

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

PORT OF SAN DIEGO
3165 PACIFIC HIGHWAY, BOARD ROOM
SAN DIEGO, CALIFORNIA

MONDAY, APRIL 7, 2003

1:00 P.M.

Michael Mac Iver
Shorthand Reporter

ORIGINAL

APPEARANCES

Cruz Bustamante, Chairperson

Steve Peace, Director of Finance, represented by David Takashima

Steve Westly, State Controller

STAFF

Paul Thayer, Executive Officer

Jack Rump, Chief Counsel

Paul Mount, Mineral Resources

Dave Plummer, Land Management

ALSO PRESENT

Alan Hagar, Deputy Attorney General

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1 Before commencing with my report, I wanted to acknowledge
2 that there's a representative of the Port here today, the
3 Chairman of the Port Board, Mr. Jess Van Deventer, who
4 wanted to speak to the Commission.

5 CHAIRPERSON BUSTAMANTE: Please come forward.

6 MR. VAN DEVENTER: All right.

7 CHAIRPERSON BUSTAMANTE: How are you, sir?

8 MR. VAN DEVENTER: Great. I appreciate the
9 opportunity to have you here in San Diego, and it's good to
10 see you again. You're no baby yet, but you're getting
11 close.

12 (Laughter.)

13 MR. VAN DEVENTER: But it's a pleasure to have you
14 having this meeting in San Diego and I hope that your
15 meeting goes well today. And if there is anything we can do
16 to help you, feel free to ask and we'll do what you would
17 like to see us do. Thank you.

18 CHAIRPERSON BUSTAMANTE: Thank you. We appreciate
19 the use of the facilities, and I think we will probably be
20 making more use of them, if they're available, so that we
21 might have some more meetings this year just right here.

22 MR. VAN DEVENTER: Definitely. Thank you.

23 CHAIRPERSON BUSTAMANTE: All right. Thank you.

24 The next order of business.

25 EXECUTIVE OFFICER THAYER: We'll continue on with

1 the Executive Officer's report.

2 CHAIRPERSON BUSTAMANTE: Please go ahead.

3 EXECUTIVE OFFICER THAYER: There are two things I
4 wanted to talk about. One just briefly is to mention that
5 as authorized and required by the Commission, staff of the
6 Attorney General's office has filed a litigation regarding
7 the abandonment fund in Long Beach. As you may recall, the
8 Commission had previously decided that this money should be
9 returned to the state. Staff has attempted to accomplish
10 this administratively and was unsuccessful, and the
11 Commission authorized the litigation to be filed that was
12 filed, I believe, last Wednesday by Mr. Hagar.

13 MR. HAGAR: Right.

14 EXECUTIVE OFFICER THAYER: And we'll of course
15 report back as that progresses.

16 The second item I wanted to mention is that I
17 wanted to report back to the Commission concerning the
18 Commission's direction at it's last meeting to come up with
19 some procedures to try and expedite the Commission's review
20 of projects which are of economic significance to
21 California. We, of course, attempt to do that anyway, we
22 try to do our best to expedite the review of any project
23 that comes before the Commission, but based on the
24 Commission's input, we went back and took a fresh look at
25 some of our procedures and we think we found some ways that

1 we are going to be able to accomplish this.

2 And, of course, these high-value projects that
3 were identified by the Chair and the other Commissioners
4 involved projects that brought jobs to California or were
5 infrastructure that would facilitate other projects of
6 importance to California's economy. So these were the kinds
7 of projects that we wanted to see if we could move through
8 more quickly, and this was at the specific direction of the
9 Commission, without short changing the environmental review
10 at all. We think we've gotten some process together that
11 will accomplish that. In order to do this, we've reviewed
12 how we've processed past projects that meet these criteria
13 and discussed how that went with some of the past applicants
14 and got some suggestions from them about how we can improve
15 our process.

16 We think there are three major areas that we can
17 improve a little bit on. One is communications with the
18 applicant. The second one is coordination between our
19 divisions. Lots of these projects require review by several
20 of the Commission's divisions. And finally, additional
21 senior staff and management monitoring the projects as they
22 move through the process.

23 Our staff report which we've distributed to the
24 Commissioners' offices previously identify a variety of
25 measures to address these three main concerns. Some of

1 them, for example, are that the projects would be designated
2 and would be discussed as they progressed at our weekly
3 senior staff meeting. That ensures that all the different
4 divisions are present and can comment on the process. The
5 applicant will be periodically contacted to ensure progress.
6 Sometimes we're in a situation where we think the ball's in
7 their court and they think it's in ours. We're going to
8 make sure that doesn't happen.

9 And finally, we're looking to make some
10 improvements to the scheduling of meetings of the
11 Commission. As the Commissioners know, we've in the past
12 generally scheduled on more of an ad hoc basis when the next
13 Commission meeting is going to be and we've usually had
14 about five a year. We're recommending and have worked with
15 your offices to accomplish already a process where we're
16 going to end up with six meetings a year, so it would be
17 more reliably every other month.

18 This will give applicants some advance knowledge
19 of when we're going to meet. And we're going to try and set
20 our dates in advance as well. And I'm happy to report that
21 we've already been able to accomplish that with the
22 assistance of your offices so that the next four meetings
23 are already now established, the dates, and we'll be putting
24 that up on our website later this week so that all the
25 applicants can be aware of when they can have a Commission

1 meeting.

2 We're going to track the results from these
3 improvements. We'll do an annual review on the staff level
4 to see how we're doing, to see if there is anything else
5 that we can do to improve our performance, what changes are
6 needed. And eventually we hope to apply some of these
7 lessons as well to our regular items. There is no reason
8 why we can't do the same sort of thing with everything that
9 comes through the Commission. So we want to take what we
10 learn on the special projects and apply it to the rest of
11 the process.

12 So that's what we have done in response to your
13 direction. We hope that the results and we're looking
14 forward to measuring whether we've accomplished this, and
15 we'll be able to expedite these important projects through
16 for California.

17 CHAIRPERSON BUSTAMANTE: Any questions by the
18 Commissioners?

19 Go ahead.

20 ACTING COMMISSIONER TAKASHIMA: I have a question.
21 What's our next location for a meeting, because I do want to
22 come back to San Diego a little later in the summer, if we
23 can. But I'm not sure if you have already scheduled
24 locations for the meetings.

25 EXECUTIVE OFFICER THAYER: We haven't reserved a

1 room yet, but we had planned on coming to Southern
2 California. We thought about Los Angeles, but, of course,
3 if the other Commissioners agree with coming back in June,
4 then our next meeting date is June 2nd, we can certainly do
5 that.

6 CHAIRPERSON BUSTAMANTE: There is some discussion
7 also about the possibility of doing some additional hearings
8 and things and doing some performance audits. And so it
9 might actually work out really well to come back to San
10 Diego.

11 ACTING COMMISSIONER TAKASHIMA: Yes, but June is
12 not good, there is some other matters that I have, and
13 Commissioner Westly has to do in Sacramento. But maybe
14 in --

15 EXECUTIVE OFFICER THAYER: August?

16 ACTING COMMISSIONER TAKASHIMA: -- September. The
17 August/September period that might be resolved, hopefully.

18 EXECUTIVE OFFICER THAYER: The next date, I don't
19 remember exactly when, is in August.

20 And that concludes the Executive Officer's report.

21 CHAIRPERSON BUSTAMANTE: Thank you. Mr. Thayer,
22 is there any additional amendments to the consent calendar?

23 EXECUTIVE OFFICER THAYER: There are two. Item
24 27, at the request of the applicant. This is the Border
25 Fence and the Department of Homeland Security has requested

1 that that item be taken off and be heard at a future date.
2 So we have scheduled that later, perhaps the next time we
3 meet in San Diego might be the appropriate time to do that.

4 And then the second item is Item 30. This is the
5 Pelican Point Association's request for lease for a seawall
6 and a river wall. And we've received a number of comments,
7 including some that have specifically requested that the
8 Commission have a public hearing on that. So we will remove
9 that from the consent calendar and we intend to hear that.

10 CHAIRPERSON BUSTAMANTE: So we will move that to
11 the first item on the regular calendar?

12 EXECUTIVE OFFICER THAYER: The first or second,
13 whichever is the Chair's will. Other than that, there are
14 no other changes to the consent calendar.

15 CHAIRPERSON BUSTAMANTE: Okay. Is there any
16 questions about the consent calendar as amended?

17 Is there anybody in the audience that would like
18 to speak on the consent calendar?

19 Seeing none, the Chair is open for a motion and a
20 second to approve the consent calendar.

21 COMMISSIONER WESTLY: So moved.

22 ACTING COMMISSIONER TAKASHIMA: Second.

23 CHAIRPERSON BUSTAMANTE: Let the record show that
24 it passes with unanimous consent. And without objection,
25 we'll just make it one single vote for all the different

1 consent items.

2 That takes us to the regular calendar. Does it
3 make a difference, do you have anything listed whether it's
4 30 or 38 first?

5 EXECUTIVE OFFICER THAYER: It's at the Chair's
6 discretion. I think that the presentation for the one
7 that's on the regular calendar right now I think is Item 38.
8 It will probably take about ten minutes for the staff
9 presentation, and I think the applicant is here, perhaps
10 another ten minutes for that.

11 CHAIRPERSON BUSTAMANTE: Well, why don't we go
12 ahead and start with the existing regular calendar and we'll
13 start with Item 38, and then we'll just move forward.

14 This is the consideration of the assignment to
15 Paramount Petroleum. Who's the staff member who is making
16 the presentation?

17 EXECUTIVE OFFICER THAYER: Paul Mount who heads up
18 our Mineral Resources Management in Long Beach.

19 CHAIRPERSON BUSTAMANTE: Okay. It's all yours.

20 MR. MOUNT: Good afternoon, Commissioners, I'm
21 Paul Mount. I'm Chief of the Mineral Resources Management
22 Division out of Long Beach. I have a short presentation for
23 you on this item to give you some familiarity with the Long
24 Beach Wilmington oil field operation and also this
25 agreement.

1 It's the wrong presentation.

2 CHAIRPERSON BUSTAMANTE: That is a very short
3 presentation.

4 (Laughter.)

5 MR. MOUNT: I have a map to show you first and
6 it's important that you see that.

7 Thank you.

8 Okay, next slide. I guess I can do that.

9 Okay. Just to familiarize you with the operation,
10 there's a West Wilmington oil field which is labeled
11 Tidelands on this map, and a pump operation, which is the
12 East Wilmington oil field, which is also called the Long
13 Beach Unit. We're interested in the tidelands area of the
14 Long Beach operations down there, and that will be the area
15 of concern for this briefing.

16 First of all, let me familiarize you with the
17 contract relationships. The City is the operator of the oil
18 fields, they get a six-percent overhead on the field
19 operating expenses. Tidelands Oil Production Company is the
20 contractor to the city and they get five percent of the net
21 profits and 50 percent of an oil bonus which are determined
22 later.

23 Of course, the state of California is the big
24 beneficiary. We get 95 percent of the net profits and a
25 hundred percent of the dry gas sales, and 50 percent of the

1 oil bonus. We are also, however, potentially responsible
2 for abandonment costs. Right now we're producing about
3 4,000 barrels a day. Tidelands Oil Company took over in
4 about 1992, the operation was making about 7,000 barrels a
5 day and there's a normal oil field decline, so today we're
6 about 4,000 barrels a day.

7 A little statistics on the oil field. There are
8 418 state wells, 308 active wells, 110 are idle. The
9 current production, like I said, 4,000 barrels a day.
10 Abandonment liability has been estimated to be upwards of
11 \$48 million. By keeping the operation going there's also
12 three to five million dollars per year contributing to
13 prevention of subsidence by the operation, that comes out of
14 revenue. We anticipate this year the State will receive 2.7
15 million in revenue from the operations, and we're projecting
16 about two million next year, mainly because our oil price
17 has been pretty high this year and we wouldn't expect it to
18 be quite that high next year.

19 We received an assignment request from Tosco.
20 They requested that the assignment be made from Nestee to
21 Paramount Petroleum. Before the assignment, Nestee's a 79.9
22 percent owner of the Tidelands Oil Production Company and
23 Paramount's a 75 percent afterwards. Chance Energy
24 increases their percentage to 25 percent.

25 Let me give you a little background on Paramount

1 Petroleum Company. It purchased the Paramount refinery in
2 '95. It's the largest asphalt refiner in California, the
3 largest liquid asphalt manufacturer in the U.S, 245
4 employees, refining capacity of 54,000 barrels a day, and
5 it's privately owned.

6 Financially, they look very solid. Their
7 capitalization is \$180 million, they have \$9 million in
8 equity. Dunn & Bradstreet say that they are extremely low
9 likelihood of ceasing business without paying off creditors.
10 It indicates that they pay their bills within 30 days and
11 have a low leverage liquid balance sheet. Overall, they are
12 a financially sound and stable company.

13 Here's a little bit more on their financial
14 information. Here's a financial snapshot. You might wonder
15 why the profitability is low. Of all those numbers up
16 there, they exceed or equal industry median, except for
17 profitability, and the reason is that they are plowing money
18 back into the company and they had low margins this last
19 year. But basically they're plowing money back into the
20 company, which is good news.

21 As an example of that, they spent over \$1 million
22 on odors control for their refinery to be a good neighbor.
23 They also cut their NOX in half and reduced their SOX
24 emissions. They spent \$6.5 million on remediation of soil
25 conditions. They voluntarily spent \$300,000 per year to

1 eliminate potential sources of soil and groundwater
2 contamination, and they are active as a good citizen and
3 based on calls that they have made around the area.

4 Here is some of the contract amendments that are
5 going to be made. It would normally be a straight-across
6 contract assignment, but in this case, since they will be
7 taking the crude oil, one of the issues is that this is not
8 an arm's length transaction. So we somehow have to value
9 the crude that they take, since they aren't going to be
10 paying you. They are going to be paying themselves for the
11 crude, basically, so we have to come up with a way to value
12 that crude. So we negotiated a new oil price and bonus
13 agreement. We're going to look at that and work on that for
14 two years, and we'll renegotiate that in two years to see if
15 the agreement that was negotiated was good and we still
16 agreed with that. The amendment will provide for a safety
17 audit and there will be added provisions to pay for land
18 rental, and I'll explain that in a minute.

19 Let me explain to you what the difference between
20 posted price and bonus is, that's important to this
21 amendment. First of all, posted price are those prices
22 posted by oil companies in major oil fields in California.
23 A bonus is the difference between what the State receives
24 for their oil and what the posted price is. So historically
25 over the last ten years, we've received anywhere between 50

1 cents to a dollar bonus for the oil above posted prices.

2 And that's been consistent over the last ten years.

3 In this agreement, we've negotiated a new bonus.
4 The bonus is going to be based on crude oil sales in the
5 Long Beach area. Currently, we're getting \$1.55 bonus for
6 state crude. Under the new agreement, if we were to
7 implement that today, it would be \$1.65. So we've enhanced
8 our bonus.

9 The contractor also charges about 7.25 cents per
10 barrel for marketing fees. In this case, if Paramount takes
11 80 percent or more of the crude, that will be waived, so the
12 State will not have to pay that.

