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2
3 MEETING OF THE
4 CALIFORNIA STATE LANDS COMMISSION

5
6 PORT OF SAN DIEGO
7 BOARD ROOM, 1ST FLOOR
8 SAN DIEGO, CALIFORNIA 92101

9
10 ***ORIGINAL***

11 TRANSCRIPT OF PROCEEDINGS
12 THURSDAY, DECEMBER 9, 2004
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25 REPORTED BY: MARY ANNE YOUNG

A P P E A R A N C E S

STEVE WESTLY, State Controller, Chair

CRUZ M. BUSTAMANTE, Lieutenant Governor, Member

DAVE HARPER, Department of Finance, Member

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REPORTER'S TRANSCRIPT OF PROCEEDINGS, taken on
Thursday, December 9th, 2004, before me, Mary Anne
Young, CSR No. 12799, beginning at the hour of 2:19 p.m.
at 3165 Pacific Highway, Board Room, 1st Floor, in the
City of San Diego, County of San Diego, State of
California.

1 SAN DIEGO, CALIFORNIA

2 THURSDAY, DECEMBER 9, 2004 2:19 P.M.

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4 CHAIRMAN WESTLY: I'd like to call this
5 meeting of the State Lands Commission to order. My
6 apologies to the public for being a little bit late this
7 afternoon. I'm State Controller Steve Westly and I'm
8 joined today on my right by Lieutenant Governor Cruz
9 Bustamante and Dave Harper representing the Department
10 of Finance.

11 For the benefit of those in the audience, the
12 States Land Commission administers properties owned by
13 the state as well as its mineral interests. Today, we
14 will here proposals concerning the leasing and
15 management of these public properties.

16 The first item of business will be the
17 adoption of the minutes from the Commission's last
18 meeting. May I have a motion to approve the minutes?

19 MEMBER BUSTAMANTE: So moved.

20 MEMBER HARPER: Second.

21 CHAIRMAN WESTLY: Great. All in favor, say
22 aye.

23 MEMBER BUSTAMANTE: Aye.

24 CHAIRMAN WESTLY: The minutes are approved.

25 MEMBER HARPER: For the record, Mr. Chairman,

1 representative from the Attorney General's Office there
2 to help explain the public trust document. And folks
3 who were at the meeting were very appreciative that your
4 staff had gone down there and spoke to people locally
5 about issues of concern.

6 The second set of meetings I wanted to
7 highlight were the EIR workshops last week. These were
8 in Southern California at various locations proximate to
9 the proposed BHP LNG terminal, for which an
10 environmental impact report, a draft one, has now been
11 prepared. It's in the public comment period of time,
12 which, I think, closes December 20th.

13 But we had gone down to Southern California --
14 the staff had gone down to Southern California and
15 conducted workshops jointly with the Coast Guard. There
16 were over 650 people in attendance at the different
17 meetings down there and public comments came from
18 over -- well over 100 of them.

19 We are presently looking for a Commission
20 meeting on the first LNG terminal in the beginning of
21 March but we haven't heard all the comments yet, of
22 course, and we haven't seen yet what we will need to do
23 to make sure the EIR is in good shape for that.

24 The final comment I wanted to make is that our
25 next Commission meeting will be in February. We're

1 since I wasn't at the last meeting, I'm going to abstain
2 without privilege to the last minutes.

3 CHAIRMAN WESTLY: Okay. That's absolutely
4 fine.

5 The next order I'd ask that the record reflect
6 that the next order of business is the Executive
7 Officer's report.

8 Mr. Thayer.

9 MR. THAYER: Good afternoon, Mr. Chair.

10 Just a couple brief items here to note a few
11 meetings we've been involved with. As the Commission
12 will recall at our last commission meeting in October, I
13 mentioned that we had conducted a public trust workshop
14 as a means of outreach for the commission in San
15 Francisco. This was at the request of some of the
16 public interest groups in San Francisco that wanted to
17 hear more about the public trust doctrine and more about
18 how the Commission functioned.

19 As I indicated at that time, we were going to
20 take that workshop to other parts of the state to share
21 that information, and I'm pleased to report that on
22 October 26 we had a similar public trust workshop in San
23 Diego and then followed up November 30th in Long Beach.
24 We had fairly good attendance at each of these, 50 or 55
25 people. It took three hours. There was a

1 still working with your staff to come up with a date
2 that is mutually agreeable to all the offices and
3 mutually available. And we'll let you know as soon as
4 we've done that. And we will also -- we're also working
5 on trying to come up with a schedule that would allow
6 the public to know all of our dates for next year, as we
7 did for this year, and hopefully that will be
8 promulgated fairly soon.

9 And that's all I have.

10 CHAIRMAN WESTLY: Thank you, Mr. Thayer. I
11 actually have a question, but let me ask you, do any of
12 the other commissioners have any questions on that?

13 I know the other commissioners are aware that
14 several weeks ago there was a gas and oil leak at the
15 platform off the Ventura County coast. And while these
16 leaks are never trivial, this one was of particular
17 concern because of the hydrogen sulfides, obviously
18 something that's a poisonous gas.

19 Most of the platform workers were evacuated
20 because of the hydrogen sulfide spill. The name of the
21 platform, Gail, is in federal waters, and I'm greatly
22 concerned that whatever caused that leak could
23 potentially cause similar leaks to state platforms under
24 the jurisdiction of the Lands Commission. Notably, the
25 operator, Veneco, also operates platforms in state

1 waters and we need to be assured that a leak like this
2 will not occur on that or any other platform.

3 Of further concern is Pemico's ownership of
4 nearby Platform Grace, the platform that is proposed for
5 use as an LNG terminal. And I understand that Veneco
6 and the proposed terminal operator disagrees as to
7 whether oil operations could occur. If Platform Grace
8 was to be used as an LNG terminal and a gas leak occurs,
9 it suggests that joint operations could raise special
10 concerns that would need additional environmental
11 review.

12 And I would just love it if the staff would
13 contact Veneco, ask them to send a representative to our
14 next meeting to respond to some of these questions about
15 safety. I'd also like to have the staff review both the
16 leak implications and LNG oil operations on the
17 platforms and report back at the next Commission
18 meeting.

19 If you could also include in that report
20 suggested steps that we can proactively take to ensure
21 that last month's leak will not happen in state waters,
22 that would be terrific.

23 MR. THAYER: We'll certainly do that. Since
24 it is in state waters -- excuse me, federal waters is
25 where that last leak occurred, the Mineral Management

1 Service, the federal agency with jurisdiction over
2 off-shore oil development in federal waters, is
3 conducting an investigation, and our staff has been in
4 contact with them. And we'll make sure that the
5 concerns that you've expressed are addressed in that
6 investigation, or if they're not, our own staff will
7 look into those issues.

8 I think we will be glad to bring this back to
9 the next meeting. The one caveat I would want to have
10 is the results of that investigation available so that
11 the Commission could understand why the leak occurred
12 and therefore what remedies might be appropriate. You
13 can't get to that second step until we know what the
14 cause is. I've been told that that report may be done
15 in January, and if so, that will give us time to do it
16 at the next meeting. But if for some reason it's
17 delayed, we'll come back with good information for you.

18 CHAIRMAN WESTLY: I understand these things
19 are complex and take time. It's also winter storm
20 season and I'd hate to say, "Oh, gosh, we're all so busy
21 here," if there is a problem, but if you could move as
22 expeditiously as you can.

23 MR. THAYER: We will.

24 CHAIRMAN WESTLY: The next order of business
25 is the introduction of the consent calendar, and I've

1 asked Mr. Thayer to highlight a few of the items on the
2 consent calendar.

3 One looks like it will be a victory for our
4 state's teachers, and each of the other highlighted
5 items benefits the environment. I would like to call on
6 Mr. Thayer to provide a quick overview of these items
7 and then indicate which of these other items we can
8 remove from the consent calendar. There are a number of
9 them or we can take them all at once, unless the other
10 commissioners have concerns.

11 Mr. Thayer, go ahead.

12 MR. THAYER: Starting with your last point
13 first, item 31 is the only one we're removing from the
14 calendar.

15 The ones that I wanted to highlight included
16 the items 28 through 33. These are more -- acceptance
17 by the Commission of additional offers to dedicate
18 easements for public access in the Malibu area. The
19 State Lands Commission has worked closely with the
20 Coastal Commission to broaden public access
21 opportunities. Each of these OTDs were dedicated as a
22 requirement for compliance with the Coastal Commission
23 permit, but each of these was on the verge of expiring,
24 and the State Lands Commission in most circumstances
25 steps up and accepts them so that these public access

1 opportunities won't be lost.

2 These will bring us close to around 190 that
3 we've accepted, which is more than any other entity in
4 the state, so it's something for the Commission to be
5 proud of that we're able to pursue public access
6 opportunities like that.

7 The second one I was going to point out was
8 the one that you mentioned. It's calendar item 34.
9 This has to do with the sale of about 13 acres of lands
10 that are part of -- school lands that the Commission
11 administers out of 33 acres in Barstow. That particular
12 parcel is 33 acres in size.

13 The school lands program started when the
14 federal government gave these lands to the state to help
15 pay for educational programs. By law, any revenue from
16 these lands today goes to retired teachers to -- as part
17 of their cost of living increases for their pensions.

18 The plan here is to sell these acres to the
19 highest bidder. We have one in mind who has expressed
20 an interest, and that bidder, in addition to paying
21 money for the land, will also provide the infrastructure
22 that's necessary to develop the remainder of it. The
23 Commission has done several market studies to
24 indicate the -- to maximize the return to the state for
25 the remainder of those 33 acres if we can have that

1 infrastructure in place. And what I mean by that is
2 roads, sewer, electrical and water supplies. So another
3 good thing that should result in more revenue to the
4 state and teachers.

5 Item 36 involves removing tires that were
6 dumped in the San Joaquin River. There is a fund
7 available in Waste Management Board for this and they
8 will be undertaking that problem.

9 Calendar item 47 involves the expenditure of
10 the \$200,000 that the Commission received from Carnival
11 Cruise Lines as payment for violation of the
12 Commission's Ballast Water Program. This was about a
13 year ago, I think. The program would ask the Commission
14 to authorize funding and involves a program that would
15 enable us to know whether or not ships that come to
16 California ports have done a mid-ocean exchange, which
17 the law requires; otherwise, there's very little
18 evidence of it. We think that with the study we're
19 doing here, we should be able to come up with some
20 techniques that will enable us to ensure compliance and
21 protect California's environment.

22 The final one I wanted to highlight is item
23 55. As the Commission is aware, we have a variety of
24 offshore oil and gas leases and development off of our
25 coast. These are one by one -- these leases are playing

1 out and developed, and this is another one of these
2 leases to be quitclaimed back to the state. Once it's
3 quitclaimed back, it will go into the sanctuary program
4 and will be preserved.

5 And those are the items that I wanted to
6 highlight.

7 CHAIRMAN WESTLY: Sure. Thank you, Mr.
8 Thayer.

9 Mr. Bustamante, would you want to add one?

10 MEMBER BUSTAMANTE: I'd like to ask Paul if he
11 can give me some background on the seawall item?

12 MR. THAYER: This is the one at Pelican Point
13 in Santa Cruz?

14 MEMBER BUSTAMANTE: 46.

15 MR. THAYER: 46. This was an item that the
16 Commission had approved, I think, about close to two
17 years ago now.

18 MEMBER BUSTAMANTE: I remember.

19 MR. THAYER: The condominium development in
20 question is right at the juxtaposition of the Pajaro
21 River and the Pacific Ocean. The river -- there was a
22 protective wall along the river which had degenerated,
23 and reconstruction required use of two or three feet of
24 state lands. The Commission granted a lease subject to
25 the payment of fair market rent to the state.

1 Since that time, we've worked to see if there
2 might be some other approach to this which would be a
3 benefit to public trust values in that area, and there
4 are some local environmental groups that are very
5 interested in restoring the sloughs around lots. And
6 one of them is immediately adjacent to the property
7 that's being protected by the seawalls.

8 The homeowners now have agreed to give up
9 acreage, which is greater than the seawalls occupy, in
10 exchange for lifting the public trust from the area of
11 the seawalls. We won't receive the rent any more, but
12 the benefit will be that areas of this wetland will now
13 be available for restoration, and that is supported by
14 some of the local environmental agencies.

15 MEMBER BUSTAMANTE: How much was the lease
16 rent?

17 MR. THAYER: I think it was about \$57,000 a
18 year.

19 MEMBER BUSTAMANTE: And the amount of acreage
20 that we're receiving?

21 MR. THAYER: Curtis, how many acres? Let me
22 see if I can -- 46.

23 MR. FOSSUM: I said item 46.

24 MEMBER BUSTAMANTE: Item 46?

25 MR. THAYER: About eight-tenths of an acre

1 will be removed from public trust.

2 MEMBER BUSTAMANTE: One-tenths of an acre?

3 MR. THAYER: Eight-tenths.

4 MR. FOSSUM: The termination of the state's
5 claims are eight-tenth of an acre. I believe it was in
6 the neighborhood of four acres, but I don't --

7 MEMBER BUSTAMANTE: We were charging \$57,000 a
8 year for eight-tenths of an acre?

9 MR. FOSSUM: No. If you'd look at item 46,
10 the exhibit to it --

11 MEMBER BUSTAMANTE: Yes.

12 MR. FOSSUM: -- Exhibit A.

13 MEMBER BUSTAMANTE: Yes.

14 MR. FOSSUM: The area being terminated of the
15 trust is identified as the major area where the
16 condominiums are.

17 MR. THAYER: That exhibit at the back -- that
18 exhibit in the back shows in the heavy cross-hatch the
19 location first on the left of the seawall, which
20 protects the condominium development from the Pacific
21 Ocean, and then along the south side, the location of
22 the river wall parcel. Those two areas will be where
23 the public trust was lifted and the land will be
24 transferred to the condominium association.

25 The lined area, the more lightly shaded area

1 along the Watsonville Slough in the upper right-hand
2 corner of that exhibit, shows the area that will pass
3 from private ownership into public ownership and where
4 the public trust will attach. As you can see, the
5 large -- the area that's coming into the public trust is
6 much larger, probably a multiple of three or four, than
7 the areas which -- from which the trust is being lifted.

