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1 BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
2 OF THE STATE OF COLORADO

3 IN THE MATTER OF THE RULES AND ) CAUSE NO. 1  
4 REGULATIONS OF THE COLORADO ) DOCKET NO.  
5 OIL AND GAS CONSERVATION ) 0401-GA-01  
6 COMMISSION, WELD COUNTY, )  
7 COLORADO )

8 PURSUANT TO NOTICE to all parties in  
9 interest, the above-entitled matter came duly on  
10 for hearing at the Colorado Oil and Gas Conservation  
11 Commission, 1120 Lincoln Street, Suite 801, Denver,  
12 Colorado, 80203, commencing at 11:40 a.m., on Monday,  
13 January 5, 2004.

14  
15 COMMISSIONERS:  
16 CHAIRMAN PETER J. MUELLER  
17 COMMISSIONER TOM ANN L. CASEY  
18 COMMISSIONER BRIAN J. CREE  
19 COMMISSIONER LYNN J. SHOOK  
20 COMMISSIONER MICHAEL W. KLISH  
21 COMMISSIONER J. THOMAS REAGAN  
22 COMMISSIONER JOHN B. ASHBY

ORIGINAL

23 Richard Griebeling, Director  
24 Brian Macke, Deputy Director  
25 Patricia Beaver, Manager of Commission Affairs

## 1 APPEARANCES

2 FOR APPLICANT, ST. VRAIN PARTNERS, LLC:

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 4 Otis, Coan & Stewart, LLC  
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 Greeley, Colorado 80634

6 FOR PROTESTANT, ENCANA ENERGY RESOURCES, INC.:

7 GRETCHEN VANDERWERF, PC  
 1525 17th Street  
 8 Denver, Colorado 80202  
 and  
 9 DIANE M. BLIESZNER, ESQ.  
 EnCana Oil & Gas (USA) Inc.  
 10 950 17th Street  
 Suite 2600  
 11 Denver CO USA 80202

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1                   CHAIRMAN MUELLER: Next is Cause No. 1,  
2 Docket No. 0401-GA-01, in the Wattenberg Field of Weld  
3 County, and the applicant is St. Vrain Partners, LLC,  
4 represented by G. Brent Coan. Protestant is EnCana  
5 Energy Resources, Inc., represented by Gretchen  
6 VanderWerf.

7                   MS. VANDERWERF: That's correct.

8                   CHAIRMAN MUELLER: And the subject is  
9 requesting an order to revoke the variance and three  
10 permits to drill granted by the Director to EnCana  
11 Energy Resources, Inc. for wells located in the  
12 southwest quarter of Section 7, Township 2 North, Range  
13 67 West, 6th P.M. And there was a prehearing  
14 conference on that December 17th. Summary was  
15 provided.

16                   COMMISSIONER ASHBY: I attended.

17                   CHAIRMAN MUELLER: Would you like to give  
18 us some background on that?

19                   COMMISSIONER ASHBY: Um, no. I believe  
20 it will all, from what I can understand of the plan, I  
21 think it will all become apparent.

22                   CHAIRMAN MUELLER: Fair enough. Okay.  
23 With that, let's begin.

24                   MS. BEAVER: Okay. We're going to have  
25 you both come forward.

1                   COMMISSIONER CREE: These are just  
2 opening comments.

3                   MR. COAN: Correct.

4                   CHAIRMAN MUELLER: No testimony. All  
5 right.

6                   MR. COAN: Good morning. Morning,  
7 Mr. Chairman and Commissioners. My name is Brent Coan.  
8 I am with the law firm, Otis, Coan and Stewart. I  
9 represent St. Vrain Partners, LLC, the applicant in  
10 this matter.

11                   There is actually an application and a  
12 cross-application pending before you today. If I  
13 understand the intent of the procedure today correctly,  
14 while much of the information you've received will be  
15 applicable to both, the decision will be bifurcated.  
16 So, I will do my best to address all of the issues as  
17 they come up.

18                   The application itself, is, as you  
19 stated, does request that you revoke the three approved  
20 variances to Rule 603. Those variances that were  
21 granted are in writing on the applications for permits  
22 to drill that were approved. The variances that were  
23 necessary for the approval of the APDs were twofold:  
24 Variance to Rule 603.a.1, which is a setback from a  
25 public road, and a variance to Rule 603.a.2, which is a

1 setback from a surface property line.

2           As I mentioned, on the actual APDs that  
3 were approved, the text of the variances are presented.  
4 And the text says, "Variance to Rule"-- I'm sorry. Let  
5 me back up -- quote, Variance to 603 under 502.b  
6 approved; that that language, and the APDs, are  
7 attached to both the application and protest filed by  
8 EnCana. Essentially, in my client's application, my  
9 client has indicated that they believe the Director  
10 exceeded his authority in granting the variance and the  
11 approval of the APDs with those variances. The meat of  
12 my client's position really relates to the  
13 interpretation of the rules, the interpretation of the  
14 intent of the Oil and Gas Conservation Act.

15           There is not necessarily a lot of factual  
16 information. You will hear some factual testimony from  
17 EnCana today. We have decided that, actually, in our  
18 case-in-chief, we will not present witnesses, we will  
19 not present testimony, because we believe the record  
20 contains the facts that are essential to the  
21 conclusions that the Director made and essential to the  
22 conclusions you need to make. I believe those facts  
23 will be -- are borne out in the application, in the  
24 protest, as well as the staff summary that you received  
25 as a related document as well. I don't think those

1 facts will be changed by any factual testimony by  
2 EnCana. So, in order to expedite this, we're not going  
3 to rehash those facts. We're not going to present  
4 factual testimony from witnesses. We intend to argue  
5 the application of the rules, the intent of the Oil and  
6 Gas Conservation Act, as applied to those facts.

7           The application itself really is more of  
8 a procedural argument and whether or not the Director  
9 had the appropriate information in front of him and  
10 followed the appropriate procedures to approve the  
11 variances. I think the salient facts that you have in  
12 front of you with the written materials, and you will  
13 have in front of you after any additional testimony,  
14 are the following: The proposed wells are  
15 approximately 76 feet from an open public road. The  
16 Town of Firestone has not agreed to close those public  
17 roads during drilling. The proposed wells are less  
18 than 150 feet from various surface property lines. The  
19 distance from the public road and distance from the  
20 surface property lines are the reasons for the need or  
21 the necessity of a variance in this case.

22           In a letter to the Director, dated July  
23 17th, 2003, EnCana requested a variance to COGCC Rule  
24 603.a.1, regarding public road setbacks. That letter  
25 is found as Exhibit E to the application -- Exhibit 2,

1 I'm sorry, to the protest. EnCana requested but did  
2 not receive waivers of the surface property line  
3 setback. On or about September 15th, 2003, EnCana  
4 provided the staff with copies of the above-referenced  
5 waiver requests. Said requests were attached to a  
6 letter to Mr. Ed Dimatteo, which is found at Exhibit 4  
7 attached here in EnCana's protest.

8           Then, on October 1, 2003, the Director  
9 approved the APDs for the three wells and granted  
10 variances to Rule 603.a.1 and 603.a.2, as well as,  
11 potentially, based on the text of the variances, the  
12 balance of Rule 603. Again, the text of the variance  
13 states variance to Rule 603 under 502 approved -- 502.b  
14 approved.

15           Just to clarify a couple of statements in  
16 the staff analysis. If you were to refer to the third  
17 paragraph on the first page of the staff analysis,  
18 December 18th, 2003, the second sentence of that third  
19 paragraph states what Ms. Pavelka informed me as to  
20 what the procedure would be at -- in consideration of  
21 the applications for permits to drill. I just want to  
22 add, because the conversation was directly with me,  
23 that Ms. Pavelka indicated what would be necessary for  
24 the approvals was the waiver from the offset property  
25 owners and a road closure for the roads within 150 feet

1 of the proposed locations. She also encouraged me to  
2 file a complaint with the Commission, based on the fact  
3 that the APDs, as submitted, contained inaccurate  
4 information.

5           Then, in the final paragraph of the staff  
6 analysis, other than the first sentence of that final  
7 paragraph, you will see the rationale for the decision  
8 as described in the staff's summary or staff analysis.  
9 I just want you to keep in mind that that summary was  
10 written after the application was filed, after the  
11 protest was filed, after the prehearing conference was  
12 held, and is contrary to the rationale that was  
13 provided to me in October, immediately after the APDs  
14 were approved. In October, the rationale given to me  
15 was as contained in Item No. 3 of this analysis, and no  
16 further rationale was given to me at that time for the  
17 approval of the variances and APD.

18           Now, with that clarification, I just want  
19 to restate that I think the facts are what they are in  
20 the record. They are contained in the correspondence  
21 with the Commission, contained in the correspondence  
22 between the parties, contained in the staff analysis,  
23 with my comments or clarification. And I don't think  
24 that any testimony from EnCana would vary that, and  
25 those facts I read to you are, I think, the salient

1 facts for making a decision about the variance and  
2 APDs, under your rules and regulations and under the  
3 Oil and Gas Conservation Act.

4           So, with that, again, we will not call  
5 witnesses for factual testimony. My clients are here  
6 today, if it becomes necessary to clarify any points,  
7 but I don't think it's necessary. And we will reserve  
8 for cross examination and closing statement for the  
9 balance of my time.

10           CHAIRMAN MUELLER: Thank you very much.

11           (Whereupon discussion was had off the  
12 record between Chairman Mueller and Assistant Attorney  
13 General Harmon.)

14           CHAIRMAN MUELLER: Thank you.

15           MR. COAN: Thank you.

16           CHAIRMAN MUELLER: Ms. VanderWerf.

17           MS. VANDERWERF: Mr. Chairman, members of  
18 the Commission, my name is Gretchen VanderWerf. I  
19 represent the protestant and the cross-applicant,  
20 Encana Energy Resources, Inc. With me today is Diane  
21 Blieszner, an attorney with EnCana, and I would like to  
22 introduce her to the Commission and staff.

23           MS. BLIESZNER: Hi.

24           CHAIRMAN MUELLER: Welcome.

25           MS. BLIESZNER: Thank you.

1 MS. VANDERWERF: The issue before you  
2 today in this hearing is a narrow one. Did Director  
3 Griebeling properly exercise his authority in granting  
4 the variances to the drilling permits for the three  
5 Wandell wells. The Director approved the permits with  
6 two variances. The first variance, as Mr. Coan has  
7 mentioned, was a variance to Rule 603.a.1, which  
8 requires that, at the time of drilling, a well must be  
9 set back 150 feet from a public street, or 1 1/2 times  
10 the height of the derrick, whichever is greater. That  
11 was the first variance. The second variance was to  
12 Rule 603.a.2, which requires that a well must be set  
13 back at least 150 feet from a surface property line.

14 The Director granted these two variances  
15 pursuant to his authority in Rule 502.b.1. That rule  
16 provides that the Director may, at the written request  
17 of an operator, grant a variance if the operator shows  
18 that the request for a variance meets the requirements  
19 and the variance does not violate the intent of the Oil  
20 and Gas Conservation Act. Rule 502.b.1 is an  
21 overarching rule that gives the Director the discretion  
22 to grant drilling permits in certain cases, where the  
23 wells do not meet all of the requirements of the  
24 Commission's rules and regulations, but the Director  
25 has concluded that the wells should be drilled.

1           That's the situation we have here with  
2 the three Wandell wells. The Director approved the  
3 permits with the variances because he determined that  
4 EnCana had properly requested the variances and he  
5 determined that granting them would not violate the  
6 act. Approving the variances was necessary to promote  
7 the development and production of the state's oil and  
8 gas resources, and it was also necessary to prevent  
9 waste.

10           The Director reached his decision with  
11 input from his staff after EnCana filed the APDs, and I  
12 think this is also in the staff analysis. Ed Binkley,  
13 the Weld County field inspector, personally visited the  
14 proposed well site. He confirmed EnCana's belief that  
15 this site is the best possible location for the Wandell  
16 wells. He confirmed that this was an adequate location  
17 and that it did not pose a threat to the public health  
18 and safety. Mr. Binkley recommended to the Director  
19 that the permits be granted, with the variances to Rule  
20 603.a.1 and 2, and the Director acted upon that  
21 recommendation.

22           The testimony you will hear from EnCana's  
23 witnesses will establish that the Director's decision  
24 was correct. Pat Marx, an engineer and a leader of  
25 EnCana's operations group for the D-J Basin, will

1 testify regarding the proposed location for the wells.  
2 He will testify that the proposed location, the  
3 existing drill pad for the Wandell No. 2 well, is a "J"  
4 Sand well that was drilled 30 years ago and which  
5 continues to produce today. He'll testify that EnCana  
6 will use the same access route to reach the new wells  
7 that the pumpers and water haulers have used for years  
8 to reach the old well.

9           He will testify that EnCana is willing to  
10 directionally drill the three wells, at their sole  
11 expense, to minimize further surface disturbance,  
12 something it's not required to do, but something that  
13 is a direct and tangible benefit to the applicant. He  
14 will testify how EnCana is willing to go beyond what  
15 this Commission requires. EnCana is willing to fence  
16 the drill site during drilling operations and it's  
17 willing to post a security guard on the property 24  
18 hours a day, all to ensure the safety of the  
19 neighboring residences.

20           Another witness for EnCana will be Larry  
21 Lorenz. He will address concerns that the applicant  
22 has raised concerning the drilling operation and  
23 whether they pose a safety threat to the residents. He  
24 will address the concerns concerning noise and lighting  
25 associated with those drilling operations. Mr. Lorenz

1 is a drilling superintendent for CAZA Drilling Company,  
2 and he has firsthand knowledge regarding Rig 54. That  
3 is the rig that the Town of Firestone wants EnCana to  
4 use in drilling the Wandell wells and these wells  
5 within the Town of Firestone. Mr. Lorenz's testimony  
6 will show that Rig 54 meets the Commission's noise  
7 standards. He will put to rest any argument the  
8 drilling operations for the Wandell wells will pose a  
9 threat to public safety.

10 EnCana had intended to call Cathi Boles  
11 as a witness. She is the regulatory and permitting  
12 analyst for the D-J Basin group. Her testimony would  
13 have covered EnCana's submittal of APDs, the attempts  
14 to obtain waivers from the town and from the applicant,  
15 who are offsetting surface owners, also her requests  
16 for the variances. It sounds to me, from what I've  
17 heard this morning, that it may not be necessary to  
18 call Ms. Boles, and we may be able to shorten the  
19 hearing that way.

20 Also, EnCana will call Richard Starkey,  
21 an engineer and development group leader for the D-J  
22 Basin. He will testify regarding the reserve estimates  
23 for the three Wandell wells and the value of the  
24 production that will be lost if EnCana is unable to  
25 drill these wells.

1           So to sum it up, EnCana's evidence will  
2 show that the proposed well location, a location which  
3 has already been approved, is the best location  
4 available. And, yet, the applicant is protesting the  
5 drilling of the wells and granting of the permits. Why  
6 is that? The evidence will show that the applicant's  
7 real concern is the fear that if the wells are drilled,  
8 it may lose the ability to maximize the development of  
9 the offsetting lots that are platted in this  
10 subdivision, and that it may not be able to build as  
11 many homes as it would like to build. The applicant  
12 simply does not want EnCana to drill these wells. The  
13 hearing today is one part of the strategy to accomplish  
14 that objective.

15           The evidence will show that the Director  
16 acted properly when he granted the variances and  
17 approved the permits for the wells. But if, for any  
18 reason, the Commission should find that there was some  
19 procedural defect, either in the way in which EnCana  
20 requested the variances or the way in which the staff  
21 processed them, or the way in which the Director  
22 approved them, if there is some procedural defect,  
23 EnCana has also filed a cross-application in addition  
24 to the protest. In the cross-application, EnCana  
25 requests that the full Commission, pursuant to its

1 authority under Rule 502.b.1, decide that the variances  
2 are proper and approve the permits with those  
3 variances.

4           After this hearing, the Commission will  
5 have heard all of the evidence and you will be in a  
6 position to make a ruling on the cross-application, if  
7 that becomes necessary. The evidence that EnCana is  
8 going to present today will go to both the protest and  
9 to the cross-application and will not drag out this  
10 hearing.

11           CHAIRMAN MUELLER: Thank you.

12           MS. VANDERWERF: The interests of  
13 administrative economy will not be served if EnCana is  
14 required to file new APDs for these same three Wandell  
15 wells, only to have the applicant protest again and we  
16 go through this whole process. So, that's the reason  
17 for the cross-application.

18           In closing, I would ask you to keep in  
19 mind that the applicant is asking you to revoke the  
20 approved drilling permits that it did not formally  
21 object to or protest until six weeks after the permits  
22 were granted. That is a very unusual request and a  
23 drastic step which is not warranted by the evidence.  
24 This Commission should deny the application and uphold  
25 the Director's decision to grant the variances and to

1 approve the drilling permits. Thank you.

2 CHAIRMAN MUELLER: Thank you very much.

3 Let's see. It's 12:10.

4 MS. BEAVER: Our lunch in here. And my  
5 thought had been, you know, just to take a short break.  
6 I guess, in light of some of the changes, the lack of  
7 witnesses, we had originally planned about a five-hour  
8 hearing. With that in mind, I told the other parties  
9 that we weren't going to have them here until Tuesday.  
10 I guess the first question I have is --

11 CHAIRMAN MUELLER: Sure.

12 MS. BEAVER: Do we want to try to get a  
13 sense of time now? Do we want to just stick with  
14 knowing we'll have to come back tomorrow? I'm not  
15 really sure I could get everybody for the other matters  
16 here by whatever time we think it might be.

17 CHAIRMAN MUELLER: (Nodding head in the  
18 affirmative.) Any thoughts?

19 COMMISSIONER ASHBY: I also attended the  
20 prehearing for the other contested matter, and there is  
21 enough witnesses there, and enough phone calling, I  
22 guess it would be quite difficult to get them  
23 rescheduled today.

24 CHAIRMAN MUELLER: So, given that, then,  
25 if I understand what you are saying, if we could take,

1 perhaps, a more extended break for lunch, then come  
2 back, hear the testimony, finish up with this matter  
3 and then start with the other matter today as was  
4 planned before.

5 COMMISSIONER CREE: That's what we should  
6 do.

7 MS. BEAVER: Okay.

8 CHAIRMAN MUELLER: So, given that, why  
9 don't we begin testimony right after lunch. One  
10 o'clock would give you 45 minutes to get out and grab  
11 something. Is that okay?

12 MS. VANDERWERF: (Nodding head in the  
13 affirmative.) That's fine.

14 CHAIRMAN MUELLER: Okay. Let's get back  
15 together at 1 o'clock. Then we'll start the testimony.  
16 Thank you.

17 (Recess.)

18 CHAIRMAN MUELLER: Okay. We're back on  
19 the record right now. We were at the point where we'll  
20 start with testimony from St. Vrain. You've decided  
21 not to present any further --

22 MR. COAN: That's correct, Mr. Chairman.  
23 And just to reiterate, we won't call any witnesses and  
24 for direct testimony. We intend to participate in  
25 cross examination and reserve the right to call

1 witnesses for rebuttal, and then for the closing  
2 statements.

3 CHAIRMAN MUELLER: Very good. Thank you.

4 MR. COAN: Thank you.

5 CHAIRMAN MUELLER: So, then we'll move to  
6 the presentations by EnCana. Do you need a few minutes  
7 to get ready?

8 MS. VANDERWERF: Just a few minutes to  
9 hand out our exhibit notebooks to the Commissioners and  
10 the staff.

11 CHAIRMAN MUELLER: Okay.

12 (Pause.)

13 MS. VANDERWERF: I think we're ready to  
14 start.

15 CHAIRMAN MUELLER: Good deal.

16 MS. VANDERWERF: EnCana calls as its  
17 first witness, Pat Marx.

18 CHAIRMAN MUELLER: Mr. Marx, I need to  
19 swear you in.

20 (Whereupon Pat Marx was sworn.)

21 CHAIRMAN MUELLER: Thank you.

22 DIRECT EXAMINATION

23 BY MS. VANDERWERF:

24 Q Mr. Marx, would you please state your  
25 full name and for the record.

1 A Full name, William P. Marx, M-a-r-x.

2 Q How are you employed, Mr. Marx?

3 A I am the operations lead for EnCana in  
4 the D-J Basin.

5 Q Have you prepared a resume describing  
6 your educational background and professional  
7 qualifications?

8 A Yes.

9 Q And would you take a look, please, at  
10 Exhibit 1 in the exhibit notebook. Is that your  
11 resume?

12 A Yes, it is.

13 Q Have you testified before this Commission  
14 before as an expert witness, Mr. Marx?

15 A Yes, I have.

16 MS. VANDERWERF: Subject to any questions  
17 from the Commission, I would move to qualify Mr. Marx  
18 as an expert in the field of petroleum engineering,  
19 with an emphasis on operational matters.

20 CHAIRMAN MUELLER: Any objections from  
21 the Commissioners?

22 COMMISSIONER REAGAN: None.

23 CHAIRMAN MUELLER: Tom Ann.

24 COMMISSIONER CASEY: No. Thank you.

25 CHAIRMAN MUELLER: Any objections from

1 the --

2 MR. COAN: No objections, Mr. Chairman.

3 CHAIRMAN MUELLER: Thank you very much.

4 You are accepted as a witness in this matter. Thank

5 you.

6 BY MS. VANDERWERF:

7 Q Mr. Marx, are you familiar with the  
8 proposed drill site for the Wandell wells?

9 A Yes.

10 Q And when I say, "Wandell wells," for the  
11 record, I am talking about the Wandell 14-7 well,  
12 Wandell 23-7 well and the Wandell 24-7 well; is that  
13 correct?

14 A That's correct.

15 Q Are you familiar with the area  
16 surrounding the proposed drill site?

17 A Yes.

18 Q Have you personally visited the proposed  
19 drill site and its surrounding area?

20 A That's correct, yes, I have.

21 Q Have you been out to that location more  
22 than one time?

23 A Yes.

24 Q And when did you visit the proposed  
25 location and surrounding area last?

1 A Friday, January 2nd of this year.

2 Q So, you were out at this drill site just  
3 a few days ago; is that correct?

4 A That's correct, yes, yes.

5 Q Have you prepared an exhibit showing the  
6 proposed location for the Wandell wells and the  
7 surrounding area?

8 A Yes.

9 Q And is that Exhibit 2 in the exhibit  
10 book?

11 A Yes, it is, with a slight change, but --  
12 and I'll show it on the larger scale.

13 Q And have you prepared a larger version of  
14 Exhibit 2?

15 A That's correct.

16 Q To show the Commission?

17 A Yes. How best would it be to --

18 CHAIRMAN MUELLER: Probably if you set it  
19 up here on the board.

20 THE WITNESS: Okay. Excuse me.

21 CHAIRMAN MUELLER: Will that stay up  
22 there? There's a magnet over here as well.

23 THE WITNESS: Okay. Should I proceed?

24 BY MS. VANDERWERF:

25 Q Mr. Marx, could you please describe

1 Exhibit 2 to the Commission.

2           A       Exhibit 2 is Section 7, Township 2 North,  
3 Range 67 of Weld County. I would like to point out a  
4 couple of things that changed. These wells are, as you  
5 will notice, were not exactly plotted right via the  
6 computer, that I had redone this morning. I apologize.  
7 We cannot get the changes in there, but you can see  
8 this wellbore here, and this well was shifted over  
9 slightly from the street. So, it is a fairly decent  
10 representation of the surface locations.

11                   And the solid lines represent the bottom  
12 hole locations. For instance, in the northeast, we  
13 have four wells drilled in the northeast, three of them  
14 were done directionally. We have three wells here, one  
15 of which was vertical, two of which were directionally.  
16 And over here, we have a four-well pad that was  
17 drilled, where three of them were drilled directionally  
18 to this location, and in the northwest and here. And  
19 then the one vertical well. These other wells that you  
20 see here and here are vertical wells, as is the  
21 vertical well here in the southwest quarter of the  
22 section.

23                   This is where the Wandell 2 currently  
24 exists, where we're proposing to utilize the same well  
25 pad to drill three additional wells. These two red

1 dots here just represent potential bottom hole  
2 locations of other wells that could be drilled in the  
3 future.

4 I would like to point out this aerial  
5 photo was done in May of 2002, and since then there has  
6 been more homes built in this area, and more homes  
7 built in this area, as well as north of Shenandoah.

8 Q When you are talking about more homes  
9 being built, could you describe a little more  
10 precisely, so we get it on record, as to where those  
11 homes are located, please, Mr. Marx.

