

<b>COMMISSIONER SHALLENBERGER</b>	
<b>Timing of Submissions</b>	
<p>“The developer has made it clear that they do not accept the staff’s recommendation, and they’ve made it clear with a 55-page document, which we got this morning, which has been, you know, underlined, redlined, how they would like this to be, taking staff’s language and crossing out and adding. Something that we clearly are unable to read, much less analyze.”</p>	<p>Page 365 Line 4</p>
<b>Rarity of Coastal Bluff Ecosystem</b>	
<p>“And this is a project that we have to get right. We can’t get just good enough on this one. And we can’t get just good enough on this one for a number of reasons. We heard earlier it is the only intact coastal bluff ecosystem left in southern California, other than Bolsa Chica. The only one. And so we have to do it right.”</p>	<p>Page 365 Line 13</p>
<b>Endangered/Threatened Species</b>	
<p>“It is the largest concentration of threatened and endangered species in all of Orange County.”</p>	<p>Page 365 Line 21</p>
<p>“We’ve already missed it on the Coastal Cactus Wren. It’s gone. The habitat has been destroyed, there is no more Coastal Cactus Wren on this land.”</p>	<p>Page 367 Line 3</p>
<p>“We heard from US Fish and Wildlife Service in 2007. They designated all of Banning Ranch as critical habitat for the Gnat Catcher. And yet there isn’t any agreement on protecting that habitat with an adequate buffer. The proposal is that the buffer in some cases be -- that the fuel modification be overlaid on the buffer which is to protect habitat for threatened species.”</p>	<p>Page 367 Line 7</p>
<b>Native Americans</b>	
<p>“We heard from Native Americans about the burial sites, sacred sites, ancestral tribal nations, residences and sites. You can’t make a mistake with that and then turn back when you find out that you didn’t have it quite right.”</p>	<p>Page 365 Line 23</p>
<p>“We have to have all nine tribes involved in this, not two out of nine. They don’t speak for other, they speak for themselves. So the risks are too high. We know that there any -- that there are many sites there that are eligible for listing on the Historic Register. They have to be avoided. And if there is actual consensus and proof that they cannot be avoided, they must be capped. And that’s not what’s being proposed here.”</p>	<p>Page 366 Line 18</p>

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<b>The Burrowing Owl</b>	
<p>“We heard from -- we heard about the Burrowing Owl. Dr. Bloom's letter, which I think was dated the 7th of this month, basically said he believes first of all that there's more than one owl there, the surveys that have been done have not been done at night, which is when the owls are out foraging, so, you know, if you wanted to find out how many Burrowing Owls are on this property, don't bother to go in the daytime. So we don't know, but we have to know, because if we're wrong, there will be no Western Burrowing Owls on this land.”</p>	<p>Page 366 Line 5</p>
<p>“Again, we heard from Peter Bloom in his letter that if the habitat is not protected for the Burrowing Owl, including foraging, because we all know, is why we stop for dinner, it doesn't do you any good to have a house if you don't have anyplace to eat. And that is precisely what we're talking about with the foraging. So he said that the owl will no longer exist on Banning Ranch if we don't get both the habitat including the foraging right.”</p>	<p>Page 367 Line 15</p>
<b>Site Cleanup</b>	
<p>“...we heard it from a lot of the supporters, and I think they have been misled in many ways to think that the only way that this land is going to get cleaned up is for us to approve this. But there -- we already have a consent order, and that consent order for the cleanup of many of these sites stands no matter what we do today.”</p>	<p>Page 368 Line 9</p>
<b>Land Management</b>	
<p>“So let me get to the part I really don't understand very well, and that's the partnership in this, because it seems to me as I understand it, that there are three partners in Banning Ranch. One Aera Energy, who came about some time in the 1990s when Exxon Mobil and Shell, they formed Aera Energy. So behind one-third of the partnership here, we have two oil companies. And then we have Cherokee Investment, who I confess I don't understand who they are, and then we have Burke Street... who is the developer here. So -- and then we have a trust, which I -- don't actually have independent knowledge of this other than what was reported in the LA Times, who actually has done some pretty darn good deep research on what's happening on the coast and the Coastal Commission.... If it's true that this -- that the trust, which is the project proponent is proposing that all of the open spaces and conservation area, whatever, be managed by this trust, and the -- the board of directors of the trust is mostly made up by members of the vice president of ...somebody from Brooks Street and somebody else from Aera, so we really, if that's true,</p>	<p>Page 368 Line 19</p>

<p>does staff know if that's true? I just know what I read in the paper. But it is very troubling.”</p>	
<p>“...the trust is actually, the majority of the board is made up of people who represent, who come from the partners of Banning Ranch. If you don't know, that's okay. You know, it's -- I'm just saying I read it in the paper. Again, another very troubling thing. And I recognize that if we were to take the staff's proposal, they wouldn't necessarily go with this trust as the land manager, because we have lots of criteria that have to be -- to be sure that they're viable, that their tax status is in place, that they are really a non-profit.”</p>	<p>Page 369 Line 25</p>

**COMMISSIONER VARGAS**  
*Vargas' comments appear here in plain text with his questions highlighted in red. Staff's responses appear in italics. Parts of the exchange have been edited for clarity.*

<b>The Burrowing Owl</b>	
<p>“So it seems that the recent discovery or -- or at least taking into account the recent information on the Burrowing Owl has kind of changed that and altered that, but prior to that we were -- we were getting close. So I really want to – maybe before moving forward, just kind of explore the Burrowing Owl question and maybe ask a couple questions of Dr. Engel.”</p>	<p>Page 373 Line 19</p>

<b>Burrowing Owl – Species of Special Concern Designation</b>	
<p>“...the Burrowing Owl is a species of special concern, and I wanted to kind of understand how those types of determinations are made, and I believe, and correct me if I'm wrong, <b>is that a California Department of Fish and Wildlife designation?</b>”  <i>DR. ENGEL: “Yes.”</i></p>	<p>Page 374 Line 3</p>

<b>Burrowing Owl – Viability in Populated Areas</b>	
<p>“So there's in that very large book that addresses several species is the Burrowing Owl, and there's about ten pages dedicated to that. So while I was reading those ten pages...I saw some kind of items that I just wanted to...ask questions about.... there's a section called "Ecological Requirements" for the Burrowing Owl, obviously. And the first sentence in that section of ecological requirements states as follows: ‘The Burrowing Owl is primarily a grassland species. But it persists and even thrives in some landscapes highly altered by human activity....’</p>	<p>Page 374 Line 18</p>

SHALLENBERGER/VARGAS

<p>I'm just wondering. <b>So it's saying in that sentence that the Burrowing Owl can persist and even thrive in some landscaped highly altered by human activity. Is that your understanding?"</b></p> <p><i>DR. ENGEL: "Yes, especially agricultural fields... And disturbed areas that have lots of... low-lying vegetation where their prey is, such as the Harvest mouse, lizards, insects, as long as their prey is there...they are...ground burrowers, they live in the ground squirrel burrows... So they are susceptible to disturbance, so when...you say they thrive in disturbed areas, it's not really where active human disturbance occurs, it's the fact that they were disturbed by agriculture...they're not natural habitats necessarily. And I want to say one more thing... They are also designated as an S3, a state 3 rare species. This is a new Natureserve, the California Department of Fish and Wildlife has adopted the Natureserve categories of rarity, and so in addition to being a California species of special concern, it's also listed as a state 3 rare species, in addition to the BLM and US Fish and Wildlife Service rarity rankings."</i></p>	<p>Page 375 Line 11</p>
<p><b>Burrowing Owl – Viability in Populated Areas continued...</b></p>	
<p>"...there's another sentence, which is as follows: 'In urban areas,' not agricultural areas, <b>'In urban areas such as much of Santa Clara County, Burrowing Owls persist in low numbers in highly-developed parcels such as Moffett Federal Airfield, in busy urban parks, and adjacent to roads with heavy traffic.'</b> And it cites two different sources for that as well... is that also your understanding?"</p> <p><i>DR. ENGEL: "Oh, I think that Moffett Field I think it's like an...airfield... And so there would be airplanes coming in and out... but there would be lots of open space for them... and since they are foraging at night, they're probably hunkered down in their burrows while the flights are going... it's not a housing development, it's an open – large open field."</i></p>	<p>Page 377 Line 1</p>
<p><b>"Right. But also says 'in busy urban parks and adjacent to roads with heavy traffic.'"</b></p> <p><i>DR. ENGEL: "Well, as...Dr. Bloom in his letter has said that one of their most -- the most causes of their mortality is the -- their roadkill. So I think that they maybe aren't wise about cars....and we could ask Dr. Bloom, who is here....and he...is a Burrowing Owl expert."</i></p>	<p>Page 378 Line 8</p>

