

STATE OF CALIFORNIA
BEFORE THE
CALIFORNIA ENERGY COMMISSION (CEC)

CALIFORNIA ENERGY COMMISSION WORKSHOP
DURABILITY OF CONSERVATION ACTIVITIES ON PUBLIC LAND
WITHIN THE DESERT RENEWABLE ENERGY CONSERVATION
PLAN (DRECP)

CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
FIRST FLOOR, HEARING ROOM A
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P R O C E E D I N G S

1

2 SEPTEMBER 5, 2012

11:10 A.M.

3

4 can find their name tags. It's not always easy to do.

5 but we've got a number of people here. This is great.

6 I really appreciate the turnout on the round table and

7 in the room.

8

9 In a minute we'll go around and do
10 introductions. Let's see, we're missing just a couple
11 of people. Jim Kenna is coming at 1:00.

12 Janea, is Steve -- Steve's coming so he should
13 be here any minute then. Okay.

14 Kevin Hunting is coming at 1:00. Ted Boling is
15 actually WebExing in so we don't need a name plate for
16 him.

17 And I think we're expecting Clark Morrison, but
18 we don't have him yet, and that's fine.

19 So, anyway, let's get started. This is the
20 first of four workshops to help support a public
21 dialogue on really important issues in the Desert
22 Renewable Energy Conservation Plan.

23 The Desert Renewable Energy Conservation Plan is
24 a -- is composed of a number of different plans,
25 actually. A land use plan amendment from the Bureau of
Land Management. A natural community conservation plan

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1 under State law, and a habitat conservation plan as
2 well.

3 And the DRECP is a major component of
4 California's renewable energy planning efforts. The
5 California desert is one of the best places for
6 developing renewable energy in the world. And at the
7 same time we all know that the deserts of California
8 support many rare, threatened, and endangered plant and
9 wildlife species and natural communities.

10 And so through the Desert Renewable Energy
11 Conversation Plan we have a partnership of a number of
12 agencies and a number of very engaged stakeholders to
13 find ways to both streamline permitting for renewable
14 energy projects, and provide for the siting of the
15 amount of renewable energy that California sees as being
16 necessary over the long term due to California's climate
17 and energy goals, and environmental policies.

18 And at the same time provide for the long term
19 conservation of species in the desert. And so that's,
20 in the broad brush, what we're doing with the DRECP.

21 This workshop focuses on the public land
22 reserve, the public land portion of the plan. And in
23 particular how to achieve durable conservation on public
24 land, particularly BLM land, in order to satisfy various
25 legal requirements under State and Federal law,

1 including the -- including requirements for mitigation
2 under the California Endangered Species Act and the
3 Federal Endangered Species Act, as well as requirements
4 for the NCCP and HCP.

5 So we will focus in quite intensively on that
6 issue, particularly in the afternoon.

7 We'll start off with a presentation from the
8 Department of Fish and Game.

9 But before we do that I wanted to just make sure
10 that we go around the table and do introductions.

11 My name's Karen Douglas, I'm a Commissioner at
12 the California Energy Commission and the lead
13 Commissioner on siting at the Commission.

14 So, let's see, let's go around to you, Steve.

15 MR. INGRAM: I'm Steven Ingram, I'm with the
16 Office of General Counsel for the Department of Fish and
17 Game.

18 MR. HART: Good afternoon. I'm Josh Hart; I'm
19 with the County of Inyo and I'm here because this is a
20 very important issue to us.

21 MR. CHURCH: Zack Church with the National Park
22 Service, the Pacific West Regional Office.

23 MS. BELENKY: And I'm Lisa Belenky, Senior
24 Attorney with the Center for Biological Diversity and
25 we're a stakeholder in the DRECP process.

1 MS. WALD: I'm Johanna Wald and I'm a Senior
2 Counselor at the Natural Resources Defense Council in
3 San Francisco. And we, too, are stakeholders in the
4 DRECP.

5 MS. PULLING: Good morning. I'm Wendy Pulling.
6 I'm with the Nature Conservancy here in California. I'm
7 the Director of Conservation Programs. And that will be
8 three of us who are stakeholders in the DRECP process.

9 Thank you for having this workshop and for
10 including us.

11 MR. SAX: I'm Joe Sax from the University of
12 California at Berkeley Law School.

13 MR. LAZERWITZ: I'm David Lazerwitz, an attorney
14 with Farella, Braun and Martel in San Francisco.

15 MR. SAULS: Ed Sauls, the Sauls Company and
16 representing many of the grazing interests and
17 converting it to mitigation effort.

18 MR. FRIS: Hi, I'm Mike Fris, U.S. Fish and
19 Wildlife Service.

20 MS. DOBSON: I'm Cheryll Dobson with the
21 Department of the Interior, Solicitor's Office.

22 MS. SCOTT: Hi, I'm Janea Scott. I'm the Deputy
23 Counselor for Renewable Energy at Department of
24 Interior.

25 MR. BLACK: Good morning. I'm Steve Black,

1 Counselor to Secretary Salazar at the Department of
2 Interior.

3 MS. CAMPBELL: Hello. I'm Vicki Campbell. I'm
4 the Program Manager for the DRECP for BLM, sitting in
5 for Jim Kenna this morning, who will be here after
6 lunch.

7 MS. YUNG: Hi. I'm Jill Yung from Paul Hastings
8 in San Francisco. It's a law firm and several of our
9 clients are stakeholders in the DRECP.

10 MR. ADAMS: Steve Adams from the Chief Counsel's
11 Office here at the Energy Commission.

12 COMMISSIONER DOUGLAS: All right. Well, thank
13 you everyone and we'll introduce other participants as
14 they come.

15 I will warn you, just as a housekeeping item,
16 the green light on your microphones means that they're
17 on. I just attempted to turn mine off and it didn't go
18 off. So, you may or may not have that experience with
19 your microphones.

20 So, let's turn now to Department of Fish and
21 Game for the opening presentation on approaches to
22 incorporating public land into the DRECP. And that will
23 be Bill Condon.

24 MS. CHEW: Hi. Actually, it's Kristy Chew with
25 the Energy Commission, just a few housekeeping items.

1 This meeting is on WebEx and it is being recorded. The
2 attorneys like me to tell that to people. So, those on
3 the phone this meeting is being recorded and it will be
4 posted on the website and you can re-listen, or look at
5 the presentations at your leisure after the meeting's
6 over.

7 And just a few things, if you could please mute
8 yourself, if you're not currently speaking, I've gone
9 ahead -- I actually have the ability to mute those on
10 the phone, as well, so I've gone ahead and muted
11 everybody.

12 If you would like to make a comment or have a
13 question on the phone, please go ahead and use the chat
14 function or use the raised hand function. And you can
15 find the raised hand function in the participant box, if
16 you click on that, in the very lower left that's there.

17 All right, and now I'm going to introduce Bill
18 Condon.

19 MR. CONDON: Good morning. Being the first
20 speaker there will be some adjustments, no doubt.

21 I'm Bill Condon, I'm with the California
22 Department of Fish and Game. Kevin Hunting will be
23 joining us at one o'clock this afternoon. I'm
24 presenting for Fish and Game in his place.

25 I will be covering some background information

1 regarding the DRECP with particular regard for the
2 conservation strategy and, in particular, the reserve
3 system.

4 So, Kristy, to get -- to access those documents
5 I assume I have to -- okay.

6 I always wondered, Kristy, where that picture
7 was taken, we see it a lot.

8 So, I'll open several documents. While we're
9 waiting for that map to open up let me just get started.

10 As we know, the DRECP is a -- includes a
11 conservation strategy which is part and parcel to what's
12 required for a natural community conservation plan.

13 The conservation strategy includes a reserve
14 system, which includes certain land use designations
15 that are supportive of conservation.

16 It includes, with regard to project mitigation,
17 a component of that land use designation reserve system,
18 which deals with the proportional contribution of
19 projects toward project mitigation.

20 The plan also, the conservation strategy under
21 the DRECP also includes conservation measures or
22 actions, constraints on development, as well as
23 affirmative conservation interventions that play out
24 throughout the reserve in various ways.

25 As is the case of all NCCPs there will be a

1 monitoring adaptive management approach, and we have to
2 tend to funding. We will be developing a governance
3 structure.

4 And one particular element of this particular
5 plan is the covered activities are limited in location
6 and area. There is a limitation on where renewable
7 energy resource development is to occur within the plan
8 area.

9 As we know, the DRECP is unusual, exceptional.
10 It's the largest natural community conservation plan
11 ever. It has been promoted in response to State and
12 Federal Policy.

13 To date no local government entities are
14 signatory to the planning agreement for the DRECP, and
15 specifically NCCP component.

16 The covered activities are limited to one sector
17 of the economy and that is renewable energy resource
18 development and a pertinent transmission development.

19 And, finally, this plan, most of the plan area,
20 in contrast to other NCCPs, is on public land. Some 80
21 percent of the plan area is indeed on public land,
22 including National Park Service land and Bureau of Land
23 Management land, among others.

24 So, to the reserve system, I'll scroll down a
25 bit. The reserve system actually comprises some 15.8

1 million acres out of the 22.6 million acre area of the
2 DRECP plan area.

3 The size of the reserve system is driven by
4 DRECP biological goals and objectives for the covered
5 species, some 55 plus covered species, plus more than 40
6 natural communities have biological goals and objectives
7 developed for them.

8 Those BGOs, as we call them, are really an
9 important part of why that reserve system is so large.

10 And to break down the reserve, and I should
11 caveat that some of these numbers are a little bit
12 different depending on which side of the page you look
13 at because of rounding errors. And I'll explain one of
14 them in particular. So don't be too bothered if the
15 numbers don't add up exactly.

16 The main point is to look at the overall
17 proportion of these land use designations.

18 So, the reserve includes 7.5 million acres of
19 legally and legislatively protected lands. These
20 include National Park Service units, BLM wilderness,
21 California Department of Park and Recreation Park units,
22 municipal park designations, or designations toward some
23 sort of land protection.

24 This 7.5 million acres is already established
25 through other authorities as lands designated for

1 conservation emphasis.

2 The plan does propose some 2.1 million acres of
3 private land designated toward conservation. These are
4 areas on private land that based on the analysis, and
5 toward meeting the biological goals and objectives for
6 the covered species and natural communities, there are
7 areas of private lands that we believe need to be
8 conserved in some manner in order to meet the biological
9 goals and objectives laid out for the covered species
10 and natural communities.

11 There is a proposed 6.3 million acres -- it says
12 6.1, but it's 6.3, "mas o menos", proposed 6.3 million
13 acres of public land that is toward conservation.
14 That's excluding the legally and legislatively protected
15 lands I just mentioned.

16 These include BLM areas of critical
17 environmental concern. And, indeed, the plan as
18 currently written anticipates an expansion of the
19 current extent of ACECs on BLM land by some 2.9 million
20 acres.

21 The reserve does not include, in the balance of
22 the plan area, 6.7 million acres urban land, hardscape,
23 open off-highway vehicle areas, tribal lands, Department
24 of Defense lands which takes up a large area within the
25 DRECP, some 2.9 million acres.

1 And, of course, what we call the development
2 focus areas. These are areas that are proposed for
3 designation for areas for renewable energy development.

4 So, more to the point of this workshop: the role
5 of proportional contribution and mitigation in this
6 conservation strategy.

7 What I did is I selected one of the alternatives
8 that's under consideration, so-called Alternative II
9 Delta. We could have used any other alternative to
10 convey what I'm about to say.

11 The total development focus area under this
12 alternative is about 1.8 million acres. The total
13 estimated proportion contribution mitigation is derived
14 at based on how much of that area will likely be
15 developed.

16 Even though the DFAs cover a large area, only a
17 subset of that area will likely ever be developed
18 because of various constraints, such as parcelization
19 and other factors.

20 So, of the total 1.8 million acres we anticipate
21 some 183,000 acres will actually be subject to ground
22 disturbance for development purposes.

23 I can show some of the other documents once I'm
24 done with the presentation, if that works.

25 So, of this -- of these DFA acres under this

1 proposed alternative, about ten percent of the area
2 probably will be situated where they can be developed.
3 At least that's based on our tentative analysis.

4 Now, given the 183,000 acres of ground
5 disturbance within the DFA, a certain proportional
6 contribution or mitigation would be applied to that.

7 We reasoned that approximately 256,000 acres
8 would have to be designated as part of the proportional
9 contribution part of the conservation strategy to offset
10 the impacts to habitat, listed species, and natural
11 communities that actually occur within the DFAs.

12 This is a 1.4 to 1 mitigation ratio, which is
13 somewhat less than what we're accustomed to seeing for
14 individual projects. And one of the reasons is these
15 DFAs were purposely situated in locations of relatively
16 low habitat value. Where areas where the habitat,
17 through various land use processes have already been
18 impaired.

19 So, looking at considering this 256,000 acres of
20 proportional contribution, I took the liberty of
21 divvying that out between public land and private land
22 based on what proportion of the DFAs are on private
23 land, and what proportion of the DFAs are on public
24 land.

25 So, based on that logic, understanding that

1 that's still subject to considerable discussion,
2 nevertheless, based on that logic some 54,000 acres of
3 public land would fall under this proportional
4 contribution part of the conservation strategy.

5 So, with regard to the question of durability of
6 project mitigation on public land, under the heading of
7 the proportional contribution, the area of concern
8 applies to about 54,000 acres out of the total reserve
9 system, under the conservation strategy.

10 So, one way that I look at this is the
11 durability question of conservation is part of the --
12 depending on where it plays out falls in a continuum of
13 certainty and uncertainty.

14 If we consider the total area of the reserve to
15 which the conservation measures would be applied,
16 probably the greatest certainty in terms of durability
17 of conservation would arguably fall under legally and
18 legislatively protected lands, that 7.4 million acres of
19 the DRECP area.

20 This next, probably most durable modality of
21 proportional contribution mitigation I would argue plays
22 out on the private lands mitigation. This is the
23 traditional, if you will, acquisition of private lands,
24 applying conservation easements, establishing endowment.

25 Those are legally designated areas. Those, we

1 feel, at least in our practice, Fish and Game's
2 practice, feel that these, the mitigations that play out
3 on these lands should be pretty durable.

4 They're not totally free and clear. The land
5 could be condemned. There could be various reasons why
6 certain areas might be put in harm's way but,
7 nevertheless, for the most part they're pretty secure in
8 terms of durability.

9 The public land designations, for example,
10 through the LUPA process, some 5.7 million acres would
11 be designated to some conservation supported category.

12 And by the way, the 5.7 million acres is
13 specifically with regard to BLM lands, only. It doesn't
14 include any other types of public lands, such as state
15 parks lands.

16 And we will be talking about the durability of
17 land designations by BLM toward conservation.

18 The private land conservation designations, they
19 could occur, as they have under NCCPs, through county
20 general plans, and ordinances, and zoning ordinances, et
21 cetera.

22 We don't have those in place, but to have the
23 same level of assurance that we have under other NCCPs,
24 we would have to take steps, either through formal
25 processes or through memoranda of understanding, or

1 various other instruments to ensure that conservation
2 does play out on those 2.1 million acres that occur on
3 private land.

4 Again, that is the private land component of the
5 overall reserve. The private land component, similar to
6 the public land component, is driven by the biological
7 goals and objectives, the ranges of the species that are
8 covered under the plan, the location and extent of
9 natural communities under the plan.

10 The proportional contribution mitigation on
11 public land again gets down to, according to this scheme
12 and logic, some 54,000 acres.

13 So here we don't know, as of yet, how the
14 conservation measures will play out. We haven't had a
15 thorough discussion of that, but how they will play out
16 according to the rule sets that are being developed for
17 public lands. The same is true for private lands.

18 But in this case the -- there is -- we
19 anticipate, if we have an equitable proportionality of
20 private and public land, a proportional contribution,
21 that 54,000 acres or so, or their equivalent, would be
22 required to offset the impacts of projects that involve
23 covered activities under the plan.

24 And that could be actually designating lands for
25 conservation or through some algorithm we might

1 determine how many acres of disturbed lands are
2 equivalent to feet of fencing, or enhancement of
3 connectivity corridors for Big Horn Sheep, and so forth.

4 Finally, I just added something we don't talk
5 about a lot, we tend to write it off, the DOD Integrated
6 Natural Resource Management Plans. Those NRMPs are
7 currently playing out on DOD lands.

8 They do have -- they definitely have
9 conservation value but we don't tend to think about them
10 so much because we reason that they don't have any long-
11 term assurances. There's not much durability seen in
12 those plans.

13 In the event of some sort of a national security
14 situation those lands may or may not continue to be
15 managed for conservation.

16 So, I guess one of the points I'd like to make
17 is whereas we were very concerned about how the
18 durability of mitigations, as applied in the
19 proportional contribution part on public lands play out,
20 how can we secure those assurances that those
21 mitigations will play out in a durable fashion.

22 We also should be concerned about the public
23 land conservation designations, such as the ACECs, and
24 so forth. Those, too, are subject to some change
25 through land use plan amendments.

1 And so to the extent that this plan depends very
2 much on those land use designations, we need to think
3 about what are the implications of the level of
4 uncertainty with regard to those land use designations
5 for the durability of the conservation approach.

6 So, with that I think we have time for
7 questions.

8 Well, actually, let me show you, as a matter of
9 background -- this is the familiar map to many of you.
10 It actually shows, depicts, and it's hard to see, I
11 apologize, but it does depict the legally and
12 legislatively protected areas, which constitute a large
13 portion of the reserve.

14 It also depicts areas that are designated under
15 the reserve as high biological sensitivity. It
16 distinguishes high biological sensitivity from moderate
17 biological sensitivity areas.

18 And it further distinguishes between public,
19 where those occur on public lands versus private lands.

20 It also shows the large extent of the Department
21 of Defense lands within the DRECP area. So, we need to
22 think about what should be the role or to what extent we
23 should rely on those lands, or their management regimes
24 in contributing to the conservation strategy of the
25 DRECP.

1 I think that's it for now.

2 MS. CAMPBELL: This is Vicki Campbell with BLM.
3 Just for folks that have the actual hardcopy, I just
4 want to clarify on the last map, where it says "proposed
5 ACECs for BLM" those are actually proposed conservation
6 lands.

7 We have not yet determined clearly, as we're
8 working through alternatives, what will be an ACEC, what
9 will be a national landscape conservation system unit,
10 what will be a wildlife allocation.

11 So, just for clarity I didn't want folks to come
12 away with a misperception of what we're considering.

13 MR. CONDON: Thank you, Vicki. I depended on you
14 to make those corrections. I kind of gloss over those
15 designations from time to time so, thank you.

16 COMMISSIONER DOUGLAS: Yeah, thank you Vicki. I
17 was just going to add, you know, the reason for going
18 through this presentation at the beginning of the day
19 was to set some context and, in particular, give people
20 around the table and people listening to the workshop a
21 sense of kind of an example scenario, which is what this
22 really is, of the type of approach that's being
23 considered and how it could play out, and the relative
24 roles, therefore, or sense of scale, therefore, for some
25 of the different issues that we're talking about.

1 So, I wanted to ask, before we get into
2 questions if, Mike, you have anything you'd like to add
3 on this, just to go to the Fish and Wildlife Service for
4 a minute.

5 MR. FRIS: I actually really don't. I think
6 Bill did a real good job of summarizing. I think we're
7 in good shape.

8 COMMISSIONER DOUGLAS: Okay, good. Great, in
9 that case are there questions for Bill?

10 Go ahead, Lisa.

11 MS. BELENKY: Thanks. I just had a couple of
12 quick questions to make sure I understand the framing.
13 When you talk about the total estimated proportional
14 contribution and then you're assuming a 1.4 to 1
15 mitigation -- well, there's two assumptions in there.

16 One is that only 10 percent of the DFAs will be
17 developed. And the second is, and I'm not sure where
18 there's coming from -- and the second is this 1.4 to 1
19 mitigation which assumes that you're using very low
20 value habitat, really, not just -- I mean for the most
21 part it's a very low number compared to a lot of what
22 we've seen.

23 So, I just wanted to clarify that because some
24 of the DFAs contain some very high quality habitat,
25 still, in the mapping and so that's of concern.

1 You're not -- I'm not sure if you're saying this
2 would be the proportion we use across the board or that
3 you think this would be the average once things start to
4 be developed within a DFA.

5 MR. CONDON: This value, 1.4, is actually what's
6 playing out in this Alternative II Delta. And so the --
7 it is not an average among the alternatives that are
8 under consideration. It is what are actually the
9 outcome of the anticipated -- it includes consideration
10 of what lands and habitat values actually occur within
11 the DFAs envisioned under this alternative.

12 So, other alternatives will, indeed, include
13 more areas of higher value habitat. As such, for those
14 alternatives the mitigation ratios would be
15 commensurately larger.

16 But the whole idea was to -- in going through
17 the process of identifying DFAs, one of the major
18 considerations was to try to limit those areas that are
19 of -- of habitat that are already disturbed so that the
20 plan will -- the extent of impacts to the covered
21 species and natural communities would thereby be limited
22 under the plan.

23 But again, if we were to look at other
24 alternatives, the mitigation ratios would likely be --
25 or actually are higher than 1.4.

1 COMMISSIONER DOUGLAS: And Lisa certainly has a
2 follow up, but let me just ask to clarify, the 1.4
3 ratio, to what extent as that plays out does that take
4 into account micro-siting within DFAs as well.

5 MR. CONDON: It would. And this really doesn't
6 readily take into account the implications of the rule
7 sets applied, except to the extent that it's probably
8 reflected in the 10 percent, the DFA area, that value.

9 Because a DFA is not carte blanche for
10 development, there will be rule sets applied to help
11 conserve resources within and adjacent to those areas.

12 The rule sets entail constraints on locations
13 and timing of construction, operations for example.

14 So that, hence -- the 10 percent of the DFA area
15 is really a function of those constraints as well as
16 consideration of what lands likely will be available
17 from willing sellers for development.

18 MS. BELENKY: Okay, great. Well, that was very
19 helpful. And then on the -- I just wanted to check,
20 where you have the proportional contribution mitigation
21 private, the 200,000 plus acres, is there a -- have you
22 looked at the availability of adequate lands for that
23 mitigation?

24 Because this is the second place where we have,
25 when we've been looking at it, at least from the Center

1 and other environmental groups, that we don't see,
2 necessarily, that there is that level available and that
3 creates a second place where there may be a need to
4 utilize public lands to achieve the full mitigation.

5 MR. CONDON: And again, I simply proportioned
6 out what's the private part, what's the public part
7 based on the DFA acres in private and public. There are
8 many other ways, bases for arriving at that mix or that
9 balance, if you will.

10 But, yeah, we agree that for some areas of the
11 plan to the extent that we would look for proportional
12 contribution mitigation near the DFAs, in some sort of
13 proximity to DFAs, some areas of the plan present real
14 challenges because of the paucity, lack of private land
15 opportunities for mitigation.

16 So that's one of the challenges we have to
17 overcome for any of these alternatives that are under
18 consideration.

19 COMMISSIONER DOUGLAS: You know, Josh Hart
20 stepped out of the room. Oh, no, you didn't step out of
21 the room. This is your cue, Josh, if you want to speak
22 to this question.