12 A In the southwest area particularly, there  
13 are more homes south of Sage Avenue, and north of  
14 Shenandoah, but no home is within 350 feet of the  
15 existing wellbore.

16 CHAIRMAN MUELLER: Thank you.

17 BY MS. VANDERWERF:

18 Q Is, Mr. Marx, is EnCana the oil and gas  
19 lessee of the lands where the proposed drill site is  
20 located?

21 A That's correct.

22 Q And I would like you to take a look at  
23 Exhibits 3 and 4. These are certified copies of two  
24 oil and gas leases. They were certified by the clerk  
25 and recorder of Weld County. Are these the leases that

1 cover the proposed drill site?

2 A Yes.

3 Q And, for the record, Exhibit No. 3 is an  
4 oil and gas lease dated December 7th, 1972. It was  
5 recorded in Book 683, Reception No. 1604774. And  
6 Exhibit 4 is an oil and gas lease, dated December 4th,  
7 1972, recorded in Book 683, Reception No. 1604775.

8 A That's correct.

9 Q Is EnCana proposing to drill the three  
10 Wandell wells as vertical wells or directional wells?

11 A As directional wells.

12 Q And what do you mean by a directional  
13 well?

14 A A directional well, in this case, is  
15 where the surface location is different than the bottom  
16 hole location, and we drill a lateral well from the  
17 surface location to the bottom hole location.

18 Q And could you please point out the bottom  
19 hole locations for each of the three Wandell wells on  
20 the large map.

21 A Yes. As indicated, the surface location  
22 is at the existing Wandell 2 well pad. We would be  
23 drilling directionally to the 14-7, to the 23-7 and to  
24 the 24-7. The solid red dots represent the approximate  
25 bottom hole location.

1 Q Do EnCana's oil and gas leases cover the  
2 bottom hole locations as well as the surface locations?

3 A That's correct.

4 Q You've testified that there is already an  
5 existing well at the proposed location, and that is the  
6 Wandell No. 2 well; is that correct?

7 A That's correct.

8 Q When was the Wandell No. 2 well drilled,  
9 Mr. Marx?

10 A It was drilled in 1973.

11 Q And has the Wandell No. 2 been producing  
12 for the last 30 years?

13 A Yes, it has.

14 Q And is it producing today?

15 A And it's currently producing today.

16 Q And what formation is it producing from?

17 A It is producing in the "J" Sand, the  
18 Codell and the Niobrara.

19 Q Was it originally drilled -- well, let me  
20 ask this: To which formation was it originally  
21 drilled?

22 A It was originally drilled to the "J"  
23 Sand, at a later date, completed in the Codell and  
24 Niobrara.

25 Q And did EnCana do the later recompletion?

1           A     No. Vessels did, the predecessor to  
2 EnCana.

3           Q     EnCana's predecessor did?

4           A     Correct.

5           Q     You told us that you visited the proposed  
6 drill site for the Wandell wells. Have you had any  
7 photographs taken of the well site?

8           A     Yes, we did.

9           Q     And do you know when they were taken?

10          A     December 30th of 2003.

11          Q     I would like you to look at Exhibits 5  
12 through 11 in the exhibit notebook, please, and are  
13 these the photographs of the well site that were taken  
14 on December 30th?

15          A     Yes.

16          Q     And could you please describe for the  
17 Commission and the staff what these photographs show?

18          A     On Exhibit 5, the photograph is one that  
19 is looking north, and in the forefront is the  
20 separator, and in the background are homes that are on  
21 our side of Shenendoah Street.

22          Q     And Exhibit 6?

23          A     Exhibit 6 is the separator, looking west,  
24 and the homes are on the other side of Weld County Road  
25 13.

1           Q     And could you point out on the large map  
2 where --

3           A     Yes.

4           Q     -- Shenendoah is and where Weld County  
5 Road 13 is.

6           A     This is Shenendoah Avenue, and this is  
7 Weld County Road 13. And the other streets, this is  
8 Dogwood, Dover, Debonshire and Sage Avenue.

9           Q     And are those streets labeled on the  
10 large map?

11          A     Yes, they are.

12          Q     Would you please take a look at Exhibit  
13 7? Can you describe that photograph for the  
14 Commission.

15          A     Yes. This is another picture of the  
16 separator, only looking to the east. And those homes  
17 are on the other side of Dover Street.

18          Q     And Exhibit 8?

19          A     Exhibit 8 is the wellhead looking west,  
20 and those homes are on the other side of Weld County  
21 Road 13.

22          Q     And Exhibit 9, please.

23          A     Exhibit 9 is the wellhead, looking south,  
24 and those roads -- excuse me -- those homes are south  
25 of Sage Avenue.

1 Q Exhibit 10?

2 A Exhibit 10 is the oil and water storage  
3 tanks looking south, and those homes are south of Sage  
4 Avenue.

5 Q And our last photograph is Exhibit 11.

6 A Again, this is a -- the tank battery, oil  
7 and water storage tanks, looking to the west. And the  
8 homes in the foreground are on the other side of Weld  
9 County Road 13.

10 Q Mr. Marx, why did EnCana choose the  
11 proposed location for the three Wandell wells?

12 A We chose that location because, one,  
13 there was already an existing wellbore and an existing  
14 well site. Two, there is existing production  
15 facilities. There is the tank, the oil storage tanks,  
16 and the gas separator. And, third, there's already an  
17 existing gas sales outlet to the gas purchaser, Duke.  
18 And drilling the three wells at one site would minimize  
19 the disturbance in the southwest quarter.

20 Q Can EnCana reach the bottom hole  
21 locations of the Wandell wells from that drill site?

22 A That's correct, yes, we can.

23 Q And when a well is directionally drilled,  
24 that's a question sometimes, isn't it, whether the  
25 drilling rig is long enough reach to reach the bottom

1 hole location?

2 A That is correct.

3 Q Does EnCana believe that the proposed  
4 location would be advantageous to the applicant.

5 A In my opinion, yes, because it does  
6 minimize surface disturbance.

7 MR. COAN: I'm going to object,  
8 Mr. Chairman. That's speculation with regard to my  
9 client and my client's beliefs about the proposed  
10 wells. I don't think, even though Mr. Marx is  
11 qualified to testify as an engineer, he is not  
12 qualified to testify to my client's views of the  
13 matter.

14 CHAIRMAN MUELLER: Thank you. Do you  
15 want to rephrase the question?

16 MS. VANDERWERF: Actually, my question  
17 was whether EnCana believes that this location would be  
18 advantageous. I am asking him about EnCana's point of  
19 view, not anyone else's. And I think he can testify to  
20 that.

21 THE WITNESS: In that case, as I  
22 mentioned before, yes, I do, because it does minimize  
23 surface disturbance, and, in fact, we have the wells  
24 set five feet apart from the existing wellbore. It  
25 would be -- the first one would be five feet away, the

1 second, five feet from that well, et cetera.

2 BY MS. VANDERWERF:

3 Q Does EnCana view the proposed location as  
4 an accommodation to the surface developer?

5 A Yes.

6 Q Does EnCana have any obligation,  
7 Mr. Marx, to directionally drill the Wandell wells?

8 A No.

9 Q Why did EnCana decide to drill them  
10 directionally?

11 A Two of the locations, the 23 and the 24,  
12 would be difficult to drill vertically because of  
13 current development. And 14-7 could be drilled  
14 vertical, but we elected to maintain all three  
15 locations on the existing well site, because of the  
16 existing production facilities and the existing gas  
17 outlet.

18 Q How does the cost of drilling a  
19 directional well in this area compare with the cost of  
20 a vertical well?

21 A It is costing approximately 80 to  
22 \$100,000 over and above a vertical well.

23 Q Who is paying that additional cost?

24 A EnCana is.

25 Q Is the applicant paying any of the

1 additional costs?

2 A No, they are not.

3 Q Did EnCana take safety considerations  
4 into account when it selected the proposed locations  
5 for the three Wandell wells?

6 A Yes, we did.

7 Q And what considerations were made?

8 A Um, the considerations were, one, the  
9 nearest home is greater than 350 feet away. And, two,  
10 as we indicated to the Town of Firestone, that we were  
11 willing -- that EnCana was willing to put up a  
12 temporary fence around the drill site during drilling  
13 operations and completion operations, as well as  
14 installation of a permanent fence, as shown on the  
15 photographs you saw earlier. And we also had indicated  
16 that we would have a 24-hour guard during the drilling  
17 operation to prevent and limit access to the drill  
18 site.

19 Q Did the Town of Firestone request that  
20 EnCana use a particular drilling rig in the operations?

21 A In the operations we've done in Section  
22 7, the Town of Firestone has requested that we use CAZA  
23 Rig 54.

24 Q And does EnCana plan to use CAZA Rig 54  
25 to drill the three Wandell wells?

1 A Yes, we are.

2 Q Is EnCana taking measures to protect the  
3 groundwater, Mr. Marx?

4 A Yes, we are. We will be setting surface  
5 casing to the depth prescribed by the Oil and Gas  
6 Commission.

7 Q Could you please point out, on the large  
8 map, the access route that EnCana will use to access  
9 the well location?

10 A Off of the Weld County Road 22, we would  
11 be coming north on Debonshire, east on Sage Avenue and  
12 then north on Dogwood to the location. And that is the  
13 current route that our -- that is being utilized by the  
14 EnCana pumper as well as by the water and oil hauler.

15 Q Are there presently any homes built along  
16 Dogwood Street?

17 A No.

18 Q Do any of the residents in the  
19 subdivision need to use Dogwood Street to reach their  
20 homes?

21 A I don't believe so.

22 ASSISTANT ATTORNEY GENERAL HARMON: Can  
23 we ask two questions?

24 (Discussion off the record.)

25 CHAIRMAN MUELLER: Please continue.

1 BY MS. VANDERWERF:

2 Q Mr. EnCana, will you try to schedule  
3 trucks during daylight hours?

4 A Whenever possible, we schedule the  
5 movement of the trucks during the daylight hours.

6 Q In your opinion, Mr. Marx, do you think  
7 that the Dogwood Street access is the best available  
8 access?

9 A Yes, it is. As I indicated, we are  
10 currently using that to service the existing well.

11 Q Has EnCana considered closing Dogwood  
12 Street during drilling operations?

13 A Yes, we have.

14 Q Would you please take a look at Exhibit  
15 12 and in the notebook. And could you describe Exhibit  
16 12, please.

17 A Exhibit 12 is a traffic control study for  
18 the proposed three wells. At the time we did this, we  
19 were trying to be proactive with respect to the Town of  
20 Firestone, to have something available if that question  
21 was asked by the Town of Firestone. And the conclusion  
22 was that the closing of Dogwood would not create a  
23 problem; that there was other accesses available to the  
24 residents of the area.

25 Q Mr. Marx, has the Town of Firestone asked

1 EnCana to close Dogwood Street?

2 A No, they have not.

3 Q If the town were to ask EnCana to close  
4 Dogwood Street, would you be willing to do that?

5 A Yes, we would.

6 Q Is there any requirement, in the  
7 Commission's rules and regulations, that you're aware  
8 of, that would require EnCana to close Dogwood Street?

9 A Not to my knowledge.

10 Q And is there any rule in the Town of  
11 Firestone's local ordinances that would require EnCana  
12 to close Dogwood Street?

13 A Not to my knowledge.

14 Q In summary, Mr. Marx, why did EnCana  
15 conclude that the proposed location for the three  
16 Wandell wells is the best available location?

17 A We felt it was the best available  
18 location because of, one, the existing access to the  
19 existing well, the existing well pad, the existing  
20 production facilities, and the existing gas sales  
21 outlet that is already there, and has been for many  
22 years.

23 Q In your opinion, is drilling the three  
24 new Wandell wells at the proposed location consistent  
25 with the protection of public health, safety and

1 welfare?

2           A     As we proposed, with no home being within  
3 350 feet, and we're willing to put up a temporary fence  
4 and a security guard around it, I believe so.

5           MS. VANDERWERF: Mr. Chairman, I would  
6 like to move the admission of Exhibits 1 through 12 in  
7 the EnCana exhibit notebook.

8           CHAIRMAN MUELLER: Any objections?

9           MR. COAN: No objections.

10          CHAIRMAN MUELLER: These exhibits are  
11 accepted. Thank you.

12                   (Whereupon Exhibit Nos. 1 - 12 were  
13 admitted.)

14          MS. VANDERWERF: Thank you, Mr. Marx.

15                   CROSS EXAMINATION

16 BY MR. COAN:

17           Q     Mr. Marx, with reference to the large  
18 exhibit that I think is in the notebook at Tab 2 as  
19 well, can you tell me when those various wells were  
20 drilled that were drilled directionally?

21           A     Um, I might have to look at some other  
22 notes, but that Well 33-7 and 42-7 were drilled  
23 directionally in December of 2002. The wells, 11, 12,  
24 22 and 13 would be the wells to the northwest. This  
25 would be the 22, the 13. And the vertical Well 12 was

1 drilled in the early part of 2003, I believe, January.  
2 And I believe, in April and May, these three wells  
3 here, the 31 location, the 41 location and the 42  
4 location were drilled in April and May of 2003. And  
5 those are the most recent wells that we have drilled  
6 directionally in this section.

7 Q You have stated that the date of this  
8 aerial photograph was May of 2002, correct?

9 A That's correct. I believe that's what it  
10 was.

11 Q Was there a reason, at the time you had a  
12 drilling rig in this section, that you did not more  
13 over and drill the subject wells, the Wandell wells?

14 A It was just principally the permitting  
15 process. We started permitting the 33 and the 43, and  
16 moved up and permitted the 11, 12, 13, and 22 location.  
17 That took additional time working with the Town of  
18 Firestone, as well as the locations in the northeast,  
19 again working with the surface developer.

20 Q Mr. Marx, are you familiar with the  
21 property that constitutes the St. Vrain Ranch  
22 subdivision?

23 A A portion of it as it relates to there.

24 Q Can you identify, on the aerial  
25 photograph, what portion is the St. Vrain Ranch

1 subdivision?

2           A     As I said, I know there's several other  
3 subdivisions out there. I believe that this area in  
4 here -- and there could be more -- that is the  
5 St. Vrain. I'm not sure. I believe, in through here,  
6 could be St. Vrain.

7           Q     Of the portions of the property north of  
8 where you indicated, can you tell me what subdivision  
9 that is?

10          A     This division up here?

11          Q     That's correct.

12          A     No, I can't. I am presuming it might be  
13 St. Vrain, but I do not know for a fact.

14          Q     Are you typically involved in negotiating  
15 surface use agreements with surface owners?

16          A     No, I'm not.

17          Q     Okay. There was some photographs of the  
18 existing Wandell No. 2 well in the packet of exhibits.  
19 Can you tell me when those fences were placed at that  
20 well site?

21          A     Um, those fences were placed -- I'm  
22 trying to think -- not that long ago, during the fourth  
23 quarter of last year.

24          Q     Can you tell me why those were put there?

25          A     It's part of a program -- two reasons.

1 One, it's part of a program that, again, EnCana has of  
2 installing fences around -- and, two, it was part of  
3 the conditions of the Town of Firestone permit.

4 Q And what permit are you referring to with  
5 the Town of Firestone?

6 A In some of the newer permits up there,  
7 they do have and it is a requirement to put fences  
8 around there.

9 Q And did you apply to the Town of  
10 Firestone for permits for those other wells in that  
11 section?

12 A I believe so, but I could not say with  
13 certainty.

14 Q And did you receive permits from the Town  
15 of Firestone for those wells?

16 A Like I say, I cannot tell for certainty,  
17 but I do know that, again, that a battery site here  
18 services these four wells here as well as these two  
19 wells here. So, it would not be individual wells. We  
20 have another -- these wells here are serviced here, so  
21 the tank battery, the fencing is around this area here.

22 Q Mr. Marx, what did you say your title was  
23 with EnCana?

24 A Operation lead.

25 Q Operation lead. And in that position,

1 you're not familiar with whether or not you have  
2 received permits from the Town of Firestone for those  
3 other wells. Is that your testimony?

4 A That's correct. On the fencing aspect of  
5 it.

6 Q And I'm not referring to just fencing,  
7 I'm referring to any permits that may be necessary.

8 A I'm familiar with the fact that we have  
9 gotten permits, both from the state and the Town of  
10 Firestone, to drill the wells that we have drilled.

11 Q Okay. Has Firestone ever denied a permit  
12 to EnCana to drill a well within the town limits?

13 A I'm not sure they have -- I'm not sure.  
14 They may have denied, but I'm not sure if that's  
15 additional -- these permits for the 14, 23 and 24-7.

16 Q What's your recollection of the  
17 conclusion of the hearing on the permits from the Town  
18 of Firestone?

19 A That they would deny the permits.

20 Q What was the rationale that was given,  
21 based on your recollection.

22 A On a safety issue.

23 Q Thank you. When do you expect that  
24 proceeding to be concluded?

25 A They are meeting soon, but I do not have



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1 an exact date.

2 Q And the reason for the additional  
3 meeting, are you familiar with that?

4 A No, I'm not.

5 Q Has the Town of Firestone denied any  
6 other permits, besides the ones for the subject wells,  
7 for EnCana?

8 A Not that I'm aware of. And we have  
9 drilled, not only those wells, but we had three other  
10 wells, too, in Section 5 of the same township and  
11 range, that we were permitted through the Town of  
12 Firestone.

13 Q If you were to directionally drill from  
14 the location that you said you had four wells, in the  
15 north half -- it would be the east half of the  
16 northwest quarter, could you reach the bottom hole  
17 locations for the Wandell 23-7?

18 MS. VANDERWERF: Mr. Chairman, I'm going  
19 to object to this line of questioning, because the  
20 issue today is the drilling permits for the Wandell  
21 wells that EnCana has applied for. It's not a question  
22 of whether there are other possible locations. That's  
23 not relevant to the issue as to whether the Director  
24 properly granted the permits for these three wells.  
25 And EnCana has no obligation to consider alternative

1 locations in order to please a surface owner. That is  
2 not the law in Colorado.

3 MR. COAN: Mr. Chairman, the scope of the  
4 direct examination involved the accommodation to the  
5 surface owner. And, so, I think that, to that extent,  
6 the cross examination involving the accommodations and  
7 potential for accommodations would be appropriate.

8 MS. VANDERWERF: And accommodation is --  
9 well, does not go so far as to require EnCana to look  
10 at every possible location. I have submitted some  
11 points of law and attached an order from the Weld  
12 County District Court, in which the court ruled that an  
13 operator does not have to consider alternative  
14 locations. The locations EnCana has filed permits on  
15 are legal locations under Rule 318.a.

16 (Whereupon discussion was had off the  
17 record between Chairman Mueller and Assistant Attorney  
18 General Harmon.)

19 CHAIRMAN MUELLER: I'll overrule the  
20 objection, and please answer the question.

21 THE WITNESS: Okay. Could you repeat it,  
22 please.

23 BY MR. COAN:

24 Q Sure. I'm not sure of the exact well  
25 names, but the location that has four well locations,

1 in the northwest quarter of Section 7, where you  
2 drilled one vertical and three directional wells.

3 A Yes.

4 Q Could you reach the Wandell 23-7 from  
5 that location, downhole.

6 A Yes, we could.

7 Q Okay. Mr. Marx, are you familiar with  
8 any offers made by the applicant, St. Vrain Partners,  
9 LLC, to pay EnCana to directionally drill from other  
10 locations besides the proposed locations?

11 A Are you, again, are you referencing the  
12 southwest quarter?

13 Q Referencing any locations besides where  
14 they are proposed. Are you familiar with -- are you  
15 aware of offers that have been made to pay EnCana for  
16 that?

17 A I believe there has been, but I'm not  
18 intimately knowledgeable of them.

19 Q Who is the appropriate party, then, that  
20 would be intimately familiar with that?

21 A It would be our land negotiator.

22 Q And who is that?

23 A I believe it would be, perhaps, Mike  
24 Hall.

25 Q Now, in your testimony, you mentioned you

1 were asked whether or not Firestone has made any  
2 requests of you to close certain streets; is that your  
3 testimony?

4 A To my knowledge, Firestone has not  
5 requested us to close the street.

6 Q Are you familiar with the permit  
7 application process that the Town of Firestone has to  
8 close a public street in the Town of Firestone?

9 A No, I'm not.

10 Q Have you investigated, based on your  
11 traffic study, and the statements in your traffic  
12 study, about the need to have a clear zone within 200  
13 feet of the drilling rig, have you investigated the  
14 procedure for the -- or the appropriateness for closing  
15 certain streets?

16 A Can you repeat? I'm sorry. I don't  
17 understand what you are referencing.

18 Q Exhibit 12 is a traffic control study  
19 that was provided to Mr. Holland, and is an exhibit in  
20 this matter. In the introductory paragraph, I guess it  
21 would be 1, 2, 3 -- the 4th line, first actual  
22 sentence, it says, "EnCana has indicated that a  
23 200-foot clear area should be provided around the  
24 drilling rigs." Based on --

25 A Yeah.

1 Q Based on that information, that EnCana's  
2 opinion is that a 200-foot clear area needs to be  
3 provided, have you investigated the procedure for  
4 closing roads in the Town of Firestone?

5 A No, I have not.

6 Q Has EnCana applied to the Town of  
7 Firestone to close any roads?

8 A I'm not sure if we have done it formally,  
9 but it has come up in hearings with Firestone. And it  
10 was my understanding Firestone thought it was an  
11 administrative function of the Town of Firestone, not  
12 part of the permitting function of these three wells.

13 Q So, there's a separate process besides  
14 the permitting process?

15 A I believe so, yes. That's what I  
16 presumed.

17 Q Has EnCana initiated that separate  
18 process?

19 A Not that I'm aware of, at this time.

20 Q Is it EnCana's position that EnCana has  
21 the authority to close public streets in the Town of  
22 Firestone?

23 A No.

24 Q I know, when you testified earlier that  
25 the Town of Firestone has requested that EnCana use

1 CAZA Rig 54, you were testifying to other locations,  
2 not these specific Wandell locations; is that correct?

3 A Yes. They have required us -- requested  
4 that we use CAZA Rig 54 on the wells that we have  
5 drilled in the north half, and we presumed that they  
6 would have the same request on the wells drilled in the  
7 southwest.

8 Q Mr. Marx, what distance for directional  
9 drilling was -- is the farthest extent of a reach that  
10 EnCana has engaged in previously?

11 A I think probably about 1800 -- 1800, plus  
12 or minus, feet.

13 Q And can you describe to me how many  
14 locations, if you have a location in every 40 acres,  
15 how many locations would that reach? Is it just to one  
16 permitted location or is it two or three? I'm not sure  
17 what the 1800 feet equates to.

18 A If we would drill from the Wandell No. 2  
19 site, we could drill -- we could have drilled all four  
20 of the additional wells in the southwest quarter with  
21 CAZA Rig 54.

22 Q Just for a comparison, I guess, the  
23 directional well from -- I guess it would be the 13-7?

24 A (Witness nodding in the affirmative.)

25 Q Can you tell me what the reach is to

1 that?

2 A I would have to check some notes. If  
3 you'll allow me to, I will.

4 Q Okay.

5 A Excuse me. The lateral reach on the 13-7  
6 was approximately 1477 feet.

7 CHAIRMAN MUELLER: Excuse me. Can you  
8 repeat that, please.

9 THE WITNESS: 1,477 feet.

10 BY MR. COAN:

11 Q Since you were in the area recently, can  
12 you tell me what the status of the surface is directly  
13 south of the well pad from which the 13-7 was drilled?

14 A I don't -- let's see. I wasn't -- didn't  
15 specifically look at that when I was out there the  
16 other day. At this point in time, I don't believe  
17 there's anything there, but I'm not 100 percent sure.

18 Q Is it common for EnCana to use the  
19 surface of one property owner to reach a downhole  
20 location underneath a different surface owner?

21 A No, it's not standard procedure.

22 Q Can you explain why you think it's  
23 appropriate, then, to use the St. Vrain Partners'  
24 surface for the Wandell 23-7 when, in fact, the  
25 downhole location is under a different surface owner

1 and developer?

2           A     As I indicated earlier, we feel that  
3 drilling from this one pad is the best place to drill  
4 all three of the remaining wells in the southwest  
5 quarter.

6           Q     Even though it's contrary to what you  
7 typically do, utilizing someone else's surface for a  
8 downhole location?

9           A     In this case, since we maintain the  
10 minerals throughout the whole section, in my opinion,  
11 it's more prudent to drill the three wells off of that  
12 existing well pad, where we have existing facilities.

