

MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

ORIGINAL

STATE CAPITOL
ROOM 437
SACRAMENTO, CALIFORNIA

THURSDAY, FEBRUARY 17, 2005
1:00 P.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
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APPEARANCES

BOARD MEMBERS

Mr. Cruz M. Bustamante, Lieutenant Governor, Chairperson

Mr. Steve Westly, State Controller, represented by
Ms. Cindy Aronberg

Mr. Tom Campbell, Director of Finance, represented by
Ms. Anne Sheehan

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Jack Rump, Chief Counsel

Mr. Curtis Fossum, Senior Staff Counsel

Ms. Kimberly Lunetta, Executive Assistant

Mr. Dave Plummer, Regional Manager, Land Management
Division

ALSO PRESENT

Mr. Richard Aschieris, Port Director, Port of Stockton

Mr. Dennis Brueckner, ILWU Local's 54, 34, 91, 6

Mr. Lester Denevan

Mr. Alan Hager, Deputy Attorney General

Ms. Jenny Harbine, Natural Resources Defense Council
Friends of Riviera Cliffs, Deltakeeper

Mr. Lee Sandahl, International Longshore and Warehouse
Union

Mr. J.F. Schneider

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1 ACTING COMMISSIONER SHEEHAN: I know I have them.
2 But I was not in attendance at the meeting.

3 CHAIRPERSON BUSTAMANTE: Oh, okay.

4 The next order of business is the Executive
5 Officer's report.

6 EXECUTIVE OFFICER THAYER: I wanted to report on
7 two or three items.

8 The first is, at our last commission meeting, we
9 had a presentation concerning the adoption of best
10 management practices for marinas in California and
11 specifically on State Lands Commission leases. Staff at
12 the direction of the Commission had gone out and reviewed
13 what the marinas were, what the marina best management
14 practices were in other states, to determine if California
15 was up to date and did other investigations to ensure that
16 our marinas were going to be operated as environmentally
17 safe as possible.

18 There was one -- the Commission was generally
19 satisfied with the best management practices that were
20 presented to it. But a member of the audience asked
21 questions about copper-based paint and whether those would
22 be phased out at this point. I think that that
23 individual -- which this took place in San Diego --
24 understood that there was still some doubt about whether
25 or not the potential replacement paints existed at a

1 reasonable cost and whether they were efficient enough to
2 work. And we said we'd look into that.

3 We did investigate that, looked at a SEA GRANT
4 study. And we think that at this point those replacement
5 paints aren't really available that will do a good enough
6 job. But we think that that's, as is the case with a lot
7 of environmental issues, something that we'll continue to
8 monitor and watch. And if it appears that replacement
9 paints are feasible, we'll come back to the Commission and
10 ask for a revision to those best management practices.

11 Interestingly enough, one of the potential
12 hazards of switching to an alternative paint prematurely,
13 that is, to a paint that doesn't necessarily work, is the
14 potential impact on importation of an invasive species.
15 And as it turns out, ballast water program is in fact
16 going to be participating in a study to look at potential
17 adverse impacts from not using copper paints or not
18 otherwise preventing the attachment of fouling, algae and
19 this kind of thing in foreign ports and then bringing it
20 back to California. So there are potential adverse
21 environmental effects from moving too quickly to
22 non-copper-based points. But we'll get come back to the
23 Commission on that issue.

24 The second issue which was raised at our last
25 Commission meeting had to do with the spill of mostly gas,

1 a little bit of oil, from an offshore oil platform in
2 federal waters which was run by Venoco. And the
3 Commission asked that at the next Commission meeting we
4 return with Venoco so that there'd be an opportunity to
5 talk with Venoco about the cause of that spill and what
6 steps were taken to prevent it from happening again, and
7 whether there were potential similar problems on the
8 platform, Platform Holly, that Venoco operates in state
9 waters.

10 Regretfully the investigation is not yet
11 complete. It's primarily being run by the Mineral
12 Management Service which is the federal agency that
13 controls federal offshore oil leases. They're doing
14 various tests. We had thought that study might be done as
15 timely as this week. But my understanding as of yesterday
16 it still was not out. So what we propose to do is wait
17 for that study to come out, investigate it further as a
18 staff, review it with Venoco and MMS, and then bring that
19 back potentially to the next Commission meeting if we can
20 get that information, so that we'd be able to -- the
21 Commission would have an opportunity to review the results
22 of that investigation.

23 ACTING COMMISSIONER ARONBERG: Mr. Chair?

24 On both items, they were requests of Controller
25 Westly. So on the first item, which is the

1 environmentally safer leases, I understand they still have
2 one stakeholder group to talk with before fully
3 implementing the program. And the Controller would just
4 ask that that get underway as soon as possible so that
5 these leases get moving. And we realize that there is one
6 on the calendar today, which is great. But we'd love it
7 to be an overall program. And, secondly, on Venoco, as
8 soon as that report can be made, hopefully by next
9 meeting, the Controller would appreciate it.

10 EXECUTIVE OFFICER THAYER: Certainly.

11 CHAIRPERSON BUSTAMANTE: Any questions?

12 ACTING COMMISSIONER SHEEHAN: No.

13 CHAIRPERSON BUSTAMANTE: Do you have anything
14 else for your report?

15 EXECUTIVE OFFICER THAYER: The last thing I
16 wanted to note was actually two birthdays. Kim Lunetta,
17 who is my assistant, who attends a lot of your meetings
18 here, I think I'm setting up --

19 CHAIRPERSON BUSTAMANTE: So, Paul, how old is
20 she?

21 (Laughter.)

22 ACTING COMMISSIONER ARONBERG: Twenty-five.

23 EXECUTIVE OFFICER THAYER: I think it's about 23
24 or 24. I'm not sure.

25 And I have to also notes that I've heard a rumor

1 that one of the Commissioners, Commissioner Aronberg, just
2 celebrated her birthday. And I don't know how old she is
3 either.

4 ACTING COMMISSIONER ARONBERG: I'm also about 24.
5 (Laughter.)

6 EXECUTIVE OFFICER THAYER: Oh, 24. I'm sure
7 that's the case.

8 But I wanted to note those birthdays.
9 And that concludes the Executive Officer's
10 report.

11 CHAIRPERSON BUSTAMANTE: That's a very thorough
12 report.

13 (Laughter.)

14 CHAIRPERSON BUSTAMANTE: Any births that --
15 (Laughter.)

16 EXECUTIVE OFFICER THAYER: I'll ask my wife.

17 CHAIRPERSON BUSTAMANTE: The next order of
18 business then, if there's no questions by the
19 Commissioners, and if there's nobody in the audience who'd
20 like to throw stones, we will go ahead and proceed to the
21 adoption of the consent calendar.

22 Paul, is there any items that have been taken off
23 the consent calendar?

24 EXECUTIVE OFFICER THAYER: Yes, Mr. Chair, there
25 are five items. They are C 14, C 30, C 43, C 52 and C 54.

1 And in each of those cases I believe we'll just be
2 bringing those back at a succeeding Commission meeting.

3 CHAIRPERSON BUSTAMANTE: Okay. You think they'll
4 be ready by the next meeting?

5 EXECUTIVE OFFICER THAYER: I believe so. But
6 it's a question of making sure -- in each case there's a
7 different situation -- making sure they're addressed
8 before we bring them back.

