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MEETING OF THE CALIFORNIA STATE LANDS
COMMISSION

December 3, 1999

1:30 P.M.

300 South Spring Street
Los Angeles, California

REPORTED BY:
Dina M. Lossone
CSR No. 11340
Our File No. 1-61220

1 APPEARANCES:

2

3 CRUZ BUSTAMANTE, Lieutenant Governor, Chair

4 KATHLEEN CONNELL, State Controller, Member

5 ANNETTE PORINI, Chief Deputy, Department of Finance

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7 COMMISSION STAFF:

8 PAUL THAYER, Executive Officer

9 JACK RUMP, Chief Counsel

10 RICK LUDLOW, Senior Staff Counsel

11 PAUL MOUNT, Chief, MRMD

12 DWIGHT SANDERS, Chief, Environmental Planning and
Management

13 SHARON SHAW, Administrative Assistant II

14 KIMBERLY KORHONEN, Executive Assistant

15 MARIA C. GUTIERREZ, Executive Secretary I

16

17 ATTORNEY GENERAL'S OFFICE:

18 DENNIS EAGAN, Deputy Attorney General

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1 MR. BUSTAMANTE: I'd like to call the
2 meeting of the State Lands Commission. My name is
3 Cruz Bustamante. I'm joined today with Controller
4 Kathleen Connell and Annette Porini, chief deputy of
5 the Department of Finance. The State Lands
6 Commission was established to administer properties
7 owned by the state as well as its mineral interests.
8 Today we will hear proposals concerning the leasing
9 and management of these public properties. We will
10 have transactions by our legislative grantees a
11 request for the retrocession of jurisdiction. The
12 first item of business will be the adoption of the
13 minutes from the commission's last meeting.

14 MS. CONNELL: I move the motion.

15 MS. PORINI: Second.

16 MR. BUSTAMANTE: Next order of business
17 will be adoption of consent calendar. There was an
18 interest to add Item No. 73 to consent. Do I hear a
19 motion?

20 MS. CONNELL: I move the addition of
21 Item 73.

22 MS. PORINI: I second.

23 MR. THAYER: There are a couple
24 removals that I think we need to handle first.

25 MR. BUSTAMANTE: Which are those?

26 MR. THAYER: C-26, C-57, that's been
27 settled. C-59 is a matter dealing with the shell
28 mounds that we need to move to the regular calendar

1 because of an objection we received in the letter.

2 MS. CONNELL: I will amend my motion.

3 I move the consent calendar with the subtraction of
4 Item 26, 57, and with the addition of Item 73.

5 MS. PORINI: I second.

6 MR. BUSTAMANTE: Does that take care of
7 all of it? Let the record show that the motion to
8 second passed unanimously. Executive officer's
9 report.

10 MR. THAYER: I wanted to draw several
11 matters to the commission's attention. At the June
12 meeting there was a proposal by Long Beach to engage
13 in a study on subsidence in the Naples area. At the
14 time the commission approved that proposal but
15 suggested that the city cost share that study. It
16 was unclear at that time whether the city would be
17 for it. And I have the pleasure of announcing that
18 the city has decided to accept the condition that the
19 commission imposed and that study therefore will
20 proceed. With a total of around \$150, the commission
21 staff will be working on this jointly with the city
22 to ensure that it's properly prepared. We expect the
23 study to be completed later --

24 MS. CONNELL: \$150?

25 MR. THAYER: I'm sorry. \$150,000.

26 MS. CONNELL: Zeros matter to me as the
27 chief financial officer.

28 MR. BUSTAMANTE: Is that better?

1 MS. CONNELL: At least we like to take
2 account of \$153,000.

3 MR. BUSTAMANTE: Any questions?

4 MR. THAYER: The second informational
5 item I wanted to report when the commission reviewed
6 the lease status report in September, this was the
7 report on the status of all of our oil and gas
8 leases. The commission requested that it receive
9 regular updates, and we provide information on the
10 Internet. I would like to say it has been placed on
11 the Internet as well as the press release showing the
12 commission's action in September to accept three
13 quitclaims which changed the numbers. That has been
14 put on the Internet as well. The consent calendar
15 that was adopted by the commission, there's the
16 quitclaim of another oil and gas lease. That will be
17 updated on the Internet as well. Unless there's any
18 questions, the next item I have is the amicus brief.
19 There was a lawsuit in Seattle which had the
20 potential -- it's going to the Supreme Court -- it
21 had the potential to severely limit the authority of
22 the Lands Commission to prevent oil spills in
23 California.

24 After consulting with your offices, the
25 attorney general filed an amicus on the state's
26 behalf and on the Lands Commission's behalf to try
27 and ensure that the ultimate Supreme Court decision
28 would protect our decision and our responsibilities

1 in this respect. I'd like to report that that now
2 has been filed and that, in fact, 27 states in all
3 join with California on this amicus. This amicus
4 showed great leadership on the part of the commission
5 in California. We had the Marianas join in as well.
6 My understanding is the Supreme Court will hear
7 arguments on this case next week. We'll let you know
8 what the results are.

9 I'd like to draw to the commission's
10 attention several awards that the commission and
11 staff have recently received. The first one is this
12 Orchid Award which actually went to the San Diego
13 Unified District. They have a local program out
14 there to give out orchids and onions.

15 MS. CONNELL: I'm glad you got the
16 orchid and not the onion.

17 MR. THAYER: The port district was
18 awarded because of the western salt project that the
19 commission heard earlier this year in which the port
20 bought out a lot of wetlands, and they'll be managed
21 by the Fish and Wildlife Service. What happened was
22 the port understood that this was a cooperative
23 effort and ensured we were received a copy of this.
24 They hoped that we would display this in our offices
25 as proudly as they display theirs. We appreciate the
26 relationship we have with the port, and we thank them
27 for making us part of this award too.

28 The second award I wanted to mention is

1 there's a BC oil spill task force. It involves the
2 West Coast states in the United States as well as
3 British Columbia. They had the first annual legacy
4 for oil prevention this year. They awarded an award
5 to the high velocity current study group. This group
6 was convened by our marine facility division to
7 address problems in high velocity water areas, area
8 where there are strong current and terminals. We had
9 occasional tankers that are trying to off and onload,
10 and that can cause oil wells. It consists of
11 governmental and industry representatives, and it
12 received this award for its work.

13 The final award I wanted to point out
14 is the NOA has an excellent award for coastal and
15 ocean research landmarks. They participated jointly
16 with the San Francisco Bay and Conversation and the
17 San Francisco Regional Water Quality Control Board in
18 establishing a one-stop permitting office depot in
19 San Francisco. It has the effect of diminishing the
20 processing time for dredging permits and at the same
21 time ensuring that these agencies are working
22 cooperatively. This Golden Hammer Award was
23 presented by Vice President Gore. NOA is recognizing
24 this effort as well as being for resource management.
25 I wanted to make sure the committee was aware of
26 these awards.

27 I think we're ready to move on to the
28 regular calendar. We're ready to move on to the

1 regular calendar then.

2 MS. CONNELL: May I comment at this
3 point that I want to thank staff for their effort on
4 the workshop today. I attended it very briefly. A
5 part of that Annette, I think, sat through most of
6 it. I thought it was an extraordinary effort by our
7 staff and amassed a great amount of input. I
8 suggested at the workshop that we continue that input
9 process and dialogue, and I certainly hope, Paul,
10 that you and others will carry that forward because I
11 think there's so much more to learn about what is a
12 truly complicated process. But I do think that they
13 did a good job, and I wanted to publicly acknowledge
14 that.

15 MR. BUSTAMANTE: Thank you. Item
16 No. 71.

17 MR. THAYER: Item 71, Mr. Chairman, is
18 an informational item. It does not require
19 commission action. We wanted to report to the
20 commission on the efforts your staff have undertaken
21 in response to the Y2K issue. There are two aspects
22 of that issue. The first one has to do with our
23 internal operations involving our own equipment
24 working closely with the Office of Information and
25 Technology. The commission has thoroughly reviewed
26 its own equipment and made various hardware and
27 software changes to ensure that Y2K will not be an
28 issue for this agency.

1 The second half and perhaps more
2 important half, look at what our lessees have done in
3 response to this issue, oil operating facilities have
4 done to respond to this issue. We've convened
5 several workshops inviting representatives, our
6 lessees, to come and talk about what they've done.
7 We've required our lessees to present to us
8 certification that they've taken the necessary steps
9 to prevent Y2K from becoming an issue on their leases
10 as well. That concludes my report.

11 MR. BUSTAMANTE: Any questions? If
12 there's no action necessary, we'll go on to Item
13 No. 72. We have in terms of requests to speak
14 approximately 22 requests. We are going to have to
15 limit the amount of time that the speakers will have
16 so that we might be able to get to not only the
17 reports as well as all the speaking that will take
18 place afterwards. So why don't you go ahead and
19 start on this side, Mr. Thayer, and then we'll see
20 how long it goes. And we'll determine the amount of
21 time for each of the speakers.

22 MR. THAYER: Mr. Chairman, this matter
23 will be presented by Jim Frey of our legal staff.

24 MR. FREY: We're requesting you to
25 accept an application for a relinquishment or
26 retrocession of partial legislative jurisdiction over
27 a portion about half of the Marine Corps Air Station
28 at El Toro. If you noticed on this display here, the

1 base covers all of the areas with both yellow and
2 green presently accounting on the green area and the
3 United States on the yellow area. And it is this
4 green area that they would like to make a
5 retrocession on. If you accept their application and
6 decide to accept the retrocession, then the United
7 States will only be able to enforce federal law over
8 that portion, and the county will take over the
9 responsibility for exercising civil and criminal law
10 over the entire base.

11 Supervisor Smith is here representing
12 Orange County. He is assisted by Jack Golden and
13 Michael Gatzke. The United States is represented by
14 Mr. Jack Wells, and I understand you've had some
15 questions and concerns about toxics and hazardous
16 substances on the base. So we've asked Mr. John
17 Scandura from the Department of Toxic Substances
18 Control to come and address you, and he is here today
19 and can answer your questions about that also. And I
20 believe the Navy has brought some people who can
21 address your questions.

22 MS. CONNELL: I think it would be
23 helpful to know if the commission was to vote at some
24 point to agree to the retrocession, does that not
25 just put this issue, as controversial as it may be,
26 back into the hands of the local elected officials to
27 handle?

28 MR. FREY: The controversy is over the

1 use of the facility as an airport --

2 MS. CONNELL: We're not determining the
3 use of the facility. When we vote on retrocession,
4 what we are doing as a commission is simply
5 transferring this issue back to the local
6 jurisdiction; is that not correct?

7 MR. FREY: You're transferring the law
8 enforcement authority back to the jurisdiction.

9 MS. CONNELL: And allowing them to have
10 an authority however they wish whatever it may be on
11 this partial sell of land.

12 MR. FREY: That's correct.

13 MS. CONNELL: I don't see how our
14 decision is controversial. Deal with retrocession
15 and allow the decision to be made at a local level.
16 Why would that be controversial for us? I see where
17 it might create controversial issues at the local
18 level. I served as the keynote speaker for the
19 National League of Cities, and I was informed by
20 people at their executive session that the key issue
21 they have with state governments is the constant
22 interference of state government in their lives in
23 the lives of financing and land use decisions.

24 It would seem to me that we are doing
25 exactly what the National League of Cities cautioned
26 me to do at lunch which is give the governments the
27 opportunity to make their own decisions. Is that not
28 what we're doing here?

1 MR. FREY: The retrocession would be to
2 give local government that responsibility.

3 MS. CONNELL: I'm sure speakers will
4 speak to that issue, but I can't understand why we
5 would not want to move our own process forward so
6 that others can engage in what is rightfully, I
7 think, a local issue here. I think there's strong
8 feelings on all sides, and I benefited from receiving
9 letters from people on both sides. And I think
10 that's a decision that should be openly debated but
11 hopefully at the local level.

12 MR. FREY: I finished my presentation.

13 MR. BUSTAMANTE: Do you have other
14 folks to --

15 MR. FREY: Would you like to hear from
16 Mr. Scandura?

17 MR. BUSTAMANTE: You didn't outline the
18 folks who are going to be speaking.

19 MR. FREY: We can proceed as you wish.

20 MS. CONNELL: I think I raised,
21 Mr. Chair, the toxics issue. I'm familiar from
22 having done some work in Orange County and San Diego
23 County and military bases, the problem that exists
24 with having live ammunition on some of these military
25 sites. And I was concerned from a liability
26 viewpoint that we are going to proceed forward at
27 some point with retrocession that we are certain that
28 the site is not toxic or that later it was found to

1 be toxic that it had a tragic situation in north San
2 Diego County within this last period of years in
3 which land was deeded back to the city. And it was
4 actually the county, and there was live ammunition
5 still remaining on that base. And children were
6 injured and got killed playing on that land.

7 I am just concerned that we have done
8 everything in our power to make sure that this land
9 is properly monitored for that --

10 MR. THAYER: I think we should,
11 therefore, to respond to that concern from the
12 representatives of the Department of Toxic Substances
13 Control, and I believe there's an explosive expert
14 here as well to respond to the ordnance issue.

15 MR. FREY: Should we proceed on that?
16 Mr. Scandura, would you join us, please. And then
17 maybe if the Navy would speak to this issue also
18 after Mr. Scandura finishes.

19 MR. SCANDURA: Thank you very much,
20 Mr. Chairman and commissioners. I do have a little
21 bit more extensive testimony. For the sake of time,
22 I'd like to narrow it down to strictly the toxics
23 issues. If I can give a brief overview of the toxic
24 situation including ordnance at the base.

25 MR. BUSTAMANTE: If you could expand
26 that to include any other toxics, I know in many
27 other military bases, there's a huge range of toxic
28 materials that are either left or are aggregated on

1 these facilities.

2 MR. SCANDURA: My name is John
3 Scandura, and I manage the Southern California office
4 of the facilities. The Department of Toxic
5 Substances Control is one of the two oversight
6 agencies involved in the cleanup of El Toro, Santa
7 Ana Regional Water Quality Control Board. And
8 together the two agencies are responsible for
9 ensuring that the environmental cleanup of the base
10 applies with the applicable laws and regulations and
11 that sound science and engineering is employed to
12 protect public health, environment, and resources.

13 A federal facilities agreement was
14 signed in 1990 with the U.S. Environmental Protection
15 Agency and the Department of the Navy and delineates
16 the roles and responsibilities of the regulatory
17 oversight agencies and permits the Navy to have
18 timely and enforceable cleanup schedules. And for
19 your reference I am furnishing handouts to summarize
20 contamination issues. That I did distribute to
21 staff.

22 Over the years the base in the
23 Department of the Navy has identified 830 locations
24 of concern, and these include 24 verified historical
25 contamination sites; 425 above and underground
26 storage tank locations of which two thirds actually
27 required cleanup; 124 PCB transformer areas; 200
28 waste management; 56 oil-water separators; and a

1 single area suspected to have unexploded organs.
2 When further investigated, most of these areas were
3 found to require no further action. Other areas have
4 had remedial action or action as planned. These
5 areas became contaminated as a result of military
6 operations and waste management practices during
7 nearly 50 years.

8 The contamination is a result of
9 standard operating practices and bases in civilian
10 airfields before the major environmental law. It's
11 really no better or worse than these other types of
12 locations.

13 Provided that Congress allocates
14 sufficient funding, the Navy plans to clean up all of
15 the contaminated sites so that the property can be
16 available for unrestricted land use. The exception
17 of that is four sites where landfills for development
18 for housing of schools would be prohibited. In your
19 handout there's a map that shows these sites, and
20 these sites are Nos. 2, 3, 5, and 17. They're all
21 landfills. The Navy has proposed to cap these
22 landfills, and the regulatory agencies are working
23 with the agencies to ensure that the capping is
24 effective and there are appropriate land use
25 restrictions.

26 There is groundwater contamination
27 beneath the base and off site. Most of it is solvent
28 associated. The Navy is actively considered to be a

1 source of the groundwater contamination. It is in
2 the final stages of negotiating with the local water
3 districts and joint remediation effort for the
4 groundwater contamination. There is purchase power
5 particularly near site 1 which I'll talk about in a
6 second. This is an ingredient of propellents for
7 rockets, missiles, and they have been found in the
8 groundwater near site 1.

9 MR. BUSTAMANTE: Going back to this
10 chart, am I reading this right that there are 13
11 superfund sites yet to be dealt with?

12 MR. SCANDURA: Either they're going
13 through the investigation phase, or they're actually
14 going through the public --

15 MR. BUSTAMANTE: We don't know in those
16 13 sites what kind of remediation we need.

17 MR. SCANDURA: There's a pretty good
18 idea of what it's going to be. There's a few where
19 they need to do a little better studies before we
20 come up with a cleanup.

21 MS. CONNELL: Is it the intention of
22 the federal government to remediate all these sites?

23 MR. SCANDURA: All these sites can be
24 remediated to land use. You can develop pretty much
25 whatever you want. The exception of those are
26 landfills. The problem with those four landfills, it
27 is expensive, plus there's health and safety
28 ramifications going in there removing and excavating

1 all the waste. What they plan on doing is capping
2 those landfills. Those landfills can be and those
3 being hospitals, offices, day care centers, and
4 schools. And two of those sites are actually in the
5 area. This green area up here in the northeast
6 corner at this time is scheduled to go to another
7 federal agency for part of a wildlife refuge. The
8 others are within the yellow area, and they're areas
9 that are plants for open space or golf courses.

10 There is one plant that does call for
11 site 5, some housing development on that. If that
12 reuse plan ever went through, they want to put houses
13 on that landfill, they would have to do the extensive
14 cleanup so they could have --

15 MR. BUSTAMANTE: That's 3 and 4, site 3
16 and 4?

17 MR. SCANDURA: Site 5.

18 MR. BUSTAMANTE: I don't see site 5
19 here. Here it is. So you're going to on
20 site 5, you're going to cap it because it's harmful
21 to people, and you're going to make it a wildlife
22 refuge?

23 MR. SCANDURA: Site 2 and 17 would be
24 part of the wildlife refuge.

25 MR. BUSTAMANTE: Site 2 and 17.

26 MR. SCANDURA: Sites 3 and 5, they
27 can't provide. There's capping and monitoring and
28 control systems to control landfill gases and

1 landfill leaching. They can't put on commercial or
2 industrial use or open space use for golf courses,
3 not the sensitive uses that I had mentioned.

4 MS. CONNELL: Is there any negative
5 impact from having landfills even if they are capped
6 adjacent to residential housing or hospitals or day
7 care centers?

8 MR. SCANDURA: If it's adjacent,
9 provided there are proper monitoring and control
10 systems in place such as gas extraction systems. So
11 any gas that comes up to the boundaries, those suck
12 up the gas before they move on to the adjacent
13 property where there's the sensitive land uses.
14 There has to be proper monitoring and operations and
15 maintenance.

16 MR. BUSTAMANTE: What about runoff?

17 MR. SCANDURA: Runoff is also control.
18 What they do with caps is design and engineer so it
19 runs into culverts and off the property, but in no
20 way does it percolate down into the landfill and
21 become part of the contamination. The other big
22 thing about the cap is not only does it prevent
23 runoff, but it prevents rainfall and filtration into
24 the landfill and ultimately to the ground.

25 MR. BUSTAMANTE: Are those people who
26 are going to buy homes in that area, are they given
27 notice that they're living near an area that has been
28 capped?

1 MR. SCANDURA: There are disclosure
2 laws both if you had a piece of property, residential
3 property, you have to disclose if you have a
4 hazardous waste or hazardous substance problems.
5 There are disclosure laws for any landfill sites. I
6 forget the exact distance. It's 1,000 or 2,000.