8 And more importantly than just size, it's
9 right along the Watsonville Slough, and there have been
10 some areas here that have had various species, pampas
11 grass, ice plant, that kind of thing which inhibit the
12 habitat value of Watsonville Slough. So by putting this
13 in public ownership, there are also private groups that
14 are interested in going down there and picking out those
15 species so that the seawall --

16 MEMBER BUSTAMANTE: And the previous seawall
17 had been opposed by environmental groups?

18 MR. THAYER: Yes.

19 MEMBER BUSTAMANTE: How are they with this
20 exchange? Have you had a chance to communicate?

21 MR. THAYER: We've gotten letters from some of
22 the local groups there in support, particularly one
23 called, I think --

24 MR. FOSSUM: I can provide you with copies of
25 the letters in support.

1 MEMBER BUSTAMANTE: Because I think I recall
2 it was the Sierra Club and Surf Rider that were --

3 MR. THAYER: They have not expressed any
4 opposition to this. And actually, at the end of the day
5 on the last project, they had some concerns but they
6 were satisfied with the ultimate Commission decision and
7 the amount of rent that was charged, so by the time the
8 Commission heard it, they were not in opposition any
9 more. They had these concerns.

10 As you know, they have an overall policy, they
11 want to make sure that we're not allowing public lands
12 to be used for protecting private development without a
13 fair repayment to the local environment.

14 MEMBER BUSTAMANTE: So this three and a half,
15 four acres, whatever, that we exchange for the point
16 eight --

17 MR. THAYER: Yes.

18 MEMBER BUSTAMANTE: -- of an acre?

19 MR. THAYER: Yes.

20 MEMBER BUSTAMANTE: Those three to four acres,
21 are they in some process or are they part of a program
22 to have that still go into some type of habitat area?
23 Is there some program for it? Is there a proposal for
24 it, or is it just something that we've freed up for the
25 possibility of some day maybe somebody doing something

1 with it?

2 MR. THAYER: In this particular area, the
3 Coastal Conservatory has been very active and has worked
4 with these local environment groups. In fact, they
5 produced a wetlands restoration plan which calls for
6 restoration in this area, so this isn't sort of a
7 stand-alone exchange, but will help contribute to this
8 larger plan that's in place.

9 MEMBER BUSTAMANTE: All right. As long as it
10 was going to actually be used for something.

11 MR. THAYER: Yes.

12 MR. FOSSUM: Commissioner Bustamante, it's
13 1.55 acres, 67,667 square feet along the slough.

14 MEMBER BUSTAMANTE: An acre and a half.

15 MR. FOSSUM: An acre and a half, that's
16 correct. And there has been some activity already in
17 removing non-native vegetation and planting native
18 vegetation along there by these groups that you're
19 getting copies of letters in support from now: The
20 Friends of the Dunes and the Wetland -- Watsonville
21 Wetlands Watch Group.

22 MEMBER BUSTAMANTE: Seeing that the Chair has
23 left for just a moment, he is being represented by his
24 staff personnel, I'll assume the chair and take on the
25 next -- this next item of business.

1 Is there anyone in the audience who would like
2 to speak on the consent calendar?

3 Seeing none, I'll entertain a motion on the
4 consent calendar.

5 MS. ARONBERG: So moved.

6 MEMBER BUSTAMANTE: Is there a second?

7 MEMBER HARPER: Second. That's as reflected
8 with the deletion in 31?

9 MR. THAYER: Yes.

10 MEMBER BUSTAMANTE: It's been moved and
11 seconded, and let the record show that the motion is
12 unanimous.

13 The next item of business is item 57.

14 MR. THAYER: 57, I believe this is the item
15 regarding marina leases and approving provisions. The
16 Chair had asked --

17 MEMBER BUSTAMANTE: That is purely
18 informational; is that correct?

19 MR. THAYER: It is an informational item of
20 which the Commission could choose to direct staff to
21 forward implementation of the measures.

22 MEMBER BUSTAMANTE: They will be entered into.
23 You're going to be talking instead of the
24 Chairman?

25 MS. ARONBERG: Yeah.

1 MEMBER BUSTAMANTE: Okay. Very good. Why
2 don't you go ahead and proceed?

3 MR. THAYER: The presentation will be made by
4 Dave Plummer from the Commission staff who worked on
5 this project. Dave?

6 MR. PLUMMER: Good afternoon, Commissioners.
7 My name is Dave Plummer. I'm regional manager of the
8 Land Management Division, and I'm here today to give the
9 Commission a status report of our review of the marina
10 lease.

11 At the request of Chairman Westly, staff
12 undertook a comprehensive review of our marina leases to
13 ensure that the leases and their provisions were as
14 comprehensive as possible to ensure greatest protection
15 for the state's waterways.

16 As the Commission is aware, boating in
17 California and across the nation is more popular than
18 ever. In California, there's currently approximately
19 one million registered vessels. And every year there is
20 an additional 20 to 30,000 vessels being registered.
21 Across the nation, there are approximately 17 million
22 registered vessels. With increasing boating activities
23 in the state's waterways, we face increased risk of
24 water quality degradation and pollution.

25 And in response to the increased boating

1 demands, there's been an effort both by the federal
2 government, individual states and also private
3 organizations to promote a greater awareness of the
4 potential pollution sources and wastes to minimize those
5 potentials. And commonly what's being looked at and
6 referred to across the nation by states and by the
7 federal government is a promotion of clean marinas and
8 clean boating programs. Many of the states actually
9 operate clean marina programs through their equivalent
10 of our boating and waterways.

11 In California, efforts have been underway for
12 several years to promote clean boating. This effort is
13 being conducted both on the government level and by
14 association representing marina owners and operators,
15 and Commission staff and members of the California Clean
16 Boating Network and an interagency formed by the Coastal
17 Commission coordinating the non-point source pollution
18 from marinas and recreational boating.

19 In reviewing our marina leases, staff
20 contacted our sister agencies across the nation to look
21 at what their requirements were, including their leases
22 and their marina operating agreements. And as not --
23 and to be expected, the coastal states, Gulf states,
24 Great Lake states were actually at the forefront of most
25 of the states. And the states of Washington, Texas,

1 Florida, Massachusetts, Delaware, North Carolina and
2 Michigan, as well as the Canadian government, were all
3 very good sources of information. I contacted our
4 sister agencies in all of those states, got copies of
5 their leases and also their best management practices
6 that they have imposed.

7 In reviewing our staff leases and their leases
8 and comparing them, in terms of actual lease provisions
9 that we currently have in our leases, ours were as
10 stringent as anybody's. As an example, since 1989 our
11 Commission leases have had lease terms regarding
12 plastics and polystyrene foam. Those provisions were
13 adopted due to the concern of the Commission at the time
14 that non-biodegradable materials were finding their way
15 into state waters. Our leases also have prohibitions
16 against bottom paint application removal on the lease
17 premises, and we have provisions on the handling of
18 petroleum products.

19 Our review did reveal an area where our leases
20 are lacking and they need improvement, and that is the
21 inclusion of best management practices as a part of our
22 leases. Marina leases that have been approved by us in
23 the last year, we have adapted California boating and
24 waterways clean boating habits have required them to be
25 part of our leases, but in looking at what's happening

1 on a national level and in the other states, clearly we
2 can do more.

3 Creating comprehensive best management
4 practices that address potential sources of pollution
5 from marina operations and the boating public have been
6 on the forefront of all the states. Here in California,
7 there is an ongoing effort by state and local agencies,
8 as well as industry representatives, to design measures
9 to reduce non-point source pollution. Commission staff
10 has been and will continue to be a participant in this
11 process.

12 In addition to the government working on these
13 issues, marina operators and yacht clubs have worked
14 hard to draft their own best management practices. In
15 fact, right here in the San Diego region, there's a
16 partnership of marina operators and yacht clubs that
17 have developed the Clean Marina Program to encourage
18 marinas and yacht clubs to practice best management
19 practices to prevent or reduce pollution to the
20 waterways.

21 Industry organizations that take a proactive
22 lead should be recognized for their efforts. Whatever
23 the source of development of best management practice,
24 the state's federal government or industry, the results
25 across the nation have been similar. Best management

1 practices that have been developed looked at both marine
2 operations and general boating activities and potential
3 sources of pollution that can benefit from adhering to
4 best management practices.

5 Staff has done work that's being conducted in
6 California and from the states that I previously
7 mentioned, from Canada, and from the marina industry
8 itself and the work that they have done on the basis for
9 developing best management practices that is attached as
10 Exhibit A and B to the staff report.

11 Staff has categorized the best management
12 practices into two groups: Measures that marina
13 operators can take and measures that the boating public
14 should strive to achieve. And the list that's included
15 is not meant to be a final product. Staff is still
16 evaluating some other additional best management
17 practices, but we're also looking at the potential
18 economic and regulatory implications. And this is
19 especially true in the area of hazardous waste.

20 It should be noted that many management
21 practices have little or no costs associated with them
22 and can be implemented quickly. Other measures may
23 require capital outlays that a marina operator may have
24 to budget for.

25 Inclusion of best management practice into our

1 leases is just part of the process. Staff will continue
2 to work with our lessees to monitor the effectiveness of
3 the measures. Staff proposes to require lessees'
4 submittal of compliance reports initially one year after
5 the lease approval, and triannually thereafter. And
6 staff will be meeting with marina and boating
7 organizations to discuss the inclusion of best
8 management practice in the Commission leases to ensure
9 that they are comprehensive, practical and can be
10 achieved on a cost-effective basis. Staff does not
11 expect that any significant changes will result in the
12 proposed best management practices as we haven't had
13 discussion with marina lessees.

14 If there are significant changes to be
15 proposed, staff will come back to the Commission for
16 further hearing. If there are no significant changes,
17 staff will include all the best management practices
18 into all of our leases, and we currently have
19 approximately 100 leases within our jurisdiction.

20 As a final note, and I've worked with marina
21 lessees for many, many years for the Commission,
22 inclusion of best management practice into our leases is
23 not to suggest that our lessees are not currently doing
24 many of these things. In fact, the marina lessees we
25 have met with have been very receptive with the

1 inclusion of best management practices into our leases.
2 It's just very sound business practices that we do.

3 And with that, any questions?

4 CHAIRMAN WESTLY: Thank you. We have three
5 members of the public who would like to speak, so unless
6 any of the other board members would like to jump in,
7 I'd like to ask members of the public to move forward.

8 Terrific. First, we have from Port of San
9 Diego, Ross Campbell. And I'd like, Mr. Campbell, if
10 you could just identify yourself again for the record.

11 MR. CAMPBELL: Sure.

12 CHAIRMAN WESTLY: And again, we have a number
13 of people who would wish to speak and a number of
14 issues, so if you could keep this to three minutes or
15 less, we'd appreciate it.

16 MR. CAMPBELL: Good afternoon. I'm Ross
17 Campbell. I'm with Coast Law Group. I'm an attorney
18 representing the Surf Rider Association.

19 It's Surf Rider's position that the inclusion
20 of BMPs in marina business is definitely a step in the
21 right direction; however, a review of the BMPs proposed
22 today indicates failure to look at a significant problem
23 throughout the state, and that is the high levels of
24 dissolved copper in our water column and harbors.
25 Dissolved copper constitutes pesticides that are toxic

1 to aquatic life and can result in long-term
2 contamination of our sediment.

3 Mainly, the vast majority of copper enters the
4 water column through copper-based antifouling paints
5 that are found on the bottom of ship hulls. Now, from
6 the ship hulls, it enters the water two ways: One is
7 basically by manual ship cleaning on the bottom of the
8 hull by divers. There are BMPs, I believe, in Exhibit B
9 designed to effectuate change there; however, even if
10 best management practices are incorporated for that
11 problem, ship hull cleaning only constitutes five
12 percent of the emissions from antifouling paints. 95
13 percent comes from day-to-day passive leaching. And the
14 studies have shown that the best way to accommodate that
15 problem is a switch from copper-based antifouling paints
16 to non-toxic hull coatings and strategies. Therefore,
17 Surf Rider proposes additional BMPs designed at
18 effectuating change in this regard over the next five
19 years.

20 Now, there are a number of things that can be
21 done in this regard. First, education of the public is
22 extremely important. The UC Sea Grant Program has
23 developed a number of valuable documents that can be
24 distributed or required to be distributed to individual
25 boat owners. In addition, there can be some sort of fee

1 schedule whereby non-toxic -- owners of non-toxic boats
2 can have a reduced fee. Furthermore, you can also
3 require new boat owners to comply with non-toxic
4 requirements. And lastly, current boat owners can be
5 required to switch to non-toxic strategies as soon as
6 their next regular repainting is scheduled.

7 Thank you very much for your time. I
8 appreciate it.

9 CHAIRMAN WESTLY: Thank you, Mr. Campbell.

10 Next, we have Sandy Purden, Port of San Diego.
11 Commissioners?

12 MS. PURDEN: Good afternoon. Thank you. My
13 name is Sandy Purden. I live locally at 747 Golden
14 Park, San Diego.

15 I am a commissioner with the Department of
16 Marine Waterways but I am also a marina operator and
17 owner. I also am past president of the San Diego Port
18 Tenants Association. I'm not on the staff of the port.
19 But we have a great relationship with our port here, and
20 I wanted to come here and tell you a little bit about
21 what was alluded to in your staff report, which was the
22 alliance that we have with marinas, yacht clubs,
23 municipal marinas and non-profit clubs and the military.

24 We have a program that's about an 80-page
25 program which your staff has downloaded and copied from

1 our web site, and we define our program, basically, as
2 an ongoing endeavor by the marina industry alliance, the
3 folks that I just talked about, to provide
4 environmentally clean facilities through compliance of
5 best management practices determined to protect San
6 Diego's regional coastal waters from pollution.

7 So, as I said, we're made up of a lot of
8 different entities. And about a year and a half ago,
9 the regional Water Quality Control Board was considering
10 requiring marinas and yacht clubs to have an MPS, so
11 obviously that got our attention because that was going
12 to be a considerably costly event for us that we would
13 probably pass on to our customers.

14 So we undertook getting all these 45 marina
15 owners and operators together, and we developed this
16 eight-page document which you can download, as I
17 mentioned. And it's been quite successful. We've
18 rolled it out to the Water Quality Control Board. They
19 were very positively receptive to it. We currently have
20 eight marinas and yacht clubs certified. We have a
21 passing grade of 65 percent, which are the optional
22 items that are in the thing that they have to do all on.
23 They have to meet 100 percent of the required items
24 which are currently regulatory items. They pay a minor
25 fee of \$250, which basically pays for the cost of the

1 berthing (sic) and the certificate, which they can use
2 for their own marketing purposes.

