

MEETING  
STATE OF CALIFORNIA  
STATE LANDS COMMISSION

PORT OF SAN DIEGO  
BOARD ROOM, 1ST FLOOR  
3165 PACIFIC HIGHWAY  
SAN DIEGO, CALIFORNIA

THURSDAY, DECEMBER 14, 2006

1:48 P.M.

KATHRYN S. KENYON, CSR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13061

*C. S. Kenyon*

APPEARANCES

COMMISSION MEMBERS

Mr. Steve Westly, State Controller, Chairperson, also represented by Cindy Aronberg

Mr. Cruz M. Bustamante, Lieutenant Governor

Mr. Michael C. Genest, Director of Finance, represented by Ms. Anne Sheehan

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Curtis Fossum, Assistant Chief Counsel

Mr. Alan Hager, Assistant Attorney General

Mr. Jack Rump, Chief Counsel

Ms. Kimberly Lunetta, Executive Assistant

Ms. Mary Howe, Public Land Manager

Ms. Jennifer Lucchesi, Staff Counsel

Mr. Donn Oetzel

ALSO PRESENT

Mr. Mike Gin, Redondo Beach

Ms. Donna Andrews, Woodfin Suite Hotel

Mr. David Biggs, Redondo Beach

Mr. Jerry Butkiewicz, San Diego Imperial Counties Labor Council

Ms. Victoria Cypherd

Mr. Perry Dealy, Manchester Financial Group

APPEARANCES CONTINUED

Mr. Kenneth Elliott, Unite Here Local 30  
Mr. Graham Forbes, Unite Here  
Mr. Sam Hardage, Woodfin Suite Hotel  
Ms. Laura Hunter, Environmental Health Coalition  
Mr. Steven Kaufmann, Woodfin Suite Hotel  
Ms. Colleen Manzer  
Mr. John McNab  
Mr. Jess Money  
Mr. Gary Ohst  
Mr. George Palermo, Spinnaker Hotel  
Mr. John Parsons, Redondo Beach  
Ms. Gerri Retman  
Mr. Bruce Reznik, San Diego Coastkeeper  
Ms. Molly Rhodes, Unite Here  
Ms. Katheryn Rhodes  
Ms. Sandra Smelik  
Mr. Wayne Smith  
Ms. Gabriel Solmer, San Diego Coastkeeper, San Diego Bay  
Council  
Mr. Ian Trowbridge  
Mr. "Dukie" Valderrama, Port of San Diego  
Ms. Tracy Weiss  
Mr. Dan Wilkens, Port of San Diego

INDEX

	<u>PAGE</u>
I. Open Session	1
II. Confirmation of Minutes for the Meeting of November 21, 2006	1
III. Executive Officer's Report	2
IV. Consent Calendar C01-C34, C37, C38, C40-C42, C44-C46	21
V. Regular Calendar	
Item 36 (Pulled from Consent for Discussion) Trans Bay Cable LLC (Applicant): Consider application for a General Lease - Right of Way Use, of sovereign lands located in Carquinez Strait, San Francisco, San Pablo and Suisun Bays, between the San Francisco county line and the city of Pittsburg; Marin, Solano, and Contra Costa counties; for the construction of a new high voltage direct current cable to transmit electrical power from Pittsburg to San Francisco. (W 26025; RA# 07004) (A 6, 7, 8, 11, 13, 14; S 2, 3, 5, 7)	123
Item 47 City of Redondo Beach (Trustee): Consideration of a financial management review of the city of Redondo Beach granted tide and submerged lands; Los Angeles County. (G05-07) (A 53; S 28)	22
Item 48 California State Lands Commission: Consideration of a request to review the consistency of the timeshare component of the Woodfin Suites Hotel proposal with the Public Trust Doctrine; located on filled Public Trust lands held in truth by the San Diego Unified Port District at Harbor Island, city of San Diego, San Diego County. (G10-08) (A 78; S 39)	49

INDEX CONTINUED

	<u>PAGE</u>
Item 49 California State Lands Commission: Commission consideration of a resolution proposed by the Controller supporting environmental protection of the Klamath River for the improvement of salmon habitat and other public trust benefits.	132
Item 50 California State Lands Commission: Commission consideration of a resolution proposed by the Controller supporting the remediation of sediment contamination in San Diego Bay.	125
VI. Public Comment	136
VII. Closed Session	143
Adjournment	143
Reporter's Certificate	144



1 the public for the late start of this meeting. And please  
2 direct any complaints to Southwest Airlines.

3 (Laughter.)

4 CHAIRPERSON WESTLY: We were a little late getting  
5 in. My apologies.

6 Mr. Thayer?

7 EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.  
8 Good afternoon.

9 I want to start off by saying my understanding is  
10 that a radio station will be taping this program, so fair  
11 warning to everybody. So my understanding is this program  
12 will be taped for use on a radio broadcast. And I think  
13 the Board staff, because of the large number of people  
14 here, turned the TV on, out in the lobby, with the sound.

15 CHAIRPERSON WESTLY: By the way, that's an  
16 important announcement. I would ask, if people have cell  
17 phones, please turn them off. And if you are getting up  
18 or wanting to chat about issues, please step outside.

19 Again for the, radio, if you have complaints, it's  
20 T-H-A-Y-E-R.

21 (Laughter.)

22 CHAIRPERSON WESTLY: Right, Mr. Thayer?

23 EXECUTIVE OFFICER THAYER: Yes, perfect.

24 Other than those housekeeping items, I wanted to  
25 talk about two items this morning. And one is to provide

1 on update to the staff response to the Commission -- the  
2 Chair's proposals to look at global warming, climate  
3 change, and sea level rise in terms of the impact to the  
4 State Lands Commission and the areas that we have  
5 jurisdiction over.

6 This is something that we're -- is an ongoing  
7 effort. We started talking to the AG's office and with  
8 the Coastal Commission about this. But I wanted to talk a  
9 little bit about some of the highlights that we'll be  
10 honing in on. And this is obviously something that's  
11 going to be involving us, indefinitely, for the future.  
12 It's not going to result in one staff report; it's going  
13 to be a continuing issue.

14 Of course, it's pretty obvious that there will be  
15 impacts to waterways that we have jurisdiction over. All  
16 the predictions are that if the warming occurs, that there  
17 will be run off both because precipitation that now falls  
18 as snow will fall as rain. And there's also some concern  
19 that we may have stronger storms. So we can anticipate  
20 additional flows through the fresh water system, and  
21 probably the need to do additional levee strengthening.  
22 As much as it is occurring right now in the delta, which  
23 the Commission has approved in the last few meetings.

24 Along the coast, I think the issues are likely to  
25 be more severe and raise more policy issues for the Lands



1 Commission.

2           The higher sea levels and more powerful storms  
3 will adversely affect all aspects of shoreline. In the  
4 natural state, things like beaches and bluffs and marshes  
5 would recede as the water rose, through erosion and  
6 through flooding. But of course, in the urban -- and new  
7 habitats we create will replace the old ones. Perhaps we  
8 would end up with a situation that wouldn't be that  
9 different.

10           But the problem will be in urban areas, where  
11 existing development will want to be protected from that  
12 inland surge of sea. And so you're likely to see, in a  
13 lot of proposals, for further armoring of the coast, if  
14 you haven't already. But they will be more extreme and  
15 more continuous. Public Trust resources will squeeze  
16 between the rising sea and this armoring of the coast.  
17 And so it's very possible that marshes right now, that  
18 we're spending gobs of money on and trying to save, will  
19 be threatened, and that they won't have the opportunity to  
20 spread inland.

21           Similarly, recreational beaches, which are  
22 symbolic of California, really, to a lot of people, are  
23 under threat. You look at all the beaches along Los  
24 Angeles or Orange County or San Diego. They are pretty  
25 much in urban areas. And so the development, which is

1 immediately adjacent to them will want to be protected  
2 from the impacts. So it's a very severe problem.

3 How to address these legally, it's difficult.

4 Obviously, if things were left to their own, or  
5 without the protective devices, the Public Trust Lands  
6 would migrate inland. And so the question will arise,  
7 whether or not, in an unnatural state, whether some of the  
8 property behind these seawalls should be considered Public  
9 Trust lands. Certainly, in other situations, we reject  
10 artificial changes to the shoreline in terms of  
11 determining whether Public Trust doctrine, as the way we  
12 usually do it, is a consequence of fill and things like  
13 this.

14 So this would be a different challenge to talk  
15 about, whether or not future changes, which never occur  
16 because of the seawalls, should be deemed legally to be an  
17 expansion of Public Trust lands.

18 And obviously, this is going to have enormous  
19 legal and political issues associated with this question.  
20 It's going to be a clash between trying to preserve the  
21 Public's resources, the Public Trust lands, and the  
22 ability of private owners to -- to protect their lands.  
23 And so this is one of those classic things that's not  
24 going to have an easy answer. And it's going to take a  
25 lot of thought, and I imagine there will be a lot of

1 starts and stops. But I think it's time to start looking  
2 at that and trying to figure out a policy or a direction  
3 that makes sense.

4 It's also clear that impacts of global warming and  
5 climate change and sea level rise will affect a number of  
6 different agencies. And the different state agencies will  
7 need to work cooperatively together.

8 We have our piece of it; other agencies have they  
9 piece. But they are all related, so we're going to need  
10 to work cooperatively.

11 And after the last year, when the Chair's been  
12 sitting on the Ocean Protection Council, I'd like to point  
13 out that one of the charges of that Council is to  
14 coordinate on issues like this, between different state  
15 agencies. So this might be an item that is appropriately  
16 addressed or at least given some study and thought by that  
17 council. They seem like the perfect higher level council  
18 that has within it, or has the expertise of a number of  
19 different agencies.

20 So again, we don't have any final conclusion on  
21 this, but we're thinking about it. And we'll continue to  
22 work on it.

23 And unless there's any questions....

24 CHAIRPERSON WESTLY: Thank you, Mr. Thayer.

25 Let me just compliment you and staff on always

1 being proactive. These issues are coming down upon us  
2 faster than people realize. We thank you for beginning to  
3 do the research necessary to keep us on the front of them.

4 I just want to observe that I think there are two  
5 extraordinary environmental issues, all of us need to deal  
6 with. And one of them is the simple fact that our oceans  
7 are dying. That has an extraordinary impact on a state  
8 like California, where our coastal economy generates over  
9 \$47 billion a year. I want to give Ms. Sheehan and the  
10 Governor's Office credit for setting aside larger wildlife  
11 preserves in our ocean areas to observe aquatic life that  
12 drives much of our state's economy, and helps preserves  
13 the oceans.

14 The other issue that's coming down very quickly  
15 upon us -- and Mr. Thayer, you've been a leader on it, but  
16 I want to urge the staff to continue the staff front -- is  
17 the sheer amount of runoff, much of which is toxic, that  
18 runs off from our coastal areas, directly in the oceans.  
19 I'm hoping that the State Lands Commission can continue to  
20 be a leader, you and your staff. Much of the time we're  
21 on point there.

22 But I just want to commend you again. We took not  
23 just national, but world leadership on things like  
24 once-through cooling, ballast water dumping. Many of the  
25 things we've set the national standard to become

1 legislation, because we move forward with the leadership  
2 of your staff, with a little bit of support from this  
3 group. We've lead the nation. I hope we'll continue to  
4 do that.

5 That's not an action item, but I know the next one  
6 is.

7 EXECUTIVE OFFICER THAYER: Well, I have one other  
8 item, if I may, under the Executive Officer's Report.

9 Today is the -- I would like to note that today is  
10 the final day -- the final meeting for two of the members  
11 -- the present members of the Commission.

12 And we thought it appropriate, here, at staff, to  
13 honor that. And so we wanted to talk a little bit about  
14 the achievements of the Commission and these two  
15 commissioners -- the controller and the lieutenant  
16 governor. We still have Commissioner Sheehan with us. So  
17 we'll save that for another time.

18 But it's been four years for the chair and eight  
19 years for Lieutenant Governor, on the Commission --  
20 serving on the Commission and serving the public.

21 There are a lot of similarities to the service of  
22 both of you. Both are retiring commissioners and focused  
23 on the environment very strongly. Both of you have been  
24 dedicated to stopping new offshore oil development. Both  
25 of you have critically refuted any proposal to the

1 Commission for its impacts on the environment.

2           There have been very significant accomplishments  
3 over the last eight years: Scores of offers dedicated for  
4 public access have been accepted by the Commission. This  
5 has made realty available to people in Malibu and  
6 elsewhere, that wasn't available before. Eight offshore  
7 leases were extinguished. Haven't entered any new ones.  
8 I generally describe our offshore oil industry as a sunset  
9 industry.

10           Bolsa Chica was restored; one of the largest  
11 coastal wetlands in the west coast, our restoration  
12 projects. And again, the Commission played a lead role in  
13 that with the owner of the wetlands, and has coordinated  
14 that resolution.

15           Finally, I wanted to note that the State's ballast  
16 water program has evolved into one of the toughest in the  
17 nation. It's a new thing for California; it's a new thing  
18 for the country. And I think a lot of what we're doing  
19 here is being watched by other states and on a federal  
20 level, in terms of how to deal with this issue.

21           I would also note, especially because of the size  
22 of the audience we have today, that you have been very  
23 involved -- involved with the public and the Commission's  
24 processes. We hadn't previously gone out from Sacramento  
25 that much. But now we regularly come here once a year, to

1 San Diego, or once a year in the Bay Area, once a year in  
2 Los Angeles. So we've taken the show on the road and  
3 given people an opportunity to participate.

4 And this is -- and you've -- you've not only  
5 encouraged the participation; you've considered it. So  
6 for example, when activists from San Francisco came up in  
7 Sacramento and asked for assistance in understanding the  
8 Public Trust Doctrine, you directed staff to conduct  
9 workshops in the Bay Area, Long Beach, and San Diego.  
10 These were very well attended. It was a great way to  
11 explain the Public Trust Doctrine, what the Commission is  
12 about.

13 Here, in San Diego, because of it being here,  
14 we've had people in the audience here, now, bring us  
15 concerns about the South Bay Power Plant, the once-through  
16 cooling issue, copper-based paints, and the resolution on  
17 contaminated sediments that was raised by the public.

18 I would like to highlight some individual  
19 initiatives by both the -- I'm sorry for taking so much  
20 time. But this doesn't happen this often. But I want to  
21 presage the comments about individual initiatives with the  
22 observations that the entire Commission, including, of  
23 course, Commissioner Sheehan, her predecessors of Finance,  
24 have worked on and supported these initiatives as well.

25 And these initiatives not only respond to the

1 issues of the day, but permanently advance the work of the  
2 Commission. New policies adopted by the Commission mean  
3 that we will act in a different way, after you have left,  
4 in the future. And I think this is -- we look at the  
5 day-to-day efforts. But I think that's that the real  
6 legacy of the people on this Commission, is to change the  
7 way we do our work.

8           And finally, before making a couple of  
9 presentations here, I want to voice my appreciation for  
10 the opportunity to work with the two of you about the  
11 issues that matter to all of us.

12           And I think primarily, this Commission has been  
13 dedicated to protecting, for the public, the resource  
14 values of Public Trust lands, and that you've -- you've  
15 looked at that goal -- you've looked to that goal in all  
16 of your actions. So I want to thank you, on behalf of the  
17 staff, for all your good work.

18           So I have a couple of -- of presentations to make.  
19 And I would like to come up, if I may.

20           This is for the chair. This is a plaque.

21           In recognition of your service on the Commission,  
22 to the People of California, and your stewardship of the  
23 State's Public Trust resources, presented by the  
24 Commission's staff.

25           So congratulations. I want to acknowledge all of



1 your work on resolutions and offshore oil development  
2 resolutions, to once-through cooling. And I know that you  
3 and your office pushed to have best manners and practices  
4 established at marinas throughout the state. These are  
5 all great achievements. And I hope, when you look at this  
6 in the future, you will remember these things on the  
7 Commission.

8 (Applause.)

9 EXECUTIVE OFFICER THAYER: Lieutenant Governor,  
10 this is also in recognition of your service on the  
11 Commission, to the People of California, and your  
12 stewardship of the State's Public Trust resources,  
13 presented by the Commission's staff.

14 And while handing this over -- again, I want to  
15 acknowledge some of the things that the lieutenant  
16 governor has accomplished. We've adopted new policies on  
17 shoreline erosion; policies on environmental justice; the  
18 adoption of a formal Public Trust Policy; and finally --  
19 well, those were the most significant. Those were the  
20 policy ones.

21 But I have to say that I remember your first six  
22 months here when we ran into the problems with Holly  
23 [phonetic] and that was shut down with your initiative.

24 So I just want to say that I enjoyed very much  
25 working with you. And again, I hope, as with the

1 controller, you have an opportunity to work with us in the  
2 future, and remember your work with the Commission.

3 (Applause.)

4 COMMISSIONER BUSTAMANTE: Mr. Chairman, if I  
5 might?

6 CHAIRPERSON WESTLY: Mr. Bustamante?

7 COMMISSIONER BUSTAMANTE: First of all, thank you,  
8 Paul, for the recognition. I greatly appreciate it.

9 But I think all the kudos have to really go to all  
10 the staff, and especially the person who was my  
11 environmental advisor, Lorena Gonzalez for having  
12 constantly working on all these various issues, as well as  
13 working with Cindy and all the rest of the commissioners,  
14 on making these kinds of things take place. It's nowhere  
15 near one person who does it. The staff here, I think, has  
16 done a great job, has made advancements on behalf of State  
17 Lands, keeps us at the forefront and cutting edge on many,  
18 many things. And I think the work here in general,  
19 although it's not well known in the body of public policy  
20 work around the state, I think it's well known in  
21 environmental circles. And I think that the kind of work  
22 that's been done has been absolutely fabulous, to use the  
23 governor's word.

24 And I think it's extremely important work that's  
25 being done. And so I would hope, I would hope that the

1 kind of work that's been taking place over the last decade  
2 will take place forevermore.

3 (Applause.)

4 CHAIRPERSON WESTLY: Mr. Thayer, anything further  
5 in your Executive Report?

6 EXECUTIVE OFFICER THAYER: I think that's enough.  
7 This concludes the Executive Officer's Report.

8 CHAIRPERSON WESTLY: Thank you. I -- the next  
9 order of business will be the adoption of the consent  
10 calendar.

11 I would like to call on our executive officer,  
12 Mr. Thayer, to indicate which items have been removed from  
13 the consent calendar.

14 EXECUTIVE OFFICER THAYER: There are two items  
15 that staff is pulling: One of them is Item 43, which will  
16 be heard at a future meeting. And then Item 36, the Trans  
17 Bay Cable item, we would like to hear at this meeting, on  
18 the regular calendar.