23 MR. HART: Well, you know, in Inyo County
24 there's a particular dearth of private land available.
25 And just, you know, even a project that's outside of

1 Inyo County that takes mitigation lands in Inyo County
2 could take a significant portion of our private lands.

3 We have about 120,000 acres of private lands and
4 most of that's already developed. So, it's really a big
5 issue for us.

6 I did have one question, Bill. There's a number
7 of lands that are held in trust for schools, have those
8 lands been considered in this analysis?

9 MR. CONDON: Those are considered among the
10 public lands and State Lands Commission, who is a
11 participant of the development of the DRECP, is looking
12 for this plan as an opportunity to find the highest and
13 best uses for those lands, including renewable energy
14 development. As well as some of those lands, as I
15 understand, may serve some role in mitigation, as well,
16 and particularly areas where renewable energy
17 development or any other type of development, basically,
18 is not practicable.

19 MR. HART: Right. A lot of them are surrounded
20 by protected lands and it would make sense to protect
21 them and then do a land trade of some sort.

22 MR. CONDON: And BLM and other colleagues from
23 BLM, Vicki and other colleagues from BLM could describe
24 to you the ongoing discussion between BLM and the State
25 Lands Commission in terms of land exchanges and so

1 forth.

2 Yeah, one of the considerations is where are the
3 DFAs? And where are the opportunities nearby, however
4 you define that, to secure land for conservation?

5 Under this particular Alternative II, depicted
6 on the map, as far as I can tell given the scale, there
7 are no DFAs very close to Inyo County, for example.

8 And the private land opportunities, as you point
9 out, are pretty limited as well.

10 Again, the traditional approach for CESA
11 mitigation to offset the impacts of projects is to
12 secure private land and apply an easement, and endowment
13 to manage the lands.

14 That's one conservation modality for us to
15 consider. There may be, for example, some key Bighorn
16 Sheep corridors up your way that we'd be interested in
17 working with you to enhance and maintain. That would
18 not necessarily be a matter of land acquisition, it
19 could be some other means to meet the objectives of
20 conserving that particular species in that area.

21 And that is true both for private and public
22 lands.

23 COMMISSIONER DOUGLAS: So, we've got a question
24 from Johanna.

25 MS. WALD: Thank you. This is Johanna Wald from

1 NRDC and I had another clarifying question, if I might,
2 for Bill. And that concerns the expression on the first
3 page of your handout, toward conservation. So, we have
4 private lands towards conservation. This is the second
5 to the last bullet in the bottom three bullets, and then
6 public lands towards conservation.

7 And I was wondering if you could sort of explain
8 or clarify the meaning of that expression and does it go
9 to durability, or availability, or what? Thanks.

10 MR. CONDON: Johanna, I think it does go to both
11 of those, durability and availability.

12 I used the term "towards" keeping in mind that
13 under the NCCP Act there's a reference to reserves,
14 including -- but those reserves do -- the law, as I
15 understand it, does anticipate that certain activities
16 that are compatible with conservation can occur within
17 those reserve areas.

18 So, these acreages under private lands and
19 public land need not be in the form of an inviolate
20 park, so to speak. But, nevertheless, the land use
21 designations would, hopefully, be such that they would
22 support conservation.

23 And how they play out on private lands is that's
24 where the creativity comes in and that's where the
25 dialogue with the counties and other local jurisdictions

1 really come in, in terms of their land use designations.

2 Ideally, we would build on existing designations
3 and see how far they go in terms of meeting the
4 objectives of the DRECP. So, it's pretty wide open at
5 this point as far as I can tell.

6 COMMISSIONER DOUGLAS: And we've got a
7 question --

8 MR. CONDON: The durability is still up in the
9 air for all of those types of conservation
10 interventions.

11 COMMISSIONER DOUGLAS: We've got a question on
12 the WebEx from Lorelei Oviatt, with Kern County.

13 MS. OVIATT: Hi, everyone, this is Lorelei,
14 Planning Director from Kern County.

15 So that was one of my questions that Johanna
16 asked. But my question is what if the county doesn't
17 set aside 2.1 million acres, what does your reserve
18 design look like then?

19 MR. CONDON: Hi, Lorelei, good to hear your
20 voice. That is the big question. What would be the
21 implications in terms of meeting the biological goals
22 and objectives for each of the species and natural
23 communities in the event not all of this, in this
24 example 2.1 million acres, of private land are somehow
25 designated toward conservation.

1 Again, this doesn't mean these areas will be --
2 development will be precluded in these areas, but
3 somehow the land use designations have to result in
4 contributing to the conservation of those covered
5 species.

6 So, the 2.1 million, the reserve design was
7 completed, put together independent of public versus
8 private land designations. It's basically driven by the
9 species ranges and the biological goals and objectives
10 applied to those species, as well as natural
11 communities.

12 So, there may be some cases where at the end of
13 the day we look at what's going to play out on these
14 areas of private land and we may determine that we
15 cannot make NCCP findings with regard to certain
16 intended covered species because key parts of -- the
17 status of key parts of the ranges of those species
18 remain uncertain.

19 So, we'll have to cross that bridge very soon,
20 when we get there.

21 COMMISSIONER DOUGLAS: This is the topic -- go
22 ahead, Lorelei.

23 MS. OVIATT: Would the mitigation ratios go up?
24 I mean let's just hypothetically, if the counties don't
25 participate and don't agree to set aside these lands,

1 would your reserve design then increase the mitigation
2 ratios for acquisition for the renewable energy
3 projects?

4 MR. CONDON: That's one possible outcome. It
5 could also include increasing the constraints on
6 development elsewhere in the reserve, whatever that may
7 be.

8 MS. OVIATT: Okay.

9 COMMISSIONER DOUGLAS: Thank you.

10 MS. OVIATT: So, it's really you put it
11 together -- this is the optimum -- would you say this is
12 the optimum based on your biological review?

13 MR. CONDON: It is.

14 MS. OVIATT: In other words -- okay. All right.
15 All right, so this is the optimum based on the
16 biological review, but it didn't look at cumulative
17 growth in regards to other industries, it only looked at
18 alternative energy?

19 MR. CONDON: Yes and that's --

20 MS. OVIATT: All right, okay.

21 MR. CONDON: -- one of the salient aspects of
22 this plan, it is limited to that sector of the economy,
23 of renewable energy and transmission.

24 MS. OVIATT: Okay. All right. Well, you know,
25 I really appreciate this presentation. I think it

1 really drills down into some of the questions that we
2 all have, so I really appreciate the workshop.

3 COMMISSIONER DOUGLAS: Thanks, Lorelei. And, of
4 course, we have a workshop dedicated to the private land
5 aspects of the plan to look forward to, so this is a
6 foreshadowing for us.

7 We have -- I'm looking around the room to see
8 who on the panel has questions. We have questions on
9 the WebEx from Gail Barton, with Riverside County, and
10 from Laura Crane with the Nature Conservancy.

11 So, why don't we go ahead and take those now,
12 let's go ahead and do that. Gail? Okay, Gail, you're
13 unmuted, if you talk we should be able to hear you.

14 MS. BARTON: Okay, now can you hear me?

15 COMMISSIONER DOUGLAS: Yes.

16 MS. BARTON: Okay. I, too, would like to thank
17 you for this workshop. It's very helpful to see
18 numbers. It's hard to always deal in the -- what we
19 might have in our mind.

20 The 202,000 acres of private land is a lot of
21 land. And, of course, as you know that's of concern to
22 all of us. With Inyo County and others, also, we share
23 that concern.

24 And it sounds to me like the implementation of
25 this plan, and this is one of Riverside County's big

1 things, is how is it going to be implemented is going to
2 be a critical issue, whether or not the counties
3 participate because I think there's going to be a
4 variation in that mitigation amount.

5 I'm also concerned, when you talk about the
6 private lands conservation designation through the
7 county general plans that does not necessarily mean
8 durability.

9 So, I'm wondering how that's going to be
10 achieved, that usually involves money, also.

11 So, I think I'm saying more of comments than of
12 a question. I'm not finding a question even in what I'm
13 saying, other than that we are concerned, but we are
14 encouraged to see some numbers put to situations.

15 And if this is the optimum biological view, I
16 think that's helpful to know because that means that
17 these are probably very baseline numbers and, again,
18 assuming participation of the counties.

19 Again, thank you, and we appreciate the
20 opportunity to participate.

21 COMMISSIONER DOUGLAS: Thank you, Gail.

22 Bill, anything on that you'd like to comment on?

23 MR. CONDON: Yes, please. Hi, Gail, it's good
24 to hear your voice as well.

25 I should clarify this may or may not be the

1 optimum reserve design, it's simply what comes out of
2 the process that's driven by the biological goals and
3 objectives established for the covered species and
4 natural communities.

5 But it is an outcome that we feel would result,
6 if everything lines up, in the conservation of those
7 covered species and natural communities.

8 And, yeah, on the bottom of the page shown on
9 the screen, that's kind of my regard to that continuum
10 of durability. And you see somewhere in the middle is
11 private land conservation designations, and it should
12 say EG county general plans. There are many different
13 ways for local jurisdictions to designate areas that are
14 friendly toward conservation and one of them, of course,
15 is general plan updates and then it's the general plans.

16 And we're all ears in terms of what particularly
17 the local jurisdictions feel would be effective toward
18 land designations that would be friendly toward
19 conservation.

20 MS. BARTON: I think, then, to expand on that a
21 little bit you would have land use designations that are
22 friendly to conservation, but our experience under
23 MSACPs is that there has to be some control over those
24 to allow for management in order to be able to count
25 them.

1 So, are you looking at those as acres that you
2 would be able to count under your reserve and be under
3 management?

4 MR. CONDON: We would look for acres in private
5 land that would contribute to the overall reserve. We
6 would also look at how they play out with regard to
7 individual species.

8 But, again, certain land use designations under
9 the counties or municipality jurisdictions have
10 varying -- represent varying levels of durability. So,
11 we have to decide what level of durability within those
12 designations, the process for designating those lands
13 toward conservation are sufficient for us to conclude
14 that the plan is viable in terms of conserving the
15 covered species in order for us to, in other words, make
16 findings under the NCCP Act.

17 MS. BARTON: Thank you.

18 COMMISSIONER DOUGLAS: This conversation is
19 helpful in underscoring that durability is not solely an
20 issue when we talk about public land. And there's a
21 really robust conversation to be had on the private land
22 side of the spectrum.

23 Let me ask Laura Crane, on the WebEx, and then
24 we'll go to you, Ed, if you had something.

25 MS. CRANE: Thanks. Can you hear me?

1 COMMISSIONER DOUGLAS: Yes.

2 MS. CRANE: Great. Well, Bill, thank you so
3 much for the presentation. And I have actually two
4 clarifying questions. The first is the reserve system
5 that you are referring to, to hear -- I was wondering if
6 you could clarify, is this the overall plan reserve
7 design that was distributed with the alternatives? I
8 know that the agencies, the lead agencies have been
9 talking about developing specific reserve designs for
10 each of the alternatives and is this referring to a
11 reserve design that as developed for Alternative II?

12 MR. CONDON: Hi, Laura. The reserve system in
13 this document refers to the 15.8 million acres, and that
14 is the overall reserve area. I don't believe it takes
15 into account -- I'll have to get back to you on that,
16 it's an important question.

17 But to what extent that's in place, aside from
18 development focus areas, standing right here I'm not
19 sure.

20 I know that the -- if I can bring up this
21 example --

22 COMMISSIONER DOUGLAS: Bill?

23 MR. CONDON: Yeah.

24 COMMISSIONER DOUGLAS: Vicki's here with an
25 answer to that.

1 MR. CONDON: Go ahead, thank you.

2 MS. CAMPBELL: Hi Laura, it's Vicki Campbell
3 with BLM. The plan-wide reserve design that you're
4 seeing in the handout distributed by Bill is actually
5 the reserve design associated with the alternative and
6 the DFAs that you see on this piece of paper.

7 In the July 25th-26th briefing book that is
8 posted on the DRECP website there is actually a plan-
9 wide reserve design that is independent of DFAs, of the
10 development focus areas. And there is also a reserve
11 design that is associated with each draft alternative
12 presented.

13 So, I guess, Laura, the answer to your question
14 is what you see here is the reserve design associated
15 with just this alternative that you're seeing, but in
16 the briefing book you see both plan-wide without DFAs
17 being considered, and then the reserve design associated
18 with each of the alternatives presented in that briefing
19 book.

20 MS. CRANE: Okay. Thank you for that
21 clarification.

22 MR. CONDON: And Laura --

23 MS. CRANE: My other clarifying -- yes?

24 MR. CONDON: Go ahead.

25 MS. CRANE: No, go ahead.

1 MR. CONDON: I just wanted to point out that I
2 did put up on the screen yet another example of an
3 alternative. And in this table it does depict the
4 areas, the development focus areas. It does depict the
5 total acreage under the conservation area reserve
6 system, the reserve design.

7 And these are additive, so the reserve area
8 is -- the reserve system is indeed separate from the
9 area of the DFAs. And it also reflects the fact that
10 there will be some adjustment overall, depending on the
11 alternative, but not -- you probably won't see that
12 great a variation among the alternatives.

13 MS. CRANE: Okay, thank you.

14 My second clarifying question just was in terms
15 of the ratios and I wanted to make sure I understood
16 what you were saying, Bill.

17 I thought that I heard you say that there were
18 still going to be discussions about the ratio when it
19 applied to public lands, as opposed to a ratio that's
20 used for acquisition of private lands. Is that true?

21 Or are you thinking that it would be the same
22 ratio in terms of investment for public lands as it
23 would be for acquisition of private lands?

24 MR. CONDON: Laura, in this example, what you
25 see on the screen, I made the assumption that based on

1 the proportion of DFA on public land versus private land
2 there would be a commensurate assignment of acres toward
3 proportional contribution mitigation on public and
4 private lands.

5 So, that's the basis of that distribution. I
6 imagine that very much will be subject to conversation,
7 how that will be distributed, how the proportional
8 contribution will be distributed.

9 And as far as the mitigation ratio, on this
10 example there's no distinction made between what would
11 be applied to public land and what would be applied to
12 private land.

13 But with the understanding that what we'll
14 likely have to do for some situations is develop
15 algorithms that convert acres disturbed under
16 development to conservation interventions.

17 It could be, again, in the form of just an acre-
18 to-acre applying the mitigation ratio or more likely, in
19 addition, it would be in the form of some sort of
20 conservation interventions.

21 And again, the example being for one acre of
22 Desert Tortoise habitat destroyed there would be X
23 linear feet of fencing, or a certain amount of money
24 going into some sort of conservation fund, et cetera.
25 Those are important details we have yet to work out.

1 MS. CRANE: Right, they are really important
2 details. And I guess in terms of the importance for
3 this discussion on durability related to public lands,
4 if we look at, at least the example in Southern Nevada,
5 there was a much, much higher ratio of investment on
6 public lands in terms of, you know, per acre disturbed,
7 than they would have done from a private lands
8 acquisition stand point.

9 So, with the recognition that, you know, if
10 you're addressing stresses on lands that when you buy
11 lands you can eliminate certain stresses altogether,
12 residential development, those types of things.

13 Whereas when you're investing on public lands,
14 you know, that you're trying to improve things for the
15 species in a way that basically needs to affect a much
16 larger number of acres to remove the same threat.

17 So, I guess with that kind of in mind I think it
18 could make this discussion on durability for public
19 lands all the more important, recognizing that the ratio
20 might end up being much higher for mitigation if it's
21 applied to public lands, than if it were just
22 acquisition of private lands.

23 COMMISSIONER DOUGLAS: Thanks Laura. You know,
24 I think that was a helpful comment and moving us forward
25 towards our agenda for this afternoon.

1 We've got Ed Sauls.

2 MR. SAULS: Oh, yes, thank you very much. I've
3 got a question out of ignorance, we're here at the table
4 to try to solve a problem and there's just some things I
5 don't understand, so forgive me if the question is -- as
6 I understand it, what you're saying is that in NCCPs
7 that land use designations under general plans provide
8 for the permanence that you're looking for, and the
9 durability that you're looking for under NCCP,
10 endangered species.

11 MR. CONDON: In the case of other NCCPs, the
12 land use designations by the counties toward
13 conservation have been regarded as sufficiently, to use
14 that expression, durable for us to provide a partial
15 basis for Fish and Game to make those NCCP findings.

16 MR. SAULS: So, that's yes, like a general plan
17 designation is open space and Riverside County, for
18 example, would provide you the durability that you're
19 looking for, for your NCCP permit.

20 MR. CONDON: Well, the devil would be in the
21 detail, what open space actually means? What types of
22 development in open space are allowed? What types of
23 development are ground disturbing activities, activities
24 that affect species or their habitat are not allowed?

25 So, it really depends on what the zoning

1 ordinances actually say and we have to consider that
2 with regard to the implications to the covered species
3 and their habitats.

4 MR. SAULS: So, it's a preventative development?

5 COMMISSIONER DOUGLAS: Yeah, so Ed, we're going
6 to get into this in the afternoon.

7 MR. SAULS: Okay.

8 COMMISSIONER DOUGLAS: Particularly with the
9 presentation by David Lazerwitz, where he's going to go
10 through some of the different standards, under different
11 laws.

12 MR. SAULS: Great.

13 COMMISSIONER DOUGLAS: But it's a good question
14 and it's helpful to get that.

15 MR. INGRAM: If I could real quick just add
16 something, this is Steve Ingram with Fish and Game.
17 Under our normal NCCP practice the typical NCCP, so much
18 as there is such a thing, is a county-based NCCP and the
19 county is typically the applicant for the NCCP.

20 And so the county's land use -- their exercise
21 of their land use control through general plan
22 amendments, changes to the zoning ordinance and
23 everything are incorporated into the plan design and the
24 implementation agreement.

25 And the county is actually the applicant who

1 receives authority to delegate take under the NCCP. So,
2 the county has something at stake if it changes. We
3 can't require a county to designate something in their
4 general plan or their zoning ordinance and never change
5 it. Counties don't have the power to do that. They
6 have to leave open the possibility that they will amend
7 those documents.

8 But one of the ways we gain a certain amount of
9 durability from those protections is if they in fact
10 change those later, the county, itself, will be out of
11 compliance with the plan, and then the authority to
12 authorize take under the plan may be revoked or
13 suspended until they get back into sync with it.

14 This is a different type of plan and currently
15 none of the counties are applicants. So one of the --
16 to the extent that something like these conservation
17 designations from a county general plan or a zoning
18 ordinance, how far they can be taken in counting towards
19 the conservation requirements under the NCCPA, how much
20 durability we have on it really depends on what type of
21 agreements are ultimately negotiated between the
22 department and the counties.

23 And that, again, the traditional plan would be
24 for the counties to come in as plan participants; here,
25 that hasn't happened yet. But nothing in the NCCPA

1 actually requires them to be formal plan participants.

2 So, you know, one of the things that Fish and
3 Game is looking towards is how can we work with the
4 counties and have some kind of other agreement that
5 would in some ways mirror the traditional relationship
6 with them to allow us to -- to give more durability to
7 those designations.

8 And it may be something where there are certain
9 consequences for the plan overall and for the
10 authorization of take, if those designations are later
11 changed.

12 MR. SAULS: That's very helpful, thank you.

13 COMMISSIONER DOUGLAS: Okay, are there other
14 questions or comments from anyone here on the panel?
15 Because if there are not, we really squeezed our lunch
16 break in anticipation, or at least wanting to have the
17 ability to have a robust discussion and answer questions
18 here, so we're actually back online and starting right
19 at one o'clock, and it's 12:10.

20 So, seeing a natural break in the action, if
21 there are no other questions at this moment we will go
22 to lunch, be back at one o'clock.

23 And I actually don't have to give a speech about
24 where to go and get lunch in a half hour, we've got more
25 than that. So, anyway, we'll be back at 1:00. Thank

1 you everyone.

2 (Off the record at 12:10 p.m.)

3 (Reconvened at 1:07 p.m.)

4 COMMISSIONER DOUGLAS: All right, thanks. We're
5 going to get started in just another minute. We've been
6 joined by Kevin Hunting with Department of Fish and
7 Game.

8 Kevin, you want any introduction or is that
9 enough?

10 MR. HUNTING: No, that's enough, thank you.

11 COMMISSIONER DOUGLAS: All right, so Kevin's
12 here from Department of Fish and Game. Let me see if
13 there's anybody else new.

14 No, I don't think so. Oh, Jim Kenna. Oh, of
15 course, but I was going to go to Jim first, anyway.

16 So, Jim Kenna, California Director of the Bureau
17 of Land Management, if you could -- Jim's going to kick
18 us off with item three on the agenda, "Overview of
19 Design Options for the DRECP and Implications for
20 Durability."

21 We take responsibility for that title. So,
22 based on our sense of what you're going to cover here.
23 So, why don't you go ahead and take it from here.

24 MR. KENNA: Okay. And I understand there was
25 some interesting presentation and material this morning

1 and some discussion started, but a lot to happen, still.

2 So, if I get redundant, somebody can just kick
3 me or elbow me.

4 But if I understand, is the Alternative IV going
5 to come up? Somebody said it was on the -- okay.

6 Well, and the reason I was hoping to do that is
7 because I think some of what I was going to talk about
8 would be easier to talk about with a map, and just sort
9 of picked an alternative. It probably doesn't matter so
10 much which alternative the concepts are discussed under,
11 but I think it's important to think about what we're
12 doing in terms of some geography.

13 So, my intent here is to talk a little bit about
14 the history that Kevin and I had. I know you heard some
15 presentation and I'm going to assume I know at least
16 certain parts of it from the discussions that I've had
17 with Kevin and California Fish and Game.

18 And what we really have started thinking about
19 is that there really are kind of two pieces in terms of
20 thinking about durability. And the line is a little bit
21 artificial because the two are clearly related, but I
22 think it's helpful to think about them in two large
23 chunks.

24 One is that there is a need to create a
25 conservation design that includes reserves, that

1 addresses habitat and a number of covered species.

2 And if you look at the map that's on the screen,
3 that tends to be the green and the blue.

4 But there's also a need to think about the
5 management that will subsequently follow in terms of
6 project locations and the kinds of things that will have
7 to happen when we're implementing the plan.

8 So, that piece has to be able to essentially
9 insert in some plug and play kind of way into the plan.
10 And Kevin's folks need to be able to make findings on
11 that, on how it's going to work.

12 So, from a land use planning stand point we need
13 to have a land use plan that has allocations and terms
14 and conditions -- or not terms and conditions, but kind
15 of rule sets that describe how we are going to manage
16 different areas geographically.

17 So, what we're attempting to do in the DRECP, at
18 a scale that has never been done before over 20 million
19 acres, to create those land use allocations that include
20 several categories of things. And I'm going to do some
21 lumping here, using the map as a reference.

22 First, the areas that you see, I believe in
23 pink, on the map are the DFAs, the areas where we would
24 say, okay, this is a place where it makes sense because
25 of transmission and other things to put renewable energy

1 projects in. And that would be one allocation.

2 Then, we're going to also have other allocations
3 that we can distribute across --

4 (WebEx interruption)

5 MR. KENNA: I'm sorry, God.

6 (Laughter)

7 MR. KENNA: We are going to have other
8 allocations that we distribute across the plan area.
9 Now, this is an unusual plan in the sense that it
10 includes huge amounts of public land.