9 CHAIRPERSON BUSTAMANTE: Is there any other items
10 that the Commission would like to pull from the consent
11 calendar?

12 ACTING COMMISSIONER SHEEHAN: No.

13 CHAIRPERSON BUSTAMANTE: None.

14 Is there anyone in the audience, or if there's
15 any Commissioners that'd like to speak on anything on the
16 consent calendar, not just pulling anything off, but speak
17 on anything or in general?

18 Anyone in the audience would like to speak on any
19 of the consent calendar items?

20 Don't all rush up at once.

21 Seeing none. If there is none, I'll take a
22 motion to approve the consent calendar.

23 ACTING COMMISSIONER SHEEHAN: I'll move adoption
24 of the consent calendar.

25 ACTING COMMISSIONER ARONBERG: Second.

1 CHAIRPERSON BUSTAMANTE: A motion's been made to
2 accept the consent calendar, and a second.

3 Let the record show that it's a unanimous vote.
4 Moving on to the regular items on the calendar.
5 We have Item No. 55?

6 EXECUTIVE OFFICER THAYER: Yes, Mr. Chair.

7 This item has to do with the Port of Stockton.
8 The Commission has had several previous serious hearings
9 on this matter, and at the last hearing, in December, the
10 Commission did approve a lease for the bridge at the Port
11 of Stockton subject to the conditions laid out in the
12 staff report; but, in addition, adding an oral condition,
13 which had to do with a truck air quality program. It
14 requested that the Commission staff draft -- or document
15 the condition that the Commission had attached and bring
16 it back for the Commission's approval. And we've got that
17 for you today.

18 Dave Plummer is the staff person who's working on
19 this from the Land Management Division and he'll make the
20 presentation.

21 REGIONAL MANAGER PLUMMER: Good afternoon,
22 Chairman Bustamante, Commissioners. My name's Dave
23 Plummer, Regional Manager for the Land Management
24 Division.

25 As Paul told you, at the last meeting the lease

1 and the assignment were approved on the condition that we
2 have a truck replacement program that was funded by a
3 percentage of the Port's profits attributable to the West
4 Complex expansion area.

5 The Commission directed that the program be
6 consistent and equitable when compared to the programs of
7 the other ports and that the program have flexibility that
8 monies could be dedicated -- that were dedicated to the
9 program could be spent in other areas if you got a better
10 emissions reduction.

11 In order to compare the programs, staff contacted
12 the Port of Los Angeles, the Port of Long Beach, and the
13 Port of Oakland about their truck replacement programs in
14 order to form a description that was in compliance with
15 the condition imposed by the Commission on December 9th.

16 The Three ports have all contributed money, but
17 they've all been fixed sums. Not one of the ports was
18 based on a percentage of profit or any other percentage.

19 The Port of Long Beach made a one-time
20 contribution of a million dollars. That money was
21 allocated towards clean diesel fuels technology rather
22 than truck replacement.

23 The Port of Los Angeles agreed as part of its
24 litigation settlement NRDC, stemming from the China
25 Shipping terminal, to contribute \$10 million over a

1 five-year period to replace or retrofit trucks serving the
2 port. Additionally, the port allocated separately from
3 the litigation approximately \$17 million over a four-year
4 period. That could be used for truck modernization and
5 diesel particulate filter installation.

6 The Port of Oakland has made a one-time
7 allocation of \$1.48 million. And that was in connection
8 with two specific terminal projects.

9 So in order to satisfy the Commission's direction
10 that it be based on a percentage and it be comparable,
11 staff looked at what had been allocated by those three
12 ports, looked at what we could compare it against that
13 would be equitable.

14 In order to get a common denominator, staff
15 looked at net operating revenues as the common denominator
16 found in all the audited reports, all consistently
17 reported, all had the same elements.

18 And then we looked at what had been contributed.
19 Because the settlement monies from the China Shipping was
20 spread out over five years and the additional allocation
21 by the Port of Los Angeles was four years, we looked at
22 five years as being a number we could spread the
23 contributions out to have consistency in the programs.

24 The resultant percentage allocations are before
25 you in the staff report.

1 If you look at the Port of Long Beach, I did it
2 two ways actually in the staff report. One, if you just
3 took \$1 million and did it on a one-year allocation, it
4 was three-quarters of 1 percent. And if you spread it out
5 over five years, less than two-tenths of a percent.

6 The Port of Los Angeles, if you look at the
7 non-litigation monies, which was \$17.12 million, if you
8 spread that over five years it's a 2.21 percent allocation
9 against their operating -- net operating income.

10 If you used the China Shipping litigation
11 settlement, which staff doesn't believe is really an
12 accurate reflection -- that was monies derived from
13 litigation. The Port of Stockton is currently in
14 litigation. We don't know really what's going to come out
15 of that litigation. But if you looked at the China
16 Shipping litigation, monies spread over five years, that
17 was about a 1.3 percent allocation.

18 And If you looked at the combined allocations by
19 the port, the litigation monies and the non-litigation
20 monies by the Port of Los Angeles, that was about a 3.5
21 percent allocation.

22 The Port of Oakland spread over five years
23 against their -- what I put in the staff report was
24 maritime operating income. And the reason I did that was
25 I excluded income from the airport, because the Port of

1 Oakland has an airport. That didn't seem to be
2 consistent. It was a 1 percent allocation on a five-year
3 basis.

4 So as you can see, we have a spread. If you
5 eliminate Long Beach, because that's even less than 1
6 percent, and just looked at Oakland and the Port of Los
7 Angeles, you have a spread of 1 percent to 2.21 percent if
8 you don't include the China Shipping monies. And if you
9 look at the China shipping monies, then you have a range
10 of 1 percent to 3.5 percent, with the average contribution
11 being 2.25 percent.

12 So it was on that basis that staff and the Port
13 of Stockton worked to describe what we have called the
14 West Complex Air Emissions Reduction Program. That
15 requires the Port of Stockton to establish an air
16 emissions reduction account, and at a minimum deposit for
17 a period of five years 2.3 percent of the net operating
18 profit derived from the West Complex in compliance with
19 the direction given by the Commission.

20 The program funds consistent with that direction
21 shall be applied towards reducing diesel truck emissions.
22 But the program does have flexibility to allow monies,
23 subject to the approval of the executive officer and in
24 consultation with the local air control district and the
25 State Air Resources Board, that if there's a greater air

1 quality benefit to be achieved by spending money on
2 something other -- by truck air emissions, that that
3 program will allow for that.

4 We have set the program up that the program would
5 actually start at the opening of the bridge to traffic.
6 The NRDC argued that, you know, it was a bridge that was
7 bringing the traffic. Well, we didn't necessarily --
8 staff didn't necessarily agree with that nexus. If you
9 accept that premise, opening of the bridge seemed to be
10 the proper time to implement the program.

11 Staff recommends that acknowledgement of the West
12 Complex Air Emissions Reduction Program before you
13 satisfies the condition imposed by the Commission through
14 its approval of the lease to the Port of Stockton.