13          Q     Who in your company is familiar with  
14 whether or not EnCana has entered into surface use  
15 agreements with surface owners in Section 7?

16          A     Again, I have to refer back to EnCana's  
17 land negotiator, Mike Hall.

18                   MR. COAN:   Okay.  No further questions.

19                   CHAIRMAN MUELLER:  Okay.  Questions from  
20 the Commissioners?

21                   COMMISSIONER ASHBY:  Yes.

22                   MS. VANDERWERF:  Excuse me,  
23 Mr. Chairman --

24                   CHAIRMAN MUELLER:  Redirect.

25                   MS. VANDERWERF:  Might I have a brief

1 redirect?

2 CHAIRMAN MUELLER: Please.

3 REDIRECT EXAMINATION

4 BY MS. VANDERWERF:

5 Q Mr. Marx, Mr. Coan asked you some  
6 questions about the situation with Dogwood Street, and  
7 I would like to just make sure the record is clear.  
8 Has the Town of Firestone requested that EnCana close  
9 Dogwood Street?

10 A No, they have not.

11 Q Were you at a public hearing before the  
12 town board in December? Did you attend that meeting?

13 A Yes, I was. Yes, I did.

14 Q Was there any discussion at that time, by  
15 the town administration, concerning the closing of  
16 Dogwood Street?

17 A Yes, there was.

18 Q And do you recall what was said?

19 A I believe, as I indicated before, that it  
20 was an administrative process and not part of the  
21 permitting process.

22 Q And is it your understanding that the  
23 process has to originate with the town and not with  
24 EnCana?

25 A That's what I presumed from the hearing.

1 Q Would you please take a look at Exhibit  
2 35 in the exhibit notebook. And this document is a  
3 fax, dated November 4, 2003, from Bruce Nickerson to  
4 Cathi Boles. Do you know who Bruce Nickerson is?

5 A Yes.

6 Q And who is Mr. Nickerson?

7 A I believe he's the town administrator.

8 Q He is the town administrator for what  
9 town?

10 A Oh, I'm sorry. For the Town of  
11 Firestone.

12 Q And the subject of this memo is, "Special  
13 Use Permits for the Wandell 14-7, 23-7 and 24-7 Wells";  
14 is that correct?

15 A Yes.

16 Q And is the Special Use Permit the permit  
17 that is required by Firestone?

18 A Yes.

19 Q And would you please look at the last  
20 page of the memo, No. 222. Do you see that?

21 A Yes.

22 Q And I'm reading from the exhibit. It  
23 says, "The drill rig used for drilling operations shall  
24 be Model CAZA-54."

25 A That's correct.

1 Q Does that refresh your recollection as to  
2 whether the Town of Firestone has asked EnCana to use  
3 this particular rig in drilling the Wandell wells?

4 A Yes, they did.

5 Q Thank you.

6 MS. VANDERWERF: Thanks. I have no  
7 further questions.

8 CHAIRMAN MUELLER: Okay. Thank you. Any  
9 other questions?

10 MR. COAN: If I may, just one quick one.

11 RECROSS EXAMINATION

12 BY MR. COAN:

13 Q Mr. Marx, you indicated that it was your  
14 understanding that, with the Town of Firestone, it was  
15 the Town of Firestone that would initiate the  
16 administrative procedure for closing of public roads.  
17 Is that what your testimony was?

18 A I believe so, yes.

19 Q And have you reviewed the ordinances in  
20 the Town of Firestone to actually determine the  
21 procedure for closing roads in the Town of Firestone?

22 A I have not done so.

23 MR. COAN: No further questions.

24 CHAIRMAN MUELLER: Questions from the  
25 Commissioners?

## EXAMINATION

1

2 BY COMMISSIONER ASHBY:

3

Q Yes. Mr. Marx, I see what may be a  
4 railroad grade depicted on the map.

5

A (Witness nodding in the affirmative.)

6

Q Is that active or abandoned?

7

A That's abandoned. I believe that's  
8 Firestone Trail.

9

Q And regarding the Wandell No. 2, do you  
10 have any idea what the current casing pressures are, or  
11 tubing pressures are on that well?

12

A Our casing pressure on that line is about  
13 150 pounds.

14

Q Has that well been pulled or worked over  
15 in the past?

16

A I would need to check my notes, but I  
17 believe we were on the well about two years ago, and  
18 just a routine maintenance, where we pulled the tube  
19 and ran back in. I think we may have cleaned out the  
20 wellbore.

21

Q That was prior to the development?

22

A No. Parts of the development were -- are  
23 still there. To what degree, I can't recollect, but we  
24 have been on the well in the last, approximately, two  
25 years ago.

1 Q And when you say, "on the well," what  
2 kind of equipment do you use in the cleanup?

3 A In this case, it was a workover rig, a  
4 service rig, not a drill rig.

5 Q Can you describe that?

6 A It would be a rubber-tired,  
7 derrick-mounted service rig.

8 Q How tall would be the derrick be?

9 A Oh, I believe about 75 feet.

10 Q Would you -- do you anticipate that  
11 activity regarding the Wandell No. 2 would continue?

12 A At various points, yes. We would very  
13 likely restimulate the Niobrara at that location at a  
14 future time.

15 Q Has the well been refraced?

16 A No, it has not.

17 Q In the event the well is refraced, do you  
18 anticipate the life of the well being extended?

19 A Yes, we do.

20 Q In your opinion, does increasing the  
21 lateral distance in drilling the well have an effect on  
22 the operation's cost and success of the well?

23 A It certainly has an effect on the cost.

24 Q What is the height of Rig 54?

25 A I believe it's 105 feet.

1 Q And I believe we'll have a chance to ask  
2 that question again.

3 A I believe so.

4 Q Of the CAZA representative.

5 A Yes.

6 COMMISSIONER ASHBY: Thank you. That's  
7 all I have.

8 CHAIRMAN MUELLER: Other Commissioners?

9 EXAMINATION

10 BY COMMISSIONER REAGAN:

11 Q What's an estimated time to drill and  
12 complete each one of these directional holes?

13 A As mentioned in the Town of Firestone, we  
14 anticipated drilling the three directional wells in 22  
15 to 24 days.

16 Q So, the disruption is minimal?

17 A Yes.

18 CHAIRMAN MUELLER: Does that include  
19 completion too?

20 THE WITNESS: No. That would be the 12/7  
21 operation of the drilling.

22 BY COMMISSIONER REAGAN:

23 Q I meant drilling and completion, the full  
24 time.

25 A I'm sorry. The drilling operations would

1 be 22 to 24 days.

2 Q Right.

3 A The completion operation, with the zones  
4 that we would complete, we estimated that it would take  
5 perhaps 30 to 60 days, at the most, and we would do  
6 everything we could to shorten that process up,  
7 including, if so desired, refracing the existing  
8 Wandell No. 2 at that time.

9 Q Okay. When everything is done from the  
10 pad, from a single location, there's no disruption  
11 anyplace else?

12 A That's correct. Everything would be  
13 utilized on the pad.

14 COMMISSIONER REAGAN: That's it.

15 CHAIRMAN MUELLER: Tom Ann.

16 EXAMINATION

17 BY COMMISSIONER CASEY:

18 Q I was curious why the town requested CAZA  
19 Rig 54?

20 A It's a very quiet rig. And in later  
21 testimony, that will be brought out.

22 COMMISSIONER CASEY: Thank you. That's  
23 all I have.

24 CHAIRMAN MUELLER: Since we didn't have  
25 any direct testimony from St. Vrain, I'll ask this

1 question. Whoever wants to jump up can take it. When  
2 was the St. Vrain subdivision developed? When did that  
3 begin?

4 MR. CARMICHAEL: Michael Carmichael, one  
5 of the partners of St. Vrain Partners, LLC.

6 CHAIRMAN MUELLER: I do need to swear you  
7 in.

8 (Whereupon Michael Carmichael was  
9 sworn.)

10 CHAIRMAN MUELLER: Thank you.

11 MR. CARMICHAEL: The property was  
12 purchased in 1996, and the platting process began in  
13 '97. That property was final-platted -- that area over  
14 there was final-platted in '98, '99.

15 CHAIRMAN MUELLER: When did construction  
16 begin?

17 MR. CARMICHAEL: Construction began, that  
18 process, in 1998, has continued through 2002.

19 CHAIRMAN MUELLER: Okay. All right. And  
20 then, with staff, when were the downspacing rules  
21 adopted for that area?

22 THE WITNESS: 318.a?

23 DIRECTOR GRIEBLING: Yeah.

24 MR. MACKE: When were those --

25 DIRECTOR GRIEBLING: About four years

1 ago.

2 MS. BEAVER: April of '98.

3 CHAIRMAN MUELLER: Thank you. Okay. Any  
4 other questions?

5 COMMISSIONER KLISH: I did.

6 EXAMINATION

7 BY COMMISSIONER KLISH:

8 Q How do you service the 34-7 and the 44-7?

9 A At the present time -- I'm sorry. Which  
10 wells were you referencing?

11 Q The 34-7 and the 44-7?

12 A This well here and this well here have  
13 not been drilled at this point in time.

14 COMMISSIONER KLISH: Okay. Thank you.

15 CHAIRMAN MUELLER: Any other questions?

16 All right. Thank you very much.

17 MS. VANDERWERF: Mr. Chairman, EnCana  
18 calls Larry Lorenz, please.

19 CHAIRMAN MUELLER: Mr. Lorenz, welcome.

20 (Whereupon Larry Lorenz was sworn.)

21 CHAIRMAN MUELLER: Thank you. Please sit  
22 down.

23 DIRECT EXAMINATION

24 BY MS. VANDERWERF:

25 Q Mr. Lorenz, would you please state your

1 full name for the record.

2 A Larry Michael Lorenz.

3 Q And how are you currently employed?

4 A Drilling superintendent for CAZA

5 Drilling.

6 Q And have you always worked in the oil and  
7 gas drilling industry?

8 A Yes.

9 Q And for how many years?

10 A Since 1975.

11 Q Have you prepared a resume showing your  
12 work experience?

13 A Yes, a short one.

14 Q Would you please look at Exhibit 26. Is  
15 that your resume?

16 A Yes.

17 Q And could you please describe your work  
18 experience for the Commission.

19 A Um, I started out in Wyoming as a  
20 roughneck, actually. Worked my way up. Went to  
21 college. Worked as a superintendent in Venezuela.  
22 Worked for Exeter Drilling for 21 years. And then I  
23 worked in international until Exeter was bought out by  
24 Nabors, and then I came home, to go back to work  
25 overseas, and ended up at CAZA Drilling. Got off the

1 plane at 4:30 and they called me at 6. I went to work  
2 for them as equipment manager for rig refurbishment for  
3 a few years and then I went back into the drilling  
4 sites.

5 Q What's your position for CAZA Drilling?

6 A Drill superintendent. I watch four rigs  
7 in Wattenberg and two on the Western Slope.

8 Q Mr. Lorenz, are you familiar with CAZA's  
9 Rig 54, which is the rig that the Town of Firestone is  
10 requiring EnCana to use to drill the Wandell wells?

11 A Yes, I am. I brought it -- it's a  
12 brand-new rig. It was built in September of 2001 in  
13 Canada. I actually brought it into the country myself.  
14 Watched it go across the border, went back, got on the  
15 plane. It was bought from Pan-Canadian Energy  
16 before -- that was EnCana's predecessor -- under a  
17 two-year contract.

18 The rig, as far as the technology for the  
19 Wattenberg, you won't find anything else like that.  
20 Everything is hydraulic on the rig. Three engines on  
21 the rig that run two generators, one is just for  
22 backup. You have all engines set down below, enclosed  
23 buildings. It runs a shaft. It runs the hoisting  
24 system. Then it runs a hydraulic pump. Everything on  
25 this rig is hydraulic. That floors sits up 16 feet.

1 Everything else is down on the ground and enclosed.  
2 There's really no noise on the floor. You have  
3 hydraulic catheads, hydraulic pipe spinners, kelley  
4 spinners, pipe tubs. So it's -- even the pipe tubs are  
5 hydraulic. They come up and run over -- nothing banged  
6 or bounced off this rig.

7 Q Okay. Thank you. Do you consider this  
8 rig to be your baby, Mr. Lorenz?

9 A I take personal interest in it, yes,  
10 since it's inception here. It's actually drilled, in  
11 the City of -- Town of Platteville, right next to the  
12 school. I mean, that's how quiet it is. It's a nice  
13 rig. And most of the rigs, you mostly know, were  
14 probably built in the '80s, during the boom. They have  
15 leftovers, and things like this. This is the first,  
16 newest rig I've been around.

17 MS. VANDERWERF: Mr. Chairman, I would  
18 move to have Mr. Lorenz qualified as an expert with  
19 regard to the performance characteristics of Rig 54.

20 CHAIRMAN MUELLER: Okay. Any objections?

21 MR. COAN: No objections.

22 CHAIRMAN MUELLER: Commission questions?

23 None. I am sure you are accepted.

24 Thank you, sir. You are accepted. Thank  
25 you.

1 BY MS. VANDERWERF:

2 Q I got to admit, Mr. Lorenz, I didn't  
3 really catch all of that that you were saying. So I  
4 would like to ask you a few more questions.

5 A Sure.

6 Q I will try not to be to repetitive, but  
7 could you please describe the engines on the rig.

8 A As I said earlier, there's three engines  
9 actually running the rig. One runs the mud pump. One  
10 runs the generator system, which does the power for the  
11 complete rig. The other engine runs a shaft for the  
12 hoisting system. The rest of the hydraulic pumps that  
13 run the rig are for the making and breaking the pipe.

14 Q Do the engines have mufflers?

15 A Everything is silenced on the rig as far  
16 as mufflers go, yes.

17 Q Have you had a test performed on CAZA Rig  
18 54 to determine the level of noise that is generated  
19 during drilling operations?

20 A Yes, I have.

21 Q And who performed that test?

22 A It was a Christian Gamblin.

23 Q Who is Mr. Gamblin?

24 A He's an HS&E specialist. He was hired by  
25 our HS&E department to do it.

1 Q When was that test performed?

2 A In October, probably the second week of  
3 October, of this year.

4 Q Would you please look --

5 A Last year, excuse me.

6 Q Would you please look at Exhibit 28, and  
7 can you describe this document.

8 A This is what it sets out on CAZA 54.

9 Shows the center-of-wellbore decibel readings: 300  
10 feet is 63, 200 feet was 81 and 100 feet, 92 decibels.  
11 This is under normal drilling operation.

12 Q And is this document certified?

13 A Yes, it is.

14 Q And does it state the noise level  
15 readings that were obtained during the test for the  
16 CAZA Rig 54?

17 A Yes, it does.

18 Q And what are those decibel readings?

19 A 63 at 300 feet, at 200 feet it was 81  
20 decibels and 100 feet it was 92 decibels.

21 Q And did you hear Mr. Marx's testimony  
22 that there are no homes closer than 350 feet to the  
23 proposed drill site for the Wandell wells?

24 A Yes, I did.

25 Q So, looking at these three decibel

1 readings, which one do you think is most appropriate  
2 when we're talking about the situation that we're going  
3 to have when the new Wandell wells are drilled?

4 A The 63.

5 Q The 63 decibel rate.

6 A Yes.

7 Q And that's the rating at 300 feet; is  
8 that correct?

9 A Right. So it would be less than that.

10 Q Are you familiar with the Commission's  
11 regulations regarding noise?

12 A Um, I read them over actually, yes.

13 Q Would you like to take a look at them  
14 or --

15 A They are, I believe, what? 75 rate  
16 decibels or something like that.

17 Q I don't want you to make a guess. I'm  
18 happy to show you the rule.

19 A I believe they were at 80.

20 Q Um, I would like you to take a look at  
21 Commission Rule 802, please.

22 A Uh-hum.

23 Q And what are the allowable maximum  
24 decibel ratings?

25 A Just for residential, or what do you

1 want? Industrial?

2 Q Well, I think, if I am correct, that the  
3 drilling operations are considered an industrial area.

4 A Be 80 decibels from 7 a.m. to 7 p.m.  
5 From 7 p.m. to 7 a.m. is 75 decibels.

6 Q So, does the CAZA Rig 54 meet the noise  
7 standards that the Commission has enacted?

8 A Yes, they do. Yes, it does.

9 Q Mr. Lorenz, have you been on the rig  
10 floor of Rig 54 during drilling operations?

11 A Yes, I have.

12 Q And how would you describe the noise  
13 level on Rig 54 when the well is -- the rig is drilling  
14 the well?

15 A You can talk just like we are talking  
16 right now.

17 Q Just like we're talking right now?

18 A (Witness nodding in the affirmative.)

19 Q Have you carried on conversations with  
20 people on the rig floor?

21 A Yes.

22 Q How would you compare the level of noise  
23 on the rig floor to highway traffic?

24 A Maybe less or about the same.

25 Q Can you name some common household

1 appliances that would have approximately the same level  
2 of noise that you've experienced on the rig floor of  
3 Rig 54 during drilling operations?

4 A Well, looking them up on the Internet  
5 would be like a dishwasher, a washing machine or a fan,  
6 window fan. What you hear on 54 is mostly the fans  
7 running off the generators.

8 Q Could you describe the lighting that will  
9 be used on Rig 54?

10 A Um, regular lighting. We'll direct all  
11 of the lighting right to the location. Make sure  
12 nothing glares to the houses, except for the mast.  
13 That's something that would be a safety issue, which I  
14 won't -- will not change.

15 Q Why is lighting necessary on the drilling  
16 rig?

17 A To work 24 hours a day. And the mast,  
18 it's for the safety of the rig crews. It needs to be  
19 well-lit.

20 Q Is Rig 54 in compliance with the  
21 Commission's rules on lighting?

22 A Yes, it is.

23 Q How would you compare Rig 54 to other  
24 rigs that are operating in the D-J Basin today?

25 A There's no comparison. As far as

1 technology goes, it's 20, 25 years ahead of them.

2 Q In your opinion, Mr. Lorenz is Rig 54 a  
3 state-of-the-art drilling rig?

4 A For the Wattenberg Basin, yes.

5 Q In your opinion, will using Rig 54 to  
6 drill the Wandell wells decrease the quality of life in  
7 the St. Vrain Ranch subdivision?

8 A I don't see how, other than having a  
9 drill rig setting at the end of the street for 21 days,  
10 22 days.

11 Q Just for the record, Mr. Lorenz, where do  
12 you live?

13 A In the -- I live in the St. Vrain Ranch.  
14 MS. VANDERWERF: Thank you.

15 CROSS EXAMINATION

16 BY MR. COAN:

17 Q Mr. Lorenz, have you previously studied  
18 the Oil and Gas Commission's regulations associated  
19 with noise?

20 A Not until the other day, no.

21 Q Under Rule 802, where is the appropriate  
22 place to actually measure the sound of a rig?

23 A We start from the center of the wellbore,  
24 and walked -- you have to understand. I was not there  
25 when he did it. He was hired. And he went 100 feet

1 from the rig, went around in a circle, on all sides.  
2 This is what I understand.

3 Q That's what the person did that tested  
4 the sounds of the rig?

5 A Yes.

6 Q But are you familiar with what actually  
7 the rules require with regard to testing of the sounds?

8 A I don't think I would need to be. He  
9 does. He's certified. I am not.

10 Q Can you tell me what the sound would be  
11 at 354 feet from the wellbore?

12 A No, I cannot.

13 Q Is that because you don't know what that  
14 sound is?

15 A I don't know what that is.

16 Q And --

17 A I am not an HS&E specialist.

18 Q And the person you commissioned to test  
19 the rig did not test that distance?

20 A No. He went to 300 feet. That was  
21 normal, through the certifications, is what he was  
22 telling us.

23 Q You don't know what the sound would be at  
24 the nearest residence?

25 A No, I do not.

1 Q There was a question about the height of  
2 the Rig 54.

3 A Uh-hum.

4 Q Can you tell me what the height of Rig 54  
5 is?

6 A 105.

7 Q Is that the height of the mast?

8 A That's the height from the ground to the  
9 top.

10 Q So that includes the substructure?

11 A Yes, it does.

12 Q Are you familiar with the sound or the  
13 level of sound during a frac job?

14 A No. I don't do production work.

15 Q And can you tell me why you commissioned  
16 the noise level test in October of 2003?

17 A Because we were going to have them done  
18 on all of our rigs.

19 Q And did you have them done on all of your  
20 rigs?

21 A Not completely yet, but they are working  
22 on it. That's something the HS&E department want them  
23 to do, for safety of the employees for noise, for No.  
24 1.

25 Q And this particular test was commissioned

1 for purposes of safety of your employees?

2 A Of course. We also do lighting also.

3 And they were doing that also as far as lighting.

4 Q Okay. No further questions.

5 CHAIRMAN MUELLER: Any redirect?

6 MS. VANDERWERF: I have nothing further.

7 CHAIRMAN MUELLER: Okay.

8 EXAMINATION

9 BY COMMISSIONER ASHBY:

10 Q Mr. Lorenz, let's see. Have you seen the  
11 proposed location pad?

12 A Yes, I have.

13 Q Is there adequate room for the rig  
14 without infringing on offsetting surface owners?

15 A As far as I looked at it, let's see,  
16 almost looked like a greenbelt, to a point. And then  
17 there's a street off to the side. As far as the 54 rig  
18 rig-up, there's no problem. Just go ahead five feet at  
19 a time.

20 Q Okay. On the initial rig-up, what kind  
21 of distance will you need for the derrick trunk?

22 A We have a telescoping double. Everything  
23 sliding on from the back. The derrick actually  
24 hydraulics up, goes up to the front. There's no front  
25 needed. Just for the pipe tubs to set.

1 Q Is that distance 40 feet? 60 feet?

2 A Probably 125.

3 Q How many loads on Rig 54?

4 A 15.

5 Q 15?

6 A 15 total. That includes the boiler

7 (sic).

8 Q Do you intend to dig a reserve pit here?

9 A No.

10 Q Does that include the dewatering  
11 equipment?

12 A We will use our own tank and bring one  
13 extra trailer and make it 13 loads, because it -- we'll  
14 do outside source. It wouldn't be with us. It will be  
15 the rig -- another contractor to bring in for a closed  
16 loop, closed system.

17 Q Will there be any pits?

18 A No.

19 Q How much time to rig-up and rig-down?

20 A As far as rigging up, you are looking at  
21 about 4 to 6 hours to rig-up. For skids, I can skid  
22 and have it going on our pads, probably 4 to 5 hours.  
23 With three trucks, just to skid and rig-down, about 6  
24 hours, 4 to 6 hours, we'll be done.

25 Q How many trucks do you anticipate

1 applying in the move?

2 A As far as something like that goes, I  
3 would only use, probably, four to five, seriously, just  
4 because of traffic.

5 Q Can you comment further on the traffic or  
6 moving situation circumstance?

7 A We want to do it during the workweek,  
8 where people are gone, instead of on the weekends. As  
9 far as the traffic out there goes, it's developing.  
10 It's going on quite a bit. Traffic is getting busier  
11 all of the time. As far as on those streets, I have no  
12 idea. I don't live there. I live on the far end of  
13 Saddleback.

14 Q Do you anticipate any need to close the  
15 roads, probably?

16 A That I couldn't tell you. I really don't  
17 know.

18 COMMISSIONER ASHBY: Thank you.

19 CHAIRMAN MUELLER: Michael.

20 EXAMINATION

21 BY COMMISSIONER KLISH:

22 Q Just one. Do you know if the sound  
23 measures are done during the pipe trip or not?

24 A It wasn't -- it was during drilling  
25 operation on these wells. We don't really trip pipe

1 anymore. We run PDCs, MWDs and when I pick a bit off a  
2 surface, I don't make bit trips anymore.

3 Q Okay.

4 A I drill right to TD with it. That's why  
5 we can do them, like an average directional well, and  
6 in the other Wandells, 6.5 days. During drilling, and  
7 in the older days, it used to take two to three weeks  
8 to drill a directional well. Lot of trips. A lot of  
9 problems. But now, with technology, it's bang, bang.

10 COMMISSIONER KLISH: Thanks.

11 CHAIRMAN MUELLER: Tom Ann.

12 EXAMINATION

13 BY COMMISSIONER CASEY:

14 Q Let's see. I had a couple of questions.  
15 One, are you built to rig-up and use the existing well  
16 pad, or will you have to expand that area to  
17 accommodate the new wells?

18 A They will have to, as far as that would  
19 be a production question, for the drilling part of it.  
20 They have to either set a bridge plug in that existing  
21 well, then they'll tear the tank battery and stuff out.  
22 They will have to -- they will have to move their  
23 treater and things. They usually shut the well in, the  
24 existing well. They will have to shut everything in.