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<p><b>“...so do we feel that the statement in this book...would not be an accurate statement...?”</b></p> <p><i>DR. ENGEL: “Oh, I think it's very accurate....we're looking at it myopically...there's a lot more around it...Dr. Bloom is right there if you want to...”</i></p>	<p>Page 378 Line 24</p>
<p><b>Burrowing Owl – Viability in Populated Areas continued...</b></p>	
<p>“It seems to me by reading this that there -- while staff has taken an approach to be as -- as cautious as possible to the Burrowing Owl or kind -- kind of arrowing to... to the extreme, there is citation in this Species of Special Concern book with relation to the Burrowing Owl that A, they even thrive, they in landscapes highly altered by human activity; and B, that they persist, and I'm using the words of the book, so <b>“thrive and persist in busy urban parks and adjacent to roads with heavy traffic.”</b></p> <p><i>DR. BLOOM: “There's nothing inaccurate about...”</i></p> <p><b>“I'm sorry, I didn't ask you....Dr. Engel?”</b></p> <p><i>DR. ENGEL: “I noticed that you asked, that you did say they were in low numbers... I understood you to say that they were in low numbers, that they thrive in very low, very low numbers in some highly urban areas. And so we don't know if that is foraging area or burrow habitat...it makes a difference, and so I -- I think that the testimony of the birds is that there are less than three as of 2002, there are less than three breeding pairs known to exist in all of Orange County, and that they are nearly extirpated in a highly urban area... where else do they go in those areas? They are definitely in low numbers...that is not their preference, but if they have nowhere else to go, they will...live there.</i></p>	<p>Page 380 Line 4</p>
<p><b>“‘However,’ the quote, ‘However, urban development at moderate levels appeared to benefit owls by increasing prey availability,’ in parentheses, ‘(arthropods and lizards) near homes and reducing mortality from natural causes....’ What are your thoughts on that?”</b></p> <p><i>DR. ENGEL: “You know, to be honest...I am not a Burrowing Owl expert. I... have done reading and I have, you know, I have a background in science, but I think that, you know, so you're asking me what my thoughts on that are. I think that yes, in moderately urban... areas that have prey items for them, they would survive, they would not thrive in those areas. I think that high intensity residential development with the noise, the traffic, the artificial</i></p>	<p>Page 382 Line 20</p>

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<p><i>lights, would not be suitable to a Burrowing Owl given that it lives in the ground, and another problem for Burrowing Owls is that anticoagulants are used on their prey, and they could eat those and suffer from that... in southern California they are nearly extirpated because of human disturbance in the form of rapid urban development and loss of habitat. So yeah, I think that's what I think."</i></p>	
<p><b>Burrowing Owl – Research Methodology</b></p>	
<p><b>"So with regard to the Burrowing Owl, if I can ask, how did you establish the methodology...did you reference this book or this guidebook...Put out by the CDFW?"</b></p> <p><i>DR. ENGEL: "I... read a lot of the peer-reviewed literature, I read... the 2008-2012 California Department of Fish and Game conservation guidelines.... the BSSC that you're referring to, the 2003 listing petition by the Conservation Biology Institute. Do not - - this is not meant to be insulting, but it doesn't take a brain surgeon to figure out what kind of foraging habitat they need. They prefer open grassland which it doesn't matter if it's disturbed, if it's ruderal that has low shrub and grassland, and that has ground squirrel burrows.... that's super important. And that has little disturbance, you know, your moderate disturbance doesn't seem to bother them. As I said, they are nocturnal, they're crepuscular, they forage primarily during the early morning and in the dawn or dusk, and so they're going to be down in the burrows hiding when a lot of the disturbance is going on in a moderate urban area.... definitely spent a lot of time reading, and...in all transparency, this didn't come to our attention until we received the letter from Dr. Bloom.... I was focusing on Gnat Catchers, on vernal pools... on wetlands, on the Coastal Scrub, <b>so it was an oversight.... I thoroughly admit that we -- we dropped the ball on the Burrowing Owl.</b>"</i></p>	<p>Page 384 Line 7</p>
<p><b>Burrowing Owl – Required Acreage</b></p>	
<p>"Okay. I appreciate..."</p> <p><i>MR. AINSWORTH: "I would like to make one point...looking at the disturbed landscapes that you were describing...in that reference... what's not mentioned are the acreage requirements that the Burrowing Owls need in order to thrive in those environments. So those environments that you describe may have a fair amount of large acreages and the burrows themselves may be separate from those moderate urban areas. I think that's a critical point that we need to focus 6 on as well.... Dr. Bloom may have insight into that, but I think that's a critical component of what you were citing</i></p>	<p>Page 386 Line 3</p>

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<p><i>there as there's a certain critical mass of acreage, grassland that those birds need, and it is a large area of acreage.... So even some of the urban parks you may mention that may be used could have large expanses... of grassland open space.... and the birds may not be thriving in those ... in those contexts either. They could be stressed."</i></p> <p>"So...I appreciate that. And I...certainly don't, you know, want to insinuate that...you didn't apply a strict methodology to this. I'm just -- I think with regard to the Burrowing Owl and with regard to what I read, and again there's a quote here regarding their persistence, 'and adjacent to roads with heavy traffic.'"</p>	
<p><b>Burrowing Owl – Impact of the Bluff Road</b></p>	
<p>"...I'm just curious, with regard specifically to the Burrowing Owl, and that Bluff Road extension, would the Bluff Road itself, it seems to me based on what this is saying in this species of special concern handbook, that <b>the Bluff Road wouldn't by itself lead to extirpation of this Burrowing Owl. Do you feel that's -- is that a correct assumption to make, or is that a leap or..."</b></p> <p><i>MR. TEUFEL: "If I could just jump in. In that...same reference you're referring to, I'm familiar with that, it actually sits on my desk right in front of my computer.... I bought it myself, and refer to it quite frequently. But there's a really critical section in that -- in that chapter on Burrowing Owls and it's called 'Threats.' And one of the important statements in that section reads as follows: 'In addition to loss of nesting burrows from extermination of ground squirrels, developed environments pose a substantial risk to Burrowing Owls from mortality caused by traffic. Owls nesting along roadsides or parking lots are at greatest risk, although owls foraging along roads over a kilometer from the nest burrow,' and then it goes on to note a number of citations and go into a little more detail about specific cases where that's -- that's occurred. And I think that was a really critical part of our analysis as well in evaluating not only the development, but the -- but the road, and as Dr. Bloom noted earlier and mentions in his letters, traffic is a particular cause -- noted cause of mortality for these birds."</i></p>	<p>Page 387          Line 20</p>
<p><b>Burrowing Owl – Consideration of Alternative Conservation Strategies</b></p>	
<p>"So we're going to get into dueling quotations, so the... next page on that under 'Management and Research Recommendations for the Burrowing Owl,' it... highlights two particular ones that I'm just curious of the thoughts of staff on. For the Burrowing Owl, one of the management and research recommendations is 'maintain suitable vegetation structure through mowing, re-</p>	<p>Page 389          Line 6</p>

