 80 degrees and others to 60, and there will be a
6 great deal of individual variation.

7 I think the question that we're trying to get at
8 here is the issue of the significance of the cost of com-
9 plying with the standards, and whether or not this provides
10 an excessive delay. That is, we're essentially attempting
11 here, or at least I'm trying to attempt to get some idea
12 of what the facts related to the wording of the law that
13 talks about significant costs and delays is.

14 So whether or not people do remove the shade
15 screens is a very real question in the real world. It
16 doesn't help particularly today, in my determination of
17 what the facts in this case are, so if --

18 MR. LA MONT: I -- I --

19 COMMISSIONER SCHWEICKART: -- if you could make
20 an approximation, I would appreciate it.

21 MR. LA MONT: Okay. Well, Commissioner
22 Schweichart, the difficulty that I'm having expressing this
23 is that it is -- it's very difficult with a subdivision such
24 as we have, with the curvilinear design, with houses next
25 door, to say eight percent of houses of how many windows

1 of what size that I would have to shade because of that
2 requirement.

3 COMMISSIONER SCHWEICKART: Okay. Let me --

4 MR. LA MONT: I don't know, I'm finding as an
5 average widow size of four by four, to shade that with a
6 screen, I've gotten a price anywhere from \$75 to \$150 for
7 that window. That's the price that I'm told. I have a
8 hard time swallowing that but, nevertheless, that's what
9 someone that has more of an expertise has told me. That's
10 the best way I can respond.

11 COMMISSIONER SCHWEICKART: All right.

12 CHAIRMAN IMBRECHT: Okay.

13 COMMISSIONER SCHWEICKART: Again, if we could --
14 if the staff has an approximation, I'll take that. I'm
15 trying to get to a bottom line here.

16 MR. LA MONT: One other item. This is one item
17 that, yes, very definitely we would have to have a local
18 approval on.

19 COMMISSIONER EDSON: If you built overhangs, I
20 assume. I -- you would need a local approval if you put
21 blinds inside, or --

22 MR. LA MONT: With the -- we can use overhangs,
23 but in some cases we are not providing overhangs, and a
24 shade screen or some other --

25 COMMISSIONER SCHWEICKART: If you put a Levelor

1 blind inside the house --

2 MR. LA MONT: No.

3 COMMISSIONER SCHWEICKART: -- that would require
4 a --

5 MR. LA MONT: No. I was only speaking to a shade
6 exteriorally applied.

7 COMMISSIONER COMMONS: Can you give an estimate
8 of what the Levelors for blinds would be?

9 CHAIRMAN IMBRECHT: Well, let's try -- I think
10 this is getting a little -- let me try to get to a bottom
11 line.

12 Aside from the shading, we're close now to the
13 bottom of the list, are there other items that cause you
14 any difficulty? I have a sense that, in the event you
15 would be willing to accept all or most of this list, that
16 we could probably move the resolution of this -- of your
17 application.

18 MR. LA MONT: Okay. If we can kind of then put
19 the shade situation in abeyance, and if you want to we can
20 come back to it --

21 CHAIRMAN IMBRECHT: Fine.

22 MR. LA MONT: -- let's talk about the thermal mass.
23 Really, in all honesty, I think that it's reasonable to
24 assume that we would provide a vinyl sheet, good material
25 in the kitchens, the bathrooms, and family room areas. I

1 think that's reasonable. I think --

2 COMMISSIONER SCHWEICKART: These are slab floor
3 homes?

4 MR. LA MONT: Those are slab floor, right.

5 COMMISSIONER SCHWEICKART: So that are you saying,
6 then, that there's essentially no incremental cost in terms
7 of the thermal mass?

8 MR. LA MONT: No.

9 COMMISSIONER SCHWEICKART: Okay.

10 MR. LA MONT: No, the only difficulty we may have
11 is in buyer acceptance, but --

12 COMMISSIONER SCHWEICKART: Would these -- do your
13 plans currently call for the kitchen to be carpeted, or --

14 MR. LA MONT: No. The family rooms are carpeted,
15 but -- and the family rooms really add significantly to
16 this percent. You know --

17 COMMISSIONER SCHWEICKART: You're saying in terms
18 of cost, it probably is --

19 MR. LA MONT: It's a wash.

20 COMMISSIONER SCHWEICKART: -- doesn't do anything,
21 but the question is whether or not they would be more or
22 less acceptable --

23 MR. LA MONT: Right.

24 COMMISSIONER SCHWEICKART: -- to the customer.

25 All right. How about the -- the furnace? Have you already

1 specified the furnace for use in the home?

2 MR. LA MONT: I have checked with our furnace
3 people, and they have advised me that there's very little
4 cost impact on --

5 COMMISSIONER SCHWEICKART: Are there any?

6 MR. LA MONT: -- on using that.

7 COMMISSIONER SCHWEICKART: Can you say what the
8 seasonal efficiency of the current plans are of the fur-
9 naces you have identified or specified?

10 MR. GAUGER: Say '71.

11 COMMISSIONER SCHWEICKART: I'm sorry?

12 MR. GAUGER: The current standard is the '71
13 standard.

14 MR. LA MONT: Current -- yeah.

15 MR. MALLETT: Yes, '71.

16 MR. LA MONT: Yeah. The current standard is '71.
17 That's primarily what they would --

18 COMMISSIONER SCHWEICKART: No, I understand the
19 standard is '71, but have you already identified the specific
20 furnace that --

21 COMMISSIONER GANDARA: I want to know if that's
22 with or without a vent damper.

23 CHAIRMAN IMBRECHT: For Christ's sake, come on.

24 COMMISSIONER SCHWEICKART: Wait a minute.

25 MR. LA MONT: Well, no models were identified on

1 the drawings.

2 CHAIRMAN IMBRECHT: I think -- I think Mr. LaMont's
3 answer was clear.

4 COMMISSIONER SCHWEICKART: No cost.

5 CHAIRMAN IMBRECHT: Little or no cost.

6 COMMISSIONER SCHWEICKART: All right. So then
7 what we have --

8 CHAIRMAN IMBRECHT: And that doesn't cause you
9 a problem to comply with that particular requirement,
10 particularly.

11 MR. LA MONT: No, not really.

12 CHAIRMAN IMBRECHT: So that's a --

13 COMMISSIONER SCHWEICKART: So then we have 750
14 to 1150 --

15 CHAIRMAN IMBRECHT: And there are no air condi-
16 tioners, so that's -- that's out.

17 MR. LA MONT: The --

18 CHAIRMAN IMBRECHT: And domestic hot water --

19 MR. LA MONT: The domestic hot water and --

20 CHAIRMAN IMBRECHT: Any of those are acceptable.

21 MR. LA MONT: -- are solar.

22 CHAIRMAN IMBRECHT: So that's not a problem.

23 MR. LA MONT: You know, we had planned on going
24 with gas. The solar significantly --

25 CHAIRMAN IMBRECHT: Gas --

1 MR. LA MONT: -- in our best estimate, adds 28
2 -- a minimum of \$2800.

3 CHAIRMAN IMBRECHT: What we're left with, then,
4 are two issues, basically. The question of whether or not
5 you would wish to agree to the shading, as well as your
6 concerns about marketability of 25 percent exposed slab.

7 Do these homes contemplate having fireplaces?

8 MR. LA MONT: We -- we are providing a zero
9 clearance fireplace.

10 CHAIRMAN IMBRECHT: Is there any masonry around
11 that?

12 MR. LA MONT: Yes. There is a --

13 CHAIRMAN IMBRECHT: Are you aware that that can
14 be counted as well?

15 MR. LA MONT: That's thermal mass, yes.

16 CHAIRMAN IMBRECHT: That's right. So --

17 MR. LA MONT: And also the tile counter tops in
18 the kitchens.

19 CHAIRMAN IMBRECHT: So -- and the entryway, that's
20 uncarpeted?

21 MR. LA MONT: Uncarpeted.

22 CHAIRMAN IMBRECHT: Okay. So, down to -- I guess
23 the bottom line is then would you find this list basically
24 acceptable as a condition to an exemption? I'm not trying
25 to coerce you one way or the other. I mean if you don't

1 find it acceptable, please tell us, and I might --

2 MR. LA MONT: The only --

3 CHAIRMAN IMBRECHT: -- let me just -- let me just
4 say that I appreciate very much your demeanor and the very
5 businesslike manner in which you presented your case. I
6 think you've done a very good job for someone that hasn't
7 appeared before a regulatory body before.