11 The most analogous situation I can think of is
12 the Coachella Valley land use plan amendment/ACP/NCCP.
13 And if you go and visit the Coachella Valley you can go
14 to areas that have conservation designations in that
15 ACP/NCCP.

16 You can go to White Water River, you can go to
17 Mission Creek, you can go to Big Morongo, you can go to
18 the French Toad Lizard preserve and you can go to Dos
19 Palmas and you can look at what's happening there and
20 you've got a ten-year history, essentially, on that land
21 use plan, with those conservation designations.

22 And those tend to be a combination of wilderness
23 and ACEC. The Mission Creek/White Water area is largely
24 wilderness. Most of the rest of the rest of the
25 designations are ACEC designations.

1 So, that's a shorthand for some of what we are
2 trying to do now, also, with the -- is we will have --

3 (WebEx interruption)

4 COMMISSIONER DOUGLAS: I'm sure Kristy's working
5 on muting. Is that right, Kristy?

6 MS. CHEW: Yes.

7 COMMISSIONER DOUGLAS: Okay. Okay, perfect,
8 thanks.

9 MR. KENNA: Well, I won't take it as commentary.

10 (Laughter)

11 MR. KENNA: Okay. So, on a larger scale we have
12 a lot of crosswalk, I think, into the DRECP. There are
13 large amounts of designated wilderness in the DRECP
14 planning area.

15 There also are some existing ACECs; DWMAs are a
16 form of that. And they generally have management
17 standards tied to them. And they're species driven,
18 generally.

19 It can be a one percent disturbance threshold
20 for Flat-Tailed Horned Lizard or Desert Tortoise within
21 a DWMA area, as an example.

22 So, there are limitations on what kind of
23 management actions can take place based on those plan
24 decisions.

25 So, we will be doing that in the DRECP planning

1 area. But there's one additional task that has to
2 happen in this particular plan. Because of the Omnibus
3 Public Lands Management Act we have to make decisions
4 on what lands will be classified as conservation lands
5 under that Act. And in doing so, they move across into
6 the National Landscape Conservation system.

7 For those who don't know how that system
8 operates, within the National Landscape Conservation
9 system it includes national monuments, national
10 conservation areas, wild and scenic rivers, wilderness
11 areas. And each of them have a dominant set of
12 conservation values that are identified that become the
13 preeminent values for which the area's managed.

14 So, we will be making that decision in the DRECP
15 for conservation lands identified as well. And that
16 will be an implementation of the Omnibus Public Lands
17 Management Act.

18 So, that's sort of my summary of what the
19 planning side of that looks like.

20 Now, I wanted to go back to the sort of project
21 level piece, and this is the piece that Kevin and I have
22 had to have some discussion about, that there needed to
23 be some sort of structure that allowed for so, what's
24 going to happen at the more site-specific level around
25 any kind of a proposal that might come in. How does

1 that work? What happens?

2 So, we also are working on a mechanism for
3 should someone come in with a project proposal how does
4 it plug and play into the NCCP. And that has to be
5 transparent enough that Kevin and his folks can make
6 findings on it within the planning process.

7 There are differences, however, in that there
8 will also be discussions in mitigation, and things that
9 happen at that project level as well.

10 But what we will be doing in the plan is
11 structuring that. That is really kind of what I was
12 going to offer as an opener. Kevin can probably improve
13 upon that.

14 But the other thing that I wanted to do is sort
15 of daylight my hopes in terms of this afternoon. My
16 purpose today is to hear, to listen, and I'm most
17 interested -- and I appreciate the invite, Karen, thank
18 you. I'm most interested in what kinds of ideas are
19 there out there that would contribute to allowing Kevin
20 to make the kinds of findings -- not personally Kevin,
21 but the kinds of findings that he needs to under the
22 NCCP Act that are within that sort of construct, or
23 related to that sort of construct that we will be
24 creating in the plan.

25 And that can go from, you know, rather broad

1 ideas related to the mix that you might have in the
2 plan. For example, the designated wilderness is pretty
3 fixed because that's a Congressional action.

4 But we have some discretion and there will be
5 some range of alternatives around how do we answer
6 Congress's question about what the conservation land
7 designations will be for the California desert.

8 We will put out different sets of polygons that
9 describe alternatives for that.

10 We also will answer the question of where are
11 the areas of critical environmental concern?

12 And you can see that those things could overlap,
13 I'm not sure whether that's necessary, or you could have
14 smaller amounts of ACEC and larger amounts of
15 conservation lands under the National Landscape
16 Conservation system.

17 So, those variables can happen, can move around
18 within the range alternatives and will.

19 But there also are specific things that could go
20 down to, you know, what's possible at the project level.
21 We have talked previously about things, for example,
22 rights of way around tortoise fencing in order to
23 improve habitat conditions along highways. That's a
24 specific example.

25 So, those detail tools I think are also ideas.

1 And at this point my hope is that people will
2 offer up ideas that start to give us more, not fewer,
3 options to play with within the variables.

4 What I think we will be able to give back is a
5 range of configurations of all those pieces across the
6 alternatives covering the blue and the green areas in
7 the various alternatives, so that you can see different
8 conservation designs that in one sense will respond to
9 intrinsic values.

10 This is a really important place or has a high
11 concentration of species, or something like that. And
12 in another sense will respond to what else is going on.
13 So, if you have DFAs in an area and you expect to have
14 some sort of development, how would you address the
15 question of making sure all the pieces are kept in good
16 shape? That there's connectivity from a genetic stand
17 point, that there is a physical movement possibilities
18 in response to climate change, anything like that.

19 So, I guess I'll stop there and ask Kevin if he
20 wants to improve on what I did there.

21 MR. HUNTING: I assume they both work. Thank
22 you, Jim. I think Jim did a good job of kind of scoping
23 this out and kind of launching us into the durability
24 question.

25 There are a couple of things I want to add.

1 This has been a long-standing policy resolution area for
2 the State. I've been, myself, working at it for about
3 ten years, but it's been around for longer than that.
4 You know, this concept of the opportunity for a lasting
5 investment through State Endangered Species Act on
6 federal or public land. And it is tricky.

7 But I will say we've made a lot of progress in
8 the last year, eight months.

9 I want to thank Jim for his commitment to that.
10 It's really taken a little bit of giving around all
11 sides of the table. We've made a lot of progress.

12 But I'm hoping today we can recognize there is
13 this spectrum of, for lack of a better term, durability,
14 you know, ranging all the way from public lands that are
15 not wilderness areas, that are open to a variety of
16 different uses but do offer some conservation value, all
17 the way to those lands that are identified as part of a
18 compensatory mitigation program under CESA.

19 And there's everything in between and we've
20 explored those various pieces in between. I think we've
21 done a pretty good job of really kind of chasing down
22 all those various elements.

23 But I'm sure there's other ideas that I hope we
24 hear some new ideas today, and I hope we can kind of get
25 to the bottom of how we craft this durability issue for

1 the DRECP.

2 And, hopefully, we can kind of focus on that.

3 As Jim said, we need to make findings that are based on
4 a reserve network, with -- under pretty prescriptive
5 terms in the NCCP Act.

6 And those go all the way from compensatory
7 mitigation lands to general reserve design connectivity
8 lands.

9 So, we need to do all of that. So, I'm hoping
10 this discussion can kind of shed light on it and,
11 hopefully, gain a common understanding today for those
12 issues.

13 COMMISSIONER DOUGLAS: Thanks, Kevin.

14 Let me see, so Mike is there anything you want
15 to add? No.

16 Okay, so let's see if there are any questions
17 for Jim or Kevin right now around these framing
18 statements.

19 And if not, we'll go to a presentation by David
20 Lazerwitz.

21 And so what we've done is on item four on the
22 agenda, well, this is where we're covering the -- Item
23 4.a, we're covering the legal framework that we're all
24 addressing as we work to resolve the issues of
25 durability of conservation on public lands, and

1 particularly BLM land.

2 And so, David is going to give an overview
3 presentation that just helps us make sure that we're
4 talking about the same thing, given the different
5 standards for definitions of mitigation, or standards
6 that we're trying to meet under different laws that all
7 come into play here.

8 What I'd particularly like to ask participants
9 to do, as you listen to this presentation, is certainly
10 identify any areas where you have clarifying questions,
11 and also any areas where, you know, you want to add,
12 subtract, or modify for the presentation.

13 My hope is that we will move pretty
14 expeditiously through this part of the agenda so that we
15 can get on to some of the detailed solutions, or
16 discussion of solutions.

17 But at the same time I want to make sure that we
18 have kind of real clarity on the framework that we're
19 working with.

20 So with that, go ahead, David.

21 MR. LAZERWITZ: Thanks, Karen. It's really a
22 pleasure to be invited today to speak. And, you know,
23 I've had involvement both in permitting projects, most
24 notably the Desert Sunlight project, as well as working
25 on Campo Verde, and Silver State for solar and other

1 projects. But also had the pleasure of working at the
2 Department of Justice and representing the Department of
3 the Interior, and doing some pro bono work with some of
4 the folks in the room, too.

5 So, I try to be as objective here as possible
6 and the views, obviously, are my own.

7 But when Karen called me last week and asked to
8 just provide an introductory overview of the legal
9 concepts, you know, I want to keep it focused at that.
10 There's obviously a very informative discussion to
11 follow, but my hope was really to set forth some of the
12 parameters to guide the discussion, just let people know
13 what the background legal concepts are.

14 And, unfortunately, I think in some ways was
15 hamstrung by the topic of durability because one can
16 spend a lot of time looking in the law for this concept
17 of durability without a whole lot of success in finding
18 it.

19 So, I think that leads to the creativity of this
20 group today in trying to help define what that is and
21 should be.

22 So, three issues I want to cover and, again,
23 I'll try and be brief, 10 or 15 minutes, hopefully, to
24 let you guys get into a deeper discussion.

25 But the first is, really, what is the legal

1 standard for mitigating species impacts under both
2 federal and state law. You know, what are the
3 guidelines we're working with here which in some ways do
4 inform durability, particularly from a factual stand
5 point of what the impact is and what we need to do,
6 pursuant to the legal standards, to mitigate it.

7 And the second is; what is this concept of
8 durability?

9 And then, finally, I know there's going to be
10 some discussion of adaptive management, so I thought
11 just at least a brief note on what adaptive management
12 is and what it means in the law.

13 These are the principle authorities for purposes
14 of what we're looking at in the HCP/HCCP context. On
15 the federal side, obviously, the Endangered Species Act,
16 and section 10 in specific, and as well, FLPMA, just in
17 terms of we're looking at a land use plan amendment
18 here, and management of BLM lands in terms of the
19 conservation reserves.

20 On the California side the NCCP Act, the State
21 Endangered Species Act and specifically section 2081.

22 I don't get into it but, obviously, the
23 Fish and Game Code, generally for non-listed species, we
24 talk about Burrowing Owl, or other species of concern.

25 And then, also, agency policy, guidance and

1 practice in both prior HCP/NCCPs and, frankly, just in
2 permitting projects, and biological opinions and
3 incidental take permits.

4 First, the Section 10 requirements on
5 mitigation; pursuant to Section 10 in order to approve
6 an HCP, and issue a take permit, the Secretary must find
7 that the applicant will to the maximum extent
8 practicable minimize and mitigate the impacts of such
9 taking. And that's the full extent of the language in
10 Section 10 directly on this issue.

11 As most of you know, there's an extensive HCP
12 handbook that then gets into more detail for both
13 services in interpreting that language and in reviewing
14 HCPs.

15 And the relevant section really boils down to
16 two issues or two criteria that the services have come
17 up with to determine the adequacy of mitigation.

18 The first is the extent to which the proposed
19 measure provides substantial benefits to the species.
20 And, secondly, whether the amount of mitigation proposed
21 is the maximum extent practicable, just like the
22 language above, in looking at such factors as benefits
23 and costs of additional mitigation, the amount of
24 mitigation provide by other applicants in similar
25 situations -- I think that gets into some of the models

1 we could look at -- and the ability of that particular
2 applicant. Here, looking at it from the stand point of
3 the agencies being the applicants.

4 I also just briefly wanted to add in FLMA and
5 the implementing of resource management plans.
6 Obviously, like NEPA, itself, in some ways sets forth a
7 more general mitigation standard or at least the context
8 for more generalized mitigation.

9 In particular, though, for off-site the focus is
10 on compensating for resource impacts by replacing or
11 providing substitute resources or habitat on a different
12 location than the project area.

13 Obviously, the overall goal is managed by BLMs
14 mandate under FLPMA for multiple use and sustained
15 yield, so it's a looser standard.

16 There is DOE guidance at least on the off-site
17 issue, which I do think is relevant in looking at
18 conservation lands when we're talking about mitigating
19 impacts in one place on another place, even though it's
20 within federal land.

21 But DOE guidance does provide that off-site
22 mitigation may be performed on federal lands managed by
23 BLM.

24 And then, finally, obviously we have RMPs that
25 set form specific compensatory mitigation requirements.

1 I think we're all familiar with, you know, Desert
2 Tortoise compensation ratios. And, as well, set aside
3 areas for mitigating impacts, themselves, on BLM lands,
4 whether we're talking about BLM directed actions, OHV
5 networks, other things where we have ACECs, other
6 mechanisms that have been set up pursuant to RMPs.

7 On the state side the focus is really two fold,
8 it's the NCCP Act and section 2081. The NCCP Act is
9 fairly broad, it contains a number of provisions, but it
10 seemed to me the most relevant is under section 2820
11 with regard to implementing agreements. They must
12 include provisions to ensure that implementation of
13 mitigation and conservation measures on a plan basis is
14 roughly proportional in time and extent to the impact on
15 habitat or covered species under the plan.

16 And that's a term that we see coming back under
17 state law, the roughly proportional focus, obviously
18 taking it a little bit further than under federal law.

19 And it goes on to specifically include reference
20 to conservation measures including the assembly of
21 reserves, where appropriate, and implementation of
22 monitoring and management activities could take place.

23 So, if possible, it certainly contemplates the
24 establishment of reserves.

25 And then, finally, under the State ESA, section

1 2081, very specifically for an incidental take permit,
2 it requires that the impacts of an authorized take shall
3 be minimized and fully mitigated. So, leading to a
4 stronger standard that we see under federal law and
5 coming back, also, into the roughly proportional
6 language that we also see in the HCP context as well.

7 So, as I preview, the durability concept is
8 really an open issue and something that is not very
9 specific or, in fact, is not defined at all currently
10 under law, either federal or state law. So, I got to
11 spend some fun time poking around for that.

12 Obviously, we talk a lot about perpetuity, we
13 talk a lot about permanence, but durability, I think, is
14 a unique concept for you all to consider today.

15 Looking at the standards that we just went
16 through, from my perspective the focus is really on the
17 site-specific impacts and analyzing those impacts
18 pursuant to those legal standards. So, you're really
19 looking at a case-by-case analysis.

20 In summarizing it, under federal law, you know,
21 looking at it, the action, is it necessary to minimize
22 and mitigate the impacts of the identified taking to the
23 maximum extent practicable? We're going to look at that
24 on an individual, case-by-case basis to see if the
25 impact and the proposed mitigation can meet that

1 standard.

2 And then, similarly, under state law the
3 question is, you know, is the action enough to ensure
4 rough proportionality in time and extent to the impact
5 and, pursuant to 2081, fully mitigate that impact?

6 So, I think the standard gets stronger under
7 state law, as I noted before. But, again, it's really a
8 site-specific analysis in terms of this durability
9 concept.

10 You know, in my brief look, in practice this
11 issue is not that well defined for existing conservation
12 lands. Obviously, I think the typical focus, at least
13 from my practice where I run into it is permitting
14 individual projects and seeing a biological opinion, or
15 an incidental take permit with requirements for
16 perpetual management for off-site acquired lands that is
17 taking private lands into acquisition.

18 So, one of the authorities that is out there is
19 DFG's policy guidance that was issued just recently, in
20 March of 2012. It specifically addresses the mitigation
21 on publicly owned, department owned, or conserved lands.

22 It's a very interesting policy document and I
23 think there's a lot we could talk about, but I really
24 tried to focus it in as much as possible on the relevant
25 provisions that deal with the temporal, or permanent

1 nature, or durability concept and call out several of
2 those provisions for you.

3 Those include the following: future uses of the
4 land, including encumbrances or easements, must not
5 preclude or diminish the mitigation.

6 So, obviously, a construct in terms of the
7 future use of the land and what might be contemplated or
8 what could occur. It needs to be, basically, nullified.

9 Secondly, the resource values that are replaced
10 or substituted for those impacted must be maintained in
11 perpetuity.

12 Looking at it from a fish and wildlife resource
13 or habitat stand point, and the maintenance objective
14 needs to continue in perpetuity.

15 That said, the next bullet calls out at least a
16 limited exception, which may not apply here but it's
17 something to keep in mind, which talks about the fact
18 that some impacts resulting from take can be temporary
19 in nature.

20 And, therefore, there could be an exception to
21 this where on a site-specific basis maybe land will
22 return and its future decommissioned or reclaimed
23 capacity for habitat that could be sufficient. In that
24 regard, the mitigation lands may be possibly temporary
25 in nature and not in perpetuity.

1 And then, finally, the last standard, very
2 specifically, even beyond the resource value issue, is a
3 requirement that a fully mitigated standard must be met
4 and lands protected in perpetuity.

5 So at least pursuant to DFG's own guidance, we
6 have a very specific requirement leading to a permanent
7 or perpetual designation.

8 Interestingly enough and, hopefully, some of the
9 panel will talk about this in a little while, I did hear
10 this morning about AB 2402. So, looking, and from my
11 very quick look at it, the legislation, which I
12 understand has passed, now, the Legislature, would bring
13 in some of these concepts into law.

14 So, while normally we're looking at policy
15 guidance that would necessarily govern, from a legal
16 standard, some of this may actually be codified. So, I
17 think something to think about and talk more about.

18 And then adaptive management, just briefly,
19 since I know we'll get into this concept, and it's
20 obviously -- you know, just from the maps that we're
21 looking at today, it's such a macro level for this plan,
22 a very important concept that will need to be addressed.

23 And so the question, you know, what is adaptive
24 management? It's something recognized both under
25 federal and state processes. But it's effectively a

1 method for addressing data gaps, a lack of biological
2 information or a specific understanding of the resource
3 and impacts.

4 Through research and continued monitoring with,
5 you know, defined objectives so that, you know, based on
6 that information feedback and sort of the feedback loop
7 the conservation actions can be adjusted over time to
8 meet those objectives.

9 Now, obviously, taking a very conservative stand
10 point, initially, but with possibly lessening things, or
11 just changing, modifying boundaries, modifying ratios,
12 as we talked about earlier, there's certainly a number
13 of concepts that can be addressed through adaptive
14 management.

15 And as I noted, both concepts are recognized
16 under the HCP process, as well as under the NCCP Act,
17 itself.

18 So, that's really the overview. You know, I
19 think, like I started off to say, there's not a lot
20 there in terms of the durability concept. I think we
21 look to the mitigation standards that are set forth in
22 law, and need to apply those based on the actual
23 impacts, and then we have guidance from DFG on these
24 issues, as well.

25 And now I'll let Karen take it over but, you

1 know, some of the issues that just come to mind, in my
2 view, obviously, federal public lands that are multiple-
3 use management are very distinct from newly acquired
4 off-site lands.

5 When we talk about private lands, the context
6 many of us often deal with, you know, we have lands that
7 are currently under management. They are currently, in
8 a sense, protected or used for specific resource
9 purposes and multiple use; obviously, a critical issue
10 to talk about today.

11 And, frankly, just the balancing; clearly, under
12 the law we have the need for certainty to mitigate
13 identified impacts versus the need for flexibility for
14 future resource planning, BLM zone planning efforts.

15 We're talking today about renewable energy. We
16 could be talking about something else in five years, as
17 well as the existing uses on the public lands.

18 And then the adaptive management principle I
19 think comes into that, as well.

20 Another issue that I'm sure has been talked
21 about in other contexts, but I think is somewhat
22 relevant here in thinking about durability, is the
23 distinction between solar and wind, and the particular
24 types of impacts that we see. Particularly, on the wind
25 side where you have more diffuse siting locations and

1 the ability to preserve at least some lands and lessen
2 impacts.

3 But it's something to consider; I mean we're not
4 talking about sort of a one-size-fits-all model, even in
5 thinking about the impacts and the durability concept.

6 So, with that, hopefully, I covered what you
7 wanted, Karen, but I'll turn it back over to you.

8 COMMISSIONER DOUGLAS: Well, thank you, Dave. I
9 really appreciate you doing this and I think it was
10 really helpful framing for us.

11 I'm going to see if the agencies would like to
12 ask questions or make -- you know, make any comments on
13 the presentation, first.

14 And if not, we'll open it up for questions.

15 So, Kevin, or Steve, anything, or I can look
16 around. Jim? Cheryll?

17 MS. DOBSON: This is Cheryll Dobson from the
18 Solicitor's Office.

19 I just wanted to clarify that in the structure
20 of the DRECP the Fish and Wildlife Service has roles
21 under two different sections of the Federal Endangered
22 Species Act.

23 So, section 10 that was discussed applies to
24 private actions, non-federal actions, to the extent --
25 so for BLM land, to the extent that these activities are

1 actually going to occur on BLM land, the service would
2 be operating under section 7 of the Endangered Species
3 Act, where federal agencies have to ensure that their
4 actions will not likely jeopardize a species or
5 adversely modify critical habitat.

6 Mitigation is not a term used under section 7.
7 It's focused on minimizing impacts of take, or avoiding
8 impacts to species.

9 So, I just wanted to be clear that the section
10 component of this would only apply if there was some
11 sort of mitigation on public land from a private, non-
12 federal activity.

13 COMMISSIONER DOUGLAS: Cheryll, that's a really
14 helpful clarification. And I'm going to ask you to
15 repeat it, just to make sure that I got it right in my
16 own notes, let alone everyone else.

17 MS. DOBSON: For the component of the DRECP that
18 is covering actions occurring on federal land, so some
19 sort of solar development on BLM land, wind development
20 on BLM land, geothermal, the provision of the Endangered
21 Species Act that the service would be operating under
22 and BLM would be operating under as it applies to
23 impacts to listed species is section 7 of the Endangered
24 Species Act, not section 10.

25 So, the Fish and Wildlife service isn't issuing

1 an incidental take permit. They are consulting with BLM
2 to make sure that the activity will not likely
3 jeopardize the continued existence of a listed species
4 or destroy or adversely modify critical habitat.

5 When we consult, the product of that is a
6 biological opinion. The biological opinion lays out the
7 Fish and Wildlife Service's determination of whether or
8 not it's jeopardy or no jeopardy, adverse modification
9 or no adverse modification.

10 If incidental take is going to result from the
11 activity, then the service issues an incidental take
12 statement that exempts the federal agency and any
13 applicant from the take prohibitions under the
14 Endangered Species Act.

15 So, again, mitigation is not a section 7 concept
16 so there's no minimizing -- there's no mitigation to the
17 maximum extent practicable. None of that standard under
18 section 10 comes into play under section 7.

