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U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

ORIGINAL

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MONDAY, DECEMBER 28, 2015

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The Commission convened by teleconference
at 10:01 a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

PATRICIA TIMMONS-GOODSON, Vice Chair

ROBERTA ACHTENBERG, Commissioner

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

KAREN K. NARASAKI, Commissioner

MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director

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STAFF PRESENT:

ANGELA FRENCH-BELL

ALFREDA GREENE

TINALOUISE MARTIN

DAVID MUSSATT

MAUREEN RUDOLPH, General Counsel & Parliamentarian

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART

JASON LAGRIA

CARISSA MULDER

ALISON SOMIN

KIMBERLY TOLHURST

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P R O C E E D I N G S

(10:01 a.m.)

CHAIRMAN CASTRO: Thank you, everyone. This is Chairman Marty Castro, and I want to announce that this is the telephonic meeting of the U.S. Commission on Civil Rights. We'll come to order. This meeting is taking place today, December 28, 2015. It is now 10:00 a.m. Eastern Time. This meeting is taking place telephonically.

I wanted to go over -- excuse me, I'm fighting off a little bit of a cold here. I want to go over a few logistical matters just to ensure that we have a readable transcript and a meeting that flows well. Since we're doing this telephonically, there's obviously a few little hurdles we have to make sure we overcome.

So whenever anyone speaks, if you could please identify yourself, not just the first time, but every time because the court reporter will need to identify who we are, and he or she may not necessarily recall the tone of your voice. When you aren't speaking, please make sure you mute the phone, particularly if you're in a public place, so that we don't get a lot of feedback or static background noise.

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1 And also, try not to speak over one another
2 because when someone is speaking, we can't hear the
3 other person anyway. Aside from, you know, obvious
4 courtesy reasons, but we just want to make sure we have
5 as accurate and complete a transcript as possible.

6 So in terms of commissioners that are
7 joining us telephonically, myself, Commissioner
8 Kirsanow, Commissioner Heriot, Vice Chair
9 Timmons-Goodson, Commissioner Kladney, Commissioner
10 Narasaki, Commissioner Achtenberg, and Commissioner
11 Yaki are all participating. We have a quorum present.
12 Is the court reporter present?

13 COURT REPORTER: I am.

14 CHAIRMAN CASTRO: Court reporter, can you
15 answer please?

16 COURT REPORTER: Yes, I'm present.

17 CHAIRMAN CASTRO: Sheryl, are you on the
18 line?

19 MS. COZART: Yes, I am.

20 CHAIRMAN CASTRO: What's the problem?

21 MS. COZART: I am not sure. The operator,
22 Angela, said that the court reporter is on the line,
23 but I have not heard the court reporter's voice.

24 CHAIRMAN CASTRO: Is there a way we can get

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1 some acknowledgment?

2 COURT REPORTER: I'm present. I don't
3 know why they can't hear me.

4 MS. COZART: I just heard something.

5 OPERATOR: And I did open up the lines of
6 all the participants in the room.

7 CHAIRMAN CASTRO: Okay.

8 COURT REPORTER: I'm on the line. Can
9 anyone hear me?

10 MS. COZART: Yes.

11 CHAIRMAN CASTRO: Who is this?

12 COURT REPORTER: This is the court
13 reporter.

14 CHAIRMAN CASTRO: Okay, good, all right.

15 COURT REPORTER: Okay.

16 CHAIRMAN CASTRO: Thank you. Is the
17 staff director present?

18 DIRECTOR MORALES: I am present. This is
19 Mauro Morales.

20 CHAIRMAN CASTRO: Okay, then I think the
21 meeting will come to order. The first item is the
22 approval of the agenda.

23 I. APPROVAL OF AGENDA

24 CHAIRMAN CASTRO: I have moved that we

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1 approve the agenda. I do have additional amendments
2 as well, and that is to add the discussion vote on the
3 2016 enforcement report discovery plan. So I'll make
4 a motion that we approve the agenda with that amendment.
5 Are there any other amendments? Hearing none, is there
6 a second?

7 VICE CHAIR TIMMONS-GOODSON: Mr. Chair,
8 I'll second.

9 CHAIRMAN CASTRO: And that was the Vice
10 Chair?

11 VICE CHAIR TIMMONS-GOODSON: Vice Chair.

12 CHAIRMAN CASTRO: Okay, so all those in
13 favor, say, aye.

14 (Chorus of aye.)

15 CHAIRMAN CASTRO: Any opposed? Any
16 abstentions? Okay, the motion passes unanimously.
17 So that gives us four items on our agenda today.

18 II. PROGRAM PLANNING

19 PRESENTATION ON TOWN HALL BUDGET ESTIMATES
20 FOR THE ENVIRONMENTAL JUSTICE REPORT

21 CHAIRMAN CASTRO: The first is a
22 presentation on the town hall meeting budget estimates
23 for the environmental justice report, so for that I'll
24 ask our Director of OCRE, Angela French-Bell, to please

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1 come to her mic and discuss the budget estimates for
2 us.

3 MS. FRENCH-BELL: Good morning, Chairman
4 Castro, Vice Chair Timmons-Goodson, Commissioners,
5 special assistants, and staff, and happy holidays.
6 Our budget for the town hall meetings that we are
7 proposing in Alabama on either February 26 or March 4
8 come to a total of \$36,000. We estimate \$10,000 for
9 the operating travel budget. There would be
10 approximately eight employees, mostly staff -- I'm
11 sorry, was there a question?

12 CHAIRMAN CASTRO: No, go ahead. There
13 may be one when you're done, but please continue.

14 MS. FRENCH-BELL: Okay, they would stay
15 approximately three nights. We're hoping to have this
16 be a late afternoon event from 5:00 to 7:00 p.m. so that
17 we can get the most people to be able to attend and not
18 have them be at work. So the extra day would be helping
19 to set up and also ensuring that everything runs
20 smoothly.

21 We will anticipate that there would be
22 approximately 19 employees who would stay for two
23 nights at a total cost of \$19,000, and that would
24 include commissioners as well as special assistants.

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1 It would be \$1,000 for sign language interpreters,
2 \$3,000 for transcription services, \$2,500 for the
3 facility and equipment rental, and \$500 for shipping
4 materials, supplies, and printing costs.