7 MS. CONNELL: Paul, may I ask a
8 question of you at this point? If you have a staff
9 recommendation here for retrocession, were we
10 expected to vote for all this land to go back, or
11 would you exclude these four properties? That
12 appeared not to be ready to be released by the
13 federal government?

14 MR. THAYER: The staff has investigated
15 because there have been some commission questions on
16 this score at the last meeting in September. Staff
17 has investigated whether or not the commission could
18 accept a portion of the land that the Navy would like
19 retrocession on, and we believe that legally the
20 commission can do that so that it could exclude areas
21 that it didn't wish to grant retrocession on today.
22 And so that would be a possible option. I suspect
23 that -- well, so that is an option that's available
24 for the commission.

25 MS. CONNELL: I would like to ask again
26 a timing question here, Mr. Chair. How long is it
27 going to take to get total retrocession -- I mean,
28 total remediation of all these properties, or is it

1 impossible in some cases?

2 MR. SCANDURA: The plan is that we
3 should have all the records and decision which
4 outline the cleanup actions for all the sites
5 including the 13 sites that the chairman mentioned
6 within the next two years as far as actually
7 finishing the actual remediation. All of the final
8 decisions for remediation should be done within the
9 next five years include capping of the landfills.
10 What would be afterwards is superfund sites,
11 long-term operations, and maintenance. That would be
12 for those four landfills.

13 At this time one thing I might mention
14 is that, when the base was first closed, one of the
15 things that the Navy had to do was assess or identify
16 the clean areas on the base. Back in 1995, they
17 identified, I believe it was 63 percent of the base
18 property as clean. The very latest figure now is
19 that 85 percent of the base property is clean enough
20 for either property transfer or lease.

21 MS. CONNELL: It's 85 percent now?

22 MR. SCANDURA: It's 85 percent.

23 MS. CONNELL: And that means that we
24 are getting a clean bill of health from the federal
25 government on this?

26 MR. SCANDURA: The federal government
27 and the state government.

28 MS. CONNELL: Because the California

1 State Department of Toxics has signed off on it.

2 MR. SCANDURA: That's correct. That
3 all came out of an environmental baseline survey.
4 Both our agency and the U.S. Environmental Protection
5 Agency reviewed current findings of those, and later
6 on the federal government proposed to release or sell
7 or transfer property. What they do have to do is run
8 findings of suitability to lease or findings of
9 suitability to transfer. They have to have our
10 agency and USEPA review on those findings before it
11 gets transferred.

12 MR. BUSTAMANTE: Once the retrocession
13 takes place, is the Navy and the federal government
14 relieved of their responsibilities for cleanup?

15 MR. SCANDURA: The Navy will stay on
16 the hook as far as their cleanup responsibilities.
17 They will continue to be out there performing the
18 investigation and the mediation and the state and
19 federal oversight agencies that seem to be involved.
20 We would not expect retrocession to have an impact
21 on this at all.

22 MS. CONNELL: Didn't you do this in
23 Northern California? Didn't you transfer a base up
24 there?

25 MR. SCANDURA: I believe George Air
26 Force Base. There was a similar problem there.

27 MS. CONNELL: There's still sites
28 remaining to be remediated in that base?

1 MR. SCANDURA: There's groundwater
2 contamination that still needs to be finalized.

3 MR. BUSTAMANTE: Any more?

4 MR. SCANDURA: There was mention about
5 an area where there might be some unexploded ordnance
6 explosives that Commissioner Connell mentioned. I'll
7 talk a little bit about that. This is what's called
8 site 1, and that is actually located up in the green
9 area. That's the only area -- that site is the only
10 area where we know there may be unexploded ordnances
11 or munitions. This site was used for the disposal of
12 the small munitions such as flares, small ordnances.
13 There's an area of waste contamination present. The
14 plans for this site have included incorporation into
15 a habitat conservation area, but there is also
16 consideration to have this site continue to operate
17 for use by federal and local enforcement agencies.
18 For this particular site --

19 MS. CONNELL: Does that mean you value
20 wildlife more than you do law enforcement? Law
21 enforcement can use the ordnance area but not
22 wildlife? Why would anyone be allowed to use it
23 until it's cleaned up?

24 MR. SCANDURA: Actually this is a site
25 that was a disposal site used by the Marines while it
26 was in operation. When closure was proposed, one of
27 the considerations was to go in there and clean up
28 that particular site, and that's what they intend to

1 do. And the plan was to turn that over as a wildlife
2 refuge or habitat conservation. We heard that they
3 may want to use that particular site, that particular
4 area for ordnance disposal, munitions disposal.

5 MS. CONNELL: It wouldn't be a training
6 ground. They would continue to pollute the property?

7 MR. SCANDURA: What we have told the
8 Navy as well as the others interested, they have to
9 go in there and clean up all the soil contamination
10 to very strict standards. There's also groundwater
11 contamination. I mentioned chlorines, that
12 by-product of explosives. That too would have to be
13 remediated. All of that would have to be cleaned up
14 first before they can reuse this. They would have to
15 go through a permitting process. They'd also have to
16 get a hazardous waste facility permit and air quality
17 permits from A.Q.M.D. There may be other agencies to
18 get permits from. There's a lot of considerations
19 before they can reuse that as an ordnance range.

20 MS. CONNELL: We don't need to worry
21 about that because that is not part of the property
22 we are addressing today?

23 MR. SCANDURA: Yes.

24 MS. CONNELL: Thank you.

25 MR. BUSTAMANTE: You said you had the
26 chairman of the board of supervisors here?

27 MR. SMITH: I'm Chuck Smith, and I'm
28 chairman of the Orange County Board of Supervisors.

1 I'm urging you to vote yes on the registration
2 jurisdiction of El Toro. In October 1998, the Orange
3 County Board of Supervisors voted unanimously to
4 support the Navy's application for retrocession. All
5 five members, despite differing degrees of ideas
6 about how the base was to ultimately be used, agree
7 that the public's interest and the public safety will
8 best be served by retrocession approved by your
9 commission. This action is vital for public safety
10 on the base. The military presence at El Toro has
11 essentially ended. The primary activities require
12 base civilian residents of the county.

13 Facilities such as the base child
14 development center, the golf course, and the officers
15 club are now used by the public by interim lease
16 agreement with the Navy. From a practical realistic
17 point of view, local law enforcement is equipped to
18 handle public safety on the base. Without
19 retrocession, state and county law enforcement is
20 hampered. Orange County Sheriff Mike Corona, who is
21 represented here today by Assistant Sheriff Rocky
22 Hewitt and a few other sheriffs has written to you,
23 and the letter should be in your packet in support of
24 the recommended action. And it urges your support of
25 this item.

26 Retrocession will enable the Orange
27 County Sheriff's Department to maintain good order on
28 the base as a frontline law enforcement agency with

1 community policing as its primary responsibility.
2 The current public safety requirements have
3 arrangements which rely on federal officers focused
4 on white collar crime is not for expanding civilian
5 use and not favored by other law enforcement
6 agencies. The bottom line is that technically the
7 agency, though, they have a presence on the base and
8 are not authorized to make arrests and bring people
9 into state court for violations of the law. They
10 have to follow the federal marshals and take them
11 into federal court.

12 In summary, your staff report notes
13 today's recommended localizing law enforcement and
14 MCAS El Toro. This has no bearing on the reuse plan,
15 and it has no bearing on the toxic cleanup on the
16 base. So I respectfully request on behalf of the
17 people of Orange County, on behalf of the entire
18 board of supervisors, and Sheriff Mike Corona that
19 you vote in favor of this retrocession and that you
20 allow the sheriff's department to take over law
21 enforcement on the base.

22 With that I'd be pleased to answer any
23 questions you might have on this, and we do have as I
24 noted before, we have Assistant Sheriff Rocky Hewitt
25 here to answer any questions that you might have on
26 law enforcement. And we also have a program manager,
27 Mike Lapin, here and our legal adviser Mike Gatzke.

28 MR. BUSTAMANTE: Is there any other

1 formal presentations, Paul, on the agenda?

2 MR. THAYER: No, sir.

3 MS. CONNELL: I have a question of
4 Supervisor Smith. Supervisor, do you want us to
5 actually take action that would encompass all of
6 these areas even though they don't appear to be
7 remediated yet, or would you prefer that we transfer
8 back the 85 percent which appears to be remediated?
9 I'm concerned about the exposure.

10 MR. SMITH: As far as law enforcement
11 is concerned, I would assume retrocession has the
12 jurisdiction of the entire base. If you want to hold
13 back the areas to be remediated, you could do that.
14 The only problem I would see there is the sheriffs
15 may not have the legal ability to make an arrest on
16 those toxic areas if they get trespassers. They
17 would have to detain the person and call in the
18 federal law enforcement agencies to make the arrest.
19 That would be the only problem. But all it does is
20 it gives the sheriffs control, legal control of
21 people who commit crimes on the base or are
22 trespassing.

23 MS. CONNELL: I understand your law
24 enforcement issue. I just don't want you to be hung
25 with the exposure that kind of liability might
26 represent to you, and I'm trying to protect you
27 against that kind of liability.

28 MR. SMITH: I understand that, but it

1 really doesn't make any difference. We're protected
2 by existing laws as part of the Navy's and the
3 Marines's cleanup is concerned, and we have the state
4 Environmental Protection Agency and the national
5 environmental laws to help us there. And we cannot
6 accept deep transfer either. We can't accept
7 ownership of the base which eventually we attempt to
8 do until that toxic cleanup is satisfactorily
9 completed.

10 MS. CONNELL: Thank you.

11 MR. BUSTAMANTE: There's no other
12 formal presentation. We'll go to those folks who are
13 here to speak. We have now about 22 folks who'd like
14 to speak. We're going to limit the remarks to one
15 minute so we can try to get through them. We'll try
16 to go in as much of an order as possible in support
17 and oppose alternating. I'm going to give the first
18 two, and then please move quickly to the microphone.
19 The first person is Chuck Smith, who is speaking in
20 support.

21 MR. THAYER: He just spoke.

22 MR. BUSTAMANTE: Michael Lapin in
23 support and John Scandura.

24 MR. THAYER: Just spoke.

25 MR. BUSTAMANTE: Just spoke. Allan
26 Songstad in opposition.

27 MR. LAPIN: My name is Michael Lapin.
28 I am program manager for the Orange County El Toro

1 Reuse Program office. I had indicated that I would
2 be available to speak in response to any questions
3 that you may have, and I only have at this point one
4 item that I feel by your conversation and discussions
5 that needs to be emphasized. This request for
6 retrocession, retrocession itself does not involve
7 the conveyance of any interest. Retrocession is a
8 legal principle which will probably be explained by
9 other speakers, but it has solely to do with who
10 exercises legal jurisdiction on the base. It has
11 nothing to do with transfer of ownership to the land
12 by the county or state or environmental
13 responsibilities. Those responsibilities will stay
14 intact as they are for retrocession. Retrocession is
15 merely a device which will enable jurisdiction to
16 pass to where it should be.

17 MR. BUSTAMANTE: Ten seconds.

18 MR. LAPIN: That is the issue before
19 the commission today. If you have any more
20 questions, I'll be available to answer.

21 MR. BUSTAMANTE: Why don't we hold --
22 I'm going to go ahead. If you have a question, we
23 can. Allan Songstad.

24 MR. SONGSTAD: Mr. Chairman, members of
25 the State Lands Commission, I'm Allan Songstad. I'm
26 vice chair of the El Toro reuse plant authority. I'm
27 also a city councilmember in the city of Laguna
28 Hills. I'm here to urge you to consider the report

1 of facts as part of your consideration. I don't have
2 very much time here, but we would like to point out
3 as you know this is a very, very contentious issue in
4 Orange County. The entire process of the county
5 government has been called into question, and despite
6 Chairman Smith's remarks almost everything to do with
7 this airport is negative votes being the people who
8 are most supervised.

9 These communities are affected by the
10 airport. There are a number of actions that are
11 about to take place that we believe, facts for this
12 commission to consider because we believe as our
13 legal counsel will explain in a minute, this process
14 insofar as it relates to the airport, there are
15 interim leases that are certainly subject to the CEQA
16 process --

17 MR. BUSTAMANTE: Ten seconds.

18 MR. SONGSTAD: Those actions are judged
19 to be doing the supplemental E.I.R. which has been
20 supplemented by the county. The Navy and the
21 department is preparing for the process of preparing
22 an E.I.R. The city of Irvine has released an E.I.R.,
23 and there is a local ballot measure.

24 MR. BUSTAMANTE: Your time's up. I
25 think that in order for us to be able to get through
26 this, we're going to have to not have all the
27 introductory remarks. I think you have to get right
28 to what you're going to say. We have quite a few

1 people to speak. If you have a person who's going to
2 come up and speak on some legal points, you might as
3 well not introduce them. You might as well save your
4 time and talk about what you're going to say. And if
5 you'd like to submit any of the more detailed
6 information for the record, we'd be more than happy
7 to accept it.

8 MR. SONGSTAD: My remarks are in
9 writing. We will submit them.

10 MR. BUSTAMANTE: Mr. Tom Wall. And
11 after Mr. Wall, Ms. Mimi Walters. And then after
12 that Peggy Ducey and then Michael Brown.

13 MR. WALL: My name is Tom Wall. I used
14 to teach the base closure process in the Pentagon.
15 I'm a past Orange County lands commissioner. I spent
16 12 years on the commission. I know the dilemma you
17 face because there is a controversial issue. I urge
18 you to stick to the issue at hand today, and that is
19 retrocession. As has been stated, the only people
20 who will suffer if we do not transfer authority for
21 civil and criminal actions on the base are those
22 people who are using the base, the residents of
23 Orange County who now participate in activities like
24 the officers club, the golf course, the stables, and
25 the recreational facility. Those people do not have
26 the benefit of law enforcement on the base until you
27 transfer that jurisdiction. It will happen anyway.

28 Your staff report was completely

1 accurate in that this issue does not deal with
2 anything but the transfer of that liability. It has
3 nothing to do with toxic cleanup which will be the
4 responsibility of the federal government. It has
5 nothing to do with other issues which are peripheral
6 to the controversy that exists in Orange County. I
7 urge you to consider retrocession favorably today.
8 Thank you.

9 MR. BUSTAMANTE: Thank you, sir.

10 MS. WALTERS: I'm Mimi Walters. I'm on
11 the planning authority board and mayor pro tem for
12 the City of Laguna Niguel, and I'm opposed to the
13 airport. I'm here to address critical issues
14 relative to the item before you at this time. First,
15 in December 1996, the County of Orange certified the
16 E.I.R. No. 1063 as a result of a court challenge.
17 The Superior Court of San Diego invalidated the
18 E.I.R. and ordered several revisions. That has not
19 been CEQA. In other words, there is no valid E.I.R.
20 for the base property at this time. Major
21 contaminations issues have been found in surface and
22 subsurface soils. There is groundwater. There is a
23 possibility there is radionuclear contamination
24 throughout the base.

25 Several state agencies have raised
26 major concerns and questions regarding the base
27 contamination. None of these agencies whose purpose
28 is to ensure public health, safety, and welfare from

1 environment and public health perspectives --

2 MR. BUSTAMANTE: Ten seconds.

3 MS. WALTERS: -- comprising of over a
4 million people have issues related to the potential
5 impacts of the property. These issues have not been
6 addressed and remain outstanding today. The
7 Department of Navy offered approximately a thousand
8 acres of prime habitat area to the Department of the
9 Interior. However, the DOI has refused to accept
10 jurisdiction over major concerns regarding
11 contamination of the potential risk for the liability
12 of the Department of the Interior.

13 MR. BUSTAMANTE: Your time's up.

14 MS. CONNELL: I have a question for
15 Ms. Walters if I may. Even assuming that we agreed
16 with all of your concerns, why wouldn't we let you
17 address them at the local level? Why would you want
18 us to withhold retrocession? Why shouldn't you begin
19 addressing those issues at the local level?

20 MS. WALTERS: We are concerned if you
21 transfer over the retrocession issue, the concern of
22 the toxics in the county would take on that
23 liability, and we as taxpayers in Orange County are
24 very concerned about that liability.

25 MS. CONNELL: Your county supervisors
26 told us they don't have a problem.

27 MS. WALTERS: He's not the supervisor
28 that represents us. Jerry Mitch does have that

1 concern. I as a resident have a concern. Thank you.

2 MS. DUCEY: Peggy Ducey, Orange County
3 Regional Airport Authority. The Regional Airport
4 Authority is composed of 15 Orange County cities that
5 are urging you to support this application for
6 retrocession. We're doing it on the basis of we feel
7 it's good public policy not only from a public safety
8 perspective but an economic perspective. The county
9 to use that base completely, the full use of its
10 resources will generate ultimately and can defray the
11 cost of maintaining that base. We urge you to
12 approve that.

13 MR. BUSTAMANTE: Did Michael Brown come
14 up?

15 MR. BROWN: My name is Michael Brown,
16 and I'm working with the City of Irvine as a
17 consultant working on the cleanup of the
18 environmental contamination of the El Toro base. I'd
19 like to address several aspects of base cleanup
20 postpone your decision not because of the pieces that
21 Mr. Scandura talked about which are being conducted
22 but because there are some outstanding questions.
23 I'd like to highlight a couple of them in a brief
24 minute. First off for about 15 years, the Marines
25 ran a radium point room to radium dials on the
26 aircraft. That room was dismantled and distributed
27 somewhere on that base. It is unknown where the
28 debris was put from that demolition. Because it's

1 unknown, there is going to be a radiological survey
2 done. That survey is expected to be completed in
3 spring 2001. Until it is complete, there may be
4 areas of significant radiological contamination that
5 are unknown and raise significant risks for human
6 health.

7 MR. BUSTAMANTE: Ten seconds.

8 MR. BROWN: We're waiting until the
9 completion of the survey work to determine, if any,
10 of them by contamination are germane to your decision
11 about retrocession. Thank you very much.

12 MR. BUSTAMANTE: Thank you. We have
13 Jack Golden speaking. Jack Golden, Jeffrey Metzger,
14 Michael Gatzke, and Charles Bennett.

15 MR. GOLDEN: Jack Golden, deputy county
16 counsel for the County of Orange. I direct you to
17 the letter of Richard C. Jacobs, attorney.
18 Commission was sent one on December 1, 1999.
19 Mr. Jacobs's letter is well written, reads well,
20 and sounds very convincing. But it's based on two
21 incorrect factual predicates. The first is that the
22 letter is written as if the County of Orange is
23 asking for retrocession so it can institute air
24 cargo. The real fact is the Department of Navy is
25 asking for retrocession so it can see law enforcement
26 responsibility and prior responsibility back to local
27 agencies.

28 The second incorrect factual predicate

1 of the letter is no civilian activities will be
2 allowed until retrocession is done. That is a former
3 Navy policy that has been abandoned as to whether or
4 not they will prove it while they retain ownership of
5 the property. Further environmental laws will have
6 to be complied with on a federal and state level. So
7 we do encourage retrocession today. Thank you.

8 MR. BUSTAMANTE: Thank you, sir.
9 Jeffrey Metzger, Michael Gatzke, Charles Bennett.

10 MR. METZGER: My name is Jeff Metzger.
11 I'm chairman of the Citizens for Safe and Healthy
12 Communities, a grassroots citizen group in Orange
13 County which has fueled an initiative entitled the
14 Safe and Healthy Communities Initiative on the March
15 ballot. This initiative will require that the
16 construction or expansion of airports, jails, or
17 toxic dumps must be approved by a two thirds pass by
18 the county voters. This initiative qualified 192,000
19 signatures, most accomplished exclusively by
20 volunteers. We would request in three months that
21 approving retrocession will create the appearance
22 that this commission has chosen to decide this
23 emotional debate.