3 Now, our program is unique because we are the
4 only association addressing this issue in the United
5 States that we can find that is private industry and an
6 alliance of all these different entities of municipal
7 marinas, military marinas and the non-profit yacht
8 clubs. So we're delighted that we also have support
9 from the Marina Operators Association of America,
10 California Department of Boating and Waterways, and the
11 University of California Sea Grant Extension Program.
12 The San Diego Bay Council gave us an endorsement in a
13 sense. They liked our program. Obviously, they were
14 more concerned that we did not come under regulation,
15 but that's the whole purpose of our effort is to not
16 have regulation. That would cost a lot of money.

17 But Baykeepers, Sierra Club, Surf Rider
18 Foundation, the Audubon Society and the Environmental
19 Health Coalition acknowledged that we were heading in
20 the right direction. The San Diego Association Yacht
21 Club, the Tenants Association, Dock Masters Group and
22 the San Diego Ocean Foundation. So those are the
23 letters so far acknowledging the support that we have,
24 and we're excited about our program.

25 I'll leave this document with your staff,

1 although I understand they've already downloaded it, and
2 I'd be happy to work with them. I've already talked to
3 some of your staff, and I think the beginning of the
4 year we're going to share some ideas and some thoughts
5 on where your program is and where our program is. So
6 thank you very much.

7 CHAIRMAN WESTLY: Thank you. And Bruce
8 Resnick, the Executive Director of Baykeepers.

9 MR. RESNICK: Good afternoon. Thank you,
10 Mr. Chair and members of the Commission for giving me
11 this opportunity to speak. I'm going to be very brief.

12 I just want to thank your staff for putting
13 together these recommendations. I think that anybody
14 who spends any time at marinas realizes that marinas can
15 be a significant contributor of pollution to our bays
16 and our coastal waters as a collection source of
17 plastics and other types of pollutants, sewage, oil
18 spills, and of course, as Ross Campbell alluded to,
19 toxic discharges.

20 I think it's an important issue to be
21 addressed, as was already alluded to. It's something
22 our regional water board actually was going to take up
23 with a discharge permit under some pressure from the
24 marina owners. That effort, unfortunately, from our
25 perspective never happened, and it's good to see that

1 this effort moving forward as another way to get at many
2 of these recommendations.

3 I think it is important to have actual lease
4 requirements and I would also agree or put forth having
5 actual regulated permits, again PTS permits. While we
6 do support voluntary measures, we like to see those
7 teeth, and we look forward to working with your staff on
8 putting some more meat on the bones to some of these
9 recommendations, particularly with regards to non-toxic
10 hull paints. I think using this type of measure is a
11 way to really help develop that market through, you
12 know, whether it's mandates on marinas or extended
13 programs. That would be a good way to go.

14 So we look forward to working with you. I've
15 already had some brief discussions with staff, so thank
16 you very much.

17 CHAIRMAN WESTLY: Thank you, Mr. Resnick.
18 Commissioner Bustamante?

19 MEMBER BUSTAMANTE: Either Bruce, the
20 Baykeepers or Ross, either one, are there strategies now
21 that are available for non-toxic hull paints, but other
22 strategies that the kind of paints that are used or the
23 different materials that are used allow for maintenance
24 of the ship's hull and still has to deal with the whole
25 issue of either a native species or other kinds of

1 species that either attach themselves to the hull? Are
2 there different strategies for that that currently work
3 or that are being thought of?

4 MR. CAMPBELL: Well, there are -- as far as
5 cleaning the hulls of boats, there are a number of
6 strategies that can help as far as -- I believe one is
7 using harder paint, also using less abrasive measures
8 for scrubbing off the growth that does accumulate. That
9 could prevent the amount of copper that goes into the
10 water and prolong the life of the paint as well. And
11 then there are continuing benefits of non-toxic paints.

12 Now, it's my understanding that every one to
13 three years a ship is repainted, so apparently at that
14 time it would be easiest to implement non-toxic --

15 MEMBER BUSTAMANTE: Is there a list somewhere
16 of these non-toxic paints?

17 MR. CAMPBELL: I'm sure there is but I'm not
18 aware of it. I'm sure I could find it.

19 MEMBER BUSTAMANTE: It would be helpful if we
20 could find a source, either a manufacturer or --

21 MR. CAMPBELL: Okay.

22 MEMBER BUSTAMANTE: Because what happens is if
23 we ask the staff to develop a procedure or -- you know,
24 it sounds like a very good thing for us to pursue, but
25 how does a boat owner, then, get access to the kinds of

1 materials that we're talking about? And if there's any
2 sources that could be provided, it gives us a chance to
3 be able to, in some cases, provide a carrot and
4 sometimes, if necessary, a stick in trying to make sure
5 that these changes take place.

6 MR. CAMPBELL: Sure.

7 MEMBER BUSTAMANTE: And also if there are any
8 cost comparisons with the paints, et cetera, anything
9 that would help that us try to figure out how to,
10 obviously, make this a much better, much cleaner marina.

11 MR. RESNICK: Sea Grant has done extensive
12 work. We can follow up with them on getting those
13 materials. There's been statewide working groups and
14 environmental groups like as EHZ, who sat on --

15 The one thing I would say is that we are sort
16 of a chicken and an egg. They are not readily, you
17 know, out there for everybody to engage in right now,
18 but, you know, potentially we can help use regulations
19 to build these markets. So one of the things that we
20 were pushing through with, like, the MPBS, and Surf
21 Rider was involved. And when that measure was going
22 forward, there was subject to requirements that would
23 phase in or would require a number of slip spaces for
24 companies or for boats using non-toxics. If we can
25 start to build that from the ground up, we may help

1 drive this, so that's one of the goals as well. But we
2 can find out that information and give it to your staff.

3 MEMBER BUSTAMANTE: Yeah, and whatever harder
4 paint means -- I'm not familiar with these terms. And
5 so as a lay person giving some kind of definition and
6 giving the availability, these kind of products would
7 really be helpful.

8 MR. RESNICK: We'll get these.

9 CHAIRMAN WESTLY: What I would like to do here
10 is I'll go ahead -- I'll make the motion here but to
11 direct the staff to go ahead and review the leases and
12 make sure they are utilized and state of the art and
13 environmentally-sound technologies. And I just would
14 like to get a sense that you understand the things
15 they've raised and you do think this is reasonable and
16 workable, and direct staff to work with the membership
17 of the public.

18 Is that a reasonable request, Mr. Thayer, or
19 are there some other issues that we need to delve into?

20 MR. THAYER: No, I think that's very
21 reasonable. Of course, we'd like to do a little more
22 research into this issue of the availability and
23 feasibility of these alternative paints to make sure
24 we've got a workable solution, but I'm eager to talk to
25 Ross Campbell about that. They've got some information

1 that might be helpful.

2 CHAIRMAN WESTLY: If you could do that with
3 the other members of the public that spoke here today, I
4 would be grateful. What I'm trying to do is expedite a
5 movement to that solution, which doesn't necessarily
6 involve trying to get things set with hard paints but if
7 you have --

8 MS. PURDEN: Just 30 seconds. There's a whole
9 issue of total max related to the bottom paint issue,
10 and Segret has some -- a lot of research that's been
11 done on that. But the big problem is that the paint
12 companies have legally -- have copper in their paint.
13 So until you figure out a way to make copper illegal,
14 we're going to have a big problem. So I think what we
15 have to do is maybe phase in the illegality of copper in
16 paint over the years -- like they did with the auto
17 emission issue -- and find out how to arrive at a
18 solution over many years of what you were suggesting,
19 easy insert strategies.

20 MR. THAYER: I can, perhaps, be more
21 responsive to your question. I think -- I'm hearing
22 that none of the witnesses believe that what we propose
23 so far -- that there's anything wrong in any of the
24 measures that are listed. But there is a proposal to
25 enhance them -- the measures with respect to

1 copper-based paint.

2 And so I would request that the Commission go
3 ahead and direct staff to implement the measures that
4 have been developed. In our report, we identified
5 several other measures that we think ultimately may be
6 feasible as well, but we're not prepared at this point
7 to recommend, so --

8 CHAIRMAN WESTLY: Exactly what I wanted to
9 hear. Let me simply this: I'm going to ask my
10 legislative team and legislative director to see if we
11 can go the next step: to change the state law to tackle
12 some of the very issues that you've outlined here today.

13 Under the context of the current law, I'd like
14 to ask staff to go as far as you can to increasing to
15 the highest levels within the laws that we can. This is
16 an issue I'm passionate about. I asked the staff to
17 work on this several months ago. We all understand many
18 of the state's leases are important. They're important
19 to the state to provide necessary revenues, but many of
20 the leases put into place five, 10, especially 15 to 20
21 years ago would have had environmental standards at a
22 much lower level. We want to raise the bar wherever we
23 can, and I'd like to ask for a second on line motion to
24 direct the staff to do precisely that.

25 MEMBER BUSTAMANTE: Second.

1 CHAIRMAN WESTLY: All in favor, please say
2 aye.

3 MEMBER HARPER: Aye.

4 MEMBER BUSTAMANTE: Is this on the entire item
5 or is this just on that part of the issue?

6 CHAIRMAN WESTLY: The entire item.

7 MEMBER BUSTAMANTE: I have another question
8 that I'd like to ask staff.

9 CHAIRMAN WESTLY: Commissioner Bustamante.

10 MEMBER BUSTAMANTE: In this process, did we
11 design -- I notices that in the report it talks about
12 different controlling your management, it talks about
13 different ways of handling fuel, its leaks, protocols,
14 et cetera. Was there anything in particular that was
15 discussed with regard to the fuel itself or the engines
16 themselves?

17 MR. PLUMMER: Well, we have a requirement in
18 our leases right now that all engines have to be up to
19 code, and they have to have all the best technology they
20 can have. It has to do with air pollution. We
21 addressed that already, I think, in our leases. I
22 understand what you're saying and I -- there hasn't been
23 a lot -- probably there's hasn't been enough work done
24 on that. We'll have to do that.

25 MR. THAYER: You're thinking about two versus

1 four?

2 MEMBER BUSTAMANTE: Well, I'm looking for
3 different possibilities. I mean I see what it says on
4 here, but I don't know that we have reviewed all the
5 different possibilities. We're undertaking, as a
6 society, this process of changing automobiles into
7 alternative fuels and we're moving in a variety of
8 different directions with electric cars and with all
9 different kinds of directions that we're talking about
10 because of the air pollution that takes place, and yet
11 there is no discussion with respect to water pollution,
12 so I've just -- it seems like we should figure out how,
13 at some point, to start that dialogue.

14 MR. THAYER: I think that's a good point and I
15 believe that, at least presently, boat motors don't meet
16 the same requirements as car motors. If you have a
17 speedboat with the exact same engine as is used in a
18 Ford or a Chevy, it doesn't have those requirements. I
19 believe the ARP is ramping up those requirements but --

20 MEMBER BUSTAMANTE: In what way?

21 MR. THAYER: Well, they don't have Catalytic
22 converters, for example, or some of the other emission
23 controls that an automobile has, yet it's the same
24 motor.

25 MEMBER BUSTAMANTE: I know a '66 GTO, a muscle

1 car, that doesn't have a Catalytic converter and it's
2 street legal and licensed.

3 MR. THAYER: Sure, because it's an older
4 vehicle. I think the ARB is moving to ramp up those
5 through marina associations.

6 MEMBER BUSTAMANTE: But like that?

7 MR. THAYER: Yes.

8 MEMBER BUSTAMANTE: That's exactly the right
9 thing and what we're talking about, but how do be -- not
10 to do it just because we think it's a great idea, but
11 can we figure out how to start this whole dialogue as to
12 how to better protect, you know, a fairly finite source
13 that we have both inland and along our coast? To
14 have --

15 It's a little bit different -- if you dump
16 something on soil, you can normally pick that up. In
17 most cases, you can pick it up and figure out how to
18 deal with it, even if you have to store it some place.
19 But in the water, it goes in and how do you deal with
20 that and the accumulation of that?

21 And we talked substantially about the kind of
22 problems that MTBE was having in waterwells as a result
23 of using that in our cars. Well, here we are using MTBE
24 on waterways. And what's -- you know, what's been --
25 what have we done about that in terms of what's taken

1 place, is there any accumulation there, is there
2 anything taking place both in our rivers and lakes and
3 along our coast.

4 So we have not discussed, other than in this
5 document, what is a good start. I think we should think
6 about how we might look at this in a grander way, and
7 look at it with a bigger picture in terms of how we deal
8 with the entire process of the vessels that are used.
9 And what kind of equipment they're required to use, and
10 how we might be able to have best thinking for our
11 future, not just best practices for now.

12 MR. THAYER: I understand. We'll definitely
13 look into that.

14 MEMBER BUSTAMANTE: Thank you.

15 CHAIRMAN WESTLY: Thank you.

16 MEMBER BUSTAMANTE: With that, I'll be more
17 than happy to --

18 CHAIRMAN WESTLY: The motion has been
19 seconded. All in favor say aye.

20 MEMBER BUSTAMANTE: Aye.

21 MEMBER HARPER: Aye.

22 CHAIRMAN WESTLY: I think that brings us to --
23 I thank the members of the public here for contributing
24 to this important issue.

25 That brings us to Number 58, the Port of

1 Stockton, which we had heard at the last meeting, and
2 I'd like to have a presentation. I want to apologize to
3 members of the public. This issue may go on for a bit,
4 and, unfortunately, my plane requires that I have to
5 leave in a bit, but I would like to move this ahead as
6 quickly as I can because it is important to me. Staff
7 presentation, if we may?

8 MR. THAYER: The presentation on this, also,
9 will be made by Dave Plumber.

10 MR. PLUMMER: And I'll cut my remarks a little
11 bit short to get done as quickly as possible.

12 As you know, this item was heard at our last
13 meeting in October in Huntington Beach. It involved two
14 things: The assignment of a lease from the Navy to the
15 Port of Stockton; and, more controversially, the
16 construction of a new bridge to serve the Port's
17 expansion, which is called the West Complex, and that's
18 the Daggett Road Bridge.

19 The Commission had received written
20 information and we heard testimony at that meeting. We
21 heard testimony from the Port. We also heard testimony
22 from the Natural Resources Defense Council. We've
23 received additional information -- more information from
24 NRDC and Shute, Mihaly, Weinberger, a law firm that
25 represents plaintiffs challenging the environmental

1 document.

