

MEETING  
STATE OF CALIFORNIA  
LANDS COMMISSION

STATE CAPITOL  
ROOM 437  
SACRAMENTO, CALIFORNIA

TUESDAY, AUGUST 17, 2004  
2:10 P.M.

**ORIGINAL**

Michael Mac Iver  
Shorthand Reporter

APPEARANCES

Steve Westly, Chairman

Donna Arduin, Director of Finance, represented by Dave Harper

Cruz Bustamante, Lieutenant Governor

STAFF

Paul Thayer, Executive Officer

Jack Rump, Chief Counsel

ALSO PRESENT

Alan Hager, Deputy Attorney General

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PROCEEDINGS

1  
2 CHAIRPERSON WESTLY: I'd like to call this meeting  
3 of the State Lands Commission to order. We have a quorum of  
4 the Commission present.

5 I am the State Controller, Steve Westly, and I am  
6 joined today by Dave Harper, representing the Department of  
7 Finance. And we understand that the Lieutenant Governor,  
8 Mr. Bustamante, will be with us shortly.

9 For the benefit of those in the audience, the  
10 State Lands Commission administers properties owned by the  
11 State, as well as it's mineral interests. Today we will  
12 hear proposals concerning the leasing and the management of  
13 these public properties.

14 The first item of business will be the adoption of  
15 the minutes from the Commission's last meeting.

16 May I have a motion to approve the minutes?

17 ACTING-COMMISSIONER HARPER: I would move the  
18 minutes to be approved.

19 CHAIRPERSON WESTLY: And I will second. And we  
20 have a unanimous vote there.

21 The next order of business is the Executive  
22 Officer's report.

23 Mr. Thayer, may we have your report.

24 EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair,  
25 and good afternoon, Mr. Chair and Commissioner Harper.

1           The one item I have to report on is a follow-up to  
2 some comments that the Commission received, some input  
3 several months ago at one of its meetings. There were  
4 several public interest groups that came from San Francisco  
5 to address the Commission, and they wanted to have some  
6 better liaison with respect to the public trust information.  
7 They were aware that we had a lot of good information on our  
8 website, but they requested that we do other things such as  
9 conduct a public trust workshop in the San Francisco area so  
10 that public interest groups, officials, and others could  
11 better understand the doctrine that governs our decisions.

12           And I'm pleased to report that we've worked with  
13 those individuals and established an agenda and are going to  
14 conduct a workshop next week on the 24th in San Francisco  
15 that will run from I believe it's 4:00 to 7:00, in hopes of  
16 providing opportunities for people to come who should come  
17 after work. And depending upon how that works, we're  
18 looking forward to perhaps running the same sort of workshop  
19 in Southern California to provide that kind of information  
20 down there.

21           And unless there are any questions, that concludes  
22 my report.

23           CHAIRPERSON WESTLY: Terrific. Any questions from  
24 the other members?

25           If not, the next order of business is the adoption

1 of the consent calendar.

2 Mr. Thayer, would you indicate which items have  
3 been removed from the consent calendar.

4 EXECUTIVE OFFICER THAYER: There are three items  
5 which we would like to remove. The first is C-21. That  
6 particular item we'll hear at another meeting, our next  
7 meeting, we hope. Items 46 and 62 also need to come off  
8 because there's some opposition to those, and we would like  
9 to try and hear them today. And our usual custom has been  
10 at the Commission to just hear those at the end of our other  
11 regular calendar items, and I would suggest that we do that,  
12 recommend that we do that.

13 CHAIRMAN WESTLY: Okay. Is there anyone in the  
14 audience who wishes to speak to an item still on the consent  
15 calendar?

16 If not, the remaining group of consent items will  
17 be taken up as a group for a single vote.

18 And now I would like to proceed with that vote.

19 Is there a motion.

20 COMMISSIONER BUSTAMANTE: Move.

21 ACTING-COMMISSIONER HARPER: Second.

22 CHAIRPERSON WESTLY: All in favor?

23 (Ayes.)

24 CHAIRPERSON WESTLY: Thank you. We have a  
25 unanimous vote.

1           In that case, let us move right to the regular  
2 calendar.

3           Mr. Thayer, I would just discuss the order of  
4 items on the agenda, and you have some ideas how to proceed  
5 most efficiently with the meeting?

6           EXECUTIVE OFFICER THAYER: Yes, Mr. Chair. I  
7 think as we discussed, I think that the bulk of the  
8 testimony that we might hear today would be on Item 68,  
9 which has to do with the recommendation from the California  
10 Performance Review to abolish the Commission. And so it may  
11 be appropriate to go ahead and hear that first to  
12 accommodate those members of the audience who are here for  
13 that.

14           CHAIRMAN WESTLY: That certainly makes sense to  
15 me. I know we have a number of people from the public who  
16 would like to speak on this. Unless there are any  
17 objections from the other Commissioners, I think we should  
18 proceed to Item 68, a discussion of the California  
19 Performance Review recommendation as they concern the State  
20 Lands Commission.

21           And I understand we have a representative from the  
22 California Performance Review here. Why don't we hear from  
23 that person first.

24           EXECUTIVE OFFICER THAYER: Yes, sir. I understand  
25 Chris Reynolds is in the audience from the California

1 Performance Review. Thank you.

2 Mr. Reynolds was kind enough to on short notice to  
3 come and talk to the Commission about the recommendations  
4 and the basis for them, and we're very appreciative.

5 MR. REYNOLDS: Good afternoon.

6 CHAIRPERSON WESTLY: Good afternoon, Chris. Thank  
7 you for being here to talk --

8 MR. REYNOLDS: Thank you for inviting me.

9 CHAIRPERSON WESTLY: -- about our abolishment.

10 (Laughter.)

11 MR. REYNOLDS: For the record, my name is Chris  
12 Reynolds, and I am the team leader for the Resource  
13 Conservation and Protection Team for the California  
14 Performance Review.

15 I wanted to provide the Commission with the basis  
16 for our analysis and our recommendation to eliminate the  
17 State Lands Commission and then respond to any questions.

18 The title of the reorganization report in which  
19 you will find this particular recommendation is the best  
20 characterization of that analysis, Form Follows Function.

21 We endeavored to identify the functions that are  
22 performed by government agencies and then consolidate those  
23 functions to achieve several goals: making government more  
24 intuitive to citizens, consolidate like functions to achieve  
25 synergy and achieve efficiencies, to improve customer



1 service to Californians, and to make the Executive Branch  
2 flatter and therefore more accountable to the voters through  
3 the Chief Executive, the Governor.

4 In the State Lands Commission, we saw the need for  
5 its function. There is not a recommendation to forego the  
6 State responsibilities.

7 The functions that we looked at did fall into  
8 three broad categories. Category A, resource conservation  
9 functions: mining, grazing, dredging, timber harvesting.  
10 Planning functions: preparing and reviewing environmental  
11 impact reports. And land management functions for sovereign  
12 lands, with the intent of preserving State land in a natural  
13 state.

14 Category B could be considered energy resource  
15 management functions and infrastructure management functions  
16 together. Evaluating leasing and oversight of tidelands,  
17 oil and natural gas exploration and development in  
18 geothermal projects. And maritime infrastructure management  
19 functions, including marinas, responsibility for marinas,  
20 industrial wharves, tanker anchorages, removal of man-made  
21 structures, and monitoring the use of granted lands and the  
22 management of unsold school lands.

23 And the final category would be environmental  
24 protection functions: inspection of marine terminals and  
25 involvement in oil spill cleanup efforts.

1           We viewed the functions identified under Category  
2 A as falling within the purview of the Natural Resources  
3 Department where the Coastal Commission, the Bay  
4 Conservation and Development Commission, the Department of  
5 Fish and Game, and the Department of Conservation currently  
6 reside.

7           For infrastructure functions, we viewed the  
8 functions under that category as a responsibility closely  
9 aligned with the State's infrastructure duties, where the  
10 Energy Commission and the Department of Boating and  
11 Waterways would reside under the recommended  
12 reorganizational plan.

13           And then finally, the environmental protection  
14 functions. We viewed the oil spill prevention and cleanup  
15 efforts as functions that should be aligned with toxic waste  
16 oversight and cleanup efforts for both land and ground and  
17 surface water that currently reside within the California  
18 Environmental Protection Agency.

19           The Commission's jurisdiction is largely governed  
20 by location from our perspective, much like a city, a  
21 county, or a regional entity has jurisdictions over its  
22 boundaries. The Commission's duties did not appear to us to  
23 be governed by function.

24           Our charge was not only to take a look back, but  
25 to look forward to a governmental organizational structure

1 built around the principles I mentioned previously.

2 In closing, I would like to address two critical  
3 issues that are raised both in the staff's analysis and in  
4 the resolution recommending opposition to the CPR  
5 recommendation.

6 First, the staff raises the issue of limited  
7 opportunities for public participation. This is of great  
8 concern, of course, and it's a viable criticism that needs  
9 to be addressed. The question is whether the mechanisms  
10 that exist under current law, including opportunities for  
11 public workshops, open bidding processes, and the  
12 Administrative Procedures Act provide enough opportunity for  
13 sunshine and public participation.

14 And finally, I would note there is nothing that  
15 precludes the department secretaries from hosting formal or  
16 ad hoc citizens advisory panels on issues that follow the  
17 existing or expanded public notice and public hearing rules.

18 Second, the staff raises the concern that  
19 expertise, particularly on the Public Trust Doctrine will be  
20 lost. CPR does not recommend that there be a fundamental  
21 change in staffing or programmatic functions of the State  
22 Lands Commission. We believe that consolidated functions  
23 will achieve synergy and improve the overall performance of  
24 programs as personnel come together to deliver services to  
25 California.

1 Thank you. I'm available for questions.

2 CHAIRMAN WESTLY: Mr. Thayer, do you wish to speak  
3 on this from a staff standpoint?

4 EXECUTIVE OFFICER THAYER: Yes, I do. I have a  
5 number of comments that are intended to describe the basis  
6 for the resolution which is before the Commission for its  
7 consideration, some of which have also been laid out in the  
8 staff report.

9 I think that the California Performance Review,  
10 which only started in February of this year on its work and  
11 had to evaluate the California state government, probably  
12 the most complex government in the United States, that it  
13 was a very difficult task for them to undertake, and given  
14 the size and complexity of that task, it's not surprising to  
15 us that we think in this particular instance with respect to  
16 the Lands Commission that the proposal doesn't meet the  
17 goals of the Commission. The Commission's goal is to  
18 restructure, reorganize, and reform State government to make  
19 it more responsible to the needs of its citizens and  
20 business community.

21 I think Mr. Reynolds has appropriately and  
22 adequately described what the proposed reorganization of the  
23 Lands Commission would do. It would abolish the Commission  
24 and divide up its functions among three different new  
25 agencies.

1           We think this is a bad idea for several different  
2 reasons. And again, it should be understood that staff is  
3 not analyzing the whole reorganization program and the costs  
4 and benefits of that, we're looking purely at this  
5 particular Commission.

6           There are three or four particular concerns to  
7 staff that flows from its analysis. We think that the  
8 proposal will decrease public access and accountability to  
9 the public from government. We think that the proposal is  
10 less efficient than the existing situation and that it  
11 returns to a form of management of public trust lands that  
12 had been practiced by the State in the past, but had been  
13 deliberately left behind because of problems it engendered.

14           With respect to public access and accountability.  
15 As presently is the case, as we see here today, the  
16 Commission decisions are at public hearings where costs and  
17 benefits of a project can be openly debated. Development of  
18 recommendations and final decisions are separate functions  
19 where the staff makes recommendations, but it's up to the  
20 Commission to make the decisions.

21           The statewide elected officials on the Board are  
22 directly accountable for their decisions on the Commission  
23 to the public and are accessible to applicants and the  
24 public when there are disagreements from those people with  
25 staff.

1           The second concern that staff has is with respect  
2 to the efficiency of the proposal. As I said earlier, we  
3 believe that the CPR proposal is less efficient than the  
4 existing situation. For example, as Mr. Reynolds described,  
5 the oil spill prevention program currently in the State  
6 Lands Commission is an engineering and port-based function  
7 that fits well with our other responsibilities. The State  
8 Lands Commission already has petroleum engineers who  
9 administer the leases. These same engineers can enhance our  
10 oil spill prevention program, because again, that program is  
11 largely based on things like the size of pipes, the  
12 appropriate safety valves, staff training and that kind of  
13 thing.

14           The CPR plan would sever the organizational  
15 connection with oil and gas lease expertise here at the  
16 Commission, instead send the program over to in essence the  
17 Department of Fish and Game. Fish and Game presently is the  
18 home of the oil spill response program, and the difference  
19 is that the response program is biology-based, once the oil  
20 is in the water, the primary concern is to make sure the  
21 environment is not affected. But that doesn't relate well  
22 from a function perspective to oil spill prevention.

23           With regard to reduced efficiency, a more  
24 fundamental problem that we see is the division of our  
25 different public trust responsibilities among different

1 entities. The Public Trust Doctrine is enormously complex,  
2 as we've all found as we worked on it. It still surprises  
3 me occasionally after I've been here eight years. But it's  
4 very complex and to divide these different functions, the  
5 oil and gas leases, for example, going to one entity and the  
6 rest of the leases going to a different entity would require  
7 that public trust expertise be duplicated and present in  
8 each of those different agencies, whereas in the present  
9 situation, we can focus that function here at the State  
10 Lands Commission and not divide it up.

11 Further, these two kinds of leases have more in  
12 common than not, oil and gas versus the other kinds of  
13 leases that we have. They both require surveyors to  
14 determine the boundaries of the lease. They require  
15 attorneys with leasing expertise to make sure we've got the  
16 terms right in there and that we're going to properly  
17 collect the revenue. And they both require revenue  
18 accounting.

19 So again, there are common functions here to these  
20 two kinds of leases that suggest that it's best to retain  
21 them in one place, rather than dividing them between  
22 different agencies.

23 I'd also like to note that with respect to  
24 efficiency that our existing organization has already gotten  
25 lean and mean in a big way. Starting in 1990, we've had a

1 variety of cuts so that what 249 positions did in 1990, we  
2 now have to accomplish with 102. So this agency is already  
3 efficient.

4 Finally, unlike some of the Commissions that have  
5 been discussed in the media, the officials on this  
6 commission do not make any additional money from the State,  
7 there's no additional State costs for members on the  
8 Commission because they're already paid by the State,  
9 they're already State officials. So with respect to that,  
10 our commissioners do not cost anything more for the State.

11 Coming to a close here or getting closer to the  
12 end here. The third major drawback of the CPR proposal is  
13 that it returns to this old administrative method of  
14 managing public trust lands. The public trust lands were  
15 administratively handled by a predecessor to the Department  
16 of Finance, but allegations of corruption in oil and gas  
17 leases led to a special session being called of the  
18 legislature, and in 1938 it created the State Lands  
19 Commission, and the goal was to provide for independent  
20 public review by accountable statewide officials. And for  
21 the last 66 years since the State Lands Commission has been  
22 formed, the Commission has responsibly managed public trust  
23 lands and leases while generating over \$7 billion in  
24 revenue. The CPR reorganization plan returns administration  
25 of these lands back to the old system which had been left



1 behind in 1938.