24 As Commissioner Jacobs has pointed out
25 in his letter to you, we believe Orange County's
26 purpose of being here is to attempt to begin flying
27 cargo in and out of El Toro. The main reason for our
28 initiative, however, is to determine who gets to make

1 the decision on whether the jail or standard airport
2 or toxic dumps. Approving retrocession at this
3 time --

4 MR. BUSTAMANTE: Ten seconds.

5 MR. METZGER: It will interfere for the
6 right which the Orange County voters will be entitled
7 to passage of this initiative. This will be so
8 because the commission will be seen providing
9 indirectly the County of Orange the essential ability
10 to conduct aviation activities before the people have
11 their say.

12 MS. CONNELL: The same question to the
13 speaker. I applaud the grassroots effort that is
14 going on here, but I do not understand why you would
15 not want us to put this back at the local level and
16 allow the dialogue and the debate to continue. If
17 you have the initiative on the ballot in March, I
18 think you should be focused on trying to get the
19 initiative passed so that you can make your concerns
20 clear to the county board of supervisors. I don't
21 understand why you want to delay a discussion of this
22 at the local level. It's obvious you're all
23 discussing at the local level. The retrocession if
24 it was to be taken today would simply give you that
25 opportunity to continue the dialogue. We're not
26 directing you to do one thing or the other, the
27 decision to build an airport or not build an airport.
28 The decision to build a national habitat is yours.

1 It should be yours just as it is in Northern
2 California, just as it is across the country. The
3 retrocession does not reflect any posture --

4 MR. METZGER: We're concerned --

5 MS. CONNELL: I think you should be
6 concerned about the politics of whether you have the
7 votes that the Orange County Board of Supervisors
8 votes with the people of Orange County.

9 MR. METZGER: We're certainly concerned
10 with that.

11 MR. GATZKE: My name is Michael Gatzke.
12 I'll be very brief. I know the record on this matter
13 is voluminous. The reality is that the sole issue
14 that is being presented to this commission under the
15 laws of the state of California on the matters under
16 your jurisdiction or whether or not it's in the best
17 interests of the state of California that the laws of
18 the state of California should apply to activities
19 that occur on approximately 2,000 acres of land
20 that's located in a part of one of the most populous
21 urban counties in the state of California.

22 The answer to that question is obvious.
23 Of course, it's in the interests of the state of
24 California to be able to apply its criminal and civil
25 laws to actual activities that occur on the land
26 within the state of California. I think the fact
27 that neither the record or the issues that are being
28 raised by those speaking in opposition ever addressed

1 that simple fundamental question is an indication of
2 the fact that they are trying to revert this issue.
3 The tactic clearly is change the issue. Change the
4 question. The questions before this commission is
5 simple defined by statute. The staff has summarized
6 it accurately in the staff report --

7 MR. BUSTAMANTE: Ten seconds.

8 MR. GATZKE: -- would urge you to
9 follow the staff's recommendation.

10 MR. BUSTAMANTE: Thank you.

11 MR. BENNETT: Charles Bennett. I'm
12 with RAB, a citizens' group regarding the El Toro
13 closure. This point of retrocession may be a very
14 serious issue if, after the process of retrocession
15 is allowed, the county then goes ahead and does a
16 transfer of land with the federal government. My
17 desire is to protect the state from having another
18 valve. As an environmental chemist, I'm aware of the
19 issues associated with El Toro, and my concerns have
20 to do with the 85 transfers going to go ahead. One
21 of them is building 296 on the southern portion of
22 the base. Waste from that plant was sent to the
23 sewage treatment plant, and from there the waste
24 water effluent went to water the golf course.

25 From that you can see that the
26 distribution of radioactive material could have gone
27 to many places on the base. It is currently being
28 worked on by the agency, but it won't be ready or

1 complete for at least 12 months. I would urge the
2 commission not to urge retrocession at this time and
3 wait until a more appropriate time. I would like to
4 prevent the state from incurring liability in the
5 future.

6 MS. CONNELL: It's an issue as I
7 referred to before, and I would like to know whether
8 or not you think the state has any liability for the
9 remediation activity or whether this is federal
10 remediation responsibility.

11 MR. EAGAN: There's no implications
12 regarding liability in connection with the action
13 that this commission is being asked to take today
14 which is to approve the retrocession. Whatever other
15 involvement the state may have had over the years,
16 I'm not aware of that. In terms of the action here
17 today, that's a liability neutral.

18 MR. BUSTAMANTE: Mr. Wells, Marcia
19 Rudolph, Mike Stevens.

20 MR. WELLS: My name is Jack Wells, and
21 I'm for the Navy base closure in San Diego. I think
22 all of the things that I wanted to cover have almost
23 been covered by other people. I did want to make one
24 point, though, and I think the attorney general
25 pretty much made it for me a moment ago. The
26 Department of Defense is required prior to the time
27 that it disposes of property by deed to warrant that
28 all of the remedial action has been taken and also to

1 warrant that in the event that further environmental
2 remedial work needs to be done that the Department of
3 Defense will come back and do it. We clearly have an
4 obligation to do these things, and neither the state
5 nor the county is going to incur any liability as a
6 result of retrocession.

7 I also wanted to remind the members of
8 the commission that not too long ago, perhaps
9 two-and-a-half years ago, the matter of retrocession
10 involving Long Beach Naval Station and Long Beach
11 Naval Shipyard was before you. There was a great
12 deal of environmental cleanup that remained to be
13 done and still remains to be done today at the time
14 that the commission acted favorably upon the request
15 for retrocession. I would just ask that the
16 commission take action in accordance with the staff's
17 recommendation and that it take an action that's
18 consistent with other actions that's taken in the
19 state in connection with retrocession of other base
20 closures. Thank you.

21 MR. BUSTAMANTE: Thank you, Mr. Wells.
22 Rudolph? Marcia Rudolph.

23 MS. RUDOLPH: Good afternoon. I'm
24 Marcia Rudolph, councilmember of the city of Lake
25 Forest and more importantly a founding member and
26 continuing member of the Restoration Advisory Board
27 for MCAS El Toro. I was community co-chair for two
28 years. The concern that I have is one that I'm sure

1 you're addressing, and that is the fact that you're
2 mandated to make sure that the state doesn't get us
3 into some kind of environmental mess. I can tell you
4 when I got involved with the rep, I thought the Navy
5 walked on water.

6 We have had too many errors and
7 omissions and slicing and dicing of sites where they
8 look for TCE here and on this side they look for TPH
9 and they don't seem to think TPH. We have which was
10 not an issue until Dr. Bennett and I put radium 226
11 dials on one of the landfills. The issues are too
12 strong and too many for retrocession to take place at
13 this time. I believe it is the wrong time to do it.
14 Let us wait until we have a completed site
15 investigation by the Department of the Navy which
16 they are promising us and we have an oversight of
17 USEPA doing their full investigation and their full
18 oversight of what is happening.

19 And frankly the environmental risk here
20 is to provide retrocession so the County of Orange
21 and I as a citizen of the County of Orange pay for
22 what they very well may sign off on and take
23 liability for. The state ends up being the deep
24 pocket in that issue. So please not today. Thank
25 you.

26 MS. CONNELL: Are we in danger of being
27 a deep pocket here?

28 MR. EAGAN: No.

1 MS. CONNELL: The answer is what?

2 MR. EAGAN: No.

3 MS. RUDOLPH: Sorry. I don't agree.

4 MR. BUSTAMANTE: Just to correct you on
5 one item, we don't have the need to be concerned
6 about the environmental consequences of our actions
7 today. But I believe I have an ethical
8 responsibility to review those environmental issues
9 until I can feel secure that we are not passing along
10 an environmental disaster. Although I'm not required
11 to, I believe it's my responsibility to.

12 MS. RUDOLPH: And I really appreciate
13 the situation you're in. As somebody who's been
14 looking at this base for five years, I'm really
15 concerned, and I hope that you can set this aside for
16 three to six months until we have some more answers.
17 Thank you.

18 MR. STEVENS: My name is Mike Stevens
19 from L.A. Expansion South Central Los Angeles and
20 Inglewood-Lennox, the working class. What you have
21 here today is a group of people who are pretty much
22 what the issue here is this. And I hope you'll vote
23 yes for retrocession to the county. The reason is
24 this. LAX, we carry the burden of these elite people
25 who are here today. We don't have high-priced
26 attorneys that are here today. Lake Forest, Mission
27 Viejo, Rancho Santa Margarita. This issue of El Toro
28 is what this is all about. They voted for it not

1 once, but they voted for it twice. The people of
2 Orange County did. But an elite group which is here
3 today has asked you not to vote for retrocession
4 because they don't want it to go to the county.

5 What will happen is this area here that
6 does not have one school, one school -- the dots
7 represent schools inside the north contour. They're
8 not even impacted, not one school. Even if they want
9 to say there's a private one, they're not in the
10 north contour. Take a look at my neighborhood. Take
11 a look at the working class what they have to deal
12 with. Over 40 schools within that flight contour
13 with thousands of people. What's on your table right
14 now is this. We ask you, the working class --

15 MR. BUSTAMANTE: Ten seconds.

16 MR. STEVENS: -- to vote yes for the
17 retrocession so the county can put an airport so
18 Orange County can carry their fair share. One
19 minute.

20 MR. BUSTAMANTE: Done.

21 MR. STEVENS: Thank you, sir.

22 MR. BUSTAMANTE: I gave you an extra 30
23 seconds. You were all wound up. Thank you, sir.

24 MS. CONNELL: I think that was the most
25 extraordinary amount of information in a limited
26 time. They should use you for scripting 30-second
27 commercials. Very well done.

28 MR. BUSTAMANTE: We're obviously going

1 generally over the one minute in many cases but
2 Mr. Jacobs, Hanna Hill, Charles Bennett.

3 MR. JACOBS: Richard Jacobs. I wanted
4 to make sure that my December 1 letter is part of the
5 record, and I have additional copies for you. You
6 know from your staff report that Orange County leased
7 several parcels from the federal government so that
8 the public could use existing facilities at El Toro
9 that operated when the base was operational the
10 stables, the officers club, golf courses. But as you
11 can see from this map, the retrocession is much, much
12 broader than those parcels of land.

13 Supervisor Smith told you it is
14 necessary to add civilian jurisdiction over those
15 parcels. This map demonstrates that this request is
16 much, much broader than that purpose. There's no
17 need to have state jurisdiction over the airfield for
18 the purposes advanced Mr. Smith. That's the reason
19 for this application, and I suggest to you the answer
20 is that this is a major step towards the interim air
21 cargo operations that the county has planned for
22 years. This is the first step to facilitate that
23 operation. That's what it is about. This is proper
24 independent obligations.

25 MR. BUSTAMANTE: Ten seconds.

26 MR. JACOBS: If I could, there's two
27 errors I think in the staff report that I think is
28 essential.

1 MR. BUSTAMANTE: You'd better make them
2 very quick.

3 MR. JACOBS: It's appropriate to accept
4 retrocession where military operations have seized
5 and closed military installation has been converted
6 to civilian use under leasing or under arrangements.
7 That's not correct. The central airfield has not --

8 MR. BUSTAMANTE: Paul, you want to
9 address that?

10 MR. THAYER: I think the reference in
11 the staff report is to the other interim uses that
12 Mr. Jacobs described around the airfield.

13 MR. JACOBS: This retrocession
14 application is far too broad. It's unnecessary to
15 clear the entire airfield as part of that, and I
16 would make the same comment with regard to the very
17 last sentence in the staff report that says now that
18 the entire 2,319 acres have been subjected to
19 civilian operation control, retrocession is
20 appropriate. Again, that's not true.

21 MR. BUSTAMANTE: Would you like to --

22 MR. THAYER: I think Mr. Eagan has a
23 comment.

24 MR. EAGAN: The purpose of the staff
25 involvement with staff in its drafting was to say
26 what is said on page 2 that the Navy -- actually
27 Marine Corps is no longer there and ceased being
28 operational on July 2. It's true that some of the

1 activity on the base is passive. It's primarily the
2 least active ongoing activities, but that doesn't
3 mean that the airstrip is any less maintained by
4 authority of the county cooperative agreement
5 regarding base caretaking with the Navy.

6 MR. BUSTAMANTE: One last counterpoint.

7 MR. JACOBS: I think the point I would
8 make is that, if as Supervisor Smith said
9 retrocession is appropriate to provide jurisdiction
10 over the parcels that leads to this much too broad.
11 It goes much further than that.

12 MS. CONNELL: You would agree with
13 releasing, say, the 85 percent which has been
14 cleared?

15 MR. JACOBS: I couldn't make that
16 commitment without talking to my client, but I'm not
17 referring to the 85 percent application issue. I'm
18 referring now to the small number of parcels and the
19 acreage over which there are actually civilian
20 operations as compared to the actual airfield. I
21 think the airfield was probably 95 percent of this
22 whole retrocession request. If I could, I also have
23 one more map from the federal application which I
24 think demonstrates that even a bit more clearly. The
25 map I just handed to staff is from the federal
26 government's application, and I think it quite
27 dramatically shows that really what we're talking
28 about here is the heart of the base, the airfield

1 operations.

2 MS. CONNELL: You would basically --
3 may I see if I understand this? I'm not sure I
4 understand this. We have so many different maps here
5 today, and maybe the commission is not operating.
6 Keep that one up for just a minute. You would
7 basically say this area is the area that you are part
8 of the issue you want to see (indicating)? Which
9 part of it are you saying?

10 MR. JACOBS: What I'm suggesting is
11 this whole area of the runway former military
12 airfield, that's unnecessary because none of those
13 parts are leased to the County of Orange.

14 MS. CONNELL: You would have a problem,
15 or you would not have a problem?

16 MR. JACOBS: We do have a problem
17 absolutely. The other map here shows where the
18 parcels are. For example, you see "rec" on this map.
19 Those are all parcels in the perimeter of the
20 airfield, and the major part of the airfield is not
21 necessary to provide civility.

22 MS. CONNELL: Mr. Chair, do we have the
23 added law enforcement still here from Orange County?
24 Wasn't somebody here from Orange County?

25 MS. PORINI: I believe the sheriff is
26 here.

27 MS. CONNELL: I'd like to have a
28 response to that comment.

1 MR. BUSTAMANTE: The comment was?

2 MS. CONNELL: You don't need an airport
3 to provide civilian jurisdiction. I'm not sure how
4 you get to those areas. I don't know the
5 transportation routes for that area.

6 MR. SMITH: Chuck Smith, chairman of
7 the Orange County Board of Supervisors. They're
8 suggesting that the airstrip itself not be allowed
9 into jurisdiction, but currently the Navy hobbyists
10 use those airfields to use their model airplanes. So
11 the county or the law enforcement is present on the
12 base, and they should be able to handle law
13 enforcement on the airstrip as well as outside the
14 airstrip. If I can pose a hypothetical case where
15 supposing a bunch of kids took their hot rod to the
16 air base without retrocession of jurisdiction, our
17 sheriffs will not have the power to stop them to ask
18 them to detain them.

19 MR. BUSTAMANTE: For the reporters
20 please don't give that as an example in the story.

21 MS. CONNELL: Cruz and I are parents of
22 young children, and we were thinking this would be an
23 attractive weekend adventure. We don't want to
24 encourage thoughts along that line if there's still
25 live ammunition out there.

26 MR. SMITH: There are other entities,
27 the one that used the airstrip for various for
28 parking for events and various activities nonrelated.

1 MR. BUSTAMANTE: Hanna Hill, Charles
2 Bennett, Tristan Krogius.

3 MS. HILL: Hanna Hill of Orange County.
4 I represent no one. Ms. Connell, you are correct
5 that local issues should be determined at local
6 levels. Staff also is correct that retrocession does
7 not imply a specific activity. However, the
8 situation of Orange County is different. Had it not
9 been for the jurisdiction, there would have been
10 interim cargo operation last July leading to full
11 operation.

12 Ms. Connell, you offered before to
13 protect the county by keeping 15 percent out of
14 retrocession, and we need the protection of this
15 commission. Five years ago, exactly five years ago,
16 this county declared bankruptcy, the worst in the
17 history of the nation. We believe there is an
18 airport in there is not enough demand to have all of
19 the operation to support revenue bonds. We already
20 have. John Wayne Airport had \$200 in revenue bonds.
21 So yes, we do need to determine it on local level
22 with or without a retrocession, but to act now, we
23 need the protection of this commission. The taxpayer
24 of this county need the protection. Thank you.

25 MR. BENNETT: Charles Bennett. I have
26 already spoken, but I would be glad to add ten
27 seconds about it if you'd let me.

28 MR. KROGIUS: Tristan Krogius. I'm

1 with Taxpayers for Responsible Planning, T.R.P., a
2 grassroots political organization headquartered in
3 Orange County devoted to responsible land use
4 decisions. I'd like to just address the question of
5 why should the retrocession decision not be pushed
6 down to the local level. My answer is that the base
7 reuse process in Orange County has essentially been
8 hijacked by the special interests. The law specified
9 that base reuse decisions should be made by the
10 affected communities, but we have an airport being
11 mandated by a three to two majority of the Board of
12 Supervisors acting as the LRA which does not
13 represent the best interests of the community
14 adjacent to the base who should be making the base
15 reuse decisions. For all reasons set forth in the
16 letter of February 2, T.R.P. strongly urges this
17 commission not to approve retrocession. Thank you.

18 MS. CONNELL: I have a question,
19 Mr. Chair.

20 Are you suggesting we never approve
21 retrocession ever?

22 MR. KROGIUS: Not at this time.

23 MS. CONNELL: That's different from
24 what you just said.

25 MR. KROGIUS: I'm trying to condense my
26 reports.

27 MS. CONNELL: You have no time period
28 in which you expect this commission to act? We're

1 going to sit here and hijack the decision?

2 MR. KROGIUS: As set forth in the
3 letter, we think retrocession should take place at
4 the appropriate time but not now.

5 MR. BUSTAMANTE: Kate Keena. And last
6 but not least Deborah Acker. Did I miss anybody
7 besides that?

8 MR. GRIFFIN: Charles Griffin.

9 MR. BUSTAMANTE: You'll go last then,
10 sir.

11 MS. KEENA: Kate Keena, South Orange
12 County Chamber of Commerce, the largest business
13 organization in south Orange County. I respectfully
14 request as Mr. Krogus requested to postpone your
15 decision until there is more information. It is
16 extremely controversial. It is three to two as far
17 as the Board of Supervisors is concerned. As a
18 business community request, we ask that you postpone
19 your decision until at least after March 7. Thank
20 you.

21 MR. BUSTAMANTE: Thank you. Deborah
22 Acker.

23 MS. ACKER: Deborah Acker from Ontario,
24 California. I have been retained to do some aviation
25 marketing at Ontario International Airport, and I
26 would like to note that we are working very hard to
27 develop Ontario's airport to a greater air cargo
28 capacity. And it is my understanding that, if this

1 retrocession takes place, a first of the year air
2 cargo could be processed in El Toro. Immediately
3 they would have to move out of Orange County. We are
4 doing a lot of work, and it's come to our attention
5 that L.A. has not been marketing air cargo.

6 I was in a conference that had no
7 information about Ontario. Ontario's trying to get a
8 route to China. We are the U.P.S.'s second largest
9 air facility in the world, their gateway to the Asian
10 Pacific. This would hamper job growth to the city
11 equivalent to the size of Chicago. What will happen
12 is that the jobs will be in Ontario. The Inland
13 Empire residents would have to commute, and this is
14 taking jobs from our community and putting them in an
15 Orange County where there's already a job surplus.
16 Thank you.