2 The main thrust of the arguments that were
3 presented at that meeting by NRDC was that the
4 Commission, acting as a responsible agency, could impose
5 a wide range of mitigations as part of its approval of
6 the bridge project even though the lead agent has chosen
7 not to impose those mitigations. The Commission was
8 also asked at that time by NRDC and Shute Mihaly if we
9 could put the meeting over so that they had more time to
10 talk to us and also present us more information, and
11 also to give more time to the staff to review their
12 comments that they provided, and that was of course put
13 over for this meeting.

14 Since that time, staff has received additional
15 written submittals from NRDC and Shute Mihaly that
16 argues that the Commission has broad discretion as a
17 responsible agency under CEQA. The staff has consulted
18 the Attorney General and has considered the argument
19 raised at the meeting as well what they presented to us,
20 reviewed statutory and regularity and case law. And the
21 staff in the Attorney General's Office has discussed
22 this issue with NRDC and Shute Mihaly of issues that
23 they had raised at the meeting and their additional
24 correspondence.

25 Staff believes that the Commission's role in

1 acting as a responsible agency, as it is doing so on
2 this project, is more limited than advocated by NRDC and
3 Shute Mihaly. CEQA provides a responsible agency must
4 presume that an environmental impact report approved by
5 the lead agency is adequate, absent a court ruling to
6 the contrary.

7 Since the time of the October meeting, staff
8 has been working with the Port of Stockton specifically
9 to define measures adopted by the Port that address
10 transportation impacts, and it better defined the
11 coordination between the Commissions Ballast Water
12 Program and the Port regarding increased vessel calls at
13 the West Complex.

14 The Port had adopted mitigation that specified
15 the preparation of a truck travel control plan that was
16 to be implemented upon completion of the first project
17 at the West Complex. After negotiation between staff
18 and the Port, the Port has agreed to expedite the
19 creation of that plan -- that portion of the plan that
20 has to do with access to and from the West Complex via
21 Daggett Road.

22 The Port has agreed that the plan will address
23 making Daggett Road and the Daggett Road Bridge the
24 primary gateway to the West Complex. Prior to opening
25 the Daggett Road access, the Port has agreed to prepare

1 signs to be installed at all tenant facilities to the
2 West Complex to encourage truck traffic to use Daggett
3 Road when entering or exiting the West Complex.

4 The Port has agreed to hire a licensed traffic
5 expert every two years to monitor traffic travelling to
6 and from the West Complex. The traffic expert will be
7 instructed by the Port to determine if future steps or
8 further steps are necessary to ensure traffic travelling
9 to and from the West Complex minimize trips through
10 residential areas adjacent to the Port.

11 The Port had also adopted a mitigation measure
12 to address potential release of non-native organisms
13 from ships calling at the Port. That measure required
14 continued implementation of the Port's Ballast Water
15 Program, management plan, and, to an extent, feasible
16 coordination with State Lands and other agencies who
17 have regulatory authority.

18 The Port has agreed to implement, after our
19 negotiations, a pilot program for an initial period of a
20 year to provide for the collection and transmittal of
21 ballast water information from vessel operators to staff
22 of the Commission's marina-based species program.

23 While currently the Port has elected not to
24 pursue shoreside treatment of ballast water at this
25 time, the Port has agreed that it will plan for its

1 infrastructure facilities in a manner that would not
2 preclude shoreside treatment of ballast water.

3 The part has also agreed to investigate the
4 feasibility of shoreside treatment of ballast water and
5 to incorporate into its infrastructure facilities
6 planning for the West Complex the infrastructure that
7 would likely be needed to support shoreside treatment.

8 And based on our analysis of our role under
9 CEQA, it's staff recommendation that this item be
10 approved as presented.

11 CHAIRMAN WESTLY: Thank you. I'd like to ask
12 members of the public to come forward. Melissa Perrella
13 representing the NRDC.

14 MS. PERRELLA: Good afternoon, Commissioners
15 and staff. My name is Melissa Lin Perrella, and on
16 behalf of the Natural Resources Defense Council and its
17 members, I strongly urge that if you grant this lease
18 today, that you require the Port to adopt measures to
19 significantly reduce the harmful impacts to Boggs Tract
20 and other Stockton residents.

21 Preliminarily, I'd like to thank the
22 Commission for your attention to this item and for
23 directing staff to consider our comments and to consider
24 the Port's EIR. Additionally, I thank staff for their
25 efforts on this agenda item.

1 As you may know, over the past two months,
2 NRDC and Shute Mihaly have responded in writing to the
3 Commission's legal questions, provided a list of
4 mitigation measures we believe the Commission should
5 adopt under CEQA, and had a call with staff last week to
6 discuss these issues.

7 Unfortunately, we and staff disagree on the
8 Commission's authority under CEQA to adopt our suggested
9 mitigation measures. We think it is clear that CEQA
10 places important obligations on responsible agencies
11 that are separate from those imposed on lead agencies to
12 ensure that the impact of their actions are mitigated.

13 CEQA provides that a responsible agency must
14 mitigate the direct and indirect environmental effects
15 of those parts of the project which it carries out or
16 approves. Further, a responsible agency may not approve
17 a project if feasible mitigation measures within its
18 powers are available.

19 There is no question in our mind that the
20 traffic and pollution generated from the two million
21 trucks that will use the Daggett Road Bridge is a direct
22 environmental effect of the construction of that bridge.
23 We think it is equally clear that the operations at the
24 West Complex are an indirect effect of the construction
25 of that bridge. California law supports this

1 interpretation.

2 In October, we provided to staff a list of
3 approximately 25 measures the Commission could adopt to
4 mitigate these direct and indirect environmental
5 impacts. In working with staff and in the interest of
6 compromise, we narrowed our list to six measures that
7 would mitigate the impacts most directly caused by the
8 operation of the bridge.

9 And in the interest of further compromise, I
10 come to you today with only four of those 25 measures,
11 which include the following of which I tried to
12 distribute and I hope you all have a copy of.

13 The first measure includes before constructing
14 the Daggett Road Bridge, the Port should comply with the
15 recommendations adopted pursuant to the Boggs Tract
16 specific plan process. As you may recall, Boggs Tract
17 is a low-income, Latino and African-American community
18 near the Port.

19 For at least four years the city of Stockton,
20 the San Joaquin County, the Port and Boggs Tract have
21 been working together to formulate an access route to
22 the West Complex that would create the least amount of
23 harm to Boggs Tract. This is the correct process to
24 decide this issue.

25 At first, we understood that the Port wanted

1 to relocate Boggs Tract residents. Now, the Port is
2 attempting to circumvent the process in place by rushing
3 ahead to construct the bridge without fully considering
4 how best to alleviate these harms -- the harm that
5 thousands of trucks will have on this community. If the
6 Port is allowed to build the bridge before this process
7 is complete, trucks will likely drive through Boggs Tract
8 because the Port's favored route is already at gridlock
9 conditions. CalTrans, the Department of Public Works
10 and the County Community Development Department have all
11 commented that it's unsafe for trucks to travel through
12 the Boggs Tract community.

13 Second, the Port should participate in a truck
14 replacement program modeled after the Gateway Cities
15 Program operating at the Ports of LA and Long Beach.
16 Ports usually attract the oldest and dirtiest trucks on
17 the road, so a measure of this type could help alleviate
18 pollution and health impacts, like asthma and cancer
19 risks in Boggs Tract. The percentage of revenues we've
20 asked for is considerably smaller than the percentage
21 the Port of LA is contributing towards the Gateway
22 Cities Program to mitigate emissions at the China
23 Shipping Terminal.

24 Third, the Port should implement idling
25 restrictions at the West Complex. The Ports of LA, Long

1 Beach and Oakland all impose idling restriction, which
2 is an extremely inexpensive way to reduce dozens of tons
3 of pollution every year. These restrictions will also
4 reduce fuel consumption, which is good for trucking
5 companies as well.

6 Fourth, we advocate that the Port should
7 require at least 70 percent of all ships to cold iron or
8 use electric power at berth. Ships are the largest
9 source of pollution at port, and here residents are just
10 a few hundred feet away from the channel from where the
11 ships will be docked, yet the Port has not adopted
12 measures to reduce pollution from ships from this
13 project.

14 At the Port of LA, 70 percent of the ships
15 that use the China Shipping Terminal will cold iron.
16 Further, the Port of Long Beach -- I'm sorry.

17 CHAIRMAN WESTLY: Wind up.

18 MS. PERRELLA: Okay. Sure. The Port of Long
19 Beach has found that cold ironing is an extremely
20 cost-effective and feasible measure.

21 Further, in the EIR, the Port argued that it
22 could not implement cold ironing because it doesn't have
23 good candidates, vessels for cold ironing, or that it
24 could not require ships to implement cold ironing;
25 however, it can require ships to implement cold ironing

1 through contractual relationships. And we have looked
2 at the Port's vessel call logs and have actually seen
3 ships come into the Port time and time again that would
4 be good candidates for this mitigation measure.

5 Basically, in conclusion, what I'd like to say
6 is even if the Commission finds that it does not have
7 the obligation to mitigate certain environmental impacts
8 under CEQA, I think we can all agree that the Commission
9 has the clear discretionary authority as a public agency
10 to adopt measures as conditions of the lease. If the
11 Port has the power to deny the lease, it also has the
12 power to grant it with conditions, especially conditions
13 that are consistent with your EJ policy. Thank you.

14 CHAIRMAN WESTLY: Thank you, Ms. Perrella. I
15 just want to say that we appreciate representatives of
16 the NRDC being here today. It is a complex issue but we
17 do believe in my office that there are some appropriate
18 mitigations wherein we can suggest some, in just a few
19 minutes, in the name of fair and reasonable compromise,
20 but your thought in outlying this was helpful.

21 Having said that, I'd like to ask members of
22 the public to stay within three minutes. I'd like to
23 ask --

24 MS. PERRELLA: Thank you for your time.

25 CHAIRMAN WESTLY: Thank you, Ms. Perrella.

1 I'd like to ask Ms. Schussman of the Port of Oakland to
2 come forward. I'm going to hand the gavel over to
3 Commissioner Bustamante, but I will be represented by
4 Ms. Aronberg for the remainder of the meeting.

5 MR. SCHUSSMAN: Thank you. My name is Barbara
6 Schussman. I'm here on behalf of the Port of Stockton.
7 I am the Port's outside counsel but I also have been
8 representing the Port throughout the process of
9 approving its West Complex development plan.

10 I spoke at the last meeting and I explained
11 the Port's understanding of the law of the California
12 Environmental Quality Act that a responsible agency can
13 adopt mitigation measures only for the part of the
14 project it is approving, not the project as a whole.

15 I agree with the Attorney General and the
16 Council for State Lands' interpretation of the law. I
17 can certainly answer any questions that you may have.
18 We do publish the California -- one of the leading
19 California treatises on the California Environmental
20 Quality Act, and we feel very confident that you have
21 received the correct legal advice from your staff.

22 I also would like to point out that the Port
23 of Stockton was never provided the mitigation measures
24 recited here today. We never heard them, we were never
25 given a copy of them, I still have not been given a copy

1 of them. I'm not sure how anyone would expect the Port
2 of Stockton to be able to respond to mitigation measures
3 only just now presented at this hearing. The Port of
4 Stockton is a public agency. It is not a private
5 applicant. It can only take -- thank you.

6 I've just been handed the mitigation measures.
7 It can only take action if its commission approves that
8 action. I cannot take action on behalf of the Port of
9 Stockton. Mr. McKay, who is here on behalf of the Port
10 of Stockton, also cannot take action. If anyone had
11 wanted us to consider additional mitigation measures for
12 this meeting, they needed to have been provided to us in
13 advance of the meeting, not at the meeting, and so I do
14 object to the process.

15 I also went to point out that this has been
16 the procedure that's been followed throughout by the
17 entity and by the litigants opposing the project. They
18 have repeatedly come in with last minute requests, last
19 minute letters providing no notice and then ask for a
20 continuance. It is not a correct legal process.

21 I can respond to each of the measures that
22 were provided because I am very familiar with the Port's
23 environmental impact report. But, as I said, I cannot
24 accept any measures because the Port of Stockton is a
25 public agency with a designated body that has to take

1 action on any proposals.

2 The measures that were presented -- first of
3 all, this idea of the study being done in the Boggs
4 Tract area, that's an ongoing study. There's nothing
5 about the Daggett Road Bridge Project that would
6 preclude any solution under that study. I do have a
7 diagram I could show.

8 Thanks. It shows very clearly that traffic
9 does not go from the Daggett Road Bridge area to the
10 residential community. This is the Port's West Complex.
11 This is the part that would be developed under the
12 project that the Port approved. This is the Daggett
13 Road Bridge that is before State Lands. This is the
14 waterway and the marine terminals.

15 Trucks would come across this bridge down to
16 State Route 4 and then over to Highway 5 -- actually
17 over Charter Way, I'm sorry. I was by the railroad
18 track. All the way down to State Highway 4 and over to
19 Highway 5. The residential community of Boggs Tract is
20 down here. It's nowhere near that traffic flow.

21 The traffic currently goes along either
22 Washington Street or Navy Drive to get to the Port via
23 the Navy Drive Bridge. All this project does is remove
24 traffic from that area. There's no reason, therefore,
25 to wait until the study is done. The study is a good

1 study. The Port is sponsoring the study and
2 participating in the study, but there's absolutely no
3 reason to wait to solve a problem based upon this other
4 study.

5 The truck replacement program, the Port
6 adopted a mitigation measure actually saying that as it
7 approves any project that would substantially increase
8 trucks on the West Complex, it will at that time
9 consider the feasibility of a truck replacement program.
10 No project has been approved to date that would
11 substantially increase truck traffic over there, so
12 there is nothing to examine in terms of feasibility.

13 Idling restrictions, one of the mitigation
14 measures that is part of the project also is to make
15 sure that the roadways are -- will reduce idling at the
16 West Complex.

17 And then as far as cold ironing goes, that is
18 not feasible at the Port of Stockton. That is only
19 feasible, according to that Long Beach study, for a very
20 few types of ships. None of those types of ships call
21 at the Port of Stockton as a whole, certainly not at the
22 West Complex. The only ships that are repeat ships are
23 ammonia (sic) ships. They come right down to the
24 complex. That has nothing to do with the project that
25 is before the Port or before the Commission.