2 I would like to note that the California  
3 Performance Review proposal is not limited to  
4 reorganization, there's also a section that deals with the  
5 enhancements of organizational management. The Commission  
6 itself, of course, has always been interested in that in  
7 terms of including our website, that kind of thing. But  
8 there are suggestions that are made in the CPR report that  
9 we think the Commission would be well-advised to look at  
10 more closely, and we're proposing that the staff do that.  
11 Things like website improvements, having online applications  
12 that people can file their leases electronically with,  
13 recognition of customer service requirements in our  
14 strategic planning, vehicle needs assessments to make sure  
15 we don't have more vehicles than we need. All of these we  
16 think should be reviewed by staff, these recommendations and  
17 others, and implementation of a lot of them would probably  
18 benefit both the public and the Commission's operation. And  
19 so we recommend that the staff do that.

20 We think that the existing State Lands Commission  
21 has produced many benefits for the public. The  
22 Commissioners here have experienced a lot of them. We're in  
23 the middle of the restoration of Bolsa Chica, the  
24 groundbreaking coming in another two months.

25 We have wonderful oil spill prevention statistics

1 that show that the operation of that program under the  
2 Commission has been very effective. There's been an 80  
3 percent reduction in the volume of oil spilled into marine  
4 waters from oil terminals since our programs started in the  
5 early '90s.

6 We've also ensured, for example, when the fiber  
7 optic cables, those leases were coming before the  
8 Commission, that impacts to fishermen were recognized and  
9 addressed.

10 Our ballast water program is considered to be one  
11 of the best in the country. And we've been very strict  
12 about that, and as the Commission knows, where there have  
13 been problems with enforcement or where we've had some  
14 problems with that, we've been willing to take strong action  
15 to ensure that all industry was being dealt with equally.

16 We've had a very active public access program.  
17 The Commission regularly accepts easement along the coast  
18 that improves public access. We've also been involved in  
19 litigation to improve access at the Mad River, at Lake  
20 Tahoe, and also at the Mokolumne River, all of which  
21 benefitted the public.

22 There's a long list here, I'm going to stop here  
23 for a time, but I just think that the Commission can be  
24 proud of the public service it's provided under the existing  
25 situation and a lot of that comes from interaction between

1 the Commissioners who hear from constituents and the staff,  
2 and that's a mechanism that's served best by a commission.

3 So the staff is recommending adoption of the  
4 resolution before it. We think that when these facts become  
5 better known that it's quite possible that the Governor or  
6 the CPR Commission may recognize the strength of the  
7 existing operation and that this might be the best thing to  
8 stick with. And we think the first step to bringing about  
9 that recognition is the Commission speaking strongly with  
10 this resolution.

11 I note that this resolution was only finalized  
12 last Thursday, but I think the Commissioners already have  
13 five letters of support and I think there are a couple of  
14 people from the audience who would like to speak as well.

15 CHAIRMAN WESTLY: Mr. Thayer, thank you.

16 Before we entertain the resolution, I would like  
17 to give Mr. Reynolds a chance to respond, and I know the  
18 Attorney General has a staff person here.

19 I do want to thank you for drawing attention to  
20 the dire concern that none of us receives any additional  
21 salary.

22 (Laughter.)

23 CHAIRMAN WESTLY: And pointing that out.

24 Mr. Reynolds, I'd love to give you a chance to  
25 respond and then we'll go to the Attorney General's

1 representative and then give the Commissioners a chance to  
2 ask questions.

3 MR. REYNOLDS: Absolutely. And I'll be very  
4 brief, because I'm going to run over familiar territory, if  
5 you heard my testimony previously.

6 One of the valuable criticisms in the staff issue  
7 background and in the resolution relate to public access and  
8 accountability. We believe that with the flattening of the  
9 organization that you are enhancing accountability.  
10 However, this Board is unique in many respects in that it  
11 has two directly elected representatives and an appointee of  
12 the Governor or their representative present. And so in  
13 that respect, it is a balance, it is a call about public  
14 access, but there are existing mechanisms. Again, I went  
15 over some of them, the Administrative Procedures Act, the  
16 open bidding requirements, and the opportunity for public  
17 workshops, and then the opportunity for department  
18 secretaries to host open public forums to gather public  
19 input. We don't believe that public access would be  
20 denied.

21 With respect to the efficiency of the  
22 organization. Again, we are not in any way suggesting that  
23 the programs and even the success of delivering those  
24 programs should be undermined in any way. What we're  
25 suggesting is that we have looked at organization of

1 government from a functional perspective, and when you look  
2 at it from a functional perspective, we have those  
3 categories that I mentioned that relate to infrastructure  
4 that we believe are appropriately assigned to a department  
5 of infrastructure. We have resource conservation that is an  
6 ongoing effort. In a number of other places, oil spill for  
7 instance, is handled largely by the Department of Fish and  
8 Game. In the reorganization proposal, we recommend that oil  
9 spills is actually closely aligned with toxic spills  
10 generally and should be shifted over to a sight cleanup  
11 responsibility within the California Environmental  
12 Protection Agency.

13           Again, we're trying to bring together functions to  
14 achieve synergy, to increase efficiency, and so that it's  
15 more intuitive to the public who is responsible for what.  
16 Again, along these functional lines, we saw the need or the  
17 opportunity to bring those functions together with functions  
18 that are very similar and in many ways identical to what the  
19 Commission is delivering in the form of services to  
20 California, but they're being performed at other departments  
21 or boards or structures that are more within the Executive  
22 Branch than this Commission.

23           And we acknowledged the situation in 1938 that  
24 brought about the existence of the Commission. But, again,  
25 our responsibility was not just to look backward, but to

1 look forward and see what kind of government organizational  
2 structure would best serve the needs of California and  
3 that's why we looked at things in terms of form follows  
4 function.

5 If you have any questions about that analysis, I'm  
6 available now.

7 CHAIRMAN WESTLY: Thank you, Mr. Reynolds.

8 What I'd actually love to do is give the other  
9 Commissioners a chance to ask you or Mr. Thayer any  
10 questions, then we'll ask the Attorney General's  
11 representative and other members of the public to come  
12 forward.

13 COMMISSIONER BUSTAMANTE: First of all, I don't  
14 think there's anybody who's going to oppose the idea of  
15 making something, as you called it, flatter, more efficient  
16 in terms of the way things ought to operate. Recognition by  
17 the public is also a very good thing to build into the  
18 system. I think that's a noble and wonderful attribute to  
19 be able to have people see something, they'll recognize what  
20 it is, and they can immediately go to it. In terms of form  
21 and function, I think you're right, those are things that we  
22 should in fact try to accomplish.

23 But you know the only people that I've heard that  
24 are supportive of this particular proposal are people who  
25 want to continue to drill oil off our coast, they want to

1 operate in an uncapitalized way. I mean to think, for  
2 example, it's a bit naive to think that an oil spill is an  
3 oil spill is an oil spill. To think that the kind of oil  
4 spill or toxic contamination that deals with an underground  
5 water aquifer or deals with soil or deals with an ocean are  
6 all the same, it doesn't make any sense for those people who  
7 are in the business, for those people who attempt to monitor  
8 those kinds of functions. And I think it's very naive to  
9 think that somehow those activities are somehow supposed to  
10 be the same.

11 I find it also a little disconcerting that the  
12 process took place in a way that didn't include any kind of  
13 comment by any of the members or by staff or by a group of  
14 experts. I don't know what your background is, I'm assuming  
15 you're a very capable person, I wish I knew more about you,  
16 but my guess is that there wasn't much contact with people  
17 who are expert in what we do. And so you have to understand  
18 that there's going to be a natural inclination for people  
19 who are used to doing something, who are doing it pretty  
20 well, who have an understanding of what they're supposed to  
21 be doing, seeing people from outside who have no experience,  
22 who have not done the job, who have no experience in doing  
23 the job, to try to explain to them how they're supposed to  
24 do their job. You know the old saying about going to court  
25 as yourself as an attorney.

1 I also don't perform brain surgery on myself and I  
2 probably would never want to have myself represent myself in  
3 a court of law and there's a lot of other things.

4 And so it becomes a little disconcerting that  
5 nonexperts are telling experts what they're supposed to be  
6 doing and how they're doing it, in sort of this context that  
7 is a fairly broad context that doesn't really talk  
8 specifically about this, but creates a bunch of different  
9 departments. It throws things into what appears to be  
10 connections. But the focus of this Commission is to protect  
11 the public trust. If you want to focus attention on a  
12 particular area, you create an identity for something and  
13 you go after that and you focus your resources, so, in fact,  
14 you deal with something that's particular.

15 In this particular commission, it's about the  
16 public trust. If you're to separate all the pieces and put  
17 it throughout departments, you no longer have a focus on the  
18 public trust. And I think that that contained with the lack  
19 of contact, contained with an experience that's already been  
20 done in California, at least it makes me pause about what  
21 the real intentions of what we're trying to do here.

22 I hope that in gathering the data, I hope that in  
23 reviewing comments, and I'd love to be able to provide a  
24 written response on as many of the issues that you raised as  
25 possible so that you can have comments, so that you can have



1 dialogue, so that you can have testimony. And hopefully  
2 after you go through that process, you'll find that this  
3 Commission, unlike many others, was created for a very  
4 specific purpose and has shown itself to be fairly  
5 efficient. And hopefully you'll see that there is symmetry  
6 within the organization as to its effectiveness and  
7 hopefully you'll find a way of being able to find that  
8 the -- if you want to make some recommendations, as Paul  
9 mentioned earlier, that could help the Commission in  
10 becoming more efficient. That will never be tossed to the  
11 side, I think that will always be accepted. We would accept  
12 any criticism I think very, very well. But when you say to  
13 destroy a focus that has been very important to the state of  
14 California, the focus of the public trust, I think that that  
15 probably goes a little beyond, I hope, what you were  
16 intending.

17 CHAIRMAN WESTLY: And I know Mr. Harper had some  
18 questions as well.

19 ACTING-COMMISSIONER HARPER: Yes, thank you, Mr.  
20 Chairman.

21 Mr. Reynolds, I'd like to talk a little bit about  
22 the process that brought you here today. You mentioned  
23 earlier that you are the team leader of the resources area.  
24 Can you kind of talk about how that came to be?

25 MR. REYNOLDS: And I did want to comment on the

1 Lieutenant Governor's comments just to let him know what,  
2 among other things, what the process was that we used.

3 We did have 275 State employee volunteers who  
4 formed the CPR effort. We interviewed 1,800 people in our  
5 research, you can find all the end notes to the issue papers  
6 there. And in truth, we had contact with more than 10,000  
7 in the form of e-mails and letters and phone calls and  
8 follow-up interviews that we did.

9 COMMISSIONER BUSTAMANTE: But did you ask any of  
10 the members of the State Lands Commission?

11 MR. REYNOLDS: I was not in direct contact with  
12 any member of the State --

13 COMMISSIONER BUSTAMANTE: Was the team in contact?

14 MR. REYNOLDS: You know, to tell you the truth,  
15 the team has -- many of them have returned and we did a  
16 board-by-board, commission-by-commission analysis. But I  
17 can't swear to you, so I'm not going to say we spoke  
18 directly.

19 COMMISSIONER BUSTAMANTE: Did anybody in CPR, any  
20 member of the Review Committee, ever contact anybody from  
21 State Lands or its Commissioners or its staff or consultants  
22 or the person that takes the minutes?

23 MR. REYNOLDS: I don't know. I can only tell you,  
24 sir, that the Boards and Commissions that I analyzed, I did  
25 have direct contact with.

1 COMMISSIONER BUSTAMANTE: Okay.

2 MR. REYNOLDS: And those included the Air  
3 Resources Board, including State Water Resources Control  
4 Board.

5 COMMISSIONER BUSTAMANTE: Well, what about  
6 stakeholders, were any of the stakeholders contacted?

7 MR. REYNOLDS: We contacted any number of --

8 COMMISSIONER BUSTAMANTE: Ports?

9 MR. REYNOLDS: I beg your pardon?

10 COMMISSIONER BUSTAMANTE: Were the ports  
11 contacted?

12 MR. REYNOLDS: I can't tell you that we contacted  
13 specifically the ports.

14 COMMISSIONER BUSTAMANTE: Were environmental  
15 groups contacted?

16 MR. REYNOLDS: Yes. We spoke with more than a  
17 dozen environmental groups.

18 COMMISSIONER BUSTAMANTE: Specifically about the  
19 State Lands Commission?

20 MR. REYNOLDS: I was at some of those meetings,  
21 and during that time the State Lands Commission did not come  
22 up.

23 COMMISSIONER BUSTAMANTE: Okay.

24 CHAIRMAN WESTLY: Mr. Harper.

25 COMMISSIONER BUSTAMANTE: Thank you for your

1 comments on my comments.

2 MR. REYNOLDS: Yes. The other question you raised  
3 is whether these are comparable activities, whether the  
4 analysis of using functional equivalency and what is being  
5 done, the way the contaminant in situ, whether it's in dirt  
6 or whether it's in water and so on and so forth. I would  
7 contend that the expertise that resides at places like Fish  
8 and Game and the Department of Toxic Substances Control and  
9 other places is equivalent in terms of environmental cleanup  
10 and in terms of the functions that are performed by the  
11 State Lands Commission, otherwise we wouldn't have made the  
12 recommendation.

13 COMMISSIONER BUSTAMANTE: And that's why you  
14 should not be on this committee or on the staff or in EPA,  
15 because you don't understand that there is a difference.

16 MR. REYNOLDS: I understand that --

17 COMMISSIONER BUSTAMANTE: There is a huge  
18 difference.

19 MR. REYNOLDS: -- you perceive there to be a  
20 difference between an oil spill that is in ocean waters and  
21 an oil spill that is in inland waters, but -- those types of  
22 things, those functional things that we took a look at to  
23 try to determine whether there is an actual difference. And  
24 for those areas where there is commonality, I think there  
25 could be synergy that would be brought to the function that

1 gets performed. We actually think that the functions that  
2 are performed by the State Lands Commission and its staff  
3 can be more effective if it's brought within --

4 COMMISSIONER BUSTAMANTE: The paperwork may be  
5 similar, but the function is very different. You know what,  
6 I suggest that you might, before you make your final  
7 recommendation or you talk with the Governor, I suggest you  
8 go and you talk to somebody. I really hope that you'll talk  
9 to somebody who's done a cleanup of a toxic in some kind of  
10 a water scenario, any water scenario, whether it's leaking  
11 down into a water aquifer or into a river or a creek or into  
12 the ocean. I hope that you will take the time to just talk  
13 to somebody, because you're very misinformed.

14 MR. REYNOLDS: We have had those kinds of  
15 conversations, I can speak to it directly, sir. But when  
16 you asked me did I meet personally with the State Lands  
17 Commission staff, I'm being honest with you, I did not. But  
18 what I'm saying is that when we compared the functions, when  
19 we talked to the people who performed the work, and talked  
20 to them about what it is they do, not just the paperwork but  
21 the actual technical work that gets done, the cleanup  
22 effort, the land management functions, the development of  
23 marinas and wharves, I mean these kinds of functions are  
24 being performed by other State entities that we believe  
25 could accept and combine these functions.