19 I understand the chair has two items that he's  
20 concerned about as well.

21 CHAIRPERSON WESTLY: Great.

22 EXECUTIVE OFFICER THAYER: 35 and 39.

23 CHAIRPERSON WESTLY: So Items 35 and 39 deal with  
24 once-through cooling.

25 And so these items are going to be pulled and

1 discussed at the next meeting. I would like to offer  
2 members of the public, since they have made the effort to  
3 come here, if they would like to speak briefly on those  
4 issues, we would love to hear them. But the items we're  
5 about to pass on the consent calendar, now, we would like  
6 to continue those items; they would be re-agendized for  
7 the next meeting.

8 If any of these people would like to speak on the  
9 items: Ron Rowe, Tim Hemig, or Rick Wilson, we would love  
10 to have you. But we will address these items at the  
11 following meeting, because they have been removed.

12 Okay.

13 With that, I would like to ask for a vote that we  
14 go ahead and approve the items on consent calendar.

15 COMMISSIONER BUSTAMANTE: I would like to ask a  
16 couple of questions of staff on a couple of items.

17 CHAIRPERSON WESTLY: Absolutely.

18 COMMISSIONER BUSTAMANTE: Item Number 29; could  
19 you go over that -- give me just a little briefing on what  
20 exactly they are trying to do here.

21 EXECUTIVE OFFICER THAYER: This is an existing gas  
22 gathering pipeline in the San Joaquin -- in San Joaquin  
23 County.

24 COMMISSIONER BUSTAMANTE: Can you define that  
25 clearly: "gas gathering."

1 EXECUTIVE OFFICER THAYER: If I run out of space,  
2 I'm going to have an expert to come up.

3 But my understanding is that it's a pipeline  
4 that's not used, necessarily, for transmission of gas, say  
5 from the Bay Area, up to Sacramento. But it's a line  
6 that's used, as part of the system, to gather the gas from  
7 a variety of different wells.

8 COMMISSIONER BUSTAMANTE: Okay.

9 EXECUTIVE OFFICER THAYER: And so this presently  
10 exists in -- it's an existing facility in the San Joaquin  
11 county owned by Pacific Gas and Electric. And the  
12 proposal is to transfer ownership of that to Vintage  
13 Production California, a pipeline company.

14 COMMISSIONER BUSTAMANTE: Okay. So it's just a  
15 straight sale. We've done our due diligence on Vintage.  
16 The operations are going to be appropriate. We don't have  
17 to worry about their capitalization or --

18 EXECUTIVE OFFICER THAYER: We believe that they  
19 are a responsible company. Our staff engineers have also  
20 reviewed the maintenance performed on this pipeline. We  
21 believe it's in good shape. It's not subject to as much  
22 oversight as other agencies, as the transmission lines  
23 are. Gathering lines are exempted from some of the state  
24 review but again, our review of the maintenance records  
25 indicate that the pipeline is being kept up.

1 COMMISSIONER BUSTAMANTE: Anybody on site who's  
2 actually seen, rather than just reviewing paper?

3 EXECUTIVE OFFICER THAYER: No. We've looked at  
4 their maintenance records, though.

5 COMMISSIONER BUSTAMANTE: Okay. Well, you know, I  
6 have -- I trust the staff has done their due diligence.  
7 But I would like, just as I'm departing here, a note of  
8 caution and perhaps some review in the near future, just  
9 to go on site and spot check just to make sure.

10 EXECUTIVE OFFICER THAYER: Certainly.

11 COMMISSIONER BUSTAMANTE: The only other item was,  
12 that I had -- I'd like to have some clarity on C 33,  
13 Chevron.

14 EXECUTIVE OFFICER THAYER: This is a project  
15 involving remediation of some contamination underneath  
16 Castro Cove, in San Pablo Bay.

17 My understanding is that there are some petroleum  
18 products, and, I believe, mercury that have run off from  
19 the shoreline here, and have been the subject of an  
20 investigation by the Regional Water Quality Control Board,  
21 who has issued an order, for cleanup, to Chevron. And so  
22 Chevron is proposing to dredge, I think, a hundred  
23 thousand cubic yards, to eliminate the sediment  
24 contamination in the cove.

25 COMMISSIONER BUSTAMANTE: And the contamination,

1 did it come from Chevron or did it come to Chevron?

2 EXECUTIVE OFFICER THAYER: I believe it was some  
3 of each, I think. I would ask staff from Chevron.

4 UNIDENTIFIED MALE: From Chevron.

5 COMMISSIONER BUSTAMANTE: From Chevron?

6 CHAIRPERSON WESTLY: Yes.

7 COMMISSIONER BUSTAMANTE: And was there an issue,  
8 in addition to the remediation, any other actions that  
9 were taken?

10 EXECUTIVE OFFICER THAYER: No. It's purely for  
11 the dredging of a hundred thousand cubic yards.

12 COMMISSIONER BUSTAMANTE: I understand "dredging."  
13 I'm asking if there were any other actions for creating  
14 the problem.

15 EXECUTIVE OFFICER THAYER: You're wondering  
16 whether Regional Board has imposed any penalties or other  
17 actions like that?

18 COMMISSIONER BUSTAMANTE: I don't know. I mean,  
19 did they go back to check and make sure they weren't going  
20 to do it again?

21 The contamination, I'm assuming -- I'm assuming  
22 that there were protocols established in order to ensure  
23 that that contamination doesn't happen again.

24 MR. OETZEL: My name is Donn Oetzel.

25 And as far as I know, this particular action does

1 not address a future project. It only addresses the  
2 dredging of 100,000 cubic yards of contaminated material.

3 COMMISSIONER BUSTAMANTE: I understand --

4 MR. OETZEL: I'm not familiar with any other  
5 actions on that matter.

6 COMMISSIONER BUSTAMANTE: Okay. My concern is  
7 that there's still a leak someplace. My concern is that  
8 whatever protocols were in place, that caused the  
9 contamination, have not been remediated, just like the  
10 activity, just like the contamination is about to be  
11 remediated.

12 So have we done our due diligence to ensure that  
13 five years from now, ten years from now, we're not going  
14 to be looking at the exact same thing, as no one has done  
15 due diligence on the process or production or whatever is  
16 taking place.

17 CHAIRPERSON WESTLY: I think Mr. Bustamante has  
18 raised an excellent question here. And for the sake of  
19 time, because we have many issues and a number of people  
20 from the public have come, is there an appropriate way,  
21 Mr. Thayer, we could direct staff to pursue appropriate  
22 follow-up on that issue, to address Mr. Bustamante's  
23 concerns?

24 EXECUTIVE OFFICER THAYER: Mary might have a quick  
25 answer.



1 PUBLIC LAND MANAGER HOWE: Mary Howe from State  
2 Lands Commission.

3 This action is due from a remediation plan, a  
4 clean-up order by the Regional Water Quality Control  
5 Board. And they have taken all steps to make sure that  
6 doesn't happen again.

7 COMMISSIONER BUSTAMANTE: All I wanted to hear was  
8 somebody from staff saying, "We checked" --

9 PUBLIC LAND MANAGER HOWE: Yes, we have.

10 COMMISSIONER BUSTAMANTE: -- "and that we know  
11 there is a proper remediation plan in place."

12 PUBLIC LAND MANAGER HOWE: Oh, yes.

13 COMMISSIONER BUSTAMANTE: "And I'm putting my name  
14 on the record to say that, in fact, I have checked and  
15 that we believe that it's appropriate, and that as far as  
16 we know, this will not happen again"; and that somehow the  
17 remediation is not going to worsen the contamination.

18 PUBLIC LAND MANAGER HOWE: No. No. That was all  
19 looked into. And we will put our name on it.

20 COMMISSIONER BUSTAMANTE: That's all I needed to  
21 know.

22 CHAIRPERSON WESTLY: We have a motion pending  
23 here. But what I would like to ask the staff is, did you  
24 simply follow all the steps?

25 PUBLIC LAND MANAGER HOWE: Yes.

1 CHAIRPERSON WESTLY: I would just love if you  
2 could just notice the board members and send a letter out,  
3 saying what the steps are, here they are, here's what we  
4 have done, so we will know, based on that, the Board's  
5 prepared to move ahead.

6 And I would like to ask for a motion, if I may.

7 COMMISSIONER BUSTAMANTE: Absolutely. If a motion  
8 was made, I will second it.

9 CHAIRPERSON WESTLY: This is a motion to approve  
10 the consent calendar.

11 It's excluding Items 35 and 37 which will be  
12 addressed -- I'm sorry, 35 and 39, which will be addressed  
13 at the next meeting.

14 Do I have a second?

15 ACTING COMMISSIONER SHEEHAN: Yes, I will second  
16 it.

17 EXECUTIVE OFFICER THAYER: And 43 and 36; 36 of  
18 which will be addressed at this meeting.

19 CHAIRPERSON WESTLY: So Items 35 --

20 EXECUTIVE OFFICER THAYER: 35, 39, 36, and 43.

21 CHAIRPERSON WESTLY: Four items. Thank you for  
22 correcting that.

23 We have a motion. We have a second.

24 All in favor say "aye."

25 (Ayes.)

1 CHAIRPERSON WESTLY: Thank you.

2 Again, I'm going to move things along quickly,  
3 because we have so many members of the public who take the  
4 time to come.

5 That brings us to Item 47. And this is a report  
6 of the issues regarding the grant to Redondo Beach. This  
7 was quite a colorful report in the past. I'm personally  
8 quite interested to follow up.

9 May we have the staff report?

10 EXECUTIVE OFFICER THAYER: Certainly, Mr. Chair.

11 Jennifer Lucchesi from -- one of the attorneys at  
12 the Commission will present the report.

13 MS. LUCHESSI: Good afternoon. Chairman Westly  
14 and Commissioners, in response to complaints alleging the  
15 number of illegal activities by the City of Redondo Beach,  
16 Commission staff conducted a financial audit of the City's  
17 granted trust lands and trust assets. At the Commission's  
18 June meeting, staff presented its financial audit report.

19 Following testimony from assistant manager David  
20 Biggs and Redondo Beach citizen Jess Money, additional  
21 questions and issues were raised. The Commission deferred  
22 action on the staff report, asking staff to look into the  
23 various issues raised by Mr. Money's testimony.

24 Staff has complied with the Commission's  
25 direction. A complete outline of the specific issues

1 raised at the June meeting, and responses to those issues,  
2 are included in the staff report as Exhibit C.

3 In summary, the issues raised by Mr. Money did not  
4 substantially change the analysis and conclusions reached  
5 in staff's original audit report.

6 While the original complaint included a variety of  
7 allegations relating to the City operations, staff focused  
8 only on those allegations related to the Tidelands Trust  
9 funds.

10 In summary, staff believes that the evidence  
11 uncovered does not warrant further action by the  
12 Commission regarding the allegations of criminal conduct  
13 involving the Tidelands Trust made in the original  
14 complaint. The allegations did, however, lead staff to  
15 uncover several separate areas within the financial  
16 management of the City's trust lands, which were in need  
17 of explanation and remediation.

18 These areas involved two particular transactions:  
19 the Harbor Center Project, and the Kincaid's Restaurant  
20 lease.

21 Before addressing these transactions, I will first  
22 discuss the specific allegations outlined in the original  
23 complaint. The specific allegations suggested illegal  
24 transfers of trust funds to the City's general fund, and  
25 to the Redevelopment Agency, and a perceived depletion of

1 the trust retained earnings.

2 As described in the staff report, the audit did  
3 not substantiate any of these allegations. However, as  
4 stated previously, staff did find certain instances where  
5 the City's contractual arrangements involving granted  
6 tidelands raised questions.

7 I will now address these specific instances  
8 beginning with the Harbor Center Project. As background  
9 in the early 1980s, the Harbor Center Project was a  
10 proposal by the City's Redevelopment Agency for a hotel,  
11 retail, and parking complex project. The project as  
12 submitted to the Commission shows the project is divided  
13 between public and private portions. The public portion  
14 was to be a public parking structure and an open landscape  
15 area.

16 The private portion was to be a 353-room hotel,  
17 retail space, and a portion of the parking structure.

18 In 1983, pursuant to the express provisions of the  
19 Tidelands Trust grant, the Commission approved an  
20 expenditure of \$3.5 million in trust funds for the  
21 acquisition of the land for the public portion of the  
22 Harbor Center Project.

23 Subsequently, the Commission approved two 18-month  
24 extensions for the City to comply with the time authorized  
25 for the acquisition of land and the conveyance to the

1 trust.

2 Staff analysis of the Harbor Center Project  
3 focused on three primary aspects including the specific  
4 procedural requirements with the Commission's approvals,  
5 the rate of return received for the lease of the public  
6 portion of the project, and the occupation of a portion of  
7 the parking structure by a non-Trust use.

8 Staff found that the City failed to comply with  
9 certain procedural requirements of the Commission's 1983  
10 approval and subsequent amendments. Staff also concluded  
11 that a grant received from the parking structure lease is  
12 not reflective of commercial market rates and is less than  
13 adequate as a percentage of return on investment.  
14 Finally, staff found that the second story of the parking  
15 structure is currently being occupied by Gold's Gym, a  
16 non-trust use.

17 I will now discuss Kincaid's Restaurant.  
18 Kincaid's restaurant is located on the City's portion of  
19 the Redondo Beach Pier, on Trust Lands. Kincaid's has  
20 been successful, financially, for the Trust, generating  
21 approximately \$150,000 per year.

22 In 1997 the City and RUI ONE Corporation entered  
23 into an agreement for the construction of Kincaid's, in  
24 which RUI would initially finance the entire project with  
25 an agreement that the City would reimburse RUI for

1 50 percent of the construction costs. The City's  
2 financing was arranged through Redondo Beach Public  
3 Financing Authority, a joint powers authority between the  
4 City and the Redevelopment Agency.

5 The PFA obtained a 20-year loan of 1.75 million,  
6 and pledged future rents from Kincaid's as collateral,  
7 from which the PFA paid RUI 50 percent of the project  
8 construction costs.

9 The borrowing of money for capital improvement and  
10 the collateralization of future rents from an asset within  
11 the Tidelands Trust is a capital expenditure. Pursuant to  
12 the City's granting statutes, any capital expenditure of  
13 Tidelands Funds in excess of \$250,000 requires Commission  
14 approval.

15 While the City did not believe that the granting  
16 statutes required Commission review of this transaction,  
17 this transaction should have received Commission's review  
18 and approval, as trust assets would have been ultimately  
19 liable for the loan.

20 Finally, I would like to conclude by saying there  
21 are some needed modifications to the City's financial  
22 management of trust lands and assets.

23 However, the City has invested a substantial  
24 amount of its resources in enhancing its grant and Trust  
25 lands, thereby creating a valuable visitor-serving

1 waterfront destination in its King Harbor. While the City  
2 may disagree with certain staff interpretations of the  
3 City's trust management, Commission staff and City staff  
4 have resolved these outstanding issues while addressing  
5 the City's concerns and protecting public trust assets.

6 As such, staff recommends that the Commission  
7 authorize staff to enter into a Memorandum of Agreement  
8 reflecting the elements as outlined in the staff report  
9 findings. Please note that the land exchange element will  
10 come back to the Commission at a future date for its  
11 review and approval pursuant to Public Resource Code 6307.  
12 I'm available to answer my questions you may have.

13 Thank you.

14 CHAIRPERSON WESTLY: Thank you very much. We have  
15 a number of members from the public who would like to  
16 speak on this.

17 Please remember, we're asking everybody to speak  
18 for no more than three minutes because we want to give  
19 everyone a chance to speak today. We'll begin with two  
20 people who will speak in opposition to this item. And  
21 then I think we have three people who would like to speak  
22 in favor.

23 I'd like to begin by asking Jess Money to come  
24 forward. And if I could have Gary Ohst to be on deck.

25 Mr. Money, would you like to begin? And please



1 identify yourself for the record.

2 MR. MONEY: First of all, I would like to thank  
3 the Commission for allowing me to speak. And I would like  
4 to ask that you strike my written comments beginning, that  
5 I turned in, regarding the location to Kincaid's. Looking  
6 over, I see that "Enrondo's" municipal task force is here.

7 My immediate reaction to this staff report is that  
8 the staff asked the City some questions; they gave them an  
9 answer; they take their word for it; and that's it. Some  
10 of the questions are confusing and even nonsensical. For  
11 instance, the report states that the tidelands'

12 3.5 million only purchased the area occupied by 76 parking  
13 spaces in the parking structure. I'm no math whiz, but my  
14 Canon calculator says that's \$46,000 per space. At an  
15 average of about 150 to 160 square feet per space, that's  
16 \$300 a square foot.

17 Now, according to Gold Gym's own brochure, their  
18 facility is 59,000 feet. If that sits above what is  
19 supposed to be the tidelands -- the area purchased by the  
20 tidelands area, then dividing that by 76 parking spaces,  
21 each parking space would be about 776 square feet or the  
22 size of a small house.

23 Item 9, on Page 3 of Exhibit C, states that police  
24 patrols on the pier and harbor marina area are not funded  
25 by the Tidelands Fund but are funded from the City's

1 Uplands Fund. Why does the Upland Fund pay for policing  
2 of public safety in an area that's predominantly within  
3 the tidelands? Could it be that the City doesn't want  
4 Tidelands Commission nosing around in the finances?

5 Item 13 quotes, the City is having unrestricted  
6 funds in the tidelands of 10,738 -- 10,738,000 on June,  
7 2005. But for the cash balance, they report 7,008 --  
8 7,895,000 as of June 30th, 2004.

9 Why are we using figures from two different years?  
10 There's also a difference there of about 2.8 million.

11 The staff report doesn't even address the  
12 allegations that the City recently negotiated a lawsuit  
13 settlement with the owner of the Guthry Leasehold, in  
14 which the City has forfeited its right to audit that  
15 leasehold in the future.

16 The proposed land swap remedy is a joke. What  
17 land? Where? Is it ready to use, or are we going to have  
18 to wait for a long process to get it developed?

19 I urge the Commission to send this back and let a  
20 real investigation take place. And I could go on for  
21 another couple minutes. This report's got more holes in  
22 it than good swiss cheese.

23 CHAIRPERSON WESTLY: Mr. Money, thank you for your  
24 comments.

25 Two points, here. If there's more data that you

1 would like to submit to the Board members -- and I know  
2 you have more written notes, there, please feel free to  
3 submit that, if you would us to take a look at it.

4 Secondly, for those watching from the public, I do  
5 note that we'll be hearing from both the mayor and the  
6 mayor pro tem of this city. So we'll hopefully move  
7 forward and get to the bottom of this.

8 The next speaker is Mr. Ohst.

9 Could you please identify yourself for the record.

10 You have three minutes.

11 MR. OHST: Yes, thank you, Steve. My name is Gary  
12 Ohst, resident of Redondo Beach.

13 Jeff covered again, but I'm really focused on a  
14 couple areas. And what I want to focus on is leasing and  
15 the regulations that go along with structuring a pier  
16 lease on both sides. The State Lands Commission has  
17 regulations that it follows when it conducts a lease  
18 directly. And in some cases, it has cities which are  
19 acting in trust for the State Lands Commission, that you  
20 basically delegated your rights to them to negotiate  
21 leases.