17 MR. BUSTAMANTE: Mr. Griffin, the last
18 speaker.

19 MR. GRIFFIN: My name is Charles
20 Griffin. I'm from Newport Beach. Our county has
21 suffered already damages from delays in not being
22 able to start our air cargo service. And we can
23 start the air cargo service probably immediately as
24 soon as we get a lease from the Navy that we do not
25 have to transfer the deed at this time. We do not
26 have to get the liability of the contamination at
27 this time, and this is a national asset. Property is
28 owned by the government and the Navy, but really it

1 is being transferred essentially to the Department of
2 Transportation because the county will act as
3 proprietor and get the land at no cost because it is
4 essentially a national asset.

5 And it's a national asset because, when
6 you look at this map, you can see that there are no
7 homes from one end of the county to the other with at
8 least a four-mile broad. I know that today I'm
9 urging you to get restitution because it has been
10 used as an excuse to get real damages on us by
11 delaying the air cargo operation. Thank you.

12 MR. BUSTAMANTE: Thank you, sir.

13 MR. GRIFFIN: I have one more sentence.
14 That is the Safe and Healthy Act is patently
15 unconstitutional because this involves interstate
16 commerce, and the first article in the Constitution,
17 Section 6 says that that is given to Congress. That
18 power that is given to Congress in Article VI says
19 that no local law like this referendum can override
20 the congressional action. Thank you.

21 MR. BUSTAMANTE: Thank you, sir. We've
22 heard a lot of testimony, and we've had a chance to
23 read a lot more before coming here. And frankly I
24 don't know about the rest of the commission, but I'm
25 still not -- well, actually I'm a little confused.
26 I'm not quite sure as to what the appropriate issues
27 are here. We have local government cities against
28 counties. You have a split on the Board of

1 Supervisors. There's still major concerns, and
2 although it may not be an absolute legal requirement
3 that I consider environmental issues in my decision,
4 I feel responsible to be able to do that.

5 There's an election on the March
6 ballot, I guess, again, and there is no plan although
7 there's a concept of a partial retrocession. There
8 is no plan for that. And so if there is some
9 interest in potentially looking at partial
10 retrocession, I would be open to discuss something
11 along those lines. But at this point I'm not
12 interested in that. In fact, I would ask the staff,
13 is there at this point a way to have this item be
14 listed as an informational item for board action to
15 be taken in the future?

16 MR. THAYER: I think the item was
17 listed as informational, but there's no reason --
18 listed as an action item, but there's no reason why
19 the commission cannot decide that it would like to
20 seek additional information and delay its final
21 decision.

22 MR. BUSTAMANTE: I'd like to hear from
23 the other commissioners, and maybe we can deal with
24 that issue.

25 MS. PORINI: Mr. Chair, I agree with
26 your comments. Instead of getting clarification, I
27 am confused. Today is the first time that we've
28 actually heard that there was a possibility of

1 dividing up the retrocession so that it could be
2 related to some discrete parcels as opposed to the
3 entire area. I would like to see if we can get staff
4 to pursue that issue to come back to us.

5 MS. CONNELL: I would like to take
6 action today, but I don't think I've got a second
7 vote to do that. It doesn't sound like the second
8 vote is there. My concern is that having sat on this
9 commission now for five years, we face this difficult
10 situation in almost every case whether it's
11 retrocession or it's another environmental matter.
12 And we have been lambasted for the five years I've
13 sat on this commission for being the spokesperson for
14 local governmental decisions. We were told just
15 recently in oil wells in Santa Barbara, "Get the hell
16 out of oil issues and let local government make the
17 decisions. Let the counties in California that are
18 impacted by this pollution play a bigger role."

19 When we were in Northern California on
20 the Mono Lake problem, they said, "Stay out of it.
21 Let local government take care of the problem." In
22 San Francisco before Cruz and Annette sat on the
23 board, the governor and I, Governor Gray Davis and I
24 were told to stay out of the city of San Francisco
25 and let the City of San Francisco take responsibility
26 for an environmental matter up in the Bay Area.

27 I have been pounded now for five years
28 by local government of the importance of staying out

1 of their jurisdictional disputes. I come into this
2 meeting today, and I hear some people from local
3 governments saying, "Be our protector." I find it
4 such an ironic situation to be in because I'm trying
5 to be truly sympathetic to the need for local
6 government to take control of their destiny here.
7 And yet I hear this kind of fractured view as to why
8 you want the State Lands Commission to continue to
9 delay. I am not of the opinion that a delay gets us
10 anything here because at the end of the day, local
11 government is going to have to bite off this problem.

12 And I understand there is this three to
13 two problem at the Board of Supervisors. I
14 understand there is tremendous concern and fear that
15 this land is going to be turned into an airport
16 facility albeit maybe a cargo facility and there are
17 many who are opposed to that.

18 I don't think the state should continue
19 to intervene. I do have a severe concern, and that's
20 why I asked for the toxic review that this land be
21 passed clean to the counties and that we not have a
22 situation where we would be passing land to the
23 county that would later have a polluted situation
24 although we've been assured by our attorney general
25 and would tell me that we have no legal liability in
26 such matters.

27 I would have liked to have seen us take
28 action today. I can see we're not going to do that.

1 If we're not going to do that, can I stipulate a
2 couple of things I'd like to see happen? If we're
3 going to delay today which is not my initial choice,
4 I would like to see the following sources of detailed
5 information coming back to this commission
6 immediately.

7 I would like to know exactly what we
8 can do in terms of the ability to define retrocession
9 other than in total matter. Is it possible to
10 segregate out certain land areas whether -- I believe
11 there were two, maybe four that the original
12 gentleman, the toxics expert from the federal
13 government referred to.

14 MR. BUSTAMANTE: A partial
15 retrocession?

16 MS. CONNELL: He referred to four sites
17 that were not concluded, and he named them. I think
18 they were two --

19 MR. BUSTAMANTE: You're talking about
20 having something come back?

21 MS. CONNELL: I want to know whether we
22 have that authority, and, if so, how would you
23 distinguish the sites that you would include and the
24 sites that you would not include? I'm not interested
25 in the politics of local government here. I'm
26 interested in only the environmental issues. My
27 concern here is to move forward on retrocession, and
28 I want to protect the state or protect the counties

1 from those sites which may be polluted only if they
2 cannot be assuredly transferred. So I want to know
3 can we get some further clarification from the
4 attorney general on what that exposure might be?

5 Secondarily I am not interested at an
6 extended discussion of this issue and an extended
7 delay. I do think this issue belongs at the local
8 level. I am the one that audits local government,
9 and I am constantly berated for having to get engaged
10 in local government issues whether it's the school
11 district audits, whether it's the government audits,
12 whether it's the audits of the superfund sites. We
13 are constantly attacked for not giving that authority
14 back to local government, and here we have an
15 opportunity to do that. I would like to see local
16 government leaders rise to the occasion and deal with
17 this issue as contentious as it might be and have
18 those debates.

19 If we're going to have a further
20 discussion of this matter, what are we going to
21 discuss in the future? I don't want to go to an open
22 hearing where we have 22 or 45 or 77 people come
23 before this board because at the end of the day, we
24 have got to have some alternative actions that we're
25 willing to consider here as a board and move forward
26 on them.

27 MR. BUSTAMANTE: First, I can't wait
28 for the locals to take this issue. I can't wait to

1 give it to them, but I don't recall this year. Maybe
2 the staff can correct me. What I don't recall having
3 been lambasted for is getting involved with projects
4 that have delayed projects. My recollection is that
5 we worked cooperatively with many jurisdictions up
6 and down the coast, inland throughout the state on
7 major projects dealing with all kinds of development
8 issues, issues of endangered species, issues of
9 coastal protection, issues of just about everything
10 there is.

11 MS. CONNELL: And we have a delay.

12 MR. BUSTAMANTE: We have moved many,
13 many, many projects off to the side that we've moved
14 including today's consent calendar which had several
15 dozen. And so although I'm very interested in
16 allowing the local governments to deal with this
17 particular issue, I don't know that I've fulfilled my
18 responsibility yet as the chair of this commission
19 and look forward to a time soon that we can, in fact,
20 move this item. I'd make a motion that we make this
21 today an informational hearing and we move this for
22 board action at some future board meeting.

23 MS. CONNELL: Are we going to set a
24 date for that?

25 MR. BUSTAMANTE: I have no date in my
26 motion. I'd like to set it as soon as possible.

27 MS. CONNELL: Do we have a meeting
28 planned, Paul?

1 MR. THAYER: Our next meeting normally
2 would be in February if that was coincidental with
3 the commissioner's schedules if we could bring one in
4 about two months hence.

5 MR. BUSTAMANTE: If we can go through
6 all the information, we might be able to set it for
7 that. There's a motion. There's a second. Those in
8 favor say aye.

9 MS. PORINI: Aye.

10 MR. BUSTAMANTE: Those opposed.

11 MS. CONNELL: I'll abstain.

12 MR. BUSTAMANTE: Let the record show
13 that the vote was two ayes and one abstention. We
14 want to thank all of the members from local
15 government and all the speakers, all the
16 presentations for having come here and given us a lot
17 more information. Maybe we can get to a decision
18 here soon. Thank you all.

19 Let's go on to the next item. Item
20 No. 73 was placed on consent and passed.

21 Item 74, adoption of emergency
22 regulations for implementation of the commissioner's
23 new ballast water management program.

24 Mr. Thayer?

25 MR. THAYER: Thank you, Mr. Chairman.
26 Maurya Falkner --

27 MR. BUSTAMANTE: Please be courteous on
28 your way out, please. We're still conducting

1 business.

2 MR. THAYER: She is an environmental
3 specialist who will present this item.

4 MS. FALKNER: I would like to talk to
5 you about California's control program that we're
6 asking you to adopt today.

7 On October 8, 1979, Assembly Bill 703
8 was signed into law as the Ballast Water Management
9 for Control of Nonindigenous Species ("the Act").
10 This provides a mandatory statewide multiagency
11 ballast water management program that becomes
12 effective January 1, 2000. Scientists have long
13 recognized that organisms are transported from one
14 part of the world to the other to shipped ballast
15 water. Ships transport ballast water in order to
16 provide civility and maneuverability. It was taken
17 on at one court and discharged in another court
18 concerning normal operating procedures. The amount
19 of ballast water that's carried on any given vessel
20 and potentially discharged into a port varies
21 considerably but can be up to 20 million gallons.

22 Small organisms are easily pumped into
23 and out of ballast water tanks during these normal
24 operating procedures, and studies have shown in a
25 single ballast tank, greater than 1 million organisms
26 can be found in there. Fortunately most of the
27 organisms don't survive out of their native habitats.
28 The few that do can cause severe ecological and

1 economic impacts.

2 MR. BUSTAMANTE: Excuse me.

3 Commissioner Porini?

4 MS. PORINI: I know I'm going to cut
5 off your presentation here. I had one concern as I
6 was going through this item, and I'm concerned about
7 the impact that this has on the smaller shipping
8 lines. And I know we're setting the fee at \$600 per
9 inspection in our emergency regulations. I just
10 wanted to see, first of all, if we could come back
11 before 120 days for emergency regs if we can come
12 back before that point in time so we can evaluate
13 what kind of impact this is having on the smaller
14 shipping lines because I didn't think that was the
15 intent of the original legislation.

16 MR. THAYER: I think we're on the
17 essential issues today on this item. We've already
18 drafted the permanent regulations, and we expect or
19 we have drafts of those permit regulations. We
20 expect to be having workshops in the next couple
21 months. It's only a question of compliance with the
22 OAL requirements and the ability to work out an
23 agreement amongst the different competing and
24 sometimes commercial shipping interests that might
25 prevent us from moving that quickly. I'm not sure
26 that will be ready for the February meeting. There
27 is a status report which might be able to give you an
28 update which we could discuss this. Would that be

1 the commissioner's concerns?

2 MS. PORINI: That would. I think in
3 the interests of time, we're all prepared to go ahead
4 with this item. I would move that we adopt staff's
5 recommendation on this emergency --

6 MS. CONNELL: I second.

7 MR. THAYER: There may be speakers on
8 this.

9 MR. BUSTAMANTE: Item number?

10 MR. THAYER: Number 74.

11 MS. CONNELL: If they're in favor,
12 maybe they would like to -- when you're ahead of the
13 game. You're opposed to it. You definitely want to
14 speak then.

15 MR. BUSTAMANTE: Let's get to the
16 speakers.

17 MS. PORINI: I'll withdraw my motion
18 until we've heard from the speakers.

19 MR. BUSTAMANTE: Lynn Korwatch, Kenneth
20 Levin, R.D. Kleist, and John Winter.

21 MS. KORWATCH: We're all set to take
22 some action. My name is Captain Lynn Korwatch, and
23 I'm the general manager at Marine Ops. at Matson
24 Navigation Company. We have already submitted our
25 comments to each one of your respective offices, but
26 I'd like to take a few minutes to expand on it if I
27 may. Our chief concern --

28 MR. BUSTAMANTE: You have two minutes.

1 MS. KORWATCH: With the proposed \$600
2 flat fee, this isn't consistent with the statute
3 because it fails to take into account impact of the
4 fees on the Hawaii trait. We're primarily a domestic
5 carrier currently making 26 voyages between the West
6 Coast and Hawaii every year. In contrast most
7 involved in the Asia Pacific trade make 10 voyages.
8 Because of the high volume of vessel terms Hawaiians
9 service, the imposition of a uniform per voyage chart
10 ballast water management program would severely
11 burden trade even though our management -- even
12 though our Hawaii vessels, the cost to the state in
13 monitoring compliance of vessels in this trade would
14 not be much different than reviewing the vessels in
15 various foreign trades which call it state ports.

16 We have a policy applicable to all our
17 vessels, a known vessel pattern regular ships'
18 officers and management personnel accessible within
19 the state and already enacting a policy of compliance
20 with the California law, all of which should speed up
21 monitoring. We do not intend to not ballast. Yet
22 under a flat fee arrangement, each Hawaii vessel
23 would bear 2.6 times borne by the Hawaiian trade.
24 U.S. flag carrier and a domestic subject to U.S. and
25 state tax law requirements and vessels are subject to
26 all of the requirements of the United States Coast
27 Guard.

28 None of the operators of the

1 foreign-bound vessels are in the same situation.
2 State statute mandates that the impact of the fees on
3 the Hawaii trade be taken into account. We have
4 heard the State Lands Commission is interested in
5 resolving this issue before the permanent regulations
6 go into place. Paul Thayer has offered to meet with
7 us, and we would like to take advantage of that
8 opportunity.

9 We ask for a commitment fee schedule in
10 the permanent regulations and provide lower rates for
11 vessel Hawaiian services. We believe this is
12 required by the statute. Thank you.

13 MS. CONNELL: I raised this concern too
14 in our briefing and I was assured, and I'd like maybe
15 Mr. Thayer to again ensure us publicly that they
16 intend to have public workshops on this matter so
17 they can decide ways to structure the fees for
18 companies with shorter trips. I think your point is
19 well taken. I understood that it would be addressed
20 in the adoption of the nonemergency regulations; is
21 that correct, Mr. Thayer?

22 MR. THAYER: Yes, Madam Controller. We
23 believe the law is clear that we do need to consider
24 those factors, and I've assured the Matson
25 representatives that I've spoken to in the past that
26 we will look at that issue. It's a complex matter
27 because the total program is going to run up costs of
28 around \$6.4 million. Not all of that is coming to

1 the Lands Commission. There are several studies that
2 are going to be undertaken by the state agencies.
3 Those need to be funded. For every vessel where the
4 fee is reduced, we must receive assurance that the
5 requirements of the legislation be carried out and
6 funded. Given those constraints, we intend to meet
7 the requirements of the legislation. We will meet
8 with these steamship companies in an attempt to do
9 that, and we expect when we bring back the permanent
10 regulations that they will show we are going to be
11 considering those factors.

12 MS. CONNELL: Does that meet your
13 concerns?

14 MS. KORWATCH: Yes. Because we have
15 frequency, we're not suggesting we pay less. We
16 resent having to pay more. We want to pay equal.
17 Thank you.

18 MR. BUSTAMANTE: Mr. Levin.

19 MR. LEVIN: I'm Kenny Levin of Foreign
20 Ship Owners Association, vice president. We
21 represent most of the vessels that service
22 California. First, let me say that we supported
23 AB 703 in the form that it is now, and we certainly
24 support most of the emergency legislation with one
25 minor exception. I'd like to take a correction in
26 the staff report. It says that ballast borders the
27 primary source of the base of species. That's not
28 true. We are a major source, and we are one of the

1 primary sources. We are part of the problem in the
2 shipping industry, and we want to be part of the
3 solution. We are not the primary source.

4 In the mitton crab paragraph, there is
5 probably something brought in on foodstuffs out of
6 some Chinese restaurant. But since we're going to
7 take the blame for mitton crab population, this
8 winter mitton crab production went way down due to, I
9 think, cold weather. Since we're taking blame, we'll
10 take the credit for that also. There's some concern
11 also about the effectiveness of the program's
12 compliance, and people are looking at the Coast Guard
13 program which started in July and seems a very
14 terrible compliance. I think it should be brought to
15 your attention that the Coast Guard sent out their
16 electronic format of reporting. I received mine in
17 November, and there's a pamphlet telling you what to
18 do. I received it last week.

19 No wonder the first quarter's been a
20 slow one. I don't think the State Lands Commission
21 is going to have that problem. The one area where I
22 do have a concern and where I do want to see a change
23 in the emergency reg is in the actual fee designation
24 number. I believe they're proposing \$600 which is in
25 Exhibit M. If you look at their numbers, \$6.4
26 million is the best forecast of what it's going to
27 cost for four years, and serving California, we have
28 roughly 10,000 vessels a year which comes out to

1 40,000 over four years of this program.

2 Now, not all will be required to pay
3 this. There's quite a bit of exemption. If we drop
4 it down to 60 percent, 6,000 vessels a year, you run
5 the numbers. If you have a calculator up there,
6 great. If not, it's under \$400 per voyage as opposed
7 to \$300 per voyage. If we go ahead and use a
8 deadbeat number -- I don't know what you want to call
9 it -- 70 percent. It's still a low number to the
10 point where \$500 per voyage exceeds the actual
11 cost -- not actual cost. The forecasted costs by
12 probably 50 percent and \$600 per voyage by nearly a
13 hundred percent. We don't have a problem with --

14 MR. BUSTAMANTE: Ten seconds.

15 MR. LEVIN: We have no problem with the
16 emergency regs. We'd like to see it dropped to a
17 more realistic number.

18 MR. BUSTAMANTE: R.D. Kleist. I
19 believe that's the way you pronounce it.

20 MR. KLEIST: Mr. Chairman, members of
21 the commission, my name is Bob Kleist. I'm speaking
22 on behalf of Evergreen Marine which is our parent
23 company. Evergreen American Corporation is our
24 agency in the United States. I'm also a member of
25 the board of directors distinction association of
26 Southern California. Before talking about this
27 issue, I'd like to thank the commission because of
28 its involvement in the so-called nexus study in nexus

1 suit which has demonstrated to us that the commission
2 is sensitive to the costs of doing business in
3 California courts. And that's simply the issue that
4 I'm here. I registered in opposition to this only
5 because, as Mr. Levin has pointed out, we believe
6 that the proposed rate schedule is far too high.