15 Do you have any questions?

16 CHAIRPERSON BUSTAMANTE: In the proposal, it
17 indicated a minimum of five years.

18 Is there any indication --

19 REGIONAL MANAGER PLUMMER: It's for five years as
20 a minimum -- a minimum of five years. That's correct.

21 CHAIRPERSON BUSTAMANTE: So is it renewable after
22 five years or does it sunset after five years?

23 REGIONAL MANAGER PLUMMER: It's a five-year
24 program, but we would look -- you know, the port has
25 ability to continue that program if they want. You know,

1 part of what -- yeah, existing environmental document
2 requires that as the port implements programs that brings
3 truck traffic to the West Complex as part of their
4 development, that they still have to look at truck
5 emissions.

6 They can keep this account open and make other
7 contributions. Our requirement is is that there be 2.3
8 percent of the net operating income for five years. But
9 they may continue that.

10 CHAIRPERSON BUSTAMANTE: But there's no
11 requirement?

12 REGIONAL MANAGER PLUMMER: No.

13 CHAIRPERSON BUSTAMANTE: Okay. Any questions by
14 the Commissioners?

15 Is the port director here?

16 Why don't you come forward. And you've asked to
17 be able to speak on this item?

18 MR. ASCHIERIS: Thank you, Mr. Chairman. My name
19 is Richard Aschieris and I'm the Port Director of the Port
20 of Stockton, California.

21 I just wanted to thank your staff. We worked
22 very hard on this since the last meeting. And I am
23 essentially here to answer any questions you might have.

24 CHAIRPERSON BUSTAMANTE: You're in support of the
25 proposal? You've worked it out?

1 MR. ASCHIERIS: Yes, sir.

2 CHAIRPERSON BUSTAMANTE: You have no concerns or
3 questions at this time?

4 MR. ASCHIERIS: No, I do not.

5 CHAIRPERSON BUSTAMANTE: Could you -- before we
6 go into other questions and comments from the audience,
7 could you explain for the record why it was that we needed
8 to have a meeting regarding this particular issue during
9 this month in order to be able to go forward on your
10 construction and the kinds of costs that you'd indicated
11 would be borne by you if we did not have this meeting?

12 MR. ASCHIERIS: Yes. Thank you, Mr. Chairman.

13 The port is very interested in moving ahead with
14 the Daggett Road Bridge project. We would like to get the
15 bids out on the street, so to speak, as quickly as
16 possible. We think we still have a window of opportunity
17 to get very competitive bids. We're very concerned that
18 if we delay further, that a lot of the companies that
19 would bid on our project would be busy on other projects
20 and would likely bid it, but those bids would very likely
21 be higher.

22 And we actually anticipate the ability to save at
23 least a few hundred thousand dollars, which for a port our
24 size -- our annual budget is, in a good year, about \$24
25 million. That is very significant to this project,

1 particularly in light of some construction materials
2 already increasing.

3 CHAIRPERSON BUSTAMANTE: We had planned to delay
4 the meeting until March. But at your urging, we moved up
5 the meeting schedule to accommodate it because of what you
6 had indicated would have been a substantial savings to the
7 port.

8 MR. ASCHIERIS: And the Port of Stockton
9 particularly appreciates your accommodating us on this
10 important issue.

11 CHAIRPERSON BUSTAMANTE: But that, in fact -- I
12 just want to make sure that for the record that -- because
13 otherwise we were not going to meet until March. And I
14 just want to make sure that for the record we have it
15 stated that it was at your urging and it was the potential
16 several hundred thousand dollars to the port that would
17 have cost had we not gone ahead with this meeting.

18 MR. ASCHIERIS: That is correct, Mr. Chairman.

19 CHAIRPERSON BUSTAMANTE: Any other questions by
20 the members of the commission?

21 Please.

22 ACTING COMMISSIONER ARONBERG: Following on the
23 Chair's earlier comment, would you have a problem with
24 continuing the project for more than five years?

25 MR. ASCHIERIS: Well, as stated, our

1 environmental impact report that was certified by our
2 board of port commissioners last June does call for
3 accommodations for increased traffic. So I don't -- I do
4 not foresee a problem with that. I would of course -- you
5 know, that's more than the port director's decision. I
6 have a board of port commissioners that I would go to and
7 consult with. But we are -- we have made commitments in
8 our environmental document to improving the air and having
9 an air program for the Port of Stockton and particularly
10 the West Complex.

11 ACTING COMMISSIONER ARONBERG: Then you wouldn't
12 have a problem with, if, let's say, instead of five year
13 or 10 years or --

14 MR. ASCHIERIS: That point, it works out well.
15 And we're -- you know, I personally don't see any.

16 ACTING COMMISSIONER ARONBERG: Thank you.

17 CHAIRPERSON BUSTAMANTE: Any other questions by
18 the Commissioner?

19 We also have two other people who've asked to
20 speak, I believe also in support.

21 Is Dennis Brueckner here?

22 Please come forward.

23 And Lee Sandahl, you're on deck.

24 Go ahead and state your name for the record
25 and --

1 MR. BRUECKNER: Dennis Brueckner.

2 Thank you, Lieutenant Governor and members of the
3 Commission. I'm Dennis Brueckner. I'm the president
4 business agent for the longshore workers at the Port of
5 Stockton. And I speak in support.

6 This is going to create a lot of new living wage
7 jobs in our area, not just for the longshore workers, but
8 will also, you know, go out into the community, you know,
9 for more work. And this is really important to our
10 local -- you know, the small ports up and down the coast
11 are slowly disappearing because of lack of -- because of
12 the containerization. And this gives us an opportunity to
13 grow. It's a very unique opportunity for the Port of
14 Stockton. And we're very happy to have gotten this
15 property from the Navy so that we can expand and expand
16 our workforce.

17 I also currently serve on the Coast Safety
18 Committee for the ILWU for the whole West Coast. And
19 we're currently doing a diesel emission test at the
20 workplace to protect our workers, and I am directly
21 involved with that.

22 CHAIRPERSON BUSTAMANTE: Thank you.

23 MR. BRUECKNER: Thank you very much.

24 CHAIRPERSON BUSTAMANTE: Perhaps you can -- you
25 can send a copy of the report to the staff so we can also

1 monitor it.

2 MR. BRUECKNER: Most definitely.

3 CHAIRPERSON BUSTAMANTE: Thank you.

4 MR. BRUECKNER: Thank you.

5 CHAIRPERSON BUSTAMANTE: Lee.

6 And Jenny Harbine, you'll be up next.

7 MR. SANDAHL: Members of the Commission, good
8 afternoon. My name is Lee Sandahl, and I am a member of
9 and I am speaking for the International Longshore
10 Warehouse Union. I am before you today to ask your
11 support for the permit process for the new Daggett Road
12 Bridge construction process at the Port of Stockton's
13 Rough and Ready Island facility.

14 The construction of the new bridge will help
15 facilitate the creation of many new jobs. These new jobs
16 will come from new commerce that will be attracted to the
17 port by improved access the new bridge will provide.

18 The impact of these new jobs will have a
19 far-reaching effect in the region. Historically port jobs
20 provide living wage standards. The addition of the new
21 jobs, together with the higher wage standards, will have a
22 rippling effect that the Union feels will more than double
23 the economic benefit to the area.

24 Upon completion of the new bridge project, the
25 port will redirect its Rough and Ready Island traffic,

1 making Daggett Road its primary gateway. This will remove
2 a lot of the traffic that now exists and is traveling
3 through local neighborhoods.