25 Q So, will there be enough room on the

1 existing pad?

2 A There's not really a pad there. This  
3 well was drilled in '72.

4 Q Was that a little area?

5 A Just an area.

6 Q The second question I had is, when I have  
7 been out on rigs, is that not only the rig noise  
8 itself, but, you know, there's the crews coming up with  
9 their diesel trucks, and changing out rig crews, and  
10 there are people delivering pipes, and water trucks  
11 and --

12 A Well, as far as the delivery.

13 Q Have you made any accommodation for that  
14 noise as well?

15 A What they can do, as far as that goes, on  
16 the other Wadells, they weren't allowed to bring the  
17 casing unless it was the daylight hours. We have to  
18 forklift to unload. We don't roll stuff and bang it on  
19 things. We have a forklift with the rig, so everything  
20 is moved --

21 Q I'm starting to feel old.

22 A I grew up in your day too. I understand.  
23 We used to kick everything off by hand. Also, for  
24 safety is one reason I put a forklift on the rig.  
25 Besides, the way the rig is built -- not like a

1 different type of rig. It needs a forklift to lift, to  
2 move the pallets of gel around. And everything pretty  
3 much comes in the initial move on surface casing, and  
4 everything, production casing, will come later. We  
5 unload it with a forklift.

6 EXAMINATION

7 BY COMMISSIONER REAGAN:

8 Q I just want to clarify one question. You  
9 were asked, you know, what the sound level might be at  
10 350 feet. If you look at the chart that's been  
11 provided, at 300 feet it was 63 decibels.

12 A Uh-hum.

13 Q So at 350 feet it would be?

14 A Less.

15 Q Less.

16 A Okay.

17 Q Okay. Probably be somewhat in  
18 relationship to the other distances that you measured?

19 A Yes. (Witness nodding in the  
20 affirmative.)

21 Q So, anyway, it's just less?

22 A Right.

23 Q It's less.

24 A I would assume that.

25 COMMISSIONER REAGAN: Me too.

1 CHAIRMAN MUELLER: All right. Jim.

2 EXAMINATION

3 BY COMMISSIONER ASHBY:

4 Q Mr. Lorenz, I notice here that this rig  
5 will be equipped with an annular preventer double ram  
6 and rotating head.

7 A Yes. It always has been.

8 Q And do you anticipate any well control  
9 circumstances here?

10 A No. On the other Wandells, we have had  
11 none. We actually weighted up ahead of time, just to  
12 make sure there wasn't any. On the Wandells we did in  
13 the north, we were within 300 feet of the houses when  
14 we were drilling those, and there was variances signed  
15 by the homeowners. And so I just -- we just did things  
16 like that.

17 I live there too, and, besides that, I  
18 don't want anything to happen, period. It's bad  
19 business for everybody, our business, your business.  
20 So, we actually weighted up early on every one of them.  
21 Slows the drilling down a little bit. We don't take  
22 chances, take any chances that way, as far as running  
23 under ballast. I have had no other gas problems on any  
24 of the other Wandells we have drilled.

25 Q No gas has been eliminated from the hole?

1 A No.

2 COMMISSIONER ASHBY: Thank you.

3 CHAIRMAN MUELLER: Okay. Any other  
4 questions?

5 MS. VANDERWERF: Excuse me, Mr. Chairman.  
6 One housekeeping detail. I forgot to move the  
7 admission of Exhibits 26, 27 and 28.

8 CHAIRMAN MUELLER: Any objection? They  
9 are accepted. Thank you. Thank you, Mr. Lorenz.

10 THE WITNESS: Thank you.

11 MS. VANDERWERF: EnCana calls Richard  
12 Starkey.

13 CHAIRMAN MUELLER: Mr. Starkey, I need to  
14 swear you in.

15 THE WITNESS: All right.

16 (Whereupon Richard Starkey was sworn.)

17 CHAIRMAN MUELLER: Thank you.

18 DIRECT EXAMINATION

19 BY MS. VANDERWERF:

20 Q Mr. Starkey, would you please state your  
21 full name for the record.

22 A Richard Douglas Starkey.

23 Q How are you currently employed?

24 A I am the development group leader for  
25 EnCana.

1 Q And are you a reservoir engineer?

2 A Reservoir engineering is my background.

3 Q And do you have any experience in the  
4 Denver-Julesburg Basin?

5 A Yes, I do.

6 Q What is involved in becoming a group  
7 leader?

8 A Group leader, I have a responsibility for  
9 overseeing the production of the reservoir and the  
10 geologic engineering aspects for the development within  
11 the D-J Basin.

12 Q Have you submitted a resume of your  
13 professional qualifications?

14 A That I have.

15 Q Would you look, please, at Exhibit 29 in  
16 the notebook in front of you?

17 A All right.

18 Q Is that your resume?

19 A That it is.

20 Q Have you ever testified before this  
21 Commission as an expert witness?

22 A Yes, I have. I have testified on matters  
23 concerning tight gas applications, for the majority of  
24 western Colorado, back in '82, '83 and '84.

25 MS. VANDERWERF: I would move to have

1 Mr. Starkey qualified as an expert in the field of  
2 reservoir engineering.

3 CHAIRMAN MUELLER: Okay. There are no  
4 objections?

5 MR. COAN: No objections.

6 CHAIRMAN MUELLER: I am sorry. No --

7 MR. COAN: No objections.

8 CHAIRMAN MUELLER: All right. Thank you.

9 BY MS. VANDERWERF:

10 Q Mr. Starkey, have you prepared reserve  
11 estimates for the three Wandell wells that are the  
12 subject of our hearing today?

13 A Yes, I have.

14 Q And would you look, please, at Exhibit  
15 30, and could you describe this to the Commission?

16 A What you see before you is a decline  
17 curve forecast for what we're projecting as our  
18 reserves for the three wells in question. Each of  
19 these are the same. We have valued these wells to  
20 recover a -- roughly about half a BCF in gas reserves.  
21 And that's a combination of about 4/10th of a BCF from  
22 the "J" Sandstone, and about a 10th of a BCF from the  
23 Codell. And the Codell is really where you get most of  
24 your associated liquids, which we are projecting about  
25 13,000 barrels of oil.

1 Q So, you're projecting about half of a BCF  
2 for each of the three wells?

3 A For each of the wells, so the total for  
4 all three wells is about 1.5 BCF.

5 Q Have you done any economics for the  
6 wells, Mr. Starkey?

7 A Yes, we have. We valued these three  
8 wells at roughly about \$325,000, on a present worth  
9 discount at 10 percent, based on EnCana pricing as well  
10 as future or existing pricing that we get at the  
11 wellhead too. So, in combination, all three wells are  
12 worth a little under \$1 million.

13 Q Has EnCana done a reservoir simulation  
14 for this area?

15 A Uh-hum. When EnCana took over these  
16 properties, back in 2002, we underwent a reservoir  
17 simulation study, where we did both a detailed geologic  
18 characterization and as well as simulation, not only  
19 this section but the ones around it. And that was  
20 primarily to focus on it, in terms of understanding  
21 drainage and future development.

22 What our conclusion came out is with the  
23 existing wells that were on that section, all we would  
24 be able to recover is about 30 to 35 percent of the  
25 original gas-in-place. Thus we felt that we were in a

1 state that we needed to follow-through and develop  
2 these prudently, otherwise we would have waste.

3           And, in late 2002, going through 2003, we  
4 have drilled nine subsequent wells. Our average  
5 pressure that we have seen in there is roughly from  
6 2200 pounds to 2600. That's about a 10 percent  
7 decrease from original reservoir pressure. And that  
8 actually outdid even our simulation forecast and kind  
9 of backed some of the things that we were seeing; that  
10 was, i.e., it took probably about 20 wells to  
11 efficiently drain the "J" Sandstone in this particular  
12 part of the D-J Basin.

13           Q     Are you familiar with Rule 318.a, which  
14 governs wells locations and well spacing in the  
15 Wattenberg Field?

16           A     Yes, I am.

17           Q     And are the three new Wandell wells being  
18 drilled in accordance with Rule 318.a?

19           A     Yes, they are.

20           Q     In your opinion, is the spacing pattern  
21 established in Rule 318.a the best pattern to recover  
22 the "J" Sand reserves underlying the Wandell wells?

23           A     Yes, they are.

24           Q     And, in your opinion, is drilling the  
25 three Wandell wells necessary to actually recover the



1 reserves?

2 A Within that given area, yes. 3

3 Q In your opinion, if EnCana is not  
4 permitted to drill the three Wandell wells, will gas be  
5 left in the ground?

6 A We believe so.

7 Q And if that happens, in your opinion,  
8 will there be waste?

9 A There will be.

10 MS. VANDERWERF: I would move the  
11 admission, please, of Exhibits 29 and 30.

12 CHAIRMAN MUELLER: I apologize. Any  
13 objections?

14 COMMISSIONER CASEY: No objections.

15 MR. COAN: No objections.

16 CHAIRMAN MUELLER: They are admitted.

17 Thank you.

18 THE WITNESS: Okay.

19 MS. VANDERWERF: Thank you, Mr. Starkey.

20 CROSS EXAMINATION

21 BY MR. COAN:

22 Q Mr. Starkey, just a quick question. The  
23 opinions you just gave with regard to leaving oil and  
24 gas in the formation, and waste, has an assumption that  
25 those wells are never drilled; is that correct?

1 A That's correct.

2 Q And that they are not drilled from any  
3 other location?

4 A That's correct.

5 MR. COAN: Thank you.

6 MS. VANDERWERF: I have no further  
7 questions.

8 CHAIRMAN MUELLER: Okay. Questions from  
9 the Commissioners?

10 THE WITNESS: Thank you.

11 CHAIRMAN MUELLER: Thank you very much.

12 MS. VANDERWERF: Mr. Chairman,  
13 Commissioners, as I indicated earlier, we had thought  
14 about calling Cathi Boles as a witness. But we have  
15 decided that, based on the applicant's case, that will  
16 not be necessary, so EnCana rests its case.

17 CHAIRMAN MUELLER: Okay. Thank you very  
18 much.

19 MR. COAN: Mr. Chairman, would it be okay  
20 if we took about a 5 to 10-minute recess to confer with  
21 my client?

22 CHAIRMAN MUELLER: We also have the 510  
23 statements to be made. I think we should probably go  
24 through those now, and then we can do that.

25 Okay. Thank you. So, are there any

1 folks in the audience that would like to make a 510  
2 statement? Mr. Wonstolen.

3 MR. WONSTOLEN: Thank you, Mr. Chairman.

4 Ken Wonstolen, representing the Colorado  
5 Oil and Gas Association. I think this is an important  
6 matter before you. I can't recall one exactly like  
7 this, so it may be a matter of first impression, to  
8 have joint drilling permits challenged in this fashion,  
9 after they have been issued. So it's important how you  
10 decide this. That's COGA's interest in the matter.

11 I would say that, listening to the  
12 testimony, it seems to me that what the  
13 protestant/cross-applicant EnCana has said, as  
14 proposed --

15 CHAIRMAN MUELLER: Excuse me. Just a  
16 minute, please.

17 (Discussion off the record.)

18 MS. BEAVER: Go ahead.

19 CHAIRMAN MUELLER: Okay. Thank you.  
20 Please continue.

21 MR. WONSTOLEN: It seems to me what  
22 EnCana has proposed is in accord with the Commission's  
23 rules, your Rule 1002.e and f. Can that surface  
24 disturbance be minimized, and that existing facilities  
25 be used, to the extent possible and practicable. And

1 that's exactly what has been proposed here. I won't  
2 opine as to whether or not that's an accommodation to  
3 the surface owner or not. There seems to be a  
4 difference of opinion, I believe, but I believe, at  
5 least on one side, there's been an attempt to do that.

6 I am a bit confused, because there's no  
7 direct testimony from the applicant as to what exactly  
8 the issue is, because, as I understand the testimony,  
9 you are going to have four wellbores separated by five  
10 feet. So, to the extent there's some setbacks  
11 applicable to the existing wellbore -- I don't know  
12 what that would be in Firestone -- I presume there's  
13 some -- the margin of that setback radius moves 15 feet  
14 in one direction along the axis of the wells. I don't  
15 know if that takes out additional lots or not, because  
16 there was no direct testimony. It seems to me that's  
17 about as close as you could ask wells to be placed to  
18 minimize the interference with surface development.

19 So, COGA would, upon listening to the  
20 matter, urge you to rule in favor of the protestant and  
21 cross-applicant.

22 CHAIRMAN MUELLER: Thank you very much.  
23 Any questions from the Commissioners?

24 COMMISSIONER REAGAN: No.

25 MS. VANDERWERF: Mr. Chairman, I am

1 sorry. I've neglected something again. Ms. Boles did  
2 not testify, but if she had testified, she would have  
3 identified certain documents, which is correspondence  
4 between the applicant and EnCana, and correspondence  
5 with the Commission. And I do want to get those  
6 documents into the record. So, would I be able to give  
7 the number of the documents, and we could see if  
8 there's any objections to them?

9 CHAIRMAN MUELLER: Please.

10 MR. WONSTOLEN: Mr. Chairman, just for  
11 housekeeping, I believe I should be sworn in as well.

12 (Whereupon Ken Wonstolen was sworn.)

13 CHAIRMAN MUELLER: Thank you.

14 MS. VANDERWERF: Mr. Chairman, the  
15 documents -- and I should say, most of these are  
16 already attachments to the application and/or to the  
17 protest. But it would be Exhibits 15, 16, 17, 18, 19,  
18 20, 21, 22, 23, 24, and 25. And Exhibit 25 is the  
19 approved APDs for the three Wandell wells. So I would  
20 move the admission of Exhibits 15 through 25.

21 MR. COAN: Unfortunately, she went a  
22 little bit fast for me, if I could have somebody read  
23 that back.

24 CHAIRMAN MUELLER: It's 15, 16, 17, 18,  
25 19, 20, 21, 22, 23, 24, and 25.

1 MR. COAN: With regard to any objections,  
2 if it pleases the Chairman, I would suggest we finish  
3 the 510 statements, give me a chance to just look at  
4 these documents during the break, and I'll indicate any  
5 objections I have, if any.

6 CHAIRMAN MUELLER: Okay.

7 MR. COAN: I would just like a few  
8 minutes to do that.

9 CHAIRMAN MUELLER: Absolutely. I  
10 understand. Will there also be staff presentation on  
11 this?

12 MR. MACKE: No, not planned to be.

13 CHAIRMAN MUELLER: Just wondered.

14 MR. WONSTOLEN: Mr. Chairman, should we  
15 proceed, if there's going to be no cross at this time?

16 CHAIRMAN MUELLER: So, before we accept  
17 those, we'll give Mr. Coan a bit of time to look at  
18 that. Any other individuals who wish to make a 510  
19 statement in this matter?

20 Mr. Wonstolen, do any of the  
21 Commissioners have questions? Would you mind?

22 EXAMINATION

23 BY COMMISSIONER CREE:

24 Q I have one question. In looking at the  
25 Commission rules, 603.a.2, I'm interested in COGA's

1 perspective on this. And since you came up and gave a  
2 510, and since you are pretty knowledgeable about the  
3 rules, one of the questions I have is that it talks  
4 about 603.a.2 says that the well should be a minimum  
5 distance of 150 feet from a surface property line. And  
6 then it goes on to say that an exception may be granted  
7 by the Director, and the word is, "exception." And  
8 that exception can only be granted if it is not  
9 feasible for the operator to meet this minimum distance  
10 requirement and a waiver is obtained from the offset  
11 surface owners. So, there's two requirements there for  
12 an exception.

13 I think that maybe one of the questions  
14 that I have is, do you see there being a difference  
15 between an exception and a variance? And, in your  
16 opinion, does a variance kind of overrule an exception,  
17 if that makes any sense?

18 A The short answer is "yes" and "yes."  
19 Exceptions have specific parameters that need to be  
20 met, such as the one you mentioned there, a waiver from  
21 the offset surface owner, which could be very similar  
22 to a location exception, a downhole location exception  
23 from offsetting mineral owners for what's called an  
24 "excepted location" for a well.

25 But there are circumstances where that

1 cannot be obtained by the offset owners. And I don't  
2 think it's the intent of the Commission rules to make  
3 that the end of the inquiry. That's why 502.b was put  
4 in place, to provide an overall procedure to effect the  
5 purpose of the act and to try to come up with the  
6 decision that best meets the overall goals of the act.

7           So, yes, there is a -- I think there's a  
8 legal difference between an exception, which requires  
9 something to be met, and a variance, which does not  
10 necessarily have a specific requirement. And, in that,  
11 the variance procedure does override the exception  
12 procedure, when it's applied.

13           Q     When I first read this last night, it  
14 seemed to me there was a conflict there, but given that  
15 you got an exception and a variance, you don't see it  
16 as a conflict? You see it as two separate issues, one  
17 overrides the other, if necessary?

18           A     In fact, when we were involved in  
19 repromulgating the Commission's procedural rules, back  
20 in the mid- to late-'90s, one of the things we did was  
21 we got away from using specific exceptions. We went to  
22 the more general variance procedures. But because  
23 there were long-standing exceptions that had been there  
24 for well locations, and for some surface locations, we  
25 left the existing ones in place, but we tried to avoid

1 putting new specific requirements for the exceptions in  
2 the rules, for all of the other Commission regulations,  
3 and went to the variance procedure as the overriding  
4 procedure.

5 Q Thank you.

6 COMMISSIONER CREE: That's all I have.

7 COMMISSIONER CASEY: I have no questions.

8 CHAIRMAN MUELLER: Any other questions?

9 EXAMINATION

10 BY COMMISSIONER SHOOK:

11 Q I believe there was a cross question  
12 concerning the fact that the top hole was on one  
13 property and the bottom hole was upon another property.

14 A I recall the question.

15 Q And this is something -- because  
16 directional drilling is somewhat new and in the  
17 industry, do you see any -- what are the ramifications  
18 of this type of thing?

19 A Well, I don't think this is really a  
20 matter for the Commission's jurisdiction, actually.  
21 The right to locate wells follows the ownership of the  
22 mineral estate, largely, irrespective of the overlying  
23 surface owner. So, if you have the underlying mineral  
24 estate, a lease, or a number of leases, committed to a  
25 drilling and spacing unit established by the

1 Commission, you essentially have the right to locate  
2 the surface location anywhere in that consolidated  
3 mineral estate. So, the well location really ties more  
4 to the mineral ownership, the mineral estates than it  
5 does to the surface estates. All of the surface  
6 estates underlain by the lease or the leases committed  
7 to a unit are burdened by the potential development of  
8 those minerals.

9                   That's very similar, Commissioner, to  
10 where you have the absolute mineral estate, where you  
11 do not have a common ownership of the surface.

12                   Q     It seems rather interesting that  
13 Mr. Smith owns mineral here and Mr. Jones owns the  
14 surface over those minerals, but the mineral owner can  
15 choose to go over here on Mr. Brown's land and drill  
16 directionally to get those minerals, if he so desires.  
17 And there's no recourse for Mr. Brown, or anyone else,  
18 apparently.

19                   A     I believe that's really a matter of the  
20 common law. I don't believe that's a matter of the  
21 Commission's jurisdiction.

22                   Q     Probably not. I just think it's rather  
23 curious. Is this an issue that's only come because of  
24 the directional drilling in the last few years,  
25 apparently?

1           A       It may well be that all of the surface  
2 estates here are severed from the mineral and derive no  
3 benefit from the mineral development. So, whichever  
4 surface estate that the wells are located on, that's  
5 the burden they carry, by the fact they don't control  
6 the mineral development.

7                   COMMISSIONER SHOOK: Okay. Thank you.

8                   COMMISSIONER CASEY: I was going to  
9 comment, I think it's fairly common, in La Plata  
10 County. The directional drilling that's done there,  
11 which isn't a huge amount, but does exist, it's common  
12 that the surface owner is different from where the well  
13 is drilled down to, above where the bottom hole  
14 location is. It's very common. It's because of the  
15 land use issues that have come about.

16                   COMMISSIONER SHOOK: I'm familiar with  
17 split estates. I mean, that's very common in  
18 Washington County, but I just, you know, this is a  
19 different issue up here. Thank you for your answers.

20                   CHAIRMAN MUELLER: Any cross examination?

21                   MR. COAN: I'm sorry.

22                   CHAIRMAN MUELLER: Any cross examination?

23                   MR. COAN: No, sir.

24                   CHAIRMAN MUELLER: Okay. Thank you very  
25 much.

1 MR. WONSTOLEN: Thank you.

2 CHAIRMAN MUELLER: All right. Mr. Coan,  
3 any objection to those exhibits?

4 MR. COAN: Well, I was listening to the  
5 testimony, Mr. Chairman. So, could I still have a few  
6 minutes?

7 CHAIRMAN MUELLER: Sure. Why don't we  
8 take a 10-minute break.

9 (Recess.)

10 CHAIRMAN MUELLER: All right. So we have  
11 concluded the 510 statements, unless something else is  
12 shown. Assuming that to be the case, then, the next  
13 item would be the presentation of staff analysis.  
14 That's already been done via paper, and then the  
15 applicant would have a chance to rebut that. You've  
16 already gone through the written application. Any  
17 further points on that or --

18 MR. COAN: With regard to the staff  
19 analysis? No, sir.

20 CHAIRMAN MUELLER: Okay. Very good.  
21 Then, the same chance with rebuttal by the respondent.

22 MS. VANDERWERF: No rebuttal.

23 CHAIRMAN MUELLER: Okay. And we move to  
24 the closing statement by the applicant.

25 MS. VANDERWERF: Excuse me, Mr. Chairman.

1 You were asking about exhibits before the break.

2 CHAIRMAN MUELLER: Yes.

3 MS. VANDERWERF: We were taking a look at  
4 exhibits, and I neglected to move the admission of  
5 Exhibit 35 that was testified to by Mr. Marx.

6 CHAIRMAN MUELLER: Let's, along the lines  
7 on the exhibits, let's go back. Mr. Coan, do you have  
8 any objections to the Exhibits 15 through 25?

9 MR. COAN: No, I do not.

10 CHAIRMAN MUELLER: Okay. So those  
11 exhibits have been admitted, then.

12 MR. COAN: That's correct.

13 (Whereupon Exhibit Nos. 15 - 25 were  
14 admitted.)

15 CHAIRMAN MUELLER: And then, to Exhibit  
16 35.

17 MR. COAN: With regard to Exhibit 35,  
18 that exhibit was used to refresh Mr. Marx's  
19 recollection. I think that was the extent of the use  
20 of it. And admission of this as an exhibit for this  
21 proceeding is probably not appropriate. It was not  
22 offered to prove the matters contained therein. It was  
23 used to refresh recollection. And it was authored by  
24 an individual that's not here.

25 CHAIRMAN MUELLER: Okay.

1 MS. VANDERWERF: Well --

2 CHAIRMAN MUELLER: Would you like to  
3 comment on that?

4 MS. VANDERWERF: I could call Ms. Boles  
5 and ask her to identify it, and I was trying to save  
6 time and did not call her. I think the testimony is in  
7 the record, and we'll rest on that.

8 CHAIRMAN MUELLER: Okay. So, we will not  
9 admit 35.

10 MS. VANDERWERF: That's fine.

11 CHAIRMAN MUELLER: So, Exhibit 35 is not  
12 admitted. Thank you. And so we're done with the  
13 exhibit issues. Then, the other question I had for  
14 you, as far as the exhibits, other exhibits, I think 31  
15 through 39, other than 35, those will not be tendered?

16 MS. VANDERWERF: Those exhibits,  
17 Mr. Chairman, were intended to be used in rebuttal, or,  
18 excuse me, in cross examination of the applicant's  
19 witnesses, and there were no witnesses; and, therefore,  
20 no cross examination.

21 CHAIRMAN MUELLER: Okay. Very good.  
22 Thank you. All right. Then we're going now to the  
23 closing statements.

24 MR. COAN: Thank you. I want to thank  
25 the Chairman and the Commission for your time today.

1 It may feel a little bit unorthodox to not call  
2 witnesses, but after, as I stated earlier, after  
3 reviewing the record that is before the Commission, and  
4 in the interests of saving time, and not repeating  
5 things that are already of record, we thought that was  
6 the most appropriate way to go here today.

7           As I stated in my opening as well, I  
8 don't think that, while you do have additional  
9 information about EnCana's thoughts and EnCana's  
10 analysis of the situation and the proposed locations,  
11 the salient facts really are no different. And I read  
12 those to you in the opening statement. Again, EnCana  
13 needs, in order to have these permits to drill,  
14 variances to Rule 603.a.1, because the proposed well  
15 locations are approximately 76 feet from the open  
16 public roadway. And Rule 603.a.2, because the proposed  
17 wells are less than 150 feet from various surface  
18 property lines in the area.