8 MR. LA MONT: With -- with only one exception,
9 and that's to better understand, you know, the -- the
10 necessity, because it in our minds creates a real problem
11 on the shading coefficient. I find the list to be accept-
12 able, something that is workable that we could work at.

13 COMMISSIONER SCHWEICKART: I think the staff could
14 very quickly give you the direct energy impact of shaded
15 versus unshaded west and south glazing.

16 COMMISSIONER EDSON: There's --

17 COMMISSIONER SCHWEICKART: It's a -- I'm sorry?

18 COMMISSIONER EDSON: There's no energy impact,
19 because they don't have air conditioning. It's a case,
20 as staff said earlier, of making it more comfortable and
21 preventing people potentially from adding air conditioning
22 in the future.

23 COMMISSIONER SCHWEICKART: From ending up adding
24 it. Right.

25 MR. GAUGER: And it may be a retrofit of air

1 condition situation without the shade.

2 COMMISSIONER SCHWEICKART: That's the reason it's
3 in there.

4 MR. GAUGER: I might add, the SMUD program --
5 SMUD has a shading, a shade screen program, in which they
6 provide materials with a .36 shading coefficient, depending
7 on the contractor, from a dollar and a half to two and a
8 half dollars a square foot, and that's a -- a program that
9 they have. Those are installed at cost, apparently,
10 according to their literature, so --

11 COMMISSIONER SCHWEICKART: You said two dollars
12 a square foot?

13 MR. GAUGER: So there are products available.

14 CHAIRMAN IMBRECHT: A dollar and a half to two
15 dollars.

16 COMMISSIONER SCHWEICKART: Let's just say two
17 dollars.

18 MR. GAUGER: A dollar and a half to two and a half,
19 depending on the contractor.

20 The product involved is called fiber sunscreen,
21 and several contractors in this area carry it.

22 COMMISSIONER EDSON: And, of course, taking
23 credit for buildings --

24 COMMISSIONER SCHWEICKART: Okay. That's 480 --

25 COMMISSIONER EDSON: -- adjacent buildings, you

1 may have very few windows that would have to be shaded.

2 COMMISSIONER SCHWEICKART: If I use 1500 square
3 feet as an average, which I think is larger than the
4 average that you're talking about, times 16 percent maximum
5 glazing, which is the -- about the average of the homes,
6 times two dollars a square foot, which is the upper end,
7 that was \$480.

8 MR. GAUGER: You've assumed all the windows are
9 either south or west.

10 COMMISSIONER EDSON: Yes.

11 COMMISSIONER SCHWEICKART: Oh, that's -- that
12 assumes all the windows, yes. So if I assume half of them,
13 that's, then, 240.

14 MR. MALLETT: That's the numbers we've --

15 CHAIRMAN IMBRECHT: Okay, 240. So then we're
16 looking at a total potential increase in cost here of some-
17 where between a thousand and 1400 dollars, roughly.

18 COMMISSIONER SCHWEICKART: Right.

19 CHAIRMAN IMBRECHT: Per unit, and we would, of
20 course, support under those assumptions, with the documen-
21 tation to CHFA, that indeed these were requirements imposed
22 upon you. I don't think there's any objection, assuring
23 that we make those representations.

24 Okay. Well, the only question I want to just
25 clarify is that, in terms of the glazing area under the

1 terms of this, we would allow for his existing design so
2 he would not have to go back for permits changes, so some
3 of the homes would have --

4 MR. MALLETT: Yeah. The one particular --

5 CHAIRMAN IMBRECHT: -- it would in fact be an
6 average of 16 percent.

7 MR. MALLETT: The one particular building we're
8 looking at is -- exceeds the 16 percent, it's 17.5, and
9 the glazing areas that are in there to get the 17.5 percent
10 are a lot of it cosmetic and not necessarily daylighting.
11 However, if you want to look at the average in the buildings
12 as being 16 percent.

13 CHAIRMAN IMBRECHT: Well, I think that one of the
14 assumptions we've made in these questions is that he would
15 not be forced to go back for additional local approvals.

16 MR. MALLETT: This wouldn't require --

17 CHAIRMAN IMBRECHT: Changing the window?

18 MR. MALLETT: Modifying the window to -- as long
19 as they didn't do it in the bedrooms, there's no particular
20 code reapproval necessary.

21 I'd like to also point out that the plan check
22 has not yet started for this project by the plan check
23 department.

24 CHAIRMAN IMBRECHT: I'm going to make a proposal
25 and see if we can get down to a decision. I would propose

1 that we direct staff to prepare a formal order for adoption
2 at the next business meeting, which would encompass an
3 exemption with the conditions enumerated upon this list
4 being applied, with one clarification, and that is that the
5 existing glazing levels of their plans be permitted, on the
6 assumption that the rough average would be 16 percent, and
7 I'll offer that as a proposal.

8 May I just get a sense of the Commission? Are
9 there objections to that --

10 COMMISSIONER GANDARA: Question.

11 CHAIRMAN IMBRECHT: -- as a direction to staff?

12 COMMISSIONER GANDARA: Question.

13 CHAIRMAN IMBRECHT: Yes.

14 COMMISSIONER GANDARA: Mr. Chandley, is an order
15 a final action?

16 MR. CHANDLEY: You mean today's order?

17 COMMISSIONER GANDARA: Yes.

18 MR. CHANDLEY: I think the motion is properly
19 phrased, and it directs me to prepare an order for final
20 action at the next business meeting. The adoption of that
21 order would be the final action.

22 CHAIRMAN IMBRECHT: Okay.

23 COMMISSIONER SCHWEICKART: Mr. Chairman, let me
24 just comment that I would support such a motion. However,
25 I would also like to indicate that -- that, but for this

1 kind of detail compromise, I frankly find essentially no
2 case made by the applicant in terms of meeting the terms
3 of the law for an exemption, and I would like to state that
4 clearly, because it does not appear to me, with the start-
5 up of the specific design, being in 1982 -- that is, the
6 designs that the project opponent is proposing to move for-
7 ward with at this time that we're dealing with. Those
8 designs clearly came well after the adoption of the stan-
9 dards themselves and, in fact, even after the Greene Bill
10 was signed into law, and it was clear that the building
11 permits for the full 309 houses would certainly not be
12 built before the expiration date of the Greene Bill, so that
13 I -- I certainly do not find any basis for an exemption in
14 terms of the keeping of the law.

15 Nevertheless, since we've come this close to in
16 fact meeting the -- the budgets, I feel that this is a
17 reasonable compromise.

18 CHAIRMAN IMBRECHT: So if I heard that correctly,
19 there is no objection to that by the staff?

20 COMMISSIONER GANDARA: Mr. Chairman, I'm
21 abstaining from this decision. I think this is improperly
22 noticed. I don't see any way we can get around it. I
23 think we've indulged here an hour and half, you know, dis-
24 placing properly noticed people here, so if it's the con-
25 consensus of the Commission, fine, but I'm abstaining from any

1 action at this time.

2 I don't think it's an unsympathy toward the
3 petitioner at all. I just don't think that it's appro-
4 priately noticed, and frankly, I think that there should
5 be some concern as to whether there's been an infirmity in
6 the process that may potentially expose the petitioner to
7 some risk at some future time by some disgruntled person
8 who might feel that some agreement was reached, some intro-
9 duction into evidence made without an opportunity for
10 rebuttal.

11 I raised this issue earlier. I have some concerns
12 that the only time we have ever proceeded to receive testi-
13 mony on an improper notice has been when the notice was
14 already made and when we were going to withdraw an item.
15 I don't think we've ever added anything late to an agenda.
16 I think it's very unconventional, and so I'm abstaining from
17 any action the Commission is taking today on this matter.