13 Also under the new agreement, if the lease
14 payments which the State makes is less than the revenue
15 generated, or is more than the revenue generated from the
16 operations, then the new contractor will in fact make the
17 lease payments for the State. So that's a big benefit to
18 us, because under the current agreement, if, in fact, they
19 don't generate enough revenue to cover the lease payments,
20 the lease payments come out of other operations, such as the
21 Long Beach Unit.

22 And finally, the new base price. We only have one
23 poster in the Long Beach area now. The new posted price
24 will be a five-field average, which benefits the State as
25 well, because we aren't relying on one poster.

1 So overall, the new agreement has some major
2 benefits to the state of California.

3 Also, one of the things the new agreement provides
4 for is a safety audit of the operations, as we've done on
5 off shore oil.

6 Yes.

7 ACTING COMMISSIONER TAKASHIMA: Can you go back.
8 Why is it that the price is best when it's, instead of using
9 Wilmington as a base price, divided into five fields? Why
10 is five fields a better way of determining the price?

11 MR. MOUNT: Well, in Wilmington, we're relying on
12 one refiner, Unocal, and we're at their mercy on posting.
13 And we have compared the five-field average with historic
14 posting of this company, and the five-field average has
15 generally always been higher. We include Midway Sunset up
16 in there, which is a substantial poster, and that boosted
17 the price for us. So it's actually a benefit to the State
18 of California by doing that. We did not, nor did the oil
19 company, nor did Paramount, want to rely on one poster in
20 the area, and that's not a wise thing to do. In fact, the
21 current contract requires that we actually consider more
22 than one poster. And so we had to make a modification, even
23 if this assignment weren't made.

24 EXECUTIVE OFFICER THAYER: And, Paul, you modeled
25 that? In other words, you went back and looked over the

1 last few years to see if this new formula had been in place
2 how we would have done, and we would have done better.

3 MR. MOUNT: We would have done better, correct.

4 The safety audit, as I was going to say, is very
5 similar to the safety audits we've done on all our offshore
6 facilities. We have done safety audits on Platform Holly,
7 as you know, on the Long Beach Unit, as you know. We're
8 currently doing audits on Platform Emmy, and will be doing
9 even Esther. We've put this audit in because we thought it
10 was necessary to look at the operations to make sure that
11 they meet all current regulations and requirements, both
12 federal and state.

13 CHAIRPERSON BUSTAMANTE: How long has it been
14 since this facility had a full safety audit?

15 MR. MOUNT: I would venture to say they've never
16 had a full safety audit like we conduct.

17 CHAIRPERSON BUSTAMANTE: And how long has the
18 facility been in operation?

19 MR. MOUNT: I believe since 1930 something.

20 CHAIRPERSON BUSTAMANTE: Are there any more like
21 that?

22 MR. MOUNT: On the state tidelands, no. We have
23 audited all our facilities at least once, with a very minor
24 audit in the early '90s. This full audit, which takes six
25 months, will be the first substantial audit that this

1 facility has had at least in recent history, to our
2 knowledge. However, the State of California does not
3 normally inspect this facility or audit this facility,
4 because it's really the -- actually, the operator is the
5 City of Long Beach. We only have a financial interest, we
6 are not even a unit member, and therefore, we don't have the
7 authority to conduct these audits, except when an amendment
8 like this comes up. And then we include those audits as
9 part of the approval for the amendment.

10 CHAIRPERSON BUSTAMANTE: Who does have the
11 authority?

12 MR. MOUNT: The City of Long Beach has the
13 authority.

14 CHAIRPERSON BUSTAMANTE: And what kind of
15 agreements or Memorandums of Understanding do we have with
16 the City of Long Beach to ensure that they are doing safety
17 audits?

18 MR. MOUNT: We have none. We work closely with
19 them, but --

20 CHAIRPERSON BUSTAMANTE: I think we should start
21 thinking about how to deal with that issue. And we might
22 talk with the mayor and talk about how we might be able to
23 do something with regard to them asking us to come in and do
24 fairly regular safety audits. And it's crazy, since the
25 1930s?

1 COMMISSIONER WESTLY: Could I ask the staff to
2 just comment on this. This does kind of defy common sense
3 and I'm sure there's some explanation for the track record
4 here and the history of how we do audits and why in this one
5 case seems to be an anomaly.

6 EXECUTIVE OFFICER THAYER: I think in general the
7 City has had a large hand in the operation of this
8 particular unit and in other units where we have had leases.
9 This is a very different arrangement in Long Beach, wherein
10 most of the state's oil we have leases with oil companies
11 and we get royalties. In this particular case, the State
12 retained a much larger -- or actually went back in after
13 this property along with its oil was granted to Long Beach
14 as one of the normal sort of port grants or waterfront
15 grants.

16 Subsequent to that grant, large amounts of oil and
17 gas was discovered, and the Legislature in effect got the
18 State back into it and it found that the City couldn't spend
19 all the money it was making from the oil and gas and put us
20 back into it. So this is a different situation than a lot
21 of the ones where we don't have direct authority over the
22 operation of the field day to day. We have an opportunity
23 to review their plans, but we don't have to same sort of
24 authority as we do where we have a lease.

25 Traditionally, we've had inspectors who go out on

1 a basis that varies from daily, if there's a particular
2 reason for being out there frequently, to weekly or monthly,
3 on all of our facilities, including these, where we have
4 looked on a day-to-day basis to make sure the operation is
5 being run safely.

6 What we've started to do over the last few years,
7 and we needed additional resources frankly to do this, we
8 didn't have either the talent or the money to do it, we got
9 a budget change proposal approved several years ago and
10 we've fought for it since then to hire some additional
11 engineers. So instead of relying on these daily
12 inspections, we now go out and are going through all of our
13 operations on a periodic basis of auditing for safety. And
14 it's much more complete than we had ever done before.

15 So I guess what we're seeing here is we're
16 progressing in terms of our own thinking of about how
17 careful we have to be and that we're going back there much
18 more frequently than we ever have before.

19 COMMISSIONER WESTLY: I just want to make sure
20 that I understand. I was hearing that no real audit has
21 occurred, but they have had quite a few staff inspections
22 and other visits. So there are visits, there are
23 inspections, but just not maybe the full performance audit?

24 EXECUTIVE OFFICER THAYER: For us a safety audit
25 has come to the special meaning in staff's mind of what we

1 have started doing over the last two or three years where we
2 go out and take six months and we assign two, three, four
3 people just about full time, and they're engineers rather
4 than these inspectors, and they're much more comprehensively
5 done.

6 COMMISSIONER WESTLY: And these are people who are
7 perhaps trained chemists or engineers looking for any sort
8 of fault or operating difficulties?

9 EXECUTIVE OFFICER THAYER: Exactly. Paul should
10 probably discuss it further, it's his show.

11 MR. MOUNT: Yes, it's a full audit team with
12 expertise in the field. Our plan is to follow up on the
13 audit. We're going to have to work with the City closely on
14 following up with that and the inspections. And we're going
15 to have to work on that a little bit more with them.

16 Also, along --

17 CHAIRPERSON BUSTAMANTE: Excuse me, we've got a
18 question.

19 ACTING COMMISSIONER TAKASHIMA: I've got a
20 question. On the agreement on page 5, line 8, it talks
21 about the audits and that the audit staff consultants are
22 hired by the contractor, but the contractor has the right to
23 approve the consultants. And the contractor in this case
24 is?

25 MR. MOUNT: The contractor is Tidelands Oil

1 Company.

2 ACTING COMMISSIONER TAKASHIMA: Okay. So the oil
3 companies will have the right to determine who the auditors
4 are. What about the Commission, what's our role in
5 determining that?

6 MR. MOUNT: Well, actually, the auditors are
7 Commission staff. We have to hire one contractor who's an
8 electrical engineer to do the electrical part. Other than
9 that, it will be entirely State Lands Commission staff doing
10 the audit and we get reimbursed for that up to \$625,000.

11 ACTING COMMISSIONER TAKASHIMA: Okay. Thank you.

12 MR. MOUNT: Also along with the amendment will
13 come new bonding. Currently, the bond is \$4 million, and
14 after the assignment it will also be \$4 million.

15 The land rentals. I mentioned earlier that land
16 rentals are outside of this agreement. They are usually
17 paid out of the Tidelands Oil Revenue Fund. In some cases,
18 the land rental exceeded the revenue from this operation,
19 and, therefore, it had to come out of other revenue, State
20 revenue. Under the new contract, if there is not enough
21 revenue from this operation to cover the land rental, Tosco
22 will in fact cover the land rental for the State of
23 California, which is a benefit also.

24 So I've already kind of given you most of the
25 benefits. Just to summarize, we don't have to pay the 7.25

1 cents per barrel fee for marketing, we get an additional
2 bonus above what we were getting before, we have a more
3 stable base price using the five field posters, we're not
4 liable for the land rental if we don't generate enough
5 revenue for that, and the safety audit will be done. And
6 finally it's a California company, as opposed to the old
7 Tidelands which was owned by Nestee, who's a Finnish
8 company. So we see all those things as benefits.

9 That ends my presentation.

10 CHAIRPERSON BUSTAMANTE: We've had other folks who
11 have taken over facilities, and maybe I missed it in your
12 presentation, does Paramount have experience in this
13 particular activity?

14 MR. MOUNT: Paramount is owned by companies who,
15 in fact, do. However, Tidelands Oil Company is going to
16 retain almost all of their current staff. So the staff that
17 will be operating the oil field will be well trained and
18 knowledgeable in oil field operations because they have been
19 doing it for the last ten years. But above that, Paramount
20 is also owned by a company called Signal Petroleum, who also
21 has a lot of experience in the Long Beach area.

22 CHAIRPERSON BUSTAMANTE: In the Long Beach area?

23 MR. MOUNT: Yes.

24 CHAIRPERSON BUSTAMANTE: And is there anything
25 more?

1 MR. MOUNT: That ends my presentation.

2 CHAIRPERSON BUSTAMANTE: Okay. Do we have any
3 discussion? There was a Mr. Domanski, Domanski?

4 MR. DOMANSKI: Yes.

5 CHAIRPERSON BUSTAMANTE: How bad did I do that?
6 Domanski?

7 MR. DOMANSKI: That's absolutely right. My name
8 is Mike Domanski, I'm the President of Tideland Oil
9 Production Company.

10 I have very little to add, actually, to what Mr.
11 Mount said. We welcome the concern for Paramount to take
12 over. They're strong financially, but above all, they have
13 a reason to stick with us and stay the course, since they're
14 local and they need the crude oil, unlike Nestee, which
15 their center of operations is based in northern Europe.

16 Secondly, contractually, we think this amendment
17 improves the basis of the contract by taking away our
18 vulnerability to one poster, who happens to be a low poster.
19 And, thirdly, something Mr. Mount has not mentioned, though
20 this oil field has been operating since 1937, only 25
21 percent of the oil in place has actually been produced.
22 There is still a lot of potential for the State to benefit
23 from this oil field. Even if we were to produce at the same
24 rate as today until 2024, that would only take the oil
25 recovery percentage up from 25 percent to 27 percent. It's

1 easily doable, so long as the global oil price remains
2 within a reasonable range.

3 COMMISSIONER WESTLY: I'm absolutely delighted
4 you're here and I'm beginning to understand the rationale
5 for the recommendation before us and the financial
6 standpoint, it makes all the sense in the world. Given that
7 we are in such a beautiful city with such an extraordinary
8 coastline, the city Cruz refers to as the Gateway to Fresno.

9 (Laughter.)

10 COMMISSIONER WESTLY: I would love to hear, if you
11 could just give a quick overview of environmental concerns,
12 the track record, and how well you've done since the '30s,
13 and perhaps, ideally, you can fill in a little bit better
14 about the track record.

15 MR. DOMANSKI: Yes, sir. I would not like the
16 Commissioners to be left with the idea that because this
17 would be the first safety audit by State Lands that,
18 therefore, this was a new thing for us. Far from it.
19 Nestee is known as the green oil company. They're Finnish,
20 they're extremely proud of their environmental and safety
21 track records.

22 And Tidelands started operations in 1989, and I
23 think the track record, as Mr. Thayer is advised every six
24 months, speaks for itself. We do regular audits. Tidelands
25 became the first oil producing company in the United States

1 to meet ISO 14001 standards. That's a third-party
2 accreditation which requires that environmental
3 considerations be taken into every decision.

4 The safety record is much improved. Because this
5 was an old oil field, it was way back in the 1980s not
6 unusual to have 50 or 60 leaks per year. These are not
7 necessarily catastrophic by any means, but nevertheless
8 locally a nuisance. We have been able to reduce that over
9 the last two years to one per year. Of course, our
10 objective is to make it zero, but that one per year, they've
11 been pretty insignificant recently. And that is done
12 through additional safety checks, pressure line testing,
13 training programs, and such like. And so, in fact, we have
14 just completed a safety audit that was organized by the City
15 of Long Beach. So this type of check is not new to us.

16 COMMISSIONER WESTLY: It sounds basically like an
17 exemplary record. Can you give us a sense so we can picture
18 it, when this one leak per year occurs, is this above
19 ground, underground, in the water?

20 MR. DOMANSKI: Yes, sir. There's two phases to
21 this oil operation. We produce oil and bring it out of the
22 ground. We reinject water back into the ground for
23 subsidence control and also to drive production. Much of
24 the fluid that we produce is water. We pressure test all of
25 the lines in the oil field once a year, and that's been, I

1 think, the main reason why the leak rate has reduced so
2 dramatically over the last ten years.

3 You can never actually predict where or what sort
4 of leak is going to happen. If we could, of course, it
5 wouldn't happen at all. The last leak we had was actually
6 clean water. It was water that had been treated and was
7 ready for reinjection. The one before that was less than a
8 barrel of oil and was contained within the dikes that we
9 have around all of our facilities, both incredibly minor.
10 The only real nuisance, you have to go back to 1994 or 1995
11 when a high pressure line developed a pin hole leak and it
12 sprayed a mixture of water and oil over a marina. So there
13 were a lot of irate boat owners.

14 COMMISSIONER WESTLY: Thank you.

15 MR. DOMANSKI: Thank you.

16 COMMISSIONER BUSTAMANTE: Any other questions?

17 Is there anything else to add? Is there any
18 opposition? Is there anything more from staff?

19 I'm open for a motion.

20 COMMISSIONER WESTLY: I move we approve.

21 ACTING COMMISSIONER TAKASHIMA: And I second it.

22 CHAIRPERSON BUSTAMANTE: Let the record show that
23 the motion is made and seconded and that it passes
24 unanimously.

25 Which brings us, I guess, to Item Number 30?

1 EXECUTIVE OFFICER THAYER: Yes, sir. Staff member
2 Dave Plummer, who's headed up the effort on the Pelican
3 Point lease will give the staff presentation.

4 CHAIRPERSON BUSTAMANTE: This is the seawall
5 project that we're moving to?

6 MR. PLUMMER: That's correct.

7 Good afternoon, Chairman, Commissioners, my name
8 is Dave Plummer and I'm a regional manager at the Land
9 Management Division. The item before you today is an
10 application by the Pelican Point Homeowners Association
11 seeking approval for the continued use of State property for
12 an existing rock revetment that was previously authorized by
13 the Commission in 1988, and for the use of a strip of land
14 approximately 480 feet long and two and a half to five feet
15 wide for the construction of a new river wall.