5 Of course these are estimates. It's not
6 entirely accurate. It's just a rough estimate. Are
7 there any questions regarding this estimate?

8 CHAIRMAN CASTRO: So you've broken it
9 down. This is Chairman Castro. You've got a line that
10 says \$10,000 for a three-night stay with eight
11 employees, and then a line that's got \$19,000 for a
12 two-night stay for 19 employees.

13 MS. FRENCH-BELL: Right.

14 CHAIRMAN CASTRO: Are these two separate
15 proposals or is this -- there's going to be a group of
16 us staying two days and a group staying three days?

17 MS. FRENCH-BELL: Well, we thought there
18 would be a group staying three days and a group staying
19 two days.

20 CHAIRMAN CASTRO: Okay, so the \$29,000 is
21 the total for the --

22 MS. FRENCH-BELL: Exactly.

23 CHAIRMAN CASTRO: -- travel, okay.

24 MS. FRENCH-BELL: Right.

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1 COMMISSIONER KLADNEY: This is
2 Commissioner Kladney. Is there a court reporter
3 budgeted?

4 MS. FRENCH-BELL: That's part of
5 transcription services.

6 COMMISSIONER KLADNEY: Okay, and why are
7 all OCRE employees going, all five of them?

8 MS. FRENCH-BELL: When it comes to an
9 event like this, we typically bring most of OCRE to come
10 along. We help do timing. We help to ensure that
11 events run smoothly. We help to do printing. So it's
12 really a team effort, so that's normally what we do.

13 COMMISSIONER KLADNEY: So they're
14 actually doing the administrative duties?

15 MS. FRENCH-BELL: Absolutely.

16 CHAIRMAN CASTRO: Any other questions?
17 Okay, I think we need a vote on this.

18 MS. FRENCH-BELL: Okay.

19 CHAIRMAN CASTRO: So, I'm sorry, was there
20 somebody who wanted to ask a question? This is
21 Chairman Castro again. Sorry, I forgot to use my own
22 rule here. Did I hear a question from anybody? If
23 not, then I will entertain a motion to approve this
24 budget. Is there such a motion?

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1 COMMISSIONER NARASAKI: This is Karen,
2 Commissioner Narasaki. I so move.

3 CHAIRMAN CASTRO: Do we have a second?

4 VICE CHAIR TIMMONS-GOODSON: Vice Chair
5 Timmons-Goodson, I second it.

6 CHAIRMAN CASTRO: Okay, any additional
7 discussion? If not, let me take a roll call vote on
8 this. Commissioner Narasaki, how do you vote?

9 COMMISSIONER NARASAKI: I vote yes.

10 CHAIRMAN CASTRO: Commissioner Kladney,
11 how do you vote?

12 COMMISSIONER KLADNEY: I'll pass for a
13 minute.

14 CHAIRMAN CASTRO: Okay, Commissioner
15 Achtenberg, how do you vote?

16 COMMISSIONER ACHTENBERG: Yes.

17 CHAIRMAN CASTRO: Commissioner Yaki, how
18 do you vote?

19 COMMISSIONER YAKI: Yes.

20 CHAIRMAN CASTRO: And Vice Chair, how do
21 you vote?

22 VICE CHAIR TIMMONS-GOODSON: Yes.

23 CHAIRMAN CASTRO: Commissioner Kirsanow,
24 how do you vote?

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1 COMMISSIONER KIRSANOW: No.

2 CHAIRMAN CASTRO: Commissioner Heriot,
3 how do you vote?

4 COMMISSIONER HERIOT: I think I abstain.

5 CHAIRMAN CASTRO: Commissioner Kladney?

6 COMMISSIONER KLADNEY: Yes.

7 CHAIRMAN CASTRO: And I vote yes. We have
8 one, two, three, four, five, six yeses, an abstention,
9 and a no, so the plan passes. Next, we have on the
10 agenda the review of the town hall meeting plan itself.

11 II. PROGRAM PLANNING

12 DISCUSSION AND VOTE ON TOWN HALL MEETING PLAN

13 CHAIRMAN CASTOR: Again, Angela, would
14 you please proceed to discuss that?

15 MS. FRENCH-BELL: Thank you, Chairman
16 Castro. There is an update to the environmental town
17 hall plan. We wanted to make sure that we were clear
18 that although staff will be able to conduct the January
19 22 briefing on environmental justice and a town hall
20 meeting in Alabama in late February, tentatively we
21 have it scheduled for February 26.

22 The proposed Commissioners' subcommittee
23 briefing for Nevada, Chicago, or North Carolina would
24 be too onerous at this time in terms of staff time and

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1 resources. As a consequence, we are proposing that we
2 do not undertake briefings in those three cities.

3 As an alternative, we would like to work
4 with the State Advisory Committees to hold state
5 committee meetings instead. We just can't accommodate
6 an additional briefing for environmental justice at
7 this time. We would also be willing to send OCRE staff
8 members to either of those three locations to conduct
9 additional research. So --

10 CHAIRMAN CASTRO: Questions,
11 Commissioners? Oh, go ahead.

12 DIRECTOR MORALES: Mr. Chair, this is
13 Staff Director Mauro Morales. I just wanted to add a
14 little bit to what Angela has stated. What -- because
15 of the -- it's not just the cost factor that we're
16 looking at. It is also the demand on staff time in
17 terms of, you know, trying to get out to the field to
18 find sites, to work with, you know, folks out in the
19 field when we try to pull this together.

20 Given the other reports and the other
21 hearings we have scheduled in February, March, April,
22 and May, to do additional town halls would place undue
23 stress on our resources and our staff.

24 So what Angela has -- and we've been in

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1 discussions with SAC chair David Mussatt in terms of
2 the SAC in Illinois doing a hearing for the SAC on
3 environmental justice and coal ash for the state of
4 Illinois, and then the other two proposals to go out
5 to Nevada and to North Carolina would be to send OCRE
6 staff or investigators or the individuals writing the
7 reports to do additional field hearing out there, and
8 so that's what we're looking at more to be able to
9 accomplish all that we -- that they proposed.