19 We're just looking at making sure the federal
20 agency complies with its obligations under section 7 of
21 the Act.

22 COMMISSIONER DOUGLAS: And where a project that
23 takes place on private land might mitigate on public
24 land that's where the section 10 mitigation standard --

25 MS. DOBSON: If there was a situation where the

1 Fish and Wildlife Service was permitting some sort of
2 activity on non-federal land through section 10, and
3 part of the mitigation involved some sort of mitigation
4 on public land, then the standards of section 10 would
5 be in play at that point.

6 MR. KENNA: Cheryll, let me -- let me do a
7 translation because I think she's exactly right, but I
8 think I can illustrate it.

9 We're going to get two things; we will get a
10 plan level section 7 consultation, but then when we're
11 in implementation, if you're trying to do the
12 translation down to a project, we will again consult.
13 And we will get a project level section 7.

14 So, in terms of the formal interface that we
15 have it's with Fish and Wildlife Service, it's getting
16 that section 7 and it's at both levels.

17 In terms of the interface with the NCCP we're
18 trying to facilitate, as I was talking about, the
19 ability of Fish and Game to get to their findings.

20 So, it's they're related in subject matter, but
21 this is a formal process.

22 COMMISSIONER DOUGLAS: Thank you. Steve?

23 MR. INGRAM: Yeah, this is Steve Ingram with
24 Fish and Game. I just wanted to make a few quick
25 comments in part about what kind of guidance we have on

1 durability. And David's exactly right, there is no, at
2 least that I've ever found, concept of durability at
3 least explicitly in either state or federal law.

4 That said, I think on the state side there are a
5 few things we can look at. And one of them, in CESA, is
6 the fully mitigated standard. And it's the word "fully"
7 there that's the key part of it.

8 I don't know of any other conservation,
9 mitigation, environmental protection statute that
10 incorporates that same standard.

11 But when we're talking about permanent impacts,
12 which are most of the impacts from project development,
13 fully mitigating a permanent impact I think necessarily
14 implies perpetuity, perpetual protection or something
15 really, really close to it.

16 So, I do think there is some guidance there even
17 though the words may not be exactly the ones we would
18 typically look for in terms of perpetuity, perpetual or,
19 in this case, durability.

20 The second point is that there's also some
21 guidance directly in the NCCPA. And, again, the word
22 "perpetual" doesn't occur in the NCCPA and the fully
23 mitigated standard doesn't directly apply under the
24 NCCPA, which I'll come back to in a second with my
25 second point.

1 But when they talk about habitat reserves in the
2 NCCPA they do specifically talk about the creation and
3 long-term management of the habitat reserve. So there
4 is actually a temporal requirement built into the NCCPA.
5 It doesn't say what long-term means. But when you look
6 at the findings that the department has to make and how
7 many of them incorporate the concept of conservation of
8 the species on some level into those findings, and then
9 you go back and you look at the concept as it's defined
10 in the NCCPA of what conservation means and it talks a
11 lot about standards that are very similar to what we
12 usually refer to as recovery.

13 So, a long-term management of a habitat reserve
14 that is trying to lead you towards recovery, I think
15 that gives you some extra context for understanding how
16 long long-term is, and I think the implication is it's a
17 pretty long time, as well.

18 So, I think in both statutes there is something
19 there to give us some guidance.

20 In addition to that, I just wanted to comment on
21 the policy for mitigation on publicly owned, department
22 owned and conserved lands. And it's my understanding,
23 and Kevin can correct me if I'm wrong, but that policy I
24 think was developed specifically as guidance for dealing
25 with CESA, not the NCCPA.

1 And so when we see the word "perpetuity" showing
2 up repeatedly in there, I think that is actually a
3 recognition of what I just mentioned a second ago about
4 the idea of the fully mitigated standard, with the
5 assumption that we are typically talking about permanent
6 impacts.

7 And then as David correctly noted, there is a
8 qualification there that there are temporary impacts as
9 well and those can be dealt with differently.

10 So, I think, you know, so I guess I want to
11 limit the guidance from that, but also say we have some
12 other things in the law there.

13 The other thing I just wanted to mention real
14 quickly is the distinction between mitigation and
15 conservation, and this is a really muddy concept under
16 the NCCPA, in part because it doesn't use the concept of
17 mitigation all that often in the Act. It's typically
18 talking about conservation.

19 And at Fish and Game we frequently internally,
20 in thinking our way through the development of an NCCP,
21 distinguish between two different parts of the
22 conservation obligation that we have under the Act.

23 And I refer to it as the mitigation component
24 and what I call a conservation increment. And the idea
25 would be that under the mitigation component an NCCP

1 should, at an absolute minimum, provide mitigation,
2 project-specific type mitigation sufficient to be the
3 equivalent of what you would have gotten had you
4 individually permitted each one of the projects in the
5 NCCP under CESA, with the fully mitigated standard.

6 And again, that's sort of the floor as we
7 typically construe it in an NCCP. You then need to get
8 something beyond that.

9 So, even though it doesn't, the NCCPA doesn't
10 have that fully mitigated standard, it's really
11 incorporating that and something more. And we get the
12 something more from a variety of different mechanisms.

13 One of them is when you look at the findings and
14 they talk about the habitat reserve, they talk about the
15 fact that we need to come up with biologically
16 sustainable blocks of habitat.

17 And so one of the ways we get something more out
18 of it than we get from individual project mitigation is
19 by simply requiring that mitigation to be congregated in
20 certain areas.

21 If we permit a hundred projects under CESA in an
22 area, we might have a hundred different pieces of
23 mitigation land with no connectivity, and no benefits
24 from aggregating them.

25 Under the NCCPA findings the idea is that the

1 reserve will actually aggregate those things. And so
2 that gives you one type of conservation benefit above
3 and beyond.

4 And then we look to other mechanisms and in the
5 case of the DRECP one of the keys, key pieces on public
6 land is in fact BLM's designation of some of these areas
7 as ACECs and/or NLCS, and the added conservation
8 increment we get from that, as well.

9 So, mitigation is not really a very important
10 concept directly under the NCCPA, but it is a component
11 of what we think of when we talk about conservation.

12 And I'd just like to say that because I think it
13 helps focus the discussion a little bit because the
14 problem of durability is much more a problem of the
15 mitigation component of an NCCP, than it is of the
16 conservation increment.

17 And so when we went back -- if we go back and
18 look at Bill's example that he went through this
19 morning, when we talk about 5.7 million acres that BLM
20 is intending to designate as either an NLCS, an ACEC, or
21 both, or some other type of conservation designation
22 that's really the conservation increment.

23 And we'd love, from the Fish and Game side, to
24 get as much durability as we can for that type of
25 designation, but we can accept something less than

1 perpetual designations by BLM, which they simply can't
2 do.

3 The core of the durability problem for BLM I
4 think comes when we look at that 53,800 acres, and
5 that's where we really need to be looking at the
6 specific mechanisms that will protect specific
7 mitigation actions that are taken on BLM land.

8 And that, to me, is sort of the core of the
9 durability problem for BLM and Fish and Game in terms of
10 working together on something like the DRECP.

11 COMMISSIONER DOUGLAS: Thanks, Steve. That was
12 really helpful. And I'm sure that between Cheryll's
13 additions and clarification and yours, you know, we are
14 now going to have a bunch of questions.

15 I just wanted to ask one question that maybe you
16 can help me with. You know, I think intuitively,
17 looking at the NCCP Act and saying, okay, at least for
18 the minimum mitigation should be about what it is or
19 exactly what it is under CESA, at a minimum, and then
20 there's some conservation increment.

21 Where I have a little trouble translating that
22 is when we start talking about tools other than acres
23 and, you know, so we're not suddenly necessarily talking
24 about at least as many acres, plus something beyond
25 that. And we are potentially talking about a suite of

1 diverse tools.

2 And so I'm kind of interested in, you know, like
3 what is the unit we're talking about when we talk about
4 at least as much as under -- you know, at least as much
5 mitigation as under CESA, plus some. Is the unit a
6 benefit to species, or is it acres, or is it something
7 else? And how can we articulate that so that we -- you
8 know, in this different field where we're talking about
9 kind of non-traditional tools.

10 MR. INGRAM: Well, I'll give you my quick answer
11 and then pass it over to Kevin, who might have something
12 else to say as well.

13 But in Fish and Game's approach to mitigation
14 under CESA has typically been providing compensatory
15 mitigation in the form of habitat. Acquiring and
16 permanently protecting habitat.

17 That is the general model we work with and it's
18 been pretty much the defining feature of most of the
19 NCCPs as well.

20 Under the NCCPA, though, we do look more broadly
21 than we typically do under CESA, at other types of
22 actions we can take.

23 And Bill alluded to this earlier, in his
24 presentation, that we need to find some kind of
25 mechanism for getting us from an acreage concept to some

1 way that we can understand and quantify the benefits
2 that come from some of these other things, like Desert
3 Tortoise fencing, or road closures, or raven protection
4 programs, or whatever it may be -- raven protection?
5 Raven control, thank you.

6 So, anyway, but we need -- and that's something
7 we're working on and we don't have an answer for that
8 right now. And I think what it's going to really
9 require is we're going to have to sit down with the
10 other participants in the DRECP, with BLM on whose
11 property a lot of this is going to happen, and with Fish
12 and Wildlife, who has similar concerns and requirements,
13 with the Energy Commission and work through what are the
14 specific types of mitigation actions we are
15 contemplating taking, particularly on public land.

16 And then try to figure out how we would convert
17 those. And I don't -- I mean I think that's more of a
18 biologist question, than a lawyer question, so I'm going
19 to conveniently defer.

20 But I do think we need to go through that
21 process and try to quantify those things in that way.

22 MR. HUNTING: Yeah, Steve's exactly right. So,
23 I don't have much to add but I do -- Bill, if you've got
24 something to say on this, please chime in as well.

25 That's a very good question, Karen.

1 And we have some taxa in the DRECP area, I'm
2 thinking Desert Tortoise, for example. There's several
3 different actions that have been identified to help
4 recover the species. Some of those actions aren't just
5 buying habitat, land-based habitat. Some are things
6 like fencing along freeways to reduce mortality, or
7 raven control, or things like that.

8 So, the currency in the DRECP, it can be -- I
9 think could be a variety of different things, it doesn't
10 just have to be habitat-based compensatory mitigation.

11 That said, there's some other taxa in the DRECP
12 area, some of the very constrained, rare plant
13 populations, maybe Mojave Ground Squirrel, where I think
14 a large component's going to have to be a habitat land-
15 based compensatory program.

16 So, I think it depends on the species, it
17 depends on the area and, you know, the goals for
18 conservation recovery.

19 COMMISSIONER DOUGLAS: Bill?

20 MR. CONDON: Just to add to that, once we figure
21 out and agree upon, again, what is the appropriate
22 algorithm, what is the equivalency of one acre of
23 disturbed habitat to, let's say, a linear feature such
24 as fencing, then a separate question is, back to
25 durability of mitigation, what does that mean? Does

1 that mean the fence must be maintained forever, in
2 perpetuity? Or the habitat that's been enhanced, let's
3 say a stream corridor, does that have to be managed and
4 maintained in perpetuity to the extent that it means to
5 the end of compensatory mitigation?

6 So, those are additional questions that we need
7 to pursue. Once we get to the happy place of having
8 figured out what those algorithms are then the work
9 continues.

10 COMMISSIONER DOUGLAS: Thanks, Bill.

11 We have a question on the WebEx from Peter
12 Weiner, and we've got a couple of questions in the room.
13 So, let me go to Peter and then we'll go to Johanna.

14 MR. WEINER: Hi, can you hear me?

15 COMMISSIONER DOUGLAS: Yes, we can, Peter.

16 MR. WEINER: Oh, thanks Karen. Thank you very
17 much; this has been a wonderful presentation. I'm very
18 sorry I couldn't be there today. I would have liked to
19 have been.

20 And I very much appreciate Steve's distinction
21 between conservation land durability and mitigation
22 durability.

23 And for the most part I think my question is not
24 terribly relevant to a lot of the things we're talking
25 about, but I guess my question has to do when we say

1 full mitigated, to me, there is language in the statute
2 about proportional in time to the impact. And many of
3 the impacts are perpetual or permanent.

4 But it does seem to me, in some of the
5 negotiations I've had with people in the community, for
6 example, that they wanted certain solar projects
7 returned to their natural state after 30 years, and they
8 didn't consider the impact permanent.

9 They saw that if they got the land back and
10 returned, for example, to agriculture or to mitigation
11 after that time that there wouldn't be a permanent
12 impact.

13 And so seeing it from that other side of the
14 picture made me realize that maybe all those impacts are
15 necessarily permanent.

16 We may want to do that for landscape planning
17 level purposes for the DRECP, but I'm just not sure it
18 applies across the board for all full mitigation.

19 And I just wondered, I assume, Steve, that you
20 have a different perspective on that.

21 MR. INGRAM: Yeah, to some degree. And again,
22 this might -- I think the answer to your question might
23 be more appropriately given by a biologist, than an
24 attorney.

25 But I think with -- depending on what types of

1 impacts you're talking about and how long-term the
2 impact is going to be there are some where the damage to
3 the habitat and the damage to the species, even if it's
4 not permanent in the sense of it's never going to come
5 back, ever, it may be a 30- or 40-year impact to a piece
6 of habitat. Especially when you're talking about what a
7 lot of renewable projects are doing which is leveling
8 the site completely and destroying every conceivable
9 habitat value there.

10 It takes a very, very long time to come back
11 from that, even if they're required to remove all the
12 equipment and restore any grading, and do everything
13 else, and try to make it look as much like it was when
14 they got there, it's a long time before it actually is
15 anything remotely close to a usable habitat again.

16 So, I think conceptually I think you're right,
17 you know, there is the possibility that some of these
18 things aren't truly permanent. But I guess we have to
19 have some type of impacts that are so severe that even
20 though they may not be permanent, they're the equivalent
21 of it for purposes of mitigation.

22 COMMISSIONER DOUGLAS: Steve, this is Karen, for
23 the benefit of Peter, who can't see me. I'm just going
24 to follow up because I thought Peter raised a kind of
25 interesting issue.

1 It does seem that there is a spectrum, with one
2 end of it being projects coming in on land that has high
3 habitat value and essentially eliminating that habitat
4 value due to leveling and, grading, and changing
5 completely the hydrology of that particular area, and
6 completely impacting the habitat value of the site.

7 And you can see that as a completely perpetual
8 impact. I mean, you know, at least in the time frame
9 that people tend to think in.

10 And at another level I think Peter's example was
11 the temporary version of land from an agricultural use,
12 in which case it might already have been leveled, and
13 might already be supporting, say, agricultural depended
14 species, but not supporting some of the native desert
15 species.

16 And in that case restoration of the land to an
17 agricultural use in 30 years, you know, I don't know if
18 there is a permanent impact in there. That is a
19 biologist's question. But there's certainly a real
20 prospect of returning the land to the state it was in
21 when the project was proposed.

22 MR. INGRAM: Yeah, and I think depending on the
23 type of impact we're talking about, yes, I think that
24 is -- that could very well be the case.

25 There also is a distinction to draw in the

1 permanence of the impacts between construction and
2 operation of facilities.

3 Because, for example, if you're building a wind
4 facility the construction impacts may be permanent, or
5 nearly permanent in the same way they would be with a
6 lot of other facilities.

7 The operation impacts to avian species and bats
8 may be very -- you know, that may be something where
9 once they stop operation you do have a radically
10 different situation, you can get back to something
11 closer.

12 So, I think there are those distinctions to
13 draw. But as a general rule of thumb I think most of
14 these impacts we're talking about are permanent or so
15 close to it that --

16 COMMISSIONER DOUGLAS: Thank you.

17 Oh, Kevin, do you want to add anything?

18 MR. HUNTING: Just agree with everything Steve
19 has said. We should make you a biologist and an
20 attorney. I think you're doing a good job on that
21 front.

22 And long ago I was a biologist, myself. You
23 know, this issue of recovery, I think the post-
24 construction bondings for a grade restoration and maybe
25 some veg restoration, but in a desert -- you know, we've

1 got direct experience in some restoration projects we've
2 done in the desert, 20 to 30 years for a full recovery
3 and regaining those habitat values.

4 So, we've wrestled with this question internally
5 a lot, what is permanent? What's the time length? How
6 do you define temporary impacts?

7 It's different in a riparian zone than it is in
8 the desert.

9 So, we're just going to have to take a close
10 look at that as we dig in a little farther.

11 And I think, Bill, you might have mentioned this
12 morning, I think I saw it in your talk, this idea of the
13 net average kind of ratio that we're kicking around
14 being reflective of the level of disturbance within
15 certain DFAs, or most of the DFAs. Is that accurate
16 or --

17 MR. CONDON: Yes, we talked a little bit about
18 that and I did some checking, the mitigation ratios that
19 play out in the various alternatives are, indeed, a
20 function of what habitat values would be affected
21 through development within the DFA areas.

22 And actually the range we found was -- I found
23 today, during lunch, among the alternatives was 1.4 to
24 1.9 mitigation ratio.

25 And those mitigation ratios are a function of

1 the extent to which high biological land, moderate
2 biological value land would be affected in the DFAs.
3 The larger the DFAs, it turns out, more likely, or more
4 high and moderate value areas could be affected through
5 development within the DFAs.

6 Hence, the 1.4 to 1.9 is basically a function of
7 those habitat values affected.

8 And, certainly, when we arrive at mitigation
9 ratios we do take into consideration what habitat values
10 are affected.

11 So that farm, agricultural land, abandoned ag
12 land, an example of a land type that we looked for when
13 designating DFA areas, would -- in the CESA world would
14 receive a lower mitigation ratio, obviously, than an
15 area of high biological value. So, there is that
16 commensurate consideration of habitat values being
17 affected to mitigation ratios.

18 COMMISSIONER DOUGLAS: Lisa?

19 MR. WEINER: If I could just follow up for one
20 second, Karen, is that okay?

21 COMMISSIONER DOUGLAS: Yeah, we'll go Peter and
22 then Lisa.

23 MR. WEINER: The only reason I raise this is
24 that first of all there are differences in technologies.
25 Some people don't grade at all, some people grade like a

1 factory floor.

2 There are impacts that differ by technology.
3 For example, PV versus thermal and thermal trough versus
4 thermal power, some are lighter in some ways than
5 others.

6 But the reason I would ask you to think about it
7 a little bit isn't because things shouldn't be durable,
8 and maybe for a long time, but a lot of BLM protections
9 can be for a long time, but may not be permanent.

10 And so as we look at what's a long time and is
11 that durable it seems to me we may not need the word
12 "perpetuity" in all cases if we think that it can be for
13 so long as is necessary, using a conservative hue of how
14 long it takes to restore things in the desert.

15 So, that was my intent. It wasn't to undermine
16 anything else.

17 Thank you, I'm done.

18 COMMISSIONER DOUGLAS: Thanks Peter.

19 MS. BELENKY: I just had a really quick question
20 for Bill and maybe for everyone in the DRECP to make
21 sure I'm understanding when you're saying the mitigation
22 ratio that would be under the NCCP -- I mean -- yeah,
23 under the NCCP, that would be in addition to whatever
24 mitigation was required, for example, if those lands
25 were public lands within a plan use planning area that

1 had a one-to-one mitigation ratio, or would these be
2 subsumed within that?

3 And this is something we've gone through with
4 some of these projects, whether it's nested or additive.
5 And so I just don't know which way you're counting it
6 and maybe you guys haven't really thought about that,
7 yet.

8 MR. CONDON: If I understand your comment, Lisa,
9 the mitigation would be applied to both -- as we
10 discussed this morning, to both public and private
11 lands.

12 The proportional contribution mitigation, as it
13 plays out in public land, would likely play out in areas
14 that are already designated for conservation, we would
15 think, such as ACECs and other areas that have a
16 conservation emphasis.

17 We have yet to get into that discussion but,
18 again, it gets back to what algorithm would be applied
19 to loss of habitat in terms of conservation
20 intervention, such as establishing and maintaining
21 fencing to benefit, for example, Desert Tortoise.

22 Really, part of the consideration, of course, is
23 to apply the mitigation where it's needed the most to
24 benefit the covered species. In some cases that may
25 occur in areas that are designated for conservation

1 already, so added -- I would say the short answer is
2 it's probably additional.

3 COMMISSIONER DOUGLAS: So, Bill, I'm not
4 entirely certain that you were responding to the
5 question that was asked.

6 But I'm going to play bad cop on managing the
7 agenda here because we're a little over time, so maybe
8 we can clarify with Lisa offline.

9 I think the question that you're asking, Lisa,
10 is, you know, is the CESA mitigation, or CEQA, or
11 federal ESA, or all of those together, or some component
12 of those. And I think that we should view those numbers
13 as illustrative but maybe, Bill, you can follow up with
14 Lisa, as well.

15 And I'm going to go to Johanna, who has her card
16 up, and then Arthur. But we're supposed to be done with
17 this topic at 2:00. Johanna's been waiting really
18 patiently.

19 Arthur Haubenstock has joined us. Thanks and
20 welcome, Arthur.

21 Go ahead, Johanna.

22 MS. WALD: Thank you, Karen. And this is
23 Johanna Wald of NRDC. And this fits in the category of
24 adding to David's excellent overview, if I may, and I
25 just wanted to point out to the people here and on the

1 phone, this goes to the question of whether there's a
2 question of durability that my colleagues, and I, in the
3 conservation community have come up with a definition,
4 if you will, of that term.

5 We have identified three fundamental concepts of
6 durability and they are, basically, durability as to
7 designation, which means that an executive branch agency
8 cannot undo the designation.

9 Durability as to management which to us means
10 that the land management agency has both the authority
11 and the responsibility to remove threats to and improve
12 the status quo for covered species in a particular area.

13 And the third would be durability as to funding
14 which means ongoing funding for the conservation
15 management that is required is assured.

16 We are talking today, obviously, about the first
17 item, but all three of these are related, depending how
18 deeply into the topic you go or how broadly you go.

19 But I offer that definition to the DRECP team
20 and to other people as one for consideration in this
21 process.

22 COMMISSIONER DOUGLAS: Thank you, Johanna. And
23 can I just clarify, when you offer that definition does
24 that go to durability of lands or actions that are
25 offered for mitigation or does that go to durability in

1 the broader sense of considering the reserve in the
2 NCCP/HCP?

3 MS. WALD: Well, it certainly goes to
4 mitigation. And I don't know if ideally is the right
5 word, but it ought to go to conservation, to the
6 conservation reserve, itself. If, you know, the word
7 "reserve" and design is to be operative and if the goal
8 of establishing such a reserve is to be achieved.

9 COMMISSIONER DOUGLAS: Okay, thank you.
10 Kevin?

11 MR. HUNTING: Thanks for offering the
12 definition, Johanna. And maybe, just if I'm reading
13 what you're saying correctly and just to follow up on
14 Karen's comment, I think we have durability. It's just
15 the -- it's the spectrum of the level of durability,
16 depending on the application in an NCCP, whether it's
17 reserved lands, connectivity, mitigation lands.

18 But there's some element of durability, at least
19 in the way we're thinking of it, in this DRECP, in each
20 of those. It just may not be the highest level of
21 durability.

22 But I think that definition does capture kind of
23 the key elements of what we would be looking at in
24 durability, regardless of how it might be applied at
25 different levels.