1 MEMBER BUSTAMANTE: Is that it?

2 MR. SCHUSSMAN: Yes.

3 MEMBER BUSTAMANTE: Okay. Is there any
4 other -- are there questions from the Commissioners?
5 Seeing none, I have a few.

6 Let's go back to what I think is sort of the
7 beginning. It's been stated back and forth that we
8 either do or we don't have jurisdiction on anything more
9 or equal to the bridge project. It's been indicated
10 that the Attorney General has -- by staff that the
11 Attorney General has indicated that we do not have
12 jurisdiction on anything other than the bridge. Is that
13 correct? Alan, can you give us --

14 MR. HAGER: Yes, essentially that's it.

15 MEMBER BUSTAMANTE: Don't say -- lay it all
16 out.

17 MR. HAGER: Okay. Our jurisdiction -- the
18 Commission's jurisdiction deals with impacts from the
19 bridge itself. And for one thing, we don't see a bridge
20 as a catalyst or anything like that. The bridge is just
21 part of a project. The bridge is something built, like
22 you build any structure, and then you subsequently
23 develop a project. They have developed a project right
24 now. The bridge is just one part of the project.

25 MEMBER BUSTAMANTE: Can everybody hear?

1 MR. HAGER: Put that in front of me and
2 then -- and, you know, the types of things that, you
3 know, are impacted directly from the bridge and that
4 affect the Commission's duties to protect its land and
5 protect the public trust.

6 To give an example: If they wanted to build
7 the bridge low so that ships couldn't pass through it,
8 we could say, "No, you can't do that kind of thing." If
9 it in any way impedes the use of the waterway for
10 navigation. And if the bridge were in an area where we
11 didn't think it was good if the bridge worked -- one in
12 a place where it would funnel the traffic right into
13 Boggs Tract, for example, no, we don't want that. We
14 don't want to let our land be used for that purpose. We
15 can move the bridge.

16 We're not a -- the Commission isn't a
17 regulator of air emissions. It's not a regulator of
18 water quality. It is concerned with water quality for
19 its own lands, but it isn't -- there are regulatory
20 agencies that do that, and to say just because the
21 Commission issues a lease for a part of a project that
22 it would be able to address mitigation measures that are
23 appropriately and properly within the purview of the
24 lead agency, that we don't agree with. And the
25 litigation measures that NRDC is asking for here are

1 mitigation measures that are within the province of the
2 lead agency that if the lead agency isn't addressing
3 them, the NRDC and Shute Mihaly have a remedy. They're
4 using that remedy right now, and that remedy is the
5 lawsuit challenging the EIR.

6 MEMBER BUSTAMANTE: But we have no authority
7 to interject in that process?

8 MR. HAGER: We are supposed to use the EIR,
9 assume that it is valid, go ahead and, you know, approve
10 or disapprove the project based on our authority. CEQA
11 doesn't give us any more authority. The authority we
12 have to issue a lease, and then the Port can go ahead
13 with the project or not. If it goes ahead, it does so
14 at its own risk; there is no injunction stopping the
15 Port from going --

16 MEMBER BUSTAMANTE: You have to admit it's an
17 interesting conundrum. We have a situation in which we
18 have no jurisdiction, although our own staff is telling
19 us that the EIR for this particular project, they think,
20 is adequate; you have the EIR -- the entire EIR is
21 wholly inadequate. In fact, it was to put -- much
22 stronger language was used in describing what they
23 thought was lacking in the EIR.

24 So we are here. We have access to information
25 indicating that the EIR is inadequate, and yet we're

1 allowing the potential -- we have a question before us
2 to either approve or not approve a particular project
3 that is going to add to this process.

4 I find it kind of a difficult thing to kind of
5 work your way out of. It's this maze of public policy
6 and conflict of information that puts -- it's not clear
7 in terms of how we should proceed. So you're saying
8 it's very clear?

9 MR. HAGER: I'm saying that the EIR is
10 what's -- what the staff is saying is the EIR is
11 adequate for the purposes of the Commission's issuance
12 of the lease. As I say, I'm not making any comment. I
13 haven't read the EIR. I don't know whether it's
14 adequate or --

15 MEMBER BUSTAMANTE: I understand.

16 MR. HAGER: A lot of people don't read.
17 Adequate or inadequate, that's what is moving forward in
18 the case being brought in by NRDC, Shute Mihaly to
19 decide. It may be adequate. I don't know. But again,
20 what CEQA tells us is that as a responsible agency,
21 we're to assume the adequacy of it, we're to go ahead as
22 if it's all right, do our thing and let the litigation
23 resolve the dispute that they have with the lead agency
24 regarding the adequacy of the EIR. Again, it's the lead
25 agency EIR, not ours.

1 MEMBER BUSTAMANTE: So do our thing, is that
2 the newest legal term?

3 MR. HAGER: Exactly.

4 MEMBER BUSTAMANTE: Let me then go to staff.
5 Is the EIR wholly adequate for this particular lease?

6 MR. THAYER: We believe that it's adequate for
7 this lease. We don't have the expertise to know -- to
8 second-guess what the court is going to have to decide
9 in April -- or at least have a hearing on in April in
10 terms of deciding whether the EIR as a whole is
11 adequate. All of the remedies that NRDC has asked for
12 are susceptible to CEQA reviews or litigation or review
13 by other responsible agencies. Each of them has their
14 own role.

15 So the Commission's action today does not
16 preclude a court from deciding or the Port from deciding
17 to carry on with responsibilities regarding it as CEQA
18 and to go forward. So whether the Commission grants the
19 lease today or not, all of these issues are going to be
20 thrashed out before the court. And if it decides that
21 there needs to be additional environmental review, there
22 will be additional review.

23 MEMBER BUSTAMANTE: Let me ask one more
24 question and then I'll go on. If we had received an
25 EIR, like the one that was done, the entire EIR, and we

1 had jurisdiction over the entire breadth of this EIR,
2 would you have accepted all of the responses -- would
3 you have accepted the EIR as it was presented to you?

4 MR. THAYER: I can't really say. If we had
5 been the lead agency for this, we would have been
6 working with a consultant right along. We would have
7 been putting out work product --

8 MEMBER BUSTAMANTE: It's not the question I'm
9 asking. As it exists now, if it had been handed to you
10 the way it is written now.

11 MR. THAYER: I can't say. I don't know. If
12 we were a lead agency, we'd know more.

13 MS. ARONBERG: It seems to me that we have
14 our -- this Commission has its own obligation to
15 consider this lease and the impacts of this lease, and
16 while there may or may not be a lawsuit pending, and
17 that may or may not be the remedy in connection with the
18 lead agency, this is a separate process and a separate
19 public process with NRDC has a right to raise these
20 issues without them even referencing the law thought
21 generally. We're not piggy-backing on what happened.
22 It's in a public process. And this Commission should
23 make a decision based upon its authority to -- I believe
24 to mitigate the direct or indirect impacts of the
25 environmental impacts that we're considering taking

1 today.

2 MR. THAYER: Well, I think -- the first thing
3 is the commissioners have independent authority here.
4 They can choose to act on this lease however they want.
5 If their action would be sustained in court, that's a
6 different question, but, Commissioners, staff is here to
7 provide our best advice as to what the law requires and
8 the impacts from this bridge. But ultimately, clearly
9 it's your decision as policy-makers.

10 But having said that, though, there is a
11 difference in this type of project. I think Alan was
12 trying to get into it a little bit. We had quite a
13 discourse with our attorneys and the attorneys
14 representing NRDC and the homeowners association. They
15 brought forward a number of different lawsuits or legal
16 cases. They agreed that there was nothing exactly on
17 point, but to try and say, for example, an interchange
18 with a project in Antioch (sic). Some others provided
19 precedences where this kind of infrastructure project
20 can only be considered if you look at the initial
21 impacts that would have occurred from the development
22 that the infrastructure facilitates.

23 The distinction, though, between those cases
24 and this one is that in the other cases the
25 infrastructure alone was being considered, so the data

1 from then was being considered, not sort of a general
2 plan why the impact. In this case -- and this is why
3 Alan used the word catalyst -- the Port saw that
4 infrastructure project as a catalyst for other
5 development, and you should look at the impacts from the
6 other development.

7 But in this case, it's the reverse. The
8 development was being considered first, the Rough and
9 Ready Island transformation from a Navy facility to a
10 port facility to an industrial facility. All these were
11 subject under the EIR, and also the bridge. So, really
12 the Port project is the catalyst for this one. It's
13 reversed.

14 So you're absolutely right, it's a separate
15 project but it's part of the whole. And in this case,
16 unlike all the other precedents, all of the development
17 that's facilitated by -- quote, unquote, facilitated by
18 this project has already been reviewed for its
19 environmental impacts, and that's the overall project
20 that the Port is engaged in.

21 MS. ARONBERG: I'd actually -- if Ms. Lin is
22 available, I think she has, at least, a different
23 perspective and can address a lot of the point that you
24 raised. And maybe if she could just come a little
25 closer because I'd be interested in knowing what she has

1 to say. And I don't know what other people feel, but it
2 seems that the mitigation measures that they've listed
3 are quite related to the impacts of a bridge and some
4 other less related things. That's our perspective.

5 MEMBER BUSTAMANTE: Does this lease comport
6 itself to the environmental justice provisions that we
7 created for ourselves?

8 MR. THAYER: Yes.

9 MEMBER BUSTAMANTE: It does?

10 MR. THAYER: Yes. There's been a lot of
11 discussion on Boggs Tract. And I don't want to put
12 words in NRDC's mouth, but I think their concern is that
13 the truck traffic generated by the overall project --
14 because this project will generate a lot of truck
15 traffic. And their concern is that ultimately there
16 will be congestion caused by that overall traffic,
17 particularly at the intersection of Highway 4 and 5 --
18 but in other places as well -- that will cause these
19 trucks to go through Boggs Tract, a lower income area.

20 But it might impact this particular element of
21 the project as a way to Boggs Tract. It doesn't run
22 through Boggs Tract, it directs traffic down towards
23 Highway 4 and back towards Highway 5.

24 There is ultimately in this -- it's
25 contemplated in the EIR, the long-range plan for the

1 Port -- a reconstruction of the bridge that does lead
2 towards Boggs Tract, the Navy Bridge. And when that
3 happens, they're probably going to need -- at least from
4 us then as well -- and that traffic, unless dealt with
5 appropriately, could go to Boggs Tract as well. But to
6 raise that argument about this particular bridge isn't
7 possible unless you're, in effect, saying that this
8 bridge -- through this bridge you should mitigate the
9 overall impacts of the project to truck traffic which
10 doesn't even go across this bridge.

11 MEMBER BUSTAMANTE: But just because it's not
12 next to the pulling of the trigger means that you're not
13 responsible for the bullet?

14 MR. THAYER: But that depends on how you
15 describe the bullets. All the traffic that goes across
16 this bridge is, in some respect, being directed away
17 from the Boggs -- the Boggs Tract and heading down
18 toward Highway 4.

19 MEMBER BUSTAMANTE: The rest of the way?
20 Maybe I think I could probably accept that argument in
21 part, but if the traffic is going to be increased and it
22 will have impact on a community, I don't see how it
23 doesn't impact the environmental justice issues that
24 we've talked about in our provisions.

25 MR. THAYER: The overall project may affect

1 those.

2 MEMBER BUSTAMANTE: You said that truck
3 traffic.

4 MR. THAYER: I'm sorry?

5 MEMBER BUSTAMANTE: As a result of this lease.

6 MR. THAYER: No. The truck traffic, as a
7 result of this lease, is directed away from the lower
8 income area. But the argument could be made that the
9 larger project, which is Rough and Ready Island
10 redevelopment, will create enough trucks that they will
11 spill over into Boggs Tract, and not just from Highway
12 4, but from the Old Navy Bridge, which presently
13 provides access there. So I think the argument is --
14 yeah, you know better.

15 MS. PERRELLA: Just a quick comment. I think
16 it's important not to just look at the map in a vacuum.
17 It's true that the Port would like to direct traffic
18 south --

19 MEMBER BUSTAMANTE: The Port people should
20 come up as well.

21 MS. PERRELLA: -- along Charter Way and direct
22 them to I-5. What the problem is -- and what you can't
23 tell just from looking at a map -- is that the area I've
24 highlighted in pink is already at level of service of E
25 and F. So you shouldn't assume that this road is

1 completely free and trucks are going to utilize this
2 road. What's actually going to happen is that they're
3 going to go back up through Boggs Tract because there is
4 a more accessible freeway and there will, as you
5 mentioned, be spill over.

6 MEMBER BUSTAMANTE: I know you just -- as you
7 said, you just saw some of these measures. Let me ask
8 the staff first. If these are -- if some of these are
9 items that we require of other ports, why is it that
10 we're requiring them of Stockton as well?

11 MR. THAYER: We generally don't have
12 jurisdiction over ports, so we haven't required them of
13 other ports. When you say we, the Commission hasn't
14 required them.

15 MS. ARONBERG: You can assume we, the state in
16 general because I know many of these are required at
17 other ports.

18 MEMBER BUSTAMANTE: Well, for example, the
19 idling provisions as well as the percentage of profits
20 for truck placement.

21 MR. THAYER: The law -- my understanding of it
22 is that the law -- the Lowenthal Bill established
23 30-minute restrictions for LA and Long Beach. It was
24 written in a way that didn't apply to Stockton, so the
25 legislature made that cut.

1 MR. SCHUSSMAN: It applies to Oakland, Long
2 Beach and Los Angeles. And as far as the truck
3 replacement program, that was a program put in place by
4 each port, not the state imposing it on the Ports. And
5 again, Stockton has also --

6 MEMBER BUSTAMANTE: That was all?

7 MR. SCHUSSMAN: I can only speak to Oakland,
8 and I can tell you in Oakland it was mitigation for
9 terminal development, just as Stockton put it in its EIR
10 at a programmatic level as mitigation for this project,
11 for the bigger project. And then if any actual concrete
12 project that would increase trucks going forward, they
13 would then look at the feasibility and what the
14 percentage should be for truck replacement at that time.
15 That's what their mitigation says.

16 MEMBER BUSTAMANTE: So why aren't you engaged
17 in this activity now? Why isn't the Port of Stockton
18 looking at these engagement measures?