19           There was testimony that, in fact, EnCana  
20 has not requested a road closure for the two subject  
21 roads that would be within 150 feet or 1 1/2 times the  
22 height of the derrick. There was testimony, in fact,  
23 the documents show that EnCana did request in writing,  
24 pursuant to the rules, a variance to COGCC Rule  
25 603.a.1. That is found in the July 17th, 2003 letter

1 that is Exhibit E to the application and Exhibit 2 to  
2 EnCana's protest. And while they did make that  
3 request, it's also our position that they did not meet  
4 the other elements that are required for a variance  
5 under 502. And I'll address that in a little bit as  
6 well.

7           The protest and cross-application makes  
8 clear that the written request for a variance to COGCC  
9 Rule 603.a.2, which is the setback from the property  
10 line, is contained in the September 15th, 2003 letter  
11 from Ms. Boles to the COGCC staff. The interpretation  
12 of the meaning of that, and whether or not it, in fact,  
13 meets the requirement of the rule, that's an issue for  
14 you, not the existence of that letter.

15           It's my client's position that, in fact,  
16 a written request was not made to the Commission, or  
17 the Director, for a variance to 603.a.2, the property  
18 line setback. Also, it's not disputed that on October  
19 1, 2003, the Director approved the APDs for the three  
20 subject wells and granted variances to Rule 603.a.1 and  
21 a.2, with the text of the variance stating variance to  
22 Rule 603 under 502 approved. Those APDs, with the  
23 variance language, again, are attached to the  
24 applicant's protest.

25           As the application set out, in order for



1 on the crux of the issue with regard to the difference  
2 between an exception and a variance under your rules.  
3 I think, in terms of Rule 603, the only way to read  
4 that rule, keeping in mind that it's a safety rule, is  
5 that an exception and a variance are the same thing for  
6 purposes of that rule.

7           And I would point the Commission to Rule  
8 318.c, which is another location where exceptions are  
9 referred to. 318.c, if you look at the last two  
10 sentences of that provision, it says, "If waivers  
11 cannot be obtained from all parties, and no party  
12 objects to the location, the operator may apply for a  
13 variance under Rule 502.b." It goes on to say that,  
14 "If a party or parties objects to the location and  
15 cannot reach an agreement, the operator may apply for a  
16 Commission hearing on the exception location."

17           So, when these rules were promulgated,  
18 the Commission found it appropriate to provide  
19 additional steps, in the case of a sentence under Rule  
20 318.c and chose not to put those additional provisions  
21 in the Rule 603.a.2 paragraph. And I think it's  
22 reasonable to interpret that as concluding that those  
23 additional steps are not available to the operator  
24 under 603.a.2. If it was available, the Commission  
25 could have, and very likely would have, I think,

1 provided those additional sentences that are found in  
2 318.c.

3 I would also suggest that, even though  
4 Mr. Wonstolen has indicated a variance trumps or  
5 overrides the exception language, if you take that  
6 analysis to heart, that means the exception provisions  
7 found in the rule has no meaning. If you can go get a  
8 variance without a waiver from an offsetting property  
9 owner, then why do you have the exception provision  
10 that's very specific that you need a waiver. That  
11 exception provision has no merit, has no effect  
12 whatsoever, if you can override that consideration in  
13 the safety rules with a request of a variance. So, I  
14 think you've hit on one of those specific issues that  
15 we are asking the Commission to look at. There are  
16 some ambiguities. There's some inconsistency in the  
17 rules. If you give effect to the exception provision  
18 in Rule 603, then granting a variance without regard to  
19 a waiver is not possible.

20 There's also a provision in Rule 603.e.6  
21 that says that an exception can be granted as well in  
22 that case. And, in that provision, there are  
23 additional requirements besides just a waiver,  
24 additional burdens that have to be met by the operator.  
25 And, again, when the Commission rules and regulations

1 were put into effect, the additional language saying  
2 you can go have a hearing, or you can get a variance,  
3 are not provided in that section. So, I think, looking  
4 at all of that together, it seems the intent of the  
5 Commission was to not provide those additional steps to  
6 an operator under the safety rules. And to preserve  
7 the safety rules, as they are written, and keep them  
8 intact, and not have a case-by-case analysis and the  
9 ability to grant variances without those requirements  
10 being met.

11           So, our position is that, with regard to  
12 the application, the Director exceeded his authority in  
13 granting the 603.a.2 variance because the specific  
14 requirements in Rule 603.a.2 were not met; that being  
15 waivers from the offset property owners.

16           With regard to the Rule 603.a.1 rule that  
17 says you have to be at least 150 feet or 1 1/2 times  
18 the height of the derrick from a public roadway, I can  
19 just inform the Commission that the discussions with  
20 the staff during the permit process were such that  
21 that's important. That's a safety rule. It's  
22 important that we don't put a rig within that close of  
23 a proximity to an open public roadway, and that they  
24 would require the roadway be closed during drilling.  
25 That's only during drilling. The rule says that, at

1 the time of initial drilling. It doesn't say that well  
2 can't be located within 150 feet of a roadway. It  
3 says, at the time of initial drilling. And the purpose  
4 of that is because of the risk associated with drilling  
5 and the size of the drilling rig.

6           The Town of Firestone has a procedure for  
7 requesting a road closure, has a municipal  
8 jurisdiction. The Town of Firestone has authority over  
9 the municipal roadways and EnCana hasn't requested --  
10 the testimony indicates EnCana has not even requested  
11 the roads be closed. And that is in light of EnCana's  
12 own position in Exhibit 12 that says, "EnCana has  
13 indicated that a 200-foot clear area should be provided  
14 around the drilling rigs."

15           If those roads aren't closed, the public  
16 can use those roads, and I think the public will use  
17 those roads. The public is using those roads today.  
18 Children are riding their bicycles on them. People are  
19 taking walks up and down that road. And they will do  
20 that in the future as well, for no other reason than to  
21 see what the heck is going on over there. If they can  
22 get that close to the drilling rig, I would expect  
23 people to wander over there and see what's going on.

24           But I think the most important part about  
25 the 502.b.1 -- I'm sorry -- the 603.a.1 variance is

1 that it doesn't meet the requirement that it comply  
2 with the intent of the Oil and Gas Conservation Act.  
3 And, hopefully, you've read St. Vrain's protest to  
4 EnCana's cross-application. I did my best to set out  
5 the intent of the act, and I'll summarize that a little  
6 bit here as well.

7           Let me back up just a little bit as well.  
8 Rule 502.b.1, I think, indicates that the burden of  
9 proof for meeting all of the requirements of that rule  
10 lie with the operator. So, the operator has to prove  
11 that its met the requirements of the rules and that it  
12 meets -- the variance meets the intent of the Oil and  
13 Gas Conservation Act. The Oil and Gas Conservation Act  
14 is found at 34-60-101, et seq, and 34-60-102. The  
15 legislature declared -- I'll just read it for you: "It  
16 is declared to be in the public interest to foster and  
17 encourage the development, production and utilization  
18 of the natural resources of oil and gas in the State of  
19 Colorado in a manner consistent with the protection of  
20 public health, safety and welfare."

21           So, it's our belief that the intent of  
22 the act is that -- is essentially stated by the public  
23 interest that is to be accomplished by the act. That  
24 is the development of natural resources of oil and gas  
25 but consistent with the protection of public health,

1 safety and welfare, as far as that goes.

2 Pursuant to the act, under 34-60-106, the  
3 Oil and Gas Commission was required to promulgate rules  
4 for the protection of the public's health, safety and  
5 welfare. And I believe, as this Commission was  
6 required to do, this Commission heard testimony and  
7 passed the 600 series rules that EnCana is requesting a  
8 variance from. In fact Rule 601 states, "The rules and  
9 regulations in this section are promulgated to protect  
10 the health, safety and welfare of the general public  
11 during the drilling, completion and operation of the  
12 oil and gas wells and producing facilities"

13 I'm assuming this Commission, during its  
14 rulemakings, because I didn't do any history research  
15 on that, I'm assuming this Commission took that  
16 obligation seriously, heard testimony, spent a lot of  
17 time on the issue, and passed rules and regulations  
18 that it determined were necessary for the protection of  
19 the public's health and safety. Two of those rules are  
20 603.a.1 and 603.a.2. In fact, those rules have  
21 statewide application, and I believe the Commission  
22 should be very cautious when considering a variance to  
23 those safety rules.

24 Where do you draw the line if you grant a  
25 variance to a open public roadway, and you don't draw

1 the line at the point where it is an open public  
2 roadway available to the public to use? Where do you  
3 draw the line? You're on a bit of a slippery slope.  
4 Is it 10 trips down that road that you draw the line  
5 and say, okay, no rigs within 150 feet. Is it 50 trips  
6 down that road? You get into a real difficult position  
7 if you start granting variances to those rules,  
8 especially when I think the intent was, you pass the  
9 rules and you follow those rules. They are for the  
10 purpose of protecting the public health and safety and  
11 welfare. Again, I don't think there is any prohibition  
12 in the rules for a road to be within 76 feet of an  
13 existing well. The issue is at the time of initial  
14 drilling. The rules are very specific to that.

15           And I want to, while I am thinking about  
16 items to address, part of Gretchen's opening statement,  
17 she indicated that it was six weeks after the permits  
18 were actually approved that my client actually  
19 expressed opposition to the permits. I think the  
20 record shows that we had concerns about public health  
21 and safety. We raised those concerns to the staff  
22 immediately upon finding out the application had been  
23 filed. We worked in good faith with the staff and with  
24 the applicant to try to resolve some of those concerns.  
25 And after the permits were actually approved, no one

1 notified us. No one at all notified us.

2 My client asked me to periodically -- and  
3 I did, once a week -- check the Commission's Website to  
4 see if it's -- see what the status was of the permits.  
5 It was at that point I then found out permits had been  
6 approved. It was less than a couple of days later for  
7 the deadline for filing an application for the December  
8 hearing. There was absolutely no time to actually file  
9 the application. I filed for this hearing. After  
10 that, the timing of the application, the timing of the  
11 hearing is a function of the calendar set for these  
12 hearings for the filing of an application.

13 And we continued to work with EnCana, all  
14 of the way up until mid-November, which was the  
15 deadline for the filing of an application for this  
16 hearing. So, I just want to clarify that there was no  
17 intent to delay. We expressed concerns from the very  
18 beginning, and we expressed concerns under the  
19 Commission's own timetable for applying for a hearing.

20 I think some of the Commission's own  
21 documents also support the fact that the Commission  
22 relies upon the safety rules, not only for making sure  
23 that the public is safe but for purposes of public  
24 relations. I have, as an example, the publication that  
25 was in your lobby. The same publication is on your

1 Website and I'll just read a couple of provisions for  
2 you.

3 This is typical questions from the public  
4 about oil and gas development in Colorado:

5 Question 1B:

6 "If COGCC is obligated to  
7 protect public health, safety and  
8 welfare, why won't they stop oil  
9 and gas development that threatens  
10 my property value and my quality  
11 of life?"

12 The answer:

13 "The law that created the  
14 COGCC and empowers the regulation  
15 of the oil and gas industry  
16 provides for the COGCC to  
17 promulgate rules to protect the  
18 health, safety and welfare of the  
19 general public in the conduct of  
20 oil and gas operations. This law  
21 is intended to keep the general  
22 public safe when drilling and  
23 development occurs, and it is not  
24 directed at protecting individual  
25 property values or a preferred

1 quality of life.

2 An example of COGCC rules  
3 enacted to protect public health,  
4 safety and welfare are the high  
5 density rules that apply  
6 significant restrictions on oil  
7 and gas development in areas where  
8 there is dense surface residential  
9 development on 2 acre or less  
10 equivalent lot sizes. In some  
11 cases these rules essentially  
12 preclude new oil and gas  
13 development because of safety  
14 concerns."

15 So, I think the Commission has also  
16 recognized that, in some cases, an operator may not get  
17 to drill a well in some case where an operator has sat  
18 and watched development occur on the surface, for six  
19 years, and had approximately 24 years prior to that to  
20 further develop the mineral estate. I think the  
21 equities don't lie with the mineral developer. So, I  
22 think the Commission has, in fact, recognized that the  
23 safety rules may preclude oil and gas development.

24 Question 4, in the same publication says:  
25 "How does the Commission

1 protect the safety of the general  
2 public?"

3 "The COGCC applies a  
4 multitude of rules and permit  
5 conditions to protect the safety  
6 of the general public including:  
7 safety setbacks from dwellings for  
8 wells and production equipment;  
9 blowout prevention equipment; well  
10 and equipment safety  
11 specifications and design  
12 standards; security fencing in high  
13 density areas," et cetera,  
14 et cetera.

15 So, again, what the Commission has pointed  
16 to in answer to that question are your 600 series  
17 rules, the safety rules that this Commission passed.  
18 Another instance of referring to those rules is in a  
19 May 29, 2003 letter addressed to all Colorado counties,  
20 cities and towns, from the Director of the Oil and Gas  
21 Commission. In the last portion of the second  
22 paragraph -- and what this relates to is the  
23 encouraging municipalities to follow the same setbacks,  
24 follow the same rules that the Commission has put in  
25 place for safety reasons. And the last part of that

1 paragraph states:

2 "There are a number of  
3 other safety-related setback  
4 rules with which oil and gas  
5 operators must comply. For  
6 the sake of simplicity, I will  
7 not discuss those requirements  
8 here. Please see our 600  
9 series rules as referenced  
10 below."

11 Protecting the safety of people living,  
12 working or congregating near oil and gas operations is  
13 the basis for these requirements, these requirements  
14 the are found in the 600 series rules. I think what my  
15 clients are asking the Commission to do is take a fresh  
16 look at the procedure that the Director followed in  
17 approving the variances and the APDs. We don't think  
18 the procedure was followed correctly. We think some  
19 requirements were missed; and, therefore, the Director  
20 did not have the authority to grant those variances and  
21 the APDs.

22 As a part of the cross-application, then,  
23 EnCana has requested that the Commission correct, if  
24 there are technical deficiencies in their procedure,  
25 correct those by hearing the evidence, which you've

1 done, considering the rules and regulations, and  
2 approve the variance on your own, and the APDs, as a  
3 result. I think the Commission is opening a can of  
4 worms in granting any variance to the safety rules.  
5 Again, where do you draw the line? Where do you say,  
6 okay, now it is a threat to public health and safety.  
7 It's an open public roadway that people can go on,  
8 people do use, and people are likely to use, perhaps  
9 even more once the drilling rig is stood up, based on  
10 curiosity.

11               So, with that, we ask the Commission to,  
12 as a part of the application, revoke the variances that  
13 were granted by the Director, revoke the APDs that were  
14 approved as a result of that, as a result of the  
15 granting of the variances. And as a part of the  
16 cross-application, we would request that you deny the  
17 cross-application and deny the variances that are  
18 requested by EnCana to your own safety rules.

19               And I want to point out as well that  
20 Mr. Marx did testify today they have had a hearing --  
21 actually a couple of hearings in front of the Town of  
22 Firestone, and even though the Town of Firestone is not  
23 here today, in their own procedure they have denied the  
24 USR applications, Use by Special Review permit  
25 applications of EnCana, when they have approved every

1 other application of EnCana previously, based on a,  
2 according to Mr. Marx's words, "safety concerns."

3 So, with that, I would ask you to act  
4 consistent with our requests, and I thank you for your  
5 time.

6 CHAIRMAN MUELLER: Thank you, Mr. Coan.

7 MS. VANDERWERF: If it further please the  
8 Commission, I would like to thank you, first of all,  
9 for your attention today. I know this isn't the kind  
10 of matter you normally hear, but maybe it's kind of a  
11 nice change of pace, once in a while, to have something  
12 a little different.

13 I would like to remind you again about  
14 what I said in my opening statement, and that is we're  
15 dealing with a very narrow issue here; that is whether  
16 the Director properly exercised his authority to grant  
17 these drilling permits with the variances. You've  
18 heard a lot about the rules and the technicalities of  
19 the rules and variances and exceptions. But if you  
20 take a look at the clear language of Rule 502.b.1, it  
21 says that the Director or the Commission, either one,  
22 can grant a variance to any rule or regulation of this  
23 Commission, any rule. That includes the safety rules  
24 in the 600 series.

25 I find it interesting that in Mr. Coan's

1 closing argument, he's testifying about safety  
2 considerations. He didn't offer any witness to testify  
3 today about safety, and he was not sworn in to testify  
4 on that matter either. The safety issue really rests  
5 on the testimony that EnCana put on. That testimony is  
6 uncontested. Mr. Marx testified very clearly to you  
7 why EnCana believes this is the best possible location.  
8 It will cause the least surface disturbance. It's the  
9 site of an existing well pad that's been there for 30  
10 years. The access is the same access that's been used.  
11 This is the best location, and that's what the  
12 Commission staff concluded as well.

13           This isn't just EnCana's opinion. If you  
14 look at your staff analysis, Mr. Binkley went out to  
15 the well site. He inspected it personally. He came  
16 back and he made a clear recommendation to the  
17 Director. He said this location is adequate and it  
18 poses no threat to public health or safety. Nothing  
19 could be clearer than that. That's the basis upon  
20 which the Director granted the variances to 603.a.1 and  
21 2. And he did that under his power granted to him in  
22 Rule 502.b.1.

23           Mr. Lorenz testified at length about Rig  
24 54, his baby. His testimony should put to rest any  
25 concerns about the noise levels associated with the

1 rig. It's clear this rig is state-of-the-art. It  
2 meets the Commission's noise regulations with flying  
3 colors. This is the rig that the Town of Firestone  
4 asked EnCana to use. It's the rig that EnCana has used  
5 on other wells in the Town of Firestone. And I think  
6 the testimony about the rig speaks for itself.

7           Street closures, that's a red herring.  
8 EnCana tried to get out in front of this issue and  
9 anticipate it. EnCana got a transportation study  
10 performed. It wasn't asked to do that. It just did  
11 it, in case the town would request that Dogwood Street  
12 be closed. You heard the testimony. The town has  
13 never requested that. It's an administrative matter.  
14 If the town wants to deal with it, EnCana's ready to  
15 respond. But there has been no request from the town,  
16 to date, to close Dogwood Street.

17           I've included in my exhibit book the oil  
18 and gas ordinance of the Town of Firestone, and this  
19 Commission can take administrative notice of that. But  
20 there's nothing in Firestone's oil and gas ordinance  
21 that talks about road closures. It's just not there.

22           Let's talk about setbacks. It's  
23 interesting, if you look at the Firestone ordinance,  
24 that the Firestone setback from a public road is only  
25 75 feet. It's twice as lenient as the 150-foot setback

1 of the Commission. Dogwood Street was paved at a  
2 distance of 76 feet from an existing well. The well's  
3 been there 30 years. EnCana doesn't encroach on that  
4 street. The street encroached on EnCana's well.

5           There have been some suggestions that the  
6 Town of Firestone is going to deny or has denied the  
7 Special Use Permits for safety reasons. And I want to  
8 address that, because there's an empty chair in this  
9 room here today, and the town is not here. And the  
10 town has never been here. And this Commission has a  
11 procedure to reach out to local governments. It's in  
12 Rule 303. The Commission asks local governments to get  
13 involved in the process. Local governments have a  
14 chance to designate a representative, and a notice is  
15 sent, with regard to every APD that's filed in the Town  
16 of Firestone, to Firestone's local governmental  
17 designee.

18           Firestone has such a person. The town  
19 got copies of the APDs and got notice of the APDs. The  
20 town had a chance to, under Rule 303, to file concerns,  
21 to file an objection, to request a hearing. Where is  
22 the town? The town is missing in action. If the town  
23 really has the safety concerns that you've been hearing  
24 about, why hasn't the town spoken up? The town has not  
25 filed an application to revoke the drilling permits.

1 The town is not here today to represent its point of  
2 view. And I think that's significant.

3 Mr. Coan has suggested that EnCana did  
4 not properly apply for the second variance, that's the  
5 Rule 603.a.2 variance. And I think that if you look at  
6 the documents that are in the exhibit book -- and this  
7 is some of the correspondence that Ms. Boles would have  
8 testified to, but to shorten the hearing, I did not  
9 call her, and I simply asked to have the exhibits  
10 admitted.

11 The question of waivers from surface  
12 property lines was first brought to the attention of  
13 the Commission staff and to EnCana's attention by the  
14 applicant. EnCana thought that there was one common  
15 surface owner, that was St. Vrain Partners. That  
16 proved not to be the case. The well site is actually  
17 owned by the Homeowners Association, not St. Vrain  
18 Partners, the developer. The developer does own  
19 offsetting lots, and, of course, you've heard about  
20 Dogwood Street, which was dedicated to the Town of  
21 Firestone. As soon as EnCana learned from the  
22 applicant that this situation existed, EnCana sent  
23 letters to the town and to the applicant requesting  
24 that they sign waivers. No waivers were signed.  
25 EnCana could not get the waivers, which is not

1 surprising.

2                   At that point, EnCana's request to the  
3 Commission -- notice to the Commission that it was  
4 sending out requests for waivers, that at the point in  
5 which EnCana could not get the waivers, that written  
6 request became, in effect, a request for a variance.  
7 The need for a variance was triggered only when EnCana  
8 could not get the signed waivers from offset property  
9 owners. And if you do, in fact, think that's a  
10 procedural defect, that's the reason that the  
11 cross-application is here before you, so we can deal  
12 with this totally today and you don't have to hear this  
13 matter again, because you will have heard all of the  
14 evidence. You have heard all of the evidence. And you  
15 can make that decision, to grant a variance, under  
16 502.b.1. That's within your power.

17                   And speaking of the intent of the act,  
18 the evidence is undisputed that the intent of the act  
19 will be violated if these wells are not drilled.  
20 EnCana is entitled to drill these wells. It's  
21 necessary in order to efficiently recover the gas  
22 reserves underlying the proposed location, consistent  
23 with public health, safety and welfare. Again, the  
24 evidence on public health, safety and welfare is  
25 uncontested. The applicant put on no evidence. If

1 these wells are not drilled, Mr. Starkey testified  
2 there will be gas reserves that are never recovered,  
3 and that's waste. And the act clearly prohibits waste.

4           It's been a long day and at this point,  
5 I'm ready to cut it short and turn this over to you.  
6 But I leave you with this thought: That is, the  
7 Director acted properly when he granted the permits  
8 with the variances. He exercised his discretion  
9 appropriately. If, for any reason, there is some  
10 procedural glitch that occurred, you have the power to  
11 rectify that. And you can make that decision.

12           EnCana asks that this Commission uphold  
13 the actions of the Director and that you approve the  
14 permits for the Wandell wells with the variances.  
15 Thank you.

16           CHAIRMAN MUELLER: Thank you. Any  
17 rebuttal?

18           MR. COAN: Very brief. The reason  
19 there's an application before you is you have the  
20 opportunity to take a look at this situation and make  
21 your own decisions about whether it's in the interests  
22 of public health and safety to stand a rig next to this  
23 road, whether the rules have been complied with. It's  
24 appropriate to bring those issues to you. The rules  
25 seem to be in -- the activities seem to be in violation

1 or at least not consistent with the rules.

2           And in asking for your ruling on those  
3 rules, with regard to Firestone, I think the Commission  
4 needs to take a look at the rules. Your counsel can  
5 provide additional insight to you about the dilemma  
6 that local jurisdiction is in when they receive a USR  
7 application, and a quasi-judicial proceeding is  
8 initiated in that jurisdiction, and it is limited in  
9 taking a position outside of the context of that  
10 proceeding, and expressing concerns about that  
11 application until that proceeding is concluded.

12           That's what happened in this case.  
13 That's the dilemma it's in. EnCana filed the  
14 applications for permits to drill, filed Special Use  
15 Permit applications with the Town of Firestone and  
16 initiated a quasi-judicial proceeding in front of the  
17 Town of Firestone. That prohibits the Town of  
18 Firestone or at least its board from discussing,  
19 evaluating, communicating with alternative -- with  
20 third parties or with the applicants about the matter  
21 that's pending before that jurisdiction.

22           So you need to think about why is  
23 Firestone not here. They ruled verbally and at the  
24 last hearing, and they are expected to adopt a written  
25 resolution at their next hearing concluding a denial of

1 the USR applications. That proceeding is pending.  
2 It's a quasi-judicial proceeding, and that's why  
3 Firestone can't be here.