<p>vegetation with low-growing and less dense native plants or controlled grazing as appropriate.’ And...the second highlight is ‘Assess various strategies for maintaining owl populations in urbanizing areas.’ <b>Did we assess different strategies for...for this particular approach? Were there other strategies for maintaining owl populations in this particular area that we considered?</b></p> <p><i>DR. ENGEL: “Did we consider other strategies such as mowing the - the habit...”</i></p>	
<p>No, no.... I referenced that as something that's in the management and research recommendations, but in particular there's another recommendation which is Assess various strategies for maintaining owl populations in urbanizing areas." <b>And I'm just wondering if, you know, I -- I think that in other circumstances where there have been Burrowing Owls on developments, there have been other kind of strategies that have been contemplated.”</b></p> <p><i>DR. ENGEL (record attributes this to Vargas, but seems like a mistake): “Well, we did not assess different strategies since the actual exact habitat that they need is right here at this site, and they are using the site now for overwintering, and so no, it was not in our purview to need to assess different strategies.”</i></p> <p><i>MR. TEUFEL: “Just to add to that real briefly.... I think the primary strategy that we evaluated was conservation of their foraging and nesting areas... And that was reflected in our recommendations.”</i></p>	<p>Page 390 Line 2</p>
<p><b>Burrowing Owl – Potential Acquisition of School District Land for Preservation</b></p>	
<p>“So, and this is why I bring up that Newport Mesa Unified School District, and I haven't talked to anybody, the applicant or staff or anybody, really about this, but I'm just wondering, there's an 11 and a half acre parcel there that is right next to where these Burrowing Owls have been sighted. It seems like prime candidate for this open space habitat preservation as well, except that it's just now owned by the applicant. And it's 11 and a half acres. <b>I'm curious to ask the representative of the applicant whether they -- whether they would consider a condition that required them to seek the purchase of that parcel so that they can create a dedication of open space preserve and habitat for that Burrowing Owl in an -- in an area that is suitable for that foraging area, and in exchange, allow 11 and a half acres on one of the areas that they were proposing to develop anyway.</b> I don't know if anybody, and again, I'm just -- I'm just shooting ideas here, but I think it's worth having a conversation.”</p>	<p>Page 394 Line 19</p>

<p><i>MR. MOHLER: " Chair Bochco, members of the Commission, Mike Mohler for Newport Banning Ranch. It's certainly thinking out of the box, but public, government agencies don't do head-to-head negotiations like that. It would not be feasible from a process standpoint."</i></p>	
<p><b>Vargas on the Prospect of Litigation</b></p>	
<p>"...I feel like there's a you know, our staff counsel had mentioned earlier that, you know, it's a tactic of developers to ask for the moon and then only get a piece of that, and make us feel guilty about it, but that's what they were going for anyway. But another tactic, you know, from the other side that I've obviously always observed is...demanding nothing, and...sending that to litigation. So my fear is that if we move towards a project denial, such as the maker of the motion is seeking, that we're going to be going towards a -- a scenario of litigation. Right?"</p>	<p>Page 393 Line 4</p>
<p>"Because if we're denying this project in its current state, then we -- then, you know, the applicant can assert some type of taking, and that goes to litigation. I've seen this, you know, I've only been on the Coastal Commission for I think three and a half years now, but I've seen this a couple of times in -- in my tenure where we -- we take this tactic, things move to litigation, it moves to courts with judges that don't necessarily have the same understanding of the Coastal Act as our staff does, nor as the commissioners do. And we get a decision remanded back to us that forces our hand and makes us approve a project that we probably wouldn't have wanted to approve anyway. So my -- my fear on this tactic of -- of denying the project is that we're basically taking the commissioners' ability to have a negotiation and a discussion. We're taking our power out of this, and we're handing it to a judge, potentially. And that's my concern about this. So I... at least want to have a discussion with my fellow commissioners in terms of whether they see any other opportunities for adaptation of the staff recommendation, that might save us from a scenario like that."</p>	<p>Page 393 Line 17</p>

<b>COMMISSIONER LUEVANO</b>	
<b>Need to act on staff recommendation</b>	
<p>“I have to put my trust in staff that they have, you know, worked with the applicant, I believe the applicant has worked in good faith with staff, and they aren't in agreement, and that's why we're here, and I feel like we need to act on what the staff has recommended. So that's my reasoning in terms of -- of seconding the motion. And without having to reiterate, I want to -- I just want to echo all of the comments that Commissioner Shallenberger made in proposing her motion. I mean, there just isn't an opportunity in my opinion to get this right tonight, and we'd need to get it right.”</p>	<p>Page 397 Line 18</p>
<b>Avoiding past mistakes (Playa Vista example)</b>	
<p>“I'm from Los Angeles, I grew up there, and one of the last remaining wetlands in Los Angeles County, Playa Vista, was developed probably now more than 20 years ago, and at the time it was talked about as a very important and valuable resource. And I don't know, you know, I don't know if anyone's done any polling, but I would imagine that there are probably as many people, experts and residents included, that today would say that that was a bad idea, as there are people who would say it was a good idea. And I just don't want to make the same mistake here.”</p>	<p>Page 398 Line 5</p>
<b>ESHA/The bluff road/The burrowing owl</b>	
<p>“And there are too many issues here that seem unresolved or at least still require more attention, and I -- I -- I don't want to bring Dr. Bloom because I feel like we could be here, again, all night, but the ESHA concerns, the – the impacts to ESHA with regard to the Bluff Road that staff has outlined to the species that we've talked about, the Burrowing Owl.”</p>	<p>Page 398 Line 18</p>
<b>Native Americans</b>	
<p>“...I have some concerns about what I've heard today, you know, very distinct and different opinions about how outreach was done to Native American tribes, and the input that they've able to have in this process. And I just can't in good conscience go forward the support something when there's that much question in my mind.”</p>	<p>Page 399 Line 2</p>

LUEVANO

**COMMISSIONER TURNBULL-SANDERS**

*Turnbull-Sanders' questions to staff are highlighted in red. Staff responses appear in italics.*

**Subsurface rights and takings analysis**

"I wanted to start first with someone that was mentioned in the -- in the public comments section -- session, and that was related to the bifurcation of the application, the separation of the oil development from the above-ground development and maybe perhaps our counsel could in on this, Mr. Helperin, you had mentioned three kind of parts of the standard for determine when a taking might occur, and concluded and went through an analysis and basically determined that in your opinion and in staff's opinion that a taking would not occur in this -- in this instance. And **I would like to get some clarification on how the bifurcation process works, separating the subsurface rights from the developable rights above the surface, and whether or not the oil development, the right to develop oil is part of that takings analysis, and maybe just kind of to close the loop on what Commissioner Vargas was mentioning about the potential takings if there was an absolute kind of denial...of the application... whether that would subject us to a higher risk for a takings claim.**"

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Line 16

*MR. HELPERIN: "Well, I actually think there would be a lower risk of the type of taking that I was focusing on primarily, which is exactions, because an exaction as I mentioned earlier is a requirement to either convey a property interest or requirement to pay a fee, and there was an argument made by the applicant that the conditions recommended by staff involved such exactions. A denial would clearly not involve an exaction, so it would have less of a risk of that type of regulatory taking. The other two types of regulatory takings that I discussed were complete denials of all the value in the property, and denial of reasonable investment-backed expectations. I think it's clear from everything that's been said here today, and everything that we would put in revised findings if we were to do a denial, that we are not -- that this Commission is not suggesting that they can't do anything with the property. The idea would be that as Commissioner Shallenberger said, we still have some way to go to figure out common ground about what they can do. And so I don't think there would be a high risk of either of the other two types of takings either. And with respect to your separate question, I believe it's a separate question, about takings of the oil interests or the mineral rights, there's a separate owner for those mineral rights, and whether or not they have the right to take some value from those mineral rights isn't really before this Commission. They're doing so currently, and they have certain*