10 CHAIRMAN CASTRO: You don't mean a field
11 hearing, do you? Do you mean a fact finding?

12 DIRECTOR MORALES: I'm sorry, yes, a fact
13 finding. I misspoke.

14 VICE CHAIR TIMMONS-GOODSON: This is Vice
15 Chair Timmons-Goodson. I support the decision by OCRE
16 for us not to conduct the subcommittee briefings or
17 meetings as originally proposed. I think that it makes
18 good sense for us to scrap that notion. I would even
19 be open to further discussion on whether we even want
20 to go the SAC route.

21 Perhaps it's Commissioner Heriot in my ear
22 all the time, or perhaps it's my experience as a jurist,
23 but I do believe the more narrowly we focus our efforts,
24 the more likely it is that we'll be able to handle the

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1 issue or issues comprehensively, and so I support the
2 withdrawal of that subcommittee plan.

3 CHAIRMAN CASTRO: Any other questions or
4 comments from Commissioners?

5 COMMISSIONER HERIOT: Mr. Chair, this is
6 Gail. I just -- I'm getting a little mixed up here
7 about whether or not at any point we specifically voted
8 to do this. Is this a proposal to the Commission or
9 is this a decision by OCRE? And I guess the answer to
10 that question depends upon what we adopted earlier.

11 CHAIRMAN CASTRO: This is Chairman
12 Castro. I don't believe we voted on a plan for this.
13 We talked about it, but I don't think we ever really
14 voted on it. That's why the plan was to vote on it at
15 our last attempted meeting, and when we weren't able
16 to do that, we put it on the agenda for today, so what
17 is being presented today is for Commissioners to vote
18 upon. It's not a --

19 COMMISSIONER HERIOT: Okay, okay, I
20 support it, by the way, for the same reasons that the
21 Vice Chair just gave.

22 CHAIRMAN CASTRO: Yes, so this is for us
23 to vote on once we're done questioning, or asking, or
24 discussing it. Any additional questions or comments?

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1 COMMISSIONER YAKI: This is Commissioner
2 Yaki. I -- while I understand the -- some of the
3 reasons behind this, I would hope that -- one of the
4 things I think drew support for this topic was the fact
5 that it had broader implications beyond just the one
6 facility in Alabama that we're talking about, and
7 especially the impact on differential minority
8 communities, not just one specific one.

9 So I would hope that if we're going to be
10 doing this revised -- I don't know if it's going to be
11 called revised, but somewhat revised plan, that if the
12 SAC's -- that the SAC should not only be encouraged but
13 requested to engage in these activities, and that the
14 OCRE staff give them as much support as may be needed
15 in order for them to be helpful to the Commission in
16 performing these tasks, and that if there are
17 Commissioners who wish to be present at these SAC
18 meetings, that they be allowed to attend because I think
19 this is a very important topic.

20 It has broad ramifications beyond just one
21 location in one state in this country, and if we're --
22 As I talked to Sue, I just wonder is this really going
23 to be so different than if we did subcommittees if we
24 are going to be tasking OCRE with field investigations

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1 as well as assisting SACs in putting together possible
2 field hearings of their own on this particular subject?

3 So I would support it. I would support
4 this modification or this proposal, whatever you want
5 to call it, if there are those kind of resources being
6 present, and if Commissioners who are interested are
7 allowed to attend those meetings. But if it's just to
8 ask them to do it, and if they don't do it, that's fine,
9 I have some problems with that.

10 COMMISSIONER ACHTENBERG: Mr. Chairman?

11 CHAIRMAN CASTRO: I'm in agreement with
12 what Commissioner Yaki just said. Who else wanted to
13 speak?

14 COMMISSIONER ACHTENBERG: It was
15 Achtenberg. I concur with what Commissioner Yaki just
16 said. I think that's the right way to go. That gives
17 us the breadth that this topic demands, and presumably
18 accommodates the concerns of the OCRE director as well
19 as the staff director, so I support Commissioner Yaki.

20 COMMISSIONER HERIOT: Mr. Chairman?

21 CHAIRMAN CASTRO: Yes, Commissioner
22 Heriot?

23 COMMISSIONER HERIOT: I just wanted to
24 comment a little bit on a controversy over the law here.

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1 Commissioner Yaki had said that he thought that SAC
2 should be encouraged -- I think maybe he even used a
3 stronger word than that -- to pick this as a topic.

4 I know that back a few years back with Staff
5 Director Marcus, he was under the impression that FACA
6 was -- did not allow us to try to get the facts to look
7 at particular topics. I have never known whether his
8 interpretation of the law is correct or whether he even
9 firmly had that interpretation. That was his working
10 interpretation.

11 It always struck me as rather strange that
12 we couldn't request a SAC to undertake a particular
13 topic, that we had to be so very standoffish on this.
14 So I just want to point out there is that possible legal
15 issue if it comes to actually requesting SACs to do
16 this.

17 And personally, I would like it if we had
18 the time to look into whether or not that's what the
19 law is, if the General Counsel could look into this,
20 because I think it's something we need to settle.

21 CHAIRMAN CASTRO: Is our General Counsel
22 on the line?

23 MS. RUDOLPH: This is Maureen Rudolph, the
24 General Counsel. Yes, I am.

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1 CHAIRMAN CASTRO: Go ahead.

2 MS. RUDOLPH: I would be happy to look into
3 that and report back to the Commissioners as to what
4 I find.

5 COMMISSIONER HERIOT: Thank you.

6 COMMISSIONER KLADNEY: This is Dave
7 Kladney. I think that's a very important issue to get
8 resolved because in my office's research on this, North
9 Carolina specifically exhibits many of the problems
10 brought forward with this coal ash problem, especially
11 recently, where instead of taking all 36 coal ash sites
12 and cleaning them up and capping them, lining them and
13 capping them, they are deciding only to do 24, and the
14 current state of the law is that only active plants have
15 to clean up their coal ash sites.

16 So I think this is very important, and I
17 would support Commissioner Yaki, and I would also --
18 I also feel that if the SAC does not do this -- these
19 hearings, that we should actually follow-up in the
20 future and do this because it's a very important and
21 pertinent issue. Thank you.

22 CHAIRMAN CASTRO: Any other questions or
23 comments?

24 MS. FRENCH-BELL: Good morning, this is

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1 Angela French-Bell. I just want to say that we stand
2 in support of Commissioner Yaki's proposal as stated
3 today, and that we will work cooperatively with --
4 actively with David and with Commissioner Yaki and Kim
5 to come up with the best plan forward to incorporate
6 that changes that we see here.