19 MR. SCHUSSMAN: The Port is looking at all of
20 these mitigation measures. They were all addressed in
21 the EIR. And like I said, it adopted the one on truck
22 replacement saying that it would look at it when it
23 approves a project that increases trucks. Now --

24 MEMBER BUSTAMANTE: When does that take place,
25 at what point in the progress?

1 MR. SCHUSSMAN: Well, hopefully they'll get a
2 tenant that wants to come to the West Complex. Right
3 now they're reusing the Navy facilities out there. They
4 don't have people knocking at their door saying, "We
5 want to come to Stockton right now." They're trying to
6 bring jobs and economic development to the area.

7 MEMBER BUSTAMANTE: So you're saying in your
8 protocols or in your business plan that as soon as a
9 facility is brought online in which trucks are using
10 that facility, then at that point you will create the
11 truck replacement program?

12 MR. SCHUSSMAN: They would assess at that
13 point whether the truck replacement program is --

14 MEMBER BUSTAMANTE: That's not what I asked.
15 That's different.

16 MR. SCHUSSMAN: Well, I can answer the
17 question why.

18 MEMBER BUSTAMANTE: No, you're not answering
19 the question.

20 MR. SCHUSSMAN: Okay. The EIR is --

21 MEMBER BUSTAMANTE: So you're not doing --

22 MR. SCHUSSMAN: I'm sorry, Commissioner, I'm
23 actually -- I'm a little bit personally invested in this
24 because I actually helped Oakland design their program
25 and I feel very strongly that this is a good program,

1 truck replacement. And so I don't like Stockton to get
2 the impression that they're trying to avoid it.

3 What's happening here is truck replacement
4 works right now with old diesel trucks in the fleet.
5 You take the old diesel trucks out of the fleet today
6 and it works --

7 MEMBER BUSTAMANTE: I understand the program.

8 MR. SCHUSSMAN: If Stockton --

9 MEMBER BUSTAMANTE: Can you answer the
10 question?

11 MR. SCHUSSMAN: If Stockton's development
12 happens way out in the future, if it doesn't happen
13 soon, those older trucks may already be out of the
14 fleet, and at that point you can do better air quality
15 mitigation with a different type of program. That's why
16 they have to assess the feasibility of the program at
17 the time when they know what development is coming, when
18 it's coming, what the emissions associated with that
19 project specific development would be and --

20 MEMBER BUSTAMANTE: So you're not --

21 MR. SCHUSSMAN: -- we're committed to do that.

22 MEMBER BUSTAMANTE: So the Port of Stockton
23 has not yet committed to the program?

24 MR. SCHUSSMAN: It's committed to evaluate the
25 feasibility of the program if and when it ever does a

1 project-specific approval.

2 MEMBER BUSTAMANTE: That's what you said in
3 the beginning and you said that now four times. I
4 understand that you are not committed to the project.
5 You're committed to thinking about it.

6 And with respect to the other item on the
7 truck idling, can you tell me --

8 MR. SCHUSSMAN: There are no substantial
9 number of trucks on Rough and Ready Island right now.

10 MEMBER BUSTAMANTE: How about the rest of the
11 Port?

12 MR. SCHUSSMAN: There has been no truck idling
13 problem.

14 MEMBER BUSTAMANTE: How about the rest of the
15 Port itself?

16 MR. SCHUSSMAN: The EIR doesn't show that
17 there would be a truck idling problem to actually impose
18 the mitigation on and resolve.

19 MEMBER BUSTAMANTE: I understand that, and I
20 guess you guys will probably figure that out in the
21 legal process. But other ports are, in fact, doing that
22 as a part of their best practices. Is there a reason
23 why the Port of Stockton doesn't believe that's a best
24 practice as well?

25 MR. SCHUSSMAN: The other ports, Long Beach,

1 Los Angeles and Oakland, have tremendous truck queueing
2 going on at the berth, and that was why there was a need
3 to reduce truck idling. Stockton hasn't had that
4 problem. There is not queueing going on at Stockton at
5 the berth.

6 MEMBER BUSTAMANTE: I'm sorry. I'm not
7 familiar with what queueing is.

8 MR. SCHUSSMAN: Oh, I'm sorry. The waiting in
9 line. The trucks are all waiting in line to get into
10 the terminal facility. That's where the idling goes on,
11 and so that's why the Lowenthal Bill imposed, you know,
12 time periods that you needed to make appointments to
13 reduce idling.

14 MEMBER BUSTAMANTE: Is there some --

15 MR. SCHUSSMAN: That's problem doesn't exist
16 at Stockton.

17 MEMBER BUSTAMANTE: Is there some kind of a
18 trigger mechanism that is established either in the
19 Lowenthal Bill or in your own best practices that would
20 indicate that at some point, should it reach this level,
21 that you would trigger this kind of activity?

22 MR. SCHUSSMAN: Well, the way that the CEQA
23 process will work at the West Complex is right now
24 they've done this programmatic document to try to look
25 way out in the future at everything as best they can.

1 Truck idling was not deemed by the experts who prepared
2 the report to be a problem at Stockton.

3 As they go forward with individual projects,
4 they'll have to update that analysis. If truck idling
5 were to become a problem, that would go into an updated
6 analysis as projects come forward, and it would be
7 addressed at that time. Truck idling is not a problem
8 at Stockton. It's not a port like Los Angeles or Long
9 Beach or Oakland. It's a very small port.

10 MEMBER BUSTAMANTE: I appreciate your -- is
11 there anything, Mr. McKay, that you'd like to offer?
12 You've come a long way.

13 MR. MCKAY: I've come all the way from
14 Stockton.

15 MEMBER BUSTAMANTE: It's the place to come to,
16 beautiful sunshine.

17 MR. MCKAY: I'd just like to emphasize the
18 fact that the whole plan for truck circulation on Rough
19 and Ready Island was designed as a mitigation measure
20 before the EIR was even dreamt of. It was a plan to
21 direct traffic away from the neighborhood onto Highway
22 4 -- a substantial amount of our traffic, as is shown in
23 the EIR does come from -- originally from the west.
24 That traffic would not have to go back through the area.
25 Also traffic going onto Route 4 wouldn't have to go

1 through all the turns and very inadequate roadways that
2 they are forced to go through now. It would also avoid
3 the intersections at Fresno and Navy Drive, which are
4 the problem now. Once the trucks are on 4, they would
5 have a straight shot. It's not perfect but it's a lot
6 better than the situation that there is now.

7 We also envision a lot of trucks that they
8 attribute to the Port in the industrial park next to the
9 Port East Complex will be using the Port of Stockton's
10 West Complex Road as a shortcut and avoid the route that
11 they're using now.

12 So I think the overall will be a reduction in
13 trucks, as they allege, and the air benefits, of course,
14 by trucks moving at full operational speed are improved.
15 So it's an overall benefit, not a deficit.

16 MEMBER BUSTAMANTE: I'm going to ask you an
17 unfair question. What would be the economic issues
18 involved if we were to postpone this lease until after
19 the litigation was fully resolved?

20 MR. MCKAY: Well, right now we've had several
21 nationally-known tenants inquiring about individual
22 development of facilities for -- even cargo movements
23 through the Port.

24 MEMBER BUSTAMANTE: But no contracts at this
25 time?

1 MR. MCKAY: No. Basically one of the problems
2 with infrastructure development and government agencies,
3 the private sector has a tendency to doubt our veracity
4 when we say, "If you come, we'll build it." They say,
5 "You build it and we'll come."

6 MEMBER BUSTAMANTE: Right.

7 MR. MCKAY: So what we're trying to do is
8 establish the backbone of a good network of roads that
9 will allow trucks to flow freely through the Port and
10 also access the state highway system without impacting
11 the neighborhoods.

12 MEMBER BUSTAMANTE: And what we're trying to
13 do -- at least what I'm trying to do -- is try to find
14 the best possible way of doing both good public policy
15 and giving you full opportunity to do economic
16 development. As the chairman of the Economic
17 Development Commission, I want you to expand. I want
18 you to grow. I want you to have the ability of being
19 able to maximize the most efficient use of your
20 facility. As you're maximizing the use of your
21 facility, more people are working, more economic
22 development comes to our state, and so there is no
23 reason why we wouldn't want you to move forward.

24 But at the same time I believe we have a need
25 to provide some form of best practices in all we're

1 doing here. And I would hope -- I would hope that you
2 would try to meet us, you know, with the same spirit
3 that we're trying to meet you. I, frankly, would see
4 this having two possibilities: Either postponing this
5 thing until after the legal items are resolved, or
6 passing it, you know, requiring certain provisions that
7 I think would be important, that I think are important
8 to have -- not just to think about, but to have as part
9 of your best practices.

10 So I would move to the Commission that we, in
11 supporting this particular lease, require that a truck
12 replacement program be included in the lease provision.
13 I believe there is nexus to this particular lease, and I
14 believe that the Port of Stockton will work with staff
15 to be able to provide for a truck replacement program
16 that makes sense to both the Port of Stockton and it
17 would comport with best practices of any port.

18 MR. MCKAY: I believe we can work together on
19 that and try to come up with an agreement that is
20 economically sound and reasonable. Perhaps also maybe
21 working with the airport to see what programs they may
22 be able to help us with, with carrots, not necessarily
23 sticks. And understanding that most of the vehicle
24 traffic is on those roads, there's only so much we can
25 do with our own stuff. As far as agreeing to or not

1 agreeing to a specific mitigation now, as counsel
2 pointed out, I am not a commissioner, I'm a staff member
3 but I --

4 MEMBER BUSTAMANTE: I wouldn't even try to
5 negotiate that part of it, Mr. McKay, because I'm not
6 competent to do so.

7 MR. MCKAY: I would struggle --

8 MEMBER BUSTAMANTE: I'll leave that in the
9 hands of the court and you all.

10 MR. MCKAY: Okay. Thank you.

11 MEMBER BUSTAMANTE: That's a motion,
12 Mr. Thayer?

13 MR. THAYER: I'm sorry. I was consulting with
14 chief counsel when this was discussed. Could you
15 describe --

16 MEMBER BUSTAMANTE: The motion is to propose,
17 with staff recommendation, with a requirement that the
18 Port of Stockton establish a truck replacement program,
19 that they would work with the staff to make a program
20 that would make sense for them. They are not Long
21 Beach, they are not Oakland, and they have a particular
22 traffic pattern as well as a particular way of doing
23 business with the kind of products that they have and so
24 forth.

25 Creating an appropriate truck replacement

1 program for the Port, I think, is important, and we
2 should stop thinking about it and start doing it. If
3 they are not in a position to create something which
4 equals the other ports, there should be some kind of a
5 program that is established, I think, that you should
6 bring back into the Commission for approval. I would
7 hope that it would come back as a consent item, but the
8 motion is to move forward with the lease requirement
9 that they work with staff in establishing a truck
10 replacement program.

11 MR. THAYER: So should a condition be written
12 that they generate that program in consultation with
13 staff for approval by the Commission?

14 MEMBER BUSTAMANTE: Correct.

15 MEMBER HARPER: Can I ask for a point of
16 clarification on the motion?

17 MEMBER BUSTAMANTE: Yes, please.

18 MEMBER HARPER: Will it apply to existing --
19 to expansion of the west end or the current facility?

20 MEMBER BUSTAMANTE: I think it would be
21 important for them to establish a truck replacement
22 program for the whole.

23 MEMBER HARPER: Without respect to the
24 expansion?

25 MEMBER BUSTAMANTE: The entire project.

1 MEMBER HARPER: The entire. And I guess a
2 question for the staff: If the Port chooses not to meet
3 that condition and this lease is not ultimately
4 approved, is the existing infrastructure sufficient if
5 you expand the west end?

6 MR. THAYER: Without the bridge?

7 MEMBER HARPER: Without the bridge?

8 MR. THAYER: I don't think so. I think
9 there's only two ways of access into Rough and Ready,
10 and one is this new bridge, which is replacing one that
11 doesn't operate. It's on one side of the river. And
12 the Old Navy Bridge, which provides access but
13 ultimately can't carry the traffic that is contemplated
14 to come from over all the development of Rough and
15 Ready.

16 And in fact, as I mentioned earlier, I think
17 their plan contemplates that they will come back to us
18 some time out four or five years out, even if this is
19 approved, to get approval to replace this second bridge,
20 so I guess in short, there's another bridge but it
21 doesn't meet standards right now and probably couldn't
22 handle traffic for too --

23 MEMBER BUSTAMANTE: It has completely
24 different issues involved --

25 MR. THAYER: Sure.

1 MEMBER BUSTAMANTE: -- which could include the
2 communities?

3 MR. THAYER: Yes.

4 MEMBER HARPER: And I guess the final question
5 is --

6 MEMBER BUSTAMANTE: Mr. McKay indicated he
7 believes they could work out some kind of policy with
8 staff on this issue.

9 MEMBER HARPER: The final question would be as
10 I understood this truck replacement program, it was
11 going to be funded by the tenants -- I guess tenants
12 that are leasing space on the expansion. Assuming your
13 proposal exists to the Port facilities, would the Port
14 be responsible for supplying the funds for this program?

15 MEMBER BUSTAMANTE: I believe there's already
16 an established program.

17 MEMBER HARPER: At the Port?

18 MEMBER BUSTAMANTE: No, in the state. I think
19 they should use that as a model. There's a small
20 percentage of profits that goes into the fund to
21 supplement the replacement of trucks. Do you happen to
22 know offhand what that amount is?

23 MR. THAYER: I don't. In LA -- and I think
24 the NRDC attorney may know better, but in LA a lot of
25 the money was going in as a result of trying to China

1 Shipping settlement, which was a fixed amount of money,
2 I think. The overall settlement was 30 million dollars
3 and a portion of that was money for truck replacement,
4 though it's not a percentage of the Port revenues that
5 was dedicated.

6 MR. SCHUSSMAN: Could I make one point of
7 clarification?

8 MEMBER BUSTAMANTE: Please.

9 MR. SCHUSSMAN: Thank you. First of all, the
10 approval of the Commission relates to the West Complex
11 development plan. The environmental reports were for
12 the West Complex development plan. Nothing before this
13 Commission relates to the existing East Complex, so
14 there really is no authority for the Commission to do
15 anything really to the Port as a whole.

16 Second, I just wanted to make sure the
17 Commission understands that last year the Port of
18 Stockton's net profits were \$200,000. We're not talking
19 about 40 million, like the Port of Los Angeles. We're
20 talking about \$200,000. That's all they netted out.
21 That's the money they want to use to build a road.
22 That's all they're building right now, is a road.