<i>rights to continue to do so, whether or not his Commission approves this project, approves a different project, or denies this project. So I think that's a separate question, if I'm understanding you correctly.</i>	
<b>Subsurface rights and takings analysis continued...</b>	
<p>"I guess my question is does the takings analysis include the subsurface rights or is that considered separately?"</p> <p><i>MR. HELPERIN: "I didn't consider subsurface rights when I was assessing takings today. I -- I, as I said just now, I don't think those are really before this Commission, there's no proposal to limit or deny those, they're currently being exercised, so I don't think there's much of an issue there, but I -- it was not part of what I discussed earlier, no."</i></p>	<p>Page 402 Line 1</p>
<b>Native Americans</b>	
<p>"And my concern is based on what was mentioned in public comment, whether there was adequate notice given to the -- the tribes that were represented. And I share the concerns, I believe, of -- of my fellow commissioner, Commissioner Luevano in that if we make a decision today, there is no way to kind undo whatever -- whatever happens going forward, and in light of particularly a level of raising of consciousness around issues pertaining to indigenous people's rights, everything that's happening around Standing Rock, I think it's very important that we make sure that we get that piece of it right."</p>	<p>Page 402 Line 21</p>

<b>COMMISSIONER MCCLURE</b>	
<i>*McClure's questions to staff are highlighted in red. Staff responses appear in italics.</i>	
<b>Site contamination – impact on the food chain</b>	
<p>"Yes, I have several questions in relationship to the contamination and how it affects the critters that live on the property. And primarily you mentioned that sometimes the pesticides or the -- the poisons that are used, for instance, for a rat population in a -- in a neighborhood can reach to the owl in relationship to that they absorb that. Is -- <b>are hydrocarbons absorbed the same way in...animals... does the animal absorb the hydrocarbons into their system and potentially poison up the food chain?</b>"</p> <p><i>DR. ENGEL: "Martha, I really don't know. I do not -- I can't imagine that unless the hydrocarbons are in the prey that they're eating, that they would be taking that into their system and have it bio-accumulate, but their prey consists of insects, they eat a lot of birds,</i></p>	<p>Page 403 Line 13</p>

<p><i>the owls, and they eat mammals and reptiles. Cassidy knows more, but the – these hydrocarbons are like two feet below the surface.”</i></p>	
<p><b>Site contamination - impact on the burrowing owl</b></p>	
<p>“And so my concern is that if we are wanting to protect the owl, if the owl's food source is potentially contaminated by hydrocarbons, then wouldn't cleanup be a priority for that critter...”</p>	<p>Page 404 Line 25</p>
<p><i>“So that's my question is what is that level of contamination for these critters...Allison, you have that answer?”</i></p> <p><i>MS. DETTMER: “I think I maybe have a little bit to offer there. It's my understanding that the location of where the birds are is not an area where there is much in the way of petroleum hydrocarbon contamination. It's the area that has been cleaned up before that we spoke about earlier. And that -- this site actually as far as we know actually doesn't have a lot of oil contamination site-wide. I do have some experience with this another site in the Central Coast of California, and I think the -- the general answer to your question about -- about what the effect is on wildlife is it depends. It depends what -- what kind of contaminants are there, in what form they are there, and what concentration, and it depends on what the wildlife is that you're...talking about. So at the Guadalupe oil field, for example, they did an ecological risk assessment out there, which is a very large -- large undertaking. So it's...a difficult question to answer, because I think it all depends. Now, on this particular site, a lot of what they are going to be removing is this very old road base materials, which to my understanding is not a to wildlife. In the same way that soil contamination and groundwater contamination, where you have more free product is more of a threat to wildlife than weathered, old roads. Now, you want to eventually take it out, but it's my understanding that it doesn't have the same kind of risk.”</i></p>	<p>Page 406 Line 3</p>
<p><b>Site contamination - Prioritizing decontamination</b></p>	
<p>“...I kept saying to myself, what is my priority? And for me, my priority is to get the poison out of the land, because I believe that that's what -- when you look at an oil well, especially with the nine miles of roads that have been covered with a very -- an oil product that is one that ends up with a plume as it moves through, where I know that some of the oil, the crude, the thick, thick oil has a tendency not to migrate. But when I was trying to look at studies as I'm reading this looking at the migration, the plumes, and how far does it go, I just kept coming back in my</p>	<p>Page 405 Line 14</p>

<p>head, we're not cleaning it up.”</p>	
<p><b>Site contamination – contamination levels observed</b></p>	
<p>“So then I have a question in relationship to the -- back to the hydrocarbons, that there are 10 parts per million, there is required cleanup. And when in – <b>when you look at C and CC, can you tell me how many parts per million were in there, in those tests that were done that actually identified the hydrocarbons?</b>”</p> <p><i>MR. TEUFEL: “Yeah, I can -- I can actually -- if I can have some help from AGP, if you can pull up the PDF I gave you, the first staff response. Same one that you had up a little while ago. And I'm asking because it has a table that shows the exact numbers and quantities.”</i></p> <p><b>“Was it greater than 10?”</b></p> <p><i>MR. TEUFEL: “Well, I think the number is a hundred parts per million for some types of hydrocarbons, and this is from the remedial action plan that was approved by the Regional Water Quality Control Board highlighted in with...the yellow highlighter there and circled in the blue boxes are the two sample locations that have the elevated levels that exceed the -- the water board-approved hydrocarbon contamination levels. And there's -- there are two standards; one for open space areas and one for proposed residential areas. The open space standard I believe is a thousand parts per million, and the residential areas is 100 parts per million.”</i></p>	<p>Page 413 Line 5</p>
<p>“Okay. And the TPH from my notes the TPH was 10 parts per million.”</p> <p><i>MR. TEUFEL: “So 10 parts per million wouldn't trigger a cleanup under either standard.”</i></p> <p>“Okay. But – and this one a hundred, so it does trigger a cleanup.”</p> <p><i>MR. TEUFEL: “If you bear with me for just one second, I will pull up the table so I can give you the exact numbers. So at pool CC, the TPH number was actually 197 parts per million at just one site, and at the other site it was 212...So those exceeded -- again, those exceeded the 100 parts per million standard for residential, but they didn't exceed the 1000 parts per million for open space.”</i></p>	<p>Page 414 Line 14</p>

<b>Site contamination – environmental hazards</b>	
<p>“Okay. And then my next question in relationship to the soil and the water, <b>if we were to leave it as is, what's the environmental hazard that would happen with rain and contamination?</b></p> <p><i>MR. TEUFEL: “The environmental hazard is that there would be -- hydrocarbons would be available for a take by plants, could be taken by anything else that interacted with it, probably burrowing invertebrates that would...interact with it.”</i></p>	<p>Page 415 Line 7</p>
<b>Site contamination – natural remediation</b>	
<p>“Okay. And then I'm going to jump back to the 158 acres that are considered contaminated at this point. <b>If those 158 acres are left as is, what will happen?”</b></p> <p><i>MR. TEUFEL: “So to clarify one thing, I think that 158 acres lumps together quite a few different...proposed cleanup targets...And so not all of those things would necessarily be called contamination. That would include pipelines, that would include these asphalt-like roadbed materials that are really, you know, in some cases have been there for many, many decades and are heavily weathered and are pretty intact and are not migrating, spreading through plumes or anything like that. And so I would have -- no, I would actually go further and say that for the most of the contamination or the cleanup targets that have been identified by -- by NBR on this site, are those types of materials. Heavy chain hydrocarbons, heavily-weathered crude materials that have been there for a very long time, a lot of these roadbeds, and so in with those types of materials, they're not really going anywhere. They're just slowly continuing to degrade over time. That's the -- the soil remediation proposal that's part of this project, was actually just to collect a lot of the hydrocarbon-contaminated soil and spread it around so that the microbes that naturally exist in the soil out there can essentially just speed up the current process of breaking that material down. So that's occurring right now, will be happening tomorrow, and on into the future. The place of that breakdown probably wouldn't -- isn't occurring as fast as it would be as if they were putting it in these treatment cells and diking it and rotating it and applying water to it, you know, doing everything they could to accelerate it. But that's going to be occurring on into the future.”</i></p>	<p>Page 425 Line 5</p>
<p><b>“So if it's left alone, it's going to self correct and all... will be right with the world? Is that what you're saying?”</b></p> <p><i>MR. TEUFEL: “Over a long enough time period...absolutely.</i></p>	<p>Page 426 Line 3</p>