18 I'll be glad to review the entire record and to
19 be able to consider the introduction of testimony at the
20 next time around, even if it's a transcript, but I -- you
21 know, I -- I just -- I just would like us in the future not
22 to proceed in this direction.

23 CHAIRMAN IMBRECHT: Well, fine. Let me just
24 suggest to you, Commissioner Gandara, that rather than taking
25 this matter to a vote, I'm going to exercise my prerogative

1 as Chair to make that direction to the staff but, as I think
2 I made clear in my earlier statement, for final adoption
3 at the subsequent business meeting two weeks from now. Of
4 course, if there are other parties that wish to be heard
5 on the matter, that will be accommodated at the time.

6 I think it's also important, though, to recognize
7 that I think we have an obligation to deal in equity with
8 parties that come before us, and indeed it is quite clear
9 to me, upon reviewing the facts, that it was an infirmity
10 by our staff that resulted in Mr. LaMont's case not being
11 properly noticed, and I think that we have some obligation
12 to honestly state that.

13 Finally, I will just indicate that also, for the
14 record, because everyone is obviously making their philo-
15 sophical statements as well, but I -- I do find reason for
16 an exemption here, and I do also operate from the premise
17 that not all citizens of the state have had actual or even
18 constructive notice of all of the ramifications of the laws
19 that replaced the building standards.

20 One of the things that I have taken exception with,
21 in terms of the implementation that has occurred with
22 respect to the standards, I personally believe that we have
23 an obligation, and I intend to pursue it at some point in
24 the future, that upon formal adoption in its final para-
25 meters, that I believe all registered contractors in the

1 state should be given actual notice, rather than an assump-
2 tion that they have received notice, something that would
3 make me a lot more comfortable in terms of imposing these
4 requirements upon members of the business community of the
5 state.

6 I think that in this case the applicant can make
7 a legitimate good-faith argument relative to, in effect,
8 falling unfortunately between the cracks of a number of
9 confusing actions taken by their government, both in the
10 context of regulatory decisions, and by the Legislature,
11 and I think that we have some equity obligations, as well,
12 in terms of dealing with the citizens of California.

13 COMMISSIONER GANDARA: I'm very concerned about
14 equity, Mr. Chairman. Let say that I don't think that per-
15 mits us to have an abuse of discretion on the noticing
16 requirements in calendaring items when they are improperly
17 noticed, and I do not wish any of my statements to leave
18 the impression that I'm not as concerned in equity as every-
19 body else.

20 I really think that we need to show some restraint
21 as well, some fiscal restraint, at the time when it's being
22 imposed upon us from all sources, that we, you know, cannot
23 just be adding items to the calendar at whim, you know.
24 Thirteen hundred dollars here, you know, is an issue. I
25 can -- you know, we are not any closer to giving a decision

1 to the applicant, you know, a final decision will be given
2 in two weeks, so what has been accomplished that would not
3 have been accomplished two weeks from today?

4 CHAIRMAN IMBRECHT: Well, the applicant's options
5 would be greatly constrained if this matter had not been
6 in some respects considered today.

7 Commissioner Commons.

8 COMMISSIONER COMMONS: I won't be here at the
9 next business meeting, but I want the record to show that
10 I would support the motion, as worded, and -- are we allowed
11 to actually vote on whether or not we direct the staff, or
12 do we just let it go?

13 CHAIRMAN IMBRECHT: No, I don't think that's
14 necessary. I think the statute is clear, I can direct the
15 staff, in accordance with Commission policies, unless you
16 choose to try to override that --

17 COMMISSIONER COMMONS: I have -- I have --

18 CHAIRMAN IMBRECHT: -- or any Commissioner, and
19 then my order to the staff stands. Okay?

20 COMMISSIONER EDSON: I have one brief comment,
21 since everyone's taking their crack.

22 I was a little concerned by Commissioner
23 Schweickart's statements. I think that we can only take
24 this action if in fact it is in compliance with the law,
25 and I have yet to hear an argument from our legal counsel

1 that we do not have the authority to take this action, and
2 I wanted to make that statement clear, so that the appli-
3 cant wasn't under, I hope -- let me clarify that with
4 counsel.

5 Is there any reason legally that we at some future
6 date couldn't grant this exception?

7 MR. CHANDLEY: I think, given all of the exhibits
8 that we entered today, and the discussion that occurred on
9 the record today, that there is sufficient evidence in the
10 record on which to grant an exemption, and I will endeavor
11 in a proposed decision, at the Chairman's direction, to set
12 forth the evidence upon which I think you should be relying,
13 and on which I think in fact you are relying, in reaching
14 what I regard as a general concensus on the matter.

15 COMMISSIONER EDSON: And --

16 MR. CHANDLEY: And that will be set forth in the
17 decision.

18 COMMISSIONER EDSON: Thank you. And the -- the
19 only other comment is that I am satisfied that the way we're
20 proceeding does keep us in compliance with any notice
21 requirements.

22 CHAIRMAN IMBRECHT: I believe we've been so
23 advised. Would you care to reaffirm?

24 MR. CHANDLEY: Yes. I have no difficulty with
25 the manner in which you've chosen to proceed.

1 CHAIRMAN IMBRECHT: Okay. Fine. Mr. LaMont,
2 thank you very much.

3 MR. LA MONT: Thank you.

4 CHAIRMAN IMBRECHT: Staff, thank you.

5 We'll go on to the Commission's consideration
6 decision regarding continuation of San Diego Gas and
7 Electric's residential appliance cycling program. I
8 believe Commissioner Commons, as the Presiding Member,
9 would like to make the presentation on that item on the
10 agenda.

11 Let me ask -- I think what we'll do is first see
12 if the Executive Director is prepared to make his report
13 in the next few minutes, and then I think we'll recess until
14 1:00 o'clock, and come back and take up the load management
15 issues.

16 EXECUTIVE DIRECTOR GEESMAN: I have a rather exten-
17 sive and segmented report today. I can indicate a couple
18 of the items --

19 CHAIRMAN IMBRECHT: Can it be accomplished in ten
20 minutes, or would you prefer to wait?

21 EXECUTIVE DIRECTOR GEESMAN: I can accomplish a
22 portion of it in ten minutes.

23 CHAIRMAN IMBRECHT: Fine.

24 EXECUTIVE DIRECTOR GEESMAN: And that is to indi-
25 cate to you that the San Bernardino geothermal grant and

1 the two federally-funded residential building standards
2 training contracts that you have approved at previous busi-
3 ness meetings have been returned to us by the Department
4 of General Services as not complying with the newly-revised
5 freeze guidelines.

6 Those new revisions make it very clear that in
7 order for contracts to receive exemptions this fiscal year,
8 they must pertain to health and safety matters. They've
9 sent them back to us. My assessment is that there's not
10 a realistic prospect for obtaining an exemption in this
11 fiscal year, given those guidelines. However, there is an
12 appeals process, so, depending on what you direct, we can
13 either sit on these for the remainder of the month and have
14 a go at them next year, or we can attempt to go through the
15 appeals process this year.

16 COMMISSIONER EDSON: In the past, my understanding
17 was that local assistance was generally exempted. Is that
18 a change in it?

19 EXECUTIVE DIRECTOR GEESMAN: My understanding is
20 that it is, that for the remainder of the year the only
21 exemptions will be health-and-safety-related.

22 COMMISSIONER SCHWEICKART: These -- two of these
23 -- excuse me. Two of these, John, you say are related to
24 training contracts?