1 Does that make sense to you or --

2 COMMISSIONER DOUGLAS: Okay, thank you, Kevin.

3 So, we've got Arthur. And let me just ask
4 around the table, any other questions on this section of
5 the agenda? It doesn't look like it.

6 Okay, go ahead, Arthur.

7 MR. HAUBENSTOCK: So, first, let me apologize
8 for being so late. I had a previous commitment to be at
9 the ISO event across town. So, I'm delighted to be here
10 at long last. I'm sorry I missed out on so much of the
11 conservation and it seems like it's taken some very
12 interesting paths.

13 I did want to touch on the question of
14 durability and the relationship of that to bonding. And
15 our technology is one that has a relatively light impact
16 on the ground, at least as far as grading and de-
17 vegetation goes. We generally grade and change the
18 contours of the earth in a very limited way, about 15
19 percent of what our overall footprint is.

20 But we're still required to put up very
21 significant bonds to restore and re-vegetate after we
22 complete.

23 And so when we think about durability of impact
24 and we think about what's ultimately becoming of the
25 sites that we use, it seems like there should be some

1 consideration of that. Of, you know, what happens when
2 the site is restored or, if it's not going to be
3 restored, whether there perhaps should be a redirection.
4 Instead of having bonding requirements, having those
5 resources go towards conservation.

6 But to have both of them at the same time, it
7 seems like there's a conflict and that's a conflict we
8 should be addressing.

9 COMMISSIONER DOUGLAS: You know, I'm going to
10 attempt an answer to that and, if I get it wrong,
11 hopefully, some of my friends around the table can help
12 me with it.

13 But I think that I would suggest that there's a
14 lot that we need to learn about the long-term
15 effectiveness of either processes that say we will
16 partially impact a site, you know, vegetation might be
17 cut back but not removed, for example, and restore it
18 later, or attempt to restore the contours, and so on,
19 and re-vegetate.

20 And all of these things are valuable, but I
21 think we've just got a lot to learn before we're able to
22 affirmatively state that the area's going to be restored
23 to X percent of its former habitat value in a time
24 certain.

25 I might have understated that.

1 MR. HUNTING: No, I think that's all right.

2 That's a good observation, Arthur.

3 I know when I'm -- at least in my discussions
4 with Jim and as we've kind of wrestled with the
5 durability issue over the last year or so, I think of
6 durability in terms of the capability for the land to
7 sustain over time, that investment from mitigation for
8 CESA.

9 So, I don't think of it in terms of the actions
10 that generate the level of impact. So, some are --
11 there's a smaller impact footprint for some actions and
12 relative to others, in either case, of some level of
13 mitigation.

14 And I'm thinking of durability, at least in my
15 narrow world, of how it, as a property of that
16 investment on the landscape for mitigation, not what the
17 impact level that generated that mitigation.

18 So, I think you raise a good point, and this
19 follows up on what Karen said, there's different levels
20 of impact for different technologies. I think that's
21 accurate. We're learning more all the time about
22 wildlife uses and kind of ecological restoration from
23 renewable energy projects.

24 We're certainly not there on any one of those
25 fronts, yet. But I'm at least thinking of durability in

1 terms of that compensatory mitigation element on the
2 landscape, not the impact side.

3 MR. HAUBENSTOCK: May I suggest, just for a
4 second, that we do a thought experiment just to think
5 this through, because I recognize and I think that
6 Commissioner Douglas is absolutely correct, we don't
7 know what's going to happen in 50 years.

8 You know, these are areas that are going to be
9 used for energy generation. They're going to have human
10 presence. There are lots of things we're doing, for
11 example, to keep noxious weeds from coming in, but we
12 don't know for sure what's going to happen.

13 But let's say that we were able to restore the
14 land. That the bond did what it was supposed to do and
15 we were able to restore and vegetate the land, and
16 return it to the status quo before we entered into the
17 site. What would that mean for purposes of the
18 durability requirement for mitigation?

19 MR. HUNTING: That's a good question and we kind
20 of had that discussion a little bit earlier today. You
21 know, in a desert environment, when you have a 30-year
22 lease plus, you know, those kind of habitats, you're
23 talking 15, 20 years to really get those biological
24 back.

25 So, it's a 50 year loss of those values, permanent

1 loss. And that's a very good question. I don't have an
2 answer for you today.

3 It's a significant loss. For a lot of our
4 target species that's many, many generations of that
5 species, so it can affect recovery. It can affect
6 population viability. It has those kinds of fundamental
7 population effects on, you know, not just loss of
8 individuals.

9 So, you know, that's a factor in how we look at
10 the permanence or relative permanence.

11 We haven't defined with perpetuity means. And
12 then you throw climate change impacts and other highly
13 variable kinds of landscape into the mix and it's very
14 difficult to define that.

15 COMMISSIONER DOUGLAS: Thanks Arthur and Kevin;
16 that was a good discussion.

17 All right, so, at this point we're going to move
18 to Item 4.b, which we're going to kick that off -- oh,
19 and let me just thank David Lazerwitz for putting that
20 presentation together. It was really helpful and I
21 really appreciate it.

22 So, we are now moving, we are now opening Item
23 4.b, durability of conservation on BLM land, with a
24 joint presentation by Lisa Belenky, Johanna Wald, and
25 Arthur Haubenstock to set the stage, in the same way

1 that David set the stage for Item 4.a.

2 So, go ahead.

3 MS. WALD: This is Johanna Wald and I'm going to
4 start, I'm going to provide a little of the historical
5 context for the issue of durability on conservation, of
6 conservation on BLM lands.

7 As Kevin indicated just a few minutes ago, this
8 is not a new issue. It's a hot topic now because of the
9 DRECP and, specifically, because there's not enough
10 private land with high conservation value out there to
11 be acquired to offset the virtually permanent impacts of
12 the kind of development that we're talking about here.

13 As we heard earlier today, traditionally, the
14 Fish and Game Department has looked to acquisition as a
15 means of mitigating.

16 In the absence of sufficient private,
17 acquirable, appropriate lands, we now have to look
18 beyond private lands to the public lands, themselves, as
19 land, as habitat, but also to these other kinds of
20 measures that we've just touched on, briefly, already
21 today.

22 But in fact the issue, for people like me, and
23 Lisa, and my other conservation colleagues in the room
24 and on the phone, is even older than ten years, Kevin,
25 if you will.

1 And it's concern, it's based on a concern that
2 has grown out of our longstanding experience with the
3 Bureau, and as an example -- with the Bureau and what
4 appear to be conservation designations.

5 We have all experienced situations in which
6 lands are designated as areas of critical environmental
7 concern, a term and a concept, if you will, that appears
8 to suggest that the lands so designated are important
9 for conservation purposes and should be managed as such.

10 But all of us have experienced, on the ground,
11 ACECs that are being grazed, indeed over-grazed. ACECs
12 where off-road vehicle use is extraordinarily harmful to
13 the resources that those ACECs were designated in
14 recognition of, where there's transmission lines.
15 There's even ACECs in California which has a substation
16 within its boundaries, and the substation came after the
17 lands were designated.

18 Having or creating durable conservation
19 designations is a long-standing challenge for the
20 Bureau. It's a challenge that's rooted in its multiple
21 use management authority.

22 It's a challenge that grows out of its need to
23 balance multiple uses, to balance conservation with
24 exploitation, if you will.

25 It's a challenge that grows out of its interest

1 in maintaining the ability to respond to proposals by
2 all kinds of interests, be they developers or
3 conservationists, into the future.

4 And it's what makes this such a very hard
5 challenge for all of us.

6 Again, it's not a new challenge, but I would say
7 that at this point in time, if there were ever a time
8 when the Bureau, with the help of all of its
9 stakeholders, is actually going to solve this challenge,
10 if there were a time or a place this is it.

11 And I, for one, am very eager to give Jim some
12 more ideas of what he could do to rise to that
13 challenge.

14 Lisa.

15 MS. BELENKY: Okay. Well, thank you. I'm
16 trying to stick to this agenda item. We're all anxious
17 to get on to the tools, which is the next agenda item.
18 And I'd love to do that, but I was assigned to discuss
19 adaptive management and how it fits within this
20 framework of conservation planning.

21 And I, actually, I have looked at quite a few
22 things about this. But what I wanted to say initially
23 is the first step is to determine what your goals are in
24 your plan. And that is -- and in a conservation
25 management plan, really, your goals are going to have to

1 have something to do with conservation of the species.

2 And then it's only within that, after you've
3 already set your goals, that you may use adaptive
4 management as a tool to help you reach those goals.

5 And I think there has been confusion in the
6 past, partly because of the way the terms have been
7 misused, and also because we've seen some very poor
8 adaptive management strategies on various -- in various
9 times.

10 So it has, within the conservation community, a
11 very mixed reputation. I would say mostly a poor
12 reputation. But I don't think it's the fault,
13 necessarily, of adaptive management concepts.

14 But I think that so, first, you need your goal.
15 And then if the value of an action that you're going to
16 take for conservation, for example, because that's what
17 we're talking about, is certain, for example acquiring
18 very high quality habitat and putting it under a
19 conservation easement, you don't need adaptive
20 management, really, for that concept, for that piece of
21 what you're doing in your plan because you know that is
22 a specific kind of tool that works. We know that there
23 is a value to the species.

24 You may want to -- when you're managing those
25 lands there may be, at that second stage, an adaptive

1 management piece, but we know that that acquisition has
2 a certain value.

3 In this concept, especially within the DRECP,
4 the tool of adaptive management is going to be more
5 important where there are areas of uncertainty.

6 And I think that Bill Condon mentioned that this
7 morning, that that is really a reason that adaptive
8 management may actually rise higher in this case.

9 So, for example, we were talking about what are
10 the metrics or the algorithms, how are we going to value
11 some of these other tools. For example, tortoise
12 fencing, or perhaps retiring grazing, or other things,
13 how do we value them?

14 Well, we might say, oh, it's worth .5 and a
15 banker. And then we'll go, oh, wow, it really wasn't
16 worth that or maybe it was one more. You know, those
17 are the kinds of questions that we very well may need to
18 adapt going forward.

19 But what adaptive management is not, it is not a
20 trial and error process. It is a science-based process.
21 And people often believe that adaptive management will
22 be quicker and less costly.

23 But that is not usually the case. If it is done
24 correctly, the opposite is more likely true. It
25 requires an initial investment of time and effort, and

1 it requires a long-term investment for monitoring, and
2 monitoring for both status of species and trends.

3 In order to show where are we with the species
4 we need to do it over a time frame that is meaningful
5 for each of those species and their lifecycles.

6 And so, therefore, it is not sort of a magic
7 bullet to, oh, we'll just fix it later, which is sort of
8 the reputation it's gotten over the years. And that is
9 not the kind of adaptive management that I think any of
10 us, who have been working on the DRECP, would expect or
11 want to see here. It really is something that is
12 extremely rigorous and requires this ongoing monitoring,
13 collection of data, and then assessment of that data.

14 So, given that, I mean I think it is a very
15 important and strong concept. And I can tell you pretty
16 much all of the conceptual background for that is in the
17 Department of Interior handbook on adaptive management.
18 I mean there's some very good language on adaptive
19 management out there.

20 I think, for at least those of us in the
21 conservation community, we have been disappointed in how
22 it's been used in the past, but we still think that
23 there's a lot of hope for this concept.

24 COMMISSIONER DOUGLAS: Thank you, Lisa.

25 Arthur?

1 MR. HAUBENSTOCK: Thanks again. So, the
2 developer interest in durable mitigation on federal land
3 is really threefold.

4 You know, first of all, developers are under
5 great pressure to make the most efficient use of their
6 dollars that they possibly can. You know, especially in
7 this age when we have tremendous price pressure for
8 natural gas and the glut of over-capacity of
9 manufacturing of a lot of renewable energy, we need to
10 make sure that every dollar really counts, and our
11 investors are looking for that.

12 And so we're looking to see, when it comes to
13 mitigation, how can we take those dollars and have the
14 best affect.

15 It's also because, as renewable energy
16 developers, we're also doing this for a greater cause.
17 This is not simply something that we're doing for
18 profit, this is something that we think is important to
19 fight the effects of climate change, to improve the
20 quality of our air, to reduce the dis-foliation that
21 results from exploration, and transportation, and
22 processing of fossil fuels.

23 There's always going to be, for the foreseeable
24 future, a good amount of that, anyway. And whatever we
25 can do to dent that is something that we want to do.

1 And so making sure that what we are doing on the
2 ground is something that we mitigate for and that our
3 mitigation is effective and cost effective is very
4 important.

5 And then we look at where the greatest needs for
6 species, and habitat, and corridors are. And we look at
7 some of the factors that Johanna just spoke very
8 eloquently about, which is we look at areas that have
9 been designated for protection, that have not actually
10 provided that level of protection.

11 You know, we look at areas that haven't been
12 protected and the multiple uses that those areas are put
13 to currently.

14 And we think about what happens as climate
15 change continues to occur. You know, how do we ensure
16 that those areas that are really most needed for
17 species, most needed for habitat, most needed for
18 corridors really are protected.

19 And so that we can have the world that we're all
20 fighting for but that, also, from a more dollars and
21 cents perspective that we have the areas that we can go
22 and continue to build our projects that are really less
23 valuable for the species, and their habitat, and their
24 corridor.

25 There's also tremendous concern about mitigation

1 on private land. We work very closely with counties and
2 with other entities that are interested in multiple uses
3 for private land, and we have been told very clearly
4 that there's concern that many of the counties, and
5 others have, that private land that they would like to
6 see used for other purposes and develop an income stream
7 for them, through tax base, would be taken off of the
8 books either because we're using the projects,
9 ourselves -- we're using the lands for projects,
10 ourselves, or because those lands are being taken out
11 for mitigation.

12 There are lots of places where that's really
13 important to do. There are areas that are on private
14 land that are critically important for species, and
15 habitat, and corridors and those lands should continue
16 to be acquired for mitigation.

17 But given the choice between lands that are more
18 valuable for species, that happen to be on federal land,
19 and land that is less valuable but happens to be on
20 private land, we should be prioritizing the land that
21 has the most value to the species, itself.

22 And, lastly, the durability aspect of this, you
23 know, because we won't get to any of this unless we can
24 satisfy the requirements of California law and the
25 requirements for durability.

1 But we also need durability. And we need
2 durability because we can't take surprises. You know,
3 when we go out for project financing, and these projects
4 are very expensive, our investors need to know that
5 there won't be any shocks to the system, there isn't
6 going to be something that's going to cause us to shut
7 down and there isn't going to be any major expenditure
8 that wasn't considered when we went out for financing.

9 And that is true whether the financier is the
10 Department of Energy or it's a private financier. These
11 days private financing is really the only option and
12 they're very, very conservative.

13 So, they want to make sure that if we're going
14 out and we are required to do something that we will do
15 it, and it will cost what we say it's going to cost.

16 If we have mitigation on federal lands that is
17 not durable, or other mitigation that's not durable, and
18 there's a potential for reopening and coming back to us,
19 and asking us for more money, that's something that our
20 financiers simply will not put up with. We will not
21 have our projects.

22 So, for all these reasons, because it's the
23 right thing to do, because it's what we need to do,
24 because it's the most cost effective thing to do,
25 because it's going to create a better benefit for all of

1 us, we think that durable mitigation on federal lands is
2 a critically important part of renewable energy in
3 California.

4 COMMISSIONER DOUGLAS: Thank you, Arthur, and
5 Lisa, and Johanna. All of that was really helpful.

6 Let me ask now are there any questions or
7 comments based on those presentations? Jim?

8 MR. KENNA: Yeah, I would just -- it would be
9 helpful to me to ask each of you to define protection.
10 I mean, we all use the word, but I'm not sure all three
11 of you said -- Johanna did, in the sense of the absence
12 of substation and power lines, so I did hear that.

13 But can you provide a definition? Is that the
14 absence of any other surface disturbing activity over
15 the entire designated area? What is it that you are
16 looking for?

17 MR. HAUBENSTOCK: Jim, I think that's a great
18 question. And I think it's a very hard one to answer.
19 And to me it really depends on the resource that you're
20 trying to protect.

21 You know, I recall all the fights over off-road
22 bicycling and whether that was a use that was consistent
23 with certain resources that were being impacted by it.

24 It seems to me that you have a very important,
25 multiple-use directive that you have to deploy and

1 implement. And there are uses that are undoubtedly
2 compatible with protection of certain resources and
3 others that are not compatible, and it really depends on
4 the resource that is to be protected.

5 MS. BELENKY: Well, I'll just say that I think
6 it's a -- unfortunately, or fortunately, a biologist
7 question. I think that some of the issues Johanna
8 raised mentioned things like off-road vehicles, et
9 cetera, and you, yourself, had mentioned the disturbance
10 cap.

11 I think for those two, for example, it may
12 depend on the intensity of the use and the
13 fragmentation. So, a one percent disturbance cap if
14 it's, you know, linear features throughout an area could
15 be completely fragmented and the value for certain
16 species may be completely lost or very, very undercut,
17 very much undercut.

18 Whereas if that disturbance is in one corner,
19 maybe that's different.

20 For off-road vehicles I think it's the same.
21 We've talked in the past about density of off-road
22 vehicle routes, for example.

23 And then, again, although this is something
24 we'll come to in the next stage, the enforcement piece
25 of it. So that simply by having legal areas that are

1 lawful for off-road vehicles often brings in people who
2 then do unlawful things and tear up habitat, and so how
3 do we address that? And that's always been difficult
4 because, of course, the Bureau isn't responsible for
5 that happening and yet they -- sometimes things are put
6 in such a way that they create the opportunity for those
7 activities.

8 So, I would say those are some of the types of
9 issues. And I think what Arthur said is right, it's
10 going to depend on the habitat and all the activities in
11 the area.

12 MR. KENNA: That's very helpful, thank you.

13 COMMISSIONER DOUGLAS: So, I saw Kevin reaching
14 for his microphone as well.

15 I was interpreting what you said as the absence
16 of disruption that undermines the conservation purpose
17 of the ACEC. I don't know how close I got as I tried to
18 translate.

19 MS. WALD: That's another way to say what both
20 Arthur and Lisa have said. And another way -- well, the
21 way we originally started thinking about this was by
22 actually trying to identify all of the potential threats
23 to unique and sensitive resources in the desert, and
24 then figuring out how you would create a way to protect
25 the resources from those threats.

1 But, you know, it's species and site specific.

2 COMMISSIONER DOUGLAS: Okay.

3 MR. HUNTING: Yeah, so I guess I would just
4 submit in its simplest terms at some point there's an
5 assessment of what values are lost as a result of a
6 given impact. An assessment of what values should be in
7 place to offset that loss. And over time those values
8 should have to be retained in the landscape. In its
9 simplest terms, that's it.

10 So, some activities probably wouldn't degrade
11 those values or affect them. Some would. But, you
12 know, it is species-specific.

13 But what it comes down to, from our perspective,
14 from an NCCP or CESA permitting perspective, it's the
15 biological values on the landscape and retaining those.

16 COMMISSIONER DOUGLAS: Uh-hum. Thank you,
17 Kevin.

18 I don't see any other hands coming up or cards
19 coming up, and it's time for our break.

20 So, we will take a break now and reconvene in 15
21 minutes which, by my Blackberry it's 2:37 right now, so
22 say 2:40.

23 So, let's reconvene, let's try to get started
24 before 3:00 o'clock. Let's try to get started -- you
25 know, if people can come back about five minutes before

1 3:00 o'clock, thank you.

2 (Off the record at 2:38 p.m.)

3 (Resumed at 3:01 p.m.)

4 MS. CHEW: Hi, this is Kristy Chew. I just
5 wanted to let you know that there are additional
6 handouts from Bill Condon's presentation from this
7 morning. They're on the back table. If you would like
8 a copy, you can pick one up.

9 COMMISSIONER DOUGLAS: All right, I think we
10 have just about critical mass.

11 I'm going to have Jim Kenna start talking and
12 that will get us going. Jim.

13 All right, David. David Lazerwitz, thank you.

14 Let's see, who else do we need? Johanna, Wendy.
15 I think we're -- Ed Sauls. Is Ed outside? Oh, you're
16 right there, I'm sorry. I slandered you already.

17 Okay, we've got Steve Ingram.

18 All right, we have critical mass to begin. So,
19 the next session of the agenda is where we really get
20 into nuts and bolts in terms of approaches to achieving
21 durability in the Desert Renewable Energy Conservation
22 Plan and specific actions and tools that can be used to
23 achieve durability for the plan.

24 So, we are going to begin this section of the
25 agenda with a brief introduction by Jim Kenna and Kevin

1 Hunting that will help frame kind of the high level
2 approach. And then we will turn this back to Johanna
3 and Lisa to introduce some ideas for actions and tools
4 that may be used.

5 So go ahead Jim and Kevin.

6 MR. KENNA: Okay. I don't know, there's always
7 a logic to Kevin. He always lets me go first so he can
8 correct anything I get wrong.

9 MR. HUNTING: The last word kind of guy.

10 MR. KENNA: So, let me try and come back to, and
11 part of this I did when I first got here, at the request
12 of a number of folks do a piece of this early.

13 But I want to come back to that I think there
14 are two levels of things to think about here related to
15 durability. And I think it's helpful, certainly for my
16 purposes of listening, if people are clear about which
17 area they're talking about.

18 One is in the reserve design that is affiliated
19 with the plan. And I've tried to talk about some
20 examples of how we might think about that in different
21 ways, how we might mix different kinds of designations,
22 as Johanna talked about, in different ways across the
23 landscape and how that could be tied to different
24 things.

25 There could be and probably will need to be,

1 under the implementation of the Omnibus Public Lands
2 Management Act, some tie to intrinsic values that are
3 cited in that Act in terms of identification of what the
4 conservation land footprint is.

5 But there also is the opportunity to make some
6 of that reserve design responsive to different things
7 going on in the various alternatives in terms of the
8 DFAs, or the designated areas for development.

9 So, there is that part of what we do that is the
10 designation piece. And inside, certainly, any
11 designation, particularly with ACECs, you create some
12 sort of a management framework that is a rule set.

13 And then the example I gave earlier was you may
14 have a threshold where you say given the species that
15 we're working with you could carefully allocate one
16 percent disturbance within this area and still be okay,
17 as long as you didn't do this, this, and this.

18 So, it's possible to create rule sets that are
19 specific to achieving the conservation goals that are
20 identified within an ACEC area, in particular.

21 And LCS designations, as I mentioned before, are
22 really keyed off of the conservation values that are
23 identified for those conservation units.

24 In the example of wilderness areas it is
25 naturalness, primitive, and unconfined recreation and

1 solitude.

2 And other units, like national conservation
3 areas or national monument areas, they're usually
4 generally called out either in the law or in the
5 proclamation.

6 So, we will be doing that kind of definitional
7 work for the NLCS areas inside the various footprints
8 that are tied to each of the alternatives.

9 So, that's that reserve design plan level kind
10 of thought process, at least in terms of the land use
11 plan.

12 There is also another piece that has to do with
13 what do you do with mitigation and project level things,
14 and how does that plug into what you've created as a
15 plan design?