22 And that instance, there are no regulations;  
23 cities can do what they want. And Redondo Beach has  
24 adopted some leasing guidelines, but in 1995, late 1995,  
25 they extended a lease for, it was then, Edison, prior to

1 sale to AAS, for 50 years, with a one-time payment, no  
2 potential increase to that rent at all, over a 50-year  
3 period.

4 Now, you, under your regulations have a clause;  
5 all leases have to be reviewed every five years and  
6 adjusted to market. So this is why the Crowne Plaza  
7 lease, that we just heard about, is a 30-year lease at  
8 \$1,000 a month, with no opportunity to raise the parking  
9 and rent. Again, a really long-term lease that wouldn't  
10 even qualify under your own regulations. So I want to  
11 clarify -- I'm up here in opposition, but I actually  
12 support what staff has done. I really appreciate what  
13 staff has done. Because they have put a recommendation  
14 that any future leases that Redondo does, goes to the  
15 Commission for review. And that really opens up, like, an  
16 appeal process for the citizens launching these things.  
17 If we have any questions, I guarantee you're going to hear  
18 about it. As you can see, Redondo is a bit of a lively  
19 town. So I want to thank staff for that.

20 I would have a minor suggestion that, rather than  
21 have it submitted to you ten days prior to council action,  
22 I would ask for 30. Ten is really kind of short for even  
23 us to review it and ask questions. So that would be a  
24 minor recommendation I would like.

25 And then the other thing, as you can see, there's

1 a lot of back and forth on what happened where. In the  
2 City's Consolidated Annual Financial Report, the CAFR,  
3 there is little to no disclosure about any of these loans  
4 back and forth between the Tidelands, the City, and the  
5 Redevelopment Agency, the City. And I'm talking about  
6 basics, like principal borrowed, when it was borrowed,  
7 interest, what payments have been made to date; it's not  
8 there. There's little footnotes that say, oh, yeah,  
9 there's this loan out there.

10 So I would also like to add to staff's  
11 recommendation that the City fully disclose these  
12 transactions in their own annual CAFR report. And I think  
13 had there been full disclosure of these and reasonable  
14 leasing regulations had be followed, none of us would be  
15 here today. So those are my comments. Thank you.

16 CHAIRPERSON WESTLY: Thank you Mr. Ohst.

17 What I would like to do now is to call Mike Gin  
18 the mayor of Redondo Beach, to come forward. And ask that  
19 David Biggs, the assistant city manager, and Mr. John  
20 Parsons, the mayor pro tem, to be on deck.

21 Mr. Gin.

22 MR. GIN: Thank you very much honorable  
23 Commissioners and staff. It's an honor for me to be here  
24 today.

25 I'm Mike Gin and I have the honor of serving as

1 mayor for Redondo Beach. As you mentioned, our mayor pro  
2 tem, John Parsons is here, as well as David Biggs will be  
3 available for any questions you might have.

4 But first of all, we're very fortunate to be a  
5 Tidelands trustee. I want to let you know that we're very  
6 fortunate to have stewardship of that, under your  
7 guidelines of your Commission and for the state, as a  
8 whole.

9 First of all, we would like to say that we're very  
10 pleased with the staff's recommendation. We think the  
11 time and energy spent on this has been very fruitful. And  
12 we believe that they have come up with some excellent  
13 recommendations that will allow us to move forward in a  
14 very positive light. And we feel very fortunate, very  
15 pleased as well, that any allegations of wrongdoing, in a  
16 criminal sense, have been put to bed.

17 Again, we urge the adoption of the staff  
18 recommendation as a whole. And with this, we think it can  
19 help bring us some closure as well as a more open working  
20 relationship with the Commission.

21 I wanted to let you know, there are some -- a  
22 couple of really great initiatives that are under way, in  
23 our harbor and the tidelands and pier area in particular,  
24 that not only will protect it from an economic standpoint  
25 but also from an environmental standpoint. We have a

1 Water Quality Task Force that has come up with a number of  
2 recommendations to ensure that we address a lot of  
3 concerns regarding ocean water quality, and so forth, in  
4 our harbor. So we're very, very pleased to be able to do  
5 that and also to be able to protect the tidelands.

6 Just wanted to let you know and to give you a  
7 little bit of background; we have been a Tidelands trustee  
8 since 1915. And we have always taken that Trust  
9 seriously, as evidenced by the number of improvements that  
10 staff has talked about, in terms of the history of the way  
11 we've managed the tidelands.

12 We also have a clear track record of managing a  
13 number of these investments in a very, very public way;  
14 and including investing funds in the area from  
15 non-tidelands sources. Most recently, as you may be  
16 aware, we had a very serious fire and the destruction of  
17 the pier, back in the late '80s. And it was all but  
18 destroyed. But we committed, and the community came  
19 together to commit, to rebuild that asset in the  
20 tidelands.

21 And again, we wanted to just thank you for the  
22 time that we have here today to present this. I think,  
23 even though there were a number of different issues that  
24 were brought up, I think that it provides an opportunity  
25 for our staff and our community to work more closely with

1 all of you, in the future.

2 And again, thank you, Mr. Controller and Mr.  
3 Lieutenant Governor for the service that you folks have  
4 done on behalf of the Commission and protecting our Public  
5 Trust lands. We look forward to answering, to the best we  
6 can, any questions you might have about the report.

7 Thanks very much.

8 CHAIRPERSON WESTLY: Thank you, Mayor Gin.

9 MR. GIN: Thank you.

10 CHAIRPERSON WESTLY: I would like to ask David  
11 Biggs, the assistant city manager to come forward, if he  
12 is here.

13 And then I would love it if you were able to  
14 respond to any of the questions that Mr. Money has raised.

15 MR. BIGGS: Certainly, Mr. Chair. And I will be  
16 happy to do that. I'm David Biggs. I'm the assistant  
17 city manager.

18 I have been tasked in helping our staff respond to  
19 the questions raised by the Commission and members of your  
20 staff. In my tenure with the City, you might recall I  
21 appeared before you in June, heard the allegations,  
22 additional allegations that were raised, and also in June,  
23 we did provide a letter dated June 21st that outlined our  
24 responses to that original staff report.

25 Since then, I have coordinated with the City



1 staff, gathering the data and information, and provided it  
2 to your staff, so they could do an independent analysis to  
3 look at the questions that were raised.

4           And since then we also, subsequent to providing  
5 that data -- I have been working with them to address  
6 specific ways that we could -- we would correct the areas  
7 identified, those opportunities for improvement that were  
8 suggested in your staff report. And as Mayor Gin  
9 indicated, we're very supportive of the recommendations.  
10 We think it provides a clean slate on a going-forward  
11 basis. And we fully intend that we will be communicating  
12 with your staff on a regular basis, as we have many  
13 exciting projects planned for reinvestment of Redondo  
14 Beach and the harbor, pier, and the tidelands areas.

15           There are still some areas that we disagree with  
16 your staff and some of the perspectives on some of the  
17 issues that have occurred.

18           We outlined those in the letter to your executive  
19 officer, that was dated December 12th, which I understand  
20 you have a copy of, on not big areas; mostly nuances of  
21 about how redevelopment financing works and some of the  
22 characterizations of that.

23           But again, as we structure transactions at Redondo  
24 Beach, we structure them to benefit the Tidelands Trust.  
25 And for example, our redevelopment agency has invested a

1 substantial amount of money in the Tidelands Trust area,  
2 as opposed to what you have seen in some other coastal  
3 communities where, in fact, the tidelands has sort of  
4 helped promote redevelopment of downtown. So we don't  
5 have a downtown adjacent to our Tidelands Trust, so our  
6 focus -- our main economic account is our Tideland Trust  
7 area. We're committed to implementing the recommended  
8 actions that your staff has put before you, in a very  
9 timely manner. We've been exploring, for example, the  
10 idea of an existing parcel swap. We're talking about an  
11 existing parcel, fully improved, generating income. So  
12 we're not talking about changing an improved parcel for an  
13 unimproved parcel.

14           Unfortunately, in our area, we have water areas  
15 that are actually in the uplands, not in the tidelands.  
16 Gets a little bit confusing. But we do have a lot of  
17 property that is -- looks like it should be in the  
18 tidelands because it's adjacent to or on the water.

19           I would like to acknowledge the professionalism  
20 and solution-oriented approach of your staff, where we  
21 have had some levels of disagreement. We've always been  
22 able to work through those. In green areas, we have a  
23 different philosophical perspective. But I think as we  
24 try to look more in the future and not try to look back  
25 15, 20, 25 years of transactions that none of us were

1 involved in, firsthand, we'll have very -- a better record  
2 on which to judge our activities in the future.

3 So I feel very fortunate. I'm fairly new with the  
4 City. With your approval for the recommended action  
5 today, we'll be able to go forward with a clean slate.  
6 And you would have answered some of the questions in our  
7 community. With that again, we would be happy to answer  
8 any questions that you might have.

9 Oh, I'm sorry. Mr. Westly, if you would like, I  
10 could actually respond to a couple of the questions.

11 CHAIRPERSON WESTLY: Because of time situation and  
12 the number of people in the public, here, I would like to  
13 move forward and ask Mr. Parsons to come forward.

14 MR. PARSONS: Thank you Mr. Chair and members of  
15 the Commission. And congratulations on your service to  
16 the Commission and to the State of California for all  
17 these years. We have been well served.

18 I want to thank you for the time to address you,  
19 and we have had, as was stated earlier, over 90 years of  
20 service as the trustee of the State of California, on the  
21 tidelands, and we very proud of that service.

22 As you said earlier, you know, this is a colorful  
23 issue. It's also very frustrating, all the years that our  
24 two staffs have spent, trying to resolve some of these  
25 things.

1           Where we originally started out led to other  
2 places. I think that as has been pointed out by the mayor  
3 and the assistant city manager, our two staffs did work  
4 very closely together. We appreciate the conclusions that  
5 have been come to, although I feel an awful lot of time  
6 has been spent on this. And to come down to two things,  
7 one that started over a quarter century ago, another one  
8 that was a decade ago, I think does show that we have a  
9 pretty good track record, especially where we have some  
10 disagreements on interpretations.

11           The solution, as proposed by staff, I think we  
12 support for a couple of reasons. One, if it will make the  
13 Commission feel better about the way we're operating  
14 things, that's fine. Two, we operate this as if it was  
15 our own property, and we're doing the best for our local  
16 citizens. And we certainly appreciate our duty to do it  
17 for the citizens of the State of California.

18           And if we can find it, I'm sure we can identify  
19 adequate property to swap. Then, you know, we can move  
20 ahead and get everything behind us.

21           I would like to point out, though, that the three  
22 and a half million that went into the Harbor Center  
23 Project is being paid back. And on top of that, there's a  
24 \$12,000 annual payment. That's a pretty good return.

25           Now, I know that that payback is considered a

1 gift, but still, it's happening. And on top of that, as  
2 was mentioned earlier, the -- we have a pretty good record  
3 of investing money in the tidelands. Three and a half  
4 million dollars that went towards rebuilding the pier came  
5 as -- as a pot of money from our redevelopment agency. It  
6 wasn't done as loan, which we could have done. So we  
7 invested in the harbor as if it was our own, and we're  
8 very proud of all the effort that we have put on there.

9 I spent eight years or seven years on the Harbor  
10 Commission, going back to 1990, and almost finishing up  
11 eight years now on the city council. And a lot of my  
12 attention has been spent on the harbor. I'm very proud of  
13 all that we've accomplished. So we really do look forward  
14 to solutions that have been identified.

15 And just very quickly, to respond to a couple of  
16 comments that were made earlier, why are police paid for  
17 out of the Uplands? That's directed by the Commission.  
18 We're not allowed to take any funds out of the Tidelands.  
19 And we're fine with that.

20 And then as far as how things are reported on the  
21 financial report, you asked the Authority to be very  
22 specific. We followed the guidelines, and we get awards  
23 every year.

24 So thank you very much.

25 CHAIRPERSON WESTLY: Great. Thank you.

1           What I'd like to do at this point, unless there  
2 are other speakers, is ask for comments from the  
3 commissioners.

4           Ms. Sheehan or Mr. Bustamante?

5           Ms. Sheehan, do you have any comments on this?

6           ACTING COMMISSIONER SHEEHAN: I applaud the staff  
7 in terms of the work they have done in responding to the  
8 questions.

9           I guess, as Mr. Thayer knows, just sort of on the  
10 bigger issues, in terms of, as we have with some of these  
11 other cities and local governments that we have these  
12 grants with, you know, for us, in the future, to either  
13 audit or to go in and make sure that they are complying  
14 with the agreements that we had originally entered into.  
15 I recognize -- we have talked about this before in terms  
16 of, you know, resource availability and all. But I feel  
17 strongly that we, as commissioners, have an obligation to  
18 make sure, if we have handed it over to local city or  
19 county, to carry out our obligation, we need to make sure  
20 they are carrying it out the way we would, as if we were  
21 doing it ourselves.

22           So that really is a bigger issue that I have  
23 regarding to moving forward and going into discussions  
24 next year with the Commission members.

25           EXECUTIVE OFFICER THAYER: Okay.

1           COMMISSIONER BUSTAMANTE:  And Paul, you know, what  
2 I would suggest is that you might want to think about  
3 submitting a supplemental budget request in order to be  
4 able to -- because you guys are tunnelling ground all the  
5 time and you are leaving behind all these at this time  
6 that can't be continuously monitored.

7           There should be an inventory of every single lease  
8 that we have and every single lease that we're allowing  
9 other people to do.  And there should be some kind of a  
10 chart that has these "ticklers" that talk about every five  
11 years to go back and review every single one of these  
12 things and at least check to make sure that somebody is  
13 following up on these things.  And since most of the  
14 revenue that you receive as a result of the work that you  
15 do, goes into the black hole of the state budget.  Perhaps  
16 it would be appropriate to ask for a very specific budget  
17 augmentation for -- you know, the adequate staffing for  
18 this very specific purpose.  Because I think it's  
19 financially -- I think it would do the state and, in fact,  
20 the fiduciary responsibility that we have on behalf of the  
21 taxpayers.

22           And I think it would be a great investment by the  
23 state to provide that type of supplemental staffing.  But  
24 I was going to ask you, is there an inventory of every  
25 single lease?  And somebody who's doing this kind of

1 backup work? I'm assuming not. But that's why I launched  
2 into my supplemental budget allocation.

3 EXECUTIVE OFFICER THAYER: We have, of course, an  
4 inventory of our own leases, but once the Commission has  
5 granted it, we don't have the inventory of all of the  
6 leases that are entered into by granted lands.

7 We did put in a budget change proposal, probably  
8 six or seven years ago, for our compliance staff. And  
9 that was granted, out of the same concerns that I think  
10 you and Commissioner Sheehan spoke of. But the State  
11 entered its financial --

12 COMMISSIONER BUSTAMANTE: I think that you don't  
13 want to -- especially those that are going to be yielding  
14 resources, you think that that would be -- would be  
15 foolish not to -- and it wouldn't meet any fiduciary  
16 requirements to not have people that are required to do  
17 those kinds of things, to make sure that we are getting  
18 the appropriate and proper revenues through the process  
19 that we're going through.

20 We give so much stuff away, as a state. And those  
21 few things that we're supposed to be charging for, we  
22 should be providing that.

23 EXECUTIVE OFFICER THAYER: And it is statutorily  
24 required that, at least for our leases and, in fact,  
25 constitutionally for the leases that are grantees are



1 entered into, that we have to get market rate.

2 COMMISSIONER BUSTAMANTE: And I think that the  
3 other issue that Commissioner also brought up was the  
4 issue of reviewing those leases, to see if there is  
5 compliance that's being done. It's a little  
6 disconcerting, that as we're getting involved with a  
7 particular issue, and we find that, in fact, the  
8 compliance has not taken place, whether it's minor or  
9 major is not the issue. It's that compliance did not take  
10 place.

11 And now we have -- we're facing that, this  
12 Commission, the new Commission will face. The issue of a  
13 new precedent being set with respect to a gymnasium being  
14 in the Public Trust and how you resolve that issue,  
15 whether it's through the lands swap or whatever process  
16 you go through, it's going to be something that is going  
17 to have to be resolved. Because I don't believe there's  
18 any statutory authority in the Public Trust Doctrine for  
19 this kind of activity. And so we have allowed an activity  
20 outside our jurisdiction, outside of the parameters that  
21 we're obligated to stay within. And we have an issue to  
22 deal with.

23 EXECUTIVE OFFICER THAYER: I agree, it's a  
24 problem. Of course, the position of the Commission has  
25 not been to accept that. And now that we found out about

1 it, to correct that. But it is really a question of  
2 resources. I don't like to go that way and make excuses,  
3 but there are 77 cities and counties with granted lands.  
4 And we have, I think, two and a half people to survey all  
5 of those. And it's just very difficult.

6 To some extent, even though I know Mr. Money is  
7 not satisfied with all of the staff report, it's people  
8 like him that help us out a lot. And we probably wouldn't  
9 have found out about these issues.

10 COMMISSIONER BUSTAMANTE: We need to make sure we  
11 follow up properly with it. And let me just ask, in  
12 the -- in the lease, this fair lease, what was the  
13 increase? Is there a proposed increase.

14 EXECUTIVE OFFICER THAYER: For what? I'm sorry.

15 COMMISSIONER BUSTAMANTE: The issue was raised  
16 that the lease has not been renegotiated as required,  
17 every five years.

18 Is there a new lease that's being proposed?

19 EXECUTIVE OFFICER THAYER: Well, with respect --

20 COMMISSIONER BUSTAMANTE: Our portion of the  
21 parking and the -- and our portion of the -- however you  
22 resolve the Gold's Gym issues.

23 EXECUTIVE OFFICER THAYER: Right. Our belief is  
24 that the best way -- what's discussed in the staff report,  
25 the best way to handle the Gold's Gym situation is to swap

1 that property out. And then it will be between the City  
2 and the lessee as to the appropriate rent for the City's  
3 properties, but that will not be Public Trust Land. That  
4 will end both those issues.

5 COMMISSIONER BUSTAMANTE: So I can get a proper  
6 visual, how far from the water is the -- is this facility,  
7 this Gold's Gym?

8 EXECUTIVE OFFICER THAYER: We have a map up here,  
9 which is impossible to -- let me bring it up.

10 This is -- Kincaid's Restaurant is right out here,  
11 in the water, within the harbor.

12 Gold's Gym is this area here, with three dark dots  
13 on top of it, right there. So it's across the parking  
14 lot, this parking lot here. And there's development along  
15 here, which blocks the views from Gold's Gym to the water.