16 As background, the existing development consists
17 of 87 condominium units that were constructed in the late
18 1960s and early '70s at the confluence of Watsonville
19 Slough, the Pajaro River and Monterey Bay. The condominiums
20 are supported by piles that were driven into the beach sand.

21 In 1971, a wooden river wall was constructed to
22 prevent the river from eroding the sands and undermining the
23 condominiums. The wall failed to function as anticipated
24 and backfill consisting of rock up to two-ton size was
25 placed behind the wall to try to reduce the scour by the

1 river. Also this wall was damaged during the 1989 Loma
2 Prieta earthquake.

3 The development remains subject to deep river
4 scour during severe rainstorms. I believe you probably have
5 some photos in front of you, one that shows the seawall and
6 the scoured condition, and one in a non-scoured condition.
7 And I just want to point out that the current proposal that
8 is the subject of this Commission for the river wall would
9 be built on the beach side of the existing wall.

10 This is the existing wall. It would be here at a
11 maximum of no further than five feet from the existing wall,
12 and it would extend from here to here on our leased
13 property. Ultimately we'd be coming on lands that are in
14 record ownership of Pelican Point Homeowners' Association as
15 it wraps around Watsonville Slough.

16 CHAIRPERSON BUSTAMANTE: How high?

17 MR. PLUMMER: It will extend about five to seven
18 feet high above the beach level.

19 In processing the application for the project,
20 staff looked at a number of issues, including the
21 recommendation of the Commission and its approval of our
22 Shoreline Protective Structures Report that was adopted at
23 the September 17th, 2001 meeting.

24 Issues staff considered include the impacts on the
25 public's ability to utilize sovereign lands, impacts to

1 public trust resources and the environment, and the issue of
2 charging rent.

3 On the issue of the public's ability to utilize
4 sovereign lands at the project location, the beach area in
5 this location is very limited to public access. The
6 existing public access comes from up coast on the beach,
7 about a mile north of this project. This whole area here is
8 a gated community. The 87 condominium owners of the Pelican
9 Point Homeowners' Association is just this area. This is an
10 entirely different association that controls the gated area.
11 So right now access is from the state park about a mile
12 north upcoast, but you can walk down the entire beach and
13 access this area down here.

14 Construction of the wall will have the greatest
15 impacts on the actual residents and users of the condominium
16 project. Because the wall will be five to seven feet tall,
17 they will not have direct access directly from the
18 condominiums across the existing wooden river wall when the
19 beach sands are high and out on to the beach. They will
20 have to come down towards the coast side of it, and there is
21 a set of stairways right here, and they will be directed on
22 the inland side of the river wall to the stairways and out
23 there.

24 The river wall will occupy approximately 3,000
25 square feet in an area that's classified environmentally

1 sensitive habitat area. The Pajaro River area provides
2 habitat for state and federal-listed species, such as the
3 Western Snowy Plover, steelhead trout and Tidewater Gobi,
4 among others. The project has been analyzed under the
5 California Environmental Quality Act and has been reviewed
6 and commented on by the state and federal agencies that are
7 charged with the protection of these species. And they
8 include the State Department of Fish and Game, the US Fish
9 and Wildlife Service, and National Marine Fisheries Service.

10 Based upon the comments to the SEQA document, a
11 mitigation monitoring program was adopted that incorporated
12 a series of construction windows that were required by the
13 various agencies for the various species, and that governs
14 when any work can be performed. By combining all the
15 various construction windows, what you have is a
16 construction period here from October 1st through December
17 15th. A mitigation monitoring program with the construction
18 dates will be incorporated as part of the lease, if
19 approved.

20 The river wall, as proposed, is scheduled to be
21 completed within a single construction season. An
22 alternative was looked at to construct the wall inland of
23 the existing wooden wall and was analyzed through the SEQA
24 process. An engineering analysis concluded that the
25 construction wall feasibly and technically could be

1 constructed there, but it isn't without challenge. The
2 closest condominium to the existing wall is only ten feet
3 away. In between that structure and the wooden wall you
4 have rock that was put in place.

5 In order to drive sheet pile, you'd have to
6 entirely take out all the rock, take out the existing wall,
7 and if you don't get that work done during that construction
8 phase, you then leave those condominiums exposed during the
9 next winter season. And there is also the condition that
10 you would have to put brand new support pilings and shore up
11 the existing condominiums by driving the piles that close to
12 the existing structures.

13 CHAIRPERSON BUSTAMANTE: As far as the
14 specifications, is there any difference in your mind as to
15 how this is going to work out, whether it's being called a
16 seawall or a river wall?

17 MR. PLUMMER: Well, it's a river wall in that,
18 one, it's a river wall because it's not on the coast. It's
19 really to prevent scouring from the Pajaro River and
20 Watsonville Slough.

21 CHAIRPERSON BUSTAMANTE: I understand. But
22 there's wooden pilings of some kind along what you are
23 calling the river wall, and there is rock.

24 MR. PLUMMER: Right.

25 CHAIRPERSON BUSTAMANTE: So what is the wall going

1 to be made of?

2 MR. PLUMMER: The new wall will be made of sheet
3 pile and driven into the ground. That steel actually comes
4 from Belgium and it's epoxy coated, and to drive it, you
5 just have to have the rock out of the way. Now, some rock
6 has migrated, especially after the Loma Prieta Earthquake,
7 on to our side of the existing wall. That rock will be
8 completely removed, sheet pile will be driven, and that will
9 prevent any other rock from moving on to the State property.

10 It has been estimated that to put the river wall
11 completely on the inland side of the existing wall will add
12 about \$3 million to the cost, and while cost is one factor,
13 more importantly it could be that it would add up to a
14 three- to four-year construction cycle. Because of the
15 short time period of October through December, you couldn't
16 get all that work done in one construction period, as you
17 can with this river wall that is proposed on the outboard
18 side, and so we're going to have impacts, especially to the
19 species, presumably for three to four years, versus one-year
20 cycle.

21 On the issue of rent. Pursuant to the
22 Commission's direction at its meeting of September 17th and
23 through its adoption of the Protective Structures Report, we
24 looked at the public benefits that are derived from this
25 project. And based on our analysis, staff is recommending

1 that rent be charged for both existing rock revetment and
2 for the new river wall in the amount of \$58,370 for the one-
3 year term of this lease.

4 The area proposed for lease of the new river wall
5 is currently leased to the State Department of Parks and
6 Recreation. The Department's lease is for the purpose of
7 protection and management of the lease area. For this
8 Commission's lease for the river wall to become effective,
9 the Department must determine that it's satisfied with the
10 project and allow the area it leases to be used for this
11 project. And that applicant is currently working with the
12 Department of Parks for that purpose.

13 In the audience today are members of the
14 homeowner's association and their consultants that may wish
15 to make a statement, as well as answer any questions. And
16 I'd be happy to take any questions the Commission has at
17 this time.

18 CHAIRPERSON BUSTAMANTE: Just before you step
19 down. The Commission has always in the past attempted to
20 look at public trust lands in a way so that it doesn't set a
21 new precedent in the way that land is being used. And so
22 that the other Commission Members know, in the past we have
23 had precedents where we were able to swap land that allowed
24 a greater public benefit. So although we have a public
25 trust, we have had occasions in which we have used some of

1 the public trust lands in exchange for other lands that
2 actually enhanced either marshlands or tidelands or provided
3 more open space or have done things in order to benefit the
4 general benefit of the public trust.

5 And so this is not precedent setting in itself in
6 that way. What is precedent setting is that in the two
7 years since the report that we have the situation in which
8 we feel strongly about making sure that those landowners and
9 people who use the coastal areas are in fact paying for the
10 costs of things such as seawalls and ensuring that the
11 public trust is not harmed in the process. And in order for
12 us to be able to be good stewards of the land, we clearly --
13 in some people's minds, some people wished there were no
14 development along the coast. The fact is that the
15 development does exist there and it will continue to exist,
16 and trying to be good stewards of that land is an important
17 part.

18 And in dealing with this, it's important that
19 always look toward the public trust and the benefit to the
20 public, but also making sure that we try to do all we can to
21 deal with those folks who are already there. And I think
22 that as we look at this, and I think that the kind of
23 restoration that is taking place or is in the process of
24 taking place here with the local environmental groups has
25 been a huge undertaking, not only by -- we probably should

1 thank Surfrider and the Sierra Club for their whole activity
2 in terms of talking about public access, but the whole local
3 environmental group and the community, along with the
4 association, for attempting to try to deal with this issue
5 in a way that in fact does benefit the public. And the
6 staff's activities in trying to make sure that we build this
7 kind of a consensus, I think has been very important in
8 getting us to this point just to consider this whole
9 project.

10 It's been looked on in the past as something in
11 which we usually just sort of dealt it away where we just
12 didn't give it the kind of emphasis that we should have.
13 And I think that this is, in fact, creating a good precedent
14 for the Commission for the future. And I look forward to
15 hearing the presentation by the Association.

16 EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

17 Just before the next witness comes up, I did want
18 to make one technical correction to the staff report. When
19 you look at page 8, it talks about the authorization that is
20 going to be made by the Commission, and there are several
21 conditions that have to be met, and they covered these. One
22 was the concurrence or the quickclaim from the Parks and
23 Rec, and the other was the approvals from the other
24 agencies.

25 When you look at the end of the page, we require

1 that that be done according to this prior to the start of
2 the construction activities. I think in response to some of
3 the public comments, we wanted to amend that to say that
4 that would be prior to the issuance of the lease itself that
5 the Association would have to obtain the approval from the
6 Coastal Commission and the other agencies, and particularly
7 the Department of Parks and Rec.

8 CHAIRPERSON BUSTAMANTE: Well, it's my
9 understanding, Mr. Thayer, is that the Coastal Commission
10 has, in fact, the jurisdiction for environmental review and
11 the final approval for this project.

12 EXECUTIVE OFFICER THAYER: That's right.

13 CHAIRPERSON BUSTAMANTE: Right. Is that the point
14 that you're just trying to make?

15 EXECUTIVE OFFICER THAYER: Yes, sir. And I think
16 what we're trying to say is that we don't want the Lands
17 Commission to be put in a position where it looks like we're
18 issuing a lease without taking cognizance of the other
19 jurisdiction that is going to be necessary here, and
20 particularly for Parks. Because Parks has an existing lease
21 from us, we need technically for them to quickclaim that
22 lease to us before we can actually issue a new lease.

23 CHAIRPERSON BUSTAMANTE: And I believe the
24 representatives have also indicated to me that they are
25 fully aware that they have to be in full compliance with the

1 Coastal Act and they are going to have to go before the
2 Coastal Commission too.

3 EXECUTIVE OFFICER THAYER: And so with the
4 clarification I just gave, what we would do then is not
5 actually issue the lease until these conditions were met.
6 Then the lease would be issued and they could proceed,
7 whereas right now prior to the start of construction. So we
8 will wait to issue the lease until these various conditions
9 have been met.

10 CHAIRPERSON BUSTAMANTE: What conditions are we
11 talking about specifically?

12 EXECUTIVE OFFICER THAYER: Well, the two in
13 particular are that the Parks and Rec either send us a
14 letter of no objection or to quickclaim their interests, and
15 the Association has obtained approval of the project from
16 all the other public agencies that have to give approval,
17 the primary one remaining is the Coastal Commission.

18 CHAIRPERSON BUSTAMANTE: Are we talking about that
19 property that is being made as a part of the swap?

20 EXECUTIVE OFFICER THAYER: The swap itself will
21 come back to the Lands Commission down the road.

22 CHAIRPERSON BUSTAMANTE: It does come back, okay.

23 EXECUTIVE OFFICER THAYER: But this is for this
24 particular lease right now.

25 MR. PLUMMER: Yes, that's one thing I did not

1 point out in my presentation. We're here for a lease before
2 you today where staff is working with the consultants and
3 the local environmental groups there. We are looking to see
4 if there may be later on a swap down the road that we can
5 bring back and that would be a different calendar item we
6 can bring back to you.

7 ACTING COMMISSIONER TAKASHIMA: I have a question.

8 CHAIRPERSON BUSTAMANTE: Sure.

9 ACTING COMMISSIONER TAKASHIMA: When I was
10 briefed, it was my understanding that there was going to be
11 a swap of the land. What's the timing or how come that
12 isn't addressed at the same time I just wanted to ask you?

13 MR. PLUMMER: The real reason for that is in order
14 for us to do a land swap, I mean first we need to work with
15 the groups, we need to find the sensible properties to trade
16 for, we have to find equal value, which means we need to do
17 a full real estate appraisal to know that we're getting
18 equal value. We need a good project product to bring to
19 you.

20 In the meantime, the homeowners' association, they
21 have to order their steel from Belgium, and that takes four
22 months to get that steel here. For them to make that
23 timeline, they need to have all their approvals, including
24 the Coastal Commission, essentially by June and have the
25 steel ordered by June so they can have it here in time for

1 this year's construction. We just did not feel that we
2 could make that timeframe on a swap by June. We just think
3 we need more time to do that and more time to work with the
4 environmental communities, and also to look at public access
5 issues.

6 ACTING COMMISSIONER TAKASHIMA: Let me ask you
7 then, what do you project as your timetable on working out
8 the major details, at least how to project the time period
9 on the mitigation, on the swap for us?

10 MR. PLUMMER: I would hope to be before this
11 Commission probably by, I'm going to stick my neck out a
12 little bit, by the end of the year.

13 ACTING COMMISSIONER TAKASHIMA: Okay. So as the
14 project is completed by the homeowner's association, then
15 you will come back on the swap. And then would that then
16 require that the lease then would be terminated if the swap
17 was done, or are we talking about that the lease would go
18 on.

19 MR. PLUMMER: No, the lease would be terminated
20 once we entered into a land swap.

21 ACTING COMMISSIONER TAKASHIMA: Okay. Thank you.

22 CHAIRPERSON BUSTAMANTE: Okay.

23 MR. BROCK: Commissioners, my name is Steven
24 Brock, I'm the president of the Pelican Point Homeowners'
25 Association. And I want to thank you very much for the

1 opportunity to speak to you today.

2 And first I'd like to say, I'd like to thank Paul
3 Thayer and his staff for the fine job they've done working
4 with us and helping us expedite this whole thing. And to
5 Mr. Takashima's comment, yes, we would like to do the swap
6 as quickly and expeditiously as possible, making sure it's
7 fair to the State as well to us.

8 I have a couple people here with me today. Rusty
9 Areias is going to speak to the project. We also have John
10 Vernon who represents the Friends of Pajaro, one of the
11 ecological groups, and another fellow homeowner with me.
12 And in case we have any technical questions, we brought our
13 project engineer, John Kasunich.