4 I think it's easy to see how construction of this
5 new bridge will go a long way in addressing the critical
6 economic concerns that now exist in this area.

7 It is for these reasons that the Union urges the
8 Commission to support the new Daggett Road Bridge project.

9 Thank you.

10 CHAIRPERSON BUSTAMANTE: Thank you.

11 Any questions of Mr. Sandahl?

12 Jenny.

13 MS. HARBINE: Hi. My name is Jenny Harbine. I'm
14 from the Law Firm of Shute, Mihaly & Weinberger. I'm
15 speaking today on behalf of NRDC, who couldn't be here,
16 DeltaKeeper and Friends of Riviera Cliffs.

17 We're concerned that the truck replacement
18 program that is set forth in the staff report doesn't meet
19 the Commission's intent to create a meaningful program to
20 benefit air quality because the staff report provides no
21 information on the actual amount of money that will be
22 contributed to the program. And because the port has
23 apparently refused to project its net operating profits,
24 there's no guarantee that this will be a meaningful
25 program at all.

1 I'm concerned that this has been portrayed as a
2 case of jobs versus air quality. And that's certainly not
3 the case. Many ports in this state who are doing fabulous
4 business have adopted similar programs without
5 jeopardizing their ability to create jobs.

6 Moreover, the Commission expressed its intent to
7 create an equitable program. And the most equitable thing
8 that the Commission can do I believe is to require the --
9 not to put the port at a competitive advantage over ports
10 that have chosen to mitigate their air quality impacts.

11 The years in which the program will be
12 implemented will be relatively early years in the
13 project's life and won't represent the West Complex's
14 highest years of net operating profits. For example, if
15 the program were implemented today, 2.3 percent of the net
16 operating profits would be \$11,000 per year. Over five
17 years you could purchase two trucks at \$24,000 a truck.
18 And we don't believe that is a meaningful program. And
19 over the life of the project, where eventually the port
20 projects that 1.2 million truck trips will be generated by
21 the West Complex.

22 We have three potential solutions to this dilemma
23 we see. One is to require the port to pay a backstop
24 payment of a million dollars per year if the percentage of
25 their net operating profits falls below that amount.

1 The second option would be to have the port
2 project it's net operating profits at full project
3 build-out and tier the percentage payment to that amount
4 rather than the years in which the project is actually
5 implemented.

6 And the third and enter the less desirable option
7 would be to have the port ascertain which years will have
8 the greatest truck traffic and implement the program
9 during those years, which will both insure that the port
10 is contributing to the program during the years where its
11 air pollution impacts are greatest and also will insure
12 that the program is adequately funded.

13 But we'd prefer the backstop payment system.

14 CHAIRPERSON BUSTAMANTE: Thank you.

15 Any questions of any of the speakers by the
16 Commission members?

17 Any additional public comment?

18 Seeing none.

19 I am willing to entertain a motion.

20 ACTING COMMISSIONER SHEEHAN: I will move the --
21 let's see --

22 CHAIRPERSON BUSTAMANTE: -- the staff
23 recommendation?

24 ACTING COMMISSIONER SHEEHAN: -- the staff
25 recommendation on the West Complex Air Emissions Reduction

1 Program?

2 CHAIRPERSON BUSTAMANTE: Is there a second?

3 I'll make the second.

4 Then we'll -- why don't we go ahead and call the
5 roll.

6 SECRETARY LUNETTA: Cindy Aronberg?

7 ACTING COMMISSIONER ARONBERG: Aye.

8 SECRETARY LUNETTA: Cruz Bustamante?

9 CHAIRPERSON BUSTAMANTE: Aye.

10 SECRETARY LUNETTA: Anne Sheehan?

11 ACTING COMMISSIONER SHEEHAN: Aye.

12 CHAIRPERSON BUSTAMANTE: The motion passes
13 unanimately by roll call vote.

14 And I guess we're ready for Item No. 56.

15 EXECUTIVE OFFICER THAYER: Mr. Chair and members
16 of the Commission, Item No. 56 has to do with a proposed
17 reduction in the fee for the Ballast Water Program.
18 Maurya Falkner, who heads up that program for the
19 Commission will make the presentation.

20 (Thereupon an overhead presentation was
21 Presented as follows.)

22 MS. FALKNER: Good afternoon. It's been a while
23 since I've seen all of you.

24 Today the Commission item is actually related to
25 reducing the fee amount. But Paul asked me to give you a

1 brief overview of the program. And I will try to be
2 brief.

3 CHAIRPERSON BUSTAMANTE: Is there any industry
4 people here to say "hurray" or anything?

5 MS. FALKNER: I'm kind of disappointed. I'll --

6 CHAIRPERSON BUSTAMANTE: Yeah, you're saving them
7 a hundred bucks a shot, right?

8 MS. FALKNER: Yeah. But Jay was supportive of
9 the --

10 CHAIRPERSON BUSTAMANTE: -- the reduction, I
11 would imagine.

12 MS. FALKNER: Yeah, thank you.

13 So if it's okay with you, I'll just give a little
14 bit on the fee and then a tiny small portion on the rest
15 of what's going in the program.

16 CHAIRPERSON BUSTAMANTE: Sure. Go ahead.

17 MS. FALKNER: Okay. Great.

18 --o0o--

19 MS. FALKNER: And all this. Oh good.

20 We've got several rules that are two-rule
21 packages and several reports that we're being required
22 develop in the program. And so I'm going to go briefly
23 over just a couple rules in the reports and then on to a
24 couple other things.

25 --o0o--

1 MS. FALKNER: This is specific to the amendment
2 that we're looking at today to reduce the fee. And we're
3 going through emergency amendment just so we can get it
4 going. But based -- if you guys may remember, in end of
5 2003 we got together, we raised the fee to \$500 per voyage
6 based on estimates on the number of voyages and program
7 costs and the compliance rate. We got together with the
8 technical advisory group in December of 2004 and
9 reevaluated those numbers. The voyages annually were
10 pretty close. The percent paying was actually higher than
11 95 percent. We're looking at -- 98 percent of the
12 industry is paying the fee every single time. That's a
13 pretty -- that's very positive for them. They should be
14 very proud of themselves.

15 A big factor in being able to decrease the fee
16 amount was the surplus that we had in the fund on July
17 1st, 2004. And that was as a result of a number of
18 things, but primarily funds were not released to us to run
19 the program for the first six months of 2004. So we have
20 a nice surplus.

21 We reran the numbers using the new variables, and
22 determines that we can easily drop the fee down to \$400
23 per voyage, and that would still leave us, all other
24 things being equal, with a surplus at the end of the
25 program that would cover uncertainties that might come up.

1 Brought that to the TAG. They approved it. And we will
2 come back to the TAG at the -- in a year approximately,
3 rerun the numbers again in case there are any changes.
4 But we think actually we probably will be able to drop the
5 fee again; the programs are going quite well.

6 So that's the amendment for today's item.

7 --o0o--

8 MS. FALKNER: We have one other rule-making
9 package that has gone into the Office of Administrative
10 Law, and it will be published tomorrow. And it covers the
11 coastal ballast water rules. The law required us to start
12 addressing those voyages. Currently we only deal with
13 vessels coming -- in terms of managing ballast water, we
14 only deals with vessels coming from foreign ports. This
15 rule would specifically address vessels that operate
16 between Cooks Inlet in Alaska and Baja, California,
17 coastally, so within 200 nautical miles.