7 When you're operating as we do five
8 shifts a week into California ports, it amounts to a
9 great deal of money. There are people who will say,
10 "How does that compare with the number of containers
11 you carry?" You can spread that out any way you
12 like, but it would come to Evergreen in excess of a
13 quarter million dollars a year. We do know and I'm
14 sure you also understand that there are many costs
15 which we bear here in the ports in California which
16 are not borne by steamship operators in other ports
17 throughout the world. So I totally support
18 Mr. Levin's comments with respect to the rate level.

19 We believe that there's a need for the
20 kind of study that is proposed under the proposed
21 regulations. We support the idea. We're willing to
22 support it economically, but we would hope that
23 another look will be taken as to the level of that
24 support. And we think that \$400 still amounts to a
25 lot of money. As I say, we have five ships a week.
26 So we're talking about a lot of money per week even
27 at the \$400 level, and we'd request that you look at
28 it from that point of view to keep California healthy

1 from a maritime industry standard.

2 MR. BUSTAMANTE: Since we've had two
3 folks ask about moving it from \$600 to \$400, maybe we
4 can bring the presenter back and have her do
5 something where she explains the formula so that it's
6 clear because I'm sure can we cut off the time in the
7 presentation for doing just that.

8 MR. THAYER: The calculations that went
9 into that, the bill of that put a cap of \$100 on what
10 could be charged. I think there was a quick study
11 done when that figure was generated that said,
12 "What's the most they required?"

13 We said, "We don't need a thousand
14 dollars. We can cut it back to \$600." I think the
15 same way we're looking at these other factors once we
16 see compliance rates under the emergency regs, it may
17 very well be when we come back in the permanent regs,
18 we can reduce that further.

19 MR. BUSTAMANTE: When does that take
20 place?

21 MR. THAYER: Within the next three,
22 four, or five months. We have a limited period of
23 time under which we remain under emergency regs. We
24 have to come back with permanent regs.

25 MR. BUSTAMANTE: So then in the regs,
26 we have your recommendation today is to put it at
27 \$600, but there will be an automatic review of that
28 rate in no more than five months?

1 MR. THAYER: Yes, because --

2 MR. BUSTAMANTE: In order to be able to
3 lower, potentially change that figure whether it's up
4 or down?

5 MR. THAYER: That's right. The
6 emergency regs that were authorized today can last
7 for a limited period of time. We will bring back the
8 permanent regs which will last a longer period of
9 time.

10 MR. BUSTAMANTE: And these will be
11 notified of that process?

12 MR. THAYER: Yes.

13 MS. CONNELL: Mr. Chair, I have a
14 follow-up question. What are the factors that would
15 not enable us to reduce that rate?

16 MR. THAYER: The costs that we're
17 trying to address here are twofold -- one, the
18 studies that some of the agencies have to do, and the
19 second is we're going to be conducting inspections in
20 ports of these vessels to ensure they're complying
21 with the ballast regs requirements. So we have some
22 costs that the commission is going to be incurring to
23 carry out this legislative mandate. The other reason
24 we may not be able to reduce it is dependent on what
25 the compliance record is. We think there's so many
26 vessels that come in and out, we're not sure how many
27 of those end up actually paying. When these are,
28 say, onetime visit vessels if they're not paying, we

1 don't have that money.

2 MS. CONNELL: This is a question of
3 compliance and enforcement.

4 MR. THAYER: Exactly.

5 MS. CONNELL: I don't know if any of
6 you who are engaged in this and lawfully and
7 appropriately paying your fees can help us or help
8 our staff deal with that question because this
9 problem is on the tax boards as well. Why should
10 anyone else have to shoulder the burden for those who
11 are failing to pay their taxes? It's the same thing
12 here. We can reduce the fees across the board if
13 everybody who was participating in these activities
14 would pay their fair share.

15 MR. BUSTAMANTE: Do we have a deadbeat
16 in this provision? They've got to pay in advance
17 before they come in.

18 MR. THAYER: We should have that --

19 MR. BUSTAMANTE: We have a situation
20 where folks who are doing something and they're
21 playing by the rules, and you have other folks who
22 are rolling in and out and you continue to bill them
23 and they continue not to pay. It seems you're
24 requiring them to shoulder the burden of that work.

25 MR. THAYER: We have a responsibility
26 to see the program is enforced. There is a little
27 bit of tension between speakers here. One speaker
28 said, "Look. If you only charge \$400 and you collect

1 it from anybody or 70 percent, you'd be fined."
2 Others think, "We should be charged less. We end up
3 dropping down even further." It's a very complex
4 issue. We want to be fair to everybody.

5 MR. SMITH: I don't think there's any
6 dissension between Captain Korwatch on myself. We
7 talked on two separate topics. I thoroughly support
8 what she said.

9 MR. THAYER: If taken together if we
10 establish a rate at a certain level and have to
11 reduce that rate in consideration of the factors in
12 some of the testimony asked that we do, we're really
13 not collecting \$400 for everybody. We're collecting
14 \$400 from some and less from others. It's dollars
15 and cents. I'm not trying to create a wedge between
16 the speakers.

17 MS. CONNELL: I would like to make sure
18 that we keep our overhead costs minimal here. I
19 would hate to think we had a bloated bureaucracy and
20 that resulted in having higher fees here. I think we
21 heard rather compelling testimony of the importance
22 of keeping this rate lower and competitive.

23 MR. GREGORY: I'm Gary Gregory. I'm
24 the chief of Marines facilities at the State Lands
25 Commission. The program that's envisioned here is a
26 multiagency program. In fact, the smallest dollar
27 value of all of them comes to the State Lands
28 Commission. These programs are approved. They've

1 gone through the approval proposed. They will be
2 reviewed and part of the Governor's budget. As such,
3 they create the dollar value of the program.
4 Collecting more dollars than the dollar value of that
5 program does none of the agencies any good. It is
6 not additional funding which is available to us to
7 use. I'm sorry you didn't get to see the whole
8 presentation.

9 Our concern is up front that we have
10 certain startup costs. Other agencies involved are
11 doing studies. They need money up front to do those
12 studies. We are uncertain of the number of vessels
13 that are coming into our ports, and we are uncertain
14 of the level of compliance. The Coast Guard level of
15 compliance is about 48 percent.

16 At 48 percent at \$600, we probably do
17 not make our budget. And yet there is no other
18 provision for funding this program. So the \$600 fee
19 was set up front in my mind. I'm the one who came up
20 with the number basically to provide a prudent
21 reserve if we had a compliance rate above 50 percent.
22 The ability to get the program started up, the
23 ability to get the contracting for the studies
24 knowing that in 120 days we would be required to
25 review and reset the fee, knowing that we would have
26 a better opportunity. We would have funding to
27 provide an opportunity to look at the issues of
28 carriers and routes and how we might examine the fees

1 associated with those carriers and routes.

2 But the \$600 fee that we've set now
3 based upon the best information that we have
4 available to us, information that was given to us by
5 the Pacific Merchant Shipping Association and other
6 representatives that you see here leads me to believe
7 that the \$600 provides us with a prudent reserve, an
8 excellent beginning to the program, and the ability
9 to adjust without having to adjust up the fee for
10 noncompliance of issues of shortfalls and funding.

11 MR. BUSTAMANTE: You have a baseline of
12 50 percent, and the suggestion was that you could if
13 you were to have a 70 percent payment by all those
14 who were billed that the number would go down
15 substantially. Are you in agreement with the
16 numbers? If you have 70 percent compliance --

17 MR. GREGORY: It's on one of the slides
18 we didn't get a chance to show you. There would be a
19 surplus. There would be sufficient dollars if you
20 look at purely a per year basis.

21 MR. BUSTAMANTE: You think, Paul, you
22 will be at a 50 percent rather than a 70 percent
23 compliance?

24 MR. THAYER: I don't know what the
25 results will be until we start going. The
26 regulations we brought to you in spring will say
27 specifically that the commission is authorized to
28 reduce this fee if we don't need the money.

1 MR. BUSTAMANTE: I think you've heard
2 from the controller and from me that we are
3 interested in getting this down to a point that is as
4 low as we possibly can and that a review in six
5 months, we take a strong look at lowering this down.
6 You would have plenty of time for an experienced reg.
7 You would have plenty of time to see what the costs
8 really are, and we'll be waiting for the reduction in
9 costs in six months.

10 MR. THAYER: I understand, sir.

11 MR. BUSTAMANTE: Is there any -- do we
12 have a Mr. Winter who has not spoken?

13 MR. WINTER: I'm the executive
14 secretary of the Steamship Association of Southern
15 California. I'd like to make several points.

16 MR. BUSTAMANTE: You have two minutes.

17 MR. WINTER: The ports of Los Angeles
18 and Long Beach represent approximately 70, 75 percent
19 of the shipping in California. The way this fee is
20 structured, California, Los Angeles-Long Beach will
21 be collecting the vast majority of it. And
22 perception to overseas people will be that Los
23 Angeles-Long Beach is a more expensive port. I
24 encourage you to looking at the per port in
25 proportion equally to achieve your same level of --

26 MS. CONNELL: Can you go through that
27 again.

28 MR. WINTER: In other words, Los

1 Angeles-Long Beach has approximately 70 percent of
2 the shipping that enters California. Los
3 Angeles-Long Beach will be paying 70 to 80 percent of
4 the fee. We'll be the place collecting the vast
5 majority of that fee. The perception overseas is
6 that, if you go to Los Angeles-Long Beach, you're
7 going to pay more because it's only being collected
8 at the first port of call. I encourage you to look
9 at spreading the fee out. We concur with the Pacific
10 Merchant Shipping Association on the total level per
11 voyage, but it should be spread out over the ports of
12 call.

13 Mr. Gregory's other half of the oil
14 spill prevention program in Los Angeles already
15 operates a fee that's collected on the voluntary
16 basis in Los Angeles-Long Beach that collects, I
17 would say, a hundred percent of what's being asked to
18 pay for the oil spill prevention program. It's a
19 voluntary program in Los Angeles. The ship owners,
20 the captain of the Port of Los Angeles-Long Beach has
21 told me as recently as two or three weeks ago that in
22 Los Angeles-Long Beach, compliance is 90 percent, not
23 48 percent. That may be what it is in the Bay Area,
24 but it's not in Los Angeles-Long Beach where the bulk
25 of the shipping takes place.

26 MR. BUSTAMANTE: Interesting point. I
27 don't know that I agree with it, but it's an
28 interesting point. It does raise one issue, however.

1 Are there ports that will be experiencing different
2 rates of collection? Will Long Beach-L.A. experience
3 a 70 or 80 percent while other ports experience much
4 lower? Will there be certain kinds of ships and
5 certain kinds of industry activity that will have
6 different kinds of experiences than others? And it
7 may be that the gentlemen that are up here, you're
8 going to experience a hundred percent return and in
9 other areas, you may only get a 30 percent return.

10 I guess you're right. It's going to be
11 complicated to get there. You have to find out where
12 folks who are doing the job and are making the
13 payments are not going to be heard in this whole
14 process.

15 MR. WINTER: The fee is based on a
16 voyage basis. The issue here is the ballast water
17 and the introduction of invasive species. The fact
18 there's a higher compliance rate in one port doesn't
19 necessarily change dramatically the probabilities of
20 introductions. Using the basis of 70 percent of the
21 shipping comes into L.A.-Long Beach, and we should
22 therefore reduce the fee knowing that the total cost
23 of the program will remain the same would end up with
24 Humboldt and Port Hueneme paying three, four or five
25 or six times as much money per voyage as we see in
26 L.A.-Long Beach where the risk is still associated
27 with the per voyage introduction of invasive species.

28 MR. THAYER: But I understand the

1 commissioner's direction and that job is as hard as
2 it is, and it's up to us to figure it out.

3 MR. BUSTAMANTE: Is there any action by
4 the board?

5 MS. CONNELL: I move the staff
6 recommendation at this point.

7 MS. PORINI: I second it.

8 MR. BUSTAMANTE: Move to second. Show
9 that it moves unanimously.

10 On to Item No. 75, the 4-H shell mounds
11 in Santa Barbara County. The proposed actions are
12 for the scope of work, interim measures, and request
13 for proposals. Staff?

14 MR. THAYER: This, of course, this item
15 includes both the Item 75 and Item 59 that was
16 proposed from the consent calendar, and I believe we
17 can have discussion on the shell mounds and take two
18 separate actions on the commission issue. One would
19 be doing a bid to do the study, and the second part
20 is what kind of interim measures for fishing should
21 be imposed while this is occurring. Michael
22 Valentine, our attorney, will be presenting these two
23 items.

24 MS. CONNELL: I have a question for
25 you, Michael. Can you name all of the structures out
26 in Santa Barbara County?

27 MR. VALENTINE: I can.

28 MS. CONNELL: I asked you last time.

1 This is supposed to be a part of your life at this
2 point. Like the seven dwarves, you should be able to
3 roll these out. These all start with an H.

4 MR. VALENTINE: Thank you, Mr. Chairman
5 and commissioners. We're here as Mr. Thayer
6 indicated for two action items, one on a staff
7 recommendation on the request for proposals and
8 contract, the other pursuant to the commission's
9 direction that we report back to you and make
10 recommendations on interim measures regarding the
11 shell mounds which are located at the site of the
12 former 4-H platform.

13 Just a moment. I'll skim over the
14 background. I know it's been a long afternoon and
15 promises to get longer. I'll try to keep it as short
16 as I can. '94 approved a decommission of the plan, a
17 removal plan. It did so pursuant to CEQA which was
18 approved at that same time. The decommission plan
19 proved a method of platform removal, and it also
20 contemplated that the shell mounds -- that is, the
21 mounds of cutting to overlaying with substantial
22 layers of shells -- would remain on the ocean floor.
23 The permit issued by the commission on the
24 decommission are subject to many stipulations or
25 conditions.

26 One of those conditions was that a
27 troll test would be conducted in the vicinity of the
28 platforms so that the area couldn't be shown to be

1 capable of being trolled using commercial gear.

2 The mounds were removed and the troll
3 test was conducted. We received our report of the
4 staff in March of '97 showing that the mounds had
5 failed the test. That's enough background. I would
6 like to briefly describe the scope of work which has
7 been attached. We are requesting that the commission
8 authorize us to issue a request for proposals to do
9 analysis set forth in the scope of work. The purpose
10 of the scope of work would be to develop options for
11 future action by this commission and by the Coastal
12 Commission with regard to the future of the shell
13 mounds whether the mounds should remain where they
14 are, whether they should be removed, or whether there
15 are combinations of measures that would be suitable.

16 Chevron, Coastal Commission staff, and
17 the Coastal Commission of the state, your staff, have
18 been working on this scope of work for several
19 months. It has been a subject of two discussions at
20 the Coastal Commission. The scope of work would
21 characterize the composition of the mounds. That is
22 what's in there. How bad is it if it's bad at all?
23 It would explore the impacts of various removal
24 methods. If you move it out with a certain kind of
25 clam shell, what would be the impacts of that? If
26 you have to use explosives, what would be the impact
27 of that? It would expand the impacts of leaving the
28 shell mounds in the area too in addition to what

1 impacts they had without biology air water quality.
2 It would identify the impacts of removal of mounds on
3 commercial recreational fishing. And likewise, it
4 would assess the impacts to commercial and
5 recreational fishing of leaving the mounds in place.

6 We believe that the scope of work once
7 completed that the amount represented by the scope of
8 work will result in information which will be
9 valuable to you when deciding what to do with the
10 fact that a condition of its existing permit has not
11 yet been complied with, that is, the area of the
12 platforms is not trolled.

13 The second area for discussion today
14 was as a result of some discussions. The commission
15 asked us to come back and make recommendations on
16 interim measures in light of those ballasts don't
17 seem to be disappearing anytime soon. At the very
18 least we can say whatever the future may hold, the
19 platforms have been gone for three-and-a-half years
20 now, and the mounds are still there. That discussion
21 at the last meeting centered on three issues. The
22 performance of the buoys at the mounds claims for
23 damages as a result of the mounds and whether or not
24 some kind of interim global positioning systems,
25 navigational system should be provided to trollers in
26 the interim.

27 I may say in introducing this part of
28 the item that I think it could have been handled a

1 little differently. As I reread the column on the
2 way down -- we read the column on the way down on the
3 plane today -- we seem to be lashing Chevron more
4 than I intended when I wrote it. Chevron has found
5 itself where it has been unable to comply with
6 existing State Lands Commission permits. They have
7 been cooperative. They have done what they could to
8 be helpful. That is not to say, however, that there
9 are not still some improvements that could be made.

10 The buoys were placed, first set of
11 buoys were placed in January of 1998 pursuant to
12 requests by the State Lands Commission executive
13 officer. The first set as was mentioned at the last
14 meeting need improvement. That is, they damage.
15 They laid down, pretended to lay down. Chevron
16 replaced those with a better performing stat in June
17 of '98. Those buoys have performed much better.
18 However, the commission staff would like to recommend
19 a series of measures to improve their performance.
20 We would like the commission to direct and authorize
21 staff to work with the Coast Guard to develop a buoy
22 perfectly designed to this site that will provide a
23 maximum amount of visibility for these mounds and to
24 require to deploy those buoys once they're developed.

25 Third, that Chevron be directed to
26 maintain a spare to these buoys so when one
27 disappears or sinks, its replacement can be used.
28 Finally that a contract be maintained by Chevron for

1 the inspection at least twice a month of these buoys
2 so we don't rely on the fishermen.

3 Some of this, Chevron is no doubt
4 agreeable to some of these things and undoubtedly is
5 doing or is planning to do some of these things, but
6 it seemed to us that it would be beneficial to have
7 these as part of the interim measures.

8 The second area of inquiry that was
9 addressed at the commission was that claims for
10 damages as a result of trollers have an impact with
11 the mounds not being handled properly. I began by
12 saying there have been no claims presented to Chevron
13 this year pursuant to the longtime oil spill fishing
14 liaison office procedure. There have been since the
15 platforms were removed four claims made to Chevron.
16 Three for a total of approximately \$7,000 have been
17 approved. One was denied. For the most part we
18 believe that this longtime procedure has been
19 operating satisfactorily.

20 The count does have some
21 recommendations that we will summarize. We recommend
22 that Chevron be directed to expeditiously act on all
23 damage claims received as a result of the mounds,
24 that is, provide an explanation in writing of why if
25 they are that State Land staff be notified as soon as
26 possible claims are received that Chevron contracted
27 to third parties to inspect and report to Chevron on
28 damaged equipment and finally that a mediation

1 procedure be created for the approval of the
2 executive officer for claims which are denied.

3 Finally on the subject of G.P.S.
4 equipment, the calendar has a recommendation that the
5 troll fishermen be provided with differential G.P.S.,
6 that is, equipment that can place the bulk of then
7 30 feet or so of the shell mounds. The problem is
8 that the trollers have no reference if the buoys are
9 not working properly because the platforms are gone.
10 They have, we are told, been providing a wider buffer
11 than they had been prior to the platform removal.
12 And, of course, they can't troll over the mounds.

13 Southern California Trollers
14 Association responded to the staff's suggestion on
15 the differential G.P.S. I'd like to indicate in
16 short that it wasn't adequate to their needs. The
17 differential G.P.S. would cost approximately a
18 thousand dollars a boat which would be in the range
19 of \$30,000 to \$40,000 for the trollers in the area.
20 The suite of equipment that the trollers of Southern
21 California Trollers Association is asking for would
22 cost approximately \$3,300 per vessel or \$132,000.
23 The difference between the two systems is that one
24 would have a plot where they would visually plot out
25 where they are, the differential by the coordinate
26 only which would have to be plotted under a chart
27 before you know where you are.

28 MR. BUSTAMANTE: I thought those were a

1 thousand layers.