<p><b>“Okay. Hundred years, probably? Or?”</b></p> <p><i>MR. TEUFEL: “It really depends, and – and that's...something that's...interesting, too. There are some locations on site that have been identified as historic sumps, and so those locations are anticipated to have a much higher level of contamination, much more dense contamination, and so those would be likely on the order of decades before they are treated. The more dispersed, lower concentrations would be breaking down much faster.”</i></p>	
<p><b>Burrowing owl – breeding vs. wintering</b></p>	
<p>“I have just a couple of questions, and one of the questions was on some of the research I was doing, that it looked like the California Department of Fish and Wildlife had put out standards of how much foraging space was necessary, but that was for a breeding pair when they are nesting. <b>So were your conclusions brought forward on breeding pair nesting? Or wintering?”</b></p> <p><i>DR. BLOOM: <b>Breeding pair nesting. There...is no nesting dat[a] in California, or no winter dat[a] in California.</b></i></p>	<p>Page 407 Line 17</p>
<p>“Exactly. There is no winter data, but the nesting data is there, but the conclusion of the -- of the report that I was reading stressed that the nesting foraging area has -- needs to be close to the -- to the burrow site because the pair, they leave and come back and feed and take care of the chicks. But my question is that when I asked and tried to find research on how far do they travel, I recognized that there were actually birds that I think were out of Canada that were found in the Imperial Valley of California in a non-nesting time. And I -- looking at those, I'm questioning is the -- since we know nothing about the wintering habitat foraging requirements because the rationale of the -- of the report that I read, and I think of what you put forward was that when they are nesting they need to stay close to the burrow, but when they are not nesting and wintering, their foraging area expands dramatically. In fact, I think Dr. Dixon in his statement, and I don't know how you interpret his statement, that <b>he felt that the foraging habitat on Banning Ranch isn't enough for -- for wintering, because they go such a long way, and he even identified the other two areas of open space that are close to the ranch. Can you tell me why he would have made that conclusion?”</b></p> <p><i>DR. BLOOM: <b>Absolutely. Understand first that the bird is breeding, it has a home range. It has an area that might be -- that might go out a half a kilometer, it might go out two kilometers. And use</b></i></p>	<p>Page 408 Line 5</p>

<p><i>whatever the best available habitat there is within that area. The birds you're talking about that come in Canada is an entirely different behavior. That's migration. And... I might add that I didn't mention this earlier, but we actually have a location where an animal was banded in Pasco, Washington and re-sited and recaptured at Naval Weapons Station Seal Beach. Now, the habitats that those birds use on their -- on their breeding grounds in Washington are very similar to what they use in California or in Mexico. That is short grasslands, little bit of sagebrush, vacant agriculture fields."</i></p>	
<p><b>Burrowing Owl – population decline and possibility of recovery</b></p>	
<p>“And then my next question is in relationship to Bolsa Chica. And the lack of Burrowing Owls that have -- there hasn't been a sighting even though it's been a restored area that -- <b>my question is when -- what will attract?</b> I mean, I know that like for instance in the Imperial Valley they do actually artificial burrows and nesting because they're working on the rehabilitation of the Burrowing Owl because that was the breeding place. I question like, for instance, the Salton Sea that used to have a breeding, a huge breeding population and it's completely gone. So I'm not sure that wintering foraging habitat is what's going to assist this owl. I'm concerned that maybe this owl is possibly being poisoned.”</p> <p><i>DR. BLOOM: “My first answer is that regarding -- regarding the state of California, it's declining statewide. There are no regions where the owl is increasing. To -- to back up a moment about the Imperial Valley, that population hasn't disappeared. There's still thousands of pairs. But it has diminished significantly, say, in the last 15. The reason they're not showing up as frequently as they used to at Bolsa Chica or anywhere else is that there probably are simply fewer of them...We have fewer wintering birds coming in. If you wanted them -- if we wanted them to be coming -- coming into Bolsa Chica or this ranch -- this, the Banning Ranch, you could establish artificial burrows and you might attract them. It may take a couple, three years, but they often do come in. And I would certainly recommend it if I was a consultant to consider that, if that was important.”</i></p>	<p>Page 410                  Line 4</p>
<p><b>Burrowing owl and other raptors – mapping and protection of foraging areas</b></p>	
<p>“Okay. And then I -- I'm going to go back one more time to the owl in relationship to other raptors....You said that we did do it once with another bird that we identified foraging, I forgot which one you...”</p>	<p>Page 421                  Line 10</p>

<p><i>DR. ENGEL: "White-tailed Kites."</i></p> <p>"Okay. So we did it with the White-Tailed Kites, and <b>when we did that, was there information available, scientific information, for instance...on the foraging needs?</b></p> <p><i>DR. ENGEL: "There was mapped foraging routes that were, you know, that were used to delineate the boundary of the foraging habitat, yes, that's true."</i></p>	
<p>"And -- <b>but we don't have any kind of that type of mapping?"</b></p> <p><i>DR. ENGEL: "No, we do not."</i></p> <p>"... for the wintering. <b>And will this kind of overlay of foraging, does that now become part of the osprey, does that now become part of any other raptor in California that we are as a commission going to have raptor foraging as our -- as our restraint for development?"</b></p> <p><i>DR. ENGEL: You mean for future projects?</i></p> <p>"Uh-huh."</p> <p><i>DR. ENGEL: "We -- we treat listed species as ESHA if they rise to the level of the state or federal listing, and where..."</i></p> <p>"Of level of concern."</p> <p><i>DR. ENGEL: "Species of special concern...Whether they are threatened or endangered, state 1 through 3 listed. And so we protect their nesting areas, and if the – the particular species is reliant on the foraging habitat to persist, yes, we would protect their foraging habitat. And so in terms of non-listed species, when there is evidence over time of a particular area being used year by year, by a number of different raptors, we have protected their nesting sites, we have not up to this point that I am aware of protected non-listed foraging habitat for raptors."</i></p>	<p>Page 422 Line 3</p>
<p><b>Burrowing owl and other raptors – mapping and protection of foraging areas continued...</b></p>	
<p>"It does make sense, but it's what I would consider a very slippery slope. For instance, if we were doing a, you know, a piece of property and we were having -- a bird was in the -- one of the trees, we've protected trees in the past because we've known they've been raptor nesting sites or perching sites. But many of them have a distance to fly that will cover all sorts of other</p>	<p>Page 423 Line 10</p>

<p>people's property to -- and I'm not sure how far we can reach on a project outside of the -- the APN numbers of what we're actually working on, so...to me that's kind of scary.”</p> <p><i>DR. ENGEL: [We've only] looked at these very large project sites like at More Mesa in Santa Barbara, the Dos Pueblos Ranch up north in Santa Barbara, and Banning Ranch, in terms of foraging habitat, and at UCSB.”</i></p>	
<b>Change in setbacks</b>	
<p>“Then back to staff, I -- I also, you know, went back and reread the May report and then looked at this report, and <b>I'm curious as to why the setbacks were so dramatically different.</b>”</p> <p><i>DR. ENGEL: “I don't think that they were dramatically different... could you elaborate, please?”</i></p> <p>“Yeah, I -- I think that we had -- we had identified that we would have the 100-foot setback from the Gnat Catcher, but a 50-foot setback from sensitive vegetation and ESHA, a 100-foot setback from wetlands and a 50-foot setback from archeological resources.”</p> <p><i>DR. ENGEL: “Yeah, that is exactly correct, and at that time we also had 160 foot, or 50 meters from the Burrowing Owl burrow habitat, which is what the California Department of Fish and Wildlife recommends solely to protect the burrows from absolute direct disturbance....That's the same in both reports.”</i></p> <p>“Okay. I thought that we were asking for a 100 percent set -- a 100-foot setback, period, from the ESHAs that we identified.”</p> <p><i>DR. ENGEL: “...that is correct that there is a 50 -- we recommended a 50-foot minimum setback from any sensitive vegetation.”</i></p>	<p>Page 411          Line 24</p>
<b>Vernal pools</b>	
<p>“And then I'm going to skip to a whole new -- to the vernal ponds... <b>what is the fate of the complex if the hydrology is not restored?</b> I'm just worried that if we don't do something, we're going to lose...”</p> <p><i>DR. ENGEL: “The fate of the complex if the hydrology is not restored, it is -- it is right now there is no problem with the hydrology of the vernal pool complex. The -- the problem is the five-year drought. That right now -- so if it was just left alone there -- there is -- Fugro -- Fugro did a watershed analysis and the eight vernal pools are within a watershed that contains, you know, that</i></p>	<p>Page 415          Line 18</p>