18 And the idea is, you know, we're -- vessels come
19 into San Francisco that have 250 minimum nonindigenous
20 species. They pick those species up with that water and
21 transport it to Long Beach or down to San Diego. We want
22 to minimize the transfer of those organisms along the
23 coastline and from other ports along the coast.

24 So we met with the industry, had four meetings
25 with the industry over the course of two years,

1 specifically brought in experts on oceanography and
2 currents and things, and they met with marine biologists
3 and came up with the current rule-making package, which is
4 going to require vessels that operate along the West Coast
5 of North America to avoid port-to-port transfers; meaning
6 that if they pick up water in San Francisco and intend to
7 discharge that or need to discharge that in L.A., they'll
8 have to go out 250 nautical miles and conduct an exchange.
9 The distance offshore was based on best available
10 information that the oceanographers and the marine
11 biologists had for us. It also goes nicely with the
12 U.S -- excuse me -- with the International Maritime
13 Organization's resolution that was passed in February of
14 2004.

15 So that meets up nicely with that, gets published
16 tomorrow. If everything goes well, the -- they have two
17 public hearings in April, the rule will be signed and go
18 into effect 180 days after it's signed. That will allow
19 the industry and our staff to adequately educate everybody
20 and implement the program fairly.

21 CHAIRPERSON BUSTAMANTE: So that's some form of
22 aquacide, is that --

23 MS. FALKNER: I wish. We still don't have an
24 adequate aquacide out there. We're working on it, working
25 with technology vendors in the international and federal.

1 But it's an exchange process.

2 CHAIRPERSON BUSTAMANTE: I know. But how does it
3 work? Is it because it distributes the organisms and
4 disperses them in a way that they don't --

5 MS. FALKNER: Exactly. Picking up high
6 concentrations of organisms in port waters and exchanging
7 that water for near coastal, out 50 nautical miles or
8 beyond.

9 CHAIRPERSON BUSTAMANTE: Is the water colder and,
10 as a result, these --

11 MS. FALKNER: Probably it's colder, it has less
12 organisms in it, it has a different salinity. The
13 organisms picked up in port are less likely to survive out
14 there. It's the same -- similar principle as the 200
15 nautical mile --

16 CHAIRPERSON BUSTAMANTE: Is there any information
17 with respect to this exchange of organisms that having
18 been able to survive the 15 mile --

19 MS. FALKNER: There is not. But the Department
20 of Fish and Game is required and is going to be starting
21 biological surveys along the coastline this summer that
22 will be looking at some of those questions.

23 In addition, we are contracting with the
24 Smithsonian Environmental Research Center, using the
25 Carnival settlement funds, which I was going to discuss a

1 little bit, to do some ballast water exchange verification
2 work that will look at the differences between near
3 coastal, coastal, and further offshore waters in terms of
4 a bunch of chemical, physical, as well as biological
5 parameters. So we'll have a better idea of what are the
6 key differences between those areas and what's the
7 likelihood -- can we put a probability of likelihood of
8 survival of an organism? We're hoping.

9 But it is a new issue. As we all know, this is a
10 very new area of science, and we're all kind of learning
11 as we go, trying to do the best we can.

12 So the idea is that port-to-port transfers should
13 be minimized. So transferring water from San Francisco to
14 L.A. or San Diego to San Francisco or Seattle, that should
15 be avoided as much as possible, because those waters are
16 more likely to act as nurseries for these non-indigenous
17 organisms.

18 --o0o--

19 MS. FALKNER: We also have two reports that we're
20 looking on. And I'll go just real briefly. One is on
21 performance standards. We're working with Coast Guard,
22 International Maritime Organization folks, state and other
23 federal agencies, as well as stakeholders, the maritime
24 industry, ports and stuff, to look at what's currently
25 known about performance standards for treatment systems.

1 If you put a treatment system on a vessel, how well should
2 it act? And we have a report due to the Legislature in
3 January of 2006. So our first meeting for that is March
4 7th of next month. And so we're moving ahead on that, and
5 people are quite excited about that meeting, attending
6 that.

7 The other important report that we're working on,
8 and it actually kind of relates back to what Paul was
9 talking about earlier in the copper-based paints, is this
10 other ship-mediated vector study, whole fouling organisms.
11 We've actually teamed up with the SEA GRANT folks who did
12 the original whole fouling study that Paul referred to
13 earlier. And we're going to be working on putting
14 together a workshop, bringing in experts from the whole
15 fouling community, the technology developers, shipper
16 industry, et cetera, to look at what's the risk of whole
17 fouling on commercial vessels. The SEA GRANT folks are
18 interested in recreational vessels. But the mechanisms
19 are very similar, so we thought we'd bring everybody
20 together, do a workshop and come up with how should
21 California proceed with regards to other ship-mediated
22 vectors in the future. So that report's coming out as
23 well.

24 --o0o--

25 MS. FALKNER: Research. Those of you who have

1 been around for a bit remember the West Coast
2 demonstration project. It was a project that was funded
3 in part by the U.S. Fish and Wildlife Service and the Port
4 of Oakland, and then the State Water Resources Control
5 Board got -- also helped out with some of the shipboard
6 technology studies themselves.

7 We finally got the report from the Moss Landing
8 folks on the research. It wasn't like, "Wow, this is the
9 greatest thing in the world and we're going to" -- you
10 know -- "we're going to approve this system for all
11 vessels. But it's a start.

12 We are summarizing the several reports that we
13 have. We hope to have a final report to go out to the
14 public and to the Commission and to the funders in March.

15 As a mentioned, we have a ballast water exchange
16 verification project that we are going to be funding. And
17 that will be using the Carnival settlement dollars that is
18 currently in a capital off-land bank fund. It's going to
19 be with the Smithsonian Environmental Research Center.
20 And I'm working on a contract right now to get the
21 deliverables taken care of.

22 We also received three proposals from various
23 scientific community -- or scientific folks, two on
24 experimental treatment technologies. Both of these
25 technologies have a lot of promise. But we have told the

1 scientists themselves that what we would like is to --
2 when they identify -- if and when they identify a vessel
3 that they would like to put this system on, that the
4 vessel themselves come and we work with them on trying to
5 assist in -- financially assist to a certain extent in
6 getting those systems put on board the vessel. So we're
7 waiting to hear back. Both of these companies are
8 courting Matson Navigation and Crowley and a few other
9 companies. So the vessels have a few choices here.

10 Finally, again the Smithsonian Research Center in
11 Portland State University we received a proposal on whole
12 fouling. And that's -- we haven't made a decision on that
13 yet.

14 And that's kind of what's going on in a nutshell.
15 Are there any questions?

16 CHAIRPERSON BUSTAMANTE: Please.

17 ACTING COMMISSIONER ARONBERG: Ms. Falkner, when
18 will we know? How many years from now will we be able to
19 determine whether we've been successful in reducing these
20 invasive species?

21 MS. FALKNER: That's a good question. The
22 Department of Fish and Game conducted their first round of
23 surveys, put out their report. They are going to be
24 continuing with those surveys. Unfortunately, this kind
25 of work is kind of -- it requires long-term studies.