23 If these obligations are put on them, they're
24 not going to build that road and this project is not
25 going to happen. There's not going to be new jobs in

1 Stockton. There's not going to be any economic
2 development. That is why you look at the feasibility of
3 how much money you can put in place when you have a
4 specific project in front of you that would bring money
5 in. They don't have that specific project in front of
6 them right now.

7 When they do, they've committed to look at the
8 numbers at that time. How can they decide now how much
9 money to put toward truck replacement when they have no
10 profits coming in from the West Complex, all they have
11 is money to build a road? That's it.

12 MEMBER BUSTAMANTE: Is there a percentage of
13 profit that is on this particular program? I believe
14 that in the current truck replacement program there is a
15 certain percentage of profit that is put toward the
16 program, so regardless of the amount of resources or
17 profit that you make, there's a very small percentage --
18 I thought I remember, and I didn't want to say a number,
19 but I thought it is a percent, like ten, that goes
20 toward this truck replacement program.

21 MR. THAYER: That I know of, there's two
22 programs, I think, from what I've heard in the state.

23 MEMBER BUSTAMANTE: Does anyone know? Does
24 anyone know who is familiar with the program?

25 MR. THAYER: The program in LA, Long Beach

1 started --

2 MS. PERRELLA: I can only speak to the program
3 in LA and comment on how the program works in Oakland.
4 There was a sum certain replacement program in LA, and
5 that was ten million dollars. And the way that we came
6 up with the five percent was to look at what percentage
7 that ten million dollars was of the revenues generated
8 at the terminal for which that mitigation measure was
9 imposed, which was the China Shipping Terminal.

10 And what we did when we calculated our math
11 was that actually came out to 7.4 percent of the
12 revenues from the China Shipping Terminal, but to be
13 conservative, we proposed five percent. But as you
14 recommended, this is a percentage that staff can work
15 out. And obviously working with a percentage as opposed
16 to a sum certain provides flexibility so that in years
17 when the Port is not profitable, it contributes less
18 money, and in the years it is more profitable and
19 putting more trucks on the road, then it contributes
20 more money at that time.

21 MR. THAYER: Curtis informs me that he recalls
22 that recently the Port of LA adopted a percentage. What
23 was it a percentage -- one and a half?

24 MR. FOSSUM: I think so.

25 MR. THAYER: For generalized --

1 MEMBER BUSTAMANTE: How much?

2 MR. THAYER: One and a half percent.

3 MEMBER BUSTAMANTE: That's what I thought.

4 MR. THAYER: But it wasn't just for trucks, it
5 also involved other forms of air quality improvements,
6 so again, I don't know but it sounds like --

7 MEMBER BUSTAMANTE: What was it in Oakland?

8 MR. SCHUSSMAN: I don't know that percentage.
9 In Oakland -- the way it worked in Oakland was the Port
10 knew what revenues it expected to get from its terminal
11 development. It, then, was able to figure out what
12 amount of money feasibly to put towards air quality
13 mitigation as a whole, not just trucks. It worked with
14 the nearby community then to allocate a specific amount
15 of money to truck replacement. It was not a percentage.
16 And then it was able to figure out what would make
17 sense, as far as cost benefit.

18 There were some types of air quality
19 mitigation, frankly, that you could get a lot more
20 pollution reduction from than truck replacement, and so
21 more money went to that than to truck replacement.
22 Truck replacement was pretty far down the list, but once
23 they got to that, they allocated some money to truck
24 replacement.

25 Here, when you're talking about a profit of

1 \$200,000, their port has already committed to spend a
2 lot of its money to mitigation for a variety of impacts,
3 not just air quality. And truck replacement may be when
4 truck traffic increases cost effective to also spend
5 money on, but if truck traffic doesn't increase for 20
6 years from now, I can tell you it will not be cost
7 effective to put money toward truck replacement. There
8 will be a lot better air quality mitigation that will be
9 in place at that time. So to even come up with a
10 percentage right now doesn't make a whole lot of sense,
11 because we don't know what the best air quality
12 mitigation will be today for something 20 years from
13 now.

14 We do know what things make sense today. If
15 they were having a huge increase in truck traffic today,
16 then taking those oldest diesel trucks off the road
17 would make sense. If they don't have a huge increase in
18 truck traffic until many years from now, those
19 diesels -- the heaviest polluting diesel trucks will
20 have already been worked out of the fleet. And with the
21 new regulation that the state has been imposing, diesel
22 trucks are not going to be the heart of your emissions.

23 MEMBER BUSTAMANTE: Well, I don't know. I
24 mean I've come from the Central Valley -- in fact, if
25 you had told me on the truck idle that just the weather

1 issue alone would have been -- you know, probably would
2 have gotten me. But, you know, I've been in the Central
3 Valley and there aren't a whole lot of truck fleets that
4 are brand new.

5 MR. SCHUSSMAN: I agree, and that's always
6 taken into account. The Port of Stockton hired air
7 quality specialists and traffic specialists with Central
8 Valley experience in particular. They worked -- they
9 used actually a model for truck fleets developed out of
10 Sacramento. They have been trying to assess all of
11 that.

12 They also did do a thorough health risk
13 assessment of all emissions from a build-out of the
14 whole port, trucks, ships, everything, and thankfully
15 found that emissions would not cause a significant
16 health risk for any of the residents in the Port area,
17 so this all has been investigated thoroughly.

18 MS. ARONBERG: Logically, it seems to me that
19 since other ports do pay in through the council those
20 percentages, figure out those percentages like Ms. Lin
21 did, and apply that same percentage to this port, to the
22 west end portion of it. That's fair. If the profits
23 are very, very low, it will be a tiny amount
24 contributed. If the profit is more, it's a large amount
25 contributed. And it just seems like it's fair to have

1 ports paying a similar amount as far as the percentage
2 of their profits, so that's where I go on that.

3 MEMBER HARPER: I guess I'm back to the
4 clarification point. I just heard you say that applying
5 this percentage to the west end portion of the project
6 and I think the lieutenant governor was talking about a
7 percentage of the entire operations of the Port, so
8 there seems to be some conflict here in need of some
9 clarity, if possible.

10 MEMBER BUSTAMANTE: I'd be more than happy to
11 amend the motion to apply it to the new portion of the
12 Port of which this is a part of and make that motion and
13 look for a site.

14 MS. ARONBERG: I would like one small point of
15 clarification. You had some very insightful comments
16 earlier about the EIR, Mr. Lieutenant Governor, and the
17 EIR, in my opinion, is inadequacy and in someone's
18 else's opinion and maybe staff's opinion as well. Is
19 there a way to address that in this motion?

20 MEMBER BUSTAMANTE: I don't know how.

21 MS. ARONBERG: Some sort of finding. Can we
22 have a finding concerning the EIR?

23 MR. THAYER: I'd have to ask the attorneys for
24 that because there are certain findings that are
25 required of us and some --

1 MS. ARONBERG: These aren't required findings.
2 It would be --

3 MR. THAYER: Sort of an observation.

4 MS. ARONBERG: Correct, an observation.

5 MR. HAGER: We're not judging the adequacy of
6 the EIR and, as I say, I don't think either -- and staff
7 can correct me if I'm wrong, I'll certainly speak for
8 myself, I'm not in a position to make a recommendation
9 one way or the other on the adequacy of the EIR in total
10 and I don't know if staff is either.

11 MR. THAYER: But if the staff wanted to
12 include in its action today something that would be
13 critical of the EIR is what I'm hearing the
14 Commissioners say, what's the legal consequence?

15 MR. HAGER: There's no legal consequence if
16 it's not -- I think I was concerned about the word
17 finding. Observation, all right.

18 MEMBER HARPER: Let me follow up a little bit
19 with that then. Given that the two parties in the room
20 are in litigation elsewhere, would a finding one way or
21 another potentially jeopardize one of those parties
22 directly or indirectly?

23 MR. HAGER: I think a finding --

24 MEMBER HARPER: Or even a statement of any
25 kind?

1 MS. ARONBERG: Yeah, a statement of an
2 observation. Forget finding. It seems to --

3 MR. HAGER: I'm sure that every party whose
4 side benefitted from that observation would use it.

5 MS. ARONBERG: The EIR seems, to our office,
6 to really fail to address so many environmental issues
7 related to this bridge and in development in general,
8 but I think the --

9 MEMBER BUSTAMANTE: We haven't reviewed the
10 entire EIR. I feel that it would be kind of anecdotal
11 information that came -- gave me tremendous pause, but I
12 don't know that we could indicate that a review with the
13 EIR has taken place of the entire EIR, so I'm a little
14 bit concerned about us making some finding or --

15 MS. ARONBERG: Observation. Just observing
16 that it seems like the environmental mitigations seem to
17 me inadequate, just as an observation.

18 MEMBER BUSTAMANTE: I think you could make a
19 statement for the record and I think that that could be
20 sufficient to list your concerns regarding the EIR, but
21 I don't know that I would be comfortable with some --
22 because I personally haven't reviewed them and I have
23 not had any thorough review given to me by anybody on
24 staff. The staff says they haven't thoroughly reviewed
25 the EIR. All I've gotten is anecdotal information about

1 bits and pieces of it which, if they find out to be all
2 true, sounds like the litigants -- those who are
3 defending this EIR are going to have a difficult time.

4 MR. HAGER: May I add one thing? I really am
5 concerned about the Commission making a comment in the
6 sense even with an observation involving itself in the
7 merits of the litigation to which it is not a party.

8 MS. ARONBERG: Okay. Just it struck me that
9 the city of Stockton, the San Joaquin County, Boggs
10 Tract community --

11 MEMBER BUSTAMANTE: I guess you can always
12 direct it to staff to --

13 MS. ARONBERG: Maybe they should. They were
14 even considering, apparently, moving the entire Boggs
15 Tract community -- picking them up and moving them
16 because of the potential environmental impacts. And
17 then to almost do nothing to protect these folks
18 seems -- it seems almost an impossibility.

19 MEMBER BUSTAMANTE: It's quite a conundrum and
20 unless you really want to put Jack to work and have him
21 really do -- I think in doing something with a
22 requirement of a truck replacement probably is about as
23 far as I can see us being able to go. And I wish we
24 could do more on the Boggs Tract. I think that there's
25 likely to be something -- I wish we were the lead

1 agency. I don't believe that with the anecdotal
2 information that we've received that we would have
3 accepted the EIR, but we have not thoroughly reviewed
4 the EIR, so it's what we can do, I think, at this point.

5 MS. ARONBERG: So I do second the motion.

6 MEMBER HARPER: Madame Chair, just one more
7 question for the Port representatives. As I understand
8 the motion, it would be to apply some type of truck
9 replacement program to the profits derived from the
10 expansion of the west end part of the Port. Do you have
11 any comment on that? I thought I heard in your
12 testimony you're already contemplating some type of
13 mitigation efforts when the west end is developed.

14 MR. SCHUSSMAN: Right. What is contemplated
15 and what the Port adopted was a mitigation measure
16 requiring itself that if and when any development comes
17 to the West Complex that would substantially increase
18 truck trips, it would at that time assess the
19 feasibility of a truck replacement program, essentially
20 modeled on Oakland's program. And the components of
21 feasibility at that time would include what benefit you
22 would derive from replacing older trucks based upon the
23 truck fee in place at that time, the truck traffic
24 increases, the cost of the program and then what other
25 profits the Port has before it. That -- at that time

1 you could do the equation and you could figure out the
2 correct percentage.

3 As I understand, the motion is to pick a
4 percentage now. Frankly, I don't know how the Port
5 could pick what a percentage would be at this time
6 because I don't know how we would know when the
7 development would happen, how many older trucks would be
8 in the fleet at that time, and whether it would be cost
9 effective to replace trucks. Every environmental
10 consultant I've talked to -- and I've talked to a lot of
11 them -- tells me that several years from now truck
12 replacement will no longer be cost effective air quality
13 mitigation. It is cost effective today. It was cost
14 effective ten years ago when Oakland adopted it. That
15 doesn't mean it's cost effective later because once
16 those older diesel trucks leave the fleet, you're not
17 getting much benefit out of truck replacement.

18 So, you know, you're going to impose whatever
19 condition and the Port will then have to decide whether
20 it would accept this lease and whether any other
21 remedies are available to it. But this is, I believe,
22 outside of this agency's jurisdiction to impose this
23 measure.

24 I also think that, frankly, it's an
25 unreasonable measure given the problematic level that's

1 been approved by the board and given the fact that truck
2 replacement has nothing to do with building a bridge.

3 MEMBER BUSTAMANTE: I appreciate your comments
4 and thank you for coming. You know, I think that if
5 staff comes back with a more generic proposal, that it
6 becomes something that you talk about air pollution in
7 general giving different kinds of triggers that could be
8 used at any particular point in time to deal with air
9 pollution issues in the area, I think that the
10 Commission would be in favor of reviewing that kind of a
11 recommendation and look to you for coming back with
12 something that makes sense. But clearly this kind of a
13 program is at every major -- at every major port and I'm
14 trying to provide some type of standard like this at
15 every single port, I think, is important for us to do.

16 MR. THAYER: So if I could just summarize to
17 make sure the direction of the Commission is clear is
18 basically it's conditioning approval or -- the motion
19 would be on the condition to approve the lease with an
20 additional condition which would require a percentage of
21 profits to be worked -- that percentage would be worked
22 out between the Port and staff to go to truck
23 replacement with some possibility that, let's say, if
24 there's a demonstration that there be better air quality
25 benefit for using that money in a different way, that

1 there might be some flexibility?

2 MEMBER BUSTAMANTE: Yeah. I think her point is
3 well taken, and I think we should incorporate that into
4 this particular -- into this agreement that would take
5 place.

6 MR. THAYER: And of course the enhancements to
7 air quality mitigation would be over and above anything
8 that's required by any other law, so it, for example,
9 requires certain things be done. What we're talking
10 about here is an enhancement over what else has been
11 done.

12 MEMBER BUSTAMANTE: Or is being done
13 currently.

14 MR. THAYER: Or might be done. In other
15 words, we don't want a situation where the air board
16 goes to them and says, "Oh, we would like you to do the
17 following things," and then the Port comes to us and
18 says, "We want to take the money that is being set aside
19 pursuant to whatever the percentage is and use it for
20 something that is already being required by the air
21 quality" --

22 MEMBER BUSTAMANTE: It may be useful in order
23 to resolve an air pollution problem.

24 MR. THAYER: Okay. All right. Fine. And so
25 we'll work that out and bring it back to the Commission

1 for --

2 MEMBER BUSTAMANTE: Yes.

3 MR. THAYER: -- approval subject to that.

4 MS. ARONBERG: Does the maker of the motion
5 agree that the amount of the percentage should be fair
6 and generally equitable with the percentage paid by the
7 other California ports?