16 So this property was not original Trust lands, but  
17 was purchased. So for this to be swapped out, it wouldn't  
18 be any different from what it had been before. So if  
19 there's some piece of property and the concerns that  
20 Mr. Money raised about what was the exchange going to be,  
21 this is going to have to come back to the Commission. The  
22 question that you had, we will all be discussing.

23 COMMISSIONER BUSTAMANTE: Okay.

24 And the actual lease, the revenue from a new lease  
25 with respect to the parking?

1 EXECUTIVE OFFICER THAYER: Well, if that's not  
2 within the Public Trust arena anymore, that's --

3 COMMISSIONER BUSTAMANTE: I thought that a portion  
4 of the parking spaces were in the Public Trust.

5 EXECUTIVE OFFICER THAYER: But that would be the  
6 parcel that would be swapped out. The Gold's Gym --

7 COMMISSIONER BUSTAMANTE: The entire parcel would  
8 be swapped?

9 EXECUTIVE OFFICER THAYER: Yes.

10 COMMISSIONER BUSTAMANTE: Okay. Are there any  
11 other -- last question: Are there any other agencies  
12 currently that are doing any investigations? There were  
13 allegations made of criminal actions, etc., etc. As far  
14 as we know, have we checked to see if there's any  
15 allegations that are being followed up on, through  
16 investigations of law enforcement or anyone else?

17 EXECUTIVE OFFICER THAYER: I wanted to respond to  
18 that, because that was something the City had raised.  
19 We're not in a position to clear the City of criminal  
20 charges.

21 COMMISSIONER BUSTAMANTE: I'm not asking that  
22 question.

23 EXECUTIVE OFFICER THAYER: But he indicated that  
24 we had. And I want it to be clear that we don't have the  
25 ability to do that.

1           Mr. Money referred many of these issues to, I  
2 think, three different law enforcement agencies. We  
3 contacted all three. The FBI said they wouldn't discuss  
4 their investigation with us. They hadn't taken any  
5 action, but they weren't discussing it. The other two  
6 said that they weren't contemplating taking any action.

7           COMMISSIONER BUSTAMANTE: Okay.

8           CHAIRPERSON WESTLY: Thank you, Mr. Bustamante.

9           First, I would like to thank Mr. Money for coming  
10 down here and raising these issues. This is an important  
11 duty the public plays, and we're all grateful to you.

12           I would like to thank all three members of the  
13 City of Redondo Beach for coming down here. I appreciate  
14 you made the effort to be here. That says a lot for the  
15 City. And thank you for your public service.

16           I think it's clear, here, there are many issues  
17 here. New ones were raised even today. The staff's  
18 recommendation does not close this matter. We will  
19 continue to follow up on a number of items that  
20 Mr. Bustamante has raised. And we'll continue -- I would  
21 like to ask members of the public, including you,  
22 Mr. Money, to continue to be in touch with the staff to  
23 raise additional issues, provide additional documentation,  
24 so on.

25           Having said that, it is time to take a motion on

1 this.

2 And I would like to ask a motion.

3 ACTING COMMISSIONER SHEEHAN: I will move the  
4 staff recommendation.

5 COMMISSIONER BUSTAMANTE: Second.

6 CHAIRPERSON WESTLY: Second? Great.

7 All in favor, say "aye."

8 (Ayes.)

9 COMMISSIONER BUSTAMANTE: Terrific. That takes us  
10 to Item 48, which is a request from the San Diego  
11 Coastkeeper, for the Commission to consider the timeshare  
12 component of the Woodfin Hotel Project in San Diego.

13 I would like to ask for the staff presentation, if  
14 I could, please.

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

16 The staff presentation will be made by Curtis  
17 Fossum, the attorney from the Commission staff who has  
18 worked on this.

19 MR. MONEY: Mr. Westly, I just wanted to say thank  
20 you for your courtesy, this time and in Oakland, and for  
21 your service to the state.

22 CHAIRPERSON WESTLY: Thank you, Mr. Money.

23 I might add, you make these meetings an awful lot  
24 more interesting.

25 (Laughter.)

1 CHAIRPERSON WESTLY: All right. Staff report,  
2 please.

3 ASSISTANT CHIEF COUNSEL FOSSUM: Chairman Westly,  
4 Commissioner Bustamante, and Commissioner Sheehan, good  
5 afternoon.

6 Commission and its staff have enjoyed a  
7 cooperative and productive working relationship with the  
8 San Diego Unified Port District Board and staff for many  
9 years, and look forward to many more.

10 The Port, in recent years, has come under  
11 increasing pressure from developers of hotels to allow  
12 leasing of timeshares as part of their projects.

13 On July 11th of this year, the Port Board approved  
14 a Port Master Plan Amendment that would permit 40 of the  
15 proposed 140 units of Woodfin Hotel Suites project to be  
16 leased to individuals, for up to 66 years, as timeshares.  
17 The leases would be in one-week intervals, and two weeks  
18 could be sold by Woodfin to buyers. We understand that  
19 those weeks can subsequently be sold or traded by the  
20 owners, and additionally, owners of timeshare weeks at  
21 other locations would be allowed to trade in their weeks  
22 for stays in Woodfin Suites.

23 Commission staff, earlier this year, testified and  
24 twice submitted written statements to the Board,  
25 expressing staff's opposition to the project because of

1 our long-held view that timeshares are inconsistent with  
2 the Public Trust Doctrine and therefore should not be  
3 allowed on Public Trust lands.

4 The Port attorney and Board Chairman Admiral  
5 Spear -- Spain, excuse me, supported your staff's  
6 position. However, Woodfin and others noted that the  
7 attorney general in 1996 had concluded in an opinion that  
8 timeshares might not be, per se, inconsistent with the  
9 Public Trust Doctrine if they provided certain amenities  
10 to the public.

11 Noting that the State Lands Commission had never  
12 formally taken a position on timeshares on Public Trust  
13 lands, and there are no judicial decisions or legislation  
14 deciding the matter, the Port Board approved the Port  
15 Master Plan for the Woodfin Suites Project, suggesting  
16 that this could be a test case to determine the law on the  
17 subject.

18 Because of the potential precedent-setting impact  
19 of the Board's decision, and receipt of a letter from the  
20 coastkeepers requesting a hearing, staff brought the  
21 matter to the Commission for your review and direction.

22 The Commission's decision on this project will  
23 help guide applicants, local government, trustees of  
24 tidelands, and the public on whether tidelands [sic]  
25 should be located on Trust property.



1           This timeshare proposal raises some very serious  
2 issues for the Commission and for the Public Trust  
3 Doctrine throughout California. The advice given by the  
4 Attorney General's Office to the Commission in 1982 was  
5 that timeshares provide a distinct and limited class of  
6 people with exclusive end use of Public Trust lands, not  
7 available to the general public, and are a use  
8 inconsistent with the Public Trust.

9           Your staff believes this is still true. However,  
10 14 years later, then-Attorney General Dan Lundgren offered  
11 a different opinion, suggesting hypothetically that under  
12 certain limited circumstances, timeshare use might be  
13 considered a use consistent with the Public Trust  
14 Doctrine. We find significant shortfalls in the  
15 fundamental analysis and conclusions in his opinion.

16           Since timeshares emerged in the 1960s to the  
17 present, no timeshare project on Public Trust lands in  
18 California has been approved.

19           Timeshares are clearly a growing phenomena and  
20 exist in many vacation and resort areas such as Palm  
21 Springs; Las Vegas; Vail, Colorado; and Florida. We're  
22 not suggesting that timeshares are inherently bad, but  
23 rather, that Public Trust lands, including fill Public  
24 Trust lands, as is the case with Harbor Island, are an  
25 extremely limited public resource and protected by laws in

1 a distinct trust that will evolve over the centuries.

2 California courts have been particularly  
3 protective of these lands and the public needs and uses  
4 associated with them.

5 Notably, California courts and federal courts, in  
6 recent years, have stepped in to protect Public Trust  
7 Resources at Mono Lake, the Owens Lake and River, and the  
8 San Joaquin River.

9 Public Trust lands are like our state and national  
10 parks; they have been set aside to be protected for the  
11 enjoyment of the common public and not to be usurped or  
12 occupied by the few.

13 Staff inquired into whether California's  
14 Department of Parks and Recreation and the United States  
15 National Park Service allows timeshares, and found that  
16 while hotels, like the Ahwahnee in Yosemite, may be  
17 permitted in some parks, timeshares are not allowed.

18 Why are hotels and restaurants allowed? They can  
19 provide necessary and incidental accommodations for  
20 visitors to public lands. But a market system of selling  
21 timeshare leases, tying up rooms for a limited number of  
22 owners, for a week or two or more, in advance, for up to  
23 66 years, is not consistent with the public access  
24 character of these lands.

25 The 1996 opinion suggested that if a project

1 provided a number of hypothetical enhancements, then maybe  
2 it would be okay. The opinions suggest a test, which is  
3 based on a misinterpretation of California case law and  
4 the legal precedences the cases stand for.

5 California courts have authorized certain  
6 non-water dependent visitor-serving uses they found  
7 consistent with the Trust, if those are necessary and  
8 incidental to accommodate the public when they access  
9 Public Trust lands, or if they are necessary and  
10 incidental to promote Public Trust uses or accommodate  
11 water-dependent Public Trust needs, such as maritime  
12 trade.

13 Hotels, restaurants, parking lots, even restrooms  
14 and warehouses all fall under these categories. However,  
15 we do not believe that timeshares qualify as necessary to  
16 accommodate public access, since hotels already provide  
17 for overnight and vacation stays.

18 Regardless, the subject project fails to even meet  
19 the misguided test in the '96 opinion. The public  
20 enhancements described as being offered by this project  
21 are nominal and would be equally available if the facility  
22 involved 100 percent hotel rooms and no timeshare units.  
23 In fact, on several occasions, proponents have indicated  
24 that the project will be built with or without the  
25 inconclusion of timeshares.

1           On behalf of Woodfin, their attorney, Mr.  
2 Kaufmann, whom I have known for over 20 years, and I must  
3 acknowledge is a friend of mine and one of the top  
4 attorneys in this area, submitted a lawyer -- submitted a  
5 letter to the Commission. The letter asserts that the  
6 staff report does not accurately characterize the Woodfin  
7 proposal and the Port Board's decision. In fact, the  
8 staff report carefully describes the Woodfin proposal by  
9 quoting from their letters regarding proposed timeshare  
10 use limitations. Those statements include discussions of  
11 stays not more than 29 consecutive days or 90 total days  
12 per calendar year. The letters are attached as Exhibit F  
13 to this agenda item.

14           Likewise, the staff report carefully describes the  
15 proposal Port Master Plan Amendment as limiting sales, not  
16 use, of unit intervals, to two one-week periods per year.  
17 This critical distinction between sale limitations and  
18 length-of-use restrictions is lost in the Woodfin letter.  
19 The letter repeatedly refers to one-week periods of time  
20 and fails to acknowledge the Port Master Plan to allow  
21 sales of two one-week intervals with no specific period of  
22 restriction on length of stays. The exception is that  
23 there's a rather vague statement that says, quote, no  
24 party shall dominate usage of any timeshare.

25           Therefore, the Port Master Plan, as adopted by the

1 Port, could allow Woodfin's earlier proposal, the 29  
2 consecutive days or 90 days per year of use; or even more,  
3 by allowing individuals to trade in their weeks for  
4 timeshare ownerships elsewhere.

5 Let me be clear about this: Even if the maximum  
6 annual use were limited to one week per household and less  
7 than 66 years in length, it's the exclusivity of use that  
8 is in conflict with the Public Trust Doctrine. The  
9 general public does not have access to timeshares; only by  
10 purchasing a unit interval and joining a timeshare owners  
11 group can members of the public access these rooms.

12 Industry data indicates that less than 1.3 percent  
13 of Californians have done this. The rest of the public is  
14 given the chance to rent vacant units, but nationwide,  
15 only 4.4 percent of the rooms are used this way. Thus,  
16 timeshares do not provide a significant overnight  
17 opportunity for those who don't own one.

18 The exclusion of the general public in favor of  
19 the benefit of the few is also a reason why residences are  
20 not permitted on Public Trust lands.

21 Proponents of timeshare developments often speak  
22 to the economic factors involving timeshares. The sale of  
23 timeshares make their projects more viable. They provide  
24 up-front cash flow. They also allow members of the public  
25 to prepay their vacations. For those individuals who wish

1 to invest and plan out their future vacations for the next  
2 66 years, this sales pitch may make investment sense.

3           However, the timeshare approach fails to deal with  
4 reality that much of the general public can either not  
5 afford the cost of purchasing and maintaining a lease of  
6 66 years or has opted not to enter into such a long-term  
7 commitment. And even if they desire to, the units may be  
8 previously sold out and not available to be purchased or  
9 rented.

10           Creation of timeshares creates a distinct group of  
11 people with a right of occupancy for a piece of a property  
12 for decades. The California Coastal Commission has not  
13 allowed this type of private development and limited --  
14 has only allowed it in limited circumstances and never on  
15 Public Trust lands. To allow this proposal to be  
16 developed would be a fundamental misstep toward  
17 privatization of public property.

18           Like the California Constitution's Public Access  
19 Protections, the Coastal Act Priorities for protecting  
20 waterfront public access and our state and national parks  
21 that prohibit creating a distinct class of private owners  
22 with up to 66 year right of use, the Public Trust Doctrine  
23 exists to protect the rights of the public and Trust Lands  
24 so that the lands remain open and available to the general  
25 public.

1 Staff and the Commission respectfully request the  
2 Commission adopt the staff report's recommendations.

3 Thank you. I would be happy to answer any  
4 questions.

5 CHAIRPERSON WESTLY: Great. Thank you very much.

6 What we're going to do here is very quickly. And  
7 the simple reason is we have more members of the public  
8 wishing to speak on this item than I have seen in my four  
9 years on this Commission.

10 So what I would like the ask the public's  
11 cooperation on, to be fair to everybody, and we would like  
12 to give everybody a chance to speak, is number one, you do  
13 not have to speak for the full three minutes. What we  
14 often find, when this many people want to speak, many  
15 people want to make the same points. So I'm going to move  
16 things along fairly quickly. I'm going to ask people to  
17 be on deck, come right up, give their name and say who  
18 you're with, if there's an identification.

19 Second, we've had a request from people speaking  
20 on the opposition, to the staff recommendation. We're  
21 going to take the opposition presenters first, and then  
22 the people speaking in support of the staff  
23 recommendation. We've had a request from the opposition  
24 side that they are -- I don't know if a premier or lead  
25 speaker would like to be able to aggregate some of the

1 time from the other people who wish to speak. I am more  
2 than happy to allow Mr. Kaufmann ten minutes, instead of  
3 the customary three, if I could get some of the other  
4 people who have signed up to speak to raise their hands.

5 (Hands raised.)

6 And state your names.

7 MS. WERNETTE: Stephanie Wernette.

8 CHAIRPERSON WESTLY: Okay. Stephanie, I'll remove  
9 your card here.

10 MS. BLEMKER: Anne Blemker.

11 CHAIRPERSON WESTLY: Anne?

12 MS. BLEMKER: Blemker.

13 CHAIRPERSON WESTLY: Okay. We'll remove yours.

14 And who else?

15 MR. ROUSSEAU: Mark Rousseau.

16 CHAIRPERSON WESTLY: Mark Rousseau. Terrific,  
17 thank you.

18 MS. FABION: Judy Fabion.

19 CHAIRPERSON WESTLY: Judy, thank you. Terrific.  
20 That is appropriate [sic].

21 Mr. Kaufmann, your colleagues have placed great  
22 faith in you. Have at it.

23 MR. KAUFMANN: Too much faith.

24 (Laughter.)

25 MR. KAUFMANN: Good afternoon, Mr. Chairman and



1 Honorable Commissioners. My name is Steven Kaufmann. I  
2 represent the Woodfin Suite Hotels. I really appreciate  
3 the ten minutes. Thank you.

4 Today's hearing -- we have actually a PowerPoint  
5 presentation. Today's hearing is obviously focused on the  
6 Public Trust. And I want to give you just a quick  
7 overview of the project. I think it helps.

8 (Thereupon an overhead presentation was  
9 presented as follows.)

10 MR. KAUFMANN: The project's located in the middle  
11 of Harbor Island -- and you see Marina Cortez; that's  
12 where it is -- on the land side of Marina Cortez, flanked  
13 by two existing hotels -- the Hilton and the Sheraton --  
14 and it's across from the San Diego airport. This site,  
15 Commissioners, is deteriorating, and it needs to be  
16 redeveloped and made more publicly accessible. Woodfin --  
17 next.

18 --o0o--

19 MR. KAUFMANN: Woodfin proposes a 140-room  
20 all-suite hotel, which 40 rooms are less than 30 percent  
21 of the total, will operate as timeshare. We haven't  
22 negotiated the length of the lease. It's not going to be  
23 66 years. We're told by the Port that they are looking at  
24 between 50 and 55 years. But the timeshares are going to  
25 be distributed throughout the main building, and you won't

1 be able to tell whether a room is a hotel unit or a  
2 timeshare.

3 We're going to provide new amenities available and  
4 open to the public; and a new seawall; a public promenade;  
5 a restaurant and bar; meeting and banquet rooms; retail  
6 space for visitors-serving uses; hospitality center; a  
7 spa; we're going to provide a new marina services  
8 building.

9 You know what an exemplary job the Port of San  
10 Diego does in discharging its Public Trust  
11 responsibilities, and the commissioners that did that are  
12 here. In approving the Port Master Plan Amendment, the  
13 Port Board conducted multiple hearings on the timeshare  
14 component and it did receive input from your staff and  
15 guidance from an attorney general's opinion. And then it  
16 imposed numerous restrictions on the project to ensure  
17 that the Public Trust is protected.

18 I think you can skip ahead.

19 --o0o--

20 MR. KAUFMANN: One more slide.

21 --o0o--

22 MR. KAUFMANN: There you go.

23 Consider that we started with simple language  
24 permitting 140-unit hotel with timeshare units, this  
25 really was where we began when we met with your staff in

1 March of this year. And then, after all the input,  
2 including the input from your staff, the adopted Port  
3 Master Plan language was revised to fully protect the  
4 Public Trust. And this is language which is in the -- the  
5 Port Master Plan Amendment that I attached as Exhibit 1 of  
6 my letter to you.

7 Go to the next slide.

8 --o0o--

9 MR. KAUFMANN: Before I actually discuss the  
10 language of the amendment, I wanted to be sure that  
11 there's no nomenclature confusion here. So we've prepared  
12 this chart for you.

13 The Coastkeeper letter, that's Exhibit E to your  
14 staff report, and appears to have been the reason for this  
15 hearing, expressed concern about condominium hotels. And  
16 that's because this year, the Coastal Commission approved  
17 four of them, and they were controversial.