16 So, we will also need to define that. And there
17 are different ways of talking about that, as well. And
18 generally they're going to be -- I thought Kevin's
19 discussion earlier about various taxa are going to drive
20 some of that, that you have certain areas where you need
21 certain kinds of connectivity, or certain habitat
22 structural features, or some sort of a conservation
23 principle is involved that will directly relate to the
24 site where the project is proposed.

25 And then you are trying to ensure that that

1 conservation feature continues on the landscape. So,
2 how do you do that and where do you do that?

3 So, those two levels are areas where I'm hoping
4 to hear ideas on either level but, hopefully, clearly
5 defined.

6 Kevin.

7 MR. HUNTING: Yeah, thanks Jim. I'll be brief
8 because I want to get right into the discussion of
9 tools. I think that's why we're all here.

10 Just a couple of comments, what Jim and I have
11 kind of agreed to as a first step in providing some
12 conservation increment on the landscape for purposes of
13 NCCP is what he's mentioned already. The LUPA will
14 create new ACECs in many areas. I assume there will be
15 an NLCS designation over the top of those.

16 And then we've talked about a cooperative
17 agreement, either a global agreement between the
18 Department, as the issuer of the NCCP, or maybe a DFA
19 level or some other kind of ACEC specific, or some other
20 type of cooperative agreement, we have cooperative
21 agreements with BLM right now, that would further refine
22 that conservation increment gained from the ACEC and the
23 NLCS system.

24 And from the Department's stand point, if we --
25 and we're down to really just crossing the T's and

1 dotting the I's on this agreement, I think we can get
2 there for connectivity, for the extra conservation
3 increment in many areas of the landscape for NCCP
4 purposes and DRECP purposes. That doesn't get us
5 through project mitigation.

6 And that is going to be a site-specific
7 proposition. Under NCCP, the mechanism by which we
8 would -- by which an applicant or a developer would
9 affect that project level mitigation has to be defined.
10 We can't define that later, the mechanism for achieving
11 that level of retained CESA investments on the landscape
12 has to be done now, as part of the NCCP, not deferred
13 until a later time.

14 So that's really what I hope we can focus on is,
15 is there a way, given BLM's valid multiple use mandate,
16 but also equally valid CESA perpetual and kind of high-
17 standard-fully-mitigate bar, is there a way to make
18 those two work on the ground, so that we can get there
19 with project level mitigation.

20 COMMISSIONER DOUGLAS: Thank you, Kevin and Jim.

21 So, with that we'll go to Johanna and Lisa.

22 MS. BELENKY: Yes, Johanna asked me to start.

23 And so I think I just want to process this by saying
24 what I think we want to talk about now is exactly where
25 Kevin ended, which is the mitigation portion of the

1 requirements.

2 And going back to the beginning of the day,
3 where Bill Condon was discussing sort of a mitigation
4 proportion, or a portion that would be on the BLM
5 land -- or it seems like it would be sort of attributed
6 to BLM, at 53,000 acres, and then the 200,000 acres of
7 private land.

8 I'd have to say, from the environmental
9 community's point of view and from the research we've
10 done, we do not think that there is 200,000 acres of
11 private land that's appropriate to mitigate the impact.

12 And so we really believe that a larger
13 percentage of this is going to have to be done through
14 some set of mechanisms to utilize public lands, increase
15 conservation values there, make them durable in order to
16 meet what we would have to meet for this level of
17 development. And that's really where we started putting
18 this together.

19 So, given that and the fact that we don't yet
20 have metrics on how to do that, like how much fencing,
21 for example, and fencing being something people have
22 talked about, we have tried to put together at least
23 looking at, and these are really a brainstorming level,
24 but looking at other mechanisms that could be used.
25 That could be either the state or the federal government

1 could do.

2 Some things that happen on public lands the
3 federal government is completely in control of. Other
4 things, the state actually does have a role to play.

5 So, for example, hunting and fishing, fishing
6 not being a big issue in the desert for the most part,
7 but hunting is actually a very big issue and there are
8 effects to other species than the ones who are the
9 targets of the hunting.

10 Especially from target shooting, for example, on
11 public lands has led to -- there have been documented
12 deaths, for example, of tortoise.

13 There's also the issue of lead ammunition across
14 the landscape harming multiple species.

15 So, that is the kind of thing that the state can
16 actually control, that we could have some sort of state
17 legislation. We already have state legislation that
18 limits the use of certain kinds of lead ammunition
19 within condor habitat. Some sort of similar mechanism
20 could possibly be used on some of these desert lands.
21 That might add a measure of conservation.

22 How much we would have to all debate and I think
23 the scientists would have to debate.

24 So, that's one kind of creative idea for how
25 could the state help?

1 And before I move on to the federal I just
2 wanted to say I think one of the other ideas on state,
3 for off-road vehicle use, which is it's not just the use
4 of vehicles but, really, lawful use of the vehicles.
5 And, really, is there a way that we can increase
6 enforcement and management to sort of change the way
7 off-road vehicles are controlled on our public lands.

8 And, again, the state does have a role to play;
9 the state licenses the vehicles. Currently, the
10 vehicles, I don't know if anyone's ever seen them, they
11 have a very, very small green sticker that you cannot
12 read from any distance.

13 So that if an officer sees someone doing
14 something they shouldn't be doing, they can't even --
15 you know, not like when you run the red light and they
16 take the picture of your license plate, you can't do
17 that because you can't actually see the sticker. So,
18 there's no way to identify that person at a later time.

19 A lot of off-road vehicles, these green sticker
20 vehicles that are not for use on the regular highways,
21 there's no licensing requirement so people who do not
22 have a California driver's license can drive them. And
23 children can drive them, who are too young to have
24 driver's licenses.

25 If you are caught doing something unlawful on an

1 off-road vehicle on the public lands, that has not
2 effect on your driver's license. For example, you might
3 get a \$50 fine, but you would not get any points on your
4 driver's license.

5 Those are the kinds of things the state could
6 change. The state could make a law that said, actually,
7 that is going to count on your driver's license. Or if
8 you're 16, you're going to have to wait an extra year to
9 get your driver's license if you're caught doing
10 something unlawful on an off-road vehicle.

11 Those are just some sort of creative ideas we've
12 thought through and there may be others. Because the
13 state also is, and this is a little bit geeky, legal
14 thing, but the state actually sort of owns the wildlife.
15 The federal government owns the land, but in some sense
16 the states really do control the wildlife. So, there
17 may be other things that the state could do to help
18 protect these wildlife. And fishing being one of them,
19 but we're not really dealing with fishing, but there may
20 be other creative ideas.

21 So, I just wanted to put those up front so it's
22 not all on the feds and then go through a few ideas. I
23 think we have talked about the basic plan idea, the
24 planning of off-road vehicle routes. That's a planning
25 that BLM already does and could be limited in various

1 ways. Or the disturbance thresholds that BLM has
2 mentioned.

3 There's also, under FLPMA, there's a whole set
4 of withdrawal -- there's ways to withdraw various lands
5 from the multiple uses. So, you can withdraw one use,
6 for example, mining is the one that's been most commonly
7 done. But, actually, the way the statute reads any of
8 the number of multiple uses could be withdrawn.

9 So, it's a little bit of a process, there's a
10 sort of a pre-withdrawal process and then a 20-year
11 period during which the withdrawals would be in effect.

12 You know, these are things that need to be
13 explored in depth. There may be pros and cons for each
14 of them, but they are important.

15 Grazing is another issue where we did get
16 legislation that now helps us if we -- if there are
17 willing sellers and people go into acquiring those
18 grazing rights then those areas, the forage could be
19 allocated towards mitigation and for wildlife.

20 We also went through and tried to look at all
21 the other statutes we could find that affect the public
22 lands. And, you know, we have come up with -- we have
23 all sorts of charts, some of you may have seen them,
24 they're very much draft.

25 But one of the other ideas was using the right-

1 of-way procedure, which now is used for the development,
2 actually, but also using it for a sort of conservation
3 easement. It would be a novel use, but we don't think
4 that it would be -- we think it may be possible.

5 There is a lot of discussion, for example, on
6 the Fish and Wildlife website, about conservation
7 banking, which notes that it may be possible on public
8 land, but also notes that it needs to be permanent.
9 Which kind of -- then we're back on the FLPMA problem of
10 permanency.

11 I think, and then we also looked at this
12 Recreation and Public Purposes Act, which usually has
13 been used on a smaller time -- a smaller frame for
14 public parks for counties or cities, also has been used
15 for waste dumps and landfills. And those kinds of
16 leases, they are usually automatically renewed, rather
17 than having to go through a whole new renewal process.

18 So, as a creative idea, maybe there's a way to
19 use those.

20 I don't want to take too much time because we
21 really want to have the discussion, but those are some
22 of the ideas.

23 MS. WALD: And this is Johanna Wald. I'd just
24 like to add to what Lisa has said. I want to back up,
25 actually, and address the question of durability. I

1 think we need to have a definition of durability because
2 I'd like to take issue with people who suggested that
3 there's sort of a spectrum of durability and say that I
4 don't agree. That something is either durable or it's
5 not.

6 Durable doesn't necessarily mean perpetual. But
7 durable to me, at least, conveys some definite time
8 period.

9 And I just want to point out that several of the
10 options that Lisa mentioned, that we have identified,
11 have the advantage of a specific term. They're
12 different from a land use plan amendment, for example,
13 which doesn't have any particular life span, and as I
14 sometimes say could be changed after 20 minutes.

15 But the grazing retirement that Lisa referred to
16 is, in fact, perpetual. The Bureau has the authority to
17 close forever public lands to livestock grazing, which
18 is in fact having adverse impacts on a number of species
19 that inhabit the desert.

20 The withdrawals have a 20-year term and we think
21 that you could condition those withdrawals, these are
22 the 5,000 acre and under withdrawals, in such a way that
23 they would be virtually perpetual, so that it has a life
24 span.

25 the right-of-way idea, whether it's a right of

1 way for a migratory species, or a right of way for
2 conservation which actually might need a little, teeny
3 legislative fix to make it happen, that has a term.
4 It's 30 years.

5 The Recreation and Public Purposes Act leases
6 are for 25 years. This is durable. It might not be
7 durable enough given the statutory framework that we're
8 operating under, but it is durable as opposed to not
9 durable, in my view, un-durable -- de-durable.

10 (Laughter)

11 MS. WALD: I mean but that is, that's the
12 advantage of the tools that we have -- oh, sorry.
13 That's the advantage of the tools that we have come up
14 with, with many of them, is that they do have a lifespan
15 and they do provide some measure of certainty, which is
16 another term that we see in the statute.

17 COMMISSIONER DOUGLAS: Thank you. So that's --
18 is that the presentation? So, we'll go on now to
19 questions and discussion. Thank you. Well, thank you
20 for doing that, I know you've put a lot of work into
21 pulling the research together for that.

22 And so at this point we're moving on to a
23 discussion of the specific tools and mechanisms, both
24 the ones suggested and potential new ones.

25 Joe Sax?

1 MR. SAX: I want to thank you for inviting me to
2 come here. I think, I guess I'm the only outsider, who
3 hasn't had any involvement in this whatever. And for
4 whatever value it has to hear the views of an outsider,
5 I have had some experience dealing with land use issues,
6 including endangered species issues, and the early
7 development of the HCP plans, and so forth.

8 It seems to me, and this is in response in part
9 to some of the things Johanna was saying, I think some
10 of the terms, including durability, are hard to get a
11 hold of, to say nothing of terms like perpetuity, which
12 is even worse in that respect.

13 It seems to me, I've been trying to think about
14 this in terms of a sort of a practical way of grasping
15 it, without having to get to the effort of giving
16 definitions to these very difficult terms.

17 But it seems to me the problem in part is that
18 on the one side you have the need and the desire to put
19 together a plan that has some very specific kinds of
20 conversation restrictions or protections in it.

21 And in order to meet the needs of the various
22 statutes, whether it's the ESA, or the California ESA,
23 or the NCCP statute the duration, let's say, of some of
24 those things doesn't fit together very neatly with some
25 of the grand use management statutes, like FLPMA, that

1 you have to work with.

2 And it seems to me the question is whether there
3 is some sort of creative, but not radical, way of
4 putting those two things together.

5 And it seems to me that one possibility, and I'm
6 sure you've thought of this in various ways and you were
7 just talking about using agreements, that the ability to
8 use agreements gives you an enormous amount of
9 flexibility, and you can craft agreements in ways to do
10 just about anything that you want and still stay within
11 the confines of the statutes that you have to work with.

12 For example, one could put into -- using any one
13 of the devices that are available, for example to the
14 BLM, some of which Johanna mentioned, you could put into
15 effect one of those categories, with whatever specific
16 protections were needed or required under, for example,
17 the endangered species laws, and then have provisions.
18 I mean have the BLM sign on to whatever agreement you
19 have, along with the Department of Fish and Game, and
20 the other parties, so that if as to any of those
21 protections a change was proposed, that you would then
22 invoke something that looked like a kind of consultation
23 process to assure that the change that was being
24 proposed, whether it was just an expiration in time, or
25 some other proposal for an additional or new use didn't

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1 interfere with the protections that you have agreed on
2 are required to have in order to meet the standards that
3 you were trying to get to when you put the plan together
4 in the first place.

5 And I don't mean a consultation, necessarily, in
6 the formal sense of the ESA, but I mean you could build
7 a consultation process of any kind that you wanted. I
8 mean you could use arbitration kind of techniques,
9 bringing in people that -- you could bring in outsiders.

10 I mean I worked recently at a job for the State
11 Department, in the California desert area, on the Glamis
12 Gold case, which was under NAFTA went to an arbitration
13 panel for a decision. I mean that's just one.

14 The more general point I'd like to make is it
15 seems to me there are -- there's a lot of flexibility
16 out there that allows you, in effect, to fashion the
17 kind of structure you want that's bounded by the thing
18 you all want, which is to make sure that the permissions
19 that you've given, with certain constraints that make
20 those permissions valid, aren't violated, so that things
21 don't just fall apart.

22 So, it seems to me rather than starting by
23 looking at what is this statutory provision, seeing what
24 does that statutory provision say that you might be
25 able, basically, to sort of fashion whatever you want

1 and put it into, I would think, a kind of memorandum of
2 agreement type format.

3 And then just to make sure that the goals that
4 you had already agreed on were being protected as time
5 went on and then you wouldn't have to worry about
6 whether you were under, you know, a ten-year provision
7 that was ten -- if it was ten years, you know, for the
8 particular, or 20 years, or whatever, or five years, for
9 whatever format you had, if that expired, that would
10 then open up the consultation type provision.

11 It's just a thought of sort of a general way of
12 going about doing what you want to do, which is sort
13 getting to -- it's a kind of getting to a yes type of
14 approach.

15 The question is how can you do what everybody
16 really wants to do? It seems to me the attractive thing
17 about this setting, as opposed to most of the
18 controversies I've been involved in, usually one of the
19 parties doesn't want anything to happen.

20 (Laughter)

21 MR. SAX: So, but that's not where you are. So,
22 I mean in a sense that's good. You all want something
23 to happen. You've got some format that gives you
24 constraints that you have to meet, so once you can agree
25 on what those are, and I'm not suggesting they're not

1 very difficult, I'm sure it's very difficult to get to
2 the specifics. But once you get there, then the
3 question of how to hold the thing together seems to me
4 to be manageable, if you're willing to be sort of
5 imaginative, rather than saying, well, we've always done
6 it this.

7 I mean it's X kind of a problem, we have an X
8 type problem, we do Z. I mean, you know, if you think
9 about it that way, then you sort of put yourself in
10 shackles.

11 Whereas it would seem to me the challenge is to
12 unshackle yourself and still get done what everybody
13 basically wants to do.

14 COMMISSIONER DOUGLAS: Well, thank you. That's
15 a really interesting comment and suggestion; any takers
16 on responding to that or adding to it? Jim?

17 MR. KENNA: Well, no, I think it's explanatory
18 on its place. And I think Kevin articulated a very
19 similar concept earlier in the session. And I think
20 that is ground that we will continue to talk about.

21 COMMISSIONER DOUGLAS: Thank you. Arthur?

22 MR. HAUBENSTOCK: I don't want to revisit ground
23 that may have been talked about earlier, but I'm just
24 wondering what kinds of vehicles those kinds of
25 agreements could be espoused in?

1 And it occurs to me that one of the vehicles
2 that Lisa Belenky mentioned earlier, was the potential
3 of having a right of way that would be a conservation
4 right of way.

5 And a conservation right of way could
6 potentially include these kinds of agreements in it.
7 And I guess the question would be, for the Department of
8 Fish and Game, is whether a conservation easement that
9 took the form of a right of way that had these kinds of
10 agreements embedded in them would be sufficient to
11 answer the question that you opened us up with. Which
12 is, you know, how do we get to the point where you have
13 something you can look at and say that this meets the
14 mitigation requirements for specific projects?

15 MR. HUNTING: I'll start and Steven, you can
16 jump in when I get in trouble.

17 Certainly, a conservation easement does it. I
18 don't know that that's really available in this case on
19 public lands.

20 Right of way, I think under certain
21 circumstances that would work. We've talked about
22 linear right-of-way features for Desert Tortoise
23 fencing, having either recurring or permanent right of
24 way in favor of the Department to make those work in
25 perpetuity, or long enough for -- certainly, through

1 plan development and implementation of the plan.

2 So that's, you know, that's one area we did make
3 some progress on.

4 As far as using a right-of-way mechanism for
5 open land, just chunks of land, we haven't been able to
6 make that kind of agreement.

7 I don't know of BLM wants to say anything about
8 that, but I'm not sure that is a tool that is available
9 to us.

10 I think if we did have a right of way and we had
11 some kind of agreement, I'd say -- I'd stop short of
12 consultation, but certainly a right to have discussions
13 if there was a change in it, or if at the time it was
14 expiring and due for renewal, that gets us close. We'd
15 have to look at the terms of that, but that's certainly
16 a lot closer than -- not as much as an easement, but
17 certainly a lot closer than just a land use designation
18 that can be administratively changed.

19 MR. INGRAM: Just to add the -- just to take a
20 step back for a second. I think most of the mitigation
21 that we're talking about doing on BLM land, we're also
22 talking about siting within the ACEC/NLCS. So, you
23 know, it's a question of layering various protections to
24 get as far as we can.

25 So, if we actually have mitigation features of

1 some kind, if they are actually located within the
2 ACECs, within the NLCS lands that gives them a certain
3 level of protection right off the bat. Then you add to
4 that whatever tools you have.

5 And to go back to Professor Sax's comments about
6 agreements, we are working on kind of a broader
7 agreement, but one of the things that it specifically
8 contemplates is using a couple of tools BLM has as its
9 disposal, and being a state attorney, not a federal
10 attorney, I'm not going to go too far into it because I
11 don't want to say anything wrong.

12 But there's site agreements and cooperative
13 agreements for management, which are two, I think,
14 separate but similar tools that allow you to actually --
15 BLM to enter into agreements with state entities for
16 habitat management, among other things.

17 So, you know, if we have an area where we have
18 the broader ACEC/NLCS designations that give some
19 protection then we're looking at site-specific
20 mitigation.

21 If we have cooperative management agreements of
22 some kind that set forth certain rules about what could
23 happen in that specific area of the otherwise protected
24 land.

25 And then try to layer that with whatever we can,

1 whether it's a right of way, or the leases that Lisa and
2 Johanna brought up, and other tools, you know, it
3 starts -- it's just a question of trying to pile on as
4 much as we can and get us as far as we can towards
5 something that we can call durable.

6 MR. HAUBENSTOCK: I don't want to fight the
7 paradigm, but it strikes me that most robust agreements
8 are robust in part because they're simple.

9 And when we talk about layering on multiple
10 complexities that may work -- that may work for the
11 DRECP. You know, we're looking at a decision point and
12 some pieces that are going to be in place for a long
13 time, and not necessarily an ongoing additional
14 designation of land, although I think that there
15 probably should be some of that as the plan is deployed
16 over time.

17 But I just wonder why -- I see some of the
18 appeal of layering on multiple different pieces and
19 saying the constellation of all these different -- it
20 does remind one of property law and all of the bundles
21 of sticks that constitute fee interest.

22 But I do wonder whether we are creating problems
23 for ourselves and whether we might be better off trying
24 to take a look at some of the simple solutions and
25 trying to make that work.

1 Like, and I don't want to put anybody on the
2 spot, either, but when we first were moving forward with
3 one of our first projects, which will go unnamed, we
4 thought it would be a great idea to put in a right-of-
5 way easement for mitigation, for the land that Desert
6 Tortoise were going to be on, and we very quickly found
7 out that that was not an option at that time.

8 But it's never really been clear to me why
9 that's not an option. And it is something that could be
10 at least as durable as the project, itself, or the
11 DRECP, itself. And it could embed the kinds of
12 agreements that Professor Sax was talking about.

13 So, is there some possibility that we could have
14 a silver bullet?

15 MR. INGRAM: I'll respond just really quickly
16 and very briefly. But when you're talking about
17 millions of acres and dozens, or scores of different
18 species, and you're working with state and federal laws
19 and regulations of a whole variety, I'm not sure that we
20 get to the simple answer. At least without a
21 legislative fix that would, you know, come in and give
22 us a tool.

23 I'm not aware of any one tool that is currently
24 in existence that could actually do that. The closest
25 thing I can think of to a tool that would really

1 accomplish it by itself is the idea of withdrawals,
2 which I think gives a greater level of protection and a
3 much stronger form of durability in terms of the
4 duration and the difficulty of undoing it than some of
5 these other tools.

6 And that's -- I mean that's something for BLM
7 and their folks to address specifically how feasible
8 that is.

9 But I'm just not aware -- otherwise, I'm not
10 aware of anything that will get us where we need to go
11 that isn't complicated, though I would prefer the
12 simple.

13 MR. HAUBENSTOCK: Have you rolled out the
14 Antiquities Act?

15 MR. INGRAM: I'm sorry?

16 (Laughter)

17 MR. HAUBENSTOCK: Have you rolled out the
18 Antiquities Act? You were asking whether there was one
19 thing that could possibly set aside millions of acres or
20 at least describe what uses would be appropriate for
21 them.

22 MR. INGRAM: I don't think we've ruled anything
23 out.

24 COMMISSIONER DOUGLAS: I think that I'm going to
25 turn that question and any other response or comment at

1 this time over to Jim.

2 MR. KENNA: Yeah, well, you know, I'm going to
3 talk more globally. There are a couple of things that I
4 think are creative. The right-of-way concept would --
5 you know, for us flows from Title 5 of FLPMA.

6 So, what generally each of these is going to be
7 bounded by is whatever the legal context or requirement
8 is.

9 But I think these are all worth discussion and
10 investigation, remembering that we are talking about 20
11 million plus acres, of which half is about -- or about
12 half is BLM administered.

13 So, the same, and I think this is part of why is
14 this layering thing being talked about. As you look
15 across that landscape you're going to have different
16 situations, places where tortoise fencing, for example,
17 makes sense and places where it doesn't, or it already
18 exists and it doesn't give Kevin any increment of
19 conservation value.

20 So, our role here, from my stand point today is,
21 and I've taken the list that I've heard so far of
22 things, some of them are very much, I think, at the plan
23 design, reserve design kind of level, and others seem to
24 be very much more appropriate to the project mitigation
25 level.