25 EXECUTIVE DIRECTOR GEESMAN: Yes.

1 COMMISSIONER SCHWEICKART: Is that the ABAG con-
2 tract and the -- I can't remember what the other one was.
3 Southern California --

4 COMMISSIONER EDSON: CBIA?

5 COMMISSIONER SCHWEICKART: -- CBIA?

6 EXECUTIVE DIRECTOR GEESMAN: One is ABAG, and I
7 honestly don't know right now what the other one is.

8 COMMISSIONER SCHWEICKART: As I recall, we issued
9 two contracts essentially at the same time for training.

10 EXECUTIVE DIRECTOR GEESMAN: Yeah. The ABAG one
11 was held up one meeting.

12 COMMISSIONER SCHWEICKART: That's right. We con-
13 tinued one meeting on that one, and these were both directed
14 at builders, as I understand it.

15 EXECUTIVE DIRECTOR GEESMAN: That's correct.

16 COMMISSIONER SCHWEICKART: Well, that's a fine
17 kettle of fish.

18 CHAIRMAN IMBRECHT: Yeah, my -- my sense is that,
19 based upon the ultimate outcome of legislative action, et
20 cetera, relative to building standards, that we perhaps
21 ought to pursue an exemption relative to implementation of
22 the standards, assuming that -- that June 15th remains the
23 date of implementation.

24 I think that a legitimate argument can be made
25 that it's important --

1 EXECUTIVE DIRECTOR GEESMAN: We'll prepare those,
2 then.

3 CHAIRMAN IMBRECHT: -- for a reasonable applica-
4 tion of the law that we get on it about that one, so --

5 COMMISSIONER SCHWEICKART: I take it, John, can
6 you say -- is there any timeliness constraint on the
7 San Bernardino geothermal project? I mean a month's delay
8 there doesn't appear to me to affect anything.

9 EXECUTIVE DIRECTOR GEESMAN: I don't believe so.
10 We'll prepare exemption requests, then, for the two training
11 contracts.

12 CHAIRMAN IMBRECHT: Fine.

13 EXECUTIVE DIRECTOR GEESMAN: The other thing I
14 had to bring up with you is with respect to the Department
15 of Personnel Administration's response to our demotion
16 ladder proposal. I'd prefer to be briefed by Gloria Harmon
17 on that before providing that part of the report.

18 CHAIRMAN IMBRECHT: Fine. We'll continue the
19 report.

20 Anything further?

21 All right. We'll recess until 1:00 o'clock.

22 MS. FLEMING: Mr. Chairman --

23 CHAIRMAN IMBRECHT: Yes. Excuse me.

24 MS. FLEMING: I wondered if I could make a special
25 appeal. Some of our staff have some flight problems that

1 require them to be back in San Diego earlier in the after-
2 noon, and I wondered if we could take the San Diego Gas and
3 Electric load management before breaking for lunch.

4 CHAIRMAN IMBRECHT: My problem is I'm told by
5 Commissioner Commons that there is an information presenta-
6 tion that will last about 45 minutes prior to moving to the
7 actual issues involved.

8 Is that still your concern, Commissioner Commons?

9 COMMISSIONER COMMONS: Yes. It does not matter
10 to me if we continue.

11 COMMISSIONER GANDARA: Is there a difference
12 between the --

13 MS. FLEMING: Well, I --

14 COMMISSIONER GANDARA: -- SDG&E and --

15 MS. FLEMING: I don't know whether Commissioner
16 Commons is aware of it at the moment. We have reached some
17 compromise language with the Commission staff that I think
18 is satisfactory.

19 CHAIRMAN IMBRECHT: Do you feel the necessity,
20 Commissioner Commons, to make your informational presenta-
21 tion prior to disposing of the San Diego matter?

22 COMMISSIONER COMMONS: Can you have a two-minute
23 recess and let me find out what has transpired?

24 CHAIRMAN IMBRECHT: Sure. I think that's -- I
25 think that's a reasonable request.

1 COMMISSIONER COMMONS: I think -- I think Karen
2 should, also, as the Committee member, join me.

3 CHAIRMAN IMBRECHT: Okay. We will recess for --

4 COMMISSIONER COMMONS: Five minutes I think is
5 about right.

6 CHAIRMAN IMBRECHT: All right.

7 (Recess.)

8 (Agenda Items 1 and 2 appear in separate
9 transcripts.)

10 CHAIRMAN IMBRECHT: Let's try to conclude this
11 meeting now as quickly as we can.

12 Mr. Geesman, would you care to conclude your --

13 EXECUTIVE DIRECTOR GEESMAN: Yes.

14 CHAIRMAN IMBRECHT: -- Executive Director's Report?

15 EXECUTIVE DIRECTOR GEESMAN: I had previously
16 intended to brief you on the Department of Personnel
17 Administration's response to our proposed demotional
18 ladders. I was informed at lunch that DPA's management has
19 not yet signed off on their staff recommendation, so I have
20 nothing to brief you on today.

21 As I learn of their management's response, I'll
22 come around and brief each of you individually.

23 CHAIRMAN IMBRECHT: Okay. Fine. Could you also
24 give us a brief report as to what occurred this morning in
25 the Ways and Means Committee Hearing, relative to

1 Assemblyman Goggin's bill on --

2 EXECUTIVE DIRECTOR GEESMAN: AB 163 --

3 CHAIRMAN IMBRECHT: -- residential standards?

4 EXECUTIVE DIRECTOR GEESMAN: -- passed out of the
5 Ways and Means Committee. I believe the vote that was
6 announced was 11 to 4. The sponsor, Assemblyman Goggin,
7 indicated that it was his intent and always had been to
8 bring his bill back to the Assembly Natural Resources
9 Committee after it is passed by the Senate, so that the
10 Assembly Policy Committee will indeed be able to debate the
11 bill as it's fully constituted.

12 His intent is to have that occur in about ten
13 days on the presumption that the bill will move quite
14 quickly now. Our best guess is that it will be brought up
15 on the Assembly Floor on Monday.

16 CHAIRMAN IMBRECHT: I think it will be a little
17 bit later than that, but okay. In fact, it would require
18 a rule waiver to bring it up on Monday.

19 All right. Fine. Thank you.

20 Are there any questions of the Executive Director?

21 Do we have a General Counsel's report today? Any-
22 one --

23 MR. COHN: No, we do not.

24 CHAIRMAN IMBRECHT: All right. Thank you.

25 The only thing remaining is Public Comment and

1 the Policy Committee Report. If you could turn to Item 4,
2 we do have a few bills that we have recommended positions
3 from the Government Relations Committee on. I will try to
4 briefly summarize those. If you have questions for Luree,
5 she is, of course, in attendance.

6 Basically, each of these recommendations I
7 believe were unanimous between Commissioner Gandara and
8 myself. The first apply to the two appliance bills. We
9 would propose to oppose those, unless they were amended to
10 provide that the Commission could adopt a new appliance
11 standard at the conclusion of a five-year period, and that
12 we would have to notice that intention one year in advance
13 of our desire to adopt new standards. The --

14 COMMISSIONER SCHWEICKART: Could I ask a question
15 about that?

16 CHAIRMAN IMBRECHT: Certainly.

17 COMMISSIONER SCHWEICKART: Is there another --
18 pardon me for not having delved into it up to this point,
19 but is that a straight time, or is it time or a significant
20 fuel price escalation, or a utility price escalation?

21 CHAIRMAN IMBRECHT: Well, we considered --
22 basically you're talking about sort of energy emergency
23 sort of trigger.

24 COMMISSIONER SCHWEICKART: Yeah.

25 CHAIRMAN IMBRECHT: In fact, we --

1 COMMISSIONER SCHWEICKART: And presumably the
2 standards should be based on cost of --

3 CHAIRMAN IMBRECHT: We considered that and largely
4 came to the conclusion that it takes such a long time to
5 promulgate standards to begin with that any such reaction
6 to a precipitous rise would be sort of after the fact in
7 any instance, and that we felt it was cleaner just to have
8 a straight, in effect, five-year rolling sunset provision,
9 and thereby signal to the affected industries some certainty
10 that they could anticipate the product lines that they
11 implement at one point, they're going to have some reason-
12 able period where they could be assured that they are not
13 going to be faced with retooling, and so forth.