18 This project emphatically is not a condominium  
19 hotel. And I think even the staff report kind of lumps  
20 them together. This chart shows some of the salient  
21 differences between timeshares, fractionals, and  
22 condominium-hotels. And the timeshare that we are  
23 discussing is really simply nothing more than a prepaid  
24 one-week vacation in a hotel. There's no right to a  
25 specific unit; there's no right to a specific week;

1 there's no ownership interest in the unit; and the cost is  
2 significantly less than a fractional or a condo-hotel.  
3 And you can compare this, what's referred to as the modern  
4 vacation timeshare with fractionals or condos, where the  
5 buyer owns a unit or a fraction of it, and stay for long  
6 periods of time, up to 90 days a year. And then the cost  
7 can be in the hundreds of thousands of dollars. There's  
8 an *L.A. Times* article that dealt with the condo-hotels  
9 that said 2 million to 3 million. A very different kind  
10 of animal.

11 Mr. Fossum, whom I love and worked with for many  
12 years, I'm not sure we're reading the same document.

13 The Port Master Plan Amendment says, "Timeshare  
14 intervals shall be limited to sale in increments of one  
15 week, on a floating week and floating unit basis and may  
16 include intervals of lesser duration including split-week  
17 intervals. Use restrictions shall limit ownership to a  
18 maximum of two weeks per year."

19 When we met with your staff, we originally talked  
20 about 29 days and 90 days total, because that's what the  
21 Coastal Commission was doing. When we walked out of that  
22 room, we changed this and cut this to the bone. And  
23 that's what the Port did.

24 Next slide, please.

25 --o0o--

1 MR. KAUFMANN: There's also some confusion about  
2 how the attorney general has looked at timeshares.

3 The 1982 Informal Advice was a memo written by a  
4 deputy -- I was a deputy; I worked with Mr. Hager, whom I  
5 also love -- in my then-section of the Attorney General's  
6 Office to our boss. And then it was apparently  
7 transmitted to the State Lands Commission. And it  
8 analyzes specific projects and proposed the Wrather  
9 project in Long Beach. Now, you have to look at this  
10 project. This is an old-style timeshare. It really is  
11 more of a fractional. You get a 30-day interval. There's  
12 no real public amenities. There's a low vacancy factor.  
13 There's a limited use of exchange rights. And Wrather  
14 really wanted this to be a residential project.

15 It walked like a residential project and talked  
16 like a residential project. And so it's really no  
17 surprise the deputy attorney general concluded properly,  
18 that that constituted a long-term private residential use  
19 and made it consistent with the Public Trust.

20 And so then compare that to the '96 opinion,  
21 detailing with a totally different product of what we have  
22 today: A one-week maximum interval, significant public  
23 access, rental of unused units, substantial use of  
24 exchange privileges, significantly -- this was a hundred  
25 percent timeshare. The AG still considered it a

1 commercial use.

2 In any event, the timeshare component -- if you  
3 can do the next slide --

4 --o0o--

5 MR. KAUFMANN: -- approved in the Court Master  
6 Plan is even closer to a traditional hotel. Woodfin is a  
7 hybrid. It's not a hundred percent timeshare. It's  
8 heavily weighted as a hotel, because what's what Woodfin  
9 does; it builds and operates hotels. 71 percent of the  
10 units, Commissioners, are hotel units; 29 percent are  
11 timeshare units; and the unused intervals are right back  
12 into the rental pool.

13 Next slide, please.

14 --o0o--

15 MR. KAUFMANN: In the 1996 opinion, the AG laid  
16 out three criteria. I'm going to run through them very  
17 quickly: The state can't, as trustee, can't give up its  
18 right of control over the Trust property. We satisfied  
19 that.

20 Second, the use can't substantially impair the  
21 Public's interest in the remaining lands and waters. We  
22 satisfy that. The Port required us to make substantial  
23 public access improvements. They are not, by any stretch  
24 of the imagination, nominal.

25 Third, the project must produce a public benefit

1 that furthers and promotes trust purposes, and we satisfy  
2 that.

3 This type of hotel and timeshare unit compliment  
4 each other. They do the same thing. They provide  
5 transient public accommodations to the tidelands. They  
6 do -- they are supposed to function in appearance and  
7 location like a hotel. When the timeshare unit is not  
8 occupied, it has to go back to the inventory of hotel  
9 rooms. Management is through the hotels. Timeshare  
10 reservations is booked through the hotel. Everything is  
11 done through the hotel.

12 So we come to the central question: Is this a  
13 residential use? And the answer is no.

14 We have a one-week maximum intervals and a  
15 floating unit or a floating week.

16 Timeshares and hotel units are treated the same,  
17 and when you think about, it's exactly like a prepaid  
18 one-week vacation in an unspecified hotel room. In fact,  
19 you know, you can prepay a vacation in a hotel for a week,  
20 two weeks, or more, if you really like it, you can pay a  
21 lot more. But that doesn't violate the Public Trust.

22 I'm giving you -- If you can go to the next  
23 slide --

24 --o0o--

25 MR. KAUFMANN: -- here's a quote from an

1 unpublished case that dealt with the same type of  
2 timeshare where the court said "It's not designed or  
3 operated to serve a residential population by any stretch  
4 of the imagination."

5 In other words, it's not a closed case. I don't  
6 know what's on the next slide, but if you can go to it.

7 --o0o--

8 MR. KAUFMANN: Staff report repeatedly says it's  
9 an instrument for the wealthy. That's wrong.

10 It's accessible and affordable to the working  
11 class, for families who want to enjoy a vacation at the  
12 coast.

13 Just a couple of real quick statistics:  
14 18 percent of timeshares are bought by families with  
15 incomes less than \$50,000 per year. 50 percent are bought  
16 by families with incomes between 50 and a hundred  
17 thousand. So that's almost 70 percent. Very significant.  
18 The cost of timeshares is between 15 and 30.

19 Let me close with this: We share and embrace this  
20 Commission's responsibility to maximize public access to  
21 the coast and the tidelands. This project advances that  
22 goal. It's a good project.

23 The Port commissioners were responsible in  
24 exercising the charge as local grantee. The Woodfin  
25 Project, as approved, is consistent with the 1996 opinion,



1 and we think exceeds it. The Port Master Plan Amendment,  
2 as approved, is consistent with the Public Trust Doctrine.  
3 And we ask you to trust your Port's decision and support  
4 it, because we believe it sets the goal standard for this  
5 type of project.

6 Mr. Chairman, this began as an information item  
7 request from Coastkeeper. Obviously, it's important to  
8 us. We hope that we've provided you with sufficient  
9 information. We want the Commission to be fully informed,  
10 and we ask you to take what time you need to be fully  
11 informed and to make the right decision.

12 Thank you very much. I appreciate the additional  
13 time.

14 CHAIRPERSON WESTLY: Mr. Kaufmann, thank you very  
15 much. Again, I'm going to try to move things along as  
16 best as I can, to accommodate and be respectful to  
17 everybody. I would like to ask Mr. Wayne Smith to come  
18 forward; and Ms. Donna Andrews to be on deck.

19 Mr. Smith?

20 MR. SMITH: Thank you. I'm Wayne Smith. I was  
21 the former chief of staff to Attorney General Dan Lundgren  
22 during the time period in which the 1996 opinion was  
23 drafted.

24 I would like to just speak very briefly about the  
25 distinction between the 1982 Legal Advise Memorandum and

1 the 1996 Formal Opinion.

2 The 1982 Advice Memorandum is actually a -- much  
3 akin to a lawyer advising a client about what that  
4 particular individual's opinion is on a particular matter.

5 The 1996 opinion is actually of the constitutional  
6 office, in this case, Office of the Attorney General,  
7 opining about what a particular matter -- what the matter  
8 would be that was asked by a legislative officer.

9 And the difference is that the Formal Opinion is  
10 actually a published opinion that the courts can cite and  
11 that bodies, such as yours, could utilize as guidance when  
12 you sort of enact your policy. And so I want to make it  
13 very clear that those two are completely different  
14 animals. And the 1996 opinion is a Formal Opinion that's  
15 published and it's offered, really, basically as legal  
16 advice to the grantees, to a body such as yours, to use in  
17 making your policy decisions.

18 CHAIRPERSON WESTLY: Great. Thank you. Thanks,  
19 Mr. Smith. We appreciate you being here.

20 Ms. Andrews.

21 MS. ANDREWS: Good afternoon. My name is Donna  
22 Andrews. I want to make two very quick points: Number  
23 one, timeshare is a financial tool to make the coast  
24 affordable for individuals whom otherwise would not be  
25 able to enjoy the coast. It is not a mechanism to enrich

1 the developer. It's a mechanism for individual families  
2 to prepay their vacations and to take their families to  
3 the coast and enjoy it, like other individuals.

4           What's interesting about this situation is that if  
5 we were before you, building a Woodfin Suite with  
6 30 percent exclusive presidential suites that will cost  
7 \$2,500 a night, we would not be before you. That's the  
8 thing that's really interesting here. Timeshare is really  
9 a representation of the spirit of the Public Trust  
10 Doctrine, to allow it to evolve and to address the  
11 changing needs of the public -- not the wealthy people --  
12 for the people who have to plan ahead.

13           I respectfully request that you take the time to  
14 really receive the information and become the expert, if  
15 you will, on what this issue is all about, before you make  
16 your decision.

17           We're not asking for your approval today. This  
18 came to you as an information item. And we would really  
19 request that you take the time to receive the necessary  
20 information so you can make a decision that is  
21 representative of what the spirit of the Public Trust  
22 Doctrine is intended to do. It's not a residential use.  
23 It's a commercial use. I can understand the concern about  
24 the slippery slope and future regulations. But look at  
25 what the Port did; they were very responsible.

1           This is an opportunity for the Commission to allow  
2 the Public Trust Doctrine to breathe; to allow it to do  
3 what it was intended to do; and what the California State  
4 Superior Court said, and that is, not to burden without  
5 motive classifications of this use, but to allow it to  
6 respond to the changing needs. And building a hotel today  
7 is decidedly more expensive than it was 10, 15, 20 years  
8 ago.

9           Thank you very much. If you have any questions,  
10 we will be here to answer them.

11           CHAIRPERSON WESTLY: Thank you, Ms. Andrews.

12           We have Mr. Sam Hardage.

13           MR. HARDAGE: Thank you very much, Mr. Chairman,  
14 commissioners.

15           My name is Sam Hardage. I'm chairman of Woodfin  
16 Suite Hotels. We're the applicant here.

17           And when I was reading the staff report, I was  
18 amazed at the -- what I thought was the  
19 mischaracterization of this project: the industry, the  
20 users, the pricing. And I would hope that this could be  
21 the beginning of a dialogue to look at all of the facts.  
22 This is a very important industry. And as a matter of  
23 fact, it's probably the only way, that I know, to assure  
24 the average Californian to be able to enjoy a vacation on  
25 the California waterfront.

1           Pricing for construction costs, of all sorts, have  
2 escalated dramatically over the last four or five years.  
3 I think everybody knows that. And the cost to build a  
4 hotel on the California coastline is roughly double what  
5 it was ten years ago.

6           So in order to build a product that can be used on  
7 the California waterfront, by the average Californian, we  
8 need to be able to use all the facilities and all the  
9 tools at our hand. And the reality is that the costs of  
10 the timeshare, in this project, would be about the same  
11 price as a Ford F-150 pickup truck, and it would allow the  
12 family, the average family in California, to be able to  
13 enjoy a vacation on the waterfront, instead of having to  
14 pay 500 or 600 or more dollars a night, for a hotel and to  
15 be priced out of the marketplace.

16           So I would hope that the Commission and the staff  
17 would take the time to understand this very important  
18 industry. This is a very important issue. And I think  
19 it's very important for the average Californian that wants  
20 to enjoy this beautiful California waterfront and the  
21 California coasts that we have.

22           So I would encourage -- and I'm glad that we're  
23 here today. I hope this is the beginning dialogue of a  
24 discovery which finally comes to a policy that will help  
25 serve all the Californians. Thank you very much.

1 CHAIRPERSON WESTLY: Thank you, Mr. Hardage.

2 Next, Perry Dealy, President of Manchester  
3 Financial Group.

4 MR. DEALY: Mr. Chair, Members of the Commission,  
5 first I want to also congratulate both yourself and  
6 Lieutenant Governor Bustamante on your phenomenal service  
7 to the State of California and how much time and sacrifice  
8 you had to give to benefit the coastal waters and to make  
9 it accessible to all of those that want to enjoy the  
10 coast.

11 We are a large-scale waterfront hotel developers.  
12 And I've done a lot of work in California over the years.  
13 And I think it's -- you know, urban San Diego, urban areas  
14 have evolved into a very complicated development cycle in  
15 the last four or five years.

16 I think, as has been presented, the cost to do  
17 coastal development is extremely expensive. The  
18 inflationary factors of construction materials, the costs  
19 that are unique to building on the water with piles.  
20 You've got all the seismic characteristics with look of  
21 action.

22 And to do it right, it's very expensive. And to  
23 have a policy that if it was set up properly, would allow  
24 projects to be designed and create public amenities with  
25 the funds necessary to do it, with these kinds of

1 amenities that would -- that would allow public to come  
2 to these areas and enjoy it.

3 For example, parks, plazas, public art, exhibits,  
4 things -- things that I think Coastal Commission and State  
5 Lands have been very successful over the years in  
6 integrating into projects that have been developed on the  
7 waterfront.

8 And I think the projects like the Hardage proposal  
9 that have been very sensitive and have taken the time,  
10 working with the community, working with the San Diego  
11 Unified Port District, in coming up with a plan that is  
12 balanced, is the kind of project that we have to work hard  
13 at finding a way to finance those projects.

14 And I think the key that you're trying to come to  
15 grips with is one that the Coastal Commission -- the  
16 commissioners have had the same issue with. And I think  
17 that if we could create an environment that you set up  
18 some -- some criteria that would allow these kinds of  
19 decisions to be made so that you have a review process  
20 that establishes the -- the opportunity to create the  
21 public benefit, allow affordability for those that could  
22 come in and take advantage of a one-week-a-year vacation.  
23 Even if it was a timeshare, I could book any hotel in  
24 Southern California a year in advance, for a week. You  
25 can do that all day long. But it's not as affordable.

1 And if you have a timeshare element, I think it gives more  
2 access to more -- more of those that want to come back to  
3 the coast on a regular basis.

4 The remainder of the time, that these units are  
5 not in that exclusive use, they are open to the public,  
6 and they operate as hotel rooms. So I would hope that  
7 this leads to more dialogue and opportunity to have the  
8 Committee and be able to create an opportunity to allow  
9 this kind of -- of financing and public amenity venue to  
10 be integrated into the total mix.

11 Thank you.

12 CHAIRPERSON WESTLY: Thank you very much. Again,  
13 trying to move things along.

14 Commissioner Dukie Valderrama.

15 Again, you are not compelled to speak for the full  
16 three minutes. I know we're hearing a lot of the same  
17 arguments.

18 MR. VALDERRAMA: Thank you very much. Dukie  
19 Valderrama, Port Commissioners, representing all of my  
20 fellow Port Commissioners for San Diego.

21 First of all, I want to welcome you to San Diego.  
22 Basically, we -- the Port Commission spent three months  
23 reviewing this particular issue. I mean, we did our due  
24 diligence. As Port commissioners, we take our fiduciary  
25 responsibility very seriously. And that's why we spent



1 three months looking at this particular issue. Where  
2 we're at, at this given time, is, you know, I come from a  
3 very big family, and I represent the City of Nash City  
4 [phonetic], which is one of the poorest cities in the San  
5 Diego County.

6 And we had a family, and as I indicated, I come  
7 from a very big family. I have 13 aunts and five uncles.  
8 So you can see, I come from a big family. We had a family  
9 meeting. When we had my family meeting, I asked everybody  
10 there --

11 COMMISSIONER BUSTAMANTE: Is that how you got  
12 elected?

13 (Laughter.)

14 MR. VALDERRAMA: That would always help.

15 And I asked my family, "How many of you have been  
16 to Port Tideland Properties, in any of the hotels?" None  
17 of them have ever been to the Port tidelands, because they  
18 can't afford it. But I asked every one of them, at that  
19 family meeting, "How many of you out there have  
20 timeshares?" And some of them have raised their hands,  
21 because they can afford timeshares and they were able to  
22 go to nice facilities that they would never have been able  
23 to do.

24 So timeshare, contrary to what your staff's  
25 position is, is that -- it's only for the elite. No, it

1 allowed my family to be able to go to nice properties that  
2 they would never been able to do before.

3 So as a result of that, I encourage you. Our  
4 Commission, it is fully -- it supports this thing, and I  
5 ask that you also consider this.

6 Thank you.

7 CHAIRPERSON WESTLY: Thank you, Mr. Valderrama.  
8 Mr. Wilkens, Port of San Diego.

9 MR. WILKENS: Port staff is here to answer your  
10 questions.

11 CHAIRPERSON WESTLY: Great, thank you. We still  
12 have about 20 more speakers. So I'm going to move this  
13 along.

14 Mr. George Palermo. And Gerri Retman, if he or  
15 she could be on deck.

16 MR. PALERMO: Chair Westly and Commissioners, my  
17 name is George Palermo. I represent 5th Avenue Landing  
18 Developer at the Spinnaker Hotel, here in San Diego.

19 And I would like to make a few points: One, I can  
20 tell you that our hotel is not financeable without having  
21 some component of an equity share concept, and it's  
22 somewhere between 20 and 30 percent.

23 And if we can get that, then we could build our  
24 hotel. Otherwise, I'm afraid it won't be built. Another  
25 point I would like to make is -- and I -- it's a question

1 and I know you don't have to answer it if you can't: I  
2 don't understand how we can ignore with the Coastal  
3 Commission does. You know, they're an agency much like  
4 you. The last thing they would do is deny access to the  
5 public, so how is it they can approve equity share-type  
6 projects when your staff can't even consider recommending  
7 them.

8 I really don't think you said that. So some day I  
9 would like to get an answer from staff as to why the  
10 Coastal Commission allows it and you won't.

11 COMMISSIONER BUSTAMANTE: You will get one today.

12 MR. PALERMO: Okay. Good.

13 Another question I have is, I took the opportunity  
14 to read some of the information -- I mean, all the  
15 information was available to me and I was able to read  
16 some of it. And as I read it, I didn't think the  
17 information was complete. And when I heard your attorney,  
18 Mr. Fossum, speak, I realized it wasn't.

19 I heard Commissioner Valderrama speak, and I know  
20 what this port went through in order to make the decision  
21 to support this. They weighed the strengths and  
22 weaknesses of this concept. They looked at the pluses and  
23 minuses. And I think that's what is deficient in your  
24 staff report.

25 I didn't see any strengths pointed out to you. I

1 didn't see any pluses. All I saw was weaknesses and  
2 negative comments.