<p><i>supports the vernal pools because it allows for water accumulation."</i></p>	
<p>"My question...is related to how the roads bifurcate the vernal pool area, and if everything is just left as is."</p> <p><i>DR. ENGEL: "None of the roads right now go through any of the vernal pools."</i></p> <p>"Around the area. Because you -- <b>you were trying to go to the -- we're trying to get the flow to happen again, right? I mean...</b>"</p> <p><i>DR. ENGEL: "Oh, do you mean for the proposed development, the roads?"</i></p> <p>"...I mean for, if the vernal pools are not -- <b>if the restored hydrology and habitat connectivity is not improved around the vernal pools, what is the fate of the vernal pools?"</b></p> <p>DR. ENGEL: "Well, I guess I'm sorry, Martha, but I'm not really understanding your question, because the fate of the vernal pools, they are doing just fine right now."</p> <p>"Oh, okay. That kind of surprises me."</p>	<p>Page 416 Line 13</p>
<b>Potential ESHA</b>	
<p>"Yeah, there was the whole thing about the potential ESHA, there's a reference to that some of this area could be potential ESHA, and so how was that, <b>how do you measure potential ESHA?"</b></p> <p><i>DR. ENGEL: "I don't know, again, I don't know what you're -- I don't -- I never referred to potential ESHA. Huh?"</i></p> <p>"I thought it was also in the -- I thought it was in the staff report. Excuse me. <b>Weren't we looking at the property as if it were totally restored in measuring the ESHA?"</b></p> <p><i>DR. ENGEL: "No, we were looking, when we looked at the on-the-ground conditions in identifying ESHA on the site."</i></p> <p>Okay. "I'm going to have to go back and I'll dig through these notes, then, because that's not what I was writing down from the report that I was reading."</p>	<p>Page 417 Line 15</p>

<b>Invasive Plants</b>	
<p>“And then the other, the ice plant. The -- the 92 acres of invasive plants that are found on the property, but the ice plant in particular was one that was of complete worry to me when I saw it, because it was all over the grassland, and it wasn't allowing any native -- it was taking away the native plants, and it's my understanding that the -- <b>I guess from you I would like to know the rate of the invasion</b>, because ice plant, when we visited two years ago, it had spread. It was everywhere. And it was spreading fast, it appeared.”</p> <p><i>DR. ENGEL: “We could bring up the vegetation map from the applicant's consultants, and they do have ice plant maps on the map, so the applicant did map the vegetation in 2012 and then again mapped it in 2015. We have not done that analysis to look at a chance in the percent cover of ice plant. To be honest, I have been out there many times. I haven't seen a change in the amount of ice plant from year to year. It -- there is quite a bit of ice plant....But it is remaining about the same, in my opinion.”</i></p>	<p>Page 418 Line 10</p>
<p>“ Okay. <b>Can I ask the applicant if they saw -- if there is an increase in the amount of ice plant that has -- since it's not being controlled?</b>”</p> <p><i>MR. MOHLER: “Chair Bocho, to the commissioner, Mike Mohler again. There is -- in the veg mapping there was a pronounced increase in invasives, but they were lumped together, so it was a combination of ice plant and even more so in the case of mustard.”</i></p>	<p>Page 419 Line 9</p>
<p>“Okay. Thank you. And so I guess my question to staff is that <b>if we do nothing, the 92 -- the current 92 acres of invasive species, based on your knowledge of invasive species, what do I anticipate it to look like five years from now, ten years from now if nothing is done?</b>”</p> <p><i>DR. ENGEL: “Well, one thing we definitely have seen is with the cessation of mowing, there has been a real resurgence in the Coastal Scrub habitat, and the -- the -- as I discussed a little earlier, there -- there also has been, due to the drought...some invasion of the Russian Thistle and the mustard, which -- but these -- these weeds have very short life spans, and they die back, and they're typically annuals, and the -- much of the native plants are perennials, and they through time will likely out compete the invasives, especially with the lack of mowing on the site.”</i></p>	<p>Page 419 Line 19</p>

<b>Shrimp species</b>	
<p>“And then also the invasive shrimp that is found in either it was C or CC. I'm not sure which.”</p> <p><i>DR. ENGEL: “There's no such thing as invasive shrimp on the site. There are two...There are -- there's the Common Fairy Shrimp, the Lindahli, and then there's the San Diego Fairy Shrimp. Now, the San Diego Fairy Shrimp is the endangered species. The Common Fairy Shrimp is the -- as the name implies, common. They're -- the applicant's consultant purported that there is potential for these species to hybridize, and that is -- that happens naturally. I don't think of that as a problem....And we don't even know if that occurs, that, you know, that is pretty unique for species to hybridize. They usually have strong ability to prevent hybridization. We don't know that they do hybridize.”</i></p>	<p>Page 420 Line 14</p>
<b>Abandoned oil wells</b>	
<p>“Okay. And then one final question about the wells. There is not required cleanup at this point with the abandoned wells that are on the site, that -- <b>it's my understanding from the staff report that the cleanup will be triggered when the last well closes?</b>”</p> <p><i>MR. TEUFEL: “No, that's -- that's not the case. So there's... two separate cleanup requirements that the Division of Oil and Gas and Geothermal Resources, essentially two types of triggers. The last well on the site trigger that I think you're referring to, is -- is when the last well on a lease is triggered or abandoned, then the division looks at the whole lease and makes sure that it's restored to natural conditions. In addition to that, every time a single well is abandoned, they need to seek a well abandonment permit from -- from DOGGR, and before DOGGR issues that permit or part of their process of overseeing the issuance and signoff on that permit is to ensure that all the infrastructure that serves that well, so I'm talking about the power lines, the transformers, the pumps, the pipelines, all those types of things, are removed. And so it's essentially kind of a piecemeal removal, everything that's going to that well is taken -- required to be taken out. And as an example of that, the whole Southern Mesa portion of the site where the wells were abandoned in that way, in fits and starts, now there isn't -- there aren't any pipelines, there aren't any power lines. Historically there was all that stuff out there, and it's all been taken away through the issuance of those well abandonment permits. And that's our consent cease and desist order that the Commission approved last year, the requirement to abandon 17 wells on the site is going to trigger the need for those well abandonment permits, which is also going to trigger that requirement that all the</i></p>	<p>Page 426 Line 24</p>

<p><i>infrastructure and services that go to those individual, 17 individual pipe wells also be removed.”</i></p>	
<p><b>Abandoned oil wells continued...</b></p>	
<p>“Okay. And that triggers one more question for me. And that is that when we -- we have the wells that we -- that are part of the cease and desist. It's my understanding there's still a number of wells that DOGGR didn't require them to remove stuff on. Is that - - I mean, why haven't -- <b>if these wells are already abandoned... why did we have to go to a cease and desist if... did DOGGR not do its job?</b>”</p> <p><i>MR. TEUFEL: “So, no, these -- these wells are actually wells that some of them are idle, some of them are currently actively operation....And the cease and desist order came about because there was a disagreement about what was exempted, what development was exempted on the site, and as a result of that, through the Commission staff's investigation, a portion of the staff's investigation it appeared that a certain number of wells were drilled without Coastal development permits that were necessary. And those are the wells, the 17 wells that we're requiring to be removed. Additionally, there are 23 more wells that rather than just mandating removal, NBR has the opportunity to seek after-the-fact authorization and retain those wells, or to remove them at their -- it's up to them. In addition, there's -- so -- so essentially DOGGR has required that all the wells that are abandoned on the site, there are no --there is no infrastructure serving those wells.</i></p> <p>“That’s all been cleaned up.”</p> <p><i>MR. TEUFEL: “That's all been cleaned up....There are other materials that have been accumulated on site, like the concrete debris and pumping units and other types of things that DOGGR is currently, as we speak today, undergoing an investigation to address those types of things.”</i></p>	<p>Page 428 Line 19</p>
<p><b>Involvement of Horizontal Development</b></p>	
<p>“ And then I get a little nervous when I hear that one of the oil companies involved is called Horizontal -- what was that, Horizontal...Horizontal Development, because that to me might be code word for fracking.”</p> <p><i>MR. TEUFEL: “To my -- to the best of my knowledge, and this is a question that I posed directly to them, and the response I got is that geologic conditions are not conducive to fracking, and so it's not something that they're interested in pursuing. That -- the permit</i></p>	<p>Page 430 Line 11</p>