1 Unless you're looking, you don't know what's coming in and
2 what's not coming in.

3 We have been working with Smithsonian, San
4 Francisco State, other folks, to look at what's going on
5 inside of ballast water tanks. And we're waiting to hear
6 back from those studies to see what is exchange doing. Is
7 it minimizing? How much is it reducing the number of
8 organisms in a tank? That of course doesn't tell us
9 whether or not those organisms are going to be able to
10 survive and then establish. But it gives us a better
11 indication. So I don't have a really good -- you know,
12 I'd love to be able to say in ten years, but I really
13 can't honestly say that.

14 CHAIRPERSON BUSTAMANTE: Is there any coastal
15 water sampling taking place?

16 MS. FALKNER: That's what the Smithsonian is
17 going to be doing. There are various groups around. The
18 SCWRT, the Southern California Water Resources --
19 something project, down in southern California. They deal
20 with the bite -- southern California bite. They've been
21 doing quite a bit of work on coastal chemistry and
22 physical properties. We're working with them. They're
23 going to be part of this -- some of these groups that
24 we're going to be working with. They gave us comments on
25 the coastal rule that we put together.

1 So there are people doing it. It hasn't been as
2 coordinated an effort as maybe, you know, it should be.

3 But --

4 CHAIRPERSON BUSTAMANTE: Okay. Any other
5 questions?

6 I believe we need a motion.

7 ACTING COMMISSIONER SHEEHAN: I'll move the staff
8 recommendation on the fee schedule for marine invasive
9 species control --

10 CHAIRPERSON BUSTAMANTE: Is there a second?

11 ACTING COMMISSIONER ARONBERG: Second.

12 CHAIRPERSON BUSTAMANTE: Let the record show that
13 the vote is unanimous to reduce the fees from \$500 to
14 \$400.

15 Okay. I believe that's the last item on our
16 regular calendar; is that correct?

17 EXECUTIVE OFFICER THAYER: Yes, it is.

18 CHAIRPERSON BUSTAMANTE: And so we're going to be
19 going to public speaking and comments, and then we'll go
20 to closed session?

21 EXECUTIVE OFFICER THAYER: (Nods head.)

22 CHAIRPERSON BUSTAMANTE: We have two people who
23 would like to comment today.

24 J. F. Schneider. Is that correct?

25 MR. SCHNEIDER: Yes, sir.

1 CHAIRPERSON BUSTAMANTE: Come forward.

2 You have your three minutes, sir.

3 MR. SCHNEIDER: Thank you, sir. Jeff Schneider.

4 I leave in Sacramento on the Garden Highway.

5 I just wanted to bring something very minor in
6 the scheme of things to you. And the dollar amount
7 wouldn't even qualify as budget dust. But over the last
8 years I think what happened this last week has forced me
9 to come and make my three-minute comment.

10 We have a -- the house that I purchased ten years
11 ago had a dock. And when -- soon after we moved in,
12 within weeks we suffered the floods of '94-'95, which was
13 a gubernatorial declared disaster in all but I think three
14 counties in California at the time. It took about 10 or
15 12 feet of our riverbank. We applied for and went through
16 with an eight-month process of getting a permit to replace
17 the damage that was caused by that, and then put bank
18 protection over it so it wouldn't happen again.

19 And among the difficulties that happened at that
20 time were -- all of the permits and all the process you go
21 through went through swimmingly except for Lands
22 Commission, which despite the project being statutorily
23 exempt from environmental review, Lands Commission staff
24 told me, "No, we're going to do an environmental review
25 regardless." And I spent a lot of my money until we get

1 the Governor's office involved to get the permit issued.

2 In renewing the permit, I -- it was on today's
3 consent agenda. It was pulled after discussions with Mr.
4 Thayer. My experience -- granted, it's only been ten
5 years the Lands Commission has been talking to all my
6 neighbors -- is that these little recreational permits
7 which fly through with no input from the Commission --
8 rightfully so, they are ministerial actions in probably
9 99.9 percent of the cases -- it's been our experience, and
10 I'm speaking both for myself and with my experience in
11 talking with my neighbors, they seem to be enforced either
12 arbitrarily or capriciously at times. And an example is
13 the amount of money that's charged differs from person to
14 person for the exact same permit, the requirements that
15 are on the permits differ.

16 And what happened this week is I got my package
17 and looked at it Tuesday night in the mail, noticed there
18 was something strange about it, compared it yesterday to
19 what I had submitted and it was different, that staff had
20 actually changed my application without bothering to
21 mention it to me and sent it to me for signature.

22 CHAIRPERSON BUSTAMANTE: How so?

23 MR. SCHNEIDER: The drawing was changed and
24 had -- the dock has a -- well, it's been there about 20
25 years -- has brackets on it for pilings. It was currently

1 put in with cables. And the intent all along was to put
2 in pilings or move the temporary cables that were holding
3 it. But with things like the four floods that have
4 happened in the ten years that I've lived there, our
5 budget has gone to dealing with that instead of putting
6 the pilings in to date. It is still our intention to put
7 those in in the near future.

8 And, that is, that the brackets that are on the
9 dock and that were noted in the drawings were removed.
10 The notations that locations for future pilings at the
11 homeowner's -- I forget the exact wording, but the
12 notation that these would be put in at a future date were
13 all removed.

14 When I called the staff person and asked what had
15 happened, I was told that, "Oh, we just moved it to a new
16 form on the drawings." And when I mentioned, "Well, you
17 know, it's been changed. You've removed a whole bunch of
18 things very specifically." It was -- you can even see
19 where it had been whited out. I got an interesting
20 response that had absolutely no logic to it.

21 I talked to Mr. Thayer and we agreed that it
22 should be pulled from the agenda until we could deal with
23 it.

24 But my concern is that this is in our -- again,
25 it's a minor thing. It's a ministerial action that should

1 probably never have to come to the commission. I
2 understand in talking to Mr. Thayer that staff believes
3 that it has to come to the Commission, even on a consent
4 calendar, even though these little permits go through the
5 same process through multiple agencies and none of them go
6 to a governing board, that I know of, except for here;
7 that the authority within set specifications is granted to
8 executive director to grant, for example, a renewal of an
9 existing permit where no conditions have changed; that we
10 spend a whole lot of money for something that we really
11 shouldn't have to.

12 One neighbor is required to put on a half million
13 dollar liability policy, while the next one down is not
14 required to. One neighbor pays \$400. One neighbor pays a
15 thousand dollars for the same thing. And then you let all
16 that go because it's minimal. But today when I found that
17 staff changed my application and then lied to me when I
18 called her on it, makes me come and speak to you.

19 And I think this whole issue predates Mr. Thayer.
20 I have a lot of respect for Mr. Thayer.

21 But given the years and years that I've talked to
22 all my neighbors that this has been their experience on an
23 ongoing basis, so I just wanted to bring it to the
24 Commission's attention if you cared about it or not.

25 But there's my three minutes.

1 CHAIRPERSON BUSTAMANTE: I appreciate it. Thank
2 you.

3 MR. SCHNEIDER: Thank you.

4 CHAIRPERSON BUSTAMANTE: Paul, do you have any
5 comments?

6 EXECUTIVE OFFICER THAYER: Yes, I do. Of course
7 I was not a the Commission in '94 and '95 and I don't have
8 all the information about what happened in this particular
9 lease. Mr. Schneider and I have discussed that before in
10 terms of -- when he talks about statutory exemption for
11 environmental review, he's referring I believe to the CEQA
12 provision that allows for reconstruction in the area where
13 there's been a declaration of emergency by the Governor.