3 And I think in order for you guys to make the best  
4 decision, you need to have all the information. You know,  
5 certainly, I go into court and they swear you in and they  
6 tell you to tell the truth, sure you will, but the whole  
7 truth and all the truth. So I think you got the truth,  
8 but I don't think you have the whole truth. And I think  
9 you need more information in order to make an informed  
10 decision.

11 So I would hope you would consider deferring this  
12 and get the information, obtain it from interested  
13 parties, much like your staff has an interest in where  
14 they want to see this go; and also obtain information from  
15 disinterested parties so you can look at all three  
16 sources, look at the strengths and weaknesses, and then  
17 make a decision.

18 Lieutenant Governor Bustamante made a comment  
19 complimenting the staff at being at the forefront and the  
20 cutting edge of many issues. And I think this is an  
21 issue. You have an opportunity, here, to be at the  
22 forefront and the cutting edge of setting a policy that  
23 will allow this state to continue with hundreds of  
24 millions of dollars of development, tens of million  
25 dollars of revenue to the related ports. And I don't

1 think it's an opportunity you should pass up.

2 Thank you very much.

3 CHAIRPERSON WESTLY: Thank you, Mr. Palermo.

4 Let me just point out, we received volumes of  
5 information here and we've looked at a good deal of it.

6 So please note how much time and effort has  
7 already been expended on this.

8 I want to acknowledge Mr. Dick Ragatz, who's  
9 kindly given his time to his president of Ragatz  
10 Associates. And he's willing to answer any questions, if  
11 necessary.

12 Thank you.

13 Gerri Retman, San Diego Port.

14 MS. RETMAN: Is that -- is that -- I'm speaking on  
15 the opposite.

16 CHAIRPERSON WESTLY: Okay. We're going to hold  
17 off and call you back in a moment.

18 Thank you. Next is Papa Doug Manchester, chair of  
19 the Manchester Financial Group.

20 UNIDENTIFIED MALE: I think he had to leave.

21 CHAIRPERSON WESTLY: Okay. Colleen -- I was  
22 curious to see. Colleen Manzer and then John McNab, and  
23 we'll move on to all of the people on -- wishing to speak  
24 in favor of the item.

25 MS. MANZER: Good afternoon. I wanted to read two

1 letters that came from me: One from my sister who wanted  
2 to be here, but she's busy having a baby; and the other  
3 from actually a very good friend who's a nurse and  
4 working.

5           The first is from Julie Redner [phonetic], and she  
6 said she wanted to talk about how timeshares had a  
7 positive impact on her ability to go, as a family, on  
8 vacation. And she says, "We have been able to go on  
9 formal vacations with our family because of a timeshare  
10 program. My parents-in-law own a timeshare and have  
11 shared it with their entire family."

12           Trying to make this quick. "What makes the  
13 timeshare concept so great was that the family with young  
14 children were able to travel to wonderful destinations.  
15 Also, by cooking meals in a timeshare together, it  
16 enhances the camaraderie between the adults and eases the  
17 stress of not having to take small children to a  
18 restaurant, as well as saves us money.

19           "The money we save by eating in allowed us to have  
20 and see more area attractions, making the vacation much  
21 more memorable. And all in all, my family has been  
22 positively impacted by a timeshare experience, and I hope  
23 that we continue to have that ability in San Diego."

24           The second, from Marilyn Gilberteen [phonetic],  
25 who's a nurse, says, "I have been a timeshare owner for

1 close to 20 years. I have had the chance to travel at  
2 reasonable expense to these places, without the worry of  
3 expensive hotels, for example, at the height of ski  
4 season, which is my favorite.

5 "On many ski vacations, my family and guests and I  
6 have been able to further curtail our vacation expenses by  
7 cooking multiple meals in the kitchen at the timeshare.  
8 What a wonderful feature to have included in a timeshare  
9 vacation. The opportunity to travel and see the world and  
10 know that options to continue to do so, at a reasonable  
11 cost, have made me a believer in the benefits of timeshare  
12 ownership. And I recommend it to my friends for years."

13 Thank you for my chance to speak.

14 CHAIRPERSON WESTLY: Thank you, very, very much.

15 John McNab.

16 MR. McNAB: John McNab. My apologies. I marked  
17 the wrong box. I was opposed to the project and fully in  
18 support of the staff's position.

19 CHAIRPERSON WESTLY: Can I come to you, back in  
20 minute? Just want to get everybody in the same -- if we  
21 can hold on -- we've asked to do this in a certain order.

22 I would like to ask -- Gerri -- we'll come back to  
23 you -- John, rather. Forgive me.

24 Jerry Butkiewicz, secretary treasurer of the San  
25 Diego Imperial County Labor Council.

1           Mr. Butkiewicz. I would like to note,  
2 Mr. Butkiewicz, is a nationally recognized labor leader.

3           MR. BUTKIEWICZ: Thank you, Mr. Westly. And I  
4 also want to thank you and other commissioners for your  
5 service to the working class people in the state of  
6 California.

7           I would like to speak in favor of the staff's  
8 recommendation. Labor in San Diego has been working with  
9 the environmental community on Public Trust issues. We  
10 agree with the environmental community and your staff that  
11 the timeshares are inconsistent with the Public Trust  
12 Doctrine.

13           The working class people in this community are  
14 counting on you to not let this domino start here, the  
15 taking away of the public right access to our public  
16 tidelands. Timeshares lead to condo-hotels, then straight  
17 condos, until we limit working class people's public  
18 access to our coast and our beaches.

19           At least if it's a hotel, we can buy one night and  
20 enjoy the view of our coast. I must admit, for this  
21 project to be the test case, is a slap in the face to  
22 working class families in California.

23           I am proud to say that the labor movement in San  
24 Diego County has a history of working with employers and  
25 developers to grow our economic development in San Diego



1 County. But for this particular company, Woodfin Suites,  
2 to ask the public to capitulate to an employer-developer  
3 who has no respect for working class families, in fact,  
4 refuses to follow the laws like livable wages, and to ask  
5 working class families to give up our public access to our  
6 beaches and our coasts, is an insult.

7 I would like to tell you that me and my wife were  
8 recently in a timeshare presentation within the last  
9 month. And I couldn't help but sit there and look at what  
10 I would have to assume would be lower income families  
11 being pressured in a room to buy a timeshare. If any of  
12 you have been in that situation -- it's a pretty sad  
13 situation, especially when they slid the paper in front of  
14 my wife and I and were hoping we were so stupid, that we  
15 didn't understand what 12 percent interest rates meant.

16 They do tell you, today, how many timeshares are  
17 bought by working class people, but they fail to tell you  
18 how many foreclosed timeshares there are on working class  
19 people.

20 I would suggest you go home and click on ebay and  
21 click on the timeshares and see how many foreclosed  
22 timeshares there are.

23 I would suggest that they aren't people who make  
24 over \$50,000 a year, that were foreclosed on. I would  
25 suggest that they were those people, working class people,

1 who got pressured in that room to buy that timeshare.

2 Please, I urge you to support your staff's  
3 recommendation. Don't let this domino start here. It's  
4 the people of San Diego and the people of California who  
5 elect you, that represent everybody. I don't very often  
6 disagree with our Port commissioners and our Port staff  
7 here. But you need to remember that they are politically  
8 appointed to that Port staff. And there is pressure on  
9 them that isn't on you, Steve, because you're elected by  
10 the People of California. So stand up for the People of  
11 California, protect our coastline, and protect our  
12 beaches. Thank you.

13 (Applause.)

14 CHAIRPERSON WESTLY: Thank you, Mr. Butkiewicz for  
15 that presentation.

16 I would like to ask Ms. Laura Hunter, campaign  
17 director, to come forward.

18 MS. HUNTER: Good afternoon. My name is Laura  
19 Hunter, and I represent the Environmental Health  
20 Coalition. And I too strongly urge your opposition to the  
21 Woodfin-type kinds of projects. I understand, and I hear,  
22 that Woodfin would have you believe this is just one  
23 little part of one little project and don't look very  
24 hard, you would hardly notice it. But it's really not  
25 true. It's really going to be a Pandora's box. It's

1 going to open a whole flood of this kind of development,  
2 that's going to just really cause serious problems with  
3 public access and development on our coast.

4 Your staff has a broader view of what that means.  
5 They have a longer-term view of our precious public lands,  
6 and we really strongly urge you to turn this back at this  
7 point. This is precedent, and this is a very negative  
8 precedent. I'm sorry, if hotels are expensive to build,  
9 than let's use some more public campgrounds. I mean, if  
10 you want to have affordable visitor-serving experiences,  
11 those are inexpensive to build, and almost anyone can go  
12 visit those. But this is really going to start a flood of  
13 development that will be very, very hard to turn back.

14 We're also very concerned with this kind of  
15 action, what it would do to threaten the progress that  
16 we've had made to the Chula Vista Bay Front Master Plan  
17 that will be here, in front of you. In terms -- I think  
18 what you are seeing is kind of a division between the  
19 haves and the have nots. You talk about, whoa, this is  
20 great, because if you make \$50,000 a year, this is  
21 affordable to you. Our members are living on 10 and 15  
22 and 20,000 thousand dollars a year. This is not going to  
23 be the kind of development that they are going to be able  
24 to benefit from, but in fact, it's going to accelerate and  
25 exacerbate development that's going to increasingly cut

1 out their opportunities to be there.

2 We ask you to indeed make a decision today, set a  
3 very strong direction that you are not going to support  
4 this kind of activity on the state tidelands. I get that  
5 it's happening on private lands, within the coastal zone,  
6 but these are our precious public lands.

7 Please leave this can of worms solidly closed.

8 Thank you.

9 CHAIRPERSON WESTLY: Thank you, Ms. Hunter.

10 Mr. McNab, it is now your turn. Thank you for  
11 waiting patiently. And if Molly Rhodes could please be on  
12 deck. And again, we still have another 15 or so to go.  
13 So if we can move this along, I would appreciate it.

14 MR. McNAB: John McNab, San Diego.

15 We've had nothing but problems with the Public  
16 Trusts in San Diego. The training center, over half of  
17 the tidelands were illegally extinguished. We have a  
18 problem with Navy Broadway right now, where it's all going  
19 into office buildings, without any ability for the public  
20 to comment on it. This, again, is a trend by the same  
21 people, same lawyers, continuing to bring these same  
22 projects in San Diego. It's almost like we have become  
23 the center around the state as far as public planning  
24 policy. This is where it needs to start changing.

25 The public has most certainly voiced what their

1 priorities are with the passage of Prop 40 and the recent  
2 park bond initiative. They want investment, public  
3 investment in their infrastructure, and in their lands.  
4 This is our prime land. You can't go out and buy this.  
5 This is the best we have. And it shouldn't be made to be  
6 more profitable for these people.

7 I was up in -- in San Pedro for the Coastal  
8 Commission hearing, and all that -- that Board was seven  
9 developers and only one public advocate advising the  
10 Coastal Commission. And what they said is if we don't get  
11 these through, we won't be able to get a 20 to 30 percent  
12 net profit margin. They said, "We can't make obscene  
13 profits." And they said, "We can't continue to pack the  
14 coastal five star resorts unless we do this." Five stars  
15 are not affordable to the average Californian.

16 We need to take a look at what is our priority.  
17 And let's start moving towards low cost hotel rooms that  
18 serve the average Joe in California.

19 And the other issue that we have is that  
20 constantly -- all these policies that come down here.  
21 Every time you say something, it gets bait and switched.

22 The policy that you set, it wink, wink, wink  
23 changes. And pretty soon, you got something worse than  
24 what you have approved. So we appreciate this one line in  
25 the sand.

1           And I personally spent over \$10,000 on lawsuits on  
2 Public Trust cases. Keep it there, so at least we have a  
3 fighting chance to keep them.

4           Thank you.

5           CHAIRPERSON WESTLY: Thank you, Mr. McNab.

6           Molly Rhodes, if you could come forward. And  
7 Graham Forbes, if you could be on deck.

8           MS. RHODES: Hi. I'm Molly Rhodes with Unite  
9 Here.

10           And just -- I can be quick. I pulled some census  
11 data for you all about the state of our middle class in  
12 California. I noticed, the applicant's attorney said that  
13 18 percent of buyers of timeshares earn less than \$50,000.  
14 They said 50 percent make between 50 and a hundred  
15 thousand. They didn't mention the remaining 32, which has  
16 got to be over a hundred thousand.

17           And the sheet that I'm passing around begins with  
18 a quote that I saw in a recent business news journal  
19 saying that timeshare owners are affluent; the medium  
20 income is \$74,000 for recent buyers, and \$81,000 for all  
21 owners. And that was out of a national survey.

22           And then you will notice that the median income  
23 for all Californians is \$51,000. And then, I was also at  
24 the Coastal Commission Workshop, and there was a lot of  
25 talk about how do we get low cost visitors services for

1 people in the non-coastal cities, so coastal cities tend  
2 to have -- we can go to the beach, we can get our car and  
3 go.

4 So there was a discussion about the non-coastal  
5 cities. And so I pulled the census out on those, and  
6 those cities are all under \$50,000.

7 The highest is Santa Ana, which I suppose they can  
8 drive to the coast. But working class people, like, they  
9 stay in their neighborhoods; they don't -- they don't go  
10 to affluent neighborhoods where they are not comfortable.

11 And then Bakersfield is 45; Chico is 32. So, you  
12 know, these are not -- it's a bunch of rhetoric that these  
13 are for working people, basically.

14 So thank you.

15 CHAIRPERSON WESTLY: Thank you very, very much.

16 Mr. Forbes, can you please identify yourself.

17 MS. RHODES: Hi. My name is Graham Forbes, and  
18 I'm also with Unite Here. And I appreciate your time.

19 This timeshare project is about which segments of  
20 our society will have access to our coastal areas and to  
21 what extent the State will allow developers, and not the  
22 public, to shape our coastal cities.

23 Not only do timeshare units on State tidelands  
24 restrict access to the minority, who can't afford to pay  
25 the thousands of dollars required for the initial purchase

1 and ongoing maintenance fees, but they also drain  
2 resources from the communities where they are developed.

3 We are currently experiencing a state and local  
4 budget crisis. Resources for our parks, community  
5 centers, schools, and other public services are drying up.  
6 Transient occupancy tax is a crucial revenue source for  
7 cities throughout California. And timeshare owners are  
8 not automatically subject to pay their fair share.

9 Imposing TOT takes place at the local level, and  
10 there's no guarantee that private interests will succeed  
11 in shedding this financial obligation, leaving the burden  
12 to local residents.

13 The timeshare industry is organized and actively  
14 working against local efforts to assure that timeshare  
15 owners contribute to the communities they are enjoying.

16 The American Resort Developer Association  
17 self-entitled the Vacation Ownership Industry Interest,  
18 boasted its steady and strategic owner advocacy and has  
19 generated an impressive list of legislative and regulatory  
20 triumphs.

21 This includes strong opposition to tax the  
22 visitor, not the voter, campaigns that work towards  
23 sustainable development and fiscal responsibility.

24 Concerning timeshares on Trust lands, your staff  
25 has written that the potential benefits of such an



1 arrangement floated to developers and sellers of the units  
2 and not to the public.

3           Given our City's financial condition and the  
4 industry's determination to resist just contribution, now  
5 is the time -- now is not the time to dole out public land  
6 to assure greater profits for developers at public's  
7 expense. We urge you that you support the staff  
8 recommendation and reject the Woodfin timeshare proposal.

9           Thank you.

10           CHAIRPERSON WESTLY: Thank you very much,  
11 Mr. Forbes.

12           Mr. Ian Trowbridge, also from Port of San Diego.  
13 And I would like Victoria Cypherd to be on deck.

14           MR. TROWBRIDGE: Mr. Chairman, Commissioners, I  
15 can be very brief.

16           First, I want to say what a -- what a wonderfully  
17 well, reasonably-sized report was made by staff on this  
18 issue. I wish some of the people down in San Diego City  
19 could have come and seen it.

20           Two things: One is, this is precedent setting.  
21 And what Perry Dealy didn't tell you while he is here, is  
22 that he is the manager for Papa Doug Manchester's Navy  
23 Broadway complex, which depending on which day of the week  
24 it is, he wants five condo hotels on that property. And  
25 so there's a little bit of self-interest there.

1 I'm simply a retired scientist. I have no  
2 financial interest in this matter at all. And so that's  
3 important.

4 The second point I want to make is this issue of  
5 the Coastal Commission stuff, Coastal Commission stuff is  
6 going to really look at the Navy Broadway development,  
7 because it's basically -- it's based on an EIR that was  
8 produced in 1990. And we actually have an appeal in front  
9 of the city council, because we don't think a 16-year-old  
10 EIR is valid anymore.

11 But the point is, the Coastal Commission rejects  
12 the idea of condo hotels and stuff. So I don't think it's  
13 true to say that they are in favor of it all the time.

14 And then I will leave it at that and let other  
15 people speak. Thank you.

16 CHAIRPERSON WESTLY: Thank you very much, Mr.  
17 Trowbridge.

18 Victoria Cypherd.

19 Again, we still have quite a long list. So if  
20 people could be brief, I would be appreciative.

21 MS. CYPHERD: Victoria Cypherd, Solana Beach.

22 CHAIRPERSON WESTLY: Tracy Weiss, if you could  
23 please be on deck.

24 MS. CYPHERD: If the State Lands Commission votes  
25 to approve this project, it will be setting dangerous

1 precedent that will have enormous cumulative negative  
2 impacts statewide. You will be giving ownership rights  
3 away forever, to benefit a private developer, by allowing  
4 Public Trust lands to be converted to private residential  
5 use.

6           You will be opening up our entire coastline for  
7 similar exclusive "condotel" and timeshare projects.  
8 These developments are lucrative for developers but will  
9 generate no additional review for the Port and citizens of  
10 California.

11           And I would like to add that I also attended the  
12 meeting in the Coastal Commission meeting in Monterey,  
13 regarding the KSL project condotel. And I also went to  
14 the hearing, or the workshop. And I was -- someone  
15 mentioned earlier, you know, the Coastal Commission  
16 approved this; why don't you?

17           Well, the Coastal Commission staff was unanimous  
18 in their objection to this, and they had really wonderful  
19 arguments, valid arguments, similar to what your staff has  
20 prepared.

21           And that particular developer, KSL -- I just  
22 thought about this, listening to the developer speak. The  
23 same developer spoke about how he couldn't afford to build  
24 his hotel on the last remaining Oakland bluff in  
25 Encinitas. This gentleman also owned the Hotel Dell

1 [phonetic] and the La Costa Resorts, where you are seeing  
2 condotels.

3 I believe that's it. I just had to say, I was  
4 really shocked because the Coastal Commission staff had  
5 such good arguments that the Coastal Commissioners,  
6 themselves, voted against it. And there was a strong --  
7 within the workshop. I concur with the previous speaker  
8 there was a strong -- what's the word I'm looking for? It  
9 was primarily developers, very few people speaking for the  
10 environment.