14 MS. STETSON: The problem with the Goggin bill,
15 as currently drafted, is that you'd have a moratorium for
16 in some cases up to 12 years, because it would go from 1984,
17 a fixed date, to 1989, and some of our standards have been
18 in place since 1978, so --

19 COMMISSIONER EDSON: I just have a question along
20 that same line as Commissioner Schweickart's.

21 Is it the Committee's feeling that in the event
22 of a sudden fuel price rise that the Commission would seek
23 some change in the statute potentially in the future, or
24 simply that the five-year certainty should be ironclad?

25 COMMISSIONER GANDARA: The Committee's

1 consideration of this matter is that for all practical pur-
2 poses we have never changed the standards since adoption,
3 and that five years is in fact shorter than the time that
4 is in fact likely for most standards, given that we're
5 working with a two- or three-year lead time from budget,
6 to development, to proposal, that you're talking about an
7 effective two-year matter.

8 There is -- there is language in the Goggin Bill
9 that says that if the Governor declared an emergency more
10 stringent standards could be adopted prior to 1989.

11 These -- there are three items there in the bill
12 analysis which we felt were -- you know, we didn't feel
13 strongly enough one way or another about, but we don't think
14 there's going to be any -- it's not going to solve an
15 energy emergency. It's going to be over by the time that
16 we even, you know, get out of the starting blocks to say
17 what appliances and where, and so forth, so that in fact
18 what we have with the five-year thing is, for example, more
19 of an opportunity to move away from the fixed, you know,
20 five years from '84 to 1989, okay, to a rolling five years
21 from whenever a standard has been adopted.

22 COMMISSIONER SCHWEICKART: How does the bill
23 handle amendments to the standards? That is, would there
24 be no amendments for a period of five years?

25 COMMISSIONER GANDARA: No. No, there is a

1 provision -- there is a provision that says that the
2 Commission could adopt, reenact or amend the standard that
3 was enjoined and found to be defective under state or
4 federal law, or preempted by federal law, so what that does
5 is it's intended to permit -- at least the way we read it,
6 that it would permit, say, a change in the standard as a
7 result of a change in the test procedure. Okay.

8 COMMISSIONER SCHWEICKART: Or a new technology
9 comes along that may prove to be more efficient, or some-
10 thing of that kind?

11 COMMISSIONER GANDARA: Well, no, It -- you know,
12 that would be a new technology and perhaps a different area.
13 Okay? But -- in the same standard itself, for example, as
14 I read and understand it, if we were to set a standard, say,
15 for example, freezer-refrigerators, that would stay in place
16 five years, notwithstanding any change in technology , or
17 so forth.

18 There is a provision that since the ASHRAE
19 standards are to be considered that if ASHRAE were then,
20 as a result of such technology, also to change the standard
21 upward, that in fact we could reconsider --

22 CHAIRMAN IMBRECHT: If the ASHRAE standard became
23 more stringent than our own standards any time within that
24 five-year period, we could move up to the ASHRAE stan-
25 dard, so that would be the only circumstance under which

1 the standards could be amended within that five-year period,
2 although we would signal at the conclusion of four years
3 our intention to promulgate new standards, so that the work
4 could be begun in the fifth year and be in a position to
5 promulgate new standards shortly after the running of the
6 five-year period.

7 We looked at, Commissioner Schweickart, the
8 practical circumstances of the standards that have been
9 adopted to date, tried to -- from my own perspective, one
10 of my considerations was some sense of fairness in the
11 context of allowing the manufacturer to have some reason-
12 able expectation that they were going to be able to rely
13 upon an investment in retooling to meet standards for a
14 reasonable period of time. We discussed this in some depth,
15 and the concensus was that five years was a reasonable
16 period of time, in terms of giving this some statutory
17 guarantees, and at the same time reflects, as a practical
18 matter, the practice of the Commission to date relative to
19 appliance standards.

20 I just -- let me just --

21 COMMISSIONER SCHWEICKART: I -- I'm quite sympa-
22 thetic to the industry in that regard, but for the circum-
23 stance where the rest of society pays under unusual circum-
24 stances either because of the absence of some new tech-
25 nology -- I mean I -- I can't say what it would be, but a

1 -- electric motor technology, for example, which might
2 reduce the -- or increase the efficiency of the electric
3 motors by 50 percent, or something of that kind --

4 CHAIRMAN IMBRECHT: Well --

5 COMMISSIONER SCHWEICKART: -- and be readily avail-
6 able, or a fuel -- a fuel cost hike which might occur
7 within the next year, but then essentially limit us for
8 five years from reflecting that within the minimum stan-
9 dards.

10 COMMISSIONER GANDARA: But the only thing that
11 that would limit you to would be the reconsideration of the
12 ballasts, the reconsideration of commercial air conditioners.
13 The last standards that was adopted was 1979. You're talk-
14 ing about 1984.

15 COMMISSIONER SCHWEICKART: Oh, I guess I had mis-
16 understood something that Loree said, then. I had under-
17 stood that, regardless of the date on which we actually
18 adopted standards in the past, that it would -- that all
19 appliance standards would be barred until 1989. Is that --

20 MS. STETSON: That's as the bill is currently
21 drafted. We're --

22 CHAIRMAN IMBRECHT: That's the bill as currently
23 written.

24 MS. STETSON: We're proposing amendments.

25 COMMISSIONER SCHWEICKART: I see. All right.

1 CHAIRMAN IMBRECHT: See, we are -- these are
2 proposed amendments --

3 COMMISSIONER SCHWEICKART: Okay. Okay.

4 CHAIRMAN IMBRECHT: -- to the bill.

5 COMMISSIONER GANDARA: To a rolling moratorium
6 from the last adoption.

7 CHAIRMAN IMBRECHT: That's correct.

8 MS. STETSON: Right. To a rolling.

9 CHAIRMAN IMBRECHT: Okay. Basically, we took
10 what the bill, and tried to come up with a reasonable
11 middle ground on the issue.

12 COMMISSIONER SCHWEICKART: Yes. Okay. I get it.

13 CHAIRMAN IMBRECHT: So that would be the same
14 recommendation for both AB 191 and SB 448.

15 AB 1276 by Assemblyman Wyman is fairly clear-cut.
16 It's a straight delay, and it's my personal belief that
17 issue is going to be worked out in other legislation, in
18 any case. We recommend an opposed position on that.

19 AB 1042, Solar Photovoltaics, is a bill that
20 provides encouragements -- I'm trying to recall how that
21 was done -- for remote or rural installations of photo-
22 voltaics.

23 MS. STETSON: It requires the PUC to notify the
24 investor on utilities to notify their customers, their
25 remote customers that photovoltaic systems are another

1 option, and the Commission -- the Energy Commission would
2 be required to establish a standard method for determining
3 whether a PV system, a line extension, or hook-up, or some
4 other option, is a cost-effective alternative for providing
5 electricity.

6 CHAIRMAN IMBRECHT: And we -- we say we would
7 support if the bill carried the appropriate appropriation
8 to fund the staffing levels we would require to carry out
9 that mandate.

10 We have just, I think, adopted sort of an informal
11 policy that, in terms of bills that mandate additional
12 responsibilities on the Commission, I think we're going to
13 fairly uniformly request amendments that fund those man-
14 dates.

15 COMMISSIONER SCHWEICKART: Have every year.

16 CHAIRMAN IMBRECHT: Well, I -- my position is that,
17 under those circumstances, if the Governor signs it, then
18 it's something he agrees to as an increased responsibility
19 for the Commission. Short of that, I don't think it's
20 tenable for us to be supporting legislation that increases
21 our workload without a concomitant increase in our staff-
22 ing.

23 And lastly, AB 763, by Assemblyman Sebastiani,
24 we would recommend an opposed position. I'm not entirely
25 sure what the motivation of the bill is but, in effect, it

1 would vest in the Office of Economic Opportunity the
2 responsibility to study the transfer of the surcharge funds
3 for a number of programs, but basically rate relief, as I
4 recall.

5 MS. STETSON: This is a bill that was put in
6 prior to the Governor's election, or the election, I should
7 say, and the author I believe will be dropping the bill.