<p><i>that that company, Horizontal Development, LLC, which actually it's a return to one of Commissioner Turnbull-Sanders' question, they are the entity that owns the mineral rights throughout the entire site....And when they come before you for their proposed drilling of additional wells within the oil remainder area, that's certainly something that -- that you can ask them directly as well."</i></p>	
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<b>COMMISSIONER URANGA</b>	
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<b>Importance of making the property accessible</b>	
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<p>"My perspectives on this whole thing is a little different. I think I've learned more about Burrowing Owls than I wanted to, or that I need to. It is important, I know. All the ESHA, we've had workshops on that and I know that's important as well. But, you know, I'm a human being and I -- and I deal with human relations, and this project initially for me was one that opened up a blighted area. Opened up an area that is fenced off, that is inaccessible, that has no value to anybody other than to the inhabitants that live there, the Burrowing Owls and everybody else that -- every other animal that lives there. But nobody gets to enjoy it, because nobody gets to see it."</p>	<p>Page 431 Line 23</p>
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<p>"But the bottom line is that we want to get this right, we want to know what we can do tonight so that we can build our future for tomorrow. And a lot of the commentaries that I heard tonight, what about, you know, opening up the access, having classes for kids, access from 17th Street to PCH to the beach; providing an opportunity for people to --for this property to get activated, to bring down the fence, to open up the gate and get people involved. That's what I would want to see, but apparently that's not what everybody can agree with today. Maybe there is one for tomorrow, but that would be more discussion, more debate..."</p>	<p>Page 434 Line 3</p>
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<p>"... I'm pretty sure that even at this point right now we could still come up with something that would be amenable to not only staff, to the Commission and to the applicants, but to everybody who is here who has a real genuine concern about not only what we're trying to protect in terms of the ESHA and the Burrowing Owls, but for our kids and for the future of than land. And for opening it up and activating it so people could enjoy it. Right now, nobody is enjoying anything out of. It's gated. It's fenced. It's nothing. You know, it's one of those tree-in-the-forest type of thing. If you don't see it, does it exist? So the people know, yes, people who are around it know it. But does a person driving</p>	<p>Page 435 Line 8</p>
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<p>down PCH know it? Do they -- do they see it? No, they don't. Unless you have a sign there that says, you know, right there, you know, it's Banning Ranch up on the hill. Fine. There's a sign that says Banning Ranch up on the hill, but you can't go in there. You can't see it. You can't enjoy it. You can't hear the birds. You can't smell the flowers."</p>	
<p><b>Consequences of denying the application</b></p>	
<p>"And my question at this point would be if we approve this motion, we essentially kill the project. What does that do to the applicants in regards to their future ownership of that land, and I know there's been some suggestions about putting it up for sale and having other groups buy it, but I don't see that happening. I think it's going to be very expensive to purchase by somebody else...."</p>	<p>Page 432 Line 12</p>
<p>"So I guess the question is, and it's one that was raised by Commissioner Vargas, is if we deny this tonight and we essentially kill this project, what's the future? What's the future?"</p>	<p>Page 433 Line 19</p>
<p><b>Difficulty of reaching an agreement</b></p>	
<p>"... there is a project, staff is recommending a "yes" vote, so there is something there. It's just not to the capacity or to the level that is acceptable to everyone. I mean, there's still a lot of issues, questions, things to clear up, because there's still some debate on this, obviously. There's a lot of debate on this. And there's probably still some opportunity to come to a middle ground on this. We just haven't reached that yet. Commissioner Shallenberger was right in the sense that we need to get this right. However, the path we're taking right now I don't think we can ever get there, because there is -- we're so far apart and they're so -- the differences in opinions and observations are so wide that there's -- there's -- we could argue this to ad infinitum, with just no solution. And I don't see one coming tonight. I mean, I'm very frustrated with the discussion that's going on tonight, because I don't see a solution to this."</p>	<p>Page 432 Line 21</p>
<p>"So I'm not -- I'm not supportive of the motion, I think there's a project there, and if we can, some way or another, that we can push this out a little more or, and I know that we have timelines, I know that we have deadlines and I know that the way this Commissioner works anyway. You know, on the city council we could say, you know, study it some more, bring it back, and we'll - - we'll...revisit the issue....We can't do that here, apparently. We have timelines and permits expire. And -- and there's no opportunity to keep on forward. I was hoping that maybe there's</p>	<p>Page 437 Line 9</p>

<p>some kind of way we can continue this discussion, get to that yes point, because there is one there. Staff is recommending a yes vote....The Commission is saying no, or the motion is no. So I think we – we need to push this out a little further and have some more discussion.”</p>	
<b>Likelihood of litigation</b>	
<p>“If we vote this down tonight, and we essentially kill this project, are we opening up our -- we had a closed session earlier today and we have a whole list of lawsuits against the Commission. <b>Are we going to add another one on this one?</b>”</p> <p><i>MR. PEDERSON: “Certainly there is the possibility of litigation if the Commission denies the project. There's a possibility of litigation if the Commission approves the project.”</i></p> <p>“So there's litigation either way. Okay. Well, you know, (chuckles) it's one of those situations, damned if you do, damned if you don't. And for me, you know, for me, I've always been the type of person, you know, I'd rather be damned if I do than don't. Because at least I know I took a risk, I took a chance.”</p>	<p>Page 436          Line 10</p>

<b>COMMISSIONER COX</b>	
<b>Nature of staff recommendation</b>	
<p>“I'm kind of maybe at the same point were Commissioner Uranga is in -- in regards to a, you know, we've got our staff that is recommending a proposal for some limited development, which means that they're -- they're not opposed to seeing development on a portion of the property, but we have the applicant who is saying that that's, you know, if that's what's ultimately approved it's tantamount to not having a project, because it's not economically feasible...”</p>	<p>Page 438          Line 14</p>
<p>“... I think that the proposal that has been laid out by the developer I think is -- is not something's probably going to be sustained based on the staff's recommendation. On the other hand, I think the staff's recommendation is -- is overly limiting.”</p>	<p>Page 441          Line 18</p>
<b>Role of the Commission</b>	
<p>“...our job isn't necessarily to make their project economically feasible, but it's to try to implement the various elements of the Coastal Act in a responsible manner.”</p>	<p>Page 438          Line 23</p>