11 Thank you very much.

12 CHAIRPERSON WESTLY: Thank you.

13 Ms. Weiss, would you please come forward? And if  
14 Mr. Charles Yip could be on deck.

15 MS. WEISS: Tracy Weiss. I live in Solano Beach.  
16 I'm just here; I have no financial profit motive  
17 whatsoever.

18 I would just like to repeat what everybody else  
19 said, but I won't. I will just say it's -- doing  
20 condotels or timeshares, it's basically a money mechanism  
21 for the developer, does not help the people, does not help  
22 the state, they don't get anything. They can go ahead and  
23 build their hotel anywhere. So it's basically a funding  
24 mechanism to presell the units.

25 CHAIRPERSON WESTLY: Thank you very much.

1 Mr. Charles Yip, could you please come forward.

2 MR. YIP: My name is Charles Yip from San Diego.  
3 I would like to give my time to Ken.

4 CHAIRPERSON WESTLY: Absolutely.

5 MR. ELLIOTT: Good afternoon.

6 CHAIRPERSON WESTLY: Good afternoon.

7 MR. ELLIOTT: My name is Kenneth Elliot, and I  
8 have been employed in the hospitality industry for about  
9 the past four years. I'm here today with my union  
10 coworkers to speak in support of your staff  
11 recommendation.

12 Many of the hotels are on public land. We  
13 testified at the city council, when a Hyatt Hotel was  
14 purchased last year. We understand -- we understand about  
15 the lease transfer and how important it is to have hotels  
16 to bring the public to the coast. But we don't like the  
17 idea of selling our state public land in timeshares.

18 We work hard but we can't afford to buy one of  
19 these ourselves. We also do not like giving the hotels an  
20 opportunity nor the developer has had. The Woodfin  
21 response to the Emeryville's living wage law shows  
22 disrespect for the workers and for the law. If they  
23 disrespect one law, why should we expect them to obey  
24 others.

25 Please vote in favor of the staff recommendation

1 to prevent the sale of our lands.

2 Thank you very much for your time.

3 CHAIRPERSON WESTLY: I thank all of you for being  
4 here. Thank you very, very much. Thank you, Ken.

5 MR. ELLIOTT: Thank you.

6 CHAIRPERSON WESTLY: Mr. -- Ms. Sandra Smelik, if  
7 you could come forward. And then our -- then Gerri  
8 Retman, if you could be on deck.

9 MS. SMELIK: My name is Sandra Smelik, and I have  
10 been a timeshare owner for, like, 25 years. We have nine  
11 children. All of those kids have been able to use the  
12 timeshare. My parents have come from the Midwest and had  
13 not -- had we not had the timeshare when they had time to  
14 spend there also, they probably wouldn't come out as  
15 often. So it has been not just us that bought the  
16 timeshare venue, but a complete family. And the family  
17 goes on. They all have children now.

18 They are using those timeshares. It wasn't just  
19 for an individual.

20 And it's in this county. I'm not living at the  
21 beach. To rent any type of housing on the beach today is  
22 prohibitive. It -- it costs too much. This allows so many  
23 people to enjoy one small space and enjoy the beach.

24 So the 25 years of ownership has been wonderful.  
25 So I beg you to reconsider this. It is a benefit to all

1 families.

2 Thank you.

3 CHAIRPERSON WESTLY: Great. Just want to point  
4 out, Ms. Smelik is speaking in opposition to the staff  
5 report.

6 Gerri Retman and then Mr. Reznik, you will be a  
7 final speaker. And then we can move forward on this  
8 issue.

9 So I would like to keep the momentum going.

10 MS. RETMAN: I will try to be brief. Gerry  
11 Retman. Thank you for this opportunity.

12 I think the staff did an excellent job outlining  
13 the reasons as to why timeshares are inconsistent with the  
14 Public Doctrine.

15 I would just like to say that I also attended  
16 those Coastal Commission hearings and workshops, and I  
17 listened closely to the Woodfin developers go to great  
18 lengths to explain the difference between timeshares and  
19 condotels, which someone referred to as a slippery slope,  
20 and I do agree.

21 When I attended those hearings, I recognize much  
22 of the same lingo. They are claiming that, you know,  
23 condotels and timeshares, we can't build them unless we  
24 have this upfront money, and this is why we have to do  
25 this. So I do kind of think that condotels and timeshares

1 do have a similar component there. And that is that they  
2 make exclusive what is meant to be very public.

3 And so I would also like to comment that the  
4 reason I'm here is because there are -- these projects are  
5 so lucrative to the developers that we are starting to see  
6 such an increase in the number of applications at the  
7 Coastal Commission for conversions of regular hotels to  
8 condotels. And this is going to be a huge problem. It's  
9 going to prioritize the entire coastline, eventually.

10 So I think this is a good start here, for you to  
11 just deny this. Don't let this start. Please don't allow  
12 this Woodfin project. They only have a small component  
13 that they are asking for timeshares. And if they can  
14 build that as all hotel, then let them do that.

15 So thank you very much for your time.

16 CHAIRPERSON WESTLY: Thank you very much.

17 Mr. Reznik?

18 MR. REZNIK: Thank you for this opportunity to  
19 speak. My name is Bruce Reznik, the director of San Diego  
20 Coastkeeper. I guess we started some of these problems.

21 I'm here obviously to support the staff  
22 recommendation. I think they have done a tremendous job,  
23 both with the report and presentation today. And I don't  
24 mean to delve into the details of that, but we really  
25 appreciate the work that they've done. I would also urge



1 that this does not get further delay. It's been delayed  
2 once. It's been on the road for a year. There's a  
3 tremendously detailed report. You have heard tremendous  
4 testimony from the public on both sides of the issue.

5 We cannot allow these wars of attrition to  
6 continue when this happens over and over again. And, you  
7 know, clearly, I think the delaying tactic that we know  
8 this is the last meetings of a couple commissioners, I  
9 think it's pretty easy to get what the intent of that is.

10 I would like to talk about our coast. We lose our  
11 coast; we are losing our coast and access to our coasts  
12 every day in California, through overdevelopment, through  
13 loss of beaches, because of the armoring of our coast.  
14 Even pollution denies us access.

15 This is a place where, as Mr. McNab said, we need  
16 to draw a line in the sand on our Public Trust lands and  
17 public tidelands. We cannot let this further erode public  
18 access to our coast.

19 This is, as has been pointed out, a slippery slope  
20 of where we go from timeshares to condotels to condos.  
21 And the other thing that was telling to me, and I was  
22 actually trying to bite my tongue and not put in a speak  
23 slip, but I wonder what San Diego people are living on.  
24 Because the San Diego I heard on this side of the room is  
25 very different from the San Diego I heard on that side of

1 the room.

2 We talked about, this is the same as a Ford, you  
3 know, F-150. The people in San Diego need that the Ford  
4 F-150 to get to work and have a job. And most San Diegans  
5 are like me, praying to God that the housing bubble that's  
6 bursting here in San Diego doesn't turn our mortgage  
7 upside down so we're left out in the cold. We're hoping  
8 that our apartments aren't converted to condos, which is  
9 happening at an alarming rate, and our rents don't shoot  
10 through the roof.

11 I think it's an amazing amount of disconnect, and  
12 we're talking about the amount of profits for  
13 Mr. Manchester and the folks. And I hate to show the  
14 division, but this side of the room versus the real  
15 concerns of working class people are just desperately  
16 trying to maintain our access to the coast.

17 So thank you. Let this end here, and we  
18 appreciate all the work you and your staff has done.

19 Thank you very much.

20 CHAIRPERSON WESTLY: Thank you, Mr. Reznik.

21 At this point, I'd like to ask either of the other  
22 commissioners if they would care to ask questions.

23 Mr. Bustamante?

24 COMMISSIONER BUSTAMANTE: We have a -- we have a  
25 1982 document, and we have a 1996 document. So for the

1 tiebreaker, the gentleman said he loved you.

2 (Laughter.)

3 COMMISSIONER BUSTAMANTE: So can you give us what  
4 the current attorney general is thinking.

5 ASSISTANT ATTORNEY GENERAL HAGER: The current  
6 Attorney General's Office has an opinion in 1996. The  
7 opinion in 1996 says that timeshare resorts are not, per  
8 se, incompatible with the Public Trust. But if -- if the  
9 project will provide for significant use by members of the  
10 general public and further Trust uses by increasing  
11 opportunities for public access to the shoreline and  
12 water-oriented recreation -- and that's a determination  
13 for you to make in your discretion.

14 COMMISSIONER BUSTAMANTE: So does the current  
15 attorney general accept that opinion as his own?

16 ASSISTANT ATTORNEY GENERAL HAGER: Yes.

17 COMMISSIONER BUSTAMANTE: Okay. Timeshares versus  
18 hotels. I saw the chart. And I have had a briefing.

19 You know, there was a -- there was a person who  
20 made a comment about \$2500-a-night rooms versus other  
21 kinds of rooms, and that we wouldn't be here, talking  
22 about it, if they were expensive per night rooms.

23 Do we have a policy that -- that restricts  
24 affordable -- affordable rooms, affordable facilities  
25 along our coasts, either by default or by design, and

1 allow for the more expenses -- expensive facilities to be  
2 able to take place?

3 EXECUTIVE OFFICER THAYER: No. There's -- the  
4 Public Trust Doctrine doesn't go to that issue at all.

5 COMMISSIONER BUSTAMANTE: But if we have a policy  
6 in place that, by default, allows for more affordable, is  
7 it -- does it make a difference at that moment or at this  
8 time, whether it's stated or not, but because of the  
9 unintended consequences of a policy, we are only allowing  
10 more expensive facilities? Isn't that a problem?

11 EXECUTIVE OFFICER THAYER: It could potentially  
12 be. And of course, the Commission would need to evaluate  
13 whether or not, in the whole of the context, you're asking  
14 about timeshare versus hotels --

15 COMMISSIONER BUSTAMANTE: At this point, I'm just  
16 talking about -- I'm not talking about the issue of the  
17 timeshare or a condo.

18 I'm talking about the unintended consequences of  
19 policy that we have. Because I was a speaker of the  
20 Assembly. I wrote a lot of unintended consequences in the  
21 bills.

22 (Laughter.)

23 COMMISSIONER BUSTAMANTE: The unintended  
24 consequences that were actually unintended sometimes have  
25 very dramatic consequences in terms of how it affects

1 people.

2 EXECUTIVE OFFICER THAYER: Absolutely.

3 COMMISSIONER BUSTAMANTE: Do we have a system,  
4 right now, in place, that does not incentivize -- that  
5 does not incentivize affordable mechanisms by which public  
6 have access to our beaches? I mean, the idea of having  
7 public access and finding places where people can actually  
8 gain access to what was previously sort of domiciled, made  
9 unavailable for access, to our beaches, is something that  
10 we've been fighting over. And we have been extremely  
11 aggressive at making sure that we have -- so that the  
12 folks from east L.A. and South Central can access the  
13 beaches of Malibu. And there's no clearer policy that we  
14 have made in this -- it's about having access. And so do  
15 we have a policy currently that, by default, is not  
16 allowing affordable facilities?

17 EXECUTIVE OFFICER THAYER: I don't believe so.

18 And --

19 COMMISSIONER BUSTAMANTE: Make a brief case.

20 EXECUTIVE OFFICER THAYER: My briefcase would  
21 be -- it's under the table.

22 (Laughter.)

23 EXECUTIVE OFFICER THAYER: But my brief case is  
24 that the State reacts or has a variety of planning  
25 mechanisms for development along the coast. And the State

1 has responded to the very issue you're talking about, in  
2 the provision to the Coastal Act, which encourages and  
3 requires affordable housing to occur. That's not  
4 inconsistent with the Public Trust Doctrine. And it's not  
5 something that's created a problem for us. And we think  
6 it's the State's approach to dealing with that issue.

7 ACTING COMMISSIONER SHEEHAN: Under the City's  
8 General Plan, is that what you're talking about?

9 EXECUTIVE OFFICER THAYER: No. Under the Coastal  
10 Act. The Coastal Act itself encourages low cost,  
11 affordable accommodations and cities that adopted the  
12 local coastal programs, which our general plan -- were  
13 required to include that within their own planning.

14 So although we, at the Lands Commission, look at  
15 as many issues as we can -- in fact, as a State, this  
16 issue has been addressed.

17 COMMISSIONER BUSTAMANTE: You know, because I  
18 think that having access to our beaches is a major  
19 concern. Whether it's by default or by design, elitist  
20 access to our beaches is not acceptable. It's just not.

21 I don't -- this is not -- this is not San Diego's  
22 coast. It's not Santa Barbara's coast. It's not  
23 Monterey's. It's California's coast. In fact, one could  
24 say it is the world's coast.

25 And so having access to it is something that is

1 extremely important to me, but it's also extremely  
2 important to all the inlanders and all the Californians  
3 and some, even, Californians who live near the beach but  
4 can't afford to actually go there. It's extremely  
5 important.

6 And so having mechanisms and policies in place to  
7 try to accentuate that and to try to enhance and nurture  
8 that, I think, is extremely important. And so, you know,  
9 taking a proposal out of hand and saying something is not  
10 acceptable, I think, is something that we should open  
11 ourselves up to for possibilities of these kinds of  
12 activities.

13 But -- and I think also that beach communities  
14 ought to be held responsible and ought to be required to  
15 ensure that they have affordable and accessible facilities  
16 that are built into their plans as a master plan for a  
17 city. They have a responsibility, as far as I'm  
18 concerned, to the rest of the city -- not just to  
19 themselves, but to the rest of the state, to make sure  
20 that we are going to be having access -- affordable  
21 access.

22 I don't think that this proposal has made that  
23 case. But I do think that the issue needs to be aired out  
24 fully. I think that the case has to be made on behalf of  
25 those people who are not here to talk about it. I think

1 whether you're a surfer or you're just a poor working guy  
2 from Fresno, you ought to be able to have access to  
3 California's beaches. In some cases, you wouldn't want to  
4 have access, the way we're polluting our coasts. And with  
5 the huge amount of pollution that we're draining into it,  
6 you probably ought to be very careful what days you go  
7 there.

8 But the fact is, that having access, affordable  
9 access, is extremely important. And we ought not allow  
10 ourselves to fall into a state of slumber on a public  
11 policy that, by default, does not allow that access.

12 So I would support the staff recommendation. But  
13 I think the debate has to be continued.

14 CHAIRPERSON WESTLY: Great. Thank you, lieutenant  
15 governor.

16 I would like to make a quick comment, because I  
17 have to go to the airport to attend another event. And  
18 I'm going to ask my deputy controller, Ms. Aronberg, to  
19 vote for me.

20 I would like to thank all of the members of the  
21 public, on both sides, that have come out. This is a very  
22 complex issue, and I appreciate your strong arguments on  
23 both sides.

24 First, there have been calls by the opponents to  
25 the staff report to postpone this issue, to read more, to



1 learn more. I just want to say, while you have spoken  
2 very articulately, I have read voluminously about this and  
3 I'm very clear on the issues here, again, complex issues.  
4 But I believe, strongly, we should vote on this issue  
5 today.

6 Second, on balance, I believe timeshares, you  
7 know, can be positive institutions. Many people enjoy  
8 them. I appreciate the testimony today.

9 I believe that they are, by their nature,  
10 exclusive and do not meet the nature of the Public Trust  
11 Doctrine.

12 Two points here: First, I want to be clear in  
13 saying I fully understand, these are not the vehicles of  
14 the super rich, but neither are they accessible to  
15 everybody. It's quite clear, and by your own data,  
16 18 percent of the people who are using them earn less than  
17 \$50,000. 82 percent are earning over the state's average  
18 income.

19 A comment was also made by Mr. Butkiewicz. I just  
20 have to comment on this, personally, that many people go  
21 to what are very high pressured meetings for timeshares.  
22 Unfortunately, I have to confess, I have been to two of  
23 these meetings. I was on the faculty at Stanford's  
24 Graduate School of Business at the time, with my wife. In  
25 both cases, I raised two questions: What are the interest

1 rates here? The consumer needs to know this. This is an  
2 important question. The interest rates, frankly, were  
3 exorbitant. I raised that question.

4 I asked, "What are the foreclosure rates?"; basic  
5 fundamental things that consumers should know.

6 In both cases, I was asked to leave.

7 (Laughter.)

8 CHAIRPERSON WESTLY: But that is not the  
9 fundamental reason for my position. My position is that,  
10 on a legal basis, I do not believe this meets the Public  
11 Trust Doctrine.

12 As a result, I would like to make a motion that we  
13 pass the staff report. I know, before we do that,  
14 Ms. Sheehan has some very thoughtful questions for you.

15 I wanted to, again, thank all of the members of  
16 the public, on both sides, for being here.

17 I apologize. I have a commitment, and I have to  
18 be at the airport. But I wanted to emphatically say what  
19 a good job I thought the staff did with a complex issue,  
20 how strongly I support staff's report. With that, I'm  
21 going to hand the gavel over to my able deputy controller.

22 Before I do that, I would like to ask Ms. Sheehan  
23 to raise the questions that you have.

24 ACTING COMMISSIONER SHEEHAN: I've got a couple  
25 of --

1 COMMISSIONER BUSTAMANTE: Second the motion.

2 ACTING COMMISSIONER SHEEHAN: A couple of  
3 questions, and I would like for the opponents of the  
4 project to maybe to -- I don't know, to come forward and  
5 clarify; and then also possibly some of the people who  
6 were concerned.

7 You know, I came in very sympathetic to where the  
8 staff is, understanding many of the issues. But I guess  
9 the problem I have is I'm not, unlike where the lieutenant  
10 governor is, in terms of -- it was like we don't want the  
11 timeshare that the hotels potentially that come in could  
12 be much more expensive. I mean, if we look at those two  
13 hotels that are next to that project now, I'm not sure  
14 what they are at night, but I know they are not cheap in  
15 terms of that.

16 So I would agree with the lieutenant governor that  
17 we could potentially be creating a -- you know, an even  
18 more exclusivity by doing this.

19 I also have some questions on -- which is why I  
20 would encourage a better discussion. This is probably the  
21 best discussion I have been party to in terms of this  
22 entire issue. Really understanding the concerns. I would  
23 love to continue this, as I've discussed with the staff,  
24 and having an entire hearing on condotels, timeshares, for  
25 me to understand what these issues are. I need to know

1 the process the Port went through in terms of some of the  
2 changes that were made. I heard a lot about these two  
3 weeks, 29 days, 30 days, you know, what really is the  
4 bottom line in terms of this.

5 The transient occupancy tax was raised. I don't  
6 know whether they pay it in these hotels, whether they  
7 don't; how that's handled. I would have a lot of  
8 questions on that.