2 MR. VALENTINE: Pardon me?

3 MR. BUSTAMANTE: I thought they were a
4 thousand layers.

5 MR. VALENTINE: The one is, the staff
6 recommendation is a thousand. The one that was
7 requested by Southern California Trollers Association
8 is approximately \$3,300 per vessel. I want to pile
9 like that approximately. That's based on two phone
10 calls I made to vendors of this equipment. They were
11 trying to sell the equipment, and I'm not a troller
12 by any stretch of the imagination. And finally none
13 of this equipment even if provided on the interim
14 basis would be useful if at some point in the future
15 the commission decided, "Well, we're going to leave
16 the mounds in place and we're going to require the
17 full suite of systems" that Chevron and the troll
18 fishermen have discussed in the past that is location
19 upon the nets. Those were very expensive per vessel.
20 This equipment would have to be removed from the
21 vessels, and new equipment would have to be
22 installed. This would be on an interim basis only.

23 On a rather confusing note, would you
24 like me to try to clarify that, or have you heard
25 enough of this particular issue?

26 MR. BUSTAMANTE: You should wrap it up,
27 but you should say what the amount is.

28 MR. VALENTINE: The amount is for the

1 two systems that are being discussed here right now.
2 The amount under the staff recommendation was a
3 thousand dollars. The amount for the equipment that
4 the Southern California Trollers Association
5 requested in their letter is \$3,300 per boat
6 installed. I will, of course, be available for
7 questions in the event you want to hear any more from
8 me.

9 MR. BUSTAMANTE: Why don't you stay
10 handy?

11 Gordon Cota, C-o-t-a, I believe. Mike
12 McCorkle. C. Miller. George Steinbach. And then
13 David Frumkes, I believe.

14 MR. COTA: Good afternoon. My name is
15 Gordon Cota, and I am a troller. I don't get
16 seasick. I don't get queasy in an airport. I'm not
17 in favor of this sort of Band-Aid approach. I
18 appreciate the spirit of what the State Lands is
19 offering here and working at trying to help us, but
20 it doesn't address our problem. The one problem with
21 a digital readout on a differential G.P.S. is that I
22 would be looking at two lines of about eight numbers
23 at one time, and they would be either increasing or
24 decreasing. What I'm trying to find out whether I'm
25 increasing or decreasing my longitude or latitude,
26 I'm going to run into the shell mounds instead of
27 paying attention to what I'm doing. That is why we
28 suggest that the visual picture of a plotter would

1 make it easier for us to look at in which case we'd
2 be able to put in a weigh point where the shell
3 mounds used to be. That's going to give us a quick
4 visual reference.

5 Like I said, I appreciate the spirit of
6 trying to help us, but this is not any more than a
7 Band-Aid. If you want to give us a Band-Aid, give us
8 the \$3,300 Band-Aid, not the thousand dollar
9 Band-Aid.

10 MS. CONNELL: \$3,300 would be a
11 tourniquet then.

12 MR. COTA: It could be. We're losing
13 the area. We've lost it now for almost five years.
14 I personally would like to see State Lands stop
15 having Chevron wasting money for studies. I'd rather
16 see that money utilized into rehabilitation of the
17 estuary area that's inside of where these four shell
18 mounds are which is a nursery ground for halibut
19 which is why I'm at those shell mounds in the first
20 place trying to catch those halibut. You want to
21 leave those mounds there and take that money and
22 spend it and try to rehabilitate and enhance the
23 halibut habitat in the estuaries? I'm totally in
24 favor of that, and that's what I see as a much better
25 and more positive way to use this money instead of
26 doing study after study after study so I'm here seven
27 years from now. And we might be getting the
28 attorneys by then instead of just a Band-Aid. I

1 don't think that's a good utilization of the money to
2 keep studying this thing.

3 MR. BUSTAMANTE: Thank you, sir. I
4 think it should be noted for the record that,
5 although there are a lot of studies that go around us
6 in government, that this is actually a
7 precedent-setting activity. This is the first of
8 what in the future will be many such situations that
9 we have to deal with and in trying to deal with -- in
10 trying to figure out how to deal with it with some
11 common sense, we have to be able to try to figure out
12 how to deal with this first one even if it takes a
13 little bit longer hoping to put down the work so the
14 future actions will be moved a little bit quicker. I
15 know it's more painful the first time around. We've
16 known about these mounds for how long?

17 MR. THAYER: We were aware of them when
18 the commission acted in '94 to take out the
19 platforms, but it's only been since '97 that we found
20 out we couldn't troller.

21 MR. BUSTAMANTE: I apologize for us
22 taking so long to move on this.

23 MR. COTA: I actually --

24 MR. BUSTAMANTE: I realize it's taking
25 us so long to move on it.

26 MR. COTA: I appreciate the concern you
27 people have on this, and I really appreciate it. And
28 that's why I think we should move forward, and I

1 really enjoy your comments about we're learning from
2 it. This thing was produced and fell apart from the
3 get-go because it was given a negative declaration.
4 All of a sudden we had all the best and brightest
5 standing around with their hands in their pockets
6 looking at the shell mounds and saying, "Oh, wow."
7 That's why I say we should learn what we've done
8 here. Don't give them a negative declaration
9 anymore. We did that this morning. We spent a lot
10 of time on rigs to reef. We're on the right track.

11 In the meantime, we're hung out to dry.
12 We don't fish there anymore because of the problems
13 that's created there. I came -- I got hung up on the
14 pipeline. I came at 30 years of fishing to the
15 closest I've ever come to rolling my boat over. I
16 don't go there anymore because I'm getting to the age
17 where that's not good for my heart.

18 MR. BUSTAMANTE: So you prefer the
19 mounds there?

20 MR. COTA: No, no, no. I prefer moving
21 ahead enjoying what we've learned so far and quit
22 wasting the money and use it to something positive
23 like the rehabilitation of Carpinteria estuary which
24 is a developing ground for halibut which gives me
25 more opportunity in my halibut dragging to have more
26 potential to catch halibut.

27 MR. McCORKLE: I feel the same way
28 Gordon does. Our association feels that way about

1 the differential G.P.S. I've been gone all week, and
2 last week it was G.P.S. And I think we wrote a
3 letter and explained our feelings on G.P.S. Now,
4 we're hearing differential G.P.S. which is actually
5 better. But we need -- that's just a thing of
6 numbers. If it was a differential G.P.S. plotter
7 which caused a little more, it would make a big
8 difference to us, and we may be able to agree to
9 that.

10 I would like to thank State Lands for
11 their new support on the buoys. The buoys are
12 important to us. I think myself I found four or five
13 of them drifting miles away from the location. I'll
14 just be going along fishing, and there's a buoy.
15 It's supposed to be on a shell mound, and it's not
16 there anymore. It hasn't worked too good. I think
17 with the new recommendations, I think it will be a
18 big improvement on the buoys which will help
19 everybody.

20 One of the things I have a problem with
21 in this final scope of work is in the commercial and
22 recreational fishing impacts, and it says an
23 evaluation of the potential adverse impacts to marine
24 biological resources that will result from the
25 resumption of troll fishing in the shell mound area.
26 There is already still trolling going on. It hasn't
27 ever stopped. It's just moved away further from the
28 shell mounds. To me that -- and add onto that on the

1 last page the next to the last paragraph at the end,
2 it says potential adverse impacts to the marine
3 biological resources that will result from a
4 continuation of troll fishing in the shell mound
5 areas.

6 This is astounding that State Lands or
7 Coastal Commission has something in this. This is
8 something that should be looked at it. This should
9 be looked at by the Department of Fish and Game. We
10 take observers on our boats and fish in the area,
11 fishing game observers, and we don't have any
12 problem. The Fish and Game department doesn't have
13 any problem with our fishing methods down there. To
14 see something like this in there, we're wondering
15 where it came from, and it upsets us and makes us
16 feel like we're being accused of destroying this area
17 when, in fact, we feel we're not. I'd like to see it
18 taken out of that study.

19 MS. CONNELL: Maybe our staff can
20 respond.

21 MR. THAYER: The scope of our work here
22 represents a coordinated effort in the Coastal and
23 State Lands Commission. Many of the things in here
24 were elements the Coastal Commission thought were
25 very important to their deliberations. Both
26 commissions are going to need to act on how to
27 resolve the shell mound issues and some of these
28 features that I think are being discussed were ones

1 that the Coastal Commission wanted to put in there.
2 There are other elements in there that are important
3 to us. It seemed, though, ultimately more efficient
4 to have one study even as part of that study were
5 more important to one agency or another. Some of the
6 things that are being identified here are the result
7 of that collaborative effort.

8 MR. BUSTAMANTE: He disagrees with the
9 statement.

10 MR. THAYER: I think that the
11 perspective of those that wanted those in there that
12 were mostly from the Coastal Commission were if the
13 trollers can't troll close to the shell mounds now
14 and are able to if the shell mounds come out that
15 this represents a potential environmental impact.
16 That was their concern if we're going to look at the
17 various impacts of leaving the shell mounds out that
18 that was one of the potential impacts. That's why
19 that's in there.

20 MR. McCORKLE: That type of study looks
21 to me like a commercial fisherman very hard to do to
22 come up with some. How do you know what's there now?
23 How do you know the impact? It's a real screwy thing
24 that doesn't make a lot of sense to me how it could
25 come out. It could come out if it stunk poorly. It
26 could come out with some bad stuff that isn't exactly
27 the way it really is which would really impact us for
28 something that we're not really doing. Thank you.

1 MR. BUSTAMANTE: Thank you, sir. C.
2 Miller.

3 MR. MILLER: Chris Miller, Commercial
4 Fishermen of Santa Barbara. I just wanted to follow
5 up on what Gordon Cota was talking about. I'd like
6 to recommend that the staff expand the scope of this
7 and get in touch with Wayne Ferrin, who is the
8 wetlands manager for the San Eland estuary and is
9 coordinator of the restoration project at that
10 wetland. You can get in touch with him through the
11 urbanian at the University of California at Santa
12 Barbara.

13 In my conversations with him, he
14 informed me since the estuary is downswelled of the
15 Santa Barbara Harbor where there's continuous
16 dredging that the flow of sand from that dredging
17 project in the future will impact the water flow in
18 the estuary which they need to maintain to keep the
19 halibut nursery area at an optimum level. And so
20 I've talked to the guys on the dock about this, and
21 one of the concerns that the fishermen in Santa
22 Barbara had, you're going to help the trollers, but
23 what about future fishermen? This is taking one type
24 of habitat and turning it into another. It's
25 basically taking a troll ground and turning it into a
26 recreational fishing opportunity. We thought a
27 mutual thing that would help everybody is to help the
28 nursery grounds for the halibut.

1 The other thing that is a concern like
2 you said, what kind of precedent does it set for the
3 rest of other offshore oil development and how we're
4 going to look at this even though it is in the
5 federal waters? Some we're worried about.

6 MR. BUSTAMANTE: Thank you.

7 Mr. Steinbach?

8 MR. STEINBACH: George Steinbach
9 representing Chevron. I appreciate the opportunity
10 to speak on this issue. I know there's been a little
11 background that Mike gave, but I feel the need to
12 provide a little bit to establish our position for
13 the record. We see the central issue of this agenda
14 item or this problem the completion of the
15 decommissioning, removal of the 4-H platforms. The
16 project was approved by the State Lands of '94 in
17 accordance with CEQA. This project was executed in
18 '96. Relative to the shell mounds with respect to
19 the project, it's important to point out that all the
20 permits issued for this call for the shell mounds to
21 remain in place. This intent was discussed in
22 preapplication meetings held with all the agencies
23 and made clear throughout the approval process.

24 The shell mounds were considered a
25 valuable resource for marine life substrate and some
26 vertical relief in a soft mud bottom area. This
27 makes them a reef that provides habitat for more
28 diverse species that would be possible. So the

1 people reviewing the documents, the agencies
2 reviewing the documents decided that it would be best
3 for the shell mounds to remain in place. In fact,
4 during project execution, special precautions were
5 done to not disturb the mounds when the jackets were
6 removed. At no time were the mounds considered to be
7 debris.

8 The permits that we did receive and as
9 Mike told you did assume the shell mounds would be
10 trolled, and Chevron was required to confirm this.
11 As you know, the tests were conducted in late 1996,
12 and we discovered that the mounds could not be
13 trolled without sagging. In early 1997, Chevron
14 began working cooperatively with the State Lands to
15 find a solution to the trollability issue. This
16 includes providing the staff with supplemental data
17 on the biology amounts. We also met with the
18 affected parties and trollers and reached an
19 agreement. Provide the affected fishermen with
20 sophisticated G.P.S. equipment to allow them to
21 safely troll very close to the mounds.

22 Chevron feels that this agreement
23 adequately and barely addresses the trollability
24 issue. But we have been prevented from implementing
25 this final solution and one that I know that the
26 trollers are very anxious to get to because this
27 recommendation has not been accepted as appropriate
28 mitigation for troll.

1 During this interim period while we've
2 been discussing all this, Chevron has taken several
3 actions in an attempt to make the situation
4 tolerable. This included the buoys that we've talked
5 about. They were installed and upgraded in 1999.
6 That upgrade resulted in a 50 percent reduction in
7 the failures of the buoys, and we have proposed
8 further upgrades on a unilateral basis. We proposed
9 these upgrades, these upgrades in 2000. We have a
10 responsive claim system. Since the 4-H platforms
11 were removed, we have received four claims, three
12 approved and one denied. And it was denied only
13 after an extensive investigation which included a
14 vessel haul-out and a third party inspection.

15 We hadn't received any claims in the
16 last year. We really do not see the need for the
17 measures recommended by staff. We think that we can
18 continue to work with the fishermen and with all
19 fisheries' liaison office to make the period
20 satisfactory to all by using existing practices.
21 Some of them are very longstanding particularly with
22 regard to claims.

23 Some of the items, however, have been
24 incorporated by staff, but we have already agreed to
25 do them on a unilateral basis. And we would
26 certainly proceed with those.

27 We are now engaged in gathering further
28 information on the shell mounds --

1 MR. BUSTAMANTE: Ten seconds. Your
2 time is rapidly coming to a close.

3 MR. STEINBACH: I can just wrap it up
4 very quickly. It looks like this interim period will
5 be drawn out further. They negotiated with us for
6 the agreement, and they're almost blaming us that we
7 can't implement it. We would like to work with the
8 State Lands to get to this private solution. Thank
9 you very much.

10 MS. PORINI: Mr. Steinbach, which are
11 the items that you unilaterally agree with the
12 fishermen on?

13 MR. STEINBACH: We have proposed
14 No. 4 -- No. 4 is a little more specific except that
15 it has a time frequency. We do it periodically.

16 MR. THAYER: For our benefit could you
17 identify one by one what those measures are.

18 MR. STEINBACH: Number 3 was the
19 requirement to maintain a spare buoy. Number 4 was
20 to -- No. 4 was to -- I'm paraphrasing -- was to have
21 the buoys inspected twice monthly. Number 5, we as a
22 common practice, we try to respond as fast as we can.
23 One month I have no problems with. Sometimes if you
24 involve a third party, that may be difficult to meet,
25 however. Number 7 is the common practice. That
26 No. 7 is to engage a qualified and experienced third
27 party. We do that as a common practice, and we did
28 that in the case of the one that was denied. The one

1 that was denied, that fisherman did have other
2 claimed processes to move to.

3 He filed with the county fishermen's
4 fund and was reimbursed for settlement. That's all.

5 MS. PORINI: Thank you.

6 MR. THAYER: To recapitulate the ones
7 that you were not in agreement, Mr. Steinbach, were
8 the better buoy design and deploying that better
9 buoy, design the written letters or written findings
10 that claim notifying the State Lands Commission of
11 any claim in mediation by the executive officer and
12 the differential G.P.S. Those were the elements you
13 did not deal with.

14 MR. STEINBACH: The question was not
15 agreed with once we implemented unilateral. I listed
16 the ones that we have already in some sense and form
17 placed. There are others, but there are some that
18 fall into that category.

19 MR. FRUMKES: My name is Daniel
20 Frumkes. I'm the director of the A.S.A. Conservation
21 Network for the Sport Fishing Association. Basically
22 our objective is to make more fish. We had a meeting
23 recently with the director of the department with one
24 of his lieutenants discussing what electronics the
25 controllers currently had because we thought they
26 could tell pretty closely. The general consensus was
27 that most of the boats had very good equipment. It
28 may be that most of the boats already have better

1 equipment than this. We want the boats to be safe.

2 In the interim they dealt with those
3 boats that need it. The idea of giving them the
4 differential G.P.S. is okay. But as I say, it's been
5 indicated in boats.

6 Another thing to note is that in 1969,
7 the union well blew out. In May 1971 the trollers
8 office in Santa Barbara were granted an almost unique
9 right to troll in state waters which is where these
10 platforms are after the platforms were built.
11 There's one other place in the Central Coast.
12 Otherwise, the state of California generally doesn't
13 allow trolling in state waters. What's being argued
14 about is less than 1 percent of an area which they
15 were already given as a unique compensation. We're
16 still trying to find out the origin of that, but
17 there's no question.

18 They have a unique situation. They've
19 asked now not to fish in 1 percent of it, and frankly
20 the settlement they're talking about is to get a lot
21 of money, not just equipment but a lot of money.
22 First of all, I agree with Gordon Cota and Chris
23 Miller that, after you do the evaluation of the shell
24 mounds, it's a tossup. Save the money from taking it
25 out and do something constructive for the marine
26 environment.

27 We agree with them entirely, and we
28 would like to see general construction the funds for

1 expenditures. We don't see the payoff for less than
2 1 percent. I agree with Thornton the negative dec
3 was accepted --

4 MR. BUSTAMANTE: You have ten seconds.

5 MR. FRUMKES: All the previous
6 workshops, everybody said don't take any shortcuts.
7 It ends up being longer. The negative dec was a
8 shortcut, and it's turning out to be longer. When we
9 get to Belmont Island, the negative dec is a
10 shortcut, and it's turning out not sufficient
11 information.

12 MR. BUSTAMANTE: Thank you, sir. Linda
13 Krop.

14 MS. KROP: My name is Linda Krop. I'm
15 the chief counsel with the Environmental Defense
16 Center, and I appear today representing the
17 Environmental Coalition of Santa Barbara, Sierra
18 Club, and Planning Association. And I also represent
19 the Pacific Coast Federal. We appreciate the work
20 that staff has done in not only addressing the scope
21 of work issues but also the very diligent job they
22 did responding to the commission's request for
23 information about interim protection. These mounds
24 have been in place for three-and-a-half years now,
25 and they have impacted obviously -- there haven't
26 been any recent claims is because they're not going
27 there. No one wants to risk their life or property
28 unnecessarily.

1 The original intent of the abandon
2 permit in the negative declaration, there was an
3 acknowledgement of the possible existence of the
4 shell mounds, but the assumption was they would not
5 be an obstruction. That's why they were left in
6 place. The negative declaration said there would be
7 site clearance of declaration. Given that the troll
8 test failed in 1996 and '97, clearly the shell mounds
9 in the permit do have to be removed. That is what
10 makes the scope of work so confusing because the
11 State Lands Commission permit says that Chevron must
12 demonstrate site clearance. They must pass a troll
13 test. Otherwise, they violate the permit.

14 They have to remove the mound because
15 there's no other way to troll in the mound. The
16 Coastal Commission does not require that. The
17 commission permits says if the mounds are to be
18 removed, a permanent amendment is removed. That's
19 why you're mixing two different standards of review
20 in one scope of work.