4 I think your counsel would advise you not  
5 to participate in an alternative process as well,  
6 before hearing the evidence and concluding your own  
7 procedure. So the rules for getting input from local  
8 jurisdictions have that difficulty for local  
9 jurisdictions. And I just ask you to consider that and  
10 understand that's why Firestone is not here.

11 With regard to Firestone requesting that  
12 roads be closed, as far as I can tell, Firestone  
13 doesn't think they need to be closed because Firestone  
14 is denying the USR permits. They don't think the wells  
15 should be there, not just that the roads should be  
16 closed, the wells shouldn't be there. So, again, I  
17 would ask to you revoke the variances, revoke the  
18 permits to drill, and deny the cross-application that  
19 EnCana has filed. Thank you.

20 CHAIRMAN MUELLER: Thank you. Anything  
21 else?

22 MS. VANDERWERF: Just briefly. The issue  
23 of involving Firestone is very interesting, and I'm  
24 sure you may have discussed this with your own  
25 attorney, but there's recent law in Colorado concerning

1 the extent to which local governments can regulate oil  
2 and gas. And what is clear from the decision that was  
3 entered, in a case involving the Town of Frederick,  
4 that there are certain matters in which this Commission  
5 has jurisdiction, and which preempt this Commission's  
6 rules -- preempt local rules. And those areas include  
7 well location, setbacks, noise, lighting and safety.

8           The act gives this Commission -- I think  
9 it's 34-60-106.5 -- gives this Commission the power and  
10 the authority to regulate public health, safety and  
11 welfare in the conduct of the oil and gas operations.  
12 And the Court of Appeals has held that that intercedes  
13 and preempts any local power.

14           Frederick's process is an entirely  
15 different process than the process that goes on before  
16 this Commission. It's a matter between EnCana and the  
17 town, clearly, and it can probably be settled in a  
18 court of law, but it really doesn't have any bearing on  
19 this administrative proceedings because it, again, the  
20 question before you is whether the Director properly  
21 granted the permits.

22           And there's one other thing that I did  
23 want to mention on the safety issue. And that is an  
24 exhibit that wasn't talked about, but is worth taking a  
25 look at, which is Exhibit 23, a letter from Mr. Coan to



1 an issue out of the safety issue here, that, to me, the  
2 only question in my mind is whether or not that road  
3 needs to be closed. And it seems to me that we have  
4 determined that that's up to the Town of Frederick -- I  
5 mean -- I am sorry -- the Town of Firestone. So, that  
6 if we approve this, uphold the Director, then the town  
7 certainly has the right to either close the road or to  
8 take the action.

9           You've suggested that they will deny the  
10 Special Use Permits. And as you have pointed out, they  
11 can't make that decision until we make ours. So it  
12 seems like we need to make the first decision.

13           But since safety seems to be the prime  
14 concern, as opposed to what we just read in this last  
15 letter, then I guess I would opt to uphold the Director  
16 and ask the town if they want to close that road or  
17 not. If they are worried about -- or we could  
18 recommend that they close the road. I don't know why  
19 we couldn't.

20           CHAIRMAN MUELLER: I think we could  
21 recommend that.

22           COMMISSIONER CREE: Along those lines,  
23 can we ask the Director why he didn't put a road  
24 closure on the APD?

25           COMMISSIONER REAGAN: Sure.



1 I would recommend that we deny both applications, the  
2 application by St. Vrain and the cross-application, and  
3 we create our own order to grant the requested variance  
4 to 603.a.1 and 2, with conditions, and because I  
5 believe there are safety issues here. In my own  
6 opinion, they really center around moving the rig, the  
7 14 loads, five heavy trucks, in the area. I think, in  
8 the presence of fencing, that's adequate to  
9 significantly inhibit the public from gaining access to  
10 the actual location during drilling operations.

11 Everything should be copesettic.

12           So, in that regard, I guess I would word  
13 the conditions something like, all public roads and  
14 other public access located within 150 feet of  
15 wellheads shall be closed to the general public access  
16 during drilling transport -- during drilling rig  
17 transport to or from. Rig moves should be conducted  
18 exclusively during daylight hours. During transport of  
19 the rig to and from locations, pilot vehicles, flagmen,  
20 temporary roadblocks should be used under the direction  
21 of the operator to ensure the safe conduct of transport  
22 operations.

23           And the reason I put it that way, really,  
24 is -- and I think, if we're considering actually  
25 creating a variance, under 601 -- or 603.a.1 and 2,

1 that we need to be very careful that we're not just, in  
2 fact, lowering the bar on safety requirements. And,  
3 so, I believe, at least in this situation, we should  
4 create the conditions to actually increase those safety  
5 conditions. So, that's all I have for now.

6 CHAIRMAN MUELLER: Okay. Lynn.

7 COMMISSIONER SHOOK: Well, as has been  
8 said before, this is a very interesting case,  
9 interesting case. As you look at it, I think you could  
10 argue on either side of it rather effectively. There  
11 was one area that was alluded to, and I don't know  
12 whether that's even an area that we can consider, but  
13 it was stated several times that if these wells were  
14 not drilled, that there will be a great deal of waste  
15 and unrecoverable production. However, at one point it  
16 was suggested that these wells could be drilled from  
17 another site and they could recover the production at  
18 that one point. Well, whether that's something we  
19 should consider or not, I don't know.

20 But going to Rule 603.a.2, I think we  
21 have a real problem there. If we want to abide by the  
22 letter of that rule, it says, "An exception may be  
23 granted by the Director if it is not feasible for the  
24 operator to meet the minimum distance requirements and  
25 a waiver is obtained. . ." Now as I read that, the

1 only way that the Director -- or the only authority  
2 that the Director has, to give an exception if there's  
3 a waiver obtained first. And, apparently, there was  
4 not a waiver obtained. So, if you read that that way,  
5 then the variance was given incorrectly.

6 CHAIRMAN MUELLER: 502.b.

7 COMMISSIONER SHOOK: Pardon me?

8 DIRECTOR GRIEBLING: 502.b.

9 COMMISSIONER SHOOK: You could interpret  
10 that another way too. Let's see. 502.b: "Variances  
11 to any Commission rules, regulations or orders may be  
12 granted in writing by the Director without a hearing  
13 upon written request by an operator to the Director or  
14 by the Commission after hearing upon application. The  
15 operator or the applicant requesting the variance shall  
16 make a showing that it has complied with the specific  
17 requirements contained in these rules to secure a  
18 variance, if any, and that the requested variance will  
19 not violate the basic intent of the Oil and Gas  
20 Conservation Act."

21 So the operator would have to show,  
22 according to 603, that he had obtained waivers from the  
23 offsetting surface owners. In my mind, as I said, you  
24 can argue on either side of this issue pretty  
25 effectively, I think. I'm kind of sitting on a fence

1 right now. I would like to hear more discussion.

2 CHAIRMAN MUELLER: Okay. Tom Ann.

3 COMMISSIONER CASEY: I agree that both  
4 parties have made very good arguments on both sides,  
5 and, not to be lengthy, I agree with Commissioner  
6 Shook's argument; that it seems to me that if we  
7 need -- if we follow these rules, the rule requires a  
8 waiver to be obtained from the offset surface owners.  
9 And even though I agree that EnCana has put on an  
10 excellent case, and I think there would be no problem  
11 drilling this well there, that it certainly would be --  
12 it could be mitigated, or there shouldn't be any  
13 problems with the houses nearby, and all of the  
14 problems could be solved.

15 It looks like, if we actually followed  
16 the rules, to me, that they need to have a waiver from  
17 the offset owners. And I recall a hearing similar to  
18 this, where the operator was a small operator, could  
19 not obtain waiver and we sent them back to negotiate to  
20 get a waiver. And then I guess they did get one but we  
21 didn't -- we did not grant them a variance. So it  
22 didn't make any -- I'm having a little problem with  
23 these rules. It doesn't --

24 COMMISSIONER CREE: But we could have.

25 COMMISSIONER CASEY: I am not sure. I

1 agree with the way Commissioner Shook. . .

2 DIRECTOR GRIEBLING: I would just have  
3 you look at 502.b. Would you read it again?

4 COMMISSIONER CASEY: It says here that  
5 the operator or the applicant requesting the variance  
6 shall make a showing that he has complied with the  
7 specific requirements contained in these rules to  
8 secure variance. And, let's see, if any -- and that  
9 the requested variance will not violate the basic  
10 intent of the Oil and Gas Conservation Act.

11 So, I'm not sure -- I haven't been  
12 convinced that this requirement has been complied with.  
13 It's very confusing. Maybe we could get some legal  
14 advice, but I don't -- I don't see that we are actually  
15 following the rules here. Sorry.

16 COMMISSIONER CREE: I think that goes  
17 back to, I guess, several things here. I think that  
18 goes back to the conversation that took place earlier  
19 today, when Mr. Wonstolen was up and maybe it is good  
20 to ask the Assistant Attorney General her opinion. I  
21 have looked at this, I read this last night and I had  
22 some of the same concerns, but I think there is a  
23 difference in the rules. There's different words used.  
24 There's an exception and a variance. I think they are  
25 two very different things. I think that an exception

1 is something that can be gotten, on one hand, the  
2 variance can be granted to anything.

3           Okay. There are certain areas where you  
4 can get exceptions, but variance, I believe -- and I  
5 would love to hear the Assistant Attorney General's  
6 opinion on that -- but I tend to agree with what  
7 Mr. Wonstolen said, which is that variance can trump  
8 anything. That the Director has the ability to grant a  
9 variance, different than a exception, has the power to  
10 grant variance on any rule that's in here.

11           And so I would ask the Assistant Attorney  
12 General to give us her comments on that.

13           ASSISTANT ATTORNEY GENERAL HARMON: Well,  
14 my comment is that I agree that this can be confusing.  
15 Our rules can be confusing because of the patchwork  
16 that they are; that some of these rules were  
17 promulgated at different times from others. And I  
18 appreciated Mr. Wonstolen's historical perspective on  
19 the use of the words, "exceptions," and "variances."  
20 I've always thought of the two as separate things,  
21 because I felt like it would have been real easy to do  
22 a global change if they wanted to, and, you know, make  
23 them all one. That's easy to do, if they were trying  
24 to make it consistent.

25           Since they are not consistent, I do

1 believe that exceptions and variances are different.  
2 And I agree with Mr. Wonstolen's interpretation that  
3 502.b basically allows this Commission to grant a  
4 variance to any rule, including safety rules that  
5 require that exceptions -- that require waivers be  
6 obtained. I agree that it's difficult, and that the,  
7 you know, it's subject to argument, but that's where I  
8 come down, is that 502.b is the one that trumps,  
9 because it is -- it is something that this Commission  
10 can do after a hearing. I mean, after you hear all of  
11 the evidence, the way you have today, you can come up  
12 with something that you craft yourself.

13                   COMMISSIONER CASEY: So, would it be your  
14 opinion that it's no problem that the applicant -- or  
15 EnCana did not ask in writing for a exception to the  
16 Rule 603.b?

17                   ASSISTANT ATTORNEY GENERAL HARMON: I  
18 think that's handled by the cross-petition then. If  
19 there was a technicality that was overlooked, I mean, I  
20 think they -- I shouldn't try to repeat evidence  
21 because you heard it yourself, but I think there was  
22 some evidence that that was something that came up at a  
23 later time, and so they sent requests for waivers, were  
24 not able to get them; and, therefore, they used just  
25 the evidence of that request for a waiver as their

1 written request.

2 COMMISSIONER CASEY: Is the 502.b, is  
3 that the paragraph that we added fairly recently; is  
4 that correct?

5 ASSISTANT ATTORNEY GENERAL HARMON: No.  
6 I don't think 502 --

7 COMMISSIONER CASEY: That's always been  
8 there.

9 ASSISTANT ATTORNEY GENERAL HARMON: 502.b  
10 has been there for a long time. It's not something we  
11 changed recently.

12 MS. BEAVER: I think we have had it since  
13 '95.

14 ASSISTANT ATTORNEY GENERAL HARMON: We  
15 haven't changed it in my tenure in three years at  
16 least.

17 COMMISSIONER KLISH: I recall a case  
18 where we didn't allow a variance, but, if I recall it  
19 correctly, in that case, the mast height was, within  
20 the backyard, very close to the corner of an existing  
21 house, which is not the case here. So, my  
22 interpretation on this one is the safety hazard could  
23 be there, unless the road is closed, there is one.

24 COMMISSIONER CREE: Let me ask a couple  
25 more questions. I'm not 100 percent familiar with our

1 rules, but -- and I'll ask the Director of the staff to  
2 help comment on this. What are the setbacks for a  
3 recompletion activity from a road? Do we have  
4 anything? Is that still 150, or is it less than 150?

5 DIRECTOR GRIEBLING: There's not.  
6 (Shaking head in the negative.)

7 COMMISSIONER CREE: For recompletion  
8 activity, there's no requirement.

9 DIRECTOR GRIEBLING: There's nothing.

10 COMMISSIONER CREE: One comment that I'll  
11 throw out is -- and I think one of the other  
12 Commissioners kind of mentioned this, and I've seen it  
13 in my history in Wattenberg, is that you have an  
14 operator who's drilled a well. And we can only  
15 promulgate rules in terms of how close a well can or  
16 cannot be to building structures, roads whatever. We  
17 clearly make a recommendation to developers to comply  
18 with those same type of rules. Here's a situation  
19 where they did not.

20 And, so, my question or my comments would  
21 be, to a developer, look, if you want to try to come  
22 back and throw our rules back in the face of an  
23 operator, then shouldn't you have taken that into  
24 consideration when you build a road. And to say that  
25 someone comes in and builds a road 76 feet from a well,

1 maybe that wasn't such a good idea in the first place.  
2 And what that does is definitely impact the operator's  
3 ability to go out and do further things in that area.  
4 And I'm not sure that that's an argument for or against  
5 this, but I think it's something that the Commission  
6 should definitely -- the Commissioners should  
7 definitely take into consideration.

8           That, to me, in my opinion, is a little  
9 prohibitive to the operator. And that if you are going  
10 to throw health, safety and welfare issues up in  
11 everyone's face, maybe you should have considered that  
12 when you were building those roads or if you are  
13 building homes that close. It should go both ways and  
14 we've talked about this for many, many, many years,  
15 since I have been on the Commission. There's nothing  
16 that we can do about it. We cannot force developers to  
17 go out and comply with our rules. We think it's 150  
18 feet. They elected to build a road closer, and I'm not  
19 sure that that should then come back and haunt a  
20 operator.

21           Couple of other comments, and then I'll  
22 be done. One of the concerns or one of the things that  
23 I think we should also think about is our Director, in  
24 lots of correspondence and discussion with his staff,  
25 I'm sure, has made a decision that he thinks that 502.b

1 is the variance that should be granted here. I'm not  
2 so sure that we want to set the precedent of overruling  
3 that upon an application. I think that's just  
4 something that -- I understand some of the other  
5 Commissioners' comments, that maybe we should go ahead  
6 and accept the application, as it was presented to us,  
7 which denies it, and then effectively accept the  
8 cross-application, which grants the variance anyway,  
9 but with some other restrictions. I mean, that sounds  
10 fairly reasonable to me.

11 I'm not sure of all of the implications,  
12 but one implication is that we have somewhat set a  
13 precedent that says approved APDs can kind of be up for  
14 discussion again. That goes to part of our discussion  
15 earlier today at lunch, about is it the final approval  
16 or is it not, or where does it stand. And I think that  
17 that's just something that's a little dangerous. And  
18 what I've heard today is that I think some of the  
19 Commissioners' comments were about the road, and  
20 whatnot, and I would agree with that. But at the end  
21 of the day, these wells haven't been drilled to this  
22 point in time. And the reason they haven't been  
23 drilled, as I understand it, is that the city is  
24 stopping it.

25 And if the city wants to go ahead and say

1 that road needs to be closed, and that's what it takes  
2 to get these wells drilled, let them make that  
3 decision. That's what I would throw out to our  
4 Commission, is let them make that decision at that  
5 point in time. We can make a recommendation, if we so  
6 desire. But they are the ones who have to make that  
7 decision. That's all I've got.

8                   COMMISSIONER ASHBY: What if there's no  
9 road closure and a possible accident occurs? What  
10 light does that cast on the Commission, when it had the  
11 opportunity to create a safety measure, particularly in  
12 light of the variance being granted?

13                   COMMISSIONER CREE: I guess, from that  
14 standpoint, I'm not sure that the blame falls anywhere.  
15 It would be unfortunate, obviously, and maybe that  
16 isn't a good argument for kind of going through the  
17 whole process and setting up a precedence doing that.  
18 I'm not sure it's that great of a likelihood, and we  
19 all have to deal in what we think may or may not  
20 happen, just as the staff did.

21                   And, from my standpoint, I'm going to put  
22 more reliance on the staff, and staff did not -- the  
23 Director and staff does not feel that, given that this  
24 is a road with no homes on it, very little traffic,  
25 that they felt there was enough of a reason to say this

1 APD is approved, with this condition. They didn't set  
2 that condition. So, I'm going to rely on their  
3 expertise more than my expertise, and agree with them,  
4 that they don't think it's a condition.

5           You could set conditions on every well  
6 that's drilled out there. The question is, are they  
7 reasonable conditions? And if we wanted to go to the  
8 extent of fully protecting every possible outcome, I'm  
9 sure, for every APD, our rules would be expanded  
10 greatly. I don't think that's what we're here for, is  
11 to protect every single possible outcome. And that's  
12 why I'll rely on staff at this point in time for that.

13           COMMISSIONER ASHBY: I would agree with  
14 you regarding the probabilities. In my own mind, I  
15 believe the probabilities are heightened considerably  
16 during the movement of these rigs. Personally, I  
17 believe that that is a much higher risk than occurs  
18 during the drilling operation itself. And, you know,  
19 here we're in a situation to grant a variance that  
20 effectively will lower the bar on those safety  
21 requirements regarding the access, and in an area that,  
22 I believe, is particularly risky. Now the probability  
23 of having an accident is very low. And it's all  
24 personal judgement, I believe, as to, you know, where  
25 you are going to sit on this particular circumstance.

1                   COMMISSIONER CREE: Let me ask you one  
2 question: How are we lowering, by allowing the  
3 variance to stand, how are we lowering the safety  
4 guidelines under 603.a or b? That I don't understand.

5                   COMMISSIONER ASHBY: Well, the variance  
6 regarding the setback of 150 feet, and the 150-foot  
7 radius line crosscuts through, so, effectively what  
8 we're doing --

9                   COMMISSIONER CREE: You are talking about  
10 moving things in and out, I would understand your  
11 comments, if it comes to drilling, because if something  
12 happened with the rig on the road, but explain to me  
13 what impact bringing the equipment in has for lowering  
14 the safety?

15                   COMMISSIONER ASHBY: Commissioner, have  
16 you ever seen a rig moved? In my estimation, there's a  
17 lot that goes on, heavy equipment, limited visibility.

18                   COMMISSIONER CREE: Do you think that the  
19 150-foot setback there from the road is for moving it  
20 in?

21                   COMMISSIONER ASHBY: From my own  
22 standpoint, that is not a concern. I have identified  
23 it as a safety issue.

24                   COMMISSIONER CREE: I would say it's kind  
25 of both issues. Maybe it's a safety issue, but I don't

1 know if the 150-foot setback --

2 COMMISSIONER ASHBY: I guess that's my  
3 point, by granting the variance, we're effectively  
4 changing that from 150 feet to 76 feet. And now, do we  
5 want to be responsible, in one way or another, for any  
6 accident, if it occurs, because that, essentially, what  
7 it does is lower the bar with respect to the standards.  
8 Now, we know we've done that, but is there any way to  
9 offset that effect?

10 COMMISSIONER CREE: Okay.

11 COMMISSIONER ASHBY: The other thing that  
12 I would like to ask, that I believe we should ask  
13 ourselves, is if the St. Vrain application is upheld,  
14 on what basis are we denying the operator's access to  
15 minerals? And I think we need to look at this on both  
16 sides. We need to have a reason for doing that. Thank  
17 you.

18 COMMISSIONER SHOOK: I think Brian Cree  
19 made an excellent point in stating that the well was  
20 drilled long before the road was there. And the city  
21 chose to put the road there, and, by doing so, they  
22 encroached upon the lessee's opportunity to recomplete  
23 or do to work on that site. So, I don't think we're  
24 doing anything. I think they did it, by putting the  
25 road there. They put them in jeopardy, or their people

1 in jeopardy.

2           So, I'm jumping sides of the fence here a  
3 little bit. I'm arguing the other side for them, but  
4 okay. Thank you.

5           CHAIRMAN MUELLER: Okay. Well, a couple  
6 of my thoughts as well. As far as the prevention of  
7 waste -- and this is, I guess, a key thing in my  
8 mind -- it's been discussed at some length today, you  
9 know, the prevention of waste, with the consideration  
10 of public health, safety and welfare. But there is the  
11 prevention of waste, and how has that been considered.

12           We're talking about a BCF and 1/2 of gas.  
13 We are talking about location. There's been some  
14 discussion tangentially about other locations. Are  
15 there other locations that could be utilized? I'm  
16 sure, but which one makes the most sense. This  
17 existing location, in my mind, makes the most sense,  
18 because it's already there. If there was another  
19 location up there for these wells, then you would have  
20 two locations, and you would have two different areas  
21 of access, and you double the situation. And we are  
22 talking about here -- plus you have another pipeline  
23 that would bring that gas from the new locations over  
24 to this existing location or some other route to get it  
25 to a pipeline.

1           So, going through that kind of logic, we  
2 figure on the -- it makes sense as to where the  
3 Commission staff said this is the most, you know, most  
4 appropriate place to drill these wells. I think that  
5 there are other locations. This one, from my  
6 perspective, makes the most sense.

7           The comment was made that EnCana and its  
8 predecessors had 24 years to develop these reserves.  
9 We heard testimony that this was put together --  
10 subdivision was put together in '96, with construction  
11 starting in '98. '98 was the same year that  
12 downspacing was allowed in the Wattenberg. So, as far  
13 as developing these additional wells, there wasn't 24  
14 years to develop these additional reserves. It was  
15 essentially simultaneous.

16           They talked a little bit about mutual  
17 setbacks. The letter that you quoted from was  
18 something that was developed while I've been on the  
19 Commission. And it is a situation that concerns me  
20 greatly, that encroachment, and if you think about it,  
21 it's kind of not -- it's not mutual, the way it works  
22 right now. If someone wants to go out and drill a  
23 well, they have to set it back from an existing  
24 structure or an existing road, but somebody can come in  
25 and snuggle up a house next to it and there's nothing

1 that can be done about it. It's just -- that was the  
2 intent of that letter, was, once again, reminding the  
3 public, reminding developers that this is something  
4 that is not a one-way street. It should be mutual.  
5 There should be common sense and accommodation put in  
6 place that allows for this issue to be recognized from  
7 both sides. I mean, that was really the intent of that  
8 letter.

9           We don't have the -- well, I'm not sure  
10 we have the authority or not. We had debated that,  
11 when we have the authority to put in a mutual setback  
12 like that, the amount of work and potential litigation  
13 that could come from something like that is enormous.  
14 And, so, at a minimum, it was a recommendation of the  
15 Commission to go ahead and send that letter out, so  
16 that developers do understand that there is -- there  
17 should be consideration of mutual setbacks. And that's  
18 one of the issues we have here.

19           I look at this road. This is not I-70.  
20 As far as use of this road goes, it makes sense to me  
21 again, common sense, it makes sense for that road to be  
22 blocked off during the period of time when this is  
23 being drilled. I think there will be curiosity. I  
24 think folks will be wondering, what's going on up  
25 there. I think it makes sense to have it blocked off.

1 That's not in our jurisdiction, as far as I understand  
2 it. That's up to the town. And it sounds like the  
3 town has that opportunity to bring those additional  
4 specifications into the permit.

5 ASSISTANT ATTORNEY GENERAL HARMON: One  
6 thing that is within the jurisdiction, that speaks to  
7 that point, is that the Commission and Commission staff  
8 have responsibility for public health, safety and  
9 welfare in the conduct of oil and gas operations. So,  
10 it may not be, you know, you don't have jurisdiction  
11 over roads owned by the town. But certainly you could  
12 either make a recommendation or require the operator to  
13 obtain that type of situation from the town, if you  
14 felt strongly enough, that that is something that had  
15 to happen or in order to protect public health, safety  
16 and welfare.