8 MEMBER BUSTAMANTE: I think I'd like to hear
9 back from the staff in consultation with the board what
10 that percentage ought to be.

11 MR. THAYER: And the percentage would be
12 against the profits.

13 MEMBER BUSTAMANTE: Correct.

14 MR. THAYER: Thank you.

15 MEMBER HARPER: He's going to come back to the
16 Commission then to understand what the percentage is?

17 MEMBER BUSTAMANTE: Exactly.

18 MEMBER HARPER: At least the --

19 MEMBER BUSTAMANTE: The parameters of the
20 program and agreement that would agree with -- if the
21 Port even wants to sit down and talk about it.

22 MEMBER HARPER: So the lease is still
23 conditioned on another action by the Commission?

24 MR. THAYER: Yes.

25 MEMBER BUSTAMANTE: Yes. There's a motion and

1 second. All those in favor of the motion, signify by
2 saying aye.

3 MS. ARONBERG: Aye.

4 MEMBER BUSTAMANTE: Those opposed?

5 MEMBER HARPER: Opposed.

6 MEMBER BUSTAMANTE: Let the record show that
7 the motion passed two to one.

8 And the next item of business on the regular
9 calendar is item number 59.

10 MR. THAYER: Item 59. Item 59 is a
11 presentation from staff regarding a port security item,
12 particularly regarding marine oil facilities and
13 preventing security problems.

14 Gary Gregory, who is chief of our Marine
15 Facilities Division, will make a presentation.

16 MR. GREGORY: Good afternoon, Commissioners.
17 I'm Gary Gregory. I'm the chief of the Marine
18 Facilities Division here at the State Lands Commission.
19 A lot of words here but we're here to discuss an
20 invitation by the California Maritime and Intermodal
21 Transportation System Advisory Council, or what we call
22 that Cal MITSAC, to join in their California maritime
23 transportation system homeland security exercise,
24 evaluation and training support consortium. A mouthful
25 of words. They have to figure some military things out

1 here and shorten these things up for us.

2 I've also been asked to give you a little
3 briefing on facilities security and where we stand today
4 in terms of that in California's ports.

5 Prior to September 11th, 2001, the Coast Guard
6 had broad regulations and broad requirements dealing
7 with security at facilities dealing with particularly
8 hazardous materials. These regulations go back to the
9 Espionage Act of 1921 and acts followed in the '50s and
10 '60s dealing with some hazardous materials.

11 They also, in 1999, started an organization
12 called the Marine Transportation System Initiative and
13 created a national advisory council that would take
14 information from local and regional advisory councils.
15 In California, there was a Southern California Advisory
16 Council and a Northern California Advisory Council.

17 Unfortunately, these councils nationwide were
18 typically less active than more active, but we were very
19 lucky that the Southern California organization was
20 very, very active. And they created, as they were
21 moving along, an organization, a subcommittee dealing
22 with safety and security. We were part of that as the
23 Marine Facilities Division and were involved in creating
24 new security requirements that could be implemented or
25 recommended for implementation in Southern California.

1 We were overtaken by events of the September
2 11, 2001 terrorist activities. At that point this MTS
3 Safety and Security subcommittee became the focal point
4 of MTS, and we worked very hard and had long, long
5 meetings where we created a proposal of infrastructure
6 and needs dealing with security at marine facilities
7 that could be used throughout the West Coast of the
8 United States and potentially nationwide.

9 At that point, the Coast Guard captain of the
10 Port, who was the single federal authority with
11 responsibility for port activities, the captain of the
12 Ports of the Port of Los Angeles and Long Beach came to
13 us and said, "We need to implement these requirements as
14 quickly as possible. We cannot, however, as the Coast
15 Guard do it in a rapid way because we have to go through
16 the national regulatory policy system."

17 At that point under our authority under the
18 Lempert-Keene-Seastrand Oil Spill Prevention and
19 Response Act, we could, in fact, implement or promulgate
20 regulations dealing with marine oil terminals in the
21 state of California. And in March 2002, we did that on
22 an emergency rule basis, and in February 2003, we had
23 final regulations that came out that were imposed again
24 on marine oil terminals.

25 These regulations were used as a model for

1 other organizations in the future and actually became
2 part of the heart of the Coast Guard's national
3 requirements later on. Also developed was the
4 California Maritime and Intermodal Transportation System
5 Advisory Council, which was taking information from the
6 two regional councils, Southern California and Northern
7 California, in attempting to present those to the
8 federal government as a statewide list of problems,
9 initiatives, recommendations.

10 We've been probably a little more successful
11 than less successful with Cal MITSAC, but it is the
12 first time we've tried to integrate statewide needs and
13 it is the only body that I'm aware of that speaks to the
14 federal government at all in terms of statewide needs on
15 maritime issues.

16 After the events of September 11, the
17 International Maritime Organization, or the IMO, started
18 moving rapidly toward developing security requirements
19 on an international basis. They came up with a body or
20 a code called the International Ship and Port Facilities
21 Security Code. We call it the ISPFSC code. Typically a
22 very slow moving and long -- it takes a long time to get
23 things developed through the IMO, and these were pushed
24 through in a very short period of time. They are,
25 however, a good set of requirements but they are general

1 in nature and performance-based.

2 The Maritime Transportation Security Act of
3 2002, the MTSA, the federal legislation, was meant to
4 implement the ISPFSC code along with some other
5 requirements. It did create new roles and
6 responsibilities for the Coast Guard and created the
7 Customs and Border Protection Agency, who works with the
8 Coast Guard within maritime security issues.

9 Using a model developed by Steven Flynn, then
10 a Coast Guard commander and now a scholar and
11 consultant, they developed a tiered-level of protection.
12 That is the tiered levels were to move away as far from
13 our coast and our land as possible threats. It started
14 out at the loading ports looking at the people that
15 were, in fact, loading containers, where were they
16 loaded, how was that done, how could they be secured, so
17 they would be secured at the loading end.

18 The second tier would be in transit on vessels
19 headed towards the United States. How could we ensure
20 that those cargos were not tampered with, how could we
21 ensure that the vessels were safe. That was done
22 through anti-tampering seals and some radio frequency
23 identification models that are being used for these
24 containers.

25 And finally, the third tier was a look at U.S.

1 ports and that is what do we do when it gets here? We
2 look now -- we have radiation centers. We have portals
3 that are able to look through containers and look for
4 unusual objects within the containers using gamma and
5 x-ray radiation, and, of course, we have physical
6 inspection of these containers.

7 Interestingly, the Rand Corporation came out
8 with a study just published just a few days ago
9 evaluating security of global containerization supply
10 chain. They are not looking at things in a tiered way
11 but, in fact, in levels. But the levels and the tiers
12 are fairly similar. They are looking at the supply
13 chain in terms of the suppliers and the people that need
14 to move cargo. They're looking at the organizations
15 that actually move the cargo, and then they're looking
16 at organizations that supply oversight.

17 And as they talk through different layers and
18 connect different layers, interestingly, we get back to
19 a three-tiered situation with many of the same
20 recommendations as the programs that we're following
21 today. So it's just a different way of looking at it.
22 I think a different logical way of looking at the
23 problems that we're approaching.

24 In the implementation of the Coast Guard's
25 programs under the MTSA, regulations under -- actually

1 Title 33 Code of Federal Regulation section 105 puts
2 forward the Coast Guard requirements for security at
3 marine facilities. And in section 105.220, it
4 specifically requires drills and exercises at these
5 marine facilities.

6 These requirements are performance-based
7 primarily. Relatively generic in nature. People in the
8 industry, in fact, are sort of shrugging their shoulders
9 wondering, "How do we comply with this?" They're
10 required to have a drill every three months. That drill
11 can test -- should test a part of your facility security
12 plan which is required under the regulations. We also
13 require a security plan which is, in essence, the same
14 court plan that the federal government requires and we
15 require that with our first set of regulations.

16 The sorts of things that you could look at
17 might be unauthorized entry into a facility, response to
18 alarms, how do you notify law enforcement, so these
19 drills are particularly small in nature. They're brief.
20 They're looking at small bits and pieces of your
21 facility's security plan. And interestingly, the
22 regulation states specifically that the vessels that are
23 at the facility cannot be required to participate in
24 these drills.

25 Facilities are also required to have

1 exercises. They're required to have an exercise every
2 18 months, and it's meant to be a full test of the
3 security program. These may be full scale live
4 exercises or they may be tabletop simulations or even
5 seminars. They may be combined with your exercises or
6 another facility's exercises or with vessels that are
7 also using the facility, but they must test
8 communications and notification capability, and they
9 should test coordination, resource availability and the
10 facility's ability to respond.

11 This is where the consortium comes into play,
12 in fact. A consortium will be a part of Cal MITSAC, and
13 its primary mission will be to create a forum to ensure
14 that California's maritime assets are given the proper
15 opportunities and resources to conduct exercises that
16 the consortium would like to be at a national standard.

17 The consortium wants to develop tools for the
18 use of conducting the exercises, evaluation formats and
19 templates in styles in a way of ensuring that these
20 drills and exercises are providing something useful to
21 the facility and to overall security at our marine
22 facilities.

23 The consortium will be largely information
24 sharing. It will be largely a promotional organization
25 and will work to combine the resources that are out

1 there through the many agencies that have opportunities
2 here. Primary members of the consortium today, as put
3 together, would be core members of Cal MITSAC, the
4 California Governor's Office of Homeland Security, the
5 Military Department of the State of California, the
6 California Maritime Academy, Lawrence Livermore National
7 Laboratories, and a number of smaller federal
8 organizations and agencies that are involved with
9 security issues and have particular skills in dealing
10 with security issues. Again, Exhibit A lists all of the
11 membership of those facilities -- of those companies.

12 To be invited are the California State Lands
13 Commission, the Center for International Trade and
14 Transportation at the California State University Long
15 Beach, the University of Southern California Center for
16 Risk and Economic Analysis of Terrorist Events, the U.S.
17 Coast Guard and the California Highway Patrol. By
18 bringing those members into the consortium, Cal MITSAC
19 believes that it has the full gamut covered. It has the
20 regulatory agencies that are there. It has the people
21 with the resources and the skills, the financial
22 wherewithal to help to put these templates together, and
23 the experience certainly through academia to assess what
24 we're looking at afterwards, how successful have we
25 been.

1 Membership responsibilities. Primarily, Cal
2 MITSAC wants to ensure that the members will be
3 involved, that they'll be there, they'll be in the
4 meetings, that they will use the best energies that they
5 have and perhaps resources, if available, particularly
6 in kind, but the agencies and organizations will share
7 research and share information openly, and that they
8 will have web-based interconnections to make sure that
9 the information that they have is available to the
10 public.

11 A staff recommendation largely is a request to
12 authorize the executive officer to accept the invitation
13 to become a core member of the consortium and to execute
14 the membership agreement, and it would be to authorize
15 staff to participate in the consortium in accordance
16 with the membership agreement.

17 I'd be happy to answer any questions that you
18 might have.

19 MEMBER HARPER: Thank you. You may have said
20 this and I probably just missed it in the presentation.
21 Has the California Governor's Office and Homeland
22 Security and the Military Department already accepted an
23 invitation to join?

24 MR. GREGORY: Yes. Yes. In fact, they were
25 the original drafters of the membership agreement.

1 MS. ARONBERG: Does Ms. Gonzalez have
2 anything?

3 MS. GONZALEZ: Nothing. Thanks.

4 MS. ARONBERG: We would just like to note that
5 homeland security is one of California's most important
6 activities, so it's great that you move forward on this
7 and the motion that we very much support and hope that
8 the Lands Commission can potentially pursue other areas
9 of port security where it's possible for us to pursue,
10 which we discussed with staff a little and hopefully
11 we'll get into that.

12 MR. THAYER: I understand.

13 MEMBER HARPER: I'd be happy to move the staff
14 recommendation.

15 MS. GONZALEZ: I can second it even if I'm
16 not -- no, I'm, like, wait. Either one.

17 MS. ARONBERG: I'll second. And we have a
18 unanimous vote given the rules of admission.

19 MR. THAYER: Meaning that the Chair, the
20 standing chair was voting in this particular one.

21 MS. ARONBERG: Right.

22 MR. THAYER: Okay. Thank you.

23 MS. ARONBERG: That takes care of that matter.
24 Item 60 is an informational report and we think it will
25 be pretty quick.

1 MR. THAYER: I'll be very quick. The
2 Commission has a small office in Huntington Beach. It
3 holds four employees that do oil field inspections off
4 of Orange County. There has been some pressure on the
5 Commission to sell that with the proceeds to be used to
6 help balance the state budget. There are other factors
7 that need to be considered before we reach a decision.
8 Would we really be saving the state money or would it
9 cost us more to get it renovated? It doesn't make
10 sense.

11 We've also heard from a local citizen who
12 would prefer that this office be kept open and that it
13 be devoted as an environmental center. We have worked
14 with the Department of Finance and General Services to
15 arrange for a feasibility study that will give us the
16 answers to these questions. And we'll return to the
17 Commission on a future date when we have all this
18 information compiled.

19 MS. ARONBERG: Thank you. It looks like we
20 have come to the public comment period of the meeting.
21 Are there any speakers who wish -- I don't have any
22 cards specifically for public comment, so please
23 indicate so by raising your hand.

24 Seeing none, that concludes the open meeting,
25 and with no other business before us, let's adjourn the

1 session and please let's have the room cleared.

2 (Whereupon, at 4:34 p.m., the proceedings were
3 adjourned.)

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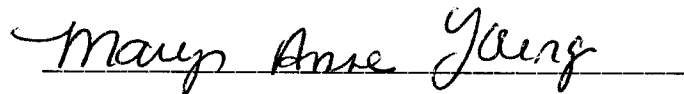
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REPORTER'S CERTIFICATE

I, Mary Anne Young, a Certified Shorthand Reporter for the State of California, do hereby certify:

That the foregoing proceedings were reported by me stenographically and were transcribed through computerized transcription under my direction; and the foregoing is a true and correct record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my hand
This 21st day of December, 2004.



MARY ANNE YOUNG, CSR NO. 12799