14 And I'd like to turn it over to Rusty at this
15 point.

16 MR. AREIAS: Thank you very much. Mr. Chairman
17 and Members of the Commission, this has been a lengthy and
18 very, very difficult process. If you can imagine after an
19 act of God like the Loma Prieta Earthquake when the
20 homeowners at Pelican Point found that their river wall was
21 on State property and began the civic lesson of learning how
22 State Parks, State Lands, the Coastal Commission, U.S. Fish
23 and Wildlife, Fish and Game, the Pajaro Dunes Geological
24 Hazards District, and a few other agencies and departments
25 needed to coordinate to get this done, well that's been a

1 five year very expensive process.

2 And this isn't exactly what I expected to be doing
3 with my life right now, but life isn't always as we plan it,
4 and I got a call in November and they asked me if I'd
5 consider looking at this project. And I went down there and
6 there was an obvious solution, and it lied in the
7 Watsonville Slough. And I contacted the local
8 superintendents of the Monterey and Santa Cruz Park
9 District, brought them down there to look at it.

10 And I remember Dave Vincent, the superintendent
11 for the Santa Cruz District saying that he had just came the
12 day before from a meeting of local environmentalists and
13 conservationists saying that the Watsonville Slough was the
14 highest restoration priority in Santa Cruz County and that
15 they've got to do it. And Watsonville Slough, the west side
16 of the Watsonville Slough, the last mile as it's called, is
17 owned by Pajaro Dunes. So what better place to mitigate for
18 a river wall than the last mile of Watsonville Slough. And
19 you're going to hear more about that exciting project from
20 John Vernon in a short time.

21 I also want to echo Mr. Brock's words in thanking
22 the staff of State Lands, Mr. Thayer, Mr. Plummer, Mr.
23 Lynch, Curtis, everyone who worked on this. They have just
24 been terrific in terms of trying to come up with a solution
25 to a very difficult and complex problem and deal with the

1 difficult timelines that we all face because of the
2 construction period and some of the environmental challenges
3 in dealing with the Snowy Plover habitat.

4 The State Lands Commission, as you know, is
5 considering a one-year lease to help resolve a long-standing
6 five-year river wall repair project on ongoing lease land
7 lying under an existing rock revetment seawall. The Pelican
8 Homeowners' Association has been in discussion with SLC
9 ultimately and ultimately proposes a land exchange for
10 approximately 18,000 square feet proposed in the lease. And
11 while 18,000 square feet sounds like a lot of square feet,
12 it's actually less than a half acre of land.

13 The exchange would be for biologically superior
14 lands in close proximity at the mouth of Watsonville Slough,
15 and those biologically superior lands include salt grasses;
16 pickleweed; Witch's Hair; blue herons; egrets both white and
17 snowy; as well as white and brown pelicans. If you haven't
18 been to this location, it's got some of the richest bird
19 life that you will ever see on the coast, on any coast, in
20 California.

21 The picture that is on the screen best
22 demonstrates how the wall rotated when the soils liquified
23 and leaned on to State lands, and this happened as a result
24 of the Loma Prieta Earthquake in 1989. It caused the
25 failure of this particular structure and it leaned over on

1 to State property. And I think it's illustrated about as
2 well there as anywhere I've seen. And it leans over on to
3 state lands about two and a half feet. There was further
4 damage as a result of El Nino a few years later. So the
5 combination of those two acts of God kind of has us where we
6 are today.

7 A Coastal Development Permit is being sought from
8 the California Coastal Commission for the river wall
9 project. Approximately 3,000 square feet of SLC property is
10 needed for the optimal river wall repair design. All other
11 agency signoffs are completed for the project, including all
12 of the environmental compliance.

13 The optimal river wall design is a straight line
14 wall that minimizes impacts to the environment, particularly
15 the Snowy Plover. It's feasible from an engineering
16 perspective, because it does not require the full removal of
17 the existing river wall, which itself provides quite a bit
18 of protection. And there is substantially more cost to
19 build an undulating wall which has been proposed by some.
20 That would raise the cost of this wall by about \$3 million,
21 but more problematic is the fact that it would take four
22 construction seasons. And the effect that that would have
23 on the Snowy Plover habitat is something that I think all of
24 us would like to avoid.

25 The Pelican Homeowners' Association also has

1 leased 15,000 square feet of State Lands' property currently
2 under existing rock revetments, the seawall, which is not
3 related to the river wall, which is the project that we're
4 talking about today.

5 This is the proposed exchange. Approximately
6 3,000 square feet of SLC land is needed for the river wall
7 repair project, which is the narrow swath in front of the
8 existing river wall, and approximately 15,000 square feet of
9 SLC land under the existing rock revetment seawall. Pelican
10 Homeowners' Association is proposing substantially more
11 square footage along the Watsonville Slough, a biologically
12 important coastal wetlands fully restored, which will be
13 reviewed as of equal economic value for the exchange, and
14 that will happen through the appraisal process.

15 The Pelican Homeowners' Association has been
16 working closely and has the support of local environmental
17 groups, the Watsonville Wetlands Watch, as well as the
18 Friends of Pajaro Dunes, to restore the last mile of the
19 Watsonville Slough. The Watsonville Slough lands proposed
20 for an exchange will be an important catalyst for this
21 effort.

22 I'd like to now call on John Vernon, who through
23 Friends of Pajaro, has been very, very involved in the
24 restoration of the last mile of Watsonville Slough. And
25 this will not only deal with the restoration of this

1 important wetlands, but it will also deal with the coastal
2 access questions which we anticipate will come up before the
3 Coastal Commission.

4 And part of the difficulty is that Pelican
5 Homeowners' represents 87 homes, condominiums, at this
6 location. There are two other homeowner groups, and the
7 entrance into Pajaro Dunes, which is gated, is controlled by
8 the other groups. And so Pelican Homeowners' really have no
9 control over getting rid of the gate if that at some point
10 is the recommendation.

11 But to deal with the public access issues, we have
12 an opportunity, and Congressman Farr, Assemblyman Keeley
13 have been working very hard on the Coastal Trail, which
14 would go from Monterey to Santa Cruz. And the Coastal Trail
15 would tie in very nicely on the east side of Watsonville
16 Slough and go along Beach Road, which would provide much
17 greater access going along the coast from Monterey to Santa
18 Cruz and much greater access to the beach and dune area.
19 That's all part of the interpretive plan, it's all part of
20 the access plan, and it's all part of the restorative plan
21 that John Vernon will now discuss with you.

22 CHAIRPERSON BUSTAMANTE: Rusty, that part of the
23 east side of the slough, is that all private property?

24 MR. AREIAS: It is private property and we will be
25 working with the landowners to encourage that. They have

1 costs and, you know, because of the confluence of the
2 Watsonville, Pajaro and the Monterey Bay at this location,
3 there are constant cost issues in terms of who's taking care
4 of the levees and who isn't. So there are a lot of moving
5 parts here that we can deal with in terms of providing an
6 access trail that would tie into the Coastal Trail and
7 greatly improve public access at that particular point.

8 Will you snap back to the picture of the bird life
9 at this particular location. Yeah. Take a look at that
10 picture. I mean on any given day, this is what you see at
11 this particular location. The wildlife here is just rich.
12 And, you know, many people would argue that this project at
13 Pajaro Dunes should have never been built. Some say this
14 project is what led to the Coastal Act and that's probably
15 true, but we can say that along a lot of the coast of
16 California today.

17 These are property owners who have a cloud on
18 their title who would like to, like the rest of us, would
19 like to go in and refinance their projects, some of them
20 would like to sell their projects. Many of them are
21 elderly, retired in the '70s and 1980s on fixed income and
22 have lived longer than they had ever planned to. But it's
23 very difficult to do that when you've got this kind of a
24 cloud on your title. And so we really need your help. And
25 I want to again thank Mr. Thayer and his staff, because they

1 have just been absolutely terrific.

2 Mr. Vernon, unless there are any questions, I can
3 come back up.

4 CHAIRPERSON BUSTAMANTE: Okay. Mr. Vernon.

5 MR. VERNON: Good afternoon, Commissioners. My
6 name is John Vernon. I am indeed, as Rusty mentioned, a
7 homeowner at Pajaro Dunes in one of the Pelican units, and
8 have been there for almost five years now. And one of the
9 things that I realized when I was so fortunate, my wife and
10 I, to purchase the property was, you know, when people go
11 there, your first -- you've seen the pictures. Actually,
12 this picture doesn't really show it.

13 People go there for the beach, right. But there's
14 this other beautiful land that all of a sudden you become
15 aware of as you drive down this road across the last mile,
16 and that is the Watsonville Slough at its confluence at the
17 Pajaro River. And as Rusty mentioned, it is just an
18 absolute just gorgeous area. On any given day walking out
19 there, and I was just there this past weekend, and said, oh,
20 look, it's a Caspian Tern. You know, I hadn't seen one of
21 those in six months. The pelicans are sure to return in
22 about another probably month or so. An absolutely gorgeous
23 area.

24 And what happened when I got there is I started
25 meeting people, other owners who were there, and I found out

1 that so many of them were there for all the same reasons
2 that I was there, they love that environment. And many of
3 them are involved in the Sierra Club and other groups
4 outside of the community, and really working hard to figure
5 out how they can protect the wetlands area.

6 So we formed a nonprofit organization out of about
7 six or seven homeowners and we named it Friends of Pajaro
8 Dunes. And our whole goal, I'll read you our mission, it's
9 very brief, is to provide, and I love this because you
10 mentioned the word stewardship, and it's really to provide
11 stewardship for what I refer to as the last mile of
12 Watsonville Slough by preserving the native habitat and
13 wildlife, collaborating with the neighboring community and
14 educating all who visit.

15 And, yes, it is a gated community, but, you know,
16 that's just a physical barrier, it doesn't have to be the
17 mental, philosophical barrier, and that's really what I'm
18 trying to do with this group and with the other homeowners.
19 So two of the board members were members of the Elkhorn
20 Slough Foundation. I don't know if you're familiar with
21 Elkhorn Slough just down the road from us, a wonderfully
22 restored area. And so we have a lot of synergy with that
23 group. The other group we're working with as well --

24 CHAIRPERSON BUSTAMANTE: But you're a homeowner
25 group?

1 MR. VERNON: Yes, yes. We started as a homeowner
2 group, but branching out and trying to touch these different
3 groups that are very much interested in the environment.

4 CHAIRPERSON BUSTAMANTE: Who are the other
5 environmental groups that are working with you?

6 MR. VERNON: Watsonville Wetlands Watch, which is
7 a local group. We work very closely with them. Actually,
8 the County of Santa Cruz is a government agency and the City
9 of Watsonville. And that kind of leads to --

10 CHAIRPERSON BUSTAMANTE: What about the Sierra
11 Club?

12 MR. VERNON: A number of our members within the
13 community are. We haven't worked directly with the Sierra
14 Club.

15 CHAIRPERSON BUSTAMANTE: Rusty, has your group
16 been in contact with the Sierra Club and the other local
17 environmental groups to ensure the restoration --

18 MR. AREIAS: Yes, we will be, as well as the
19 Watsonville Slough. You know, interestingly, there's about
20 30 Sierra Club members in the homeowners' group there, and
21 Mark Pasaro, who heads up their coastal program will be
22 meeting me there next weekend to walk the program and go
23 through it as we prepare to go before the Coastal
24 Commission.

25 CHAIRPERSON BUSTAMANTE: Okay.

1 MR. AREIAS: Okay.

2 CHAIRPERSON BUSTAMANTE: I'm sorry, go ahead.

3 MR. VERNON: No, that's fine. So once I started
4 this group, we started going out into the community. We
5 found out that there was an amazing project going on, it was
6 actually funded by the California Coastal Conservancy, and
7 it's headed up by the County of Santa Cruz, the City of
8 Watsonville. The Coastal Commission is involved, Fish and
9 Game, State Parks, you name it, they're all involved in
10 this, and it's really called the Watsonville Slough
11 Watershed Resource Conservation Enhancement Plan. It's a
12 very detailed plan. They hired Mitch Swanson of Swanson
13 Hydrology to come out and take a look at the entire
14 watershed.

15 It's not just the last mile, but the entire
16 watershed that extends many miles going inland into the city
17 of Watsonville and beyond, on county land, city land. And
18 this project is one that I then got involved in and actually
19 had several projects within this large plan identified that
20 we could work with as owners of the property in that area.
21 And we're identified in this plan and working toward it.

22 And right now, my board, we've just gone through a
23 fundraising cycle, we've raised some dollars, we're working
24 with a local biologist, and now we're developing a plan for
25 restoration of this last mile on our particular side. And

1 part of the reasoning behind this is not only to restore and
2 enhance our environment, but it's also then as good role
3 models and good stewards to be able to go over and
4 influence, as Rusty mentioned, the farming community on the
5 other side of the slough and see if we can begin restoration
6 work there and maybe do the project together, then this ties
7 into other parts of the project throughout the entire slough
8 system.

9 CHAIRPERSON BUSTAMANTE: We have quite a few other
10 folks who want to speak, can you wrap it up?

11 MR. VERNON: Uh-huh. Pretty much, I believe
12 that's probably it.

13 The one thing I will say is it was really a
14 pleasure to host Mr. Thayer. Ruth Coleman was also able to
15 come down to the site and we were able to walk that last
16 mile and really take a look at it. So I really thank you
17 for spending the time and coming down to join us.

18 CHAIRPERSON BUSTAMANTE: Thank you.

19 MR. VERNON: Thank you.

20 CHAIRPERSON BUSTAMANTE: Any questions?

21 Mr. John Kasunich, and then Mr. Gonzalez.

22 MR. KASUNICH: I'm really here to answer any
23 questions, so I don't need to make a presentation, unless
24 there's specific questions from the Commission.

25 CHAIRPERSON BUSTAMANTE: And you are a project

1 engineer representing Pelican Point?

2 MR. KASUNICH: I'm from Haro Kasunich, we're the
3 project civil and geotechnical engineers on the wall design.

4 CHAIRPERSON BUSTAMANTE: Any questions? Okay.

5 And after Mr. Gonzalez, Sheelagh Williams.

6 MR. GONZALEZ: Good afternoon, Mr. Chair, Members
7 of the Commission. My name is Marco Gonzalez. And I'm here
8 before you as the Chairman of the Surfrider Foundation for
9 the San Diego Chapter, but I'm also an attorney who
10 represents the National Surfrider Foundation up and down the
11 coast. We are a nonprofit organization dedicated to the
12 protection and enjoyment of the world's oceans, waves, and
13 beaches through conservation, activism, research, and
14 education. We have approximately 20 chapters throughout
15 California. And you may think it's strange that a San Diego
16 Surfrider Chapter Chair would be up here talking about
17 something going on up in Santa Cruz county, but I have got
18 to tell you what's going on here is historic, and the
19 importance of your decision today can't be overstated.

20 For too long the policymakers of the state have
21 opted to subsidize the efforts of developers and landowners
22 all at the expense of both the state and its citizens. This
23 seawall project robs the public of recreational land, the
24 use of which is constitutionally protected. Beyond just the
25 negative aesthetic impacts of coastal armoring, such

1 seawalls disrupt the natural flow of sand both up and down
2 the coast, but also the flow of sand that would naturally
3 come from the upland areas. For too long this has happened
4 without recompense to the citizens.