1           Now, as for the Public Trust Doctrine, although  
2 I'm not an expert on the Public Trust Doctrine, I do not  
3 believe it's exclusive to the State Lands Commission and I  
4 believe that all State entities, if they are not using it  
5 now, are certainly remiss. I mean within the mission of the  
6 Department of Toxic Substances Control, within the Resources  
7 Agency, within these other entities that we've talked about,  
8 there is a need to do things that are in the public  
9 interest. And so I don't know that the Public Trust  
10 Doctrine, as it exists within the State Lands Commission,  
11 may be somewhat dissimilar to the specifics that get used  
12 for doing things in the public interest, but people can  
13 learn from the State Lands Commission.

14           COMMISSIONER BUSTAMANTE: Perhaps Mr. Hager can  
15 explain to you at some point, whether it's here or later on,  
16 what the difference is between the public interest and the  
17 public trust.

18           CHAIRMAN WESTLY: We have a number of members of  
19 the public who are here --

20           MR. REYNOLDS: I look forward to being educated  
21 about that, sir, thank you.

22           CHAIRMAN WESTLY: -- with questions. I want to  
23 give --

24           ACTING-COMMISSIONER HARPER: Let's go back to the  
25 recommendations that your unit made or the entirety of the

1 recommendations that were made in this report. And that  
2 report went to the Governor's office and the Governor  
3 assigned it to a commission, to your commission?

4 MR. REYNOLDS: Actually, yes. I did want to touch  
5 upon, the Lieutenant Governor had made reference to an  
6 interest in having a venue for further comment. And I do  
7 want to say that there is a 21-member commission that are  
8 hosting hearings throughout the state right now. They have  
9 scheduled six, but they are planning more. The one that  
10 will touch upon this particular area, resource conservation  
11 and protection, will be hosted in Fresno on September 17th.  
12 And so I would hope that the Lieutenant Governor, the  
13 Controller, others would if they have comments on this  
14 particular item or any others, provide those to the  
15 Commission or to send a representative to that hearing.

16 COMMISSIONER BUSTAMANTE: A strict three-to-five  
17 minute presentation wouldn't be enough time for us to  
18 present a full analysis of what we think about the comments  
19 that have been made or about your report. And so in order  
20 to be able to give you serious comment, and not just  
21 showmanship, I think probably written communication would be  
22 better, as well as I hope that you will go out and do a  
23 little greater review. I know you were under a time  
24 situation.

25 MR. REYNOLDS: That's right.

1           COMMISSIONER BUSTAMANTE: I hope you have a chance  
2 since submitting the report to go out and to get another  
3 round of information seeking.

4           MR. REYNOLDS: I will make a commitment to you  
5 right now, Lieutenant Governor, that I will follow up with  
6 the staff and try to gain a better understanding of items  
7 like the Public Trust Doctrine, where there's a  
8 differentiation between the functions that are being  
9 performed here at the State Lands Commission.

10          COMMISSIONER BUSTAMANTE: A call to the staff  
11 could probably take care of that.

12          MR. REYNOLDS: Will do.

13          ACTING-COMMISSIONER HARPER: Aren't those, in  
14 fact, though going to be functions of this Performance  
15 Review Committee as they take public testimony, testimony  
16 that will evaluate the entirety of your proposals and as  
17 they relate to each other, not just a specific proposal?

18          MR. REYNOLDS: Yes. And if that is true and  
19 written testimony can take whatever form in terms of volume  
20 that it needs to.

21                 But I do want to make the commitment to the  
22 Lieutenant Governor, we'll follow up with the staff here at  
23 the State Lands Commission and talk to them further about  
24 this. It's an interim process, you know, our work is not  
25 done now. The Commission is meeting and accepting public



1 comment, and if there is anything that I can do by way of  
2 providing the Commission with additional information about  
3 an item that might appear on their agenda, I think it's  
4 incumbent upon me and staff to try to do that.

5 ACTING-COMMISSIONER HARPER: Our notes indicate  
6 that the Commission will meet up to September 24th, take  
7 testimony up to September 24th?

8 MR. REYNOLDS: That's correct.

9 ACTING-COMMISSIONER HARPER: Do you have any idea  
10 when they plan to make recommendations to the Governor?

11 MR. REYNOLDS: Unfortunately, I do not. The  
12 California Performance Review is not responsible for that  
13 effort, the justification being that the comments that are  
14 being gathered from the public, it might appear as though  
15 CPR were grading its own work if we were in charge of  
16 setting up the hearings and so on and so forth. So the  
17 responsibility for that resides with the Office of Planning  
18 and Research.

19 So I will communicate to Mr. Thayer or whomever he  
20 decides who the contact is at the Office of Planning and  
21 Research to be in touch with about providing written  
22 testimony, to making an appearance, and I will also --  
23 there's two hearings, I guess I should have mentioned. One  
24 is on September 17th, which will deal with resource  
25 conservation and protection, but the one on the 24th, as Mr.

1 Harper points out, is going to be on reorganization, which  
2 may be more germane to the topic we're discussing today.

3 ACTING-COMMISSIONER HARPER: Mr. Thayer, are you  
4 authorized to go before this committee on behalf of the  
5 State Lands Commission?

6 EXECUTIVE OFFICER THAYER: The Commission hasn't  
7 taken any action to do that.

8 ACTING-COMMISSIONER HARPER: It needs a formal  
9 action by the Committee for you to appear?

10 EXECUTIVE OFFICER THAYER: I think the resolution  
11 in fact will give me the opportunity. The Commission will  
12 establish its position by its action on the resolution, and  
13 I think that would give me the authority to represent the  
14 Commission in functions like this.

15 MR. REYNOLDS: Just to be clear and for the  
16 record, it's our intent here today to try to provide you  
17 with the information about our analysis, but we think that  
18 the recommendation is a good one and we do support it. I'm  
19 not meaning to intend with my efforts to try to be educated  
20 further that I'm suggesting that what we have produced thus  
21 far is not good staff work or policy work, with all due  
22 respect.

23 COMMISSIONER BUSTAMANTE: You object to the  
24 resolution?

25 MR. REYNOLDS: I would think that -- yes, I guess

1 you would say in a sense I do object to the resolution. I  
2 don't support it.

3 COMMISSIONER BUSTAMANTE: It's either yes or no.

4 MR. REYNOLDS: I'm trying to find the right words  
5 to convey. I am here as a representative of the California  
6 Performance Review. I am not the Governor's representative.

7 COMMISSIONER BUSTAMANTE: I guess I have to be  
8 equally blunt with you. I object to your report, especially  
9 the way it was done.

10 Move the resolution.

11 CHAIRMAN WESTLY: There are two members of the  
12 public I'd like to give a chance to speak.

13 MR. REYNOLDS: Thank you.

14 CHAIRMAN WESTLY: Although I am delighted you have  
15 chosen Mr. Bustamante's home town for the hearings.

16 We have Mr. Allayaud here, the State Director of  
17 the Sierra Club.

18 Thank you very, very much for coming up here to be  
19 with us today, Mr. Allayaud.

20 MR. ALLAYAUD: Thank you. My name is Bill  
21 Allayaud and I represent Sierra Club California here in the  
22 Capitol.

23 First on the CPR overall, there is not really  
24 anything bad in this report by any means, but there's a lot  
25 of reaction to it as a terrible report trying to make the

1 Governor king and all that. We're not looking at it that  
2 way at all. There's nothing inherently bad in saving  
3 taxpayers' money or industry money in terms of streamlining  
4 and efficiency, in fact, you might protect the environment  
5 better. And there are some good recommendations in there.

6 As far as our input in the report, we were asked  
7 back in April and had a two-hour meeting with the CPR people  
8 on the resources and the environment. A couple of our  
9 recommendations made it into the report then, but they  
10 didn't ask us a whole lot about other things that ended up  
11 in the report, obviously as they were to formulate them  
12 later.

13 But that was the extent of it. And the forestry  
14 recommendations are a good example, but we were not asked to  
15 comment on those, and industry is cited in there as the  
16 source for some of these ideas and information. And Mr.  
17 Reynolds said in the San Francisco Chronicle yesterday, "We  
18 didn't need to talk to the environmentalist, because we know  
19 what they think." And we don't think that's a good  
20 attitude.

21 But having said that, we're going to roll up our  
22 sleeves and read every bit of this report and make  
23 recommendations on the reorder, as well as specific  
24 recommendations in CPR, as well as the Boards and  
25 Commissions, and that's where I go to now.

1 I got the pleasure of working with the State Lands  
2 Commission staff since 1974 as a student assistant, way back  
3 when. So I worked with the leasing people, the legal staff,  
4 all the way up till today, and they're very professional, do  
5 a great job.

6 But having said that, I don't think decisions  
7 should just be put into their hands no matter how good they  
8 are. There's a public process that's here and it's very  
9 important that people need to know that decisions will be  
10 made in the public, that you will make findings and adopt  
11 recommendations, and make voted actions that are good things  
12 publicly. And that's true for many of these Boards and  
13 Commissions. Why do you think the Air Resources Board is  
14 more important than the State Lands Commission, that's  
15 neither here nor there today. But it says that there is a  
16 public process involved in these Boards and Commissions, we  
17 think it's critical that the people of the state save their  
18 money and be efficient, but make sure you let the public  
19 still in.

20 We met with the Governor, 30 environmental groups  
21 last week for the first time sat down with Governor  
22 Schwarzenegger, and CPR came up as one item. And we as a  
23 group told them, we highlighted four agencies actually, one  
24 was the Air Resources Board, Energy, and one was the State  
25 Lands Commission. We felt that the public trust aspects of

1 this Commission need to stay just that in the public realm,  
2 and therefore we're going to recommend against their  
3 recommendation of abolishing this commission.

4 Thank you.

5 CHAIRMAN WESTLY: Thank you, Mr. Allayaud.

6 We also have Mr. Collins from the East Bay  
7 Regional Park District here.

8 Thank you, Mr. Collins.

9 MR. COLLINS: Thank you, Members of the  
10 Commission.

11 I am Dave Collins, I'm the Acting-General Manager  
12 of the East Bay Regional Park District. We manage close to  
13 a hundred thousand acres of public lands in the East Bay, in  
14 Contra Costa County, including shorelines, trails, open  
15 space and the like.

16 We have some concerns with the proposal. We have  
17 a 30-year history of successfully working with the State  
18 Lands Commission over 30 years. We currently operate over  
19 2,000 acres of property through cooperative agreements with  
20 State Lands. It's been a competent staff, a competent  
21 commission.

22 In terms of function, functionality from a  
23 stakeholder's perspective, I have one stop to come and deal  
24 with resource issues, lease issues, historical issues, fuel  
25 pipelines and toxic contamination. All of it is under one

1 roof and under one contact, it's been a very helpful process  
2 for us.

3 So we're here to just be on the record of we have  
4 a successful history and we would like to see it continue.

5 CHAIRMAN WESTLY: Terrific. Thank you, Mr.  
6 Collins.

7 What I would love to do is give each of the  
8 Commissioners a chance to comment briefly, and then I think  
9 we're going to go ahead and ask for a motion on the  
10 resolution.

11 Mr. Harper.

12 ACTING-COMMISSIONER HARPER: Thank you, Mr.  
13 Chairman.

14 Again, I just want to make it clear that this is a  
15 recommendation of a working group to the Performance Review  
16 Commission. The Commission is anticipating to either  
17 accept, modify, or reject a whole host of recommendations,  
18 over a thousand, as I understand it, and present some  
19 findings to the Governor's office. The Governor will then  
20 have the ability to review those recommendations and  
21 ultimately will propose something to the legislature if he  
22 sees fit. This is the first step.

23 To those of you that are concerned about public  
24 input and public comment and expert testimony, the avenues  
25 are being made available up and down the state to provide

1 that testimony to provide that input. We would encourage  
2 you to do so and don't feel that you're shut out of the  
3 process. If you're concerned that there is a limited time  
4 to speak before the Commission members, submit written  
5 testimony. It will all be taken under advisement. And what  
6 we're looking for here is an open dialogue between all the  
7 stakeholders, not interested segments and their niche and  
8 how they fit into a bigger puzzle.

9 I would ask the Chairman to entertain some  
10 modifications to the resolution, in that the Commission just  
11 direct the Executive Officer to transmit copies to the co-  
12 Chairs of the California Performance Review Commission,  
13 since that is currently where the issue is before. The  
14 issue is not in the legislature, there's no reason to submit  
15 testimony or to submit a resolution to members of the  
16 legislature on an issue that may never make it to the  
17 legislature, and as long as the Performance Review  
18 Commissioners know the position of a majority of the Board,  
19 that should be sufficient.

20 CHAIRMAN WESTLY: Would you like to go ahead and  
21 move that?

22 ACTING-COMMISSIONER HARPER: I would move that as  
23 amended in.

24 CHAIRMAN WESTLY: Okay. Is there second?

25 COMMISSIONER BUSTAMANTE: No.



1           CHAIRMAN WESTLY: Okay. Seeing none, the motion  
2 fails.

3           Other comments from Commissioners. I would love  
4 to just say a brief word about this. First, I think the CPR  
5 is a great concept, long overdue in state government and  
6 something we should look at very carefully. I very much  
7 agree with Mr. Allayaud's comments on this. We all ought to  
8 be in favor of streamlining government, looking for ways to  
9 remove redundancies, looking for ways to remove Boards and  
10 Commissions that aren't necessary or certainly for the  
11 members that are drawing salaries that are inappropriate.

12           That having been said, while there are many parts  
13 and components of the California Performance Review I think  
14 are excellent, this is one of the ones that I strongly  
15 disagree with.

16           Let me just make the following two points. First,  
17 as State Controller, I serve on over 50 Boards and  
18 Commissions, and I will just tell you, I think this is one  
19 of the best run, if not the best run, that I serve on. It's  
20 a model for openness, it's a model for efficiency. The  
21 staff is first rate and the ability to work closely with a  
22 variety of public interest groups to come out with  
23 meaningful compromises to serve the public interest, frankly  
24 is the gold standard in the over 50 Boards and Commissions I  
25 serve on.

1           Second, when it comes to the issue of efficiency,  
2 I would simply note this is a Commission that has taken on  
3 substantial additional duties over the last decade and has  
4 done so with fewer employees. This too is a model for state  
5 government, not something to be abolished or consolidated,  
6 something to be emulated across the board.

7           I also just want to say that the State Lands  
8 Commission functions used to be part of the Governor's  
9 office over 60 years ago. Many of you are familiar that  
10 there were abuses, scandals that occurred and so on. And  
11 while I don't want to suggest that would happen again, I do  
12 want to suggest there are some very strong reasons to have  
13 reasonable checks and balances of a separate commission led  
14 by publicly elected officials. I do want to suggest that  
15 there is a purpose to having the additional level of  
16 openness that we provide that might not be provided in the  
17 same way if this were to be subsumed under the Executive  
18 Office.

19           So for those reasons, I am strongly in support of  
20 the resolution and with that I would like to ask if there is  
21 a motion for the resolution?

22           COMMISSIONER BUSTAMANTE: Move the resolution as  
23 written.

24           CHAIRMAN WESTLY: Second.

25           All in favor, please say aye.

1 (Ayes.)

2 CHAIRMAN WESTLY: All opposed.

3 ACTING-COMMISSIONER HARPER: No.

4 CHAIRMAN WESTLY: And the vote carries two to one.  
5 Thank you very much.

6 With that, Mr. Thayer, I think we come to you on  
7 Item 67, if that's correct, a report about the facilities on  
8 nonproducing offshore leases. May we have the staff  
9 presentation.