17 COMMISSIONER CREE: Carol, how does that  
18 happen, because that's one of the confusing things to  
19 me, is the APD has already been issued. It doesn't  
20 have a condition like that associated with the APD. Do  
21 we have to revoke that APD, or those APDs, and then  
22 reissue APDs? To put that condition on?

23 MR. MACKE: (Shaking head in the  
24 negative.)

25 MS. BEAVER: (Shaking head in the

1 negative.)

2 CHAIRMAN MUELLER: I think you can amend.

3 COMMISSIONER CREE: After the fact, we  
4 can amend.

5 MS. BEAVER: Condition of approval.

6 COMMISSIONER CREE: I think that is  
7 reasonable. We could get more of Commissioner Ashby's  
8 concerns addressed.

9 CHAIRMAN MUELLER: I think it gets into  
10 the 200 or 210-foot radius you want to put on this  
11 thing, it gets you to that point and takes care of the  
12 safety issue. This is one of those things where, you  
13 know, we have talked about this already. The road came  
14 in. The well didn't move.

15 COMMISSIONER CASEY: This is a different  
16 well.

17 CHAIRMAN MUELLER: Right, but, again, the  
18 point comes back in how do you develop these minerals  
19 from the most logical and in the least impacting  
20 surface location.

21 COMMISSIONER CASEY: Yeah, but that's a  
22 different --

23 CHAIRMAN MUELLER: I guess I see them  
24 kind of not perpendicular.

25 COMMISSIONER CASEY: So far we haven't

1 made any rules that the only place you can drill a well  
2 is from existing well pads.

3 CHAIRMAN MUELLER: There's been a great  
4 desire by the surface owners, at large, across the  
5 state, to utilize as few surface locations as possible  
6 to access minerals.

7 COMMISSIONER CASEY: I agree with that,  
8 but to say to someone, you should have anticipated  
9 we're going to come back and drill on this well pad,  
10 and drill four more wells, may not be reasonable.

11 COMMISSIONER REAGAN: I don't think what  
12 we're saying -- I think we're saying there's been a  
13 well there for 24 years, and they put a road 76 feet  
14 away. That's like saying, so the well has got to move,  
15 of course, is like saying, we built an airport, now the  
16 city came around the airport, so now we want the  
17 airport to move. You know, it's the same sort of a  
18 dilemma.

19 COMMISSIONER CASEY: Not really.

20 COMMISSIONER REAGAN: I believe it is. I  
21 mean, I think the developer knew that the well was  
22 there when you platted that ground and he probably had  
23 the opportunity to look at our setbacks. So, why isn't  
24 the road 150 feet away from the well? The answer is,  
25 so that the subdivision comes out nice and normal. And

1 I think that's reasonable too. But, again, we get back  
2 to the safety issues. And I think we have really  
3 addressed those, it seems to me, with Commissioner  
4 Ashby's recommendation, with my recommendation, and  
5 that we request the Town of Frederick -- or that we  
6 amend the APD to put these additional things in here.  
7 I mean, I don't see what else we can do.

8 COMMISSIONER CASEY: Obviously, the  
9 safety issues are the most important issues.

10 COMMISSIONER REAGAN: They are the most  
11 important issues.

12 COMMISSIONER CASEY: As I stand, they  
13 haven't been adequately addressed, in my mind.

14 COMMISSIONER REAGAN: I agree with that.

15 CHAIRMAN MUELLER: Okay. Well, I guess,  
16 unless there's further discussion, I would like to go  
17 ahead and make a motion. That motion would be that we  
18 go ahead, and with the -- and, basically, uphold the  
19 Director's decision with the amended -- with amendments  
20 to the APD that would include -- and we can -- I guess,  
21 there's more discussion on this, it's fine -- whether  
22 it's a recommendation or a requirement that the road be  
23 closed during the drilling. And then the additional  
24 safety issues that Commissioner Ashby has brought up be  
25 included in that as well.

1 COMMISSIONER KLISH: Okay.

2 COMMISSIONER ASHBY: Can we discuss that  
3 just for a moment?

4 CHAIRMAN MUELLER: Please.

5 COMMISSIONER ASHBY: I think the fencing,  
6 while it's been identified by the operator as being  
7 present, there's no indication of the specific type of  
8 fencing. And we should, you know, we should strengthen  
9 that a little bit to ensure -- the fencing in the oil  
10 patch sometimes is nothing but a red string. And we  
11 need to make sure that that -- I think that we should  
12 make it a condition.

13 CHAIRMAN MUELLER: I would assume -- Ken  
14 just talked about chain link fence. We should get to  
15 that. We should probably make that clear.

16 COMMISSIONER CASEY: They also had  
17 mentioned some other conditions that they were agreeing  
18 to follow.

19 CHAIRMAN MUELLER: Okay.

20 COMMISSIONER KLISH: I think what will  
21 ease it up for me, Peter, I guess there might be a  
22 minor defect, in fact, in the written request for the  
23 603.a.2. Doesn't appear to be there. I don't think  
24 it's a big deal. I don't see it, anyway. To me, it's  
25 not a stopper, one way or the other, but I don't see

1 that written request.

2 COMMISSIONER CREE: You don't consider  
3 the one letter at least a --

4 COMMISSIONER KLISH: Didn't say anything  
5 about it. Just --

6 COMMISSIONER CREE: I don't know that the  
7 rule says you have to specifically use the language, I  
8 request.

9 COMMISSIONER CASEY: It says a written  
10 request.

11 COMMISSIONER KLISH: Written request.

12 COMMISSIONER CREE: It doesn't say what  
13 specific language you have to use. My -- the way I got  
14 over that was that I think the letter infers that the  
15 fact that they are out looking for these waivers, and  
16 they didn't get them, I think that's enough of an  
17 inference, at least that got me over it. It may not  
18 get you over there. It got me over there. That's why  
19 I am not that concerned about it.

20 COMMISSIONER ASHBY: But, in that regard,  
21 I think we need to be fairly explicit about our  
22 upholding the 603 variances.

23 ASSISTANT ATTORNEY GENERAL HARMON: And  
24 502.

25 COMMISSIONER ASHBY: Under 502.b, as

1 language in whatever we're fixing to prepare here. You  
2 know, let's -- the Commission itself has the right to  
3 grant the variance. And it was not -- the way it was  
4 written on the application, as approved, was just 603.  
5 So, I believe we need to be, you know, more specific  
6 than that.

7                   CHAIRMAN MUELLER: If we are more  
8 specific, then are we just amending the language or are  
9 we effectively granting the application, but then also  
10 granting the cross-application?

11                   ASSISTANT ATTORNEY GENERAL HARMON: I'm  
12 just trying to figure out procedurally how that would  
13 work, if we're going to add more language to this or if  
14 we're just simply clarifying it.

15                   COMMISSIONER ASHBY: Are we, in fact,  
16 going to be denying both applications?

17                   COMMISSIONER CREE: My preference would  
18 be to stay away from that. My preference would be go  
19 ahead and reject the application and just amend the  
20 APDs. I think that's an easier way to go about this,  
21 to accomplish what we're trying to accomplish. I mean,  
22 unless we have findings that say the Director acted  
23 incorrectly, because of what you just brought up. And  
24 I'm not hearing enough support throughout everyone here  
25 that says the Director acted inappropriately.

1                   COMMISSIONER SHOOK: Let me go on record  
2 as saying I believe he acted incorrectly. I think the  
3 rules says that he can't grant an exception if the  
4 company -- if waivers are not obtained.

5                   CHAIRMAN MUELLER: You don't buy the fact  
6 that a variance trumps an exception? That's the whole  
7 argument we had.

8                   COMMISSIONER SHOOK: Well, 603.a.2 says  
9 exception. It doesn't say anything about variance.

10                  COMMISSIONER CREE: 502 overrules  
11 everything is what everyone is talking about. Yeah.  
12 603, you can go through that procedure and you can get  
13 an exception. But 502.b is a carte blanche, Director  
14 has the ability to amend or to overrule any rule that  
15 is in our books, to grant a variance.

16                  COMMISSIONER SHOOK: Only if the  
17 applicant has made every attempt to comply with the  
18 rules.

19                  COMMISSIONER CREE: They sent out  
20 waivers.

21                  COMMISSIONER CASEY: But they didn't file  
22 the written application.

23                  COMMISSIONER CREE: Then you could say  
24 that a Director could never grant -- if you have a  
25 problem with a rule that an operator couldn't get over,

1 how could a variance ever be granted, because you are  
2 not complying with that rule.

3 COMMISSIONER SHOOK: If you go to the  
4 narrow scope of our rules, it couldn't.

5 COMMISSIONER CREE: Then would you say  
6 that 502.b does not allow the Director --

7 COMMISSIONER SHOOK: Somehow you have to  
8 mitigate between the individuals so that the variances  
9 aren't or are obtained. I don't think the Director or  
10 the company should be allowed to run roughshod over  
11 landowners. In spite of everything, I think that the  
12 rule says -- and unless we want to change the rules --  
13 that he can grant an exception if waivers are obtained  
14 from offset surface owners. And the scope of this  
15 hearing was, as I recall, whether or not he granted  
16 this exception within the rules. And according to that  
17 rule, he did not.

18 Now, I'm not -- I'm not saying, you know,  
19 that's the narrow argument that I see at this point,  
20 but if we -- I mean, there's -- I think there's, you  
21 know, every reason possible to allow them to go ahead  
22 and drill these wells, but --

23 COMMISSIONER CREE: You disagree with  
24 what the Assistant Attorney General's perception is, or  
25 her belief of the rules?

1                   COMMISSIONER SHOOK: I am only reading  
2 what the language said here and interpreting it as I  
3 see it.

4                   COMMISSIONER KLISH: Can I interject? I  
5 was going to ask Trisha or Brian to give us a little  
6 historical perspective on the way these had been  
7 applied in the past.

8                   MS. BEAVER: I would love to do that.  
9 First of all, I would just draw your attention to Rule  
10 318.c, which is the exception location to setbacks from  
11 lease lines. And there is some specific language in  
12 that rule that I think is sort of what we look to.

13                   COMMISSIONER SHOOK: Okay. 318.

14                   MS. BEAVER: C. And the, you know, it  
15 basically says that -- it's titled, "Exception  
16 Locations."

17                   COMMISSIONER SHOOK: Okay. I got it.

18                   MS. BEAVER: "The Director may grant an  
19 operator's request for a well location exception to the  
20 requirements of this rule or any order because of  
21 geologic, environmental, topographic or archaeological  
22 conditions, irregular sections," a few other things,  
23 "provided that a waiver or consent" -- and this is not  
24 the important part, but the waiver or consent is  
25 signed. And it tells you who to go to to get those

1 waivers, if the mineral owner is different from the  
2 applicant seeking the waiver.

3           But, where I wanted to go with this is,  
4 basically, it says if waivers cannot be obtained from  
5 all parties, and no party objects to the location, the  
6 operator may apply for a variance under Rule 502.b.  
7 And then, if the party or parties object to the  
8 location, and cannot reach agreement, then the operator  
9 may apply for a Commission hearing.

10           And so, what happens is, many times, when  
11 people are trying to comply with 318.c, to change the  
12 location of a well, they may send out, you know, ten  
13 letters to parties to get approval. Some people just  
14 aren't going to sign a letter, no matter what. And  
15 some people will call us and say, you know, I don't  
16 really care but no way I'm putting my name on that  
17 piece of paper and signing it.

18           So that the whole idea behind 502.b is to  
19 have some mechanism by which the permit can move  
20 forward when people just don't want to sign. And  
21 sometimes we get the BLM, even they don't want to sign  
22 anything, but they don't object.

23           So, as long as there's no written  
24 objection that comes to the Commission to that request  
25 for a waiver, then that's where we look to, 502.b. If

1 the applicant then says, you know, I sent out waiver  
2 letters, here's proof that I did it, here's the proof  
3 when I did it, would you please grant a 502.b variance,  
4 because I couldn't obtain that.

5 And so, since we don't have that specific  
6 language in 603, that's really kind of how we have  
7 interpreted it.

8 COMMISSIONER SHOOK: So, then, you're  
9 going with the last sentence, "If a party or parties  
10 object to a location, the operator may apply for a  
11 Commission hearing." And then it's on our ruling  
12 that -- whether to grant it or not.

13 MS. BEAVER: No. Actually, I'm going  
14 with the sentence before that. If waivers cannot be  
15 obtained, and no party objects. . .

16 COMMISSIONER SHOOK: There is a party  
17 objecting, isn't there?

18 COMMISSIONER REAGAN: Not to the  
19 location.

20 MR. MACKE: That's that specific rule.

21 MS. BEAVER: That's that specific rule,  
22 but it's that language that -- because we don't have  
23 language in 603, we look to the, you know, we're sort  
24 of applying the same principle that's in that language.

25 So, what happened is waiver letters went

1 out to the Town of Firestone and to St. Vrain Partners,  
2 on August 21st. And they weren't received -- I mean  
3 waivers didn't get signed by the town or by St. Vrain.  
4 And, you know, we didn't get an objection to the  
5 signing of the waiver, and the Director granted the  
6 variance.

7 COMMISSIONER SHOOK: They have an  
8 opportunity to object before the APD was approved, but  
9 did not object until after it was approved.

10 MS. BEAVER: Well, there were certainly a  
11 number of letters and phone calls from St. Vrain  
12 Partners prior to the approval of the APD. But, again,  
13 as has been brought out in the testimony, our field  
14 inspector went out to do a site visit, and  
15 conversations and letters were exchanged between our  
16 permitting supervisor and one of our supervising  
17 engineers in addition. So --

18 COMMISSIONER CASEY: So, would the  
19 outcome have been different had they submitted a  
20 written objection before the APDs were approved?

21 MS. BEAVER: Well --

22 COMMISSIONER CASEY: Would the APDs not  
23 have been approved in that case?

24 MS. BEAVER: The Director could not --  
25 again, the way that I interrupt the rule, based on

1 318.c, the Director would not have been able to grant  
2 the variance to 603.b.1 or. 2, or whatever it was,  
3 after objection.

4 COMMISSIONER CASEY: So, were they aware  
5 of that? Did staff tell --

6 MS. BEAVER: I didn't have a conversation  
7 about that.

8 COMMISSIONER CASEY: That's not clear. I  
9 would say that's not clear from these rules. It's not  
10 clear that that's the procedure. So --

11 MS. BEAVER: Yeah. You are right.  
12 There's nothing written in that 603 series that would  
13 suggest that. But the question was, how have we done  
14 it, and that's the answer.

15 MR. MACKE: There's not a process.

16 COMMISSIONER CASEY: Thank you.

17 MR. MACKE: It seems to me, just to  
18 follow-up a little bit, that this ability to grant  
19 variances is a way to answer the question, can't you  
20 have rules that would be one-size-fits-all for all  
21 circumstances. And the variance allows you to look at  
22 site-specific conditions like you all are talking  
23 about.

24 And I really like the idea of amending  
25 the permit to add in the conditions that Commissioner

1 Ashby brought up, because it allows you to keep that  
2 safety bar as high as it needs to be, as high as it  
3 would be just with the regular setback, but still allow  
4 the wells to be drilled. That's my opinion.

5 COMMISSIONER CASEY: The other question  
6 is what recourse is there if the Director maybe made a  
7 mistake, because after all, the Director is human. We  
8 should not, I don't think, assume that every decision  
9 by the Director is absolutely perfect.

10 COMMISSIONER CREE: I'm not making that  
11 assumption. I'm saying that, after looking at  
12 everything, they didn't feel like it was necessary.  
13 That's how I would justify moving forward. I think  
14 that I completely agree that we should amend these APDs  
15 to protect it more after the fact. But I think,  
16 without -- my statement was more along the lines of I  
17 think that I'm going to put my reliance, based on what  
18 I've seen in five years, on the staff and the Director,  
19 and their decisions, unless I'm proven wrong, or unless  
20 they are proven wrong.

21 COMMISSIONER CASEY: With that caveat.

22 COMMISSIONER CREE: Yes. Exactly.  
23 Unless they are proven wrong.

24 MR. MACKE: Along those same lines, I  
25 think it's really important to acknowledge that

1 Director Griebeling had Mr. Binkley go out and look at  
2 it and give his professional opinion about the safety  
3 of the area. I am not too sure, not being directly  
4 involved in this process, why we didn't attach  
5 conditions in the first place. It may have had to do  
6 with the conversation with EnCana, them saying they  
7 intend to give it to the town and have the town do the  
8 road closure, things of that nature, but it didn't seem  
9 unreasonable to attach those kinds of conditions to the  
10 permit.

11 COMMISSIONER CASEY: Well, in reading the  
12 staff analysis, it implies that the road was going to  
13 be closed, and --

14 MR. MACKE: Apparently, that didn't  
15 happen, but --

16 COMMISSIONER CASEY: Apparently that  
17 didn't happen, but that's what I assumed, after first  
18 reading this.

19 MR. MACKE: I'm sure that that's the  
20 impression that staff was under.

21 COMMISSIONER CREE: Mr. Chairman, from  
22 this standpoint, to me, from a procedural -- to move  
23 forwards procedurally, couple of things have to be  
24 found. One, if everyone agrees with Commissioner  
25 Shook, that the Director didn't act appropriately, in

1 terms of how this was handled, then it seems to me that  
2 what we would have to do is go ahead and approve the  
3 application. And then the second decision is that  
4 would we then want to approve the cross-application,  
5 which is -- essentially gets us back to drilling the  
6 wells, having the wells drilled. So, I think that's  
7 one step.

8           The other step is that we find that the  
9 Commission -- that the Director did act appropriately.  
10 That's where I would sit. I mean, I think that the  
11 502.b variance allows him to do what he did, and,  
12 therefore, you deny the application, don't have to  
13 worry about the cross-application, because the  
14 application is denied, and you amend the APDs. I think  
15 those are the two paths, as I would see them, at this  
16 point in time.

17           ASSISTANT ATTORNEY GENERAL HARMON: I  
18 agree. I think that's a good summary of where you are.

19           COMMISSIONER CREE: What does everyone  
20 think on the first?

21           ASSISTANT ATTORNEY GENERAL HARMON: Your  
22 choices.

23           COMMISSIONER CREE: Do you think that the  
24 Director acted appropriately? If yes, then I think you  
25 can deny the application and adjust the -- or amend the

1 APDs. If you don't, then I think we have to accept the  
2 application or approve the application.

3 COMMISSIONER CASEY: Procedurally, can  
4 you go back -- can the Commission go back and put  
5 conditions on the APDs?

6 COMMISSIONER CREE: That's what they just  
7 said. You can amend it. That's what they both said.

8 COMMISSIONER CASEY: Is that true?

9 ASSISTANT ATTORNEY GENERAL HARMON: Yes.

10 COMMISSIONER REAGAN: So, maybe the first  
11 issue is we just go around and we decide that the  
12 Director acted appropriately, or he didn't.

13 COMMISSIONER CREE: Yeah.

14 COMMISSIONER REAGAN: It seems to me  
15 that's Step 1.

16 COMMISSIONER CREE: See where the  
17 Commission stands on that. I think we need to find out  
18 where people are at first.

19 CHAIRMAN MUELLER: Sure.

20 COMMISSIONER CREE: I think Commissioner  
21 Shook already said he thinks he didn't act  
22 appropriately.

23 COMMISSIONER SHOOK: Within the narrow  
24 scope of the language of that rule, I am, like, he did  
25 not act appropriately, except that there was no formal

1 objection filed. So, in that consideration, he did. I  
2 am, you know, if this was a -- if there was a form of  
3 objection filed to the application, then it should come  
4 before the Commission to resolve, except the rules do  
5 say that waivers must be obtained from offsetting  
6 owners, and that those were not obtained.

7 So, what -- where do -- what happens if  
8 we accept the application and then go to the cross --  
9 I'm sorry.

10 CHAIRMAN MUELLER: Cross-application.

11 COMMISSIONER SHOOK: Cross-application.  
12 That's essentially the same thing.

13 CHAIRMAN MUELLER: It could be.

14 COMMISSIONER CREE: Could be. It could  
15 get to that point, yeah.

16 COMMISSIONER SHOOK: Granted by the  
17 Commission rather than the Director.

18 COMMISSIONER CREE: It could get to that  
19 point.

20 COMMISSIONER SHOOK: I guess that's where  
21 I would have to vote, would be to uphold the applicant,  
22 but to consider, very seriously, the cross-application.

23 COMMISSIONER ASHBY: Say it again, Lynn.

24 COMMISSIONER SHOOK: Well, the first  
25 thing we're doing is considering the application of the



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1 St. Vrain's Partners, right?

2 CHAIRMAN MUELLER: Really what we're  
3 doing, just an extra poll as to whether or not you  
4 thought the Director acted prudently in granting the  
5 variances, or appropriately.

6 COMMISSIONER SHOOK: Well, you know,  
7 within the strict reading of the language of the rule,  
8 I would say no, but, in general policy, as it has been  
9 handled before, apparently, he has not acted  
10 incompatible with past rulings.

11 CHAIRMAN MUELLER: Okay. John.

12 COMMISSIONER ASHBY: I believe he acted  
13 within the scope of his duties.

14 COMMISSIONER KLISH: As I do.

15 COMMISSIONER REAGAN: I do so also.

16 CHAIRMAN MUELLER: Tom Ann.

17 COMMISSIONER CASEY: I don't think he  
18 acted quite within the rule or the law, according to  
19 the rules, but the rules are confusing. I guess I  
20 would come down on the side of going to the  
21 cross-application, just because I think it's really  
22 dangerous for the Commission to always seem to be on  
23 the side of the operators and kind of push the surface  
24 owner's concerns to the side.

25 And, in this case, you know, as a

1 practical matter, I think there's all these kind of  
2 silly things, and it really comes down to, can you  
3 drill this well in a safe manner, but we probably need,  
4 probably, some additional conditions, but there is a  
5 perception out there that sometimes the Commission just  
6 sort of gives a lot of wiggle room in the rules to the  
7 operators, and that we're industry people, and, you  
8 know, we write these rules.

9           But I can't -- maybe they comply but  
10 maybe they don't really exactly comply. And, in this  
11 case there's a little bit of a question as to whether  
12 we really followed the rules properly. So, in my mind,  
13 it would be better to grant the application and then go  
14 to the cross-application.

15           CHAIRMAN MUELLER: Okay.

16           COMMISSIONER CREE: I guess I'll make a  
17 comment on what you just said, and I strongly disagree  
18 that this Commission always sides with the operator.  
19 I've been on this Commission for five years, and I've  
20 seen operators get smashed around just as much as  
21 surface owners and others that have come before the  
22 Commission. So, I'll disagree with that statement. I  
23 don't think --

24           COMMISSIONER CASEY: It's not what I  
25 said. There's an appearance or a perception of that.

1                   COMMISSIONER CREE: Okay. Well, it's  
2 what you said, it's something you said. I don't think  
3 that trying to do something optically that gets to the  
4 same answer is good policy either. I mean, I don't  
5 think we should deny or accept the application and then  
6 essentially go ahead and veto it and get right back to  
7 where we want to be, because that will look better  
8 optically. I don't think that's a process that this  
9 Commission should go about.

10                   The Commission should do what it thinks  
11 is right, do it straightforward, and if the perception  
12 is that we're always in favor of the operator, so be  
13 it. I think we could point to several -- more than  
14 several -- many, many, many situations where that's not  
15 the case. So, I'm at the position I think the Director  
16 acted appropriately, if that's the poll you are looking  
17 for.

18                   CHAIRMAN MUELLER: I too believe the  
19 Director acted appropriately. I would also like to  
20 just -- Tom Ann, I understand you are talking about  
21 perception. I would just like to admit perception, it  
22 seems to me that virtually -- well, virtually all of  
23 the lawsuits against the Commission right now are by  
24 operators. So, as far as us being on their side, I  
25 guess I would like more of them to be on our side.

1 COMMISSIONER REAGAN: Less lawsuits.

2 CHAIRMAN MUELLER: There sure seems to be  
3 a bunch of operators that aren't happy with us either,  
4 but they don't get a lot of press. Anyway, so, given  
5 that, what I see is basically there are five  
6 commissioners who believe that the Director acted  
7 appropriately, or within the rules, two that do not.

8 And, given that, then what I would go for  
9 is a motion that basically denies the application,  
10 upholds the actions of the Director. We would also  
11 deny the cross-application, and basically amend the  
12 APDs. And the amendments to the APDs would be to  
13 require that the road is closed by the Town of  
14 Firestone during drilling operations; 8-foot chain link  
15 fencing is used to cordon off the drilling location  
16 during the drilling. And then the additional items  
17 that Commissioner Ashby put forth, as far as the  
18 trucking of the materials in and out.