1 So, I think that's why there are multiple tools
2 in the discussion here and I think, personally, that
3 that's appropriate.

4 COMMISSIONER DOUGLAS: Thank you. We've got
5 Wendy, and then Johanna, and then Ed Sauls.

6 MS. PULLING: Thank you; Wendy Pulling with the
7 Nature Conservancy.

8 Professor Sax, I was really interested in your
9 thinking on this and I wonder if I could ask you to take
10 it a little further. Because I imagine that some people
11 may have a reaction to the concept you articulated
12 around agreements as thinking, well, that doesn't sound
13 very permanent because, you know, a government agency
14 dealing with another government agency and an MOU, or a
15 contract, you know, maybe they can -- a new
16 administration, for example, comes in and decides, no,
17 we don't want to live under this, our predecessor's MOU.

18 So, I'm wondering if you have thoughts about how
19 to make an agreement or an MOU less vulnerable to the
20 sort of vagaries of time, if you will. Or another way
21 of saying that is how to make an agreement between
22 government agencies more lasting. I'm just curious
23 about your thoughts there because I can imagine that,
24 again, some folks may have a little push back to the
25 concept.

1 MR. SAX: Well, I think if you have -- I mean if
2 you have parties, including outside parties, who are
3 contracting with each other, I mean that's a fairly
4 powerful tool. It's not just a memorandum of
5 understanding that, you know, can be set aside.

6 And I guess what you want to do, you know, you
7 want to get something -- you want to get something in
8 place that has as much sort of status as possible so
9 that it isn't the kind of thing that any administration
10 would feel comfortable in just tossing aside.

11 I mean one doesn't want to take the position
12 that a determined enough administration could undermine
13 just about everything that it really wanted to
14 undermine.

15 (Laughter)

16 MR. SAX: But I mean what you want to do is you
17 want to find something that has the kind of dignity of
18 legal status and have parties to it, who are
19 stakeholders that represent the important interests, and
20 then build enough flexibility into it so that it
21 doesn't -- it isn't paralyzing. So that, you know, it
22 makes it hard, as hard as possible to deviate from the
23 standards that you had agreed on, but it gives you some
24 opportunity to take a look at these issues as they come
25 up, and with the hope that you have some relatively

1 disinterested decision maker.

2 I don't know that you can go much further than
3 that.

4 MS. PULLING: So, just to clarify, do you think
5 that in that concept it would be an MOU or a contract
6 between government agencies, as well as private parties
7 or interested stakeholders? Or in this case let's say
8 developers, whose projects are being permitted?

9 MR. SAX: Yeah.

10 MS. PULLING: So they would be parties to the
11 agreement?

12 MR. SAX: I would think so. I mean, obviously,
13 you know, I've only been thinking about this since 11:00
14 this morning.

15 (Laughter)

16 MR. SAX: So, you know, I don't have every
17 detail worked out.

18 MR. SAULS: Well, we'll give you another couple
19 of hours.

20 MS. PULLING: Doing pretty good, yeah.

21 MR. SAX: I'm just trying to throw, you know --

22 MR. LAZERWITZ: Well, and Professor Sax, you
23 steered away from it before, but the re-initiation
24 trigger I think is part of that hook.

25 MR. SAX: Yeah.

1 MR. LAZERWITZ: I mean if you're looking for,
2 you know, ultimately whether it's under state ESA or
3 federal ESA, you know, if you have an agreement that's
4 between the wildlife agencies and the management agency
5 then, you know, ultimately that's about, yeah, the take
6 authority and the jeopardy question.

7 And, you know, you're going to reinitiate
8 consultation. I mean that's sort of the hook, I guess,
9 if Wendy, what you're looking for is to keep people in
10 that agreement, you know, you're going to go beyond the
11 authorized take, right, and if you violate the
12 agreement, and we'll need to reinitiate consultation.

13 So, in a sense it would seem that would be a
14 sufficient hook or, you know, the hammer to keep the
15 management agency in the game and to keep to the
16 agreement.

17 Otherwise, it reopens whatever the authorized
18 activity is for which the take authorization was
19 provided. Just a thought.

20 COMMISSIONER DOUGLAS: Yeah, thanks. Thanks
21 David.

22 So, we'll go to Johanna and then Ed Sauls.

23 MS. WALD: Thank you; Johanna Wald of NRDC. I
24 need to say that I, too, am doubtful that there's a
25 silver bullet, Arthur, and that I do think we're going

1 to layer on additional tools to see how far we can get.

2 And I'm just wondering, Jim, if you could give
3 us some sense of what the additional tools that you all
4 have been thinking about up until this point -- I mean
5 we've heard about ACEC designation and the NLCS, but
6 what in addition to those, if any, have you all been
7 exploring with the Fish and Game Department, or
8 internally, if you can say?

9 MR. KENNA: Well, yeah, I think that there's two
10 ways I think I can answer the question. One is -- well,
11 let me start with the illustration that I talked about
12 earlier with the Coachella Valley plan. I think it is
13 an illustration of the concept that was just discussed
14 here.

15 In terms of the federal land side of it, it's
16 committed in section 7 with the Fish and Wildlife
17 Service. The federal side of the plan actually works
18 pretty well.

19 The participation of applicants on the private
20 side, including six cities, and Riverside County, and
21 CVAG, and their reliance, whether you consider it
22 baseline or you consider it something else, is for
23 different interpretations.

24 But for some species the conservation on the
25 federal land side is absolutely essential. If you take

1 out the federal land side it doesn't work. You can't do
2 it with just the private lands; it's not possible
3 because of where the species are.

4 So, I think there are examples of where that has
5 worked at least at this point for ten years. And as I
6 said, you can go to very specific places and you can see
7 those conservation designations in place.

8 So, I think there is a plan mechanism piece here
9 that Professor Sax lit on, that is already in place and
10 you can go look at it, and I think it is, at least for
11 the Coachella Valley, proven to be effective.

12 What we have also discussed in terms of plan
13 level is the agreement structure that Kevin talked
14 about, so that we use the agreement mechanisms that we
15 have with the state to commit on a cooperative level.

16 But what I would emphasize here is that, you
17 know, those two things aren't mutually exclusive or they
18 don't have to be. That in the construct of doing this
19 plan we're going to do all of this as a bundle and say
20 these are the conservation objectives and things that
21 we're trying to accomplish, and this is what we're going
22 to do to do it, and this is where we're going to do
23 those things.

24 And we're going to have agreements with Kevin
25 and his folks on their role, our role, and what we're

1 committed to accomplishing.

2 I think if you use the Coachella Valley example,
3 it is strengthened to the degree that there is
4 participation from outside applicants, e.g. a county.
5 So, those things, I think, will help once they are in
6 place.

7 So that's a piece of the discussion that we've
8 talked about is that there are -- I think there are
9 pretty potent plan level mechanisms, particularly when
10 you think in terms of the discussion earlier on
11 proportionality and the scale of what we're doing.

12 At the plan level we are literally putting
13 millions of acres into conservation designations around
14 a specific set of species, using a variety of
15 designations in combination.

16 So, that would be sort of my plan level thought
17 process.

18 Now, we have, as Kevin indicated, a little bit
19 of evolution to do here, still, but we're pretty close
20 in terms of how we can take all these pieces among the
21 agencies, the REAT agencies, and make them compatible
22 and functional as an assurance of durability. So, I'm
23 pretty confident there.

24 I think the more difficult question is some of
25 this very specific stuff that you get into when trying

1 to make plug and play in terms of the project stuff.

2 And that's where these ideas around, you know,
3 like a Title 5 right of way tied to a tortoise fence.
4 Those things we have talked about, as well.

5 We are talking about, probably at a -- I would
6 say you're limiting vehicle routes disturbance
7 thresholds, and those sorts of things all relate to the
8 rule sets that we're trying to generate for each polygon
9 within the planning area, and what kind of design will
10 happen around those under each alternative conservation
11 design because each alternative will have its own
12 conservation design to look at.

13 So, I think we do need to get to specifics at
14 that level. And then I think the other thing that Kevin
15 mentioned earlier, that I would highlight, is his point
16 about a sort of second level of agreement that works
17 specifically at the project level, and might have
18 triggers in it, as was mentioned, and other things.

19 So, those mechanisms I think we still have work
20 to do on, but we also are talking about.

21 I don't see anything here; I don't know that
22 we've talked about RMPP Act. I'm not sure who the
23 applicant would be in that case.

24 But mitigation banking, I don't know how far
25 along that one is. But the rest of it I think we have

1 talked about.

2 COMMISSIONER DOUGLAS: Thanks Jim. And, you
3 know, we can circle back on this as well.

4 But let me go to Ed. You know, one of the
5 mechanisms we've certainly talked about is grazing law
6 mechanism. So, go ahead.

7 MR. SAULS: Thank you, Karen. I wanted to
8 remind people that that is on the table. We've had some
9 great discussions, originally with Kevin, and Mike, and
10 some of your team members, and Jim, your predecessor in
11 the state level BLM, and we kind of brainstormed the
12 feasibility of a withdrawal of grazing as a tool. And
13 figured out through that brainstorming, that dialogue,
14 in this dialogue very much like what we're having here
15 and what I appreciate because I'm learning where the
16 lines are drawn, and what the issues are, and where the
17 institutional -- I don't want to -- it's more than
18 institutional trust, but the institutional reliance to
19 follow through and accomplish the goals of conservation
20 and recovery of species. They all come together.

21 But we explored the feasibility of that and,
22 frankly, as a result of that Congress gave us a tool of
23 relinquishment of grazing. And, frankly, we look at it
24 as a gift and that gift is here. Imagine it sitting in
25 front of us as a means by which we might set aside

1 260,000 acres of land for conservation to maybe a
2 million acres of land for conservation.

3 Just who benefits from that, just where it is an
4 how it is allocated as far as a public benefit and a
5 rancher's benefit needs to be talked through.

6 But the dialogue, I will tell you, like this,
7 can help us get there.

8 And let me give you some comfort in that. I've
9 not only represented private interests, but tribal
10 interests as well. And when you look at the people
11 around the table trusting a tribal sovereign government
12 and the reliance on performance of mitigation and
13 meeting standards, it was tenuous at first to figure out
14 what authorities existed to make those deals come
15 together, but we succeeded.

16 And as a result of a 30,000 acre tribe's lands,
17 20,000 acres, eventually in time, will be conserved.

18 So, have some comfort that if we continue to
19 dialogue and work on these things then the tools, like
20 grazing, we'll get there.

21 And I'm very comfortable. And we had a great
22 meeting on this on Friday, and I'm looking forward to
23 kind of fine tuning those tools so I can speak to it
24 further. But I think that's enough for now.

25 COMMISSIONER DOUGLAS: Thanks Ed.

1 MR. SAULS: Oh, just Professor, as to the
2 cutting edge of anything that's undefined, I would
3 absolutely agree with you that agreements can come
4 together and reach solutions, where there is
5 uncertainty, that's needed. And we have a couple of
6 specific ideas on grazing about where that might occur.

7 COMMISSIONER DOUGLAS: Thanks. Jill?

8 MS. YUNG: I had a question for Kevin. Oh,
9 sorry. Hi, Jill Yung from Paul Hastings. I wanted to
10 direct a question to Kevin and Steve, circling back to
11 what Johanna had said and just bringing together some
12 concepts regarding this definition of durability,
13 because I think we've heard a few possibilities. And I
14 just wanted to get your reaction to some of the things
15 that are on the table.

16 Johanna proposed an idea that there would be
17 some time of time constraint, something where we know
18 for the next 20 years, 25 years, 30 years that we can
19 expect X, Y or Z.

20 I think that the agreement concept that Joe
21 proposed is probably somewhat similar to what we have
22 with NCCPs, where there's an agreement in place that can
23 be triggered by certain circumstances, but is kind of
24 reassessed, gives us a framework for what -- to know
25 what to expect, but is constantly subject to being

1 challenged, basically.

2 And a possible third thing that we've heard,
3 from past experience, is the idea that physical changes
4 on the land, Desert Tortoise fencing might provide the
5 idea of, you know, a durable solution that you'd
6 actually have to go and rip out if we were to change it
7 in any way.

8 So with, you know, those three concepts, the
9 trigger concept, the time concept, and the physical
10 change concept you have preferences for things. Do some
11 things sound more durable than others to you, given your
12 statutory considerations in requiring durability in the
13 first place?

14 MR. HUNTING: Well, I'll say a few things and
15 let Steve jump in, I'm sure he's got some thoughts on
16 this.

17 Yeah, we have implemented discussions with
18 NCCPs, as you know, that get kind of to the heart of the
19 agreement discussion. They have been pretty successful,
20 that kind of implementing agreement in the context of an
21 NCCP and I can envision an agreement that was more
22 global. If it wasn't an implementing agreement, a
23 separate agreement among the agencies that was more
24 global to help us get closer to having some kind of
25 agreement on CESA investments on federal lands, I could

1 see that being something that takes us one step further.

2 I don't see the silver bullet that Arthur
3 suggested might be there. I think it's another tool in
4 the toolbox.

5 As far as things like Desert Tortoise fencing
6 and right of way, you know, we have -- we do have
7 agreement from BLM that we can get long-term renewing of
8 right of ways, linear right of ways for things like
9 Desert Tortoise fencing that I think would meet the NCCP
10 standard and would be durable enough to provide, in the
11 right place and under the right circumstances, the kind
12 of conservation we need for NCCP.

13 As far as defining durability, Johanna's given
14 it a lot more thought than I have. You know, I like her
15 working definition. I haven't really thought about it
16 in terms of those three elements. It does kind of make
17 some sense to me.

18 I mean this kind of evolved as -- in the
19 simplest terms as how do we make sure that an investment
20 an applicant makes under CESA, on public lands, stays
21 there. I mean it's that simple. So, we hadn't really
22 taken it to the same level that Johanna had. But I mean
23 I like her working definition, need to think about it
24 some more.

25 MR. INGRAM: I guess I'd just add that in the

1 context of a plan of this size I think we're going to
2 try and use every one of the tools out there. And, you
3 know, some of them may only apply to certain areas of
4 the desert or of certain units within the BLM system. I
5 mean we're going to be mixing and matching all sorts of
6 things. I think we're going to be looking at all of
7 these tools put together in some combination.

8 I do think the idea that Johanna was saying
9 earlier of, you know, having some sort of fixed time
10 limit on something as part of what makes it durable I
11 think is true.

12 And that makes it much easier for us, as a
13 wildlife agency, to make our findings. If we can say
14 this is something that, you know, barring anything
15 really unexpected is going to be in place for 25 years
16 or something. That gives us a much greater comfort
17 level in making our findings.

18 The flip side of it is not just the duration of
19 it, but how easily can it be undone and what obstacles,
20 in a positive sense, we can put in the way of undoing
21 those things to keep them there as long -- and so I
22 think those are the two sides of a lot of these things
23 are, you know, can we get a fixed duration and then what
24 can we do to make it difficult to undo that.

25 And a number of the different tools BLM has at

1 its disposal do have a duration. Most of them have some
2 process for undoing it as well and so, you know, we need
3 to figure out how we can work with BLM, without pushing
4 BLM to overstep its authority. What types of legitimate
5 obstacles can we put in the way of undoing those things
6 without interfering with their land use authority. And
7 that's where some of the real challenges with these
8 tools lies, I think.

9 COMMISSIONER DOUGLAS: We have a comment or a
10 question on the WebEx from Peter Weiner.

11 MR. WEINER: Thanks very much Karen. I've been
12 fascinated by the discussion, very much appreciate the
13 creativity and especially from Professor Sax, it's so
14 wonderful to hear your thoughts on that.

15 Kevin, you mentioned the right of ways that you
16 have for linears for Desert Tortoise fencing. And I've
17 never seen the statutory basis for that, the regulatory
18 basis for that, that BLM used.

19 But I guess my question is why can't we push
20 that further? Why can't we push that into other areas
21 to look at other acreages or other uses of that same
22 tool?

23 MR. HUNTING: Well, first let me clarify. We
24 have conceptual agreement on the use of that as a tool.
25 We don't have in place right now, at least to my

1 knowledge, a perpetual right of way for Desert Tortoise
2 fencing. What we have is agreement between the agencies
3 that that's a tool that we can use, so just to clarify.

4 The second part I'll let BLM address. I can't
5 really address that.

6 MR. WEINER: Yeah, and by the way I knew that.
7 I knew you had conceptual agreement. But those of us on
8 the outside, I don't think any of us have seen how you
9 got there. And given what FLMPA says, we always
10 wondered, but it sounded terrific so we were hoping it
11 could be used more.

12 MR. KENNA: Yeah, Peter, this is Jim and I'm
13 going to go as far as a non-lawyer can go because I
14 think I might need a solicitor here.

15 Well, let me take a first step here. Basically,
16 the authority for rights of way flows from FLPMA and
17 under Title 5. And it's designed as an authorization of
18 uses. And I think the limitations, as I understand them
19 from our solicitor's interpretations, have to do with
20 what is intended by Congress in terms of being able to
21 assign a bundle of rights on public land, which is
22 essentially what you're doing when you issue a right of
23 way. You take a bundle of rights and give it to
24 somebody and do something, and what was envisioned in
25 terms of the circumstances under which you could do

1 that.

2 So, that's a lay interpretation of a section of
3 FLMPA. But if one of the solicitors wants to improve on
4 that, that would be fine.

5 COMMISSIONER DOUGLAS: We do, I think, have
6 solicitors on the WebEx and in various locations. So,
7 all you have to do is raise your hand. And anyone in
8 the room who wishes to speak can, but won't be drafted
9 up to the microphone.

10 MR. WEINER: And I just want to say, Jim, I
11 appreciate what you said about that bundle of rights.
12 It's just occurred to me, I know that BLM has sometimes
13 had concerns and others have suggested that rights of
14 way versus leases for some facilities is a question. I
15 know that's how we've done it.

16 And so if we can use it for that kind of single
17 purpose of certain land, knowing that we have multiple
18 uses, generally, I don't see why we can't do it more
19 generally for mitigation.

20 And I'll take my answer from the solicitors, if
21 they have one.

22 MR. KENNA: Well, I would offer it up to --
23 Erica, you want to do that?

24 COMMISSIONER DOUGLAS: Can you come to the
25 microphone, please? You're also quite welcome to stay

1 at the table. Although, nobody gets drafted to stay at
2 the table, either so --

3 MS. NEIBAUER: Erica Neibauer with the
4 Department of the Interior's Solicitor's Office. I
5 think I'm going to sit down.

6 Pardon me?

7 MS. WALD: You're not on.

8 MS. NEIBAUER: Oh, can you hear me?

9 COMMISSIONER DOUGLAS: Much better.

10 MS. NEIBAUER: Okay, thank you. I'll take a
11 stab at the question and the answer.

12 We haven't come to a definitive answer, yet.
13 These are pretty thorny questions that we're facing on
14 kind of this global -- but I don't think that I
15 necessarily completely agree with Kevin that we have
16 agreed that a perpetual or long-term right of way could
17 be granted for something like a Desert Tortoise fence.

18 I think that BLM has policy in place, that's
19 been there for many, many years, that talk about the
20 issuance of long-term right of way grants for very
21 specific and very limited purposes, including or
22 limited, basically, to rights of way for roads, for
23 instance, which are a bit different than fences for a
24 particular species.

25 As far as rights of way go for conservation

1 purposes, Title 5 rights of way, we are coming, I think,
2 to the conclusion that that's probably not appropriate,
3 but we haven't reached that determination, yet.

4 COMMISSIONER DOUGLAS: So, Erica, by grabbing
5 the mic you may suddenly get a number of questions, and
6 I'll ask one.

7 Can you help us understand the difference or
8 distinction between a right of way for conservation of
9 some land that has an important land-based, you know,
10 place-based value versus right of way for tortoise
11 fence, or right of way for protection of a stream bed
12 that might be really valuable. That's another kind of
13 linear right of way that -- you know, and a road.

14 You know, just as some gradations -- I could
15 throw a solar project in there, as well.

16 You know, I think that a lot of us would benefit
17 from understanding how those gradations are interpreted
18 or make sense?

19 MS. NEIBAUER: Well, again, I'm not entirely
20 certain that I'm completely the appropriate person to
21 provide that interpretation.

22 The Bureau of Land Management issues rights of
23 way for many purposes and have done so for decades.

24 I don't know, in my experience with working with
25 Bureau issues, that I've ever seen a right of way issued

1 for a conservation purpose, for a completely
2 conservation purpose.

3 So, it seems to me that if BLM were to embark on
4 this that it would be embarking on a rather precedential
5 exercise.

6 Not to say that it could not, I'm just saying
7 that I don't think that I've seen it in my experience.

8 And to answer your other questions, Title 5 is
9 really, from our perspective, a use development and
10 occupancy provision. And the uses that are identified
11 are typically developmental type uses. They're not
12 necessarily conservation type uses.

13 So, it doesn't seem to fit within the statutory
14 scenario that Congress has set forth.

15 Another consideration I think that we're
16 contemplating right now is the fact that BLM does have a
17 statutory scenario that provides for conservation on
18 public lands.

19 And that statutory scenario is being applied by
20 the Bureau. Jim has talked about that at length today.

21 There are these -- the planning functions under
22 FLPMA and under some of the other statutes that BLM
23 administers. They provide a very comprehensive look at
24 conservation on public land.

25 And what we're wrestling with right now is, is

1 that comprehensive picture of conservation on public
2 land, is that Congress's word on the matter, or is there
3 something else that can be done under some of these use
4 type authorizations that have been mentioned today.

5 COMMISSIONER DOUGLAS: Thank you, Erica.

6 Jim?

7 MR. KENNA: Yeah, the only other thing -- that
8 was really helpful and better said than I could have --
9 is the thing that I think, and the discussion happened
10 before I reached California, so I'm not sure I know the
11 details. But the difference I think you see with a
12 linear right of way for a tortoise fence is it is a
13 physical feature, so it is a land use.

14 So, are you within the section, the authorities
15 of that section? And I think the interpretation at the
16 time was probably, yeah, you're within the authorities
17 of that section.

18 But I think what this goes to is that what we
19 have to do on each of these is go back and look at the
20 thresholds in law, and what they are, and figure out as
21 close as we can what those lines are.

22 What we are trying to do and we've committed to
23 this, in this process, is we're trying to facilitate the
24 ability of Kevin and his folks to get to the NCCP
25 findings.

1 And as in the case of the Coachella Valley, the
2 concept is that this will work better if it is an
3 integrated design that includes public and private land.
4 And by work better I mean both in terms of the energy
5 generation and transmission design, but also in terms of
6 the conservation design.

7 And I think you can point to a number of
8 examples of why that's true. You know, certainly, the
9 obvious example I think of, the Mojave Ground Squirrel
10 in West Mojave, you know, it's going to be helpful to
11 have both of those pieces together if you're going to
12 figure it out.

13 COMMISSIONER DOUGLAS: Let's see, I had a
14 question for you and I got distracted for just a moment.
15 Oh, I'll come back to it if I remember.

16 Arthur?

17 MR. HAUBENSTOCK: Well, thank you. And I don't
18 want to, again, put folks on the spot, but I guess I'm
19 struggling a little bit with the differentiation between
20 the rights of way for more traditional commercial
21 purposes and rights of way that could potentially be
22 used for conservation.