10 EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.  
11 I believe Jeff --

12 CHAIRMAN WESTLY: By the way, let me just thank  
13 the members of the public for being here, Mr. Allayaud and  
14 the other representative, we very much appreciate your time  
15 and your considered testimony. And Mr. Reynolds as well,  
16 forgive me.

17 Mr. Thayer.

18 EXECUTIVE OFFICER THAYER: Thank you. The next  
19 item is Item 67. This has to do with a report back from the  
20 Commission actually on a matter that was raised at the last  
21 Commission meeting where the Santa Barbara official was  
22 concerned about whether debris was being removed from  
23 nonproducing oil leases in a timely enough fashion, and the  
24 Commission asked that staff go back and survey our leases to  
25 determine where that situation existed and what we were

1 doing about it.

2 I believe Jeff Plank from our Mineral Resources  
3 Management Division will make that presentation.

4 MR. PLANK: Thank you, Mr. Thayer, Commissioners.

5 As Mr. Thayer pointed out, this report is as a  
6 result of some public comments on what's called Bird Island  
7 from the last Commission meeting regarding removal of  
8 comparable facilities on inactive oil and gas leases. The  
9 Commission directed the staff to report on the oil field  
10 facilities and/or remnants that have yet to be removed.

11 I think to put it in a framework, I just need to  
12 briefly go over what we have done over the last few years,  
13 because there really isn't much left.

14 The Commission has always impressed on staff that  
15 the removal of oil and gas facilities from state offshore  
16 leases was a priority. Since 1988, we have removed ten full  
17 facilities, six platforms, all in the Santa Barbara Channel.  
18 Belmont Island down in Orange, LA County, and the Ferguson  
19 Pier Complex, which were three piers that served as a  
20 drilling and production operation in Ventura.

21 In 1998, the Commission coordinated six oil  
22 companies to abandon a total of 21 sub-sea wells and 55  
23 attendant flow lines in the Santa Barbara Channel. The  
24 project also cleaned up a number of oil field debris items  
25 that I will talk about in a minute.

1           After the SWARS project, we, working with the same  
2 companies, coordinated another effort just to remove some  
3 debris targets that were identified by the Local Marine  
4 Fisheries Impact Program, a study done in 1989, mainly for  
5 California's commercial fishing industry, mainly the troll  
6 netters, whose nets had been hanging up on various targets  
7 out in the ocean.

8           We cleaned up 41 of the 44 remaining targets that  
9 weren't cleaned up with SWARS and three of those are the  
10 subject of this presentation also.

11           There's only a few sites left. The Unocal Cojo  
12 Marine Terminal loading line, which is up at Point  
13 Conception. It was the site of Unocal's Point Conception  
14 Marine Terminal. The only thing left there is the offshore  
15 loading line which I understand is being removed this month.  
16 The underlying oil and gas lease was accepted as a quitclaim  
17 by the Commissioners earlier this year.

18           In the Moleno area, which is a little further east  
19 from Cojo, there are two core holes. One was drilled by  
20 Pauley and one by Shell Oil Company, in conjunction with  
21 Chevron. What core holes were were wells that were drilled  
22 by oil companies before we had the oil and gas lease up for  
23 bid. What they would do with the core holes is they would  
24 drill, they would get geological information and potential  
25 for hydrocarbon, and then they would immediately abandon and

1 leave the wellsite.

2           What we believe at each of these sites are what  
3 are called landing pads, which are pretty much just big  
4 slabs of concrete which appear to have been upended over  
5 time, we have to assume by some of the commercial fishing  
6 operations catching them and bringing them up.

7           There is one other in the same area. We believe  
8 it's the Shell 2920 Number 6 well, although we're not sure,  
9 but it seems to be. There may be what's called the casing  
10 stub. When you abandon the well, you cut off the casing,  
11 usually below the seafloor. There were a lot of problems  
12 with this well, and we need to go down with a vehicle and  
13 just see if in fact the casing is now sticking up above the  
14 seafloor, and if it is, we need to remedy the situation.

15           A little further down in Goleta is Bird Island,  
16 which the Commissioners are well aware of and which is the  
17 impetus for this report. In the Carpeteria area, the  
18 Commissioners are also well versed on the Shell Mounds,  
19 which are the mounds which resulted from the unauthorized  
20 discharge of drilling muds and cuttings and periodic  
21 cleaning of the legs of the platforms of crustaceans that  
22 had built up, which is required for the safety of the rig.

23           Currently, staff is evaluating the comments  
24 received on a draft problematic environmental impact report,  
25 and we're working with the California Coastal Commission and

1 Chevron to develop a project for the Commissioners in the  
2 near future on what we're going to do with the Shell Mounds,  
3 if anything.

4 In Ventura, where we removed those three piers,  
5 during the removal process, it wasn't possible to remove all  
6 of the pier and well caissons due to just some of the  
7 information that we didn't have as to how they were put in.  
8 Some of the caisson cement was left onsite and we couldn't  
9 use any further dynamite or we didn't have any other way of  
10 getting it out.

11 Subsequent biological surveys of the site in 1999  
12 and 2002 revealed that both kelp and other marine life had  
13 already colonized the concrete caisson remnants providing  
14 equivalent habitat to the natural hard bottom habitats in  
15 that general area. The Department of Fish and Game has  
16 recommended that the area not be disturbed by further  
17 removal activities. Staff is working on an amended  
18 mitigated negative declaration to address the remnant  
19 concrete caissons there and we'll have a recommendation for  
20 the Commission as soon as the CEQA process is completed.

21 The last thing that's known to staff is in  
22 Huntington Beach, where I live. The Golden West Marine  
23 Terminal, which was the site of the American Traders spill  
24 in 1990, which actually led to the enactment of the Lempert-  
25 Keene-Seastrand Oil Spill Prevention and Response Act, still

1 has two pipelines, loading lines, out in the water. In  
2 March 1997, the marine terminal facility was removed and it  
3 was put in caretaker status and these two pipelines are  
4 still there. There had been some suggestions on how to use  
5 them by various companies, but right now they're just  
6 sitting there and staff is currently working with the owners  
7 of the pipeline in an effort to secure an application to  
8 terminate that and to get the lines out.

9 And that's all we know as far as what's left  
10 that's associated with the oilfield.

11 EXECUTIVE OFFICER THAYER: I think if I could wrap  
12 up. So what we're left with is a comparatively few number  
13 of leases where the situation exists which was of concern to  
14 the person who testified before the Commission during the  
15 Bird Island hearings, and that it's staff's position that  
16 this should be taken care of and should be taken out. Each  
17 one of these situations is a little bit different, both in  
18 terms of the kinds of facilities that are there and the  
19 process that's necessary.

20 Shell Mounds, for example, has been going on for  
21 years and we're working closely with the Coastal Commission  
22 to try and come up with a solution to that. Others,  
23 particularly the Ferguson Pier, where there's a lot of  
24 impetus to get this stuff out of there, but on the other  
25 hand it's providing habitat that's recognized as being



1 useful, where there's not going to be easy decisions. But  
2 nonetheless, we're in the middle of working on all of these,  
3 none of them are in stasis, and we hope to over the next few  
4 years resolve all of them.

5 CHAIRMAN WESTLY: Terrific. If there are any  
6 members of the public who would like to speak on this,  
7 please come forward.

8 Otherwise, I'd love to ask if any of the  
9 Commissioners would like to ask a question.

10 Mr. Bustamante.

11 COMMISSIONER BUSTAMANTE: Paul, can you tell me, I  
12 just want to confirm, in a situation where you have a cap  
13 that's been put on a wellhead and it's placed below the  
14 ocean floor, the sand shifts and then exposes the well head  
15 and you have to then go down below the new floor. Who's  
16 responsible for that process?

17 EXECUTIVE OFFICER THAYER: I'm going to allow Alan  
18 to clean up after me, because I'll probably make a mess of  
19 this. But I believe that as long as there's a responsible  
20 party identified, that we can still go back and obtain the  
21 relief of having that reabandoned or done properly, either  
22 shortened or if there's a leak. But to be honest, there are  
23 also some wells that are out there that are of great concern  
24 to us where the abandonment was not done very well, it was  
25 done years ago, and by operators that have long since

1 disappeared. And that remains a responsibility of the  
2 state, in some circumstances, and it's something that we're  
3 still concerned about.

4 In the past, we have received appropriations to go  
5 take care of some of those. There have been cases where  
6 literally telephone poles have been rammed down holes and  
7 that's all that was done to abandon the wells and some of  
8 those are leaking. We're also concerned that in some areas,  
9 the area of Lease 421, which hasn't been in operation for a  
10 while that it's repressurizing. And some of these poorly  
11 abandoned wells may create problems.

12 That's a longer answer than you wanted, but the  
13 short answer is as long as there's a responsible party still  
14 around, we would go back and seek money from them.

15 Alan, is that --

16 MR. HAGER: I think that's fair. It is a lot more  
17 to say too. There is a fund that is administered by the  
18 Division of Oil and Gas and Geothermal Resources, albeit it  
19 has a limited amount in it, and it's for when there's no  
20 longer any well operator around. It's funded by assessments  
21 against the industry. And that's available.

22 But as long as there's a responsible operator  
23 around, I think it's the position of the staff that we would  
24 make every effort to get them to pay the cost. And I mean  
25 sometimes you can even have disputes over whether or not

1 they're responsible, but oftentimes we can just settle the  
2 dispute by getting an existing responsible operator to do  
3 that.

4 COMMISSIONER BUSTAMANTE: And in cases where there  
5 are old closures or old capping processes that wouldn't meet  
6 today's standards, before you repressurize those lines, you  
7 obviously check them and assure they're okay?

8 EXECUTIVE OFFICER THAYER: Certainly. But I think  
9 the problem that we're running into --

10 COMMISSIONER BUSTAMANTE: You don't want to blow  
11 out one of those telephone poles.

12 EXECUTIVE OFFICER THAYER: Exactly. The problem  
13 is that some of it in the area of this 421 Lease is that  
14 there is natural repressurization going on. And so although  
15 some of these wells don't leak right now, there may be  
16 problems in the future from that. And it's not us or  
17 anybody doing anything to repressurize them, it's a natural  
18 phenomena. Originally, the oil field would have been under  
19 pressure and that's what causes the sorts of blowouts you  
20 hear about occasionally. The oil wells here have pumped  
21 down the pressure and it relieved that pressure, but now  
22 that they're not operating anymore, there is evidence of  
23 repressurization going on and we're concerned that that may  
24 cause some problems.

25 CHAIRMAN WESTLY: Terrific. And I understand this

1 is an informational item, it does not require any vote. So  
2 if there are no other questions, I would like to thank you  
3 for being here and certainly acknowledge this is an  
4 important thing to get right and we appreciate the  
5 Commission and the Commission staff's continuing vigilance  
6 and proactive work in working with the companies that are  
7 involved.

8           What I would like to do is move to Item 69 where  
9 we'll look at federal legislation that would implement some  
10 recommendations of the U.S. Commission on Ocean Policy and  
11 the Pew Oceans Commission.

12           What I would like to ask for is a presentation, if  
13 I could, Mr. Thayer.

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

15           I would ask Bill Morrison to make the  
16 presentation, he is very active, but we don't see him so  
17 much but here at the Commission meetings. But he does all  
18 our relationships with the legislature and with Washington,  
19 and he also does our public affairs as well and has worked  
20 for the Commission for quite some time, and he will make a  
21 presentation on this.

22           MR. MORRISON: Thank you, Chairman.

23           Chairman and Members, my name is Bill Morrison, as  
24 you know.

25           At your meeting of June 7th, you passed a

1 resolution supporting the significant work of the Pew Oceans  
2 Commission and the U.S. Commission on Ocean Policy. The  
3 resolution stated your interest in supporting  
4 recommendations of the reports that significantly improve  
5 stewardship of our coast and oceans.

6 In that regard, staff is here today to suggest  
7 your support for two measures that have been introduced in  
8 the U.S. Congress. The first is H.R. 4900, sponsored by  
9 Congressman Jim Greenwood of Pennsylvania, co-sponsored by  
10 Sam Farr of Carmel, California, along with the two other co-  
11 Chairs of the House Oceans Caucus.

12 H.R. 4900 would establish a National Oceans  
13 Council and eight regional councils to develop and implement  
14 ecosystem-based management of our oceans. The bill would  
15 establish a national policy for our oceans of protecting,  
16 maintaining, and restoring the health of marine ecosystems.  
17 In addition, the bill would address ocean science,  
18 exploration, research, and education.

19 The second bill is H.R. 4706, sponsored by  
20 Congressman Nick Rahall of West Virginia. He is the ranking  
21 minority member of the House Committee on Resources. That  
22 bill is co-sponsored by ten congressmen and women from  
23 California, with principal co-sponsorship by Sam Farr of  
24 Carmel.

25 H.R. 4706 would broaden representation on the

1 regional fishery management councils by California, Oregon,  
2 and Washington, and Alaska being the Pacific region, to  
3 include individuals who are knowledgeable regarding the  
4 conservation and management of the fishery resources. The  
5 bill would separate scientific decisions regarding how many  
6 fish can be caught from who gets to catch those fish.

7 Other members of Congress are working in their own  
8 measures. Senator Barbara Boxer anticipates introducing  
9 national ocean protection legislation in September of this  
10 year, once the U.S. Commission on Ocean Policy has released  
11 its final report, which is due in September, and the Senate  
12 has returned from its summer recess, also in September.

13 According to the Senator's office, the bill will  
14 be comprehensive and will address issues related to ocean  
15 health and our nation's approach to ocean and ecosystems,  
16 including ocean governance, fisheries management, marine  
17 habitat, restoration, and ocean pollution.

18 Staff will continue to review and monitor all  
19 efforts to implement the two ocean reports. This will be a  
20 process that will continue to evolve into and through the  
21 109th Congress.

22 Today staff is recommending that the Commission  
23 support both H.R. 4900 and H.R. 4706, that the Executive  
24 Officer be directed to send letters of support to the  
25 appropriate members and committees in the U.S. Congress, and

1 that the Executive Officer be directed to support other  
2 oceans bills that may be introduced in the 108th Congress  
3 that support the Commission's position on ocean policy.

4 The reason for this last recommendation is that  
5 Congress will return on September 7, their target  
6 adjournment is October 1st, and the next Commission meeting  
7 is not scheduled until October 6th, and there may be  
8 measures that are introduced in the 108th Congress that you  
9 would like to support.

10 Most likely, none of the oceans legislation will  
11 be acted upon in the 108th Congress. I think most sponsors  
12 and authors are looking at fine tuning whatever they  
13 introduce in the 108 and coming out with something that is  
14 even better in the 109th.

15 Thank you.

16 CHAIRMAN WESTLY: Terrific. Thank you, Mr.  
17 Morrison.

18 Unless there is other speakers, what I would love  
19 to do is ask if there are comments or questions from the  
20 other Commissioners.

21 ACTING-COMMISSIONER HARPER: Just a brief comment,  
22 and it relates to this third recommendation that you have.  
23 And I have pause in giving approval on a piece of  
24 legislation that I haven't had an opportunity to review yet,  
25 so I would like that removed.

1 COMMISSIONER BUSTAMANTE: I agree.

2 CHAIRMAN WESTLY: We're all I think comfortable  
3 with that.

4 Mr. Bustamante.

5 COMMISSIONER BUSTAMANTE: No, I was going to say  
6 the same thing, basically. I would like to amend the  
7 recommended action to remove number 3 and move the staff  
8 recommendation with numbers 1 and 2.