5 In addition to these somewhat nonmonetary prices
6 the public pays. The State has been allowing these
7 developments with very little, if any, compensation. It
8 simply amounts to a gift of trust land, which is also not
9 allowed by the state constitution. Therefore, Surfrider
10 wholeheartedly supports the portion of this project that is
11 essentially a lease fee of a substantial amount. In the
12 past, we've seen some nominal lease fees or just none
13 whatsoever, and we think that this is a strong step in the
14 right direction.

15 We'd like to commend staff for taking the extra
16 step in trying to identify a truly reasonable fee, but also
17 in working with the local environmental community as they go
18 forward with this land swap idea.

19 As the Commission is well aware of problems with
20 land swaps up in the Long Beach area, we as an environmental
21 community are very cautious when these come forward. We
22 think that biologically it's incredibly difficult to start
23 weighing one piece of property against the other, but so
24 long as the local environmental community is involved and
25 buys off on it, as well as the agencies, we think that this

1 is a proper road to go down.

2 The one thing that I would say is that there is
3 one problem with this project. Obviously, we have a problem
4 with coastal armoring in general and we feel that that's
5 something that we need to take up with the Coastal
6 Commission, but something that the State Lands Commission
7 needs to start thinking about when they talk about seawalls.
8 Seawalls are proposed because erosion is happening. We know
9 that, that's what is threatening these structures. But the
10 thing that doesn't get talked about is the fact that as
11 erosion happens, the state gains land. There is additional
12 tidelands that gets created as the natural process of
13 erosion happens. But as soon as you put up a seawall, you
14 stop that process. In essence, you've robbed the future
15 citizens of the state from the acquisition of public trust
16 lands. Unfortunately, this isn't on the radar screen.
17 We're now trying to get this notion considered by the courts
18 and we've been successful here locally recently in a case up
19 in Solano Beach where the court has said, yes, there is land
20 behind the seawall that you have to mitigate for.

21 Eventually, we're going to be coming to you and
22 saying what does the state plan to do to recompense itself
23 and its citizens for this land that it's no longer able to
24 get in the future. I would just say that this project may
25 not be the place to deal with it, but we need to start

1 thinking about it. And at this time I'd just recommend that
2 you approve the rather substantial lease fee on an annual
3 basis, and that if a land swap is not able to be done in the
4 next six to eight months, I suggest you revisit it and
5 assess and upgrade the amount for the upcoming year.

6 Thank you.

7 CHAIRPERSON BUSTAMANTE: Thank you.

8 Sheelagh.

9 MS. WILLIAMS: Good afternoon, Commissioners.

10 Sheelagh Williams, representing Cal Beach Advocates. It's a
11 nonprofit public benefit organization dedicated to the
12 restoration, preservation, and maintenance of the natural
13 shoreline of California.

14 And we asked that this item be pulled from the
15 consent calendar for your attention to the fact that the
16 State will be getting real dollars, which is good, for the
17 use of our public beach. In any time, but particularly in
18 these really fiscally tough times, it's appropriate for the
19 private homeowners who are using our public land to ante up
20 some money. We think that's very, very good.

21 But what I'd really like to talk to you about is
22 that we support staff wholeheartedly in that, is applying
23 the same principle to other seawalls as they come up.
24 Because I'd like to know -- I read in the staff report and
25 now I can see from this picture that they have a really nice

1 wide sandy beach there. Here in San Diego county we have a
2 paucity of sand. With sand mining and all those other
3 things, we have an eroding coastline and we have little
4 skinny beaches. So when people come down here, the private
5 property owners want to protect their private property,
6 which they have under some circumstances under the Coastal
7 Act the right to do. They put their seawalls on our public
8 land and it's not very much public land there because of
9 these little skinny beaches. So it's even more important
10 for us to be compensated for them.

11 Also, Marco alluded to this, but the effects of
12 passive erosion, when you fix the back of the beach, the
13 beach continues to erode and that little skinny beach gets
14 skinnier and skinnier. So it's very important that we get
15 money from those private properties for the use of our
16 public lands so that we can use that money in some sensible
17 way later.

18 So we not only support staff's recommendation
19 here, but we urge you to apply the same principle and
20 require substantial annual leases for those other projects
21 when they come in here to compensate the citizens of
22 California for the loss of their public beach.

23 Thank you.

24 CHAIRPERSON BUSTAMANTE: Thank you. Anyone else
25 who would like to speak on this issue.

1 Seeing none, any questions from the Members of the
2 Commission?

3 ACTING COMMISSIONER TAKASHIMA: I just want to ask
4 a question of staff.

5 How do you determine the value of a lease or the
6 rent on this piece of property or on others that we have?

7 EXECUTIVE OFFICER THAYER: It's a very difficult
8 process, and not being an appraiser, I can only approximate
9 what it is. But, in fact, we do have appraisers on board
10 who look at the value of the adjacent property and they look
11 at our property and what it contributes to the value of the
12 adjacent property. So to the extent that these condos
13 couldn't stand without there being the seawall there on our
14 property, there is a contributing value that comes from the
15 state property. And so usually we start with the value of
16 the upland and provide a discount, because in fact it is
17 upland a little more. But it's done through appraisal work.

18 CHAIRPERSON BUSTAMANTE: Mr. Westly.

19 COMMISSIONER WESTLY: I just wanted to speak out
20 in favor of the staff recommendation. I just want to say
21 that all the community stakeholders, I am so impressed that
22 rather than picking your battleground, locking in and poking
23 each other, you've gotten together and done the groundwork
24 to reach a sensible compromise. I'm truly impressed. I
25 intend to support this. And most of all, you've found

1 employment for Senator Areias.

2 (Laughter.)

3 COMMISSIONER WESTLY: This is a real model of a
4 community doing the work together, and my hat is off to all
5 of you for all the amount of time and effort you put into
6 this, you should be rewarded. I truly plan to support this
7 staff recommendation.

8 CHAIRPERSON BUSTAMANTE: And the staff
9 recommendation is to recommend a one-year lease; is that
10 correct?

11 EXECUTIVE OFFICER THAYER: Yes, sir, that's
12 correct.

13 CHAIRPERSON BUSTAMANTE: Is that a motion?

14 ACTING COMMISSIONER TAKASHIMA: I have one more
15 question, sorry.

16 CHAIRPERSON BUSTAMANTE: No, go ahead.

17 ACTING COMMISSIONER TAKASHIMA: The Sierra Club
18 first wrote a letter to the Commission objecting to the
19 proposal, and then they followed up in a communication to
20 staff recommending the staff recommendation. Can you tell
21 me why, I mean what was the story behind that?

22 EXECUTIVE OFFICER THAYER: I didn't actually
23 communicate directly with -- it was Mark Masar was the one,
24 but I think that Mr. Areias had subsequent conversations. I
25 think Mark is involved with -- well, I don't want to put

1 words in his mouth. So in terms of my own interpretation,
2 he's involved with a lot of very important policies because
3 he's statewide for the Sierra Club. But there has been
4 other local people involved with the Sierra Club on this
5 particular project and he may have become more aware of some
6 of their issues than he was when he first started.

7 MR. AREIAS: Mr. Masar and I had been playing
8 phone tag for about three weeks because we hadn't really had
9 a discussion. He sent a letter, I think based on some
10 assumptions as it related to the tortured history and their
11 policy in general on seawalls. And once I received that
12 letter, then he and I finally made contact and we talked it
13 through. He was not aware of all the activity around
14 Watsonville Slough. The local environmental groups that
15 were supporting that, how Pajaro Dunes Association owns the
16 west side of that last mile and the work we were doing. And
17 once we talked that through, plus what was really before the
18 State Lands Commission, then that's why he sent a follow-up
19 letter expressing his concerns and I think generally
20 supportive of what we were doing here. And as I said, Mr.
21 Masar and I will meet next weekend at Pajaro Dunes, and Mr.
22 Controller, you're invited, although I don't really expect
23 to see you.

24 (Laughter.)

25 MR. AREIAS: Maybe you can send the Lieutenant

1 Governor in your place.

2 (Laughter.)

3 MR. AREIAS: A lot of Fresno people there.

4 Anyway, and we're going to begin working on the
5 Coastal Commission application right away, and Mr. Masar is
6 the first stop on the way.

7 ACTING COMMISSIONER TAKASHIMA: Okay, thank you
8 for that.

9 CHAIRPERSON BUSTAMANTE: Any other questions,
10 comments, motions?

11 EXECUTIVE DIRECTOR THAYER: If I may just add that
12 at home this weekend I looked at the e-mail that I had
13 received, and there were about six other letters in support,
14 mostly coming from Pajaro Dunes residents, but that I
15 received and we didn't have time to copy them and bring them
16 in. And there was one as well from this outside Watsonville
17 Wetlands Watch, which is the citizens group that has been
18 working on this, they are also in support.

19 CHAIRPERSON BUSTAMANTE: Okay.

20 COMMISSIONER WESTLY: I'd like to move approval of
21 the staff's recommendation.

22 ACTING COMMISSIONER TAKASHIMA: I second it.

23 CHAIRPERSON BUSTAMANTE: Motion and second on the
24 approval of the staff recommendation. Let the record show
25 that it passed unanimously.

1 And that is the end of our regular calendar; is
2 that correct?

3 EXECUTIVE OFFICER THAYER: Yes, sir.

4 CHAIRPERSON BUSTAMANTE: We have at the time of
5 every meeting, we have an opportunity for public comment.
6 And we have had some people who have asked to be able to
7 speak. And in order, we have Bruce Reznik and Al Huang, and
8 then Laura Hunter and Jim Peugh and Elizabeth Studebaker.

9 MR. REZNIK: Good afternoon, Mr. Chairman,
10 Commissioners, thank you for this opportunity to speak. I
11 am Bruce Reznik, I'm the Executive Director of San Diego
12 Baykeeper. Just a second, I have a Powerpoint going up.

13 We're really thrilled to have the State Lands
14 Commission back down to San Diego. Probably a little overly
15 thrilled because we've put together kind of an organized
16 presentation of some of the key issues that we're facing
17 down here and some of the things that we hope to work with
18 the State Lands Commission on.

19 Which of these -- okay, well, I'm going to do a
20 quick introduction of who the Bay Council is and then the
21 four key issues that we're working on down here, including
22 the South Bay Power Plant, Chula Vista Bayfront Development,
23 sediment remediation along our shipyards, and the Border
24 Fence, which initially a portion was on the agenda today.

25 The Bay Council. It's an alliance of the

1 organizations that are up on the screen, the Environmental
2 Health Coalition, San Diego Baykeepers, The Surfrider
3 Foundation, San Diego Audubon, The Sierra Club, Wild Coast,
4 Divers' Environmental Conservation Organization, and
5 Southwest Wetlands Interpretive Association.

6 And we find the need to work together because it
7 is a very small environmental community. Actually, you're
8 looking at almost all of them here today. Where
9 environmental community is often an oxymoron in most places,
10 here it's a reality because there is so many things to work
11 on.

12 History. We grew out of a collaboration known as
13 the Friends of South Bay Wildlife, which was an effort to
14 really establish a South Bay Unit of the San Diego National
15 Wildlife Refuge working with the Port here. And it's great
16 actually that we're here because I think that was the last
17 time that State Lands was down here was approval of that
18 refuge. We continue to work together again on the myriad of
19 issues facing our local communities.

20 And the first one we're going to talk about, is
21 I'm going to pass on to Al Huang to talk about the South Bay
22 Power Plant.

23 MR. HUANG: Good afternoon, Commissioners. I'm
24 here to talk about the South Bay Power Plant. As many of
25 you know, it's a 40-year-old plant, so it's very outdated.

1 It's operated by Duke Energy and the Port of San Diego is
2 the property, it's currently leased to Duke. And currently
3 their water districts permit has expired. So this is a
4 plant that right now and in the near future there's going to
5 be a lot of movement and decisions needed to be made on it.

6 So on my presentation here, let me make sure this
7 is working right. There we go. Oh, there's a picture,
8 Chula Vista, California.

9 So the first thing I want to talk about are the
10 water quality impacts of this plant. As the plant uses
11 once-through cooling, which is a bit controversial
12 throughout the state, but in particular in the South Bay,
13 every day it draws about 601 million gallons of bay water,
14 which is 20 percent of the water that currently exists in
15 the South Bay. It's a large amount, a large volume of water
16 every day. And, in addition, it has to take in the water
17 and it has to treat it, and it treats it with chlorine
18 bleach to kill organisms so that when it goes into the
19 cooling process you don't have growth and then that costs
20 you.

21 They're treating it with chlorine, and then
22 there's a discharge, a heated discharge. So it results, as
23 it says up there, in 89,000 gallons of chlorine bleach,
24 metals, and waste heat. And as a result of that, it kills a
25 wide range of juvenile, larva, and adult organisms in its

1 cooling system, and, in addition, impacts fisheries and
2 nursery areas. And that's the discharge.

3 Now, into the intake, it traps and kills large
4 marine life through entrainment and impingement. So that's
5 a very significant impact and concern in our mission.

6 Air Quality. As we've said before, it's a 40-
7 year-old plant, so the technology is not up to date. And
8 currently it emits about 3.1 tons of smog forming
9 pollutants, 16,000 pounds a day in particulate matter, 6,200
10 pounds a day of nitrogen oxide at peak generation. And
11 there are definitely public health impacts associated with
12 the plant. There's a recent study that showed that
13 childhood hospitalization rates in Chula Vista are
14 significantly higher than the county average of San Diego.
15 And the next slide I'll kind of talk about that a little
16 more. And when it's burning, the plant can actually make
17 dioxin, which we all know is very dangerous.

18 In addition, the environmental justice impacts of
19 the plant are very, very important to note. First of all,
20 statewide, we see that 89 percent of plants sited in
21 California during and after the energy crisis were proposed
22 in a majority of low income, people of color communities,
23 and that is definitely the case in South Bay, the South Bay
24 power plant. We have 77 percent of the people living within
25 six miles of the plant who are Latino, people of color, and

1 14.6 percent of the people living within six miles living
2 below the poverty line.

3 And so, as you can see, the population located
4 near or around the plant are at high risk for cancer from
5 inhaling polluted air.

6 What we have here, this is --

7 ACTING COMMISSIONER TAKASHIMA: Let me ask you a
8 question here.

9 MR. HUANG: Sure.

10 ACTING COMMISSIONER TAKASHIMA: On environmental
11 justice. Because, you know, I'm a native of Chula Vista and
12 San Diego and grew up when this was constructed in the
13 1960s. I want it to be correct though that this area was
14 not 77 percent Latino. I mean when the plant was
15 constructed in the 1960s, the Latino population was
16 significantly lower and the population grew, the Latino
17 population grew since though, correct.

18 CHAIRPERSON BUSTAMANTE: All over the country.

19 (Laughter.)

20 MR. HUANG: I mean that was 40 years ago.

21 ACTING COMMISSIONER TAKASHIMA: Right.

22 MR. HUANG: And we're talking a while ago.

23 ACTING COMMISSIONER TAKASHIMA: But we're talking
24 about environmental justice. It's because plants are
25 located in the areas because basically no one wanted it to

1 go anywhere other than places where the communities were not
2 as strong as others. And so I think that environmental
3 justice, at least the concept, is something that if you were
4 in -- as I grew up in this area, in Otay Valley where we had
5 a hog ranch, where you had facilities that people didn't
6 want to get junky, or they had those things in the valley.
7 But in Chula Vista, which was a lot different in the 1960s,
8 I would not call this facility a problem because of
9 environmental justice. Go ahead.