14 And I understand that staff was not -- did not
15 review that very fully when he was making that claim.

16 But since then, and more recently, to deal with
17 some of the other issues that he's talking about. As the
18 Commission knows, the recreational leases -- or piers, the
19 statutes prohibit the Commission from assessing any rent.
20 But there is a specific requirement that we do recover our
21 costs. And even though most leases -- most of these piers
22 are very similar and present the exact same issues, the
23 costs do vary occasionally. And so people are going to be
24 charged different amounts because it takes a different
25 amount of time to process those as similar as they are.

1 The applicants are generally asked to make a
2 deposit. It's been generally \$600. There's been recently
3 some effort to perhaps move that to a thousand dollars
4 because we're finding that our staff costs have gone up.
5 In fact, our costs are now 70 percent higher than they
6 were in 1990 when we originally set the deposit amount at
7 \$600, just because of all the overhead that we do, even if
8 the hours are exactly the same.

9 Then the practice is to keep track of the hours
10 that are spent on evaluating the application and refund
11 the difference. And so most people who pay \$600 or a
12 thousand dollars usually get some portion of that back.

13 The problem with insurance has been that the
14 state has some liability. There have been court cases
15 which have found the state liability from the permits
16 facilities on into land and somebody's injured. And so we
17 generally try and -- or we do require rec pier lessees and
18 all the other lessees to obtain insurance which
19 indemnifies the state against claims like third parties.

20 It has occasionally been the case that we have
21 found for very small piers that the applicant has been
22 unable to get that insurance. His or her insurance
23 company's refused to issue it. And in some of those cases
24 we've not pursued it further. This has not meant that we
25 have an uneven application. It's more of trying to be

1 realistic and not to try an impose undue hardship on rec
2 pier owners who have a very small development.

3 But we do our best to require that of all of
4 them.

5 With respect to this particular application, as
6 Mr. Schneider and I discussed earlier, his original -- the
7 original leases described a development which was never
8 put in. As he's described, there's been a couple pilings
9 that were never put in. Instead the dock is controlled by
10 what are called dead men. They're concrete or other
11 anchors that are on shore, and then you carry a cable out
12 to prevent the dock from moving downstream and that kind
13 of thing.

14 The Commission has a general policy of requiring
15 that if -- or issuing leases for a specific development.
16 And amendments are required if you change your
17 development. So, for example, a lessee has a small dock
18 and wants to put in a bigger dock, then they come back in
19 and get an amendment. Similarly, if someone comes in and
20 proposes a particular kind of project, we require that
21 that project usually be completed within a certain period
22 of time. With respect to rec piers, it really doesn't
23 matter that much. But on the larger projects the theory
24 is that if someone's got a 20-year lease for some
25 development and it's valid and they're paying the rent and

1 they never put in the improvement, we are foreclosed from
2 using that property for anything else. And so the theory
3 is we shouldn't be renting the public's land for some
4 theoretical project that's going to occur down the road.

5 What should have happened in this case -- staff
6 was in error. I think what happened was the staff noted
7 that this lease showed that there were going to be two
8 pilings in there for the last 20 years and they were never
9 put in. So from staff's perspective it seemed
10 inappropriate to issue a lease for a development that
11 hadn't occurred and hadn't occurred for this long period
12 of time. The staff should not have unilaterally
13 removed -- at least my understanding of what happened --
14 unilaterally removed those piers. Instead we should have
15 approached Mr. Schneider, "Look, there's a choice here.
16 You haven't put it in for 20 years. Are you really going
17 to do it? If not, we should just take it off. That isn't
18 the development you really have. If you contemplate
19 putting it in, then what we should do" -- and what we
20 should have offered was the alternative, which is to say,
21 "Okay, we will put that on your lease. We'll authorize
22 that development if that's what you want to do. But we'll
23 put the same sort of deadlines and requirements that we
24 put on other leases that you perform that work within a
25 reasonable period of time."

1 CHAIRPERSON BUSTAMANTE: Your three minutes are
2 going to be up in five seconds.

3 CHAIRPERSON BUSTAMANTE: And I think I've covered
4 all the issues that he raised.

5 Mr. Schneider and I discussed this earlier this
6 week -- or early today. And he raised the possibility
7 that he didn't want go forward with it with this confusion
8 as to what was on there and suggested we take it off. And
9 I agreed. And I'd like to sit down and talk with him to
10 see how we can straightened all this out.

11 CHAIRPERSON BUSTAMANTE: One minute rebuttal.

12 MR. SCHNEIDER: You know, I have a lot of respect
13 for Mr. Thayer and I hope to work with him. My concern
14 was principally that I -- that the homeowners, there's
15 about 200 of us that have these piers, and when we get
16 together we all tell these same war stories that come back
17 to the Commission running up our bill for something that
18 should be a ministerial action.

19 Granted, it's a tiny amount of money. I've
20 even -- someone in this room even mentioned to me that
21 "it's a \$600 tax you pay every ten years. Pay it and move
22 on with your life." And that is the reality of life, I
23 guess, but not really how it's supposed to happen.

24 And I'd really appreciate if the Commission could
25 find a way to just make this, as the Rec District and the

1 Reclamation Board and the Water Resources people do, is
2 that on a ministerial function of renewing an existing
3 permit, that if you meet a set bit of standards, that the
4 Commission approves those and gives the executive director
5 authority to do that, the money that's cost -- the staff
6 money to run this up is not to review these. Having been
7 an executive director of a government agency before, it's
8 preparing the document and coming and bringing it to you,
9 putting it on the website and --

10 CHAIRPERSON BUSTAMANTE: Oh, I see what you're
11 saying. You're saying you could lower the cost to you by
12 not bringing it to the Commission?

13 MR. SCHNEIDER: Exactly, that the Commission
14 gives the executive director authority within set
15 parameters, the executive director reports back; if
16 their's anything out of the ordinary, then it comes to
17 you.

18 CHAIRPERSON BUSTAMANTE: Got it. Okay.

19 MR. SCHNEIDER: Thank you very much.

20 CHAIRPERSON BUSTAMANTE: Thank you.

21 One other person who wanted to speak is Lester
22 Denevan.

23 CHAIRPERSON BUSTAMANTE: This is regarding the
24 Queensway Bay?

25 MR. DENEVAN: Yes.

1 CHAIRPERSON BUSTAMANTE: You have your three
2 minutes, sir.

3 MR. DENEVAN: Lester Denevan done, urban planner,
4 resident of Long Beach.

5 The Queensway Bay project was approved by the
6 Lands Commission somewhat more than a year ago, or perhaps
7 two. And that called for a shopping center on the former
8 beach at Long Beach in the downtown area. And so the
9 project was built and has opened.

10 And we have a large project here, \$140 million
11 project, on many acres of former public beach and
12 parkland. And of course the Commission's responsibility
13 is for oversight of the project, that the terms are
14 complied with.