8 CHAIRMAN IMBRECHT: Fine.

9 MS. STETSON: It was to shift our surcharge
10 monies over to OEO --

11 CHAIRMAN IMBRECHT: Okay.

12 MS. STETSON: -- and eliminate the Energy
13 Commission.

14 CHAIRMAN IMBRECHT: Is there objection to adopt-
15 tion of these positions by the Commission?

16 Do I hear a motion?

17 COMMISSIONER EDSON: So move --

18 CHAIRMAN IMBRECHT: Moved --

19 COMMISSIONER EDSON: -- adoption of these posi-
20 tions.

21 CHAIRMAN IMBRECHT: Thank you. Second?

22 COMMISSIONER GANDARA: Second.

23 CHAIRMAN IMBRECHT: Okay. Moved and seconded.

24 Without objection, that will be the unanimous order of the
25 Commission.

1 Lastly, we'll ask, are there any members of the
2 public that care to --

3 COMMISSIONER SCHWEICKART: I would like to --

4 CHAIRMAN IMBRECHT: Excuse me. Is there a -- I'm
5 sorry. Do you have something --

6 COMMISSIONER SCHWEICKART: Yes. I --

7 CHAIRMAN IMBRECHT: Pardon me. I'm sorry.

8 COMMISSIONER SCHWEICKART: Two different things.
9 One, I'd like to pick up on your question of Mr. Geesman
10 this morning to ask -- or Loree, is there any information
11 on AB 5-X, which I understand was, in action taken last
12 Friday on the Assembly Floor, assigned to the Resources
13 Committee, and it in turn was constituted within the special
14 session?

15 MS. STETSON: I checked to see if that bill was
16 set. I was asked that question yesterday or Monday, and
17 it was not. I can doublecheck to see if it was amended.

18 COMMISSIONER SCHWEICKART: What was AB 5 -- or
19 what is AB 5-X at the current time? Do you know that?

20 MS. STETSON: I couldn't tell you.

21 COMMISSIONER SCHWEICKART: All right. The -- the
22 implication was that it was a vehicle which would be used
23 to some service by the Natural Resources Committee, and was
24 assigned to them.

25 MS. STETSON: As a vehicle for --

1 CHAIRMAN IMBRECHT: For the purposes of dealing
2 with the Energy Conservation Standards, wasn't it?

3 COMMISSIONER SCHWEICKART: Well, that -- that was
4 not clear. My understanding was that, again, in a somewhat
5 unusual proceeding, the Committee was constituted within
6 the special session, and I'm -- I turn to you as our -- as
7 our local legislator -- or more of a legislator --

8 CHAIRMAN IMBRECHT: I think we should -- I think
9 what occurred, based upon what you're just indicating, is
10 that standing committees for a special session are not all
11 created, as is the standing committee's circumstance for
12 the regular session. The Speaker basically names those
13 committees which he believe have jurisdiction or that he
14 wishes to activate for the purpose of the special session.
15 I suspect that what they decided to do is that, in the event
16 they needed to move legislation that would in effect have
17 the impact of an urgency bill without a two-thirds vote,
18 which is what you can do in a special session, that they
19 appointed the Natural Resources Committee as a committee
20 for the special session, thereby giving them that option
21 in the event they chose to use it.

22 COMMISSIONER SCHWEICKART: And my -- and, also,
23 at least from my understanding, that AB 5-X, quote, unquote,
24 was assigned to the Committee, I --

25 CHAIRMAN IMBRECHT: That may be the case. Once

1 they create the committee for the special session then, of
2 course, they can -- the Floor or the Rules Committee can
3 assign any bill or -- or refer any bill to that policy
4 committee.

5 COMMISSIONER SCHWEICKART: All right. Well,
6 obviously the --

7 MS. STETSON: We'll check on that.

8 CHAIRMAN IMBRECHT: So you'd better take a look
9 at 5-X.

10 COMMISSIONER SCHWEICKART: Well, we would like
11 to keep a fairly close eye on that. Obviously, there are
12 some potential implications.

13 The other question, then, or the other report,
14 in essence, that I wanted to provide the Commission and
15 pose a -- a current decision that has to be made, is that
16 Commissioner Edson and I received subpoenas from the
17 Chairman of the Assembly Resources Committee last Thursday,
18 to which we replied yesterday, both in writing and at the
19 hearing.

20 I raised the question at that hearing for -- to
21 Mr. Hauser, who was conducting the hearing, identifying the
22 direct conflict in staff resources between the requirements
23 listed in Attachment C in the subpoena, and the ongoing
24 work related to the development of the standards, the --
25 I should say the implementation of the standards, and the

1 analysis which is currently ongoing in cooperation with the
2 building industry, with the Legislature, and with the
3 desires of the Chairman, who has just vacated the scene
4 here.

5 And I asked for direction from the -- from the
6 committee as to the priority for that work. That is, we
7 are essentially faced with -- if I can simplify it -- six
8 weeks of staff work in three weeks, or two weeks, actually,
9 and so we clearly need to have a decision made by the
10 Commission in terms of what work is done, that which is
11 in effect commanded by the Legislature within the statute,
12 or that work which has been commanded by the Legislature,
13 or at least the Committee, in the form of the subpoena.

14 COMMISSIONER EDSON: Let me offer one additional
15 comment, and that was at the hearing I think Commissioner
16 Schweickart essentially asked the Committee to inform the
17 Commission of its desire, and the Committee indicated that
18 they would get back to us.

19 MR. RAUH: I have some additional information
20 which does not come from committee members or the chairman,
21 but from committee staff, Gene Varanini. I talked to him
22 both after the hearing, and then subsequently this after-
23 noon.

24 I queried him on his view of the chairman's
25 preference to the Commission's devoting resources either

1 to the subpoena or to working on a compromise solution with
2 the committee, and as a vehicle, SB 191 or 193, whatever
3 it is --

4 MS. STETSON: 163. AB 163.

5 MR. RAUH: AB 163. Thank you.

6 His view was that Assemblyman Goggin would
7 prefer that the Commission devote its resources in a short
8 period of time to working on a solution to the -- to the
9 dilemma of the building industry, the Legislature, and the
10 Commission base --

11 COMMISSIONER EDSON: Rather than be work directed
12 in the subpoena?

13 MR. RAUH: Rather than working directly on the
14 subpoena information requirements.

15 MS. STETSON: Gene Varanini also indicated to me
16 that it was more important to do the back-up work to AB 163
17 than the subpoena questions. That was late this afternoon.

18 COMMISSIONER SCHWEICKART: Was there an -- was
19 there any indication that that would be forthcoming in
20 writing, Ted?

21 MR. RAUH: I didn't ask for a specific --

22 COMMISSIONER SCHWEICKART: Okay. Given --

23 MS. STETSON: We can ask for that.

24 MR. RAUH: We can ask for it.

25 COMMISSIONER SCHWEICKART: Given that my name is

1 literally on a subpoena here --

2 MR. RAUH: Right.

3 COMMISSIONER SCHWEICKART: I'm a little concerned
4 with not carrying through on that, only later to have a
5 denial of a verbal indication here.

6 MR. RAUH: Well, I indicated in both my conver-
7 sations that we would certainly appreciate formal notifica-
8 tion of that priority.

9 I also committed to get back with Gene tomorrow
10 morning, and hopefully he was going to also think about
11 some indication to the Commission, but he made no commitment
12 to do so, but I'll follow up with it.

13 CHAIRMAN IMBRECHT: Commissioner Commons.

14 COMMISSIONER COMMONS: Commissioner Schweickart,
15 I think there are two or three guiding principals that I
16 would suggest here. One is, if it's not a big issue, you
17 know, we take care of it. The second it --

18 COMMISSIONER SCHWEICKART: It's a big issue.

19 COMMISSIONER COMMONS: Well, in terms -- I mean
20 in terms of time, you know --

21 COMMISSIONER SCHWEICKART: In terms of time --

22 CHAIRMAN IMBRECHT: It's a big issue.

23 COMMISSIONER SCHWEICKART: -- it's literally six
24 weeks of work in two weeks.

25 COMMISSIONER COMMONS: The second is, I heard our

1 Chairman just enunciate that we have a -- a policy that
2 I think the Commission at the previous meeting that we don't
3 take on or support programs where there is not a budget
4 provided, and I think that would be consistent with what
5 that approach would be.