9 CHAIRMAN WESTLY: I second that.

10 All in favor, please say aye.

11 (Ayes.)

12 CHAIRMAN WESTLY: Great. Would you like to  
13 proceed with the main motion now.

14 COMMISSIONER BUSTAMANTE: So moved.

15 CHAIRMAN WESTLY: Second.

16 All in favor.

17 (Ayes.)

18 CHAIRMAN WESTLY: Terrific. Thank you.

19 Again that was moved as amended.

20 Item 70 is off calendar.

21 So what I would like to do is return to Items 46  
22 and 62, the matters that were removed from the consent  
23 calendar.

24 Mr. Thayer, a staff presentation, please.

25 EXECUTIVE OFFICER THAYER: Certainly. Item 46, we



1 just learned of the opposition this morning. Jane Smith of  
2 our staff has been working on this lease, which is for the  
3 restoration of the San Dieguito Lagoon, it's been long  
4 worked on, and Ms. Smith has a staff presentation.

5 MS. SMITH: Good afternoon, Mr. Chairman and  
6 Members of the Commission. My name is Jane Smith, a Public  
7 Land Management Specialist with the Land Management  
8 Division.

9 Before I begin, as a member of the Commission  
10 staff for 26 years, I would like to personally thank the  
11 Chairman and the Lieutenant Governor for their support of  
12 this Commission and its staff.

13 Calendar Item 46 concerns an application submitted  
14 by the San Dieguito River Valley Regional Open Space Park  
15 Joint Powers Authority and Southern California Edison  
16 Company requesting the Commission's issuance of a lease for  
17 construction, operation, and maintenance of the San Dieguito  
18 Wetland Restoration Project. A joint environmental impact  
19 report environmental impact statement was prepared and  
20 certified for this project by the San Dieguito River Park  
21 Joint Powers Authority and the United States Fish and  
22 Wildlife Service.

23 The JPA is a public agency consisting of the  
24 County of San Diego and the cities of Del Mar, Escondido,  
25 Poway, San Diego, and Solana Beach. The Board is

1 represented by elected officials from the county and those  
2 cities, as well as a public member from the Citizens  
3 Advisory Committee and an ex-officio member from the 22nd  
4 District Ag Association.

5 The JPA is the agency responsible for creating a  
6 natural open space park in the San Dieguito River Valley.  
7 The proposed park boundary will extend from the Pacific  
8 Ocean at Del Mar to Volcan Mountain near Anza Borrego State  
9 Park, an approximately 55-mile corridor.

10 San Dieguito Lagoon, sometimes known as the San  
11 Dieguito River, was once the largest of the six San Diego  
12 coastal lagoons and has the largest watershed. The marsh  
13 area alone is believed to have been over 600 acres, while  
14 the entire lagoon probably covered 1,000 acres. Over the  
15 years, the lagoon was subjected to major filling activities  
16 and lost over half of its marshes. The State sold the  
17 lagoon as swamp and overflowed lands in the 1800s, but  
18 analysis of historical evidence indicates the lagoon  
19 contained tide and submerged lands as well. Those are the  
20 lands over which the Commission retains jurisdiction.

21 The fill activities and loss of natural river  
22 flows have caused constriction of the lagoon and severe  
23 reduction to the tidal prism resulting in closure of the  
24 lagoon mouth for long periods.

25 The lagoon mouth is today only opened naturally

1 during large winter floods or by artificial means when  
2 excavated.

3 Restoration of the lagoon as a functioning coastal  
4 wetland has been a stated goal of the cities of Del Mar and  
5 San Diego, and the organizers of the San Dieguito River Park  
6 for almost two decades. The Commission and its staff have  
7 also supported efforts at restoring and maintaining the  
8 lagoon's health as a viable coastal estuary.

9 Southern California Edison is implementing the  
10 wetland restoration project as mitigation for environmental  
11 impacts caused by San Onofre Nuclear Generating Station or  
12 SONGS, Units 2 and 3.

13 The California Coastal Commission required Edison  
14 to create or substantially restore 150 acres of tidal  
15 wetlands. In consultation with staff of the California  
16 Coastal Commission, San Dieguito Lagoon was selected as the  
17 site to satisfy the permit condition. Edison then developed  
18 a coastal wetland restoration plan for the San Dieguito  
19 Lagoon that is intended to satisfy this condition.

20 The San Dieguito Wetland Restoration Project,  
21 which will restore and create up to 247 acres of coastal  
22 wetlands, will have numerous public trust related benefits  
23 to the state of California in general, and to lands under  
24 the Commission's jurisdiction.

25 The project will improve overall water quality and

1 biological habitat as a result of restoring tidal exchange  
2 and circulation within the lagoon. It will increase  
3 diversity of estuarine and tidal marsh species by the  
4 creation of tidal habitats, including open water, inner  
5 tidal flats and salt marsh.

6 It will improve, restore, and preserve wetland  
7 habitat for fish, birds, benthic invertebrates and plants,  
8 including threatened and endangered species. The California  
9 Least Tern and Snowy Plover.

10 It will provide public access and interpretive  
11 opportunities related to the restoration components of the  
12 project. It will provide significant scenic, visual, and  
13 aesthetic benefits to area residents and visitors.

14 It will reduce the potential for flooding by  
15 improving the hydrologic efficiency and tidal circulation in  
16 the lagoon.

17 The project is supported by the United States Fish  
18 and Wildlife Service, the Department of Fish and Game, the  
19 San Diego Association of Governments, the cities of Del Mar  
20 and Solana Beach, and the San Diego Bay Council, a coalition  
21 of environmental organizations composed of the Surfrider  
22 Foundations, the Sierra Club, the San Diego Audubon Society,  
23 San Diego Baykeeper, and the Environmental Health Coalition.

24 Construction is expected to begin in the summer  
25 2005 and take approximately three years to complete.

1 Southern California Edison is responsible for funding the  
2 project and for long-term maintenance for the life of SONGS,  
3 estimated to be 40-plus years.

4 The JPA will then assume control over the area,  
5 pursuant to an endowment fund that Edison will establish.  
6 It is estimated that the total cost to Southern California  
7 Edison will be approximately \$80 million.

8 Commission staff analysis concludes that the San  
9 Dieguito Wetland Restoration Project is consistent with and  
10 in furtherance of public trust needs of San Dieguito Lagoon  
11 and its connection with the Pacific Ocean, and recommends  
12 that the Commission authorize the issuance of a 49-year  
13 lease beginning September 1st of 2004, to the San Dieguito  
14 River Valley Regional Open Space Park Joint Powers Authority  
15 and Southern California Edison Company for construction,  
16 operation and maintenance of the San Dieguito Wetland  
17 Restoration Project.

18 I would like to thank Wayne Brechtel of the JPA  
19 and David Kay of Southern California Edison for their help  
20 and support in bringing this item to the Commission today.

21 Commission staff, as well as Mr. Brechtel and Mr.  
22 Kay are here to answer any questions.

23 Thank you.

24 CHAIRMAN WESTLY: Thank you very much. I'd love  
25 to ask Mr. Kay, the Manager of Environmental Projects for

1 Southern California Edison to come forward, please.

2 COMMISSIONER BUSTAMANTE: May I ask a question?

3 CHAIRMAN WESTLY: Mr. Bustamante.

4 COMMISSIONER BUSTAMANTE: Staff, in any of the  
5 information that has just recently provided in opposition,  
6 does that in any way change any of your recommendations?

7 MS. SMITH: No, sir.

8 COMMISSIONER BUSTAMANTE: I've read this, the  
9 calendar item, I don't see anything wrong with it. But if  
10 there was something that was submitted that we should  
11 review, then I would be more than happy to review it. But I  
12 don't see anything here so far that changed my mind, I just  
13 wanted to make sure I didn't miss something.

14 MS. SMITH: Mr. Bustamante, the inquiry that I  
15 received this morning was actually by phone call indicating  
16 that the gentleman was going to speak in opposition to the  
17 item. I did not receive anything in writing from them. I  
18 understand there is another member of the public here today  
19 to speak in opposition to the item, and I received her  
20 comments and presentation right before the meeting.

21 COMMISSIONER BUSTAMANTE: Okay.

22 CHAIRMAN WESTLY: Terrific. I would like to ask  
23 Mr. Kay to say a few words, then we'll hear from members of  
24 the public.

25 MR. KAY: Good afternoon, Commissioners. I'm

1 David Kay. I'm the Manager of Environmental Projects at  
2 Southern California Edison.

3 The San Dieguito Wetland Restoration Project is  
4 one of a number of projects that I oversee. And I would  
5 like to say at the outset I love the State Lands Commission  
6 and Jane Smith you're the greatest.

7 (Laughter.)

8 MR. KAY: We've been working in this project since  
9 about 1991. Preliminary plans were approved by the Coastal  
10 Commission in '97, the EIR was adopted in 2000. We had a  
11 few years of litigation as big projects always do, and the  
12 California Court of Appeals resoundingly upheld the  
13 environmental impact report and denied the petition, and we  
14 are now in the final steps of final design and engineering.

15 Yesterday we submitted the first of many permit  
16 applications, this one to the California Coastal Commission  
17 for a coastal development permit. We hope to obtain that  
18 permit in October and, as Jane said, begin construction  
19 sometime next year over a three year period, and then  
20 probably an additional three years to watch vegetation  
21 develop. And many, many years of post-construction  
22 monitoring and maintenance, as Jane said, first through  
23 Edison and then a long-term endowment that we've established  
24 with the JPA.

25 I would just like to reserve any other time to

1 answer any other questions that may come up after other  
2 speakers or after discussion.

3 Thanks very much for your support.

4 CHAIRMAN WESTLY: Terrific, Mr. Kay.

5 ACTING-COMMISSIONER HARPER: I have one question.

6 CHAIRMAN WESTLY: Absolutely.

7 ACTING-COMMISSIONER HARPER: Thank you, Mr.

8 Chairman.

9 In your testimony, you indicated that there was a  
10 pending approval from the Coastal Commission?

11 MR. KAY: We just filed an application for a  
12 coastal development permit, as you must do for any  
13 development within the coastal zone.

14 ACTING-COMMISSIONER HARPER: Would there be any  
15 conditions on that approval that would necessitate a change  
16 to approval here? Is there anything that you foresee  
17 happening?

18 MR. KAY: Well, I don't know if it would  
19 necessitate a change to the lease, I don't believe so, we  
20 are asking for the Coastal Commission to impose certain  
21 conditions on our permit. I expect they will probably come  
22 up with a few additional conditions of their own, most of  
23 them related to long-term monitoring and assurance of the  
24 project elements.

25 CHAIRMAN WESTLY: Terrific. Thank you, Mr. Kay.



1 I'd like to ask Ms. Hamilton from the public who  
2 is here to come forward.

3 I unfortunately have to go to another meeting, but  
4 I will be represented by Deputy Controller Aronberg, and I  
5 will be passing the gavel to Lieutenant Governor for the  
6 remainder of the meeting.

7 Ms. Hamilton, thank you for being here.

8 MS. HAMILTON: Good afternoon, Commissioners. My  
9 name is Julie Hamilton and I represent a nonprofit  
10 organization dedicated to the preservation of the beaches in  
11 the Del Mar area called Save the Beach.

12 And we are in agreement, this is a worthy project.  
13 It's been a long time, the legal challenge that was brought  
14 forward was a challenge to the adequacy of the EIR. This  
15 is a different issue.

16 The issue that we are raising is that in weighing  
17 the public's interest, and the staff did a fabulous job of  
18 that, what happened was there was no consideration given to  
19 the competing concern of a loss of sand on the beaches in  
20 the Del Mar area. And I think that one of the things we  
21 need to keep in mind on this project is that Southern  
22 California Edison is not necessarily doing this out of the  
23 goodness of their heart. They are doing this because of  
24 impacts that are caused on the coast by the San Onofre  
25 Nuclear Generating Station. This is something they have to

1 do to mitigate other significant impacts. It doesn't  
2 diminish the value of this project, but it's important to  
3 know where people are coming from.

4 The crux of our concern is whether or not there  
5 will be significant impacts on the beach. Whether or not  
6 the opening of the river mouth permanently will cause a  
7 significant loss of sand on the beaches in Del Mar.

8 We have a very different opinion on this issue.  
9 The river valley, based on modeling done by the man who  
10 designed this project, is of the opinion that there will be  
11 no significant impacts to the beach. If my client could  
12 believe that, they would happily walk away. They would more  
13 than happily like to see this wetland restored, as long as  
14 there are no impacts on the beach.

15 Unfortunately, we have evidence to the counter.  
16 We have evidence that the project will result in significant  
17 impacts to the beach, and this is the part of the equation  
18 that was left out. There are many public interests here.  
19 There is the interest of environmental preservation and  
20 restoration and preservation of the beach. Therefore, Save  
21 the Beach is requesting that conditions be added on this  
22 lease, that the lease be modified in a way that protects and  
23 ensures the ongoing presence of a beach in Del Mar.

24 The conditions are outlined in the letter that I  
25 submitted to you on page 2, and I do want to apologize for

1 the lateness of this information. We were not aware that it  
2 was on the agenda until last week. When I tried to contact  
3 staff, I had a little difficulty getting through, and then  
4 the only date that I had available to finish up was the only  
5 day that Ms. Smith was available. Not an excuse, but we  
6 don't make it a practice to late hit, we do try to resolve  
7 these things. And many members of Save the Beach have been  
8 getting this same input since 1993, and I have been trying  
9 to work with the agencies repeatedly with the JPA and  
10 Edison. So this is not news to the JPA or Edison that we  
11 have these concerns.

12 Let me go back to the conditions that we would  
13 like to see. And again, the conditions are designed to  
14 preserve the beach and to ensure that this project will not  
15 cause a lack of sand on the beach.

16 Initially, we would be asking for monitoring.  
17 Monitoring of the sand on the beach and the impacts on the  
18 beach itself. There is a monitoring program proposed,  
19 however, this monitoring program is really on the  
20 effectiveness of the restoration, the environmental success  
21 of the restoration project. It's not necessarily monitoring  
22 of the beach and the sand levels.

23 This monitoring is imperative. It allows us to  
24 see whether or not there is an impact. It also allows us to  
25 relate the loss of sand in Del Mar to the loss of sand in

1 other areas, which gives us an idea as to whether or not the  
2 loss of sand is project related or natural causes similar to  
3 circumstances being observed in other locations.

4           The second condition that we would be looking for  
5 is an intermittent opening if there is a loss of sand being  
6 experienced on the beach. And these conditions are really  
7 somewhat gradiated. If there is not a significant loss of  
8 sand, then a consideration for an intermittent opening which  
9 would allow the beach to recover periodically and then allow  
10 a breach to provide for the biological productivity of the  
11 wetland.

12           This river mouth has historically been opened to  
13 allow the lagoon to flush and to allow some of the  
14 biological productivity to be retained, and it is also  
15 opened by the fairgrounds in order to prevent flooding. So  
16 you add a third prong to the analysis of whether or not it  
17 should be opened, that is, can the beach handle it, or are  
18 we going to cause a loss of sand that shouldn't occur.