7 COMMISSIONER NARASAKI: Mr. Chair, this
8 is Commissioner Narasaki.

9 CHAIRMAN CASTRO: Yes.

10 COMMISSIONER NARASAKI: So I do support
11 the plan to cut back, particularly since we did not get
12 the President's full requested budget, and also because
13 we do have a lot on our plate and on OCRE's plate for
14 the first six months of this year as we continue to try
15 to catch up with all of the reports, so I think that's
16 important.

17 And I do agree with Commissioner Yaki and
18 others that I think it's important to go beyond Alabama
19 if we can because, you know, Alabama is a situation
20 where the EPA is actually doing something, and I think
21 they're concerned about where they're not. If we're
22 really looking at the EPA, I think we need to look at
23 those types of situations.

24 So I do want to note, Mr. Chair, that I

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1 think we were supposed to also vote on the date, or at
2 least confirm the date for the Alabama town hall, so
3 I want to make sure we do that --

4 CHAIRMAN CASTRO: Right.

5 COMMISSIONER NARASAKI: -- before we get
6 off the phone.

7 CHAIRMAN CASTRO: Yes, thanks for
8 reminding me about that, yeah.

9 VICE CHAIR TIMMONS-GOODSON: This is Vice
10 Chair Timmons-Goodson. I think that those that have
11 spoken have offered compelling reasons for why we
12 should take a look at these others, in some way take
13 a look at the others, and so you have indeed had the
14 discussion that I wanted as we're looking at those other
15 sites, and so I would support Commissioner Yaki's
16 notion.

17 CHAIRMAN CASTRO: Any other Commissioners
18 have a comment or a question? If not, then I will
19 entertain a motion to approve the modified proposal as
20 clarified by Commissioner Yaki, subject to our General
21 Counsel making sure that we are inviting the SACs to
22 participate in an appropriate manner. Do I have a
23 motion on that?

24 COMMISSIONER NARASAKI: This is

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1 Commissioner Narasaki. I so move.

2 CHAIRMAN CASTRO: Do we have a second?

3 COMMISSIONER ACHTENBERG: I second.

4 CHAIRMAN CASTRO: Who is that?

5 COMMISSIONER ACHTENBERG: Commissioner
6 Achtenberg.

7 CHAIRMAN CASTRO: Okay, thank you. Any
8 additional discussion? If not, let me call the roll.
9 Commissioner Kirsanow, how do you vote?

10 COMMISSIONER KIRSANOW: No.

11 CHAIRMAN CASTRO: Commissioner Heriot,
12 how do you vote?

13 COMMISSIONER HERIOT: I'm a little unsure
14 as to what the proposal is, so I guess I'm going to
15 abstain now.

16 CHAIRMAN CASTRO: Would you like it to be
17 clarified?

18 (Simultaneous speaking.)

19 COMMISSIONER KLADNEY: Mr. Chairman,
20 Commissioner Yaki also spoke about attendance, and I
21 don't think he asked about participation of other
22 Commissioners at those meetings as well, and we were
23 also getting an opinion from General Counsel, so I'm
24 not exactly sure how clear we are.

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1 CHAIRMAN CASTRO: I said that though. I
2 said that it would be subject to the General Counsel
3 clarifying how we can appropriately engage the SACs.

4 COMMISSIONER HERIOT: Mr. Chairman? Mr.
5 Chairman, this is Gail again. What I wasn't sure of,
6 Commissioner Yaki had mentioned that this would --
7 allowing Commissioners to participate, I think our rule
8 is that Commissioners can always participate, but I
9 think what isn't clear is whether or not the
10 Commission's budget could be used for travel in order
11 to facilitate that participation.

12 CHAIRMAN CASTRO: And I think he said we
13 can participate, which implies that we could ask
14 questions, which we cannot, so we would be like
15 observers.

16 COMMISSIONER HERIOT: Yes, I think that we
17 can always do that, but what's really unclear to me is
18 whether or not the Commission's budget can be used for
19 the travel. Part of our problem here is lack of money.

20 CHAIRMAN CASTRO: I'll ask Mr. Staff
21 Director.

22 DIRECTOR MORALES: You raise a good point.
23 I think we can look at this in terms of Commissioners
24 traveling to a SAC hearing. I think they've done that

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1 in the past. I don't see a problem with them attending
2 and our paying for it, within reason, and maybe we can
3 -- I can send out an email, you know, when we do get
4 -- because I know Illinois is doing a SAC hearing on
5 environmental justice. Now --

6 COMMISSIONER HERIOT: I just wonder if
7 it's not going to become more expensive than the
8 original plan.

9 COMMISSIONER YAKI: This is Commissioner
10 Yaki. It can't be more expensive because we're not
11 setting up the whole Commission, U.S. Commission on
12 Civil Rights apparatus when we're going over it to --
13 when the SACs are performing these tasks. So I think
14 that it would be very -- I think the cost would be pretty
15 minor compared to the overall costs of bringing the
16 whole road show.

17 COMMISSIONER HERIOT: I thought the plan
18 was subcommittees.

19 COMMISSIONER YAKI: Yes, but even with the
20 subcommittee, there are certain things that we can't
21 get out of in terms of the kind of -- well, this is
22 Commissioner Yaki. I'll let the staff explain, but I
23 believe that even if you're a subcommittee, there are
24 certain things that we cannot waive in terms of the

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1 process and machinery that must be brought along.

2 COMMISSIONER HERIOT: I think that's true
3 for SACs too.

4 COMMISSIONER KLADNEY: This is
5 Commissioner Kladney. You know, this was originally
6 proposed by OCRE and the staff, and they are not
7 objecting to it because of cost. They are objecting
8 to it because of manpower, or person power, or employee
9 power. They are not objecting to it because of cost.
10 They've already budgeted all of that, and they proposed
11 it to begin with. So --

12 COMMISSIONER HERIOT: I thought part of it
13 was cost. I thought it was both.

14 COMMISSIONER KLADNEY: Well, I think they
15 clearly said that they were unable to do it because of
16 not having sufficient powers.

17 DIRECTOR MORALES: This is Staff Director
18 Morales. I just wanted to make sure we clarify. One,
19 the town hall in Alabama is a headquarters commission
20 event where we're in charge of it. We're taking all
21 of the resources. We're taking all of it on. The SAC
22 events are things that the State Advisory Committee
23 puts on themselves.