15 And the project is an a lot of trouble because
16 they haven't been able to find enough tenants. And I went
17 down recently and counted 27 vacant shops. And so the
18 developer has a problem, but also the city and the state,
19 because both public entities are involved in this project.
20 And one of the major project problems is the parking
21 garage, built for a private shopping center, and it was
22 built with public money derived from the sale of \$43
23 million of bonds. So now we have a public parking garage,
24 it doesn't have enough traffic, they can't pay off the
25 bonds.

1 And so the question is: Well, who's going to
2 pull the city out of this mess? And if you read the local
3 newspapers or if you've seen some of my communication with
4 your legal staff, they're talking about going into the
5 city's general fund on the one hand, my taxpayer's
6 dollar -- and, by the way, this was supposed to be at no
7 cost to the taxpayers or the State of California.

8 So one is to go into the city general fund and
9 the other is to dip into the tideland revenue fund. And
10 that's the point I want to bring up. I don't want to go
11 into details now. I would ask only that you put it on
12 your agenda for a future meeting, perhaps next month. Or
13 perhaps if you're meeting in southern California, be able
14 to come down to Long Beach or some other southern city,
15 and maybe even take a look at the project.

16 So my concern is about the risk of the tideland
17 revenue funds being squandered on this parking garage.

18 So that's the matter that I'd like to have you
19 consider very carefully, and your staff.

20 And in conclusion I'd like to say that I think it
21 was a poor decision on the Lands Commission staff to
22 approve the project in the first place on a former public
23 beach.

24 And so I hope that perhaps you could put this on
25 the agenda for public hearing. And I'll try to attend

1 that meeting at that time.

2 Thank you.

3 CHAIRPERSON BUSTAMANTE: Thank you. Three
4 minutes on the dot. You're good.

5 Paul, what kind of jurisdiction do we really have
6 at this point in this project, with a parking garage or
7 anything else?

8 EXECUTIVE OFFICER THAYER: I think that's a good
9 way to analyze it, that our primary jurisdiction's to make
10 sure the uses at Queensway Bay are consistent with the
11 Public Trust Doctrine. Whether or not any particular
12 project is a financial success is something that we don't
13 pretend to have the expertise in and we don't have the
14 jurisdiction over.

15 The parking lot was allowed by the Commission,
16 approved by the commission as a public trust use because
17 it provides for parking opportunities for the people using
18 the area.

19 So when -- I think when Mr. Denevan refers to the
20 public trust fund, he's talking about the Long Beach
21 public trust revenues that have to be put into that if
22 they don't sell enough parking spaces or they don't get
23 enough rent from cars.

24 That can be a decision by a local entity. You
25 know, as I say, if the parking lot is considered to be a

1 public trust use, it's eligible for these funds. This may
2 not have been what the city originally wanted to do or
3 what the taxpayers would prefer that it do with the public
4 trust funds.

5 But there's not really a public trust issue
6 though, I don't think. And the fact that the city may
7 have to put general funds into that again, it's not good
8 for the city. I know that city's in a deficit situation.
9 But it's not illegal. And, in effect, they're making a
10 decision as to how they want to develop their money in the
11 same way they decide whether they want to put the money in
12 schools or whatever.

13 CHAIRPERSON BUSTAMANTE: So there shouldn't be
14 confusion when it says Long Beach Public Trust Fund as to
15 indicating that somehow our review of the public trust is
16 somehow involved with this particular fund?

17 EXECUTIVE OFFICER THAYER: That's right. We
18 didn't review that project as to whether or not it was the
19 best project or whether it was of the appropriate -- or
20 whether it was the best fiscally, but whether or not it
21 qualified for use of these funds. The individual decision
22 though pursuant to the grant, the Legislature basically
23 assigned management responsibilities to the city as to
24 what they wanted to do with its land.

25 CHAIRPERSON BUSTAMANTE: And this fund is not

1 under our jurisdiction?

2 EXECUTIVE OFFICER THAYER: No, it is not. The
3 only jurisdiction we have is the same as we do generally
4 over granted lands, which is to make sure it's not being
5 spent for non-trust purposes.

6 CHAIRPERSON BUSTAMANTE: As far as we know, do we
7 have staff here who can talk very, very briefly about the
8 point that if there has been any misuse of public trust
9 lands or if there is any deviation from the original
10 authorization that was given to Long Beach for the use of
11 these properties?

12 EXECUTIVE OFFICER THAYER: Curtis Fossum is here,
13 who's the attorney that's worked on this. But I think I
14 can answer that question directly.

15 There's two instances that I know of where things
16 are working out differently from originally planned. The
17 first one is there's a site, I think it's where the IMAX
18 was proposed, that they're now proposing -- IMAX Theater,
19 that they're now proposing to make into a hotel. And this
20 is one of the areas from which the trust was lifted. And
21 the Commission assessed -- or imposed a condition on its
22 approval of lifting this trust, that if the uses were ever
23 put to trust use instead of a non-trust use, then the
24 trust would reattach. And a hotel would be a trust use.
25 And the city -- we've been in conversations with the city

1 and the developer, and they understand fully that if they
2 want to change this use to a trust use, and that a hotel
3 is a trust use, that the public trust will reattach to
4 this property. So this is change is consistent with the
5 Commission's action.

6 The one place where I believe there has been a
7 violation is that a T-Mobile One use was put into one of
8 the buildings where there was supposed to be trust uses.
9 We don't regard a T-Mobile One cell phone outlet as being
10 a trust use. This could occur anywhere. It's not water
11 related. And the developer has said they weren't aware of
12 the issue and have promised to relocate it within six
13 months or something like this. We felt that was a
14 reasonably timely solution and they will correct that
15 problem.

16 CHAIRPERSON BUSTAMANTE: So will we send him then
17 a list to refresh his memory on all of the public trust
18 uses that he can do and --

19 EXECUTIVE OFFICER THAYER: The developer?

20 CHAIRPERSON BUSTAMANTE: Yeah.

21 EXECUTIVE OFFICER THAYER: Yes. We met with the
22 developer -- I can't remember exactly when it was -- it
23 was some time last year, and went over some of this.

24 The city has -- not to make excuses, but the city
25 has been through a change in attorneys, and Jim McCabe,

1 the guy that did most of their public trust doctrine, has
2 left. And they have some new attorneys. And in our
3 meetings with them, they've become much more familiar with
4 the public trust doctrine. We hope they forestall some of
5 that.

6 CHAIRPERSON BUSTAMANTE: Okay. Any other
7 questions --

8 MR. DENEVAN: May I respond just very briefly?

9 The Commission had the hearings on the project
10 and approved the project. And during the discussions it
11 was made very clear by staff that public monies, certainly
12 not state monies, would be used to subsidize the private
13 development. And so that's the key matter.

14 You're committed on this matter of protecting the
15 public funds, because part of that draws your supporting
16 private shopping center.

17 Thank you.

18 CHAIRPERSON BUSTAMANTE: Okay. Anything else?

19 No other public comment?

20 Then we'll close the public portion of the
21 meeting and we'll go into closed session.

22 Thank you all for coming. And we'd like to ask
23 everyone to please move quickly toward the exits so we
24 might be able to conduct our closed session.

25 Thank you.

1 (Thereupon the California State Lands
2 Commission meeting adjourned at 2:12 p.m.)
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CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California State Lands Commission meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of March, 2005.



JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License No. 10063