19           The third condition is to establish and maintain a  
20 sand replenishment fund. We need to get the project  
21 proponents on the hook to replenish sand if sand is lost.  
22 There needs to be some assurances if sand is lost that it  
23 will be replaced. If sand is not lost, then there's no  
24 harm, no foul. And this can be set up in a variety of ways  
25 and it may cause a slight delay here at the State Lands

1 Commission to completely work out the language of such a  
2 condition and how it would be handled. But there needs to  
3 be assurances for sand replenishment.

4 Save the Beach would like to see the project  
5 phased in a manner that would allow a gradual restoration  
6 project working west to east, rather than east to west.  
7 This would allow as each phase is being opened up, it would  
8 allow us to monitor what happens to the beach. The current  
9 phasing plan basically opens up all of the basins at once.  
10 So if you're going to have a problem, you're going to have  
11 it all at once. If you work west to east and you do your  
12 phasing west to east in small increments, then you can see a  
13 more gradual monitoring and a more gradual impact, you don't  
14 have any of the devastating effects that may be encountered  
15 when you open up the entire restoration project.

16 The fifth condition is a commitment from Southern  
17 California Edison to quickly and completely repair any  
18 damage to the beach caused by this project. Get your dozers  
19 out, throw some sand, get it fixed. I have been told by our  
20 coastal expert, Dr. Greg Stone, who is the Director of the  
21 Coastal Studies Institute at Louisiana State University that  
22 if there is a problem, it's going to happen and it's going  
23 to happen fast, and we need to have that corrected. We can  
24 look for all the assurances possible, but once again, we  
25 can't control mother nature. We have been shown that we

1 can't predict mother nature. We saw that in Florida this  
2 week. Despite the best available modern science, we cannot  
3 predict mother nature. And if we have a situation where the  
4 restoration project opens up the river mouth and we have an  
5 instant and sudden loss of beach, then we need to have  
6 assurances that it will be fixed immediately.

7 Those assurances would include closing the inlet  
8 immediately. If we have the devastating loss of sand that  
9 can be anticipated in this situation, we would look for the  
10 inlet to be closed immediately.

11 And I want to say that many of these things we are  
12 requesting, Southern California Edison has agreed to  
13 verbally in public meetings, but we don't have it on paper  
14 yet. We don't think it's appropriate to wait for the last  
15 approval to come down to the conditions that this project  
16 must meet. It's appropriate to get the conditions resolved  
17 at the outset to get them resolved now. They haven't been  
18 resolved because there is a difference of opinion as to  
19 whether or not this project will impact the beach. I don't  
20 think we can take the risk.

21 There is a difference of opinion on almost every  
22 subject that comes before any commission. But we can't take  
23 the risk, we can't risk the beaches of Del Mar, we need  
24 assurances that the beaches of Del Mar will be protected  
25 when this project is built. So we're asking that these

1 conditions be added to the lease. We admit that the  
2 language may need to be drafted, it's not completely refined  
3 yet, and that we may need a slight delay.

4           There was no way around it, we did not have the  
5 information prior to last week and we have been repeatedly  
6 requesting that Edison and the JPA agree to these and we  
7 haven't come to it yet. So it's not that we haven't tried,  
8 we don't have refined language for the conditions for you  
9 today.

10           ACTING-CHAIRMAN BUSTAMANTE: We need you to wrap  
11 this up.

12           MS. HAMILTON: Yes. Thank you very much for the  
13 time.

14           That is in summary, we are looking for assurances  
15 to protect the beach in Del Mar if this project is allowed  
16 to go forward with this lease.

17           And I remain available for any questions.

18           ACTING-CHAIRMAN BUSTAMANTE: Perhaps staff could  
19 respond to the provided files. Are they or are they not  
20 somehow included in the agreements, specifically the  
21 monitoring, the sand replenishment fund, or not necessarily  
22 a fund, but access to funds to deal with sand replenishment  
23 issues, as well as the commitment to repair any kind of  
24 damage as a result of the project?

25           MS. SMITH: Mr. Bustamante, the lease as it's

1 presently drafted does not specifically include language to  
2 address the five issues that Ms. Hamilton has raised here  
3 today.

4 EXECUTIVE DIRECTOR THAYER: If I may, Mr. Chair,  
5 there is also a representative from the Joint Powers  
6 Authority that's worked on this project extensively and  
7 probably has additional knowledge that we're not aware of  
8 and it may be appropriate to ask some of these questions of  
9 him as well. I believe that Mr. Wayne Brechtel is here.

10 ACTING-CHAIRMAN BUSTAMANTE: He was up next, so  
11 why don't we have him come up.

12 MR. BRECHTEL: Good afternoon, Members of the  
13 Commission. It's my pleasure to be here on behalf of the  
14 San Dieguito River Valley JPA. I'm its general counsel and  
15 more familiar with this project and fluvial river analysis  
16 than I ever thought I might be.

17 As you know, the JPA, it's an organization and  
18 it's sole purpose is to form and operate and manage this  
19 open space park. It's the City of San Diego, County of San  
20 Diego, the cities of Del Mar and Solana Beach --

21 ACTING-CHAIRMAN BUSTAMANTE: The sand  
22 replenishment issue, sir.

23 MR. BRECHTEL: On the sand replenishment issue, I  
24 guess I need to give a little background, because I don't  
25 want to --



1           ACTING-CHAIRMAN BUSTAMANTE: Very little.

2           MR. BRECHTEL: This project, we understood the  
3 issue of sand replenishment from the very onset, and the  
4 number one criteria was to not alter existing conditions.  
5 Mr. Bustamante, existing conditions in this area are not  
6 simple, and very briefly, San Diego has a sand deficit. We  
7 basically are running out of sand. And most of it comes  
8 from north of Del Mar and travels south.

9           The San Dieguito River normally doesn't provide  
10 any sand. It doesn't flow fast enough to actually push any  
11 sand out into the ocean. Only during major storm conditions  
12 does it actually provide sand, when there's a flood it will  
13 push a bunch of sand out and that sand will accumulate in  
14 the city of Del Mar.

15           ACTING-CHAIRMAN BUSTAMANTE: The concern is that  
16 is there going to be sand replenishment in the event that  
17 there is a loss of sand based on this project. You're  
18 saying that there is not going to be any harm?

19           MR. BRECHTEL: That's correct.

20           ACTING-CHAIRMAN BUSTAMANTE: As a result of sand,  
21 because the river doesn't provide any sand to that  
22 particular beach.

23           MR. BRECHTEL: Well, I don't want you to think  
24 that I'm just pulling out a figure, Mr. Bustamante, we did  
25 our homework. We didn't come here today just with that as

1 an opinion, we hired experts in the field from the area  
2 to --

3 ACTING-CHAIRMAN BUSTAMANTE: Was that checked by  
4 staff?

5 EXECUTIVE OFFICER THAYER: I would ask Ms. Smith  
6 if she's --

7 MS. SMITH: Well, I believe, Mr. Bustamante, we  
8 reviewed it as part of our review of the environmental  
9 impact report environmental impact statement.

10 ACTING-CHAIRMAN BUSTAMANTE: Is it your position  
11 that this river does not provide sand to this beach?

12 MR. BRECHTEL: But that wasn't what I stated, sir.

13 ACTING-CHAIRMAN BUSTAMANTE: That's what I got.

14 EXECUTIVE OFFICER THAYER: I think what he was  
15 trying to say is that normally there is very little input  
16 from the river because it doesn't flow anymore, the river  
17 dams upstream and that rivers are classically sources of  
18 sand for the beach. And that finally real changes to a  
19 beach only occur during high water tides when the river is  
20 flowing so fast that this project would have no impact  
21 whatsoever on what's going to be happening at the mouth.

22 ACTING-CHAIRMAN BUSTAMANTE: So it's not going to  
23 have a negative. The staff's position is it's not going to  
24 have a negative impact on the beach?

25 EXECUTIVE OFFICER THAYER: Well, that's what I

1 asked.

2 MR. BRECHTEL: And just to respond to that, I  
3 would say you do not need to take my word for it, but I  
4 can --

5 ACTING-CHAIRMAN BUSTAMANTE: I won't.

6 MR. BRECHTEL: -- tell you the issue of sand loss  
7 was the issue in litigation. It was the foremost issue and  
8 there's a 74-page opinion, a Court of Appeal opinion that  
9 looked at our experts and looked at the issue and --

10 ACTING-CHAIRMAN BUSTAMANTE: It sounds like you're  
11 very thoroughly familiar. I just want a few questions  
12 answered.

13 So staff's position is that there will be no  
14 negative impact as a result of this project to the Del Mar  
15 Beach?

16 EXECUTIVE OFFICER THAYER: With respect to the  
17 sand that's there?

18 ACTING-CHAIRMAN BUSTAMANTE: Yes.

19 EXECUTIVE OFFICER THAYER: Yes.

20 ACTING-CHAIRMAN BUSTAMANTE: The second issue that  
21 I had that was a real concern in the issues that she raised  
22 was a commitment to repair any damage to the Del Mar beach  
23 as the result of any negative impacts as a result of this  
24 project. Are you saying that there will be no negative  
25 impact by this project as a whole on the beach, not just in

1 terms of sand, but in terms of any damage to this particular  
2 beach.

3 EXECUTIVE OFFICER THAYER: It's my understanding  
4 that there will not be damage to the beach.

5 ACTING-CHAIRMAN BUSTAMANTE: If something were to  
6 occur, a breach were to occur of some kind, if in the  
7 restoration process there was something that was not  
8 anticipated and some damage did occur to the beach, are  
9 there sufficient provisions to be able to ensure that the  
10 beach would be cleaned up or will be repaired as a result of  
11 the work that was being done on this particular project?

12 EXECUTIVE OFFICER THAYER: I don't know of any  
13 particular provisions that are in there to address that  
14 issue, because I think again the evaluation was that there  
15 wouldn't be damage, but perhaps Ms. Smith or Curtis Fossum,  
16 who was our attorney who worked on this, may know more.

17 MR. FOSSUM: I think, Mr. Chairman, that when  
18 we're dealing with a regime like this, a sandy beach and a  
19 lagoon, the attempt that the project is proposing to make is  
20 to try and restore some of this natural condition. It's  
21 been significantly modified by man over the last hundred and  
22 forty years and what this attempt will be is to try and  
23 restore for the habitat values primarily, but for other  
24 values as well, a prior sense of what the lagoon was.

25 Briefly, one of the slides that was shown earlier,

1 showed the lagoon in the 1880s, a marsh. There was very  
2 little beach at the time in Del Mar. Most of the San Diego  
3 beaches, in fact, early reports of U.S. surveyors who went  
4 up and down the beaches found cobble rather than sand. Some  
5 of the sand that's there today is not natural, it's  
6 certainly an amenity to the people who live on the beach and  
7 they like it very much and the people who visit the beach  
8 do, but it's not necessarily something --

9 ACTING-CHAIRMAN BUSTAMANTE: I understand.

10 MR. FOSSUM: -- that occurs naturally. So I guess  
11 maybe regardless of whether this project is approved, sand  
12 will be lost on that beach periodically from storms.

13 ACTING-CHAIRMAN BUSTAMANTE: That's not the  
14 question I'm asking.

15 MR. BRECHTEL: If I could address that, I think  
16 there's --

17 ACTING-CHAIRMAN BUSTAMANTE: No. Let me address  
18 the attorney who said a lot and didn't answer my question.

19 As a result of this project, if there is any  
20 damage to the beach, is there any provision that would  
21 provide so that it is taken care of?

22 MR. FOSSUM: I suppose it depends, Mr. Chairman,  
23 on the type of damage that occurs.

24 ACTING-CHAIRMAN BUSTAMANTE: If you have a levee  
25 that was breached and a whole lot of water runs off into the

1 beach area, I don't know. Is there a provision that would  
2 allow --

3 MR. FOSSUM: There's the protection for the state,  
4 liability protection by the lessee to the state if there's  
5 damage to third parties. If there is damage to state  
6 property that would cover insurance and expenses to repair  
7 those things.

8 ACTING-CHAIRMAN BUSTAMANTE: Well, this is our  
9 property, right?

10 MR. FOSSUM: They are. But they are a natural  
11 property that comes and goes, and as I was saying, I don't  
12 know of any particular situation in California where the  
13 fact that nature may cause, and if we're looking at the  
14 lagoon right here in this picture, you can see a very narrow  
15 beach in front of the homes on the point. Sometimes that  
16 beach is twice as wide as that.

17 So I think the concerns that we have are that this  
18 wetlands be restored, that there will be impacts to the  
19 beach, there will be positive impacts and there will be  
20 negative impacts periodically, and if a periodic negative  
21 impact occurs to the beach, I don't think that means that  
22 Southern California is necessarily going to run out if some  
23 kelp or something are washed out on to the beach and it ends  
24 up on the beach, some people may believe that's going to be  
25 a negative impact, but it's a very natural impact as well.

1           ACTING-CHAIRMAN BUSTAMANTE: That's not a negative  
2 impact.

3           MR. FOSSUM: Well, it has been alleged by some of  
4 the parties that when the lagoon was open, in fact, the  
5 initial litigation against the State Lands Commission was by  
6 the property owners in the area who felt that opening the  
7 lagoon and returning water quality to the lagoon would, in  
8 fact, damage their beach area because of the material that  
9 would be washed out from the lagoon. And it probably did  
10 for a very short period of time, a few days.

11           ACTING-CHAIRMAN BUSTAMANTE: Wayne, do you want to  
12 finish your thoughts?

13           MR. BRECHTEL: If I could, you bet.

14           Again, I just want to make the point, we did our  
15 home work to design a project that wouldn't harm the  
16 beaches. That being said, this beach will suffer periodic  
17 harm, it has historically. There are devastating storms,  
18 and El Nino, it's completely washed out and flooded. I have  
19 no doubt that will happen in the future, I have no doubt  
20 that there will be some who will say it's our project, I  
21 mean that's probably going to be happening.

22           Two things that are in place to help protect the  
23 public. One is we're a landowner and we're a public agency.  
24 If our project harms adjoining property, if our project  
25 causes damage, there is a legal recourse to recover from

1 that.

2 ACTING-CHAIRMAN BUSTAMANTE: Thank you.

3 MR. BRECHTEL: Inverse condemnation.

4 ACTING-CHAIRMAN BUSTAMANTE: It's hard to get an  
5 answer from the man.

6 MR. BRECHTEL: The second thing is we have as part  
7 of our submittal to the Coastal Commission, we have proposed  
8 a condition, we imposed it as part of the coastal  
9 development permit, of monitoring the beach, I think for a  
10 minimum of five years, just to confirm what we are confident  
11 will be the case which is this will not have a negative  
12 impact on the beach. And that the Coastal Commission will  
13 then receive those reports, and if there were, in fact, some  
14 indication of a problem, that the conditions would be  
15 monitored or altered or focused. So we've done our homework  
16 and we're going to be there and we're going to be  
17 responsible for what we do and doing it in a responsible  
18 manner.

19 And so we don't disagree with the monitoring  
20 condition. The other conditions we do disagree with, and  
21 the point I was trying to make when I first spoke is we  
22 analyze this, literally there's thousands of pages of  
23 engineering analysis, hundreds of pages of legal briefs, and  
24 an opinion by the Court of Appeals says, look, we understand  
25 these two opinions here, but are the opinions supported by



1 competent qualified experts with substantial evidence. And  
2 we're prepared to proceed forward, and we'll also be subject  
3 to coastal development permit conditions which will be  
4 incorporated into the lease. The lease is subject to those  
5 conditions and we're asking that the Coastal Commission  
6 impose monitoring.