24 And the view, I believe, from OCRE, and you

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1 can correct me if I'm wrong, was that we would go as
2 participants, and then those SACs would provide us with
3 the information they gather. So the resources from the
4 national headquarters is limited to just a commissioner
5 attending and/or maybe an OCRE staff attending. We're
6 not running those SAC hearings.

7 The SACs themselves are running them, and
8 they run them through their own budget, and they run
9 them through their own staff, and they run them through
10 their own SAC committee members who, you know, get the
11 public to attend and so forth. So we were coming as
12 just observers and participants from the Commission
13 standpoint, the National Commission standpoint.

14 MS. FRENCH-BELL: That's correct, Staff
15 Director Morales. That's correct.

16 COMMISSIONER HERIOT: But it all comes out
17 of the same budget in the end.

18 DIRECTOR MORALES: Well, that's true, but
19 the SACs are budgeted to -- they have to have a hearing,
20 and if they're interested in the project because of the
21 community being impacted by environmental justice
22 issues, then all the better that we piggyback.

23 But then again, the costs to the SACs are
24 also very different because the SAC members themselves

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1 attend. They're local people. The SAC staff that
2 works on these are also local, so the costs go
3 phenomenally down compared to transporting all of the
4 national staff out there and the apparatus that --

5 COMMISSIONER HERIOT: Again, this is
6 going to be subcommittees.

7 VICE CHAIR TIMMONS-GOODSON: Okay, this
8 is Vice Chair Timmons-Goodson. We have a motion on the
9 floor, and I believe the motion is that OCRE, that we
10 follow OCRE's recommendation that we no longer go with
11 the subcommittee, but in the alternative, that we
12 request SACs to engage in hearings in those three
13 states, I believe it is, subject to a legal research
14 by our General Counsel that it's permitted, and that
15 those -- and that at least a couple of OCRE folks be
16 involved at these -- at the SAC meeting, to the extent
17 that they're needed or warranted, and that any
18 commissioners that wanted to attend in those three
19 locations be permitted to go, and so I'd like for us
20 to vote on it if that is, in fact, what we're voting
21 on.

22 CHAIRMAN CASTRO: That was my
23 understanding, yeah.

24 COMMISSIONER KLADNEY: Madam Vice Chair,

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1 I thought it was any commissioner could attend.

2 VICE CHAIR TIMMONS-GOODSON: Well, I
3 think -- I hope that's what I said.

4 COMMISSIONER KLADNEY: Oh, no, I thought
5 you said, "in those areas." That's okay. If that's
6 what you mean, that's fine with me.

7 VICE CHAIR TIMMONS-GOODSON: If I did, I
8 misspoke. But it's my understanding anybody who
9 wanted to go, any commissioner who wanted to attend in
10 those three -- those states that the SACs would be
11 looking at, could go.

12 CHAIRMAN CASTRO: All right, let me start
13 again on the roll call vote now that we had additional
14 discussion. Commissioner Kirsanow, how do you vote?

15 COMMISSIONER KIRSANOW: No.

16 CHAIRMAN CASTRO: Commissioner Heriot,
17 how do you vote?

18 COMMISSIONER HERIOT: I still abstain. I
19 have no idea what anybody's talking about here.

20 CHAIRMAN CASTRO: Okay, Commissioner
21 Narasaki, how do you vote?

22 COMMISSIONER NARASAKI: I vote yes.

23 CHAIRMAN CASTRO: Commissioner Kladney,
24 how do you vote?

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1 COMMISSIONER KLADNEY: Yes.

2 CHAIRMAN CASTRO: Commissioner
3 Achtenberg, how do you vote?

4 COMMISSIONER ACHTENBERG: Yes.

5 CHAIRMAN CASTRO: Commissioner Yaki, how
6 do you vote?

7 COMMISSIONER YAKI: Yes.

8 CHAIRMAN CASTRO: Madam Vice Chair, how do
9 you vote?

10 VICE CHAIR TIMMONS-GOODSON: Yes.

11 CHAIRMAN CASTRO: And I vote yes. We have
12 one, two, three, four, five, six yeses, one no, and one
13 abstention. Okay, before I move on, I want to confirm
14 the date for the Alabama town hall. Now, the primary
15 date that has been discussed and circulated was
16 February 26. I think there's also a backup date, if
17 we don't have a quorum, for March 4. So does February
18 26 work for the commissioners or not?

19 COMMISSIONER NARASAKI: This is
20 Commissioner Narasaki. It works for me.

21 COMMISSIONER ACHTENBERG: This is
22 Commissioner Achtenberg. I had originally asked that
23 it not be the 26th because I had a trip planned. I have
24 now changed that plan to great inconvenience, so it's

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1 my hope now that we can stick with the 26th because I
2 absolutely could not do March 4.

3 CHAIRMAN CASTRO: Okay, that's a good
4 point. Does February 26 work for everybody else or the
5 majority of everybody else?

6 COMMISSIONER HERIOT: This is Gail. It
7 works for me.

8 CHAIRMAN CASTRO: All right, silence is
9 acceptance, folks. We'll entertain a motion then that
10 we do the hearing, I'm sorry, the town hall in Alabama
11 on February 26, 2016. Do I have a second?

12 VICE CHAIR TIMMONS-GOODSON: I'll move
13 it.

14 CHAIRMAN CASTRO: And who was that?
15 Okay, Yaki moved. Who seconded?

16 VICE CHAIR TIMMONS-GOODSON:
17 Timmons-Goodson.

18 CHAIRMAN CASTRO: Okay, I'm going to do a
19 voice vote on this unless people want to roll call. But
20 all those in favor, say aye.

21 (Chorus of aye.)

22 CHAIRMAN CASTRO: Any opposed? Any
23 abstentions?

24 COMMISSIONER KIRSANOW: Kirsanow.

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1 CHAIRMAN CASTRO: Kirsanow abstains,
2 okay, so it passes with seven yeases and one abstention.
3 Next, we have the environmental justice discovery plan
4 that was circulated about a week ago in your folders,
5 and I will ask the head of OCRE to discuss that, and
6 then we'll vote on it.