21 Rather than delay this any further, we
22 say go forward. We have submitted some comments on
23 November 24 in a letter to the commission that
24 hopefully you saw. Let's move forward but recognize
25 when it comes time for you to make your decision, the
26 information from the scope of work will be more
27 limited an application for you than for the Coastal
28 Commission. You are in a permanent enforcement

1 situation. Your job is to enforce the permit. If
2 it's not possible to remove the mounds in the site
3 clearance, then your permit can be to avoid removal
4 and various alternatives. It's a different standard
5 of review.

6 MS. CONNELL: Can you go through that
7 once more, Linda. I'm not sure.

8 MS. KROP: Your permit requires
9 verification of site clearance. In this case the
10 only way to accomplish that is to remove the mounds.
11 The scope of work for your purpose should look at
12 different methods to remove the mounds, what impacts
13 might result, how to mitigate those impacts. If
14 those cannot be mitigated, then you may look at other
15 alternatives. So you have a pretty narrow
16 standard --

17 MS. CONNELL: Do you think we're doing
18 that now adequately with the studies we're doing, the
19 rigs to reef workshop, et cetera?

20 MS. KROP: That's a different issue.
21 This is very case specific, and I think the scope of
22 work will include what I just mentioned. But it
23 includes a lot more, and I want to make sure when
24 this comes back to you, you don't get caught up in
25 all these other issues that the Coastal Commission is
26 looking at. It would be helpful in finalizing the
27 scope of work to list each item whether it's under
28 the jurisdiction of the State Lands Commission or

1 Coastal Commission or both.

2 MS. CONNELL: I think that would be
3 because this has been a discussion point all the way
4 through these comments today.

5 MS. KROP: I don't know if all staff
6 agrees with you.

7 MR. THAYER: I think staff work closely
8 enough together that it would be hard at this point
9 to tease too many pieces off. There's one or two
10 that we could, but I'm also concerned that it would
11 present -- I think that fundamentally the issues that
12 both agencies have to review are the same. There are
13 slight differences in the permits, but in terms of
14 the charge the agency, each agency we have different
15 jurisdictions. But, in fact, their responsibilities
16 are very similar, and I'm not sure it would be a good
17 idea to try to draw distinctions between the two
18 agencies as we go through this process.

19 MS. KROP: Well, for example -- and the
20 Coastal Commission staff informed their commission,
21 in fact, that their standard is broader because to
22 remove the mounds, they have to go and amend their
23 permit and according to their analysis under the
24 Coastal Act not just the permit. You are stuck with
25 a permit. For example, some of those issues are
26 things like impacts to recreational fishers. Another
27 example is impacts for trolling. That's not relevant
28 to your permit. The permit is established to a

1 specific. That's the purpose of their condition, the
2 two conditions in question. I think it is easy to
3 say which items are relevant to this commission.

4 MS. CONNELL: I just am more concerned,
5 Linda. Maybe it's an issue of definition or as Cruz
6 would say semantics, but I'm just concerned that the
7 study when it is done gives us enough information
8 that we can deal with this issue completely. I don't
9 want to so narrowly define the study where we are at
10 a point where there is questions raised by future
11 speakers at meetings like this and we don't have
12 correct data to analyze the validity of their
13 statement.

14 MS. KROP: The problem is you already
15 have issued a permit. You have a permit. It
16 requires site clearance verification. We've been
17 trying for three-and-a-half years to enforce this
18 permit. Two years ago the former executive officer
19 informed Chevron to apply then for an amendment if
20 they didn't want to remove the mound. It's been two
21 years.

22 MS. CONNELL: If your concern is the
23 timeliness of the study, we will get an answer back
24 quicker, and we can enforce the requirements against
25 Chevron. Is that an abbreviated --

26 MS. KROP: That's water under the
27 bridge. If the Coastal Commission needs to get this
28 other information, let them do it, and that's part of

1 the study. I don't have a problem with it. What I
2 have a problem with is the standard of review for
3 this commission when you get that study back. You
4 have a permit condition to enforce. If you don't
5 want to enforce it, direct Chevron to file an
6 amendment. Let's be true to the permit is our point
7 of view. We're here to enforce it.

8 MS. CONNELL: You don't have a problem
9 with the study that we're about to embark on. You
10 want to make sure when we get the information back
11 that we enforce the standard.

12 MS. KROP: Thank you.

13 MR. BUSTAMANTE: Are we ready to go on?

14 MS. KROP: I just have one last. I
15 wanted to comment briefly on the interim measures.
16 If I may, I'll do this quite briefly.

17 MR. BUSTAMANTE: You have 30 seconds.

18 MS. KROP: Support differential G.P.S.
19 with plodders, interim measures, not permanent.
20 PCFA has a concern that the provision of the
21 equipment would only affect a certain class of
22 fishers and not other fishers that have not trolled
23 in the area for the last year or troll the area in
24 the future. Thank you.

25 MS. CONNELL: Mr. Thayer may have
26 talked about the Band-Aid versus tourniquet raised
27 earlier. I'm not opposed to a tourniquet here. If
28 the tourniquet is the higher amount which was -- what

1 was that amount? \$3,300? I thought there was some
2 rather strong information presented that suggested
3 that, if we could go with this higher measuring
4 device, it might be more helpful to the vessels in
5 the area, and I normally as both Annette and Cruz
6 will tell you that I want to cut down to the bare
7 bones. But here it seems to me it might be prudent
8 to go with the higher quality instrument.

9 MS. PORINI: I agree with that. I
10 don't think we want anyone to lose their lives, and I
11 was compelled while I'm not in the trolling business
12 and I don't deal with plodders, I was compelled by
13 the arguments that the differential G.P.S. with the
14 plodder would provide more accurate and better
15 information that could be quickly and easily used.

16 MR. BUSTAMANTE: Is there a motion?

17 MS. CONNELL: I move that we go to the
18 higher mechanism at \$3,300 per vessel.

19 MR. BUSTAMANTE: Does that include the
20 rest of the staff recommendations, the exchange of
21 that?

22 MS. CONNELL: I move the staff
23 recommendation with that amendment.

24 MS. PORINI: I second.

25 MR. BUSTAMANTE: The vote is unanimous.

26 MR. THAYER: There's a second element
27 to the shell mounds, and that is whether the
28 commission would approve letting a contract for the

1 scope of work.

2 MS. CONNELL: I would agree. I will
3 make that motion as well.

4 MS. PORINI: Second.

5 MR. BUSTAMANTE: With no other
6 objections let the record show that the vote is
7 unanimous. And by request we'll take a five-minute
8 break.

9 (Recess taken.)

10 MR. THAYER: The next item, then, is
11 the last item on our regular calendar which is
12 Belmont Item 76. And the staff presentation will be
13 made by Jeff Planck.

14 MR. PLANCK: You're all familiar with
15 Belmont Island. Belmont Island as you know is within
16 42 feet of the water, a mile and a half off of Seal
17 Beach, California. They made an application and an
18 execution plan to decommission the platform in July
19 of 1998, and an initial study and negative
20 declaration developed in January of this year.

21 The staff recommendation on the June
22 calendar was remove the island completely. It was
23 met with strong and well-reasoned comment
24 sportfishing interests. The commissioners decided
25 that more information will be required to make a
26 well-informed decision on a delicate matter. The
27 commissioners directed the staff to conduct a
28 two-prong approach to help them meet the challenge,

1 bring together as much information on artificial
2 reef, rigs to reef idea which had considerable
3 history; second to do a more thorough investigation
4 of this site with particular regard to the local
5 marine habitat work conditions, navigational safety,
6 and what impacts scenarios on the current biological
7 community that was Belmont Island.

8 The staff met the first prong by
9 holding the rigs to reef workshop this morning
10 attended by many in the room here. They relied on
11 their associates to be the second prong. I think
12 that one thing was clear from this morning's
13 discussions is that each decommissioning will
14 probably present its own unique situation for
15 briefing opportunities.

16 Padre and DeWitt did an extensive
17 survey of the area within a one-and-a-half mile
18 radius of Belmont Island. This included a biological
19 study conducted after a scoping meeting in
20 consultation with Fish and Game, Coastal Commission,
21 and the lands staff personnel. The results of the
22 study are attached as Exhibit A. Copies were
23 distributed to all who ask and to the commentators
24 from the June hearing who we had current addresses.

25 An inventory of the surface area within
26 a one-and-a-half mile radius was calculated. It
27 revealed that the estimated 14,000 square feet of the
28 surface area available at Belmont Island of the 8

1 million surface area available for such biological
2 communities found around the site. There's a map of
3 the general location of all these items here to the
4 right. Further, the water clarity issue would seem
5 unresolvable since it is at the mouth of the San
6 Gabriel River and rather a turbulent area. It's also
7 considered a navigation hazard. If anything is left
8 there by the U.S. Coast Guard in the two high relief
9 options that were discussed in the interim, the Coast
10 Guard would definitely require some type of aides to
11 navigation, probably lights, et cetera.

12 In the lower ones they withhold comment
13 until they actually have something in front of them.
14 The liability issue is unresolved. No one has
15 stepped forward to be responsible for its care and
16 feeding although I know that certain parties are
17 working behind the scenes to resolve this issue or
18 confuse it. Basically the staff decided that there
19 was no evidence that Belmont creates a unique habitat
20 in this area.

21 Therefore, all things considered, staff
22 has come before you again with basically the same
23 recommendations as June to certify and adopt the
24 mitigated negative declaration, approve complete
25 removal of the island and lease restoration as
26 proposed, and require transport of rock components
27 and really anything else Fish and Game feels
28 comfortable with with the Bolsa Chica artificial reef

1 site off Huntington Beach.

2 MS. CONNELL: I have a question --

3 MR. PLANCK: Padre & Associates will
4 have debate and short presentations that they made or
5 answer any specific comments that the commissioners
6 or others may have.

7 MS. CONNELL: I had a question. Isn't
8 this the item which we discussed at LAX last time we
9 met, and I raised the question wasn't there a river
10 that came out here? And there was some concern
11 expressed by community residents about it polluting
12 this area.

13 MR. PLANCK: That's the San Gabriel
14 River.

15 MS. CONNELL: Did we investigate that
16 further? Remember someone raised that as a concern?

17 MR. THAYER: I think what was happening
18 is we had prolonged discussion from Department of
19 Fish and Game. They have an artificial reef program
20 that has certain criteria to be met. They were
21 concerned about the quality of water coming out
22 resulted in excessive trepidity around the site. And
23 therefore, this wasn't a good place to put a reef.
24 The alternative site where this material will go to
25 Bolsa Chica will be a much better place.

26 MR. PLANCK: The issue of the clarity
27 of the water and from Fish and Game's point of view,
28 the current location of Belmont Island is as they

1 said not ideal for an artificial reef. If we were
2 starting over, they would not put a reef there. They
3 prefer the water quality in the existing reef and use
4 this material to augment that and provide more
5 habitat with an area they consider more suitable for
6 biological organisms.

7 MS. CONNELL: Thank you. You know,
8 Mr. Chair, unless Annette chooses otherwise, I would
9 forgo any further testimony on this, and I would move
10 the staff recommendation.

11 MS. PORINI: I'll second that.

12 MR. BUSTAMANTE: We have several people
13 who would like to speak on this issue.

14 MS. CONNELL: I will withdraw my staff
15 recommendation.

16 MR. BUSTAMANTE: You can leave it there
17 on the table. We'll just bring the speakers forward
18 who may not change your mind. We have Milt Shedd,
19 Tim Cagle, Daniel Frumkes. That was an S, not an L.
20 Robert Osborn, Tom Raftican, and Bill Shedd. Milt
21 Shedd. Mr. Shedd said that he -- well, he wasn't in
22 support or opposition. He just wanted to speak.

23 MR. M. SHEDD: My name is Milton Shedd,
24 and I testified earlier in the day. I've been
25 involved in marine research projects ever since 1962.
26 I'm saddened because I see a political process
27 operating here that does not really pull together the
28 science that is needed to tell you honestly what

1 cause and effect is going on in the marine
2 environment.

3 Commissioner Connell, you made
4 reference to the fact that it's very difficult to
5 make decisions when you don't know what you believe
6 when you don't really have the information that you
7 can rely on so that you know whereof you speak. It's
8 difficult. And this is a worldwide problem.

9 Resources the world over are being
10 destroyed because we man these resources by the seat
11 of our pants really. And you look at the attempts at
12 managing species, and they're constantly going
13 downhill. We don't know how destructive bottom
14 trolling is. And yet we are not perhaps creating a
15 Band-Aid or a tourniquet. We may be creating even
16 bigger problems for ourselves later when we find that
17 indiscriminate gear types such as bottom trolling or
18 gill netting or long lining which you can't control
19 is doing tremendous damage to the world's resources.

20 In terms of Belmont Island, I'm
21 hopeful -- let me back off for a minute. Where can
22 the science come from that will give you the kind of
23 guidance you want? Didi Albert has been in touch
24 with the University of California and state campuses,
25 and they're putting together a blue ribbon panel to
26 look at marine issues relative to the ocean
27 environment. I think that there is a potential
28 beginning. Didi Albert's bill isn't saying that this

1 bill is dictating that they're going to be rigs to
2 reef. All it's really doing is saying, "Hey, this
3 may be something that we're overlooking, and we ought
4 to get the science together that we can believe in
5 and take a look at it."

6 I saw the 4-H rigs go out of existence
7 with nobody paying attention to any of the ecological
8 damage that was being done there, and I sure as hell
9 hope that you don't yank out Belmont Island before
10 you really know what you're doing. That's about all
11 I've got to say.

12 MR. BUSTAMANTE: I hope you're right
13 too. I hope we're right too. Mr. Cagle?

14 MR. CAGLE: I'm Tim Cagle. I'm a staff
15 engineer with Exxon Irvine. I wanted to express our
16 support for State Lands Commission staff's evaluation
17 in their report in the recommendations. We believe
18 that dismantling this, using this to significantly
19 augment Bolsa Chica is the appropriate solution for
20 this facility, and our hope is that the commission
21 will approve this recommendation today. And I'll be
22 available also to answer questions for further
23 discussion. Thanks.

24 MS. CONNELL: While the speaker's
25 coming up, Mr. Chair, I have a question.

26 MR. BUSTAMANTE: Mr. Frumkes.

27 MS. CONNELL: How deep is this mound?
28 Is it 40 feet deep or 20 feet deep?

1 MR. THAYER: The ocean floor, the area
2 is 42 feet deep. The platform comes up and breaks
3 the surface. It's not a platform. There's an
4 island. It's a caisson with rock around it. The
5 water level at the ocean floor is 42 feet.

6 MR. FRUMKES: Daniel Frumkes for the
7 American Sportfishing Association. I'm very
8 disappointed of the lack of desire to have
9 information. The biological report which was ordered
10 by your commission and was done by Padre Associates
11 was not distributed to the adviser to the University
12 of California Office of Research until a week ago.
13 We've had one week to look at that report, and the
14 first reaction of every coastal scientist that we've
15 consulted said, "You can't make a statement of a
16 snapshot. You can't go there one day, one week and
17 make a statement." We know that some of the things
18 he said are not generally true, but they were true
19 when it was there. He has a good camera. He's a
20 really good snapshot.

21 When the marine science center at
22 U.C.L.A. was asked what it would take to evaluate the
23 environmental impact removing the shell mounds which
24 were known to the settlement areas or the rockfish,
25 the marine science center said that it would take
26 three years as a minimum because of the changes from
27 year to year. So we're not given a chance. When we
28 did evaluate the study, we said, "You can't make this

1 decision without going over time." This reef, it
2 turns out, is extremely popular in the fishing
3 community. It is highly used. It's right in front
4 of major marinas. There's shallow water before you
5 get to it. You have to run around before you get to
6 it or even after you cut it down. But it's very
7 popular. It's not even referenced in the report.

8 And I'll tell you frankly when I first
9 commented on the E.I.R., I didn't know how important
10 it was. I found out as we started discussing it.
11 Gee, that reef in that position is important. Is
12 there a way that we can keep it?

13 No socioeconomics. You think in terms
14 of cost effectiveness. The Department of Fish and
15 Game, our management agency, the resource agency,
16 they're all short of money. Do you have any idea how
17 much savings there might be? Suppose that reef is
18 not where Fish and Game would like to put it. It
19 definitely could be five times as productive, maybe
20 ten. These kind of measurements have been made.
21 You've read the paper. So suppose we said, "Yeah, we
22 can mitigate for any problems there are and it's good
23 and it's convenient and my God. We saved \$3
24 million." That can be used for a constructive
25 purpose that the commercial fishermen were talking
26 about and we talk about.

27 They don't mention that. We don't care
28 about money for resources. Is that the statement

1 because it is irrelevant in the report. I meant to
2 be very pleasant here today, but I'm sorry. I was
3 really taken aback. We have a proposal. The
4 stumbling block to keeping Belmont Island is the
5 liability for a period of time. Obviously there
6 should have been a complete E.I.R. Let me, please.
7 We're working this really hard to do it well for
8 everybody. It should have been a complete E.I.R. or
9 we wouldn't be at this. That's what they learned
10 from the shell mound. We haven't gotten that permit.
11 We haven't made that mistake that Linda Krop talked
12 about.

13 Exxon, it's been delayed. They've been
14 giving mixed signals. It's kind of not fair. We
15 have a compromise that we don't force them into a
16 full E.I.R., but we enable them to support the
17 social, economic, and biological effects of removing
18 that platform. We do it in such a way as they do --
19 they get their contaminated stuff out right away
20 which they're really anxious to do and everybody
21 wants to do. They have to peel back some rocks to do
22 it. We get together with the Coast Guard and
23 everybody else to find out how high the reef should
24 be.

25 You see if you look at those studies
26 and say, "By God. The scientists tell us those are
27 valuable studies." They're going to tell us
28 something about ester which is going to come right in

1 front of us in the near future, and they're going to
2 tell us about other things. It's valuable. And you
3 say to yourselves, well, you know, if for such a
4 limited period of time, we hold the liability so you
5 can't get Exxon to do it. Assume for a limited
6 period of time we think it's in the public interest
7 to study this site. The reason we're keeping it
8 there temporarily possibly is because it's in the
9 public interest. It gives us a chance to get the
10 information. It is unfair to Exxon.

11 Exxon will have signed up and put all
12 the money they say it's going to take to remove the
13 reef with the interest to the trust fund. There are
14 university people, but it would be an RFP. Anybody
15 could bid. Socioeconomics is needed. It's been done
16 on the East Coast. It's never been done here. If
17 you decide you don't want it there, you've already
18 got a contract from Exxon to remove it for the amount
19 of money that they put into the fund, and you give
20 them the money as you remove it. You have no
21 liability whatsoever.

22 And that rock can be taken to Bolsa
23 Chica after you know what you're doing. And all you
24 have to do is say to yourselves it is in the public
25 interests for the Lands Commission to spend some time
26 while Exxon spends some money and the scientist
27 teaches. That's our proposal. We would like an
28 opportunity for it to be evaluated. We think it can

1 work. Thank you.

2 MR. BUSTAMANTE: Does staff have a
3 response?

4 MS. CONNELL: I have a question for the
5 speaker. I'm sorry. I can't recall your name. How
6 do you respond to the issue of this pollution of the
7 San Gabriel River into this area of land?

8 MR. FRUMKES: I think of Belmont Island
9 being the surfers' entrance to Malibu Creek, and
10 they're screaming about the dirty water coming from
11 Tapia and other sources. The problem is if there's
12 contaminated water coming out of that stream, that is
13 an issue that should be dealt with. Belmont Island
14 gives us a clue about that. Belmont Island is the
15 canary in the coal mine and is providing a service.
16 In terms of the clarity of the water, the office of
17 research at U.C.L.A. has a scientist. This is his
18 area of expertise. His associates are saying they're
19 not sure why the water is clear. They're not sure.
20 They say it may be the dredging that's going on in
21 the harbor. There's tremendous dredging going on in
22 that harbor. Nobody has studied that current.