7 ACTING-CHAIRMAN BUSTAMANTE: Thank you. We have  
8 Mark Teh.

9 MR. FOSSUM: Mr. Governor, I would like to just  
10 for a second. Commissioner Harper earlier asked the  
11 question if the Coastal Commission had a condition as part  
12 of the permit, and I don't know that we responded properly  
13 to that. I think our standard lease covenants provide that  
14 if additional covenants are put on a party by a permit that  
15 our lease is subject to those as well. So unless they were  
16 substantive changes that changed the project in a manner  
17 that required the Commission to review it, they would be  
18 part of our Commission's approval.

19 ACTING-COMMISSIONER HARPER: Are the points of the  
20 opposition here today subject, or is the Coastal Commission  
21 an appropriate place to review those issues?

22 MR. FOSSUM: Well, certainly the Coastal  
23 Commission would believe that if there was substantive  
24 arguments as to effects on the beach that should be  
25 addressed, I'm sure they would be looking at them as well.

1 One of the things is the information that was submitted to  
2 us today was, at least what I saw, was dated in June and we  
3 received it this afternoon just minutes before the  
4 Commission meeting. So there have been opportunities for  
5 anybody who believed this information was pertinent to bring  
6 it to our attention earlier. There was opportunities in the  
7 CEQA process to bring this kind of information. There was a  
8 challenge and the courts ultimately found that the CEQA  
9 document was adequate.

10 ACTING-COMMISSIONER HARPER: Move the staff  
11 recommendation.

12 ACTING-CHAIRMAN BUSTAMANTE: Is there a second?

13 ACTING-COMMISSIONER ARONBERG: Second.

14 ACTING-CHAIRMAN BUSTAMANTE: There's a motion, a  
15 second. But we still have one other person who would like  
16 to speak, Mark Teh.

17 MR. TEH: Good afternoon, Commissioners, my name  
18 is Mark Teh and I represent the Citizens United to Save the  
19 Beach. They are also an organization which was organized to  
20 protect the beach at Del Mar.

21 Basically, we would like to incorporate by  
22 reference the comments that were made by Ms. Hamilton. We  
23 would also like to highlight that we strongly believe that  
24 these conditions should be imposed for this lease. The  
25 conditions should include the commitment of funds by

1 Southern California Edison to cover monitoring and  
2 corrective action, should there be erosion of the Del Mar  
3 beach south of the lagoon.

4 And on that, I go ahead and submit these comments  
5 to the Commission.

6 Thank you.

7 ACTING-CHAIRMAN BUSTAMANTE: All right there's a  
8 motion and a second.

9 Call the question. All those in favor say aye.

10 (Ayes.)

11 ACTING-CHAIRMAN BUSTAMANTE: It looks unanimous  
12 with no no votes. We move the staff recommendation.

13 We're going to Item Number 62 from the consent  
14 calendar.

15 EXECUTIVE OFFICER THAYER: Mr. Chair, this is an  
16 item that deals with the Commission staff implementing the  
17 oil spill prevention program. The concern is whether or not  
18 the terminals, the oil terminals in the state are  
19 constructed in a manner that they will resist the impacts of  
20 a major earthquake which would be -- and the two major  
21 impacts would be environmental, the oil spills that we're  
22 charged with preventing, and number two, an economic impact  
23 that would be obviously if major terminals that were put out  
24 of business would have a dramatic impact on the energy  
25 supply in the state.

1           Martin Eskijian will make this presentation.

2           We have heard some of this before, but what's  
3 happened is we've learned that instead of submitting these  
4 as regulations to the Office of Administrative Law, we're  
5 being required to submit these building standards to the  
6 Building Standards Commission, and so we need Commission  
7 authority to do that.

8           And Mr. Eskijian I should say before he begins is  
9 an expert in this. He's with our Marine Facilities in Long  
10 Beach and he's traveled overseas following some major  
11 earthquakes and has seen the damage in Japan and also in  
12 Turkey, where oil terminals were damaged by earthquakes.

13           MR. ESKIJIAN: Thank you, Mr. Thayer. And thank  
14 you for this opportunity, Mr. Chairman, Members of the  
15 Commission, and Ladies and Gentlemen.

16           Like Mr. Thayer said, this afternoon is the day of  
17 reckoning for the Marine Oil Terminal Engineering  
18 Maintenance Standards, and pending your approval, this  
19 program will move into the Building Standards Commission for  
20 adoption and that's our hope today.

21           It's an interesting day today. Today is August  
22 17th, 2004. Exactly five years ago today was the Turkey  
23 earthquake, and we were there one week after the earthquake  
24 and learned a lot about port damage.

25           Also since this project started, I was in Kobe in

1 1995 following that earthquake, about two weeks after that  
2 earthquake, and we saw the port damage there.

3 If you have any questions or anything you want to  
4 clarify, just speak out. Don't wait, just say it, whatever  
5 it is.

6 This effort is mandated, we believe, by the  
7 Lempert-Keene-Seastrand, Oil Spill Prevention Act.

8 There is currently 40 terminals in the state of  
9 California. One of the critical issues is what we call  
10 grandfathering, where vessels have been growing in size or  
11 what we call deadweight tonnage over the years, way beyond  
12 what they were designed for. Structural degradation is a  
13 continuing thing. You're in a marine environment and  
14 there's impact damage, there's earthquake damage, there's  
15 corrosion, there's all kind of damage that affects the  
16 structure.

17 Inadequate fire detection and suppression is an  
18 issue. There's a standard out that's an internationally  
19 recognized standard and many of these facilities do not come  
20 up to that standard.

21 The facilities were built over the last hundred  
22 years. The average age is 50 today. The seismic standards  
23 that were in place 50 years ago are not considered adequate  
24 by today's standards.

25 She also mentioned that if you look at textbooks

1 on marine structures, 50 years is the usual lifespan of a  
2 marine structure. Some examples, and I think I showed some  
3 of these last year, I was here last August in front of the  
4 Commissioners. This is the Port of Los Angeles and that's  
5 about a hundred thousand deadweight tonnage tank vessel and  
6 you can barely see the wharf, the timber wharf behind it in  
7 which he was going to be parked. That wharf was probably  
8 built somewhere in the 1920s or '30s, there's no way it was  
9 designed to berth that particular vessel.

10 This is a picture of me in Turkey one week after  
11 the earthquake of five years ago. John Bragman and I were  
12 privileged to go on a tsunami recon trip and we entered a  
13 small fishing village and there was about three to six  
14 inches of oil, crude oil, in the marina. No doubt this is  
15 as a result of the earthquake and there was a refinery, and  
16 whether it was a result on the terminal or in the tank farm,  
17 we're not clear. But it was a major oil spill and 3,000  
18 barrels were spilled into the sea.

19 Could it happen here? This is a very recent  
20 photograph, this was taken in June of this year. And in a  
21 way, it's sort of almost comical, in a way it's pretty  
22 tragic. A vessel was moored here and due to the changing  
23 tides and the load as it was being unloaded, the lines were  
24 not tended properly and the cleats which were underdesigned  
25 for the vessel anyway, were pulled right out of the wharf.

1 And upon looking at this a little closer, you can't really  
2 see it from the photograph, but there's serious structural  
3 degradation, there's dry rot. There's no way this  
4 particular wharf is fit for the purpose in which it was  
5 intended to be used at this time.

6 The standards. I could probably speak two to five  
7 hours on each one of these topics, but I'm not going to.

8 ACTING-CHAIRMAN BUSTAMANTE: Thank you.

9 (Laughter.)

10 MR. ESKIJIAN: The document is a hundred pages  
11 long. And I'm going to give you an analogy because you're  
12 probably not engineers. And that is imagine you're a 50-  
13 year old man, the structure is 50 years old, and you want to  
14 live on for another 30 or 40 years, you've never had a  
15 physical, but now you went to the doctor and you've got to  
16 get a colonoscopy, and EKG, a general physical, and there's  
17 a whole bunch of blood tests, and he's going to tell you  
18 whether you're going to be okay for the next 30 to 50 years.  
19 And that's basically what this is doing for the marine oil  
20 terminals of California. This is a fitness-for-purpose  
21 evaluation to tell us whether they will be okay for the next  
22 30 to 40 years. And implicit in this is that the operators  
23 that are operating today want to keep operating, and they do  
24 not want to stop tomorrow. And so we believe this is  
25 necessary, just like you go to your doctor, it's necessary

1 to keep this going.

2           The structural component. The seismic analysis, I  
3 want to make perfectly clear, the requalification in terms  
4 of seismic analysis is to bring the marine oil terminal up  
5 to the same standard as is used to rehabilitate and rehab  
6 the adjacent refinery. So we're saying that the hardness of  
7 the refinery and the hardness of the marine oil terminal  
8 should be about the same, and that's what this project  
9 intends to do.

10           We've had two major workshops and maybe 200 people  
11 attended. We've got port engineers, consulting engineers,  
12 members of the industry, academia. We've had peer review,  
13 we've tried to get the best structural analysis and design  
14 professionals in the state to help us with this project.

15           The Western States Petroleum Association, WSPA,  
16 has been on the Board and has participated in all of our  
17 activities and they are intimately familiar with the details  
18 of this project and have given us a lot of good  
19 recommendations, and many of these have been included in the  
20 text. And again, I briefed this last August in front of the  
21 Commission.

22           What does it cost to get the physical. At a big  
23 terminal, I estimate the cost to be about \$185,000, that's  
24 probably an upper-bound estimate and a number that we're  
25 putting out for the larger facilities.



1 EXECUTIVE OFFICER THAYER: That's for the initial  
2 audit costs, but not the actual repairs.

3 MR. ESKIJIAN: That is here. To rehabilitate, we  
4 estimate the higher end would be around \$5 million, which  
5 could be done over a period of years. And some of the  
6 arguments raised are, well, you need to get environmental  
7 approval, you need the BCDC to say yes, we can't get the  
8 money this year, we have to wait another year.

9 This is not something that has to be done this  
10 year or next year, it's on a scheduled, agreed-upon  
11 timeframe that the operator and the Marine Facilities  
12 Division both agree to as being reasonable. So if it takes  
13 you four years to do it, he's coming in and saying I need  
14 four years to do it to get the money and to get the  
15 approvals, fine it's four years. If you say it's 25 years,  
16 then we probably wouldn't want to believe that.

17 Some of the numbers I've gotten for cleanup,  
18 \$20,000 per barrel come from the OSPR. And our criteria or  
19 screening to become a large major facility, to have this  
20 level of expense, if 200 barrels of oil spilled, that would  
21 be \$24 million, giving us a cost-benefit ration of .2. That  
22 does not include such things that could go wrong as if you  
23 have a spill in the Port of LA or Long Beach and you shut  
24 down the port. As we learned from the recent strike there  
25 that it could be as much as a billion dollars a day if you

1 shut down a port. And nobody's going to want to run their  
2 vessel through a big oil slick, so it can get very expensive  
3 very quickly.

4 Three major engineering companies have said it's a  
5 great idea. The Port of Long Beach has written an approval  
6 and endorsed a letter. The State Fire Marshal and the  
7 Office of Oil Spill Prevention and Response has also issued  
8 a letter of approval and endorsement.

9 Has it been used? Yes, it has been used. The  
10 Port of Oakland has used our seismic rehab criteria for  
11 design analysis and to treat their aging wharfs and many of  
12 these have been rehabbed already.

13 I just learned recently that a firm in Seattle,  
14 Washington has used our seismic methodology analysis and  
15 design for new pier projects and a paper documenting that  
16 will be presented at our Prevention First 2004 symposium in  
17 September of this year.

18 Chevron Long Wharf has completed their seismic  
19 rehabilitation and are in conformity with the MOTEMS  
20 standards.

21 Conoco Philips will go most of the way to complete  
22 agreement with the MOTEMS and it's in process right now.

23 There are others in the world I'm sure that I  
24 don't know about that have used MOTEMS as a criteria for  
25 design analysis at their wharves and piers.

1           The seismic portion of our document is exactly  
2 repeated word for word in the seismic design guidelines for  
3 port structures. It was published in 2001 and is a very  
4 good textbook for seismic design.

5           I sit as a member of the New York Committee for  
6 what's called Nonbuilding like Structures, and for 2003  
7 there is a complete reference to MOTEMS as a standard to be  
8 used. And it won an award last year in New York.

9           We're here today because we do need the approval  
10 of the State Lands Commission to move ahead with our  
11 program. We are planning to go to the Building Standards  
12 Commission, like I stated before. That would be in November  
13 of this year and we expect it to be published as part of the  
14 building standards code next year and be effective six  
15 months thereupon. Just to give you an idea of the  
16 timeframe, the initial audits for major facilities would be  
17 done 2.5 years after that date, so we're talking in 2008  
18 before a major oil terminal would have to do its initial  
19 audit.

20           And that concludes my statements today to you.

21           ACTING-CHAIRMAN BUSTAMANTE: Okay, thank you.

22           Any questions?

23           Why don't we have the one person who would like to  
24 speak as a public, Dennis with WSPA.

25           Dennis Bolt with WSPA.

1 MR. BOLT: Thank you, Governor Bustamante.

2 ACTING-CHAIRMAN BUSTAMANTE: It says you're here  
3 to speak in a neutral?

4 MR. BOLT: Yes, yes. Our position is neutral on  
5 this regulation. We appreciate the opportunity to come  
6 forward. I was going to apologize for my late comments, but  
7 I was ahead of schedule, they came in yesterday.

8 WSPA, as you know, represents a majority of  
9 petroleum-related interests in the western United States,  
10 and many of our members operate marine oil terminals in the  
11 state under the jurisdiction of this regulation. There are  
12 a number of marine oil terminals under your jurisdiction  
13 that are not members of WSPA.

14 WSPA, to reiterate, has a neutral position on the  
15 regulation.

16 Could I borrow the map and I can flip through  
17 this, I guess. I don't know if that will add value to the  
18 audience.

19 We do believe the environmental and small business  
20 analysis to be incomplete. The recommendations we have for  
21 you today will fully address those issues in a comprehensive  
22 and meaningful way.

23 More important, we believe your body singularly  
24 has the jurisdiction or responsibility, the purview, to act  
25 on behalf of the state of California and any untoward

1 impacts that might exist from this regulation. While the  
2 record might develop reasons for opposition in the future,  
3 they are not present today.

4 The adverse impacts, if there are any from this  
5 regulation, and it is unknown as we sit here today if there  
6 are. There are not adverse consequences to us. These are  
7 issues for public policy or on behalf of Californians that  
8 should be addressed. We can afford to comply with MOTEMS.  
9 It's a big body of law, it's a big pill to swallow, but we  
10 can do it. We've proven that. But it's the societal cost  
11 of disrupted fuel supplies and unmitigated environmental  
12 risk that might lay as the untoward consequences of this  
13 regulation that should be evaluated before the Commission  
14 adopts it.

15 In your elected and appointed positions, you're  
16 uniquely positioned to guard those interests with little or  
17 no impact on the implementation of this regulation. Your  
18 decision might be to adopt MOTEMS as it is, or it might be  
19 to find a better path to implementation.

20 What's right about MOTEMS, you've heard it. Just  
21 let me say high praise for the gentleman next to me and your  
22 staff. He's not only a world-class expert, he's a world-  
23 class regulator and collaborator and Mr. Eskijian ran an  
24 excellent stakeholder process. We've been involved in this  
25 regulation from the get-go, we just are not used to the

1 regulators being smarter than us.