6 However, if it's mandated under the Warren-
7 Alquist Act so we have no alternative, then obviously we'd
8 have to do it, and so that would be dividing that into that
9 middle ground. If Warren-Alquist directs us that we have
10 to do something, it would be our responsibility as
11 Commissioners to find ways to obtain the resources to do
12 that, but if a legislative committee or the Legislature
13 requests us to do something and doesn't allocate us the
14 resources, then we should respond that we don't have those.

15 CHAIRMAN IMBRECHT: I think that -- I think that
16 candidly one -- one approach might be with Commissioners
17 Schweickart and Edson abstaining, or whatever, if the
18 remainder of the Commission were to direct the staff not
19 to provide the resources to allow them to comply with the
20 subpoena, they would be in a position of arguing impossi-
21 bility, I believe, as a defense against the subpoena, but
22 aside from that, I -- and I think that's valid, and maybe
23 counsel --

24 COMMISSIONER GANDARA: I have a comment --

25 CHAIRMAN IMBRECHT: -- would want to comment on

1 that as well, but I -- but at the same time, I think that
2 the policy that you were describing, Commissioner Commons,
3 is a little bit different in this circumstance, because I
4 -- I guess I would also say that, as a practical matter,
5 in -- you know, first, I don't believe we should in any
6 way jeopardize any of our Commissioners from complying with
7 a legally-issued subpoena, (a).

8 And, (b), I think we have an obligation to
9 cooperate with one of the two branches of government that
10 is indeed our -- our progenitor, and that's the legislative
11 branch and the executive branch, and when they subpoena
12 information from this Commission I think we have an obliga-
13 tion to supply it, to the extent that we are capable, within
14 some reasonable test of resources.

15 I -- I trust we've called these problems to their
16 attention, and --

17 COMMISSIONER SCHWEICKART: Well, but I -- I do --
18 I heard what you said, Mr. Chairman, and I'm not sure --
19 could you direct the staff -- perhaps that would --

20 (Laughter.)

21 COMMISSIONER SCHWEICKART: Perhaps that would
22 clarify what you said, because, frankly --

23 CHAIRMAN IMBRECHT: Well, what I -- I was -- I
24 was verbalizing two options, basically, and then I thought
25 I'd see how they flowed for a moment.

1 COMMISSIONER SCHWEICKART: They don't fit together
2 is the problem.

3 CHAIRMAN IMBRECHT: Yeah, I know they don't.
4 Commissioner Gandara first.

5 COMMISSIONER GANDARA: I guess I very much con-
6 cur with your second statement that, faced with the
7 Commissioners being subpoenaed, that I would support the
8 resources. For them to be able to comply, I would hope to
9 feature instances that would be reciprocal action, should
10 that be the case, but I -- my question for General Counsel
11 Counsel is, you know, if -- if the Commission were to
12 decide as -- with the first option that we do not have
13 allocated resources, then we have to face -- and we have
14 this choice, and we do not provide it, is even though the
15 subpoena is made to a committee, could the Commission
16 itself be found in contempt, you know, for not being able
17 to -- for not providing the resource, since the decision
18 for the allocation of resources lies with the Commission.

19 MR. URBAN: Well, in this particular situation,
20 that's a highly hypothetical question, because in fact the
21 Commissioners, on the narrow question of whether they
22 legally complied with the subpoena, they did legally comply
23 when they showed up with the information that they had on
24 Tuesday at 4:00 o'clock. The real question I think that's
25 being raised here is that there was, as we discussed --

1 our office and the Executive Office discussed with the
2 two Commissioners involved how to proceed on this matter.
3 There was an indication that we wanted to do Part B of
4 Chairman Imbrecht's outline of the issues, which was to
5 supply as much information as we could to the Legislature
6 on the subject and to be as helpful as we can, and I think
7 that that really is the context in which the issue is being
8 raised.

9 Basically, the subpoena asked to supply all the
10 documents we had in hand on the subjects that were raised,
11 and for the two Commissioners to show up, and we did do
12 that.

13 COMMISSIONER SCHWEICKART: Well, no, Mark. The
14 issue here is that, in addition to what we were able to
15 provide from existing documents, plus some original work
16 between Thursday afternoon and Tuesday afternoon, there is
17 a considerable volume of additional work laid out in that
18 subpoena in Attachment C, which has been estimated to
19 amount to between two and three weeks worth of work, fully
20 -- that's if the staff is fully dedicated to that and only
21 that.

22 CHAIRMAN IMBRECHT: Let me ask this. Is it legal
23 to subpoena nonexistent documents or work product? I --
24 that's a deadly serious question. I -- you know, my recol-
25 lection of law school and -- and the ability of a court or

1 a legislative body to issue subpoenas is to require the
2 presence and the production of documents that may be in
3 existence, as opposed to subpoenaing, in effect, a work
4 product that does not exist --

5 MR. URBAN: Well, what they're really doing --

6 CHAIRMAN IMBRECHT: -- at the present time.

7 MR. URBAN: What they really did was to ask a set
8 of interrogatories and ask us to respond, and, on the other
9 hand, the face of the subpoena told us to just bring the
10 documents that we have now in our possession, so there is
11 some question as to what exactly they wanted. As far as
12 what we have to provide and what the different remedies are
13 for that, it goes up various steps.

14 It was unusual in that it is essentially a set
15 of data requests or interrogatories to us in the form of
16 a subpoena. Now, part of it was also a set of questions
17 to the individual Commissioners that they were to respond
18 to.

19 CHAIRMAN IMBRECHT: Have there been any -- well,
20 John Geesman. Excuse me.

21 EXECUTIVE DIRECTOR GEESMAN: I'm not certain that
22 you need to read a confrontation with the Legislature into
23 the set of facts that exist here. I --

24 CHAIRMAN IMBRECHT: I'm not trying to. Believe
25 me.

1 EXECUTIVE DIRECTOR GEESMAN: I think that's
2 especially true if you focus on the events of this week,
3 today and yesterday. The Committee declined to give
4 Commissioner Schweickart or Commissioner Edson any formal
5 guidance but, instead, indicated that some would be forth-
6 coming, and suggested that our staff get together with the
7 Committee staff.

8 Ted's conversation with Mr. Varanini -- Loree's
9 conversation with Mr. Varanini today indicated that the
10 Committee staff recognized that there would be conflicting
11 priorities, and indicated to Ted that we should proceed as
12 top priority with the work that would resolve the problems
13 that the builders have with the standards. I --

14 CHAIRMAN IMBRECHT: As opposed to complying with
15 the subpoena.

16 EXECUTIVE DIRECTOR GEESMAN: That's correct.

17 CHAIRMAN IMBRECHT: Fine.

18 EXECUTIVE DIRECTOR GEESMAN: The conversation with
19 Loree indicated that we should treat the review of
20 Assemblyman Goggin's amendments to AB 163 as a priority to
21 complying --

22 CHAIRMAN IMBRECHT: All right.

23 EXECUTIVE DIRECTOR GEESMAN: -- with the request
24 of the subpoena --

25 CHAIRMAN IMBRECHT: I'm going to try to reach a

1 decision. I -- that will be my direction as Chairman to
2 the staff, to reflect your comments currently, and I would
3 also direct the staff to inform me personally in the event
4 that there is any change in position by either the Natural
5 Resources Committee staff or its chairman relative to those
6 issues, so that I could have a conversation with the
7 appropriate people.