10 MR. HUANG: Note taken.

11 ACTING COMMISSIONER TAKASHIMA: No, seriously, go
12 ahead.

13 MR. HUANG: With the populations living there
14 today, definitely if you looked at it from today's
15 perspective, it definitely is an environmental justice
16 impact. And the fact that it's impacting this population is
17 really what we're concerned about, the committee is
18 concerned about.

19 And a way to show it, because this is a lifetime
20 cancer probability isopleth. And it's basically inhalation.
21 And you can't actually see this because I think we lost some
22 of the circles, but right here, this is where the power
23 plant is right here. This red circle over here is an
24 elementary school, and there's a middle school up in this
25 area right here. And as you can see, these areas where the

1 lines are thicker are where the highest probability for
2 cancer from inhalation exists.

3 So as you can see, I mean the most at risk of the
4 population are children, and they are sitting right in the
5 path of the air emissions from the plant that have a
6 probability to cause cancer. And as we've said before, the
7 asthma hospitalization rates are running much higher in
8 Chula Vista. And I don't think there's proof to show that
9 it's the plant, but the plant's not helping clearly. So,
10 oh, there's the circle, there it is. Sorry, it's a little
11 too high tech for me here.

12 So the next thing we can move on and talk about
13 are alternative solutions. And the first option would be to
14 close down the South Bay Power Plant and build a more
15 cleaner, more efficient plant, like, for example, Otay Mesa,
16 the one that's been talked about, because it's already
17 permitted, it's sited away from concentrated populations, so
18 you can avoid the problem that didn't exist before, and it
19 uses dry cooling technology, which I will talk about in the
20 next slide a little more.

21 The second option is to replace South Bay Power
22 Plant with a smaller, more efficient plant that utilized dry
23 cooling technology. And this results in a net reduction of
24 the impacts to health and the human environment, because you
25 don't have the intake-discharge issue.

1 And the final alternative solution would be to
2 have a significant commitment and an aggressive commitment
3 to renewables and energy conservation to avoid these
4 problems as population grows and you have to deal with
5 having energy and population together.

6 Here's just a quick one-pager on dry cooling
7 technology, in case you guys don't know that much about it.
8 Actually, we have a resource that we speak to, his name is
9 Bill Powers from the Border Power Plant Working Group. He's
10 an engineer and he's working throughout the state on dry
11 cooling issues. So if you want to contact him, which we
12 consult with him as well, for more technical information,
13 please feel free to do so, because I'm not an engineer in
14 the power field.

15 The first thing that it definitely does though is
16 eliminates the need for the use of valuable water resources.
17 You're not taking any water for cooling, you're using air to
18 cool the plant down. Number two is it eliminates impacts on
19 marine life, for the same reason right there. There are no
20 air emissions from the cooling system. And this is a very
21 important difference too with this technology. It reduces
22 hazardous material use. There's no need to bleach and use
23 those chemicals to kill the marine life because you're not
24 taking that water in. And also the plant no longer needs to
25 be sited on coastal areas, it can be built anywhere,

1 including closer to service areas, as we see with the
2 proposed Otay Mesa plant and other plants throughout the
3 state that I've already talked about.

4 And, finally, this is good news for most people,
5 is that the permitting process is much faster and,
6 therefore, much cheaper. So overall it's cost effective as
7 well.

8 This is a quote from the State Lands Commission
9 Staff Report from January 29, 1999. And we'd just like to
10 remind before we have some historical memory loss. "The
11 Port's purchase of the property was with the intent of the
12 decommissioning and demolishing the plant for the betterment
13 of the San Diego region." And I think that's important to
14 keep in mind for the long term, because when that transfer
15 actually took place, there was this long-term plan that
16 listen, we're going to look at the long-term history of this
17 area and make sure that we protect the resources there. And
18 I just want to remind you so you don't forget about that,
19 and also commend the State Lands Commission for taking that
20 action then.

21 So that kind of ties into what we're asking for
22 today. And the first thing is for the State Lands
23 Commission to write a letter to the San Diego Port District
24 asking them to investigate Duke Energy's failure to relocate
25 the South Bay Power Plant from San Diego Bay. And this is

1 very important because to this date we still do not know
2 what the plans are and the lease is going to be expired very
3 soon. The permits, as I say, is expired already, and we
4 don't know what the long-term plan is. And it's very
5 important for the public to be aware of the long-term
6 planning as we go on with the plant.

7 The second thing is that the State Lands
8 Commission submit comments to the San Diego Regional Energy
9 Strategy to support actions that reduce the negative
10 environmental and public health impacts of the plant. Right
11 now, the San Diego region is engaged in long-term planning
12 for energy, and part of the long-term puzzle of this plan is
13 where do we need new plants, what kind of plants do you want
14 to build, where do you want to see energy going in the
15 future. And I think it's a very important opportunity for
16 the State Lands Commission to weigh in and say we've said
17 this before and we're going to reiterate again this is
18 what's really good for this region.

19 And finally, that the State Lands Commission hold
20 a full hearing on this issue at a future meeting.

21 So that wraps up my presentation. Do you guys
22 have any questions, comments?

23 ACTING COMMISSIONER TAKASHIMA: Let me ask this
24 question. You have different alternatives as instead of
25 having the facility operational in South Bay, you prefer

1 which of the alternatives, your organization?

2 MR. HUANG: The Environmental Health Coalition
3 or --

4 ACTING COMMISSIONER TAKASHIMA: Yes.

5 MR. HUANG: I mean, we definitely understand
6 there's a need as the population rose and we need to plan
7 for our energy future, there is a need for new plants. And
8 our main interest is to protect the resources, the valuable
9 resources that we have, and protect populations that are
10 going to be impacted by these plants. So our position right
11 now is Otay Mesa is a plant that is already permitted, it
12 uses dry cooling, so you're not impacting water resources,
13 and it also is located away from high levels of concentrated
14 populations. So in our mind that would be a very feasible
15 alternative that would look at our long-term energy needs,
16 while also weighing that with the impact on the environment
17 and on public health.

18 ACTING COMMISSIONER TAKASHIMA: Thank you.

19 CHAIRPERSON BUSTAMANTE: The very first meeting I
20 came to in January of 1999, my very first Commission
21 meeting, was a meeting in which we authorized and we
22 basically took the action that you refer to today. At that
23 meeting, I recall that there had been a tremendous amount of
24 work that had been done and there was agreements, and, in
25 fact, the Port came in and basically said that they would

1 make sure, that they would move toward trying to replace the
2 facility in one way or the other. Preferably, they would
3 try to find something more inland, but if that didn't get
4 accomplished, then they would try to find some way of
5 restoring or, not restoring, but to recreate a new facility
6 with better technology right there right next to the
7 existing plant.

8 But in the last several years, every six months or
9 so, in requests to different individuals on the Port, the
10 representatives, we have not seen anything take place. We
11 have not seen anything that's indicated even any interest in
12 discussing the issue. And we are now into our fifth year of
13 this ten-year lease and still we have absolutely no motion,
14 no movement, no discussion of any kind on this issue. And
15 it's become a very frustrating activity.

16 The Port is able to hire very high-priced
17 representation in Sacramento, but they are unable to find a
18 staff person to begin the process of studying what they said
19 they were going to do. They have the ability to purchase
20 extremely expensive, I know, he's a friend of mine,
21 extremely expensive representation in Sacramento, and yet
22 they are unable to try to figure out how to get Duke to look
23 at possible options.

24 I don't know exactly why the delay, and I'm not
25 sure I understand, but I think that since we are now at this

1 point. And I think we were fairly reasonable, more than
2 reasonable, to provide such a long-term plan of transition,
3 a ten-year process. No one said you had to build a plant
4 next year, no one said you had to go out and figure out how
5 to deal with this. There's a lot of people who have very
6 strong feelings about Duke, but they're the administrators
7 of the facility to provide energy. The Port is responsible
8 for that facility, it is theirs, and so I think that the
9 focus ought to be on the Port, frankly. And I think that
10 there ought to be some kind of action taken by this
11 Commission, either today or in the very near future, to try
12 to ask the questions and to try to figure out exactly why it
13 is they're not taking the next step.

14 Maybe there needs to be that next step taken by us
15 and maybe we need to start doing audits and reviews
16 ourselves. Maybe we need to exercise whatever jurisdiction
17 that we have on the administration of the Port. Maybe we
18 need to start trying to figure out in a more direct fashion
19 the kinds of actions that this Board needs to take in order
20 to be able to spur some kind of activity. And, in fact, I
21 would suggest that, in fact, this Commission, in fact, start
22 to look at those kinds of options. I mean the issue here
23 for the locals is money.

24 Wherever the plant is situated, that's who gets
25 the revenues. And so whether it's located in Chula Vista or

1 some other community, that's where the revenues go. And I
2 can understand that a poor community would not want to have
3 a facility taken out of their jurisdiction, but it is not
4 only an eyesore, not only is it an ugly, filthy facility,
5 but it is also very inefficient, and I think in many ways it
6 symbolizes the past of the electrical and the energy systems
7 that we've had in California. And it's a clear indication
8 that we need to try to figure out how to upgrade our
9 facilities in California if we're going to meet our future
10 energy needs.

11 And so for those reasons, as well as the history
12 of all this, I really believe that the Commission seriously
13 give consideration toward taking aggressive action, meeting
14 with the Port, holding hearings. In fact, I would suggest
15 that in fact we do hold some type of hearing, and I'd ask
16 that the staff maybe go back at this point, without taking
17 any action today, but ask the staff to go back to see if
18 there isn't a review of contracts performance, any audits,
19 any legal jurisdictions that we would have.

20 I know that we were a pass-through entity at the
21 time, that we were going to give approval and probably don't
22 have a lot to hold onto in terms of dealing with the Port
23 and making sure that they keep their word. But I'd like to
24 find out from staff exactly what we can do to put some
25 pressure, gentle or otherwise, to try to make sure that we,

1 in fact, start moving toward what they have promised the
2 Commission five years ago.

3 EXECUTIVE OFFICER THAYER: We'll do that. We can
4 review the proposal that the Port brought to the Commission
5 and make sure that in essence they're complying with what
6 the Commission thought it was reviewing and approving. If
7 there's a variance there, then there may be some
8 opportunity. But I think in terms of the legal side of
9 that, we'll talk to the Attorney General's Office as well as
10 with Jack Rump, our Chief Counsel, to see where we stand on
11 that. But we'll investigate the different possibilities,
12 and we can report back at the next meeting or whenever it
13 would be appropriate. If we're going to meet down here
14 again, that might be the time to do it. But we'll work with
15 your staff.

16 CHAIRPERSON BUSTAMANTE: Commissioner Westly.

17 COMMISSIONER WESTLY: First, thanks, Mr. Huang for
18 providing this overview. I appreciate the outline of the
19 environmental and health issues and so on. Secondly, some
20 of it leads to the Deputy Director of Economic Development,
21 which has and has been with the environmental community,
22 which I consider myself part of, talk either to -- for me to
23 do the right thing, I just want to make sure in doing that
24 here we take into account the economic development effects,
25 because this is one of the largest tax generators in the

1 area and I want to make sure that as we move forward, we're
2 balancing the job and environmental issues. Issues like
3 this are incredibly complex, they do take a long time. I
4 urge you to take a few people presenting a balanced game
5 plan that I hope everybody abides to. I'd like to see staff
6 trying to reach out to people to see if we can come to a
7 compromise.

8 ACTING COMMISSIONER TAKASHIMA: Let me ask. I'd
9 like to have the staff to also communicate with the city of
10 Chula Vista, because the plant today is located within Chula
11 Vista City. And the Otay Mesa facility is in the city of
12 San Diego, I believe. I used to farm on that land of Otay
13 Mesa, so I'm familiar with that. And I did, many years ago,
14 I used to farm at Otay Valley and Mesa. So one of the
15 reasons that I'm familiar with this is that during my time
16 with Sullivan & Peace one of their concerns was the power
17 plant in South Bay and the particulate matters that were
18 being emitted from that plant when they were using oil. I'm
19 not sure of whether or not they have now switched to gas.

20 But also I'm very concerned about the existing
21 facility in the South Bay. It was our understanding many
22 years ago that at some point San Diego Gas & Electric would
23 decommission that facility. And it was also our
24 understanding that that land would be very valuable without
25 a power plant on there. And I think that's really one of

1 the things in the last 20 years that we've talked about in
2 Chula Vista and in San Diego. But you do need an
3 alternative, you need an alternative facility, and the
4 organizations at least support the additional power plant up
5 in Otay Mesa or somewhere else. Because I think that's one
6 of the problems usually I see that environmental groups
7 don't want an existing power plant, and yet they don't want
8 it substituted. But I commend you for at least committing
9 to that.

10 But I would like to have staff, direct staff to
11 really look at the real alternatives we have. I'm not sure
12 where the Otay Mesa facility is at today, whether or not
13 they have any contracts or any other relationships. I'm not
14 sure of how long until the Duke facility contract lease is
15 up. But also I'm concerned about the city of Chula Vista
16 and the loss of revenue. So hopefully we can have
17 communication with them. Thank you.

18 EXECUTIVE OFFICER THAYER: We'll look into those
19 issues as well. And, of course, I should mention that there
20 are representatives of the Port here today and I don't know
21 if any of them wants to respond or if the Commission wants
22 to hear from them today.

23 CHAIRPERSON BUSTAMANTE: If they'd like to come up
24 and talk, we'd be more than happy to listen.

25 MR. HOLLINGSWORTH: Lieutenant Governor, Members

1 of the Commission, I'm Bruce Hollingsworth, I'm President
2 and CEO of the Port of San Diego.

3 I'm a little surprised about some of the remarks
4 that I've heard here today. In fact, I think that we can
5 show and demonstrate according to the agreement that we
6 struck with Duke that they are living to the terms of the
7 agreement. They have identified sources of alternative
8 sites. They did that last summer, within the milestone.
9 They have since reduced that down to one site that is off of
10 tidelands. So I want to make it clear, I think that they
11 have met the requirements of the agreement that they struck
12 with the District. They have until June of '03 to file a
13 Notice of Intent with the State in terms of the ongoing use
14 of that power plant, or an alternate location. And I think
15 we can provide information to the State Lands Commission to
16 substantiate that.

17 Additionally, I'd like to say that under no
18 scenario that I know of, and I have heard of no scenario
19 that does not include and require the demolition of that
20 power plant. I don't think that the Port, I don't think
21 that Duke, I don't think that the City of Chula Vista, or
22 anyone else that I have heard, wants that power plant to
23 remain. I think that the issues we have with that power
24 plant are consistent with the concerns expressed not only by
25 this Commission but by the community. And so we are in all

1 scenarios looking to demolish that plant.