7 MS. FRENCH-BELL: Good morning. I
8 thought we had on here to discuss a Quiet Crisis. Do
9 you want to discuss the Quiet Crisis after the discovery
10 plan?

11 CHAIRMAN CASTRO: We'll discuss it
12 afterward because let's just keep -- we're still
13 talking about the environmental justice report, so
14 let's just keep it consistent.

15 MS. FRENCH-BELL: Okay, so pursuant to
16 Administrative Instruction 1-6, Section 8, OCRE
17 submitted a discovery plan for the 2016 statutory
18 enforcement report. Even though we're submitting
19 this, we are aware of a possibility that we may issue
20 more than one set of interrogatories and documents or
21 additional questions that may arise during the course
22 of our research.

23 But essentially what we're proposing are
24 formal and informal meetings with EPA to talk about

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1 their Title VI enforcement and enforcement of Executive
2 Order 12898, their final coal ash rule and clear water
3 act rule, the location of coal ash generating and
4 disposal facilities, and along with that, we're heavily
5 looking at the ways and social economic level of
6 individuals that surround each of those facilities.

7 We're also seeking information pertaining
8 to the status of the EPA and Department of Interior's
9 Surface Mining Bureau's joint rule developing offsite
10 coal ash disposal and storage facilities. We're also
11 interested in obtaining information from the Census
12 Bureau that will help us to track demographics for
13 communities where coal ash is generated and disposal
14 facilities are located.

15 We're also interested in setting up formal
16 and informal meetings with relevant DOJ offices.
17 Among other things, we would like to discuss how they
18 make the decision to start an in-court action that
19 involves environmental justice issues, specifically
20 when it comes to doing interrogatories, document
21 requests, and subpoenas.

22 We're seeking EPA's handbook for the
23 complaint process, data regarding their current and
24 historic Title VI compliance docket, how they developed

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1 the coal ash rule. We're also looking at whatever
2 census, and housing, and job availability data that
3 they have, information on their environmental justice
4 impact study in their final coal ash rule.

5 We also will work with the commission's
6 advisory committee to obtain additional information.
7 As we've already stated, we are also holding the January
8 22 briefing to question EPA officials regarding Title
9 VI and Executive Order 12898, and we also submitted the
10 town hall meeting proposal to obtain additional
11 information as well.

12 CHAIRMAN CASTRO: Okay, any questions for
13 OCRE? Any comments?

14 COMMISSIONER NARASAKI: This is
15 Commissioner Narasaki. I had a question about what
16 kind of investigation will be done in terms of the issue
17 over whether there is sufficient resources for this
18 enforcement work.

19 MS. FRENCH-BELL: So one of --

20 COMMISSIONER NARASAKI: And --

21 MS. FRENCH-BELL: Oh, I'm sorry.

22 COMMISSIONER NARASAKI: Particularly,
23 are we going to be talking to members of Congress or
24 not?

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1 MS. FRENCH-BELL: We are working now to
2 work with members of -- or to obtain members of Congress
3 to attend the briefing. Another thing that we're doing
4 is we're looking at EPA's budget for conducting Title
5 VI investigations, resolving complaints, and
6 monitoring any settlements. So one of our goals is to
7 see whether or not this budget is sufficient based on
8 the work that's been allocated to them. That's a good
9 question. Thank you for that.

10 CHAIRMAN CASTRO: Any other questions?

11 COMMISSIONER KLADNEY: This is Dave
12 Kladney. I was wondering if OCRE had a timeline on each
13 of these pieces of discovery?

14 MS. FRENCH-BELL: Our timeline is rather
15 vague because we get information at various points. We
16 hope to have all of it by the end of March to enable
17 us to meet our April 25 deadline.

18 COMMISSIONER KLADNEY: And how many
19 people in OCRE are working on this discovery?

20 MS. FRENCH-BELL: The discovery part?
21 Three.

22 COMMISSIONER KLADNEY: And your deadline
23 is -- your self-imposed deadline is the end of March?
24 How late can you go on the discovery and still get the

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1 report out by the end of September?

2 MS. FRENCH-BELL: If we get additional
3 items, and we've already submitted the rough draft to
4 you, there still might be an option to either make an
5 addendum to the report, or if there is sufficient time,
6 to include it in the report itself, but it would depend
7 upon the volume of information, and the type of
8 information, and the time that we still have after we've
9 received the information.

10 So, I mean, there are opportunities if it
11 comes to that, but we are hoping since we started early
12 with them, that it does not come to that, but your point
13 is well taken.

14 COMMISSIONER NARASAKI: So this is
15 Commissioner Narasaki again. I have an additional
16 request. I found it very difficult last year because
17 we got the testimony for the hearings so late, and I
18 know that it's not -- it's the fact that the witnesses
19 don't meet the deadlines.

20 I'm wondering if we could push up the
21 deadlines for testimony so that we could have the
22 testimony a week before the hearing, because it just
23 becomes, particularly I think in this area of inquiry,
24 it just becomes very difficult to be trying to figure

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1 out what the focus of questions should be when we get
2 the testimony, like two days before the actual hearing.

3 MS. FRENCH-BELL: Thank you for that
4 request. We can definitely request the information
5 sooner. We may not be able to do that since we're
6 already giving them timelines that are maybe two weeks
7 out from the date of the hearing, but we will do our
8 best to meet your request.

9 COMMISSIONER NARASAKI: Yes, and I would
10 request for all of the hearings. So as you move
11 forward, to move that date up so we have some hope of
12 getting at least most of the testimony in a time that
13 makes it more useful for us to prepare.

14 MS. FRENCH-BELL: Thank you, will do.

15 CHAIRMAN CASTRO: Any other questions?
16 Do I have a motion to approve the discovery schedule,
17 or discovery plan, I should say? Do I have a motion?

18 COMMISSIONER NARASAKI: This is
19 Commissioner Narasaki. I so move.

20 VICE CHAIR TIMMONS-GOODSON: This is Vice
21 Chair Timmons-Goodson. I second the motion.

22 CHAIRMAN CASTRO: Any additional
23 discussion? Hearing none, I will call the roll. Oh,
24 yes, go ahead? Okay, Commissioner Kladney?

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1 COMMISSIONER KLADNEY: Yes.