23 The kelp comes and goes. We may get
24 kelp there. It comes and goes. It's been there in
25 the past. But kelp reefs are not the only reefs.
26 High profile reefs can be very productive. We don't
27 know whether this reef can come to the surface and
28 have the Coast Guard buoys until we talk to the Coast

1 Guard about something other than let's get it out
2 because we've had two sides of this discussion.

3 One side's saying, "Let's get it out."
4 And the public is finally finding out. The public is
5 saying and the scientists are saying, "You don't have
6 the information. You cannot have it with a
7 snapshot." And the public is saying, "We care." But
8 what if it was a natural reef? Would you just go
9 ahead, permanently get it out of here a natural reef,
10 or would there be a hue and a cry? The fishermen,
11 and they're the ones who know about what's going on
12 there. And we've seen in the slides you can't tell a
13 natural reef from an artificial reef after it's been
14 encrusted. Where do you draw the line?

15 These are important issues. They're
16 not easy. In some ways it's not fair for you to have
17 it, but I think Lands should have it. I really think
18 Lands should be the ones to decide what to do with
19 these tidelands. You have the infrastructure to do
20 it. You have the access that you need.

21 You're really the right people. You're
22 in a position to get the information with a
23 compromise. You got to know a situation. You'll
24 know that you're not allowed to take a deep tack in
25 that direction. It's illegal, and it's monitored.

26 MS. CONNELL: Thank you.

27 MR. BUSTAMANTE: Response?

28 MR. THAYER: We asked Fish and Game to

1 look at this before we came to you in June, and their
2 basic response was -- I think staff said earlier this
3 is the wrong place. Rather than take this out, what
4 they recommended is it's better for the wildlife.
5 It's better for the state. After our meeting in
6 June, it was clear there were sportfishermen and
7 recreational divers who liked having Belmont where it
8 was. It was an amenity, a recreational opportunity
9 for them. Okay. Maybe it's not the best place for a
10 reef, but if people are using it for a reef
11 recreational rather than habitat.

12 We did a study to see if we were
13 missing on the environmental issue anything specific.
14 There was nothing specifically valuable about this
15 habitat existed that at the breakwaters of the nearby
16 harbor, that kind of thing.

17 The second thing we did is ask the
18 Coast Guard. They said they would prefer to have it
19 moved. The final thing we looked at was management.
20 We wrote letters to California Department of Parks
21 and Rec. We wrote to Seal Beach. We wrote to Orange
22 County. If this is a recreational management issue,
23 can we find somebody to take that. Nobody accepted
24 the responsibility. We thought it would be a
25 win-win. We had the Coast Guard saying, "Take it
26 up," and we have nobody else who's willing to take on
27 the management responsibility. We went back to the
28 original Fish and Game recommendation. The best

1 place for these rocks is off the Bolsa Chica.

2 MR. FRUMKES: May I respond?

3 MR. BUSTAMANTE: I think you've had
4 ample time to respond, sir. Robert Osborn.

5 MR. OSBORN: My name is Robert Osborn,
6 and I'm here representing myself. I'm a sportfishing
7 enthusiast. While no one asked me to come here and
8 represent me, I have friends and correspondents who
9 share my feelings in this matter.

10 Belmont Island is a recreational
11 facility. While we can fish in many areas, Belmont
12 Island represents a special and important resource
13 for myself and my fishing friends. Belmont Island is
14 a fishing hole when the weather is bad, the wind
15 blows. Fishermen in the interests of safety cannot
16 travel far as the water conditions can be dangerous.
17 Belmont Island and some of the other islands within a
18 couple of miles of shore have outstanding fishing
19 opportunities with a scenic distance of Long Beach
20 and Huntington harbors. Belmont Island is
21 outstanding. I also fish it on good weather days
22 when I could go to more distant locations.

23 Too few are these type of locations. I
24 know of no serious port fishermen that fish the
25 barren areas that are so common to this area. I hear
26 comments about how Belmont does not represent a good
27 or ideal or best location for a reef. Well, there's
28 probably only one location that is the best or ideal.

1 There are many locations where reefs can be
2 productive. They say it's too shallow, they say.
3 Yet many fishermen catch fish there. Much shallower
4 water can catch fish. It's close to harbors and
5 marinas. That's what it's especially good for
6 especially in rough weather.

7 Water quality is too poor. It does not
8 appear too poor for the fish because the fish are
9 there. Removal of Belmont Island even if materials
10 are used to build new reefs seems to be a process two
11 steps backwards to accomplish one step forward.
12 Thank you.

13 MR. BUSTAMANTE: Thank you, sir. Tom
14 Raftican. And then Bill Shedd on deck.

15 MR. RAFTICAN: My name is Tom Raftican.
16 I'm president of United Anglers of Southern
17 California. We're the largest association dedicated
18 to restoring fisheries and marine habitat in Southern
19 California with some 30,000 affiliated members. I
20 was going to come up and tell a little bit of
21 background about the habitat of Belmont Island and a
22 little bit about the science there, but Mr. Frumkes
23 and certainly Mr. Shedd covered those areas quite
24 well.

25 I was going to come up and tell a
26 little bit about angling on the island, but
27 Mr. Osborn did a very, very good job of that. I
28 think when you put the entire picture together, let's

1 see what we have here. We have the opportunity, the
2 existing opportunity right now when something that's
3 close in that's recreational fishing and close enough
4 to the harbors that virtually anybody can get there
5 in safety. It's an unusual situation. Bolsa Chica
6 is a great reef, but it's about four miles offshore.

7 You covered a number of areas there,
8 and I think the only one that really seemed like it
9 was much of a concern was the water quality issue
10 which relates to the San Gabriel River. Mr. Frumkes
11 put up a number of propositions. If the reef is left
12 in place, obviously there's going to be substantial
13 savings. It would seem that the savings could be you
14 could finish the Bolsa Chica reef with simply the
15 savings of leaving the existing reef in place.

16 Look at the water quality. Use this
17 to do a study on water quality around there and do
18 something to implement the changes in the San Gabriel
19 River. The word "artificial" goes in there, but it's
20 a reef. You've got lobster fishermen on it. You've
21 got recreational anglers on it now. It's a shame to
22 leave it, to take it away. Thank you very much for
23 your time.

24 MR. BUSTAMANTE: Thank you. Mr. Shedd.
25 Bill Shedd.

26 MR. B. SHEDD: Before I refer to the
27 letter in your packet of 2/12/99 from the CORE board
28 of directors, I want to clarify one point. It was

1 said that the Department of Fish and Game would not
2 choose this as their first choice for a reef site. I
3 think the point of clarification was on a new reef.
4 This is an existing one. If they were to start over,
5 there'd be other locations. You've got live habitat
6 in this, a real difference. The California Official
7 Reef Enhancement, or CORE, program is a 501c private
8 benefit corporation with the goal being additional
9 research and education about artificial reefs and
10 their role in the ecosystem.

11 In past California decommissioning
12 efforts, projects with clean materials which provided
13 homes for living marine organisms were removed
14 without considering their habitat. We're on that
15 same path. That's been expressed here by the four or
16 five folks before me. You guys have an impossible
17 job. There really is no way to really understand
18 what's happening. It's impossible. Can't do it.
19 Just as I mentioned previously, the 4-H rigs, we had
20 tons of material removed. A decision made by a
21 similar board to yourself receiving similar
22 information from similar experts, the bottom line is
23 the habitat's gone.

24 It appears we're about to be on that
25 same path. After removal of the inner island and
26 other important materials which everybody agrees
27 should get out of there that offer habitat value.
28 Rather than requiring Exxon to spend money on the

1 removal of this rock habitat, we would encourage you
2 to work with Exxon and develop a plan to have a
3 portion of any money saved from removing this rock
4 habitat and create additional reef habitat as
5 determined by the California Department of Fish and
6 Game.

7 It is widely known that vertical
8 structure increases fish community-associated reefs.
9 Possibly by working with Exxon in not making a snap
10 decision here, additional vertical structure should
11 be added to increase the overall habitat value
12 similar to what exists today. Thank you.

13 MS. CONNELL: Mr. Chair, is there
14 another speaker?

15 MR. BUSTAMANTE: He's the last speaker.

16 MS. CONNELL: I'd like you to stay
17 there for a moment if you could. Mr. Shedd, is that
18 your name?

19 MR. B. SHEDD: Yes.

20 MS. CONNELL: I want to review the
21 three concerns you had about this. I think as the
22 evening has gone on, I can only remember two of the
23 three. One was the management liability issue. Who
24 would take responsibility for management liability?
25 The next is navigation issue by which I think was
26 kind of addressed although not really adequately in
27 my view in the Coast Guard letter. I don't know that
28 the Coast Guard has major concerns with that. What

1 was the third?

2 MR. THAYER: Fish and Game had some
3 question based on water quality. I guess they
4 generally only want new reefs in 60 feet of water or
5 more, but I think that's probably more of a
6 liability.

7 MS. CONNELL: This is not a new reef.
8 We're dealing with an existing mound.

9 MR. THAYER: They thought the same
10 substrate would be more valuable in Bolsa Chica
11 because of the water quality being better there than
12 if it were in front of the river. But again, I don't
13 think any of those were absolute bars except for the
14 navigation and the liability issue which would have
15 to be resolved in keeping the island there. Our view
16 was to find out some way to keep it there --

17 MS. CONNELL: I have no scientific
18 background here. I'm exploring. It's like giving a
19 child a chemistry kit who's three years old. I don't
20 know what terms to be using correctly here. It seems
21 to me there have been some compelling arguments that
22 have been presented by the speakers. Is it possible
23 to remove the portion of this Belmont Island that
24 could create a negative problem, the remaining oil
25 portion and put that away and leave some of the rock
26 that remains at the bottom of Belmont Island so that
27 you could still have some of this reef life going on?

28 MR. B. SHEDD: Bingo.

1 MR. THAYER: Absolutely one can do
2 that. There are some studies like you getting myself
3 potentially in trouble here, and I think the
4 consultant here has done this kind of work. It would
5 indicate what is left what is a low pile of rock.
6 Right now the rock is held up because it uses riprap
7 to protect the existing platform that, once that
8 caisson is taken out, the rock becomes a mound in
9 that area and that the value of that is much
10 diminished. As we've heard this morning, generally
11 it's the vertical habitat that creates the best, the
12 vertical structure that creates the best habitat.

13 What we're left here is with a mound
14 that's 10, maybe 15 feet high whereas the overall
15 structure goes up 40 feet. If that's an amenity that
16 the fishermen can still enjoy, I'm not sure it
17 provides the same benefits. That could be left
18 behind. There's still a liability issue that's left,
19 and the Coast Guard preferred the high mounds than a
20 lower island. Their preference was to take it out.
21 Yes. It's technically feasible to remove the
22 concrete and steel inner portion of this island along
23 with a contaminated sand that's expected to be in
24 there and leave those riprap rocks behind which is
25 the substrate that is most valuable.

26 MS. CONNELL: I read some of the
27 preparation stuff through rigs and reef discussion
28 today. It seems to come down to we really don't know

1 a whole lot about this yet. We're really going to be
2 pioneering a whole new response to what we do with
3 these facilities that are out there in the middle of
4 the ocean. I think there's probably not one clear
5 solution to these problems, and I would hope that we
6 can be adaptable as we go through each of these
7 sites. What we can find for one might be quite
8 different for another. I would be willing to pull
9 back my motion here and kind of reconsider it. I
10 would really like to see if we could do something
11 that removes the oil portion of the Belmont Island,
12 carts it away so we don't have environmental damage
13 to the area.

14 I am willing to look at trying to keep
15 part of the structure in place. I think it is a very
16 sellable argument that we already have reef life
17 there. Why destroy it? Why not let it continue? It
18 might not be as vibrant as if you have had structure
19 if you had the ecosystem, but perhaps it still has
20 some value if it stays at a reduced level. I don't
21 know. There are scientists sitting in this room to
22 give us a sense. I don't know if that's more
23 expensive or less expensive for Exxon, and I don't
24 mean to be producing financial burden on this
25 company. It seems to me that we might be able to try
26 an opportunity here. We'd learn in two or three
27 years how we were doing with this. We're going to
28 have a generation where we're going to have to

1 dismantle these oil facilities up and down the coast
2 of California, and the more alternatives we've
3 explored, perhaps the more informed we're going to be
4 ourselves as we get to the more difficult situations
5 that lie ahead of the commission. Please give me a
6 response. This may be completely off the wall.

7 MR. THAYER: If the commission chooses
8 to go in that direction, we can figure out ways to
9 facilitate that. It might end up entailing to saving
10 some liability on this site.

11 MR. BUSTAMANTE: Would you like to
12 defer action today in order to be able to have me
13 come back with something?

14 MS. CONNELL: Yes. Is there an
15 immediate need to take action here today?

16 MR. THAYER: I think Exxon needs to
17 respond to that. No. I don't think there's
18 immediate --

19 MR. BUSTAMANTE: Exxon.

20 MR. THAYER: The applicant here. I
21 think the applicant has actually --

22 MR. BUSTAMANTE: Does the decision have
23 to be made today?

24 MR. CAGLE: We would like to move
25 forward with the project.

26 MR. BUSTAMANTE: Does the decision need
27 to be made today?

28 MR. CAGLE: The concerns of the site as

1 suitable for a long-term reef. We share those
2 concerns. One thing I think we need to recognize
3 is --

4 MR. BUSTAMANTE: You said yes, and then
5 you said maybe.

6 MR. CAGLE: I said yes.

7 MS. CONNELL: Let me understand again.
8 What are the concerns of the Coast Guard here?
9 Quality of water? I've read that Coast Guard -- I
10 have some practice having been in elected life for
11 five years. And I read that letter, and it was the
12 most neutral presentation of facts I have seen.

13 MR. CAGLE: I guess the question is is
14 it going to be okay to leave the island in the
15 condition it is today for some period of time for
16 further investigation or evaluation? Is that the
17 question to come back with more information?

18 MS. CONNELL: If we're coming back to
19 this commission meeting anyway in February, I'm
20 intrigued with the idea of trying to come up with an
21 alternative here. I'm looking for that letter from
22 the Coastal --

23 MR. BUSTAMANTE: The next possible time
24 we could take it up is in February.

25 MR. THAYER: One other thing that our
26 environmental attorney points out is that the
27 commission what was evaluated was the impact of the
28 proposal, the riprap over to Bolsa Chica. If the

1 commission wanted to reach a decision to leave some
2 of the material behind, we would probably need to
3 work up the environmental deal before the commission
4 could act. If that was the direction the commission
5 wanted to go, we would recommend that it not act
6 today.

7 MR. BUSTAMANTE: I think what the
8 controller is suggesting, it should be an abeyance
9 item pending additional information that you would
10 provide to the controller so she could make a more
11 informed decision come February. The issue, then, is
12 does this have any bearing on your -- I'm ready to
13 move.

14 MR. CAGLE: I believe some of the
15 concerns that you may have are addressed in the
16 evaluations that have been done today in looking at
17 the different reef alternatives and the pros and cons
18 associated with those that in the biological survey
19 information details in that report. I think some of
20 the questions that you have are answered there. I
21 hear a great concern over the fishing resource of
22 this site. That has been found to be associated with
23 the piles and the wars, and under any scenario those
24 are going to be taken out, those will be removed
25 because they do pose a high hazard to navigation and
26 liability.

27 MR. BUSTAMANTE: What you're left with
28 is about 10 or 15 feet of rock?

1 allow us to really take a snapshot. What would
2 Belmont be like if we knock it down, ester as the
3 example?

4 We found a reef is not as active as the
5 current island itself, not as active as breakwater.
6 What we also found when we prepared species, and in
7 your staff report we have a comparison of the Bolsa
8 Chica although it's in deeper water. It's in clearer
9 water. The clarity issue is one of the big drivers
10 on the habitat Belmont Island. When we look at the
11 species there, what we would expect at Belmont at 30
12 feet down, they're comparable. So the net result of
13 our analysis was that design scenarios we're talking
14 about would require complete removal of peeling back
15 of the island in significant mortality on the
16 existing organisms on the island itself.

17 As far as trying to preserve what's
18 there, there would be significant disruption. When
19 it was moved into Bolsa Chica, it moved in deeper
20 waters than navigational issues have been reduced
21 already a permanent site. There's a state trusty
22 agency Cal Fish and Game that we would see the same
23 habitat in that location. It's not in the specific
24 location, but a lot of the constraints we've heard
25 about the navigational issues, the fact we're in an
26 active harbor or naval station would all be
27 eliminated. And we have an agency to take hold of
28 the riprap. So I concluded that looking at the

1 various scenario, recognizing that the high relief
2 would be the greatest productivity but the
3 constraints of navigational issues to a lower level.
4 Bolsa Chica offers a good relocation option.

5 I should note this morning we heard a
6 number of cases in the Gulf of Mexico for relocation
7 of the jacket preapproved permitted area is the net
8 result of their rigs to reef program. So we really
9 have a parallel here. Yes, the reef is going to
10 continue to act as a reef, but it will be relocated
11 to an area.

12 MS. CONNELL: Do you think there's
13 anything to be gained from a research viewpoint for
14 knocking it down to the lower level and maintaining
15 it so we have an alternative to look at as we move
16 forward on this effort of converting things from rigs
17 to reef?

18 MR. BROWN: That is platform ester.

19 MS. CONNELL: There's no scientific
20 value.

21 MR. BROWN: There is a snapshot. If we
22 wanted to go back and see what Belmont looks like in
23 ten years if we knock it down, ester at least gives
24 us a first glance of what that would be. Ester is a
25 little clearer water. It's a little shallower
26 actually by ten feet at the most. It gives us that
27 example of what we would expect to see. No kelp is
28 anticipated to grow on any of the scenarios. We

1 didn't see kelp in ester. That's what our
2 conclusions are what kind of habitat would we get.

3 MS. CONNELL: You don't see any value
4 for keeping it at a lower level. You would say go
5 ahead. Move it to Bolsa Chica.

6 MR. BROWN: That is our recommendation.
7 The net value has already a considerable amount of
8 material that would be more beneficial than leaving
9 this isolated small low lying area.

10 MR. BUSTAMANTE: Pleasure of the
11 commission?

12 MS. CONNELL: I'll put my motion back
13 on the floor if I have a second.

14 MS. PORINI: You do.

15 MR. BUSTAMANTE: Motion is seconded.
16 Let the record show it passes unanimously. Thank you
17 everybody for coming here today and for all the
18 presentations. We are going to closed session. If
19 you could do us a great favor and move quickly.

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1 STATE OF CALIFORNIA

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4 I, Dina M. Lossone, CSR No. 11340, a
5 Certified Shorthand Reporter in and for the State of
6 California, do hereby certify:

7 That the foregoing proceedings were
8 taken down by me in shorthand at the time and place
9 named therein and were thereafter transcribed under
10 my supervision; that this transcript contains a full,
11 true, and correct record of the proceedings which
12 took place at the time and place set forth in the
13 caption hereto.

14

15 I further certify that I have no
16 interest in the event of this action.

17

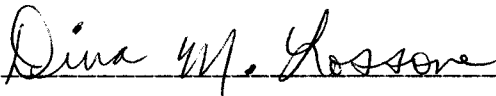
18

19 EXECUTED this 28th day of February, 2000.

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DINA M. LOSSONE

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