2 Now, something else has occurred since the
3 original proposal and as it came to the State Lands
4 Commission. I think that the language you saw posted up on
5 the board was accurate, that what we had agreed to do was to
6 investigate the use or the relocation of that power plant
7 off site. Duke is charged with that, I think they are
8 living up to their responsibility to do so and identify
9 sites. But in the meantime, the city of Chula Vista came to
10 the Port, and I would add that the city of Chula Vista, and
11 they have representatives here, they may wish to speak for
12 themselves, had initially wanted the relocation of the
13 plant. And I think what I heard you say, Commissioner, was
14 that the redevelopment of the property was an important part
15 of the consideration that the Port wanted, and I would say
16 that that is still the case.

17 However, times change, events change, and the city
18 of Chula Vista came to the Port and requested that we would
19 consider that the power plant be decommissioned, torn down,
20 but however relocated on a more convenient part of the site
21 to the very south end of that site. And that what they
22 would want us to consider is one that meets, I think, one of
23 the alternatives of what you saw posted by one of the
24 presenters here earlier, and that it's an environmentally
25 friendly plan, that it meets the concerns of the community.

1 And, in fact, as a joint resolution of the Board
2 of Port Commissioners and the City Council of Chula Vista,
3 asked as part of the bayfront planning program that's
4 ongoing between the Port and Chula Vista, that we take a
5 look at the issue of the feasibility of resiting that power
6 plant, once it's torn down and decommissioned, and put on
7 Port tidelands. That process is ongoing and it is a process
8 that is using extensive public outreach. And I think you
9 have enough members of the environmental community that will
10 stand and tell you that that is part of the process, is to
11 look at the alternatives and the feasibility of whether or
12 not that power plant should or could effectively remain on
13 the tidelands. And so that is part of the process.

14 But in no event, I want to reiterate this, does
15 anyone consider that that power plant in its existing
16 condition should remain a part of the tidelands. And I'm
17 surprised, when we came up to visit with you, Lieutenant
18 Governor, in January, during our briefing we did talk to you
19 about the requests that had come from Chula Vista and that
20 that was part of an ongoing planning process. And there
21 have been suggestions of other ways that that power plant
22 may be rebuilt and cooled, for instance, using recycled
23 water, discharging into an international outfall, air
24 cooling. So there are a number and a variety of different
25 alternatives I think that could be looked at.

1 Now, why is it important to the city of Chula
2 Vista and why is it important to the Port. Well, first and
3 foremost, we believe that if an offsite location could not
4 be found, then, and it's stated here and I've heard people
5 mention it here, and I believe, your Honor, you've mentioned
6 that yourself, is that if an offsite couldn't be found, that
7 an alternative would be to rebuild it on another site on the
8 tidelands, which is part of that alternative we're looking
9 at.

10 So why is that important? I believe that the City
11 sees the tax revenues and the income revenues to the City as
12 being important. Why is it important to the Port of San
13 Diego? The Port of San Diego, that power plant relocation
14 would be in a redevelopment area. If the Port, and we
15 receive no income off the current lease, any money that
16 comes off that power plant is being used to pay the bonds.
17 If in a new power plant any money could be generated as
18 revenue for the Port under a lease, that money, along with
19 the money from the redevelopment area, were intended to go
20 to help in infrastructure for the redevelopment of the
21 bayfront and Chula Vista.

22 And so that power plant and the income that it
23 might produce was looked at as a catalyst for redevelopment
24 for enhancing the state tidelands in Chula Vista. So that
25 is part of the reason why as part of the planning process

1 that the Port was willing to, and our board and the City
2 Council, to look at the feasibility of retaining a site
3 preference on that location, well, further south, actually,
4 and even perhaps moving the switchyard, which under the
5 current scenario the power plant would be torn down, that
6 switchyard, which is access to the grid, would stay in
7 place. So part of what we were looking at also in the
8 redevelopment would be move that switchyard, thereby
9 increasing the amount of developable space to be used for
10 other purposes.

11 Well, that's my response, and if we have failed in
12 some way to keep you informed, I apologize on behalf of the
13 Port. Certainly we take our responsibility as a tideland
14 trustee very seriously. And we believe that we have been
15 acting responsibly with respect to this power plant and the
16 relocation of this power plant or the resiting of it.

17 CHAIRPERSON BUSTAMANTE: Well, maybe we should
18 just have hearing, so what we can do is just air out
19 everything.

20 MR. HOLLINGSWORTH: We would be more than happy to
21 participate.

22 CHAIRPERSON BUSTAMANTE: And you would be able to
23 explain all the different pieces of what's been taking place
24 and all that you have been doing, and have everybody come
25 and show up and talk about exactly how we're going to move

1 this to the next point.

2 MR. HOLLINGSWORTH: Absolutely. We'd be glad to
3 participate in such a hearing.

4 Thank you. Any questions from the Commission?

5 COMMISSIONER WESTLY: First, thank you for coming.
6 Second, thanks for you commitment to building a new
7 facility. It sounds like everybody is in favor of that, a
8 more environmental and state of the art facility.
9 Especially, as a newcomer to this, I don't know if you heard
10 the last piece before us. There was a model of people
11 working hand and glove and extraordinary communications
12 amongst the different stakeholders. It sounds like as a
13 first-time observer here, you're not quite at that level,
14 and I would just urge you to, as hard as that may be, to
15 begin that process.

16 MR. HOLLINGSWORTH: If I might, and I would ask
17 perhaps you could ask Laura Hunter to come up and address
18 the stakeholder participation. I think the Port, more than
19 any public agency in this county, has worked hard to include
20 stakeholders in all the decisions we make on tidelands, as
21 an important part of the decisionmaking process. And it's
22 intended that whether or not that plant stays, not the
23 tearing down part, but the staying of it, is a part of a
24 planning process for which all the stakeholders, the
25 community, the City, the Port, environmental interests,

1 power interests, will all have a role and a position to be
2 able to be debated and talked about as we go forth. That's
3 been our intent, that's been our plan.

4 CHAIRPERSON BUSTAMANTE: Well, that's a good
5 segue, because actually she's up next?

6 (Laughter.)

7 MR. HOLLINGSWORTH: That's super. Any other
8 questions from the Commissioners?

9 MR. MORRIS: Mr. Chairman, I'm with the City of
10 Chula Vista, if I could address it just for a moment.

11 CHAIRPERSON BUSTAMANTE: Okay, sure.

12 MR. MORRIS: It kind of follows Mr. Hollingsworth.

13 My name is Sid Morris, I'm the Assistant City
14 Manager of the City of Chula Vista. Frankly, I want to
15 concur with what Mr. Hollingsworth informed you in terms of
16 the process we've been going through. The City of Chula
17 Vista has been working jointly very closely with the Port
18 District. We did come to the Port and say, you know, we
19 know what your contract says, we know that they're to look
20 at alternatives, but we're very interested in seeing that
21 plant stay at the current site. I know there's a belief on
22 the Commission that the possibility that the land without
23 the power plant is much more valuable than with. We have a
24 little different take on that.

25 Our belief is that while you may develop that

1 property at some point if the plant is torn down, and I
2 think it's important to remind you that it's a must-run
3 facility at the present time, which you are probably already
4 aware of, which means that the State is basically saying you
5 can't not run it at this point. But the reality is that as
6 to the effect that it is in a redevelopment area and the
7 fact that there is now legislation on the books that
8 basically says that all of that new revenue that is
9 generated as a result of the increased valuation stays
10 within the City of Chula Vista.

11 If you figure on average a new plant might cost
12 \$600 million, we're picking up about \$6 million a year, in
13 addition to a franchise that we have with SDG&E, that
14 enables us to bond against the money that we earn. That
15 assists us in working with the Port District to help develop
16 the property, to build the infrastructure necessary to
17 obtain the type of development that we as a community are
18 looking for in that area. That's critical to us.

19 CHAIRPERSON BUSTAMANTE: There's also examples of
20 different facilities that are placed with facades that
21 integrate better into some communities than others. And I
22 would hope that the planning that is supposed to be taking
23 place would consider some kind of facade activity,
24 especially if it's going to be relocated anywhere near
25 residential or commercial development.

1 MR. MORRIS: Mr. Chairman, I don't think you'll
2 find anybody that agrees with that comment more than I do.
3 I am not a fan of the erector set style that we have down
4 there now. I'm hoping that whatever we have in the future
5 is something that we are proud of as a community. We have a
6 very open process at this point. It's just in its infancy,
7 if you will, in terms of the master planning of the site.
8 Two of the major components that are included in that are
9 not just the land use planning per se, but also what's going
10 to happen with that power plant. And also from a regional
11 standpoint, the City and the Port, along with the local
12 water districts, are interested in looking at desalination
13 at that site and how that might benefit.

14 CHAIRPERSON BUSTAMANTE: I understand. And
15 frankly, from my own personal view, I think that only an air
16 cooled facility could be built there. I don't see any other
17 kind of water facility that could be possibly built in there
18 that would do the job that you're looking to do.

19 MR. MORRIS: All right. And I think that there
20 are alternatives that are available. I also know that the
21 air cooled facility, when you look to the aesthetics of a
22 new power plant, and I'm just an infant in terms of my total
23 understanding of these facilities, but I know that an air
24 cooled facility has its own aesthetic issues in terms of
25 impact, the size of that air cooling facility, and the

1 amount of infrastructure, if you will, that it adds to the
2 site in and of itself.

3 If there's an alternative that is an
4 environmentally friendly alternative that is available at
5 the time, all I would suggest is that it's something that we
6 should be looking at and look at it as a reasonable
7 alternative. I've heard personally and sat down with Laura
8 and her group in terms of the impact on the bay, and our
9 Council in taking its position has indicated that they are
10 looking towards something that has environmental
11 sensitivity. And that's the charge that as staff I have in
12 working with the Port District staff, and if my recollection
13 serves me right, the Port Commission made the same comment
14 in taking action jointly on that issue.

15 CHAIRPERSON BUSTAMANTE: Well, I think your
16 comments and that of the Port, I think makes it even more
17 important that we in fact have some kind of a hearing so
18 that everyone in the community can hear all of the proposals
19 that are being talked about and all the issues that are
20 being considered.

21 MR. MORRIS: Right. And if I may, some other
22 issues you may or may not wish to have your staff look at.
23 When they talk about the Regional Energy Infrastructure
24 Program that's being looked at in our community, not just
25 Chula Vista but regionwide, it's called REIPAC is the

1 acronym, as I understand it now. They speak to the need for
2 baseload, as opposed to peaker-type facilities. They say
3 that within the next five years we're going to need
4 additional baseload facilities. At the present time, I
5 don't think we can really have this plant go away. The Otay
6 plant currently does not have any contracts, and in fact
7 they are looking for those in order to be able to pay for
8 construction of the site.

9 CHAIRPERSON BUSTAMANTE: Are you talking about the
10 second facility or the first one that's already been built?

11 MR. MORRIS: Oh, I'm sorry.

12 CHAIRPERSON BUSTAMANTE: You're talking about the
13 second one?

14 MR. MORRIS: I'm talking about the one on Otay
15 Mesa.

16 CHAIRPERSON BUSTAMANTE: Because one has been
17 built.

18 MR. MORRIS: Right. This is their large -- no,
19 this is not the one that's already been built. I'm talking
20 about the one that has approvals, but has --

21 CHAIRPERSON BUSTAMANTE: It's the second one?

22 MR. MORRIS: Yes, sir. I'm not aware that there
23 is unless it's a small peaker facility up there that there's
24 a large plant.

25 CHAIRPERSON BUSTAMANTE: It's being built. And

1 they don't have contracts?

2 MR. MORRIS: That's my understanding in sitting
3 through some of the REIPAC hearings that they do not at this
4 point, but I'm not the expert on it, it's just my
5 understanding.

6 ACTING COMMISSIONER TAKASHIMA: Yes. They don't
7 have contracts. I used to work for the original owner of
8 the facility, so I know that. But one thing I'm a little
9 troubled by your presentation, but I hope we have a hearing
10 later on this year, from a Chula Vista native resident
11 position and my parents actually live downwind of the
12 facility also.

13 MR. MORRIS: As do mine.

14 ACTING COMMISSIONER TAKASHIMA: What I want to
15 know is the analysis done by the City of Chula Vista, not
16 only monetarily, but also from health concerns of the
17 facilities, because I would like to hear that presentation
18 and the concerns of Chula Vista, the City, regarding the
19 monetary importance of the facility, but also weighing in
20 the health concerns of that plant and whether or not some of
21 the information we receive today is inaccurate, I would like
22 to just get additional information from the City's
23 viewpoint?

24 MR. MORRIS: That is an important issue. When I
25 talk environmentally, I'm talking the full broad spectrum,

1 not just impact on the bay, it's the entire issue.

2 ACTING COMMISSIONER TAKASHIMA: Okay, thank you.

3 MR. MORRIS: Thank you.

4 MS. HUNTER: This is my turn? My name is Laura
5 Hunter with the Environmental Health Coalition, and I
6 apologize in advance for the quality of my voice, I don't
7 know what's going on. Just let me respond to the power
8 plant issues, because actually I wanted to talk about
9 development generally on the Chula Vista Bayfront, which is
10 my part of the presentation.

11 But certainly we do not want any kind of thought
12 that at least environmental groups and the Bay Council do
13 not have excellent communication with the Port District. We
14 have a very strong relationship with them, we feel like
15 there's a good flow of information. What our frustration
16 was we felt that was that Duke was not providing that
17 information to the Port District. We knew that they had
18 done an analysis, but they had not given it to the Port, and
19 if the Port doesn't have it, we can't get it either.

20 And so I think part of what our frustration has
21 been is not that the Port District has been withholding
22 anything, but rather Duke hasn't been providing that
23 information, and the public debate was not really started.

24 The other thing I would like to say is that when
25 we did have Port Commissioners write a simple letter on

1 their own business letterhead saying what they thought was
2 good for the region, Duke literally threatened them with a
3 very legal, very aggressive, completely unacceptable letter
4 in our view, to basically try to intimidate the Port
5 Commissioners from expressing any opinion on this. And
6 again, that's not the Port District's fault, that's Duke.

7 And so we think that some pressure needs to be
8 brought on them to be better neighbors, more open, if they
9 really want to stay in our communities. So I hope that can
10 clarify that a little bit. I think some of the things --
11 you know, I think the public debate obviously has started
12 and is in full swing. I mean there are some alternatives
13 that we would like to get on the table too.

14 We absolutely understand the economic issues, Mr.
15 Westly, that you were speaking to, you or Mr. Takashima.
16 But we think there are also alternatives we should look at
17 such as a joint powers authority. So let's repower South
18 Bay at Otay, but have revenue sharing and power sharing
19 among them. We are committed to indigenous generation and
20 making sure there is equitable distribution of those funds.
21 These are the kinds of things we want to get on the table
22 and a public hearing will help us do that, so that's very
23 exciting.

24 The last thing I wanted to point out is that the
25 City has weighed in, the Port has said what they want, the

1 State Lands will say what they want, but who is talking to
2 the neighbors. And as far as I know, we're the only people
3 with our canvassers and our organizers that have gone door
4 to door in the communities most directly impacted by that
5 power plant, they want it out of there. They don't like it,
6 they think they have health problems related to it, and we
7 really need to give them a chance to come in and say what
8 they think, because they have really been excluded from this
9 debate so far. We've been talking to them and we want to
10 give them a chance to come and talk to you. So we look
11 forward to the next time that we meet.