2 CHAIRMAN CASTRO: No? Oh, go ahead.

3 COMMISSIONER KLADNEY: I said yes.

4 CHAIRMAN CASTRO: Are you going to vote?

5 Oh, okay, I thought you were going to ask a question.

6 I'm going to take the roll now, so Commissioner

7 Kirsanow?

8 COMMISSIONER KIRSANOW: Abstain.

9 CHAIRMAN CASTRO: Pardon me?

10 COMMISSIONER KIRSANOW: Abstain.

11 CHAIRMAN CASTRO: Abstain, okay.

12 Commissioner Heriot?

13 COMMISSIONER HERIOT: Now I'm going to be

14 the no vote. No.

15 CHAIRMAN CASTRO: Commissioner Narasaki?

16 COMMISSIONER NARASAKI: I vote yes.

17 CHAIRMAN CASTRO: Commissioner Kladney?

18 COMMISSIONER KLADNEY: I pass.

19 CHAIRMAN CASTRO: You pass, okay.

20 Commissioner Achtenberg?

21 COMMISSIONER ACHTENBERG: Yes.

22 CHAIRMAN CASTRO: Commissioner Yaki?

23 Commissioner Yaki?

24 COMMISSIONER YAKI: Sorry, I couldn't hit

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1 the unmute button. Yes.

2 CHAIRMAN CASTRO: Vice Chair?

3 VICE CHAIR TIMMONS-GOODSON: Yes.

4 CHAIRMAN CASTRO: I vote yes.
5 Commissioner Kladney, going back to you.

6 COMMISSIONER KLADNEY: I'm concerned that
7 this is an awful lot to do, but I will vote yes.

8 CHAIRMAN CASTRO: Okay, so we have one,
9 two, three, four, five, six yeses, an abstention, and
10 a no, so the plan passes. The fourth and final item
11 of the agenda for today is a discussion on the plan for
12 the revision of the Native American Quiet Crisis
13 report.

14 II. PROGRAM PLANNING

15 DISCUSSION ON PLAN FOR REVISION OF THE

16 NATIVE AMERICAN QUIET CRISIS REPORT

17 CHAIRMAN CASTRO: Madam French-Bell,
18 you're still up.

19 MS. FRENCH-BELL: Thank you, Chairman
20 Castro.

21 CHAIRMAN CASTRO: You're welcome.

22 MS. FRENCH-BELL: What we're proposing is
23 holding a mini briefing. That would accomplish a
24 couple of things. One, it would give the commissioners

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1 an opportunity to question potential advocacy groups
2 and the federal agencies about issues related to
3 housing, health, and infrastructure for Native
4 American communities.

5 The last time that we did this was 2003,
6 so the information is old and stale. The reason that
7 we want it to be a mini briefing is because we do not
8 want to use up all of our resources to do that. We do
9 have a busy schedule, and so we want to make sure that
10 we're able to propose a mini briefing that would
11 actually accomplish our goals, but yet not overtax the
12 staff.

13 The third thing that it would accomplish
14 is to give us a chance to learn additional information
15 that we could use for the report. So what we're
16 proposing is holding the mini briefing on February 19,
17 2016. It would consist of only two panels. A federal
18 agency panel, it would include invitations to DOI, the
19 Department of Justice, HHS, and HUD.

20 There would also be an advocacy panel as
21 well. We would have no more than five people per panel.
22 We would want it to be short, and we would want it to
23 definitely be focused, but it would be something that
24 would be useful for our report.

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1 CHAIRMAN CASTRO: Okay, any questions,
2 Commissioners?

3 COMMISSIONER NARASAKI: This is
4 Commissioner Narasaki. I had actually suggested that
5 we do a short hearing. When we had -- the Commission
6 voted to update these reports, I think the initial
7 thinking was that at least for some of them we would
8 be able -- the staff would be able to just look at the
9 data.

10 This report is a fairly large undertaking,
11 and I think this would give an opportunity for
12 Commissioners and special assistants to be able to dig
13 in so that when we get the actual draft, we will have
14 sufficient foundation to be able to work with the staff
15 on the final report. That was at least my thinking.

16 CHAIRMAN CASTRO: Okay.

17 COMMISSIONER HERIOT: Mr. Chairman?

18 CHAIRMAN CASTRO: Yes, Commissioner
19 Heriot?

20 COMMISSIONER HERIOT: Are we sure we want
21 to do this on as quick a schedule as we're talking about?
22 It sounds like this updating has turned into a real
23 report. I'm kind of surprised at this notion of a mini
24 briefing. Two panel briefings used to be our norm.

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1 Now we've gotten into doing much, much larger
2 briefings. I think this is more of a standard
3 briefing. Do we really want to do it in February?

4 COMMISSIONER NARASAKI: So, Commissioner
5 Heriot, the challenge on timing is -- the Commission
6 has hired a consultant who appears to be doing a very
7 good job and has actually been working for several
8 months now laying the groundwork for the initial draft.

9 And so, that contract runs out in April,
10 and also we want to do it in time for that person to
11 be able to help us identify which things need to be
12 resolved at that particular hearing. So as our OCRE
13 director noted, one of the differences we hope will be
14 that this will not be sort of wide-ranging questions,
15 but hopefully more focused inquiries so that we can do
16 it in half a day.

17 COMMISSIONER KIRSANOW: Mr. Chair?

18 CHAIRMAN CASTRO: Yes, Commissioner
19 Kirsanow?

20 COMMISSIONER KIRSANOW: Thank you. I am
21 a little concerned about work load here. Just last
22 month, we -- or maybe it was a month-and-a-half ago,
23 we had a discussion related to the timing of the
24 statutory enforcement report for 2016, and we were led

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1 to believe that more time was necessary because of the
2 congested schedule of OCRE and the rest of the staff
3 in timely discharging all of their other functions,
4 plus the statutory enforcement report.

5 I'm concerned that the introduction of
6 even a mini briefing, which Commissioner Heriot
7 characterizes as, by any other term, a briefing, will
8 impinge upon the ability of staff to address other
9 matters, including the statutory enforcement report.

10 CHAIRMAN CASTRO: Okay, does OCRE have any
11 comment? My understanding is I believe you already had
12 this contemplated when you were making those other
13 proposals, but I'll let you speak to that.

14 MS. FRENCH-BELL: That's exactly the
15 issue. One of the things that we did was to ensure that
16 we could handle the schedule by doing our best to kind
17 of narrow and focus what we were doing with the
18 environmental justice report.