19 COMMISSIONER ASHBY: Do we want to  
20 require an 8-foot chain link fence? Do we not --  
21 should we not leave some of this to the direction of  
22 the operator and just pursue the requirement on what  
23 we're trying to achieve, and that is to significantly  
24 inhibit public access to the location.

25 CHAIRMAN MUELLER: Well, I wasn't sure

1 where you were going with what you said before as far  
2 as a -- just a mark on the ground. You know, my  
3 assumption was that you can use a chain link fence,  
4 unless you are not -- 8 foot. If you want to make  
5 something different, that's fine.

6 COMMISSIONER KLISH: What's called for  
7 in -- what does the APD specify?

8 COMMISSIONER REAGAN: There isn't.

9 COMMISSIONER KLISH: There ought to be  
10 some plan about fencing.

11 MR. MACKE: In high density areas.

12 COMMISSIONER KLISH: It wasn't specified  
13 in the APD?

14 MR. MACKE: Pardon me?

15 COMMISSIONER KLISH: It wasn't specified  
16 in the APD?

17 MR. MACKE: No.

18 ASSISTANT ATTORNEY GENERAL HARMON: High  
19 density rules apply automatically.

20 MR. MACKE: I'm not sure this is a high  
21 density. I don't think it is.

22 COMMISSIONER CREE: No, it's not within  
23 350. 350 is the high density.

24 CHAIRMAN MUELLER: If we want to utilize  
25 that, or some other --

1 MR. MACKE: Say, fencing adequate to  
2 prevent unauthorized public access.

3 COMMISSIONER ASHBY: What do the high  
4 density rules say regarding fencing?

5 MR. MACKE: I believe it's general, like  
6 that. Fencing adequate to prevent access, something  
7 like that.

8 MS. BEAVER: Six feet in height.

9 MR. MACKE: Yes.

10 MS. BEAVER: Constructed in conformance  
11 with written standards.

12 MR. MACKE: Pretty prescriptive.

13 MS. BEAVER: Noncombustible.

14 COMMISSIONER ASHBY: "As long as the  
15 material is noncombustible and allows for adequate  
16 ventilation and gate shall be locked."

17 CHAIRMAN MUELLER: Why don't we adopt  
18 that. Okay.

19 COMMISSIONER CASEY: Does that assume we  
20 can't or will still have a guard posted?

21 CHAIRMAN MUELLER: That's already been  
22 agreed to; is that correct? That the security guard  
23 has been agreed to and will be --

24 MS. VANDERWERF: EnCana is willing to do  
25 that. That's the testimony.

1                   CHAIRMAN MUELLER: Okay. That's on  
2 record. And then Commissioner Ashby, do you want to  
3 repeat what you said earlier?

4                   COMMISSIONER ASHBY: I'm not sure I can.

5                   CHAIRMAN MUELLER: Sounded good at the  
6 time.

7                   COMMISSIONER ASHBY: Um, okay. What I  
8 had written down here is all public roads and other  
9 access -- and I presume other public access, such as  
10 sidewalks located within 150 feet of the wellheads --  
11 shall be closed to general public access during  
12 drilling rig transport. And now we also discussed  
13 operation here. I kind of have a good one about  
14 operation, but if we want to include operation, you  
15 know, we effectively shut those avenues down that could  
16 effect, for example, an evacuation, where we  
17 wouldn't -- they would need access. My main concern,  
18 obviously, was during the rig mobilization.

19                   CHAIRMAN MUELLER: Uh-hum. Okay. I  
20 guess I was thinking the issue being also during  
21 operation with the, you know, with the point that was  
22 made by St. Vrain as far as curiosity and folks coming  
23 around. I think that is an issue. And I think it  
24 should be posted clearly, 150 feet or 200 feet --

25                   COMMISSIONER ASHBY: If you make it 200

1 feet, you are going to close down more than Dover  
2 Avenue -- I just went through the diagram -- and/or  
3 Dogwood. You close Dover, and so I think we better  
4 stay with 150 feet, which closes Dogwood and the road  
5 to the south, which is --

6 COMMISSIONER CREE: Sage.

7 COMMISSIONER ASHBY: Sage.

8 COMMISSIONER CREE: Within 150 feet of  
9 Sage? That doesn't look right to me.

10 COMMISSIONER REAGAN: So, no. It's 76  
11 feet from the bulk of the road.

12 COMMISSIONER ASHBY: It's 76 feet to  
13 Dogwood.

14 COMMISSIONER REAGAN: Are you saying it  
15 must be 600 feet or something?

16 COMMISSIONER CREE: It's more than 150  
17 feet from Sage. That's for sure. I think it's only  
18 closing Dogwood. That's the only one that we're  
19 looking at.

20 COMMISSIONER ASHBY: Here it is. The  
21 part of -- let's see. Well, there is the survey plat,  
22 I believe, provided by EnCana, by Merrick Surveyors is  
23 what I am looking for.

24 MS. BEAVER: Would it help to -- no.

25 COMMISSIONER ASHBY: There's a match

1 line. There's the match line through the wellhead.  
2 There's 350 feet, 150 feet. So, somewhere in here is  
3 200 feet, and if you continue that over, it does get  
4 into Dover, I believe. It does not get into the Sage  
5 Avenue. Well, the road to the south. You are correct.  
6 But it does -- the 200-foot interval probably is going  
7 to intersect Dover.

8 COMMISSIONER KLISH: I think 150 is fine.  
9 That's what the standard is.

10 COMMISSIONER CREE: Go with 150 then.

11 COMMISSIONER ASHBY: And --

12 CHAIRMAN MUELLER: Fencing, is that  
13 fencing during the drilling operation? And then I  
14 believe the entire production area or the wells, the  
15 tanks and separator equipment would be fenced off after  
16 drilling is complete.

17 COMMISSIONER ASHBY: The blockage in the  
18 road, I believe, is, you know, should only extend to  
19 150 feet. The fencing, I believe, should be just to  
20 fence within the actual drilling pad area. Okay?

21 COMMISSIONER CASEY: That's a standard.

22 COMMISSIONER ASHBY: Okay. During  
23 transport of the drilling rig to and from locations,  
24 pilot vehicles, flagmen, temporary roadblocks, to  
25 include temporary roadblocks, shall be used and under

1 the direction of the operator to ensure the safe  
2 conduct of such transport operations.

3 CHAIRMAN MUELLER: Okay.

4 MS. BEAVER: Conduct of such.

5 COMMISSIONER ASHBY: Transport  
6 operations.

7 MS. BEAVER: Can you read that sentence  
8 back one more time?

9 COMMISSIONER ASHBY: It will probably  
10 come out differently.

11 MS. BEAVER: Just the final sentence.

12 COMMISSIONER ASHBY: During transport of  
13 the drilling rig to and from location, pilot vehicles,  
14 flagmen, and including temporary roadblocks shall be  
15 used and under the direction of the operator to ensure  
16 the safe conduct of such transport operations.

17 MS. BEAVER: Okay.

18 COMMISSIONER ASHBY: One of the -- what  
19 brings to mind is one other comment regarding the  
20 requirement of the Town of Firestone. I'm not sure  
21 that -- we need to ask ourselves, should we name the  
22 Town of Firestone? I don't believe we should.

23 COMMISSIONER CREE: They own the road.

24 CHAIRMAN MUELLER: Yeah.

25 COMMISSIONER ASHBY: Well, it may not be

1 a big thing. I would just advise us not to name the  
2 Town of Firestone. I mean, it's very obvious who owns  
3 the road.

4 CHAIRMAN MUELLER: Can you rephrase it?

5 MS. VANDERWERF: I have something I would  
6 like to clarify, Commissioner Ashby. The safety  
7 measures when the rig is being moved, that is the  
8 roadblocks and flagmen, is that just on Dogwood Street,  
9 or within 150 feet, or is that from the minute the rig  
10 leaves the yard?

11 COMMISSIONER ASHBY: I believe it should  
12 be within 150 feet.

13 CHAIRMAN MUELLER: Okay. I guess I was  
14 thinking that, really, when it's within the  
15 subdivision --

16 COMMISSIONER REAGAN: Subdivision  
17 boundaries.

18 CHAIRMAN MUELLER: Last 150 feet you  
19 said.

20 COMMISSIONER ASHBY: Last portion during  
21 transport.

22 COMMISSIONER SHOOK: Within the  
23 subdivision.

24 CHAIRMAN MUELLER: Otherwise we're  
25 already there. Okay. But as far as the Town of

1 Firestone, how else would you word that?

2 COMMISSIONER ASHBY: Well, I think we  
3 need to be careful about how far we're going to close  
4 these roads, and now there are actually -- we need to  
5 make sure -- there are actually two parts of this, all  
6 public roads located within 150 feet of the wellhead  
7 shall be closed. That should be separate and distinct  
8 from the paragraph that, during transport of the  
9 drilling rig.

10 CHAIRMAN MUELLER: Right.

11 COMMISSIONER ASHBY: Okay.

12 MS. BEAVER: That public roads, didn't  
13 you say before that included sidewalks?

14 COMMISSIONER ASHBY: Yes.

15 COMMISSIONER REAGAN: He did say  
16 sidewalks.

17 CHAIRMAN MUELLER: Trish, can you repeat  
18 the motion, then?

19 MS. BEAVER: Um, okay. The motion is to  
20 deny -- I think I have this right -- deny the  
21 application and thus the cross-application; to impose  
22 additional -- or impose conditions on the permit, which  
23 would be to close the road during the drilling  
24 operations, to --

25 COMMISSIONER SHOOK: Which road?

1 MS. BEAVER: Well, I guess it would be  
2 Dogwood Street.

3 COMMISSIONER REAGAN: Dogwood Street.

4 CHAIRMAN MUELLER: 150 feet.

5 MR. MACKE: All roads within 150 feet.

6 MS. BEAVER: I am going to say that  
7 language, but, in general, to close the road during  
8 drilling, to comply with the fencing requirements under  
9 Rule 603.e.7. I wasn't sure if there's a need to  
10 include the security guards, since the testimony  
11 included that.

12 CHAIRMAN MUELLER: I think that's already  
13 in there already, in the record.

14 MS. BEAVER: We don't have to do that,  
15 and then we would have language that would say, all  
16 public roads within 150 feet of the wellhead, including  
17 sidewalks, shall be closed during drilling rig  
18 transport.

19 COMMISSIONER SHOOK: I think it was  
20 changed to say all roads within the subdivision that  
21 are within 150 feet.

22 MS. BEAVER: I totally missed that.

23 MR. MACKE: I did too.

24 COMMISSIONER CASEY: The road on which  
25 the rig is travelling.

1 COMMISSIONER SHOOK: That's better.

2 Don't want to close all of the roads in the  
3 subdivision, but couldn't you just close the roads  
4 within 150 feet, or unless it was just that one,  
5 Dogwood, which is already closed during drilling.

6 COMMISSIONER ASHBY: Well, then we need  
7 to close the access as it exists within the  
8 subdivision -- the planned access, as it exists within  
9 the subdivision.

10 COMMISSIONER SHOOK: During entry or exit  
11 of rig structures.

12 COMMISSIONER ASHBY: During transport of  
13 the drilling rig to and from the location.

14 COMMISSIONER CREE: Why are we so worried  
15 about them driving on the subdivision road, you know, a  
16 mile or 1/2 a mile? They are driving from their yard  
17 and there's no restrictions on them driving down I-70  
18 or whatever. Why are we putting -- issuing a  
19 restriction on the subdivision for more than 150 feet?

20 COMMISSIONER ASHBY: I think you are  
21 exactly right. I think we ought to keep this as we  
22 originally wrote it. All public roads and other  
23 access, such as -- public access, such as sidewalks,  
24 located within 150 feet of the wellheads, shall be  
25 closed to general public access during drilling rig

1 transport and operation.

2 Separate paragraph: During transport of  
3 the drilling rig to and from location, pilot vehicles,  
4 flagmen, including temporary roadblocks, shall be used  
5 and under the direction of the operator to ensure safe  
6 conduct of such transport operations. I'm getting  
7 better at it.

8 MS. BEAVER: Okay.

9 COMMISSIONER CREE: That makes more  
10 sense.

11 COMMISSIONER CASEY: Isn't there already  
12 a requirement for that?

13 COMMISSIONER CREE: Oh, I don't know what  
14 the drilling companies -- I'm sure the drilling  
15 companies have their own, when they are moving that  
16 kind of equipment, there are certain requirements  
17 they've got to comply with on any public road. I don't  
18 know what they are specifically, but I don't know that  
19 we need to add anything more, so I am happy with  
20 keeping it within 150 feet of the well.

21 CHAIRMAN MUELLER: Trish, want to give it  
22 a try?

23 MS. BEAVER: I am afraid to.

24 COMMISSIONER ASHBY: By keeping it under  
25 the direction of the operator, it is essentially his

1 responsibility when those roadblocks, et cetera, shall  
2 be utilized, except within 150 feet, and it will be  
3 closed.

4 MS. BEAVER: Maybe we should have Harriet  
5 read it back. She may be getting it better than me. I  
6 think I --

7 MR. MACKE: You got it.

8 MS. BEAVER: Okay. All public roads and  
9 other public accesses, including sidewalks, within 150  
10 feet of the wellhead, shall be closed during drilling  
11 rig transport and operations. That's the first part.

12 COMMISSIONER ASHBY: Exactly.

13 COMMISSIONER SHOOK: Maybe that's all we  
14 need.

15 MS. BEAVER: Then --

16 COMMISSIONER SHOOK: Part of it -- isn't  
17 moving part of the operation, moving in and out, or  
18 not.

19 COMMISSIONER ASHBY: Yeah. It is part of  
20 the operation. Maybe we don't need the --

21 MS. BEAVER: That's the one I have  
22 written down better.

23 CHAIRMAN MUELLER: Okay.

24 COMMISSIONER ASHBY: For example, there  
25 is -- yes. Excuse me.

1 ASSISTANT ATTORNEY GENERAL HARMON: I  
2 think we're going to have Harriet read back what you  
3 said.

4 COMMISSIONER ASHBY: But during the  
5 transport of the drilling rig, there may not be a  
6 requirement for pilot vehicles by the county. I think  
7 all we're doing is increasing the level of safety  
8 during the move, and it's up to the operator where he's  
9 actually going to use -- or when and if he is going to  
10 use pilot vehicles, flagmen and temporary roadblocks.  
11 But we have come down on the side of saying, hey, we  
12 need more safety. We need more assurance of safety  
13 during the rig move. Being under the direction of the  
14 operator, it's up to him to see that it's done and  
15 where it's done. We haven't put any requirement on  
16 that.

17 MS. BEAVER: Uh-hum.

18 CHAIRMAN MUELLER: Okay. Do you want to  
19 read the next sentence, and we're going to decide  
20 whether or not to keep it?

21 COMMISSIONER ASHBY: Okay.

22 MS. BEAVER: I am not sure where the  
23 words, "under the direction of the operator," go here.  
24 What I have is, during transport of the drilling rig to  
25 and from the location -- and maybe it's there -- under

1 the direction of the operator, pilot vehicles, flagmen,  
2 including pilot vehicles or pilot vehicle flagmen,  
3 including temporary roadblocks, shall be used to assure  
4 the safe conduct of such transport operation.

5 COMMISSIONER ASHBY: That will work fine.

6 COMMISSIONER KLISH: I don't want to make  
7 this any longer. It seems like we're a little bit out  
8 of our purview.

9 CHAIRMAN MUELLER: No. That is an issue.  
10 Are we setting a precedent here for how we transport  
11 things in and out of places? I guess I think we're --

12 COMMISSIONER ASHBY: All right. How  
13 about if we recommend, in the second paragraph.

14 CHAIRMAN MUELLER: We're requiring,  
15 basically, the fencing off of the location and closing  
16 the road within 150 feet. That's a requirement. And  
17 as far as a recommendation goes, as far as safe  
18 transport of the rig into the location, I think that's  
19 a good idea.

20 COMMISSIONER KLISH: That's fine.

21 MS. BEAVER: That will become a  
22 recommendation. It's not a "shall be used." Okay.  
23 Okay.

24 COMMISSIONER CREE: So, we have a motion.

25 CHAIRMAN MUELLER: We have a motion.

1 MR. COAN: If it's okay, too, could we  
2 have Trisha read the entire motion back, just to make  
3 sure we got the whole thing.

4 CHAIRMAN MUELLER: That's fine.

5 MS. BEAVER: The motion is to deny both  
6 applications; to require fencing, under Rule 603.e.7.,  
7 to require that all public roads and other public  
8 access, including sidewalks, within 150 feet of the  
9 wellhead, shall be closed during drilling rig transport  
10 and operation.

11 And then it will be recommended that,  
12 during the transport of the drilling rig to and from  
13 the location, pilot vehicles, flagmen, including  
14 temporary roadblocks, be used to ensure the safe  
15 conduct of such transport operations.

16 COMMISSIONER SHOOK: I think you got the  
17 second sentence messed up, or the last sentence. I  
18 think you said during transport, and I think you meant  
19 during drilling operations.

20 COMMISSIONER ASHBY: I didn't hear that.  
21 Try it again on that second paragraph.

22 COMMISSIONER SHOOK: The second  
23 paragraph.

24 MS. BEAVER: The one that you are  
25 recommending, not requiring.

1 COMMISSIONER SHOOK: The one we're  
2 requiring.

3 COMMISSIONER ASHBY: No. Okay. The  
4 first paragraph then.

5 COMMISSIONER SHOOK: Okay. Go ahead.  
6 Depends on -- okay. The first paragraph.

7 MS. BEAVER: The one about closing roads  
8 or the one about using the flagmen?

9 COMMISSIONER SHOOK: The first paragraph  
10 was the requirement, second was the recommendation.

11 MS. BEAVER: Recommendation and -- right.  
12 And the requirement you want to hear again?

13 COMMISSIONER SHOOK: Yes.

14 MS. BEAVER: Okay. The requirement will  
15 be that all public roads and other public access,  
16 including sidewalks, within 150 feet of the wellhead,  
17 shall be closed during drilling rig transport.

18 COMMISSIONER SHOOK: No.

19 COMMISSIONER ASHBY: Shall be closed to  
20 general public access --

21 COMMISSIONER SHOOK: -- during drilling  
22 operations.

23 COMMISSIONER CREE: You don't want it  
24 during move-in?

25 COMMISSIONER SHOOK: That was part of the

1 last paragraph.

2 COMMISSIONER ASHBY: During drilling rig  
3 transport and operation.

4 MS. BEAVER: Right.

5 COMMISSIONER CREE: I think Commissioner  
6 Ashby is recommending that we close those roads during  
7 transport in and out, in addition to drilling  
8 operations.

9 COMMISSIONER SHOOK: I thought we changed  
10 that to a recommendation. I thought that was -- the  
11 last part we changed to a recommendation.

12 COMMISSIONER CREE: Anything within 150  
13 feet, we want it closed.

14 CHAIRMAN MUELLER: Let's just back up and  
15 talk about intent.

16 COMMISSIONER SHOOK: My misunderstanding.

17 CHAIRMAN MUELLER: Let's just back up and  
18 talk about intent for a second, then we'll get the  
19 word-smithing right. The requirement is that roads and  
20 public access, basically, the sidewalks, the area 150  
21 feet around the well site, be closed to public access.  
22 That's what we're requiring. That's the intent. And  
23 then, the recommendation, the intent of that is that  
24 the operator provide basically safe transport, through  
25 whatever means, for moving the rigs in and out.

1 COMMISSIONER SHOOK: Right. Yeah. Okay.

2 CHAIRMAN MUELLER: Those are the two  
3 intents, so -- and I think --

4 COMMISSIONER SHOOK: Okay.

5 CHAIRMAN MUELLER: So, given that intent,  
6 do the words match that intent?

7 MS. BEAVER: I think so.

8 MR. MACKE: I've got a real quick  
9 question for Assistant Attorney General Harmon. Okay.  
10 Repeat what you said earlier about the Commission's  
11 authority on roads controlled by the city.

12 ASSISTANT ATTORNEY GENERAL HARMON: Well  
13 --

14 MR. MACKE: The limitations on that.

15 ASSISTANT ATTORNEY GENERAL HARMON: I  
16 don't have jurisdiction -- they don't have jurisdiction  
17 over roads that are controlled by the city. That's one  
18 thing that we've always said, that was local  
19 jurisdiction.

20 MR. MACKE: That would mean things like  
21 closing roads. I think the comment was made earlier,  
22 it's okay to recommend that, something like that,  
23 recommend to the city that that be done.

24 ASSISTANT ATTORNEY GENERAL HARMON: I  
25 don't think that this condition requires the city to

1 close the road. I think what it's saying is that the  
2 operator needs to obtain road closure from whatever the  
3 proper authority is for the closing of roads.

4 MR. MACKE: From the city.

5 ASSISTANT ATTORNEY GENERAL HARMON: The  
6 closing of a road, important for public health, safety  
7 and welfare considerations in the operation.

8 MR. MACKE: If there's a problem  
9 obtaining that allowance to do that from the city, then  
10 what? They would be required to do that as a condition  
11 of this permit?

12 MS. BEAVER: They could ask for a  
13 variance under 502.b. I am sorry. They could.

14 MR. MACKE: I hate to slow this down any  
15 further, but I heard that earlier.

16 ASSISTANT ATTORNEY GENERAL HARMON: Maybe  
17 the city would rather have them detour, or something  
18 like that. I agree that closing is pretty definitive,  
19 but if there are ways around it, to, to -- you know.

20 MR. MACKE: You are not seeing a problem  
21 with this language?

22 CHAIRMAN MUELLER: I think there could be  
23 an issue with the language. I'm sorry. I shouldn't  
24 interrupt. There could be, but I think that, you know,  
25 what we are talking about here is, you know, I think,

1 these are the conditions that we're looking at adding  
2 in, to make this a safe operation.

3 MR. MACKE: Sure.

4 CHAIRMAN MUELLER: And to the extent --  
5 if there's an issue with that, I'm sure we'll find out.

6 MR. MACKE: Okay. All right. Thank you.  
7 Didn't mean to interrupt.

8 CHAIRMAN MUELLER: No. That's fine.  
9 That --

10 COMMISSIONER KLISH: (Nodding head in the  
11 affirmative.)

12 COMMISSIONER SHOOK: Could we give final  
13 approval to this tomorrow, after it's typed up and --

14 COMMISSIONER REAGAN: We need to get it  
15 down now.

16 COMMISSIONER CREE: We read the motion.  
17 I will make such a motion.

18 COMMISSIONER REAGAN: I will second such  
19 motion.

20 CHAIRMAN MUELLER: Okay. Motion has been  
21 moved and seconded.

22 (Whereupon the vote was called.)

23 COMMISSIONER KLISH: Minute of  
24 discussion. We could give them an out, and in terms of  
25 saying, with the consent of the municipal authority,

1 something like that, with closing the roads. If it's  
2 decided not to allow them to be closed, that we  
3 wouldn't handle this, we put conditions on. . .

4 COMMISSIONER CREE: Then you might as  
5 well recommend it. This is where we were 45 minutes  
6 ago.

7 COMMISSIONER CASEY: I thought we felt  
8 strongly about this.

9 MS. BEAVER: I think that would be the  
10 appropriate time for them to come back and ask for a  
11 502.b variance.

12 COMMISSIONER KLISH: That's enough  
13 discussion.

14 CHAIRMAN MUELLER: That was it. Any  
15 more? Okay. Anyway, motion has been moved and  
16 seconded. All in favor?

17 (Whereupon the vote was called.)

18 CHAIRMAN MUELLER: No opposition? Motion  
19 has been carried and approved. That's where we are  
20 today. Any further discussion? Okay. Close today's  
21 hearing, and we'll recess.

22 (Whereupon these proceedings were  
23 concluded at 5:10 p.m. on January 5, 2004.)

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CERTIFICATE

STATE OF COLORADO ) ss  
CITY AND COUNTY OF DENVER )

I, Harriet S. Weisenthal, Certified Shorthand Reporter and Notary Public for the City and County of Denver, State of Colorado, do hereby certify that the foregoing excerpted proceedings were taken in shorthand by me at 1120 Lincoln Street, Suite 801, Denver, Colorado, on the 5th day of January, 2004, and was reduced to computer-aided typewritten form under my supervision;

That the foregoing is a true transcript of the proceedings had; that I am neither attorney nor counsel, nor in any way connected with any attorney or counsel for any of the parties to said action or otherwise interested in the event;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 13th day of January, 2004.  
My Commission expires October 15, 2005.

*Harriet S. Weisenthal*

Harriet S. Weisenthal