23 You know, again, let's do a little bit of a
24 thought experiment. Supposing you had a private land
25 trust that was making commercial use of the ability to

1 provide echo system services on federal land. You could
2 potentially have physical occupation through monitoring
3 equipment that was necessary to monitor species, or
4 monitor to ensure that a stream bed was not being
5 altered.

6 It's not clear to me what the salient elements
7 are for what constitutes an appropriate right of way use
8 and whether there is an opportunity to think creatively
9 about how mitigation can achieve whatever those
10 prerequisites are to allow this to be a proper purpose
11 for a right of way.

12 And I know that that's probably asking for a *Law*
13 *Review* article, and you're probably not prepared to
14 provide that right now.

15 But I'm just wondering whether there's some
16 potential to explore that and to see whether we might be
17 able to work something out in that framework.

18 COMMISSIONER DOUGLAS: You know, and just for
19 fun I'll just tag on one extra part of that question,
20 which is just, you know, what if there is an actual
21 investment in enhancement that leads to physical
22 changes? It's not necessarily a fence, but it's a
23 physical restoration of a feature.

24 MR. KENNA: Well, let me -- and Erica, you can
25 wave your arms if I get out of bounds here.

1 You know, I think we have a number of vehicles
2 under FLPMA for different kinds of use authorizations.
3 The example that you gave Arthur is an occupancy, but it
4 probably is one that would be handled under a permitting
5 process, what we'd call a 2920 permit.

6 So, I think what this leads to is maybe, rather
7 than try and do the nuances of legal analysis in this
8 setting, we will look at this. We'll take this back, we
9 will look at, you know, the bounds of use and occupancy
10 under Title 5, and the appropriateness of different
11 tools.

12 Our intent is to make the DRECP work. So, and
13 as I mentioned to Kevin and you've heard me say here,
14 that we're trying to facilitate him being able to get to
15 those findings because of a belief and, frankly, an
16 agreement between the Secretary and the Governor saying
17 this will work better if we put it together in while
18 cloth, with the private land and public land pieces
19 integrated.

20 I, personally, strongly am committed to that and
21 will try and do it. But we kind of have to be careful
22 that we're appropriately applying the tools within the
23 legal constructs that we have.

24 COMMISSIONER DOUGLAS: Thank you, Jim.

25 We have Jill and Gail -- oh, no. Okay, we've

1 got Gail Barton on the WebEx and Johanna. Johanna, is
2 this on --

3 MS. WALD: I wanted to follow up with Jim.

4 COMMISSIONER DOUGLAS: Perfect. Go ahead and
5 then we'll go to Gail.

6 MS. WALD: I want him to stop talking for --
7 I was waiting to speak directly to you, Jim.

8 MR. KENNA: All right. Well, I had a side
9 question.

10 COMMISSIONER DOUGLAS: Well, I thought you were
11 working out.

12 MS. WALD: That's quite all right. That's quite
13 all right.

14 I wanted to say that I was really grateful for
15 your commitment to look at these tools.

16 I wanted to say that of course none of the
17 lawyers at this table were suggesting that you should do
18 something that wasn't authorized by statute.

19 But I did want to put in a plea as follows, to
20 think -- if there is a provision, and I think Title 5
21 might be a good example, where you conclude that it
22 can't be used for the purpose for which there's maybe
23 broad agreement, it would be extremely useful for.
24 Could I ask that you think about what it would take to
25 fix that problem?

1 Because it strikes me that some of these
2 problems are more fixable than others. And I would just
3 remind everybody, including myself, that the
4 authorization to permanently retire grazing on public
5 land is one sentence. It has many clauses, but it's one
6 sentence, and it's in an appropriations bill. It's
7 not -- and it was carried by, of course, the senior
8 senator from California.

9 So, if we need a legislative fix, and if it's a
10 little fix, as opposed to a major piece of legislation,
11 let's not put what looks like a promising tool off the
12 table until we explore whether or not we can get the
13 fix. So that we have a tool, if we all agree, you in
14 particular, that it would be a valuable tool to have
15 in the toolbox to make this plan and this planning
16 effort work.

17 MR. KENNA: That's fair. I mean we will take a
18 hard look and if we can identify what the reason why not
19 is, we're happy to display what that is. And if other
20 things happen after that, that's fine.

21 COMMISSIONER DOUGLAS: Thank you.

22 So, Gail Barton on the WebEx had her hand up,
23 but I understand that it might not be up any more.
24 Gail, are you still there?

25 MS. BARTON: I'm here.

1 COMMISSIONER DOUGLAS: Would you like to ask a
2 question or make a comment at this time?

3 MS. BARTON: Yes.

4 COMMISSIONER DOUGLAS: Go ahead.

5 MS. BARTON: Okay, very quickly. I just want to
6 take some of the things that I've heard and sort of
7 respond to them.

8 One of them is that I think we need to always
9 keep in mind what are we looking to do? What is the
10 goal of a plan like this?

11 And I think it's to facilitate development and
12 achieve enhanced conservation over project-by-project
13 mitigation.

14 If things get too complicated, it will be self-
15 defeating, because then there will be no point in using
16 the process.

17 And I know that simplicity is such a wonderful
18 word, but to try and make it work is difficult, complex.

19 But simplicity also can bring certainty, so that
20 even if there is a toolbox with a number of components
21 in it, sometimes the organization of that toolbox to
22 suit certain areas, certain parameters is helpful.

23 I strongly support Johanna's definition of
24 durability. And in part because that's pretty
25 consistent with what is required of our other HCPs and

1 CCPs. For example, in Riverside County we have to meet
2 those goals.

3 And I think that there needs to be a fairness
4 across the board in how these NCCPs/HCPs comply.

5 Also, I had -- oh, there's been talk of the
6 duration and a fixed duration of certain kinds of
7 development. I think we need to consider and keep in
8 mind that we cannot look at it as -- today, as what it
9 will be 20 years down the road.

10 You may look at something and say, yes, you
11 know, we can put that back, so we're not going to say --
12 we can say it may last for 20 years but, in truth, when
13 we get at that point 20 years down the road, the
14 snapshot of the area and all may look very different.

15 And I think we need to keep that in mind as we
16 talk about that. And I think that covers what I had to
17 say. It's been a very interesting discussion, thank
18 you.

19 COMMISSIONER DOUGLAS: Thank you, Gail. And
20 thanks for hanging in there with us through the day.

21 So, at this point in the agenda let me -- you
22 know, we have a wrap-up on our agenda. And my thinking
23 in that was to have some space in the agenda to either
24 go on with the discussion or to just go around the table
25 and give everybody a chance to make some wrap-up

1 comments to emphasize anything that they really want to
2 emphasize based on the day, and based on what they've
3 heard.

4 So, I don't see any other cards up, so what I
5 think that I'll do is go into that wrap-up mode and
6 start making my around the table.

7 And given that I know Kevin likes to have the
8 last word, I think I'll start going that direction and
9 let him go first.

10 (Laughter)

11 MR. HUNTING: Thanks Karen. This has been a
12 very useful discussion. You know, we've been thinking
13 about this for a long time but it takes a workshop like
14 this to make me realize there's other ways to view this
15 problem, and other ways to look at it are always helpful
16 when you're trying to find a solution.

17 I agree with the comment that it's nice that
18 everybody wants to get to the same place, and so there's
19 got to be a way to do that. And I share Jim's
20 commitment to making this work and making it work as an
21 NCCP. So, appreciate everybody staying at the table.

22 MR. INGRAM: I'm not sure I have much to add,
23 except to emphasize one of the things that we at Fish
24 and Game had to do throughout this process of trying to
25 figure how to make this work is take a hard look at our

1 own authorities, and try to figure out how we can
2 creatively work with them, and how we can maybe do
3 something we haven't done before.

4 And, unfortunately, in the case of the DRECP
5 we're doing that in every single aspect of it.

6 (Laughter)

7 MR. INGRAM: But I think it is important for us
8 all to take a -- you know, to take a hard look at what
9 our requirements are and not just how we've done them,
10 dealt with them in the past, but how we can permissively
11 deal with them in the future, and try to think about new
12 alternatives and new methods for getting where we're
13 trying to go.

14 COMMISSIONER DOUGLAS: Thanks Steve.

15 Josh?

16 MR. HART: First, I want to say thank you for
17 having me, Commissioner Douglas, and it's been a very
18 interesting discussion.

19 One of the things that I wanted to talk about
20 was multiple uses and I've been very encouraged that
21 that's on everyone's mind. It's something that's very
22 important to us. A lot of the multiple uses in our
23 county have been displaced.

24 And so one of our big concerns really is not
25 impacting those to a great degree through this process,

1 so I am very encouraged that people are thinking about
2 it. So, thank you.

3 COMMISSIONER DOUGLAS: Zack?

4 MR. CHURCH: Thank you for inviting me here
5 today, Karen, it's been a very interesting discussion.
6 The Park Service certainly stands ready to provide any
7 assistance that might be needed to our sister agencies.

8 I don't really have anything to add to the
9 discussion at this point, though.

10 COMMISSIONER DOUGLAS: Thank you.

11 Lisa?

12 MS. BELENKY: Okay, dueling microphones. This
13 is Lisa Belenky. I also want to thank everybody for
14 coming and for the Commission for setting this up. I
15 think it is really, really helpful as we are moving on
16 an extremely fast timeline towards this next draft, or
17 the first draft, really, of the documents.

18 And I guess just because biologists aren't
19 necessarily on this panel, I just wanted to say two
20 things that they might not forgive me if I didn't say.

21 I don't believe that at least Center biologists
22 would agree that you could restore desert lands and
23 ecosystems even on a 20- to 30-year timeframe. That
24 most of those we actually have, you know, still tracks
25 from Patton in the desert. And most of these impacts

1 will be hundreds of years or more to get back to a sort
2 of native ecosystem.

3 Which is part of the purpose of the planning,
4 using the planning and determining DFAs that have
5 transmission so that at the end of a 20-year cycle maybe
6 the particular technology that's on there now wouldn't
7 be reused but we, at least to some degree, are assuming
8 that since the sun is still going to be there we would
9 want to have some sort of solar energy there.

10 And that's part of, I think, why we've been
11 willing to, you know, engage so heavily in this is that
12 once we set these up they are most likely going to be
13 the areas for development for a very, very long time.

14 And to, you know, break through the process of
15 having a sprawl development, which we've seen in the
16 past.

17 So, we're really very committed to having the
18 planning go forward and really appreciate people looking
19 at creative solutions.

20 COMMISSIONER DOUGLAS: Thank you, Lisa.

21 Johanna?

22 MS. WALD: This is Johanna Wald and I, too, want
23 to thank everyone for this discussion today and for
24 allowing us non-agency people to be part of it.

25 I know that these conversations have been going

1 on for a very long time and I'm grateful for the
2 opportunity as an outsider to participate in the
3 conversation.

4 I was also very glad to hear that the Fish and
5 Game Department is thinking about new methods and new
6 interpretations of their statutes.

7 And I'm equally glad to hear that the BLM will
8 be looking at at least some of the tools that Lisa and
9 I, with our colleagues, have identified that you might
10 use in this context.

11 And I look forward to hearing back from both the
12 Bureau and the Department as to what these new ideas or
13 new tools are, so that we can continue this conversation
14 going forward. Thank you.

15 COMMISSIONER DOUGLAS: Thank you.

16 Arthur?

17 MR. HAUBENSTOCK: So, thank you all, again, for
18 the opportunity to participate in this conversation. I
19 think this is very important. I think, as Johanna said
20 earlier, this seems like an opportunity to finally slice
21 through a Gordian knot that you all have been working on
22 for quite some time.

23 And we are really excited about the prospect of
24 potentially helping to unravel that and look forward to
25 the opportunity to think through what kinds of vehicles

1 might work, what kinds of vehicles we can help with, how
2 we can get to this common goal that we're all very
3 excited about and really interested in seeing become a
4 reality.

5 I don't necessarily -- we don't necessarily
6 disagree with what Lisa said with respect to
7 restoration. And it gets back to what we were saying
8 earlier about making sure that our dollars are counting.

9 There's only so much that renewable energy can
10 bear, you know, on top of everything else in a very
11 competitive world. And if we're bonding to restore and
12 re-vegetate, and that's not really going to be serving a
13 useful purpose perhaps those are resources that could be
14 put towards mitigation.

15 But the bottom line is that mitigation on
16 federal land is very clearly an essential element to
17 what species are going to need in the face of climate
18 change. You know, we want to be part of the solution to
19 make that happen.

20 We want to see a way to do that in a cost-
21 effective fashion. We're willing to do whatever we can.

22 And I think that, I'm quite sure it's not just
23 Brightsource, that many of the renewable energy
24 companies that are interested in seeing the DRECP become
25 a success are in large part motivated by the potential

1 of seeing that happen.

2 And so our ability to solve this problem will
3 have a lot to do with the ultimate success of the DRECP.
4 Thanks again.

5 COMMISSIONER DOUGLAS: Thank you.

6 Professor Sax?

7 MR. SAX: Well, I also want to reiterate thanks
8 for allowing me to participate in the workshop. And I
9 find it encouraging that agencies are working together
10 toward a solution and thinking creatively about how to
11 get there, so good work.

12 COMMISSIONER DOUGLAS: Thank you.

13 David?

14 MR. LAZERWITZ: I would also, of course, like to
15 thank you for inviting me and allowing me to have a peek
16 into this process, which I've observed from the outside.
17 And it really is amazing, and not just because of the
18 agency cooperation and to see the agencies working
19 together, but also to see the developers and the
20 conservation community really working together. And
21 it's extremely encouraging and really unlike anything
22 that I have personally experienced and been a part of
23 before.

24 And, you know, there's some great ideas around
25 the table and there's certainly trying to fit the square

1 peg in the round hole, perhaps, in some of the tools.

2 But we have the time -- you know, we don't have
3 the time, I guess. But what I want to say is we have
4 the effort and the initiative to get this done. And
5 it's not going to be perfect and, you know, there's not
6 going to be one perfect solution. But I think this
7 approach is certainly preferable to what we have on an
8 ad hoc basis today.

9 So, we need to move forward very quickly and the
10 political climate is shifting, perhaps, so it's all that
11 much more important. But thank you.

12 COMMISSIONER DOUGLAS: Thank you.

13 MR. SAULS: Yeah, Ed Sauls; thank you very much
14 for inviting me and my team, who's here with me. We're
15 very supportive of what you're looking to accomplish.
16 We want to lend our shoulder to the wheel to get the
17 whole program done, not just grazing mitigation.

18 But as to grazing mitigation, there's excellent
19 permanence in this use of this tool, grazing mitigation,
20 but it's not available permanently. We have a window of
21 time under which the ranchers are interested in seeing
22 this tool used. And we had a great meeting on it last
23 Friday and I think there's a commitment to see it
24 tested, apply it, but let's not take it for granted,
25 either, as we move forward. Thank you very much.

1 COMMISSIONER DOUGLAS: Thank you.

2 Mike?

3 MR. FRIS: Mike Fris, Fish and Wildlife Service.

4 First of all thank you, Commissioner Douglas, and staff
5 at the CEC for hosting a great workshop today and for
6 inviting us.

7 The Fish and Wildlife Service's role in working
8 on this particular issue is somewhat dictated by our
9 section 7 process, you know, that we work with BLM on
10 and that controls a lot of it.

11 Nevertheless, that doesn't kind of control, you
12 know, the conservation strategy that we want to
13 implement as part of the DRECP.

14 To that end we are kind of arm-in-arm with Fish
15 and Game in trying to come up with durable solutions to
16 mitigation and conservation on private and public lands
17 associated with this project.

18 And to that end we'll continue to work with the
19 Commission, all the DRECP agencies, and looking forward
20 to working with the stakeholders more on the solution to
21 this issue.

22 COMMISSIONER DOUGLAS: Thank you.

23 Cheryll?

24 Okay, Steve.

25 MR. BLACK: Thank you, Karen. I'll be brief.

1 On behalf of the Secretary and the Department I just
2 want to reiterate our thanks to you and your staff for
3 hosting the workshop. This fulfills part of a
4 commitment to continue a public forum and discuss some
5 of the really challenging issues that we face on the
6 DRECP.

7 And to each of you who have participated today,
8 thank you. You know, as many times as I've sat through
9 a discussion of this topic with many of you, it's
10 fascinating and I learn something new each time. So, I
11 really appreciate the creative thinking and the input
12 that you've all taken the time to provide today.

13 We'll continue to work with our lawyers and our
14 agencies to try to arrive at good solutions here that
15 make sense.

16 We do share the goals that have been articulated
17 already, so I won't repeat those. But we want to make
18 this a success, so we're looking forward to the
19 partnership and completing the agreements that are
20 already well on their way to being drafted and signed.

21 COMMISSIONER DOUGLAS: Jim?

22 MR. KENNA: I, also, will try and be brief and
23 reiterate my thanks to Karen and the Energy Commission
24 for convening.

25 You know, my purpose in coming and in accepting

1 the application was really fulfilled here today. I was
2 hopeful to hear ideas and ideas kicked around, and ideas
3 tested, and I think it was very useful for me to listen
4 to all of this. And I hope it was for all of you, as
5 well.

6 I do think the DRECP has a really important set
7 of goals and I do share, as Kevin indicated, the
8 commitment to get to a plan amendment that is also an
9 HCP and an NCCP.

10 I do believe that will work better, both in
11 terms of the conservation outcome, but also in terms of
12 the energy outcome. I think that that just leads to a
13 better design of doing the right things in the right
14 places.

15 You know, the last thought that I would offer
16 up, in listening to all of this, is I'm really convinced
17 that this can work. You know, we haven't nail down all
18 of the pieces but that, for where we are in this
19 process, is sort of normal.

20 I think that the interest of everybody to make
21 it work is a really important component. So, I'm pretty
22 encouraged that we'll get there.

23 COMMISSIONER DOUGLAS: Thank you, Jim.

24 Now, Jill and Peter also raised his hand, so why
25 don't you go first and then we'll call on Peter.

1 MS. YUNG: All right, thank you Commissioner
2 Douglas, thank you for letting me attend. And thank you
3 for everyone for your participation. I think that it's
4 extraordinarily encouraging to hear what I think is
5 consensus around the table that public lands are going
6 to be a big component in making sure that renewable
7 energy development can move forward.

8 We heard from the counties their concerns about
9 the use of private lands. We've heard from the
10 environmental and the conservation organizations that
11 there just isn't enough private land out there.

12 So, it's just a matter of finding the right
13 solution. And Lisa talked us through some of the
14 authorities that BLM might use to facilitate this.
15 Arthur added the Antiquities Act.

16 We've internally discussed some other statutory
17 authorities that might allow us to shift lands around to
18 just make sure that the lands are there, that they meet,
19 again, Fish and Game's requirements.

20 And it's just really a matter of putting our
21 heads together and making it happen, so this dialogue
22 has been extraordinarily useful. Thank you very much.

23 COMMISSIONER DOUGLAS: Thank you.

24 Peter?

25 MR. WEINER: Well, I appreciate everything that

1 Jill said, of course. And I was just blown away today
2 by how creative, erudite and collaborative everybody
3 was. I very much appreciated Jim's ideas, and Kevin's,
4 and Steve's laying out his view of the law.

5 It all sounds like we can get there and I agree
6 with Jim.

7 The only thought I've had is that we've
8 struggled with this for a long time and I know that the
9 agencies have, and I know that the agencies need to do
10 their job. But without invoking FAACO or any state
11 equivalent of it, I would suggest that it may be useful
12 for a couple of us to sit down, and I would ask
13 Commissioner Douglas, perhaps, to facilitate this, with
14 you all and discuss this at greater length.

15 Because a lot of this does turn on biology, but
16 an awful lot seems to turn on law and interpretation of
17 law. And we've gone around and around about what
18 durable means.

19 And as far as I can tell, it means a little bit
20 less than perpetual sometimes, but it does mean durable
21 and with all the elements that Johanna mentioned, which
22 I really appreciated.

23 And it may be more than BLM is used to. But it
24 doesn't mean that BLM can't get there.

25 But it just seems to me that with everybody's

1 stresses and strains it might be useful to have some
2 further workgroup meetings where we pull up our sleeves,
3 and sit around a table, and go point by point and see
4 where we can get in a collaborative way, rather than a
5 confrontational one.

6 COMMISSIONER DOUGLAS: Thanks Peter for that
7 suggestion.

8 You know, I think that since there's one person
9 between you and me doing the wrap-up, anyway, I will
10 respond to that in just a second.

11 Steve, anything?

12 COMMISSIONER DOUGLAS: Okay, and Steve passed,
13 so here we are, the last word.

14 (Laughter)

15 COMMISSIONER DOUGLAS: So, just a couple of
16 thoughts. One, in direct response to Peter, I fully
17 anticipated that this workshop would be the initiation
18 of dialogue and not the place where we wrap a bow around
19 it and say that we're done, and that's certainly the
20 case.

21 So, I appreciate your suggestion that we
22 continue to engage and solicit your help and support in
23 thinking through options, and possible tools for moving
24 forward. And so I think that that's a really -- you
25 know, I appreciate your willingness and I think the

1 willingness of others to continue to help on this issue.

2 You know, in the big picture here, just sort of
3 taking a step back, we're all here because we see that
4 by working together and that by solving for multiple
5 problems at one time, rather than going off on our own
6 direction and solving for kind of our part of the world,
7 and our slice of the problem, and making somebody else's
8 worse, we can get to the suite of outcomes that we're
9 really trying to achieve.

10 We're trying to achieve California's long-term
11 climate goals and renewable energy's a big part of that.
12 We're trying to make permitting faster. We're trying to
13 have better environmental outcomes when projects are
14 reviewed and permitted.

15 And we're trying to secure long-term
16 conservation at the same time that we're trying to put
17 California on a firm footing for meeting its long-term
18 climate and energy goals.

19 And doing that takes all of us out of our
20 comfort zones at times. And I've had to become more
21 fluent in NCCP than I necessarily anticipated.

22 And some of, you know, the other agencies, and
23 I'll use Jim as an example, has become pretty fluent in
24 infrastructure planning.

25 So, that's part of what's needed. There's an

1 infrastructure planning and permitting question to this,
2 that was our first workshop. That was the question --
3 that was the workshop that said there's this whole world
4 out there planning infrastructure, and building
5 infrastructure, and let's look at what they're taking
6 into account. Let's look at where land use and
7 conservation fits in that picture and how does DRECP
8 help change that?

9 You know, there's the world of the biology and,
10 of course, those -- you know, the biology doesn't
11 necessarily care about designations, or what's public
12 land and what's private land.

13 And, yet, we have institutions of legal
14 structures that care a lot. So, how do we work together
15 to overcome those barriers, whether they're legal or
16 institutional, and come up with a plan that makes sense
17 from a conservation perspective and from a development
18 perspective that gets us to goal.

19 And this issue is a fascinating one, frankly,
20 and it's a surprisingly difficult one. But I agree with
21 Jim that I think we have the pieces in place -- in place
22 might be a bit much. I think we have the pieces
23 gathered together around us that we can put together in
24 an appropriate configuration to really make this stick,
25 and make this work in this plan.