19 As we stated, we do have a contractor to
20 help us to locate panelists and to assist with this mini
21 briefing as well, so it's not quite the same issue that
22 we would have with the other briefings. So definitely
23 your point is well taken, but we have definitely put
24 that into consideration as a part of the plan that we

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1 have proposed.

2 CHAIRMAN CASTRO: Any other questions or
3 comments from Commissioners?

4 COMMISSIONER ACHTENBERG: Mr. Chairman?

5 CHAIRMAN CASTRO: Yes, Commissioner
6 Achtenberg?

7 COMMISSIONER ACHTENBERG: Will the
8 contractor be assisting in the drafting as well?

9 MS. FRENCH-BELL: I'm sorry, the drafting
10 of the report, Commissioner Achtenberg?

11 COMMISSIONER ACHTENBERG: Yes, the
12 drafting of the update, yes.

13 MS. FRENCH-BELL: Yes, that's correct.

14 COMMISSIONER ACHTENBERG: So there will
15 be a writing component as well, is that correct?

16 MS. FRENCH-BELL: Absolutely.

17 COMMISSIONER ACHTENBERG: Okay, thank
18 you.

19 COMMISSIONER KLADNEY: This is Dave
20 Kladney. So with this -- what you're saying is with
21 this hearing in February, and he completes his work,
22 when was it, in April?

23 MS. FRENCH-BELL: Correct.

24 COMMISSIONER KLADNEY: So you will have a

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1 completed report before he leaves?

2 MS. FRENCH-BELL: A draft, yes.

3 COMMISSIONER KLADNEY: A draft, okay,
4 thank you.

5 MS. FRENCH-BELL: Thank you.

6 COMMISSIONER HERIOT: Mr. Chairman?

7 CHAIRMAN CASTRO: Yes, Commissioner
8 Heriot?

9 COMMISSIONER HERIOT: We'll have a draft.
10 Well, there could be quite a lot of work in the second
11 draft, and there usually is. Is the contractor going
12 to be in charge of that as well?

13 MS. FRENCH-BELL: It depends on how
14 extensive the changes are. As we said, he's slated to
15 leave us in April. So after that time, it would be
16 dependent upon OCRE to finish any other additional
17 changes.

18 COMMISSIONER HERIOT: Is there some
19 possibility of extending the contract?

20 MS. FRENCH-BELL: Definitely we'll talk
21 to the staff director and consult with him about that.

22 COMMISSIONER KLADNEY: This is Dave
23 Kladney again. How much was the contract to begin with
24 and what was the period of time, just six months, or

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1 eight months, or what were the -- what were the basic
2 terms?

3 MS. FRENCH-BELL: The time was six months.
4 I'm sorry, I can't give you an exact figure right now
5 on the amount, but I can get that to you.

6 COMMISSIONER KLADNEY: Thank you.

7 CHAIRMAN CASTRO: Any other questions?

8 COMMISSIONER YAKI: This is Commissioner
9 Yaki. Although I won't -- although this won't affect
10 my vote, I will add an observation which is Commissioner
11 Heriot is actually correct in characterizing this
12 briefing as more like what the briefings we used to have
13 versus what we have right now.

14 This -- we -- I always thought a mini
15 briefing was going to be more along the lines of two
16 or three people on one single panel. That being the
17 case -- not being the case, for purposes of ensuring
18 an adequate report, this is really more of a briefing.

19 CHAIRMAN CASTRO: Any other comments or
20 questions? Hearing none, I entertain a motion to
21 approve this plan.

22 COMMISSIONER NARASAKI: Can I actually --
23 this is Commissioner Narasaki. Sorry, it took me a
24 while to get off mute. So Commissioner Yaki, are you

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1 suggesting that we should try to just do it in one panel
2 instead of two?

3 COMMISSIONER YAKI: No, I'm saying that
4 the numbers of speakers are such that it would lend
5 itself to two, and that's fine with me. I would just
6 say that, I mean, I think it almost diminishes what
7 we're doing for the report by even calling it a mini
8 briefing. We should just call it a briefing.

9 COMMISSIONER NARASAKI: Okay, I just
10 wanted to understand where you were coming from. Thank
11 you.

12 CHAIRMAN CASTRO: Okay, do I have a
13 motion?

14 COMMISSIONER NARASAKI: This is
15 Commissioner Narasaki. I move that we adopt the plan
16 as presented for the hearing for the Quiet Crisis
17 report.

18 CHAIRMAN CASTRO: Is there a second?

19 VICE CHAIR TIMMONS-GOODSON: Vice Chair
20 Timmons-Goodson, I'll second it.

21 CHAIRMAN CASTRO: Any additional
22 discussion? Hearing none, I will call the roll.
23 Commissioner Kirsanow, do you abstain or vote no?

24 COMMISSIONER KIRSANOW: No.

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1 CHAIRMAN CASTRO: Okay, Commissioner
2 Heriot?

3 COMMISSIONER HERIOT: I vote no. I don't
4 see how we're going to be able to get all of this done
5 in that short amount of time.

6 CHAIRMAN CASTRO: Commissioner Narasaki?

7 COMMISSIONER NARASAKI: I vote yes.

8 CHAIRMAN CASTRO: Commissioner Kladney?

9 COMMISSIONER KLADNEY: Yes.

10 CHAIRMAN CASTRO: Commissioner
11 Achtenberg? Commissioner Achtenberg?

12 COMMISSIONER ACHTENBERG: Yes.

13 CHAIRMAN CASTRO: Commissioner Yaki?

14 COMMISSIONER YAKI: Yes.

15 CHAIRMAN CASTRO: Commissioner
16 Timmons-Goodson?

17 VICE CHAIR TIMMONS-GOODSON: Yes.

18 CHAIRMAN CASTRO: And I vote yes, so we
19 have six yeses, a no, actually two nos -- six yeses and
20 two nos, so the motion passes, and that is our agenda
21 today, folks, so thank you, everyone, for participating
22 by phone today. There being nothing further, I hereby
23 adjourn the meeting at 10:55 a.m. Eastern Daylight
24 Time. Thank you.

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1 (Whereupon, the above-entitled matter

2 went off the record at 10:55 a.m.)

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