8 COMMISSIONER SCHWEICKART: Now, my only question,
9 then, is is there any issue whatsoever of being in contempt?
10 Because it is a subpoena --

11 EXECUTIVE DIRECTOR GEESMAN: We'll attempt to
12 secure that in writing from -- from the committee's staff.

13 COMMISSIONER GANDARA: Yeah. I don't think there
14 is, because I think Chairman Imbrecht, you know, knocked
15 loose a memory that in fact the subpoena formally was, you
16 know, to be characterized as the subpoena duces tecum,
17 which is --

18 CHAIRMAN IMBRECHT: That's right.

19 COMMISSIONER GANDARA: -- the one that asks you
20 to produce the documents that you have, so when you showed
21 up with what you had at that time, that satisfied the
22 subpoena, and that in fact any additional work done between
23 Thursday and Tuesday, frankly, need not have been done.

24 CHAIRMAN IMBRECHT: It's a little hard for me --

25 COMMISSIONER GANDARA: But it was good that it

1 was done to try to be responsive to the Legislature.

2 CHAIRMAN IMBRECHT: That's right. It's a little
3 hard for me to imagine the Attorney General filing a com-
4 plaint based upon the facts as I --

5 MR. URBAN: You know, since we have a Chairman
6 that's -- our Commissioner is somewhat at risk, I think what
7 I'll do is talk to one of our attorneys who has been work-
8 ing on this and review the document and make sure that
9 everything is where it stands. If we need additional
10 documentation from the Committee to keep things as clear
11 as possible, then we'll solicit that.

12 CHAIRMAN IMBRECHT: That's fine. I'd ask for a
13 dismissal of the subpoena, or something of that nature.

14 Okay. Any further business to come before the
15 Commission?

16 MS. STETSON: One other thing I'd like to add is
17 that the Assembly and Senate adopted our subcommittee
18 reports, and they will be going to the full conference
19 committee beginning Monday --

20 CHAIRMAN IMBRECHT: On the budget.

21 MS. STETSON: -- on the budget. They hope to
22 finish conference committee by the end of next week, and
23 send it to the Governor.

24 COMMISSIONER EDSON: That's a knowing chuckle.

25 CHAIRMAN IMBRECHT: Well, I wish --

1 COMMISSIONER SCHWEICKART: Excuse me,
2 Mr. Chairman --

3 CHAIRMAN IMBRECHT: I wish them well.
4 Yes, Commissioner Schweickart.

5 COMMISSIONER SCHWEICKART: Pardon me. I -- there
6 was a misunderstanding, I believe, between Mr. Deter and
7 I. I assumed, when I nodded earlier this morning that I
8 was willing to reconsider SB 992, and the position that
9 the Commission took on this at the last business meeting,
10 that he was bringing that before us today in the
11 Legislative Policy Committee Report.

12 I now understand that Mr. Deter expected me to
13 carry that issue.

14 Is that correct, Ross?

15 MR. DETER: At the -- I'm unclear as to what the
16 procedure is of getting it reconsidered. At the last hear-
17 ing, there was -- the Commission basically remained neutral
18 on this because they were concerned about the amount of
19 resources not being included in the amendment, and since
20 that time we've proposed some additional amendments that
21 would add the amount of resources to the legislation, and
22 my question was does the Commission wish to reconsider it,
23 and that was -- that was my question.

24 I'm not sure how the mechanism of getting that
25 reconsidered is. Would that be to take it back to the

1 Legislative Committee first, or --

2 CHAIRMAN IMBRECHT: Well, what's the status --
3 the bill --

4 MS. STETSON: The bill is now over to the
5 Assembly.

6 CHAIRMAN IMBRECHT: And it's not going to be
7 heard until after --

8 MS. STETSON: Probably a couple of weeks or so.
9 It's not set at this point. We would like some direction,
10 though, so we could sit down with Garamendi and his staff
11 and come up with some amendments to his bill.

12 We can't do that if we're in a neutral position
13 because the Commissioners aren't -- have not approved the
14 different amendments.

15 COMMISSIONER GANDARA: This was considered -- if
16 I may?

17 CHAIRMAN IMBRECHT: Yes.

18 COMMISSIONER GANDARA: This was considered and,
19 if you recall, it was a package deal. It was considered
20 at the same time of Montoya's bill, that SB 5, I believe,
21 and so if the Commission is going to reconsider this issue
22 I think it has to reconsider the linkage that it made with
23 SB 5.

24 These two bills had -- you know, had been follow-
25 ing parallel paths, and the Government Relations Committee

1 in fact deferred actions for two meetings hoping that the
2 staff would integrate these two bills in some way, and they
3 did not, and the Commission action taken at that last --
4 when we adopted a position it was to oppose SB 5, and to
5 be neutral in the Garamenda bill.

6 So, frankly, I think if the Commission is going
7 to reconsider, you know, one, it has to reconsider the
8 other, and we ought to deal again with the issue as to
9 whether in fact we ought not to be dealing with them
10 separately, but recommending some kind of a coordinated
11 perspective on both. I --

12 CHAIRMAN IMBRECHT: I recommend taking it back
13 to Government Relations. I think that's --

14 COMMISSIONER SCHWEICKART: I -- if there's no
15 timing problem, I certainly would refer them again, with
16 these amendments, to Government Relations. I guess the --
17 the one other question which I think -- other than the
18 ones we discussed last week, as I read through the -- the
19 provisions that Ross provided me this morning, there's a
20 generalized policy question here which I think we have to
21 address, and I would certainly enjoy the recommendation from
22 the Committee, and that is to what extent do we, with all
23 good intention, offer services to local governments and,
24 in this case, private developers of these energy-efficient
25 technologies, to conduct analyses which it would appear as

1 though might be available from other private services.

2 COMMISSIONER GANDARA: Certainly.

3 COMMISSIONER SCHWEICKART: Should we or should
4 we not put ourselves in a position of in any way competing
5 with services offered by other parties?

6 COMMISSIONER GANDARA: Well, again, the reason
7 the Commission took the position it did is -- was not only
8 because there was an absence of an inclusion of additional
9 funds. There was also the much larger issue that was
10 raised as to whether, you know, this would give us or assign
11 to us responsibilities that were not very clearly defined
12 that may be provided someplace else, but more than that,
13 whether, you know, this would then -- because the added
14 language, which was other than -- for other than the dollar
15 amount, was in fact proposed last time around, and the
16 Commission did not want to get into a position where it was
17 going to have to perhaps be picking and choosing as to
18 which local projects to assist more than others, and so --
19 I mean, taking it back to the Government Relations Committee,
20 but it seems to me that -- that there has been an honest
21 effort to address an amendment to the dollar amount, but
22 that was not the sole basis upon which the Commission made
23 its decision, but --

24 CHAIRMAN IMBRECHT: Well, speaking for what I
25 would be inclined to reconsider, because I am not in

1 preferable. It's a far more documentable demand on our
2 time, and so -- I mean I -- I frankly sort of, you know,
3 don't see the issue, but if people wish to reconsider them,
4 that's fine, but --

5 MS. STETSON: Well, SB 5 is being amended now to
6 have a local ordinance trigger, so it's not going to include
7 us all that much, but --

8 COMMISSIONER GANDARA: All right. Well, I think
9 it's always appropriate to reconsider positions on bills
10 after they have been amended.

11 CHAIRMAN IMBRECHT: Okay.

12 COMMISSIONER GANDARA: Whereas they get amended --

13 CHAIRMAN IMBRECHT: I'm going to rule it goes back
14 to Government Relations.

15 Okay. Anything further to come -- any member of
16 the public?

17 The meeting is adjourned.

18 (Thereupon, the business meeting before the
19 California Energy Resources Conservation and Development
20 Commission was adjourned at 4:45 p.m.)

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1 REPORTER'S CERTIFICATE

2
3 I, AMBER WHITSETT, an electronic court reporter,
4 do hereby certify under penalty of perjury:

5 That I am a disinterested person herein; that the
6 foregoing hearing of the California Energy Resources
7 Conservation and Development Commission was reported by
8 me, Amber Whitsett, an electronic court reporter, and that
9 the foregoing pages constitute a true, complete and
10 accurate transcription of the aforementioned proceedings.

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

14 I have hereunto set my hand this 6th day of June,
15 1983.

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18 Amber Whitsett
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