<b>Burrowing owl – past experience</b>	
<p>“And -- and I -- I've had some limited experience, certainly not as much as Dr. Engel or others in regards to the -- to the Burrowing Owl. When I was mayor of Chula Vista, one of the things I was really proud of was we -- I was one of the leaders that encouraged the development of the Chula Vista Nature Center, and now it's called the Living Coast Discovery Center. And one of the things that has happened out there is they actually created a Burrowing Owl exhibit where they had some Burrowing Owls that were not releasable...”</p>	<p>Page 439 Line 2</p>
<p>“And in my role on the board of supervisors, we're dealing with Burrowing Owls in the East Otai Mesa, and there it's kind of interesting, the US Fish and Wildlife Service has taken the position that there's about 2300 acres of land there, and a lot of it is set aside or identified as potential Burrowing Owl habitat and foraging areas, and they're basically, Fish and Wildlife Service is basically saying that if you're going to develop in that area, you need to mitigate one for one acre. And half of that has to be on site, and half of it can be somewhere else that is suitable, so in other words you're going to end up with kind of a patchwork quilt of areas that may not even be directly contiguous that would be set aside as foraging areas for the Burrowing Owl. So I understand that, you know, there is no hard and fast rules among the resource agencies in regards to what is the best prescriptive answer in any given situation.”</p>	<p>Page 439 Line 18</p>
<b>Burrowing owl – artificial burrows</b>	
<p>“The -- the document that Commissioner Vargas was -- was referring to earlier under the management and resource recommendations are also as a caveat or a suggestion that says that where nesting burrows are lacking, enhance habitat by using artificial burrows or encouraging the presence of ground squirrels. It seems to me since the meeting we had last May when we were considering this proposed development, and today that the Burrowing Owl seems like it's the one that has inserted itself or has been raised to an additional level of consciousness, and I -- I guess I kind of feel like in my own situation in San Diego County and East Otai Mesa, while, you know, the Burrowing Owl is an important species, it seems like one of the ways to deal with the Burrowing Owl is to create, you know, maybe it's not a shortage of Burrowing Owls as much as it is a shortage of ground squirrels.”</p>	<p>Page 440 Line 13</p>

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<p>“In other words, if we had a captive breeding program for ground squirrels and released them in this area, since they create the burrows that they like -- the Burrowing Owl likes to live in, and they're actually a part of their food chain, that maybe we would actually have an enhanced environment for Burrowing Owls.”</p>	<p>Page 441 Line 7</p>
<p><b>The south development – low cost accommodations</b></p>	
<p>“ The one part of this project that I was really, I guess I don't want to say excited, but encouraged about was the, what has been referred to I think by staff is the South development, which was the 11.9 acres that had the 75-room hotel, the limited number of residential units, and the hostel. And I think, you know, as we've dealt with projects over the years, heaven knows, over the last two plus years that I've been on this Commission we've been focusing on trying to do whatever we can to create more low cost visitor-serving accommodations.”</p>	<p>Page 441 Line 23</p>
<p><b>The south development – bluff road</b></p>	
<p>“So I guess I -- you know, I'm somewhere in between. I...don't like necessarily staff's limitation in regards to the -- the 19 acres or whatever the residual of that is, I'd really like to see some additional opportunities, maybe, to take another look at the -- the south parcel, which means that maybe the -- the Bluff Road is not something that is the spine of this project, it's something that provides access to the southern parcel, and the 17th Street access is something that is maintained for the parcels to the north.”</p>	<p>Page 443 Line 14</p>
<p><b>Site accessibility</b></p>	
<p>“The developer has represented that they are prepared to spend upwards of \$75 million in habitat restoration and other enhancements to this site. Keeping it fenced off, I mean, I guess, you know, that's one of the consequences of the actions that we may or may not take today, but I don't think it's going -- and, you know, there are some requirements that they will have to clean up portions of this site, but the -- the bottom line is this is a site that's going to be basically fenced off, not available to -- to the public.”</p>	<p>Page 442 Line 16</p>
<p><b>Public educational opportunities</b></p>	
<p>“I do think there's a lot of educational opportunities that we ought to be trying to encourage, and I think by having a good restoration and enhancement plan that is set up as a part of any approved development is something that could make this area an asset, not only to the existing creatures, but to improve the environment for expansion of the species that are somewhat limited in their ability to utilize the area here, and at the same</p>	<p>Page 443 Line 2</p>

<p>time provide I think some good educational opportunities and some additional opportunities to the public to have access to this area.”</p>	
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<b>COMMISSIONER HOWELL</b>	
<b>Positive aspects of the project</b>	
<p>“And like Commissioner Cox mentioned, there is a lot to like about this project. I like – I like the hostel, I -- I like the public access, I like the educational components, and of course I'd like cleaning up the polluted site.”</p>	<p>Page 444 Line 19</p>
<b>Burrowing Owl</b>	
<p>“But for me, ultimately that looks like bright lights and the neon signs. And I know we've talked a lot about the Burrowing Owl, and I'm not about to start, and we've talked as much as we need to. All right? And, you know, and the way I see these things shaking out perhaps, is we all end up on the front page of -- of the newspaper obsessing over the Burrowing Owl, or in some sort of appellate court decision. I like the Burrowing Owl, too, and I wish one would settle in my neighborhood and eat the mole that's like in my front yard and causing all these problems.”</p>	<p>Page 444 Line 24</p>
<b>Items neglected during project review</b>	
<p>“But we talk about this project in kind of an odd way. We don't talk about the traffic. We haven't talked about the pollution. We don't -- we're not talking about it like we talk about other projects.”</p>	<p>Page 445 Line 12</p>
<b>Endangered and threatened species</b>	
<p>“And ultimately, I think that the Coastal Commission needs to be the last court of appeal for the Gnat Catcher, the Fairy Shrimp, the Coastal Scrub, which isn't as cute as the Burrowing Owl, but it's important too...”</p>	<p>Page 445 Line 21</p>
<b>Protection of riparian habitats</b>	
<p>“...in my opinion neither the staff-recommended project nor the applicant's project adequately protects the riparian habitats, the wetlands, the vernal pools, or complies with the Coastal Act.”</p>	<p>Page 445 Line 25</p>

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<b>VICE CHAIR BOCHCO</b>	
<b>Consequences of denial</b>	
<p>“So let me just say that I don't think that if we support this motion of a denial today that that's the end of this project. I don't think that that's going to happen...”</p>	<p>Page 446 Line 20</p>
<b>Sensitivity of the habitat</b>	
<p>“I think what we really do need to do is take a much closer look at a very, very sensitive habitat. That's the problem. It's not that the applicant is looking to do a bad project. It's actually a wonderful project. Someplace else. It's just that this particular piece of property is so sensitive. It has been battered, it has been bruised, it has been, you know, decimated for 70 years, but yet they still are there. Those little animals, those -- those weeds and bushes and all the things that matter in this environment, they're still there. You can't kill it with a stick.”</p>	<p>Page 446 Line 23</p>
<b>Science behind staff's conclusions</b>	
<p>“I think the staff proposal is amazingly supported by science. I mean, I've studied all of the papers that you attached. I went back and looked at other papers that you referred to. I read all of the applicant's science. I certainly read Dr. Bloom's paper. And I think on the whole the substantial goes with staff on this one. By far.”</p>	<p>Page 447 Line 16</p>
<b>Fuel modification in the buffer</b>	
<p>“I mean, for someone to argue that fuel modification should be in the buffer, I don't know where you get that. We don't do that. We never have done that. You know, the guidelines on buffers, if you go back to 1981, you'll see it has always been the way it is. And I think the staff has been flexible on buffers. It's not a hundred buffer everywhere. What they did is they looked at every specific type of ESHA in this giant project. I mean, this is huge. And they did a very careful job of that.”</p>	<p>Page 447 Line 24</p>
<b>Burrowing owl – protection of winter foraging habitat</b>	
<p>“So I have to say not only am I going to support the motion, but I did want to tell Commissioner Vargas, because I went and did some Googling on the owl, too, and what I found, when I looked up how do you determine winter foraging habitat, what I read was the way to -- to promote winter foraging habitat is to set aside sizable tracts of grassland under conservation easements, and eliminate the poisoning of small mammals.”</p>	<p>Page 448 Line 10</p>

<b>Burrowing owl – threats posed by residential development</b>	
<p>“And that of course is exactly what's the problem here in terms of just this one species is that you're going to put in a lot of houses that are going to have a lot lawns and lot of pets. And I really appreciate when the applicant had their scientist say, hey, look, we'll put a CC&amp;R there against, you know, outdoor cats. I thought, you know, they're really trying. So that is certainly a step in the right direction. But they're still not going to want those squirrels in their yards. They're going to dig holes and we're going to poison them. That's what people do.”</p>	<p>Page 448 Line 19</p>
<b>Balancing human and conservation needs</b>	
<p>“So I think we have a problem between what Commissioner Uranga and Cox would like to see, which is the availability of the site to be improved and available for humans, and that has to be set right next to the necessary preservation of the very rare habitat of this site.”</p>	<p>Page 449 Line 7</p>