2           There are issues out there. There are problems  
3 and the problems need to be addressed in a comprehensive and  
4 meaningful way.

5           What's the problem we're trying to solve? It's  
6 the one that was demonstrated. Oil spills, the technologies  
7 are already out there to mitigate oil spills. The risk  
8 we're dealing with are structures breaking away from docks  
9 in the event of a wharf collapse and vessels being adrift,  
10 you know, without power. A fair statement. The likelihood  
11 of that scenario pending the review that we're suggesting in  
12 here is unlikely because the majority of the throughput  
13 risk, as is indicated in the staff report, has already been  
14 mitigated. In other words, the technologies are already  
15 there on the docks to shut down under the OSPR regulations  
16 and to prevent a major oil spill.

17           What are the potential adverse impacts of MOTEMS.  
18 And this is where the dots are not connected. The  
19 California Energy Commission is saying there's insufficient  
20 wharf space today to import sufficient gasoline supplies to  
21 meet the demands of California consumers. That's the  
22 Commission on the other side of the street. The Commission  
23 on this side of the street is saying we need to impose  
24 regulations, and then the unfortunate result of that is  
25 we're going to close marine oil terminals. What we're

1 suggesting is the resource agency connect the dots between  
2 those two public policy decisions in different agencies and  
3 do it in a very short period of time. Because if there are  
4 supply disruptions of petroleum products, the State should  
5 care. If they are coming down the path, we need to see them  
6 over the hill, we need to plan for them and to provide for  
7 them so that our citizens are not adversely impacted and our  
8 businesses are not adversely impacted.

9           The staff has not been directed to perform this  
10 review. They make the comment in the staff report, well,  
11 that's the California Energy Commission's job, and it is.  
12 No criticism, staff's done their job, they've met their  
13 mandate, they've delivered the mail today. But those dots  
14 need to be connected by somebody and we submit you are the  
15 ones to do it. And all we're suggesting is a 90-day delay  
16 in your decision on this regulation, pending a review which  
17 we're calling the CEC/SLC Collaborative, that until your  
18 October meeting. And what would happen in the meantime is  
19 we would determine the impacts on petroleum fuel supplies in  
20 California from this regulation and when those impacts might  
21 occur.

22           What would be those impacts on small business?  
23 That's where I believe the gap is in the staff report. If  
24 there are disruptions in fuel supplies, then there would be  
25 impacts on business that have not been addressed in the

1 staff report, and they should be uncovered and they should  
2 be addressed. It doesn't mean you don't adopt the  
3 regulation, it means you address the impacts.

4 The other issues is the environmental impacts.  
5 Well, certainly we're softening one environmental problem,  
6 but are we creating another one. In my written comments, I  
7 talked about the scenario of if you lost the north coast oil  
8 terminal, you're going to have to truck that product up 101  
9 through those redwoods and across those rivers and those  
10 salmon streams. Well, you've got to look at that issue.  
11 I'm not saying you don't do that. You've got to look at  
12 that issue with the eyes open in advance of adoption.

13 We don't know, only the State Lands Commission and  
14 the California Energy Commission can collaborate on these  
15 issues, and so we seek the collaborative. Some real easy  
16 steps we think. A single meeting with our organization, the  
17 CEC and SLC to kind of scope out the project. Then your two  
18 agencies, the technical people, Martin knows these docks  
19 better than we do ourselves, and the people over at the CEC  
20 know the supply, they know the transportation issues, they  
21 know the consequences to the marketplace. When those two  
22 sets of technical experts sit down for half a day, they go  
23 through the list of the docks, they're going to know whether  
24 or not we're at risk. Respective staff would brief the  
25 bosses.



1           And then the two agencies have a two-hour  
2 executive meeting saying how are we going to report back on  
3 this. Two staff reports come back. In October it will come  
4 back before you and you can either adopt MOTEMS or some  
5 better process for mitigating these challenges would appear.

6           There's risk here that can be mitigated and can be  
7 avoided. If MOTEMS is adopted, there is no exemption, there  
8 is no variance, there isn't a waiver, it is a train out the  
9 barn and we should just call for pause for just 90 days and  
10 take a look to see if more should be done.

11           Again, I just want to underscore, underline,  
12 double in bold, this is no criticism of the staff's work.  
13 This is a world-class regulation, well developed,  
14 technically effective, and it's going to put some people out  
15 of business and that's just part of today's world. But  
16 what's the impact on the people of California.

17           I think if just looked at in that narrow scope,  
18 you'll turn right around and you'll know absolutely the  
19 right thing to do. And if you adopt this regulation, we'll  
20 implement it with due haste in a first-class way.

21           ACTING-CHAIRMAN BUSTAMANTE: Who is it going to  
22 put out of business?

23           MR. BOLT: Well, first of all, I don't know. But  
24 let me paint a scenario. Let's say for instance a marine  
25 terminal closed and supplies now have to be trucked into

1 some central coastal area. The independent suppliers may  
2 not be able to get those supplies, if there are impacts on  
3 supply.

4           There might be additional impacts that would cause  
5 the cost of business to go up and therefore businesses would  
6 no longer be viable. It's not our businesses we're talking  
7 about here. We're moving on and we're moving forward, but  
8 these are issues that policymakers should be concerned  
9 about. And the CEC knows when they have supply problems in  
10 a particular area of the state, they know what those impacts  
11 are. So when the Marine Division sits down and says this is  
12 a wharf that's in trouble, the CEC says no problem we can  
13 fix it or oh, gee, and those conversations. There just  
14 hasn't been a facility prior to today for that to take  
15 place.

16           ACTING-CHAIRMAN BUSTAMANTE: Commissioners, any  
17 comments?

18           ACTING-COMMISSIONER HARPER: No.

19           ACTING-COMMISSIONER ARONBERG: I have one.

20           ACTING-CHAIRMAN BUSTAMANTE: Go ahead.

21           ACTING-COMMISSIONER ARONBERG: I appreciate the  
22 representative from WSPA's comments, and I recognize the  
23 potential problems that you raise. But on balance, I feel  
24 like, you know, a seismic event can happen at any time and  
25 other unknown risks are out there. And so I feel that the

1 sooner we get this under way without delay the better. So  
2 on balance I would support moving forward with the staff's  
3 recommendation. But WSPA, I appreciate your comments.

4 ACTING-CHAIRMAN BUSTAMANTE: Staff, the gentleman  
5 talks about potential unintended consequences, environmental  
6 issues. I'm assuming that we've done the appropriate  
7 reviews on the environmental side.

8 Do we have any opposition from any of the  
9 environmental community?

10 EXECUTIVE OFFICER THAYER: I don't think we have  
11 any. And I think -- first let me say Gary Gregory is  
12 rushing up here, the Division Chief, and understands all  
13 this extremely well and has participated in the process  
14 along with Martin Eskijian. But I think, you know, at the  
15 core here is basically a request to say the state may be  
16 better served if we don't have seismically safe terminals,  
17 is basically what's being suggested, that it would be better  
18 if we maintain supply, even if the supply was being held in  
19 a way that would pose environmental risk. And that's the  
20 difficult question for staff.

21 ACTING-CHAIRMAN BUSTAMANTE: But he said it a  
22 little more artfully than that.

23 EXECUTIVE OFFICER THAYER: Yes, he certainly did.  
24 But ultimately, he's basically saying there may be a concern  
25 that's greater than the seismic safety that we're espousing

1 here. But I also think that the question you asked was very  
2 insightful, which is, okay, when we get down to brass tacks,  
3 where are those impacts that you're raising in a theoretical  
4 way, where might they occur. And I think when we looked at  
5 the north coast and other places, it turns out I don't think  
6 we're in that position. But I think Gary is in a much  
7 better position to answer those questions.

8 ACTING-CHAIRMAN BUSTAMANTE: So is there any, I  
9 just want to make sure I ask the question again.

10 EXECUTIVE OFFICER THAYER: Sure.

11 ACTING-CHAIRMAN BUSTAMANTE: Is there any concern,  
12 is there anything that's been raised that you believe at  
13 this point where we have unintended consequences that we're  
14 expecting on the environment as a result of these changes?

15 EXECUTIVE OFFICER THAYER: From my perspective,  
16 the answer is no, but I think Gary can give a better answer.

17 ACTING-CHAIRMAN BUSTAMANTE: Sure.

18 MR. GREGORY: The answer is no, sir. We've looked  
19 at the facilities. Mr. Bolt talks about a north coast  
20 facility. There is one in Northern California in Eureka.  
21 That facility is in good shape. We don't expect that  
22 there's going to be any significant problems there. All the  
23 rest of the facilities are essentially bunched in the Ports  
24 of Los Angeles and Long Beach or San Francisco Bay. And so  
25 no difference.

1           ACTING-CHAIRMAN BUSTAMANTE: I'd ask also the  
2 gentleman that Mr. Bolt recognizes as the smartest guy here.

3           MR. ESKIJIAN: I will give you a little example,  
4 expanding on what Gary just said. The Eureka facility is  
5 the one that would cause you to truck tank trucks up to the  
6 Eureka area to feed the extreme northern part of California.  
7 And the structure is in pretty good shape, and to make it  
8 comply with MOTEMS would make it a little better. And I  
9 think it's in everybody's interest to have that structure  
10 better than what it is right now. And I see that as an  
11 advantage, not a -- it's not going to close down, that's not  
12 going to happen. So I think it's an improvement to make it  
13 hardened against an earthquake or any kind of incident that  
14 could occur in that area.

15           ACTING-CHAIRMAN BUSTAMANTE: Mr. Bolt also talked  
16 I thought very well about something that often takes place.  
17 I don't know if that's taking place here, but I want to ask  
18 the question about what he talked about connecting the dots  
19 and the interconnections between the Energy Commission and  
20 State Lands, and if there is in fact adequate pathway and as  
21 he called it, connecting the dots, so that there is not just  
22 a set of rules and a request for implementation, but there  
23 is a clear pathway to make sure that it connects and that it  
24 continues to work, and that we are in fact looking to find  
25 out that there is those connections, that we're trying to

1 make sure that we understand the impacts on small businesses  
2 and other unintended consequences that come from just about  
3 anything that we do here. I mean is there anything that's  
4 taking place right now between the Energy Commission and  
5 State Lands to deal with that particular issue?

6 MR. GREGORY: Yes, sir. I provided testimony at a  
7 recent hearing with the California Energy Commission  
8 regarding MOTEMS and regarding oil throughput. While I  
9 would say that it's a staff-to-staff, informal in nature, I  
10 have ongoing conversations with members of the staff at the  
11 California Energy Commission. This has not been done in a  
12 vacuum, but it has not been done in a formal process through  
13 the Energy Commission either.

14 ACTING-CHAIRMAN BUSTAMANTE: Will there become a  
15 formal process?

16 MR. GREGORY: Not to my knowledge.

17 ACTING-CHAIRMAN BUSTAMANTE: Is there a reason why  
18 it doesn't become one?

19 MR. GREGORY: My discussions with staff and the  
20 information that I provided to the siting subcommittee has  
21 not resulted in contact back to me regarding the need for a  
22 formal document or a formal arrangement or relationship.

23 ACTING-CHAIRMAN BUSTAMANTE: A review?

24 EXECUTIVE OFFICER THAYER: I think what it comes  
25 down to, as we do with other agencies more commonly like the

1 Coastal Commission or Fish and Game, they have their  
2 jurisdiction, we have ours. We do our best to coordinate on  
3 staff-to-staff levels so we don't have conflicting  
4 conditions that prevent projects from being developed. And  
5 I think what Gary is in essence saying is we're having that  
6 informal conversation, but that the Energy Commission  
7 doesn't really have jurisdiction over the same thing here,  
8 so it isn't something that requires their formal review.

9 ACTING-CHAIRMAN BUSTAMANTE: I think what Mr. Bolt  
10 was talking about is not identifying the regulations, but  
11 what takes place afterward, and that there is connection  
12 that's taking place when you give somebody else the con. I  
13 mean is there some kind of a pathway that makes sense and  
14 that they can then implement when something that's been  
15 developed. I think that that's what he's talking about.

16 EXECUTIVE OFFICER THAYER: And I think the answer  
17 to that is that this is just one step along the way. As was  
18 pointed out by staff, the next step is two and a half years  
19 or the audit to determine what sort of projects really need  
20 to be done. At the end of that process, if there's some  
21 terminal that's in deep, dark, desperate financial trouble,  
22 I'm not sure we want to help them out in that circumstance,  
23 because I'm not sure we want that kind of operator.

24 ACTING-CHAIRMAN BUSTAMANTE: Right.

25 EXECUTIVE OFFICER THAYER: But we'll know more.

1 And we're perfectly capable of coming back to you and  
2 saying, hey, we've got a new situation we didn't know about,  
3 we want to make some changes.

4 ACTING-CHAIRMAN BUSTAMANTE: Is the staff's  
5 position not to extend for 90 days, based on what you've  
6 heard from Mr. Bolt?

7 EXECUTIVE OFFICER THAYER: We see no reason to  
8 extend for that period of time. And the trouble that we're  
9 running into, and I've been in direct contact with Stan  
10 Murra from the Building Standards Commission about their  
11 process. And if we don't get approval from them in a timely  
12 way, they don't publish in the fall, and they only publish  
13 in the spring. They only publish once a year. So it would  
14 put off the implementation standards for a full year. And  
15 he's hopeful that we'll get on for his November meeting, but  
16 he's not sure. And he's not sure what impact further delay  
17 would have on publishing.

18 ACTING-CHAIRMAN BUSTAMANTE: Hearing that is there  
19 any? What's the pleasure of the Commission? Is there a  
20 motion?

21 ACTING-COMMISSIONER ARONBERG: Move approval of  
22 staff's recommendation.

23 ACTING-COMMISSIONER HARPER: I'll second that.

24 ACTING-CHAIRMAN BUSTAMANTE: Motion and second.

25 Any other comment? Seeing none, all those in



1 favor say aye.

2 (Ayes.)

3 ACTING-CHAIRMAN BUSTAMANTE: The vote is  
4 unanimous. Let the staff recommendation go forward. And I  
5 believe that finishes our regular agenda; is that correct?

6 EXECUTIVE OFFICER THAYER: That's right.

7 ACTING-CHAIRMAN BUSTAMANTE: Thank you, Gentlemen.  
8 Thank you so much for your comments.

9 I think at this point, we normally have a period  
10 of time after we conduct our regular session where we have  
11 any members of the public who would like to come up and make  
12 any other particular comment to please come up and do so at  
13 this time.

14 Is there anyone here in the public that would like  
15 to make any presentation or provide any information to the  
16 Commission?

17 Seeing none, that will adjourn the meeting. I  
18 will give us this official gavel banging, and we'll move  
19 into a closed session.

20 (Thereupon the meeting of the State  
21 Lands Commission was concluded at 4:17  
22 p.m. on August 17, 2004.)

23

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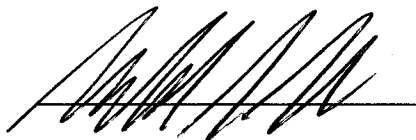
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## 1 CERTIFICATE OF SHORTHAND REPORTER

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

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

11 IN WITNESS WHEREOF, I have hereunto set my hand  
12 this 30th day of August 2004.

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18 Michael J. Mac Iver

19 Shorthand Reporter  
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