12 How do I work this? Oh, here we go.

13 So what I would like to talk about -- how do I go
14 back? Help.

15 All right. So I would like to use my three
16 minutes just to talk briefly about the Don't Pave Paradise
17 campaign, which is an effort that's addressing the
18 development all across the Chula Vista bayfront, including
19 the South Bay Power Plant site. This is a campaign to
20 ensure sustainable community-based development, and it is a
21 broad campaign of labor organizations, including HERE,
22 locals, the San Diego Bay Council, and community
23 organizations.

24 These are the areas in question. The yellow areas
25 are the areas that you have jurisdiction over through the

1 Port District. The power plant is to the south or to the
2 right, and the Port properties are in the middle, and then
3 the green property, which is what I'm going to talk a little
4 bit about is called the Midbayfront. And that is in private
5 property, although it is in the City of Chula Vista and it
6 is in the redevelopment area.

7 All of these areas, the green and the yellow, are
8 going to receive brand-new redevelopment plans that will be
9 the plans for this bayfront for the next seven generations
10 and plus. This is a very, very important time for the City
11 of Chula Vista, the South Bay Region, and certainly San
12 Diego Bay.

13 Here's the bayfront today, and the large picture
14 shows the midbayfront property. And as you can see, it's
15 one of the very last open space areas, undeveloped areas on
16 San Diego Bay, and it also is very closely linked to western
17 Chula Vista, a very densely populated community with
18 virtually no open space areas that they can enjoy. This is
19 one of the last areas that could be developed as a regional
20 open space park or open space area for this community. And,
21 in fact, that is what they want located there. The public
22 has been very outspoken about this.

23 Instead, this is what's been proposed by the
24 landowner. But unlike Pelican Homes, which you heard about
25 earlier today, this is a mistake we don't have to make.

1 Because of the significant uproar in opposition to this
2 plan, this project called Bayfront Village was held in
3 abeyance and a new plan was proposed that's just about as
4 bad. Almost 2,000 residential units, multiple buildings
5 again, very dense development, and our concern and why we're
6 bringing this before you today is there's no joint planning
7 with the Port process, and the Port actually has outlined a
8 very good planning process for their properties to the
9 south. We're hoping that you can weigh in and help us make
10 a case for why the whole bayfront should be planned together
11 so we can maximize those options such as land swaps, develop
12 more options. See, what we really need to do to give Chula
13 Vista the most magnificent public friendly bayfront that
14 they can have.

15 I should say, I guess maybe I did say, that
16 there's huge opposition to residential on the bayfront for
17 all of those reasons about privatization of a resource. And
18 so we've been working with the organizations to develop
19 project alternatives that improve the quality of life,
20 provide quality jobs, increase the open space, and enjoy
21 community support.

22 I'm hurrying as fast as I can.

23 COMMISSIONER WESTLY: There are other speakers.

24 MS. HUNTER: Yes, I know.

25 We're hoping that you will urge, to the extent

1 that you can, either as a group or individually to encourage
2 the City and the Port, mostly the City, to try to find a way
3 to plan all of these properties together so we get the best
4 thing possible.

5 Thank you.

6 COMMISSIONER WESTLY: All right. Thank you very
7 much.

8 Any questions for the speaker?

9 MR. REZNIK: One of my speakers had to leave, if I
10 can just cover really quickly sediment issues?

11 MR. WESTLY: And I have Jim Peugh.

12 MR. REZNIK: Jim Peugh was going to talk about the
13 Border fence, which was postponed.

14 COMMISSIONER WESTLY: Terrific.

15 MR. REZNIK: I'll just run through the sediment
16 issue really quick.

17 COMMISSIONER WESTLY: Great. If you could just
18 try to stick with the three minutes, we want to be fair to
19 everybody.

20 MR. REZNIK: Okay. I appreciate that.

21 Another major issue we work on here in San Diego
22 is the sediment remediation from some of the bayfront
23 facilities that are overseen by the Port. One is our
24 shipyard area that's pictured up there. For more than 40
25 years, shipyards along San Diego Bay have been heavily

1 polluting the bay.

2 As a brief bit of history, in 1991, so 12 years
3 ago now, the Regional Water Board first started to address
4 this issue by requesting a study to determine if sediment
5 remediation was required. In 1995, the first clean-up
6 levels were set, and unfortunately we still have had no
7 action, but those levels were set at the Campbell Shipyard,
8 now defunct, where the Port wants to develop a hotel.
9 Unfortunately, there wasn't a very strong environmental
10 community at the time and the levels that were set were
11 pretty horrific. They were at a level known as AET or
12 Appearance Effect Threshold. Those levels would basically
13 cause a hundred percent mortality in the Bay. So we set a
14 clean-up level of a hundred percent mortality about the
15 community.

16 There were some serious irregularities in the
17 study. The study had been conducted by the shipyards or
18 contracted by the shipyards. Luckily for us, the Port
19 District in wanting to develop actually was very proactive
20 and did their own studies, kind of being very concerned with
21 the study that had been conducted by the Port, and realized
22 that instead of the 20,000 cubic yards of contaminated
23 sediment which the initial study had found, it's in fact
24 probably over 120,000 cubic yards, which says something for
25 our need for independent studies when we do these

1 remediation efforts.

2 When this level was set, one of the other things
3 that was mentioned was that it was not applicable to other
4 shipyard sites. Other shipyards try to tie into these
5 levels realizing it was a benefit for them to do that.

6 In 1997, after years of study, the State Water
7 Board and NOAA released a report on the health of sediments
8 in the Bay, and they found chronic toxicity throughout San
9 Diego Bay, labeling it the second most toxic bay in the
10 nation behind Newark, New Jersey. Of the most toxic
11 hotspots in the Bay, two are adjacent to our shipyards.
12 And, of course, there's human health with bioaccumulation
13 and things like that, as well as environmental and economic
14 impacts it had with such contamination.

15 The environmental position is pretty clear. We
16 want the shipyards to clean up every bit of pollution that
17 they contributed to San Diego Bay, and we think there's a
18 State Water Board Order 92-49 which mandates that. And
19 there are ways to figure that out by comparing contamination
20 at these sites, versus background reference stations. So we
21 think this is possible, we think it's feasible, we think
22 it's legally required and also morally justified.

23 I have a slide just on NASSCO and Southwest
24 Marine, the two shipyards we focused on. Unless we feel too
25 sorry for how much this cleanup might cost, these are

1 multibillion dollar companies. General Dynamics owns NASSCO
2 and Carlyle Group. Yes, that Carlyle Group is the primary
3 owner of Southwest Marine. These slides are kind of old.
4 I'm guessing with the war efforts, these companies are
5 actually probably much wealthier than is put up there, but
6 certainly multibillion dollar companies. And yet what kind
7 of stewards have they been.

8 Well, I'll ignore the fact that San Diego
9 Baykeeper had to sue both companies, and successfully sued
10 them to try to get them to clean up. One case is going to
11 the Supreme Court. EHC has been on their back for a long
12 time as well. This is just a slide of the many violations
13 that they've had over the years and they've been fined
14 massively by the Regional Water Boards, and still don't
15 really necessarily always get where we need to go.

16 Where we are today. Well, the good news is we're
17 working very cooperatively with the Port District to try to
18 fix what had been messed up in that initial study and the
19 initial cleanup levels for the Campbell site. We're trying
20 to work cooperatively, as has been suggested, on a habitat
21 cap that will achieve a much greater protection level than
22 the levels that were initially set by the Regional Board,
23 and I think that's been a very positive step. There are
24 still hurdles to overcome.

25 Not so good step on the Southwest Marine and

1 NASSCO sites. We're still kind of in this study limbo that
2 goes on for years and years, and this is probably about the
3 fourth or fifth. Well, at least the third year of studies
4 there.

5 What we're actually asking from the State Lands
6 Commission, whatever role you have over these --

7 COMMISSIONER WESTLY: Is this the last slide?

8 MR. REZNIK: This is the last slide. Is we'd like
9 policy direction from this agency that reinforces the goal
10 of sediment remediation to background levels at all shipyard
11 sites, and letters to the Port and State and Regional Water
12 Boards reinforcing this position. And to the extent, it
13 sounds like there are so many issues down here that when you
14 guys do come back down for a hearing, maybe this is
15 something we could take up at greater length.

16 Thank you very much for your understanding.

17 And I'm going to pass on to Jim Peugh from San
18 Diego Audubon to talk about the Border Fence.

19 COMMISSIONER WESTLY: Okay. Any questions?

20 MS. GONZALEZ: No questions. I just want to point
21 out the Lieutenant Governor had to leave because of a
22 flight, we didn't know this meeting would go on quite so
23 long, and he is committed to coming back to San Diego for a
24 meeting. So that will be an issue. And as far as policy
25 direction, and I'm not sure, I don't believe we have yet

1 written a letter independently from our office on sediment
2 remediation, but we're happy to do so. And thank you for
3 the environmental health questions and trying to clean up
4 the Bay.

5 MR. REZNIK: Thank you very much.

6 ACTING COMMISSIONER TAKASHIMA: I have a comment,
7 your comment about a letter. I would have to have more
8 information. You know, we're talking about sediments in the
9 Bay. You know, how much of this is Navy versus others, and
10 you know there is a lot of information yet that I would have
11 to hear before I would say NASSCO or Campbell or some other
12 organization should be targeted, versus other folks. So I
13 just wanted to --

14 MR. REZNIK: Yes, it's a huge issue down here and
15 I would be happy to work with State Lands staff.

16 Thank you very much.

17 COMMISSIONER WESTLY: Mr. Peugh from the Audubon
18 Society.

19 MR. PEUGH: Hi, I'm Jim Peugh from the San Diego
20 Audubon Society. The last time I talked to this Commission
21 was when the South Bay Refuge was established, which was a
22 really exciting event for me personally.

23 I was a little disappointed that Item C27 was
24 pulled from your agenda. There is some real controversy
25 there that I hope you'll be interested in.

1 There's a project going on called the 14-Mile
2 Border Infrastructure Study that NEIS grant developed, but
3 the final has not come out and the draft EIS I think was
4 over a year ago.

5 I think that you should consider very seriously
6 that what you're asking the BP/INS to do is to piecemeal of
7 the part of the fence that was on Item C27 is also covered
8 under that EIS. And so I don't think that what you're
9 looking at is the whole project, I think what it is is a
10 fragment of a project, and you're being asked to be part of
11 a piecemeal. And I'd like for you or your staff to look
12 into that.

13 The 14-Mile Project is actually a triple fence
14 that will run along the border. Some of the outstanding
15 features of this. There is a big mesa, a beautiful mesa on
16 the border called Spooners Mesa. The top of that, one
17 section of the top of that will be cut off and used to fill
18 in a big canyon called Smugglers Gulch.

19 I think I was supposed to push this already. Uh-
20 oh, I think I pushed it too much.

21 I can show you, just to give you an idea of what
22 the magnitude of this project is. That's a photograph of
23 the canyon that will be filled in. The berm that goes
24 across it, depending on the alternative, 150, 180 feet high.
25 It will take about two million yards of fill that will be

1 cut from Spooners Mesa to fill it in.

2 And the huge impacts. There will be erosion
3 impacts on the estuary, and one of the other connections
4 with the State Lands Commission is that part of that estuary
5 is under your custody. And so the property that you manage
6 will be affected by erosion, long-term erosion from this.
7 There will be direct wetlands loss, there will be habitat
8 loss. This is a core area, a core biological area of the
9 MSCP, our local implementation of the Endangered Species
10 Act. Downstream, where the sediments are going to go, there
11 will be Lightfooted Claprail impacts.

12 It's really a question of whether any of these
13 losses are really mitigatable. You know, this is a huge
14 project with a huge impact and mitigation alternatives are
15 very limited.

16 Well, there are other ways to solving this problem
17 that will be less impact. And this is a very expensive
18 project. We think this part will probably spend like \$40
19 million, but the Border Patrol isn't sharing that kind of
20 information. As we all know, there are lots of needs for
21 Homeland Security money. This isn't on anybody's checklist
22 as being a high-priority issue. This money can be much
23 better used for other homeland security issues.

24 I'm sorry, I went over one slide too fast.

25 There are lots of community impacts -- yes.

1 COMMISSIONER WESTLY: Jim, your time is actually
2 technically up. We'll be back here to revisit the same
3 issue. So why don't you tie it up quickly and then we'll
4 give you a chance to go into more detail when we come back.

5 MR. PEUGH: Great. Well, a big part of this will
6 be impacts to state parkland, with park money, it can't be
7 used for anything else, will be taken for this project. A
8 real symbol of disrespect for the City of Tijuana which we
9 really need to be working with on issues. We will be
10 basically showing them we don't trust them and we want to
11 keep them at a Berlin Wall type distance from us.

12 We hope that you will encourage -- you'll have
13 some leverage over the Border Patrol, since they're coming
14 to you for your next meeting, and we do hope that you'll use
15 that leverage to get them to work with us, as we have been
16 talking about all through this day on getting a solution
17 that will work for the environment, for the citizens of our
18 country, for the citizens of Mexico.

19 Thank you.

20 COMMISSIONER WESTLY: Thank you.

21 And I want to thank all of the speakers for coming
22 out today, those were important points, and I appreciate you
23 bringing them forward.

24 What we would like to do now is unless there are
25 any questions for any of the speakers is to adjourn to

1 closed session.

2 And I think it's fair to say that we will look
3 forward to seeing you all sometime later this fall.

4 Thank you.

5 ACTING COMMISSIONER TAKASHIMA: And let me comment
6 one thing about the Border Fence. I think I'm the reason
7 why the item was not on the agenda. I asked that it be
8 pulled from the consent calendar because I wanted to talk
9 about that.

10 I'm a native, as I've said, of this area and I've
11 seen fences do nothing. I also would like to know about the
12 rationale of the Border Patrol of the existing fence and to
13 the use of that. I just wanted to ask questions. And I
14 think the Border Patrol has offered for staff and
15 Commissioners to see the existing fence. But I would like
16 to have additional information that you would have about the
17 plan that the Border Patrol has for the San Diego and Mexico
18 border. Because, like I said, I've lived here for 25 years
19 and seen it do nothing.

20 So even though homeland security is important, we
21 have to evaluate what we're really doing. And I'd rather
22 use the money to, as I said before, to investigate cargo
23 containers rather than building fences. So I'd like to end
24 there, but I'd like to thank everyone for coming and I'm
25 glad to be in town.

1 COMMISSIONER WESTLY: Thank you. I'd like for the
2 closed session meeting to be in here, so those involved
3 please stay here. And members of the public, thank you
4 very, very much.

5 (Thereupon the meeting of the
6 State Lands Commission was
7 concluded at 3:20 p.m. on
8 April 7, 2003.)

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CERTIFICATE OF SHORTHAND REPORTER

I, MICHAEL J. MAC IVER, a Shorthand Reporter, do hereby certify that I am a disinterested person herein; that I reported the foregoing State Lands Commission proceedings in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said State Lands Commission proceedings, or in any way interested in the outcome of said State Lands Commission proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of May 2003.



Michael J. Mac Iver
Shorthand Reporter