9 The economics of how these projects were versus  
10 the economics of just a hotel project. I know a couple of  
11 speakers said, you know, some people would say, this is  
12 the way they are financing it, understanding, you know,  
13 from -- whether it be from some of the bankers or whomever  
14 do these types of things, how those financial deals are  
15 put together.

16 You know, it sounded like nobody will build  
17 another hotel unless they do timeshares. I don't know  
18 whether that's true, but that's what I heard or at least  
19 that's -- that seemed to be communicated.

20 I must also -- I heard a lot about the cutting off  
21 public access and that you're privatizing. I would ask  
22 the counsel, are we -- are we handing over public land to  
23 private ownership? I mean, is that the structure of this  
24 deal?

25 Are we -- because I heard that from a number of

1 speakers from this side, that you are privatizing, so do  
2 they have title to that land? Because it's my  
3 understanding, that is not -- even if we wanted to do  
4 that, we couldn't do it easily.

5 As I say, I have a lot of questions. So I don't  
6 know, you know, who would like to address them. But I am  
7 concerned. I would like to understand the structure of  
8 this before I vote on this.

9 If the other commissioners want to vote today, I  
10 will abstain until I get the answers to some of mine,  
11 because I want to understand, really, this whole thing.  
12 I'm concerned about the Coastal Commission. I heard they  
13 were opposed, yet then I heard they voted for these  
14 projects. I understand they are not on Public Trust  
15 lands. But did they -- they have approved projects; is  
16 that correct?

17 EXECUTIVE OFFICER THAYER: Yes.

18 ASSISTANT CHIEF COUNSEL FOSSUM: On private  
19 property.

20 ACTING COMMISSIONER SHEEHAN: Right. Not on  
21 Public Trust lands, okay.

22 And then I also would like to understand, maybe  
23 from the opponents, the timing of this. You know, if the  
24 commissioners want to act today, that -- what happens  
25 there? If we don't, you know, I would want to commit that

1 no other stuff would be taken until we come back and get  
2 the answers to those. So Curtis or whomever.

3 EXECUTIVE OFFICER THAYER: If I could first ask, I  
4 think we can probably respond to most of those questions  
5 today.

6 ACTING COMMISSIONER SHEEHAN: Okay.

7 EXECUTIVE OFFICER THAYER: You might have  
8 additional questions, and at some point we might have to  
9 say we have to get some additional information to you on  
10 that.

11 But I just wanted to say, generally, that the  
12 staff has been working on this issue, on one way or the  
13 other, since the '96 opinion came out. It was shortly  
14 after I came to the Commission. That was one of the first  
15 things I looked at, was that decision. There's a lot of  
16 discussion of that.

17 And since then, we've, you know, talked with the  
18 proponents here. We met with them last spring. We've  
19 talked with the Port. We talked with all sides. I went  
20 to that Coastal Commission workshop. The staff report for  
21 the earlier scheduled meeting, in October, was available  
22 to the commissioners. And we felt prepared then, but  
23 we've done additional work since then.

24 So we think the work has gone into it, but I'm not  
25 sure if you wanted to do that today or not.

1           ACTING COMMISSIONER SHEEHAN:  If you can address  
2 some of them, it would be helpful, you know.

3           ASSISTANT CHIEF COUNSEL FOSSUM:  I would like to  
4 address one of the --

5           COMMISSIONER BUSTAMANTE:  There was a question,  
6 also, who I said was going to get an answer today.

7           EXECUTIVE OFFICER THAYER:  Right.  That had to do  
8 with the difference between the Coastal Commission and our  
9 approach.

10          COMMISSIONER BUSTAMANTE:  Can you make sure we get  
11 an answer today?

12          EXECUTIVE OFFICER THAYER:  Then let's start with  
13 that.  And that is that the Coastal Commission has  
14 approved some of these projects on private land.  They  
15 have not had the opportunity to review one on tidelands,  
16 yet, in the same way that none has been approved yet on  
17 tidelands, yet, anywhere in the state, so they haven't  
18 taken that step.

19          And I would say, the distinctions between the two  
20 entities and why our staff recommendation is different  
21 from what the Coastal Commission itself did on the other  
22 projects, are twofold.  One is that public/private  
23 distinction.  There are special rules that attach to the  
24 use of Public Trust lands, which are very more limiting  
25 than what they are for -- for the private land.

1           And in fact, that's the very nature of the Public  
2 Trust Doctrine and the Public Trust lands is that, just  
3 historically, it was recognized, in a lot of societies,  
4 that these are special lands that are supposed to be  
5 reserved for particular uses.

6           And the second distinction is, in fact, associated  
7 with that as well, which is that the Coastal Commission  
8 acts pursuant to the Coastal Act, which doesn't affect  
9 our -- you know, isn't the same sort of legal framework  
10 that we evaluate things on. And so they look at the  
11 Coastal Act. They make their decisions based on that;  
12 whereas we look at, usually, CEQA or the Public Trust  
13 Doctrine. And I think that's is the difference.

14           With respect to the rooms -- excuse me, to the  
15 intervals involved with this project, the staff report and  
16 the developer are in agreement on what the court -- the  
17 Port's action was, which is that the Port approved the  
18 sale of up to two intervals a year to any one individual,  
19 each interval being one week long -- as long as one week.

20           I think that what the staff noted in its report is  
21 that there's at least the theoretical option that  
22 people -- as they do, they trade timeshare -- trade  
23 timeshares. Someone could buy a timeshare on another  
24 project and trade into this project, and so that they  
25 would be able to stay here for a longer period of time.



1 But staff's view is that these numbers, of whether it  
2 should be 14 days or 29 days, or what's the right amount  
3 of time, is not central to the discussion -- or to the  
4 issue that staff sees it with respect to the Public Trust  
5 Doctrine. And that's an exclusivity that goes to the  
6 privatization issues that you raised, which is that for no  
7 matter for how long, the point is that people have  
8 purchased -- now they are -- are they an owner or not?  
9 They don't really own the land, but they have purchased a  
10 lease, and that gives them an exclusive rights to a room.

11 Now, the developer has made much of the fact that  
12 this room is floating. They are not guaranteed any one  
13 room. But the point is, nonetheless, once you have  
14 purchased that, you have a right to that room once a year;  
15 and nobody else in the public has that. And you have the  
16 right to exclude the public from that.

17 So that's the distinction that we see as most  
18 important here, is that -- we're not saying -- again, the  
19 developer's representatives have said that this isn't a  
20 residential use. We agree with that. I don't know why  
21 that's such a big issue.

22 But the issues of residences and the issues of  
23 timeshares are similar in terms of how the Public Trust  
24 Doctrine affects them. And that's the exclusive use, that  
25 when you look at legal cases, the briefs, the writings

1 that have been done on residences, all it talks about is  
2 exclusivity of use, that this is public land, and that  
3 ultimately, private use of it in a residence is the  
4 ultimate conversion of private uses.

5 We are not saying these are residences, but it's  
6 residential blight to the extent that, in timeshares,  
7 people buy the right or lease the right, whichever -- you  
8 know, they are paying a certain amount of money for it, so  
9 that they have exclusive use of a room, whether it's a  
10 single -- the specific room or some other room, and that  
11 excludes other people.

12 So that answered some of your questions. I'm  
13 happy to go through others or give Mr. Kaufmann a chance.

14 ACTING CHAIRPERSON ARONBERG: I'm going to chime  
15 in.

16 As lieutenant governor has pointed out, there is a  
17 motion and the second on the floor. So response to your  
18 question, we're going to definitely vote today.

19 And perhaps we can hold a quorum for hearing on  
20 this subject. Let me ask staff, how do you feel about  
21 that? And then I also -- we've got to wrap this item up.  
22 The lieutenant governor needs to --

23 COMMISSIONER BUSTAMANTE: I'm gone in ten minutes.  
24 So whatever we can do to help resolve the issues and  
25 answer the questions.

1           ACTING CHAIRPERSON ARONBERG: We have people who  
2 want to speak on other items.

3           ACTING COMMISSIONER SHEEHAN: I do have some other  
4 questions.

5           You know, I will abstain today, because I've got  
6 questions. I would like to have, you know, a further  
7 discussion because it -- as you raise them and I know  
8 we've been briefed. I moved by briefing three or four  
9 times. It's been a little hectic around the Department of  
10 Finance, as you know. So I apologize for that.

11           As I said, I'm sympathetic to some of the issues.  
12 And the issue that Mr. Bustamante raised, I -- I am  
13 concerned that we are -- we could be backing into an  
14 exclusivity -- not this kind of exclusivity but a  
15 different kind of exclusivity. You know, okay, so we're  
16 going -- if not this, we're going to have a Four Seasons  
17 or a Ritz. I mean, it's like then we really are not going  
18 to have people who are accessible. You know, most of us  
19 sitting in the room couldn't afford the rates of those  
20 hotels.

21           So that is -- I -- you know, go ahead and take it.  
22 I will abstain, not because I'm against or for or  
23 whatever. But so many issues were raised today that, you  
24 know, I guess it's one member moving forward to encourage  
25 further discussion.

1 I think the type of workshop that the Coastal  
2 commission had, it sounds like it was very helpful in  
3 terms of understanding some of these issues.

4 MR. KAUFMANN: I'm happy to answer the questions,  
5 quickly, that you raised.

6 COMMISSIONER BUSTAMANTE: Go ahead.

7 MR. KAUFMANN: Steven Kaufmann.

8 Quickly, if you don't take action today, we will  
9 put off the Coastal Commission and make sure that you get  
10 the chance to take action.

11 If you do take action today, one of the things  
12 that we've been talking with support staff about is an  
13 in-lieu fee. Paying an in-lieu fee towards a campground  
14 on tidelands and the port, something new, something that  
15 we hoped would be developed in this process.

16 The Port Board has authorized staff to work with  
17 us in that regard, and the Coastal Commission recently  
18 required that of a condo hotel that it approved.

19 You've raised the question about what happens.  
20 What happens is a couple of different possibilities: One  
21 is, they haven't had boutique hotels in the Port. That's  
22 a problem. You're not going to get boutique hotels unless  
23 something happens, either you raise your prices so it  
24 becomes more exclusive, or you value engineer it and you  
25 lose some of the public amenities, or the Port comes along

1 and takes money that it could use for true Public Trust  
2 kinds of uses, because it wants a hotel -- that's what it  
3 wants -- with all those amenities.

4 The 29 days, this Port Master Plan Amendment  
5 requires use restrictions. You can't get more than two  
6 weeks. TOT, we pay it on the hotel; we pay it on the  
7 timeshare.

8 Cutting off public access? No, we're not cutting  
9 off public access. We're going to take something where it  
10 doesn't exist, and we're going to make it happen the best  
11 it possibly can.

12 Title to the land is not given away; it's done  
13 through sublease. There's no fee title. And as to  
14 exclusivity, you can call expedia.com today. If you want  
15 to get a better rate on a room, book it in advance, and  
16 you get a better rate. And you can get that one week.

17 I will tell you, I've -- I have one -- when I was  
18 married, I had one favorite place that I liked to go to  
19 every year. And I paid -- prepaid, March for December,  
20 and I never -- I had good time. But I never thought for  
21 the week or ten days that I owned a piece of the rock when  
22 I left. I just wanted to come back and make sure that I  
23 got there.

24 Again, so I think the problem I have with this is,  
25 I understand where this goes, way out there. Clearly, the

1 Port drew lines on this. It drew some clear lines. And  
2 at some point, as a lawyer, I can't say that this isn't  
3 consistent with the Public Trust, because it is really in  
4 sum and substance. It's the same thing as what you get  
5 with a hotel. And the trick is making it happen, making  
6 sure the restrictions are there, and making sure that all  
7 those public access amenities that you require are a part  
8 of it.

9 So I -- I ask you to give us a chance to work with  
10 your staff, and we'll do that, and to work with this  
11 Commission.

12 Thank you for the additional time.

13 ACTING CHAIRPERSON ARONBERG: Very briefly because  
14 we've got to wrap up.

15 MR. HARDAGE: Yes. Sam Hardage, chair of the  
16 Woodfin Suite Hotel.

17 I think it's very apparent that there is a great  
18 deal of information and a great deal of misinformation.  
19 And this is a very, very important issue that deserves to  
20 be fully explored. And so I would just like to ask that  
21 the chairman of the company that's making the application,  
22 I would like to reiterate that we absolutely would put off  
23 pursuing this with Coastal Commission until an exploratory  
24 or workshop is developed to explore these issues as soon  
25 as possible, if the Commission is supportive of that.

1           ACTING CHAIRPERSON ARONBERG: Thank you,  
2 Mr. Hardage.

3           And perhaps, a hearing or a workshop of some kind  
4 is in order. But there's a motion and a second on the  
5 floor.

6           So all in favor?

7           (Ayes.)

8           ACTING CHAIRPERSON ARONBERG: Opposed?  
9 Abstentions?

10          ACTING COMMISSIONER SHEEHAN: I will abstain. But  
11 I will be going to the workshop.

12          (Applause.)

13          ACTING CHAIRPERSON ARONBERG: The court reporter  
14 needs a quick break.

15          So we're going to take a very, very quick, true  
16 five-minute break.

17          (Thereupon a break was taken in  
18 proceedings.)

19          (Commissioner Bustamante did not return for  
20 the remainder of the meeting.)

21          ACTING CHAIRPERSON ARONBERG: Okay. If we could  
22 call the meeting back to order. It won't be too much  
23 longer. Just a few more items.

24          Mr. Thayer, we have an item that was taken off the  
25 consent calendar, and we're going to hear from you about

1 it now.

2 EXECUTIVE OFFICER THAYER: Yes. With the  
3 permission of the Commission, one item that was taken off  
4 was Item 36, which has to do with the Trans Bay Cable.  
5 This is a cable that runs from -- is proposed to be  
6 constructed from the Pittsburg area, in the Delta, in  
7 northern California, to San Francisco.

8 This item was placed on the consent calendar  
9 because we knew of no opposition.

10 As the commissioners are aware, about a week ago,  
11 we did receive a letter from one individual expressing  
12 some concerns. I've been over that letter. The one that  
13 seemed -- the concern that seemed relevant to the  
14 Commission's jurisdiction had to do with whether or not  
15 this project -- first, I should say, I'm not sure this  
16 individual is here. It might be worthwhile to determine  
17 if there's any opponents to Item 36, in the audience.

18 ACTING CHAIRPERSON ARONBERG: Is there anyone here  
19 on Item 36? I don't have any cards for anyone on 36.

20 EXECUTIVE OFFICER THAYER: In which case --

21 ACTING CHAIRPERSON ARONBERG: Seeing nobody.

22 EXECUTIVE OFFICER THAYER: -- let me proceed,  
23 then, to try and summarize what he said rather than -- say  
24 it if he were here.

25 But he had some general concerns about power



1 planting in California, which didn't seem relevant to the  
2 Commission's jurisdiction. However, there was one issue  
3 which had to do with whether or not the facility --  
4 onshore facilities at the San Francisco Cable would  
5 prevent access for wetland restoration in the Pier 70  
6 areas in San Francisco.

7 We reviewed this project further and found that he  
8 had made comments along these lines earlier in the  
9 process, and that the project had been modified, so that a  
10 building at the shoreline, there, had been moved back, and  
11 so that it was no longer right on the shoreline. I would  
12 guess, from looking at the picture, perhaps 75 feet.

13 UNIDENTIFIED MALE: 200 feet.

14 EXECUTIVE OFFICER THAYER: 200 feet.

15 So I think that particular issue has been  
16 resolved. We did speak with the individual yesterday. He  
17 indicated that he still had some concerns about whether  
18 access would occur. We have also spoken with the Port of  
19 San Francisco who indicate that they are actually working  
20 on a trail in this area, and hope to go forward with that.

21 So I wanted to make sure the Commission was aware  
22 of that. I want to say, we can put things on consent,  
23 whether there's opposition. And so this is off the  
24 consent calendar, and nonetheless, the staff's  
25 recommendation is for approval.

1           ACTING COMMISSIONER SHEEHAN:  If there are no  
2 further comments, I will move approval for the staff  
3 recommendation.

4           ACTING CHAIRPERSON ARONBERG:  I will second.

5           All in favor?

6           (Ayes.)

7           ACTING CHAIRPERSON ARONBERG:  The motion carries.  
8 Okay.

9           The next item -- Mr. Thayer, is that right?  We  
10 have Item 49?

11          EXECUTIVE OFFICER THAYER:  Yes.

12          ACTING CHAIRPERSON ARONBERG:  I know there are  
13 speakers here.  So I'm going to take it out of order so  
14 that these speakers' time will be respected.

15          Is that okay with you, Ms. Sheehan?

16          ACTING COMMISSIONER SHEEHAN:  Yeah.

17          ACTING CHAIRPERSON ARONBERG:  Item 50 is a  
18 resolution supporting the remediation of contaminated  
19 sediment in the San Diego Bay.

20          Will staff please begin with the presentation.

21          EXECUTIVE OFFICER THAYER:  The contaminated  
22 sediments issue is one of those that was brought to us by  
23 some of the environmentalists in the room, here -- the  
24 Environmental Health Coalition and other people.

25          The problem -- this is a problem in many urban

1 water areas. The causes are many: urban runoff,  
2 industrial discharge, vessel-bottom paints, or shipyard  
3 construction, which is the case here.

4 Many of these factors have now been controlled,  
5 but the legacy of the contamination remains.

6 The contaminated sediment work their way up the  
7 food chain, damaging not only aquatic species but  
8 ultimately presenting a human health risk. And in fact,  
9 here in San Diego, the fishing piers are posted about the  
10 dangers of eating the fish here, in San Diego. So it's a  
11 definite threat.

12 In the past couple of years, the Commission has  
13 approved several dredging leases in San Diego to help  
14 remediate some of the contamination.

15 In April of 2005, the San Diego Regional Water  
16 Quality Control Board issued a tentative cleanup and  
17 abatement order for additional contaminated areas in the  
18 areas of several shipyards. This is an important first  
19 step, but actual cleanup hasn't yet occurred, and the  
20 contamination remains.

21 The Regional Board staff indicate that  
22 implementation measures are being developed and that the  
23 order will be issued. The resolution before the  
24 Commission today urges that this occur expeditiously and  
25 to end the threat from contamination.

1 ACTING CHAIRPERSON ARONBERG: Thank you.

2 Ms. Sheehan, do you have anything?

3 ACTING COMMISSIONER SHEEHAN: No, but we can hear  
4 the speakers.

5 ACTING CHAIRPERSON ARONBERG: Okay. Great.

6 So why don't we start with Gabriel Solmer.

7 MS. SOLMER: Thank you so much, Chairman Aronberg.

8 And we do have a PowerPoint presentation, if we  
9 can turn that on. I have handouts if we need that.

10 EXECUTIVE OFFICER THAYER: Oh, great.

11 MS. SOLMER: Always prepared.

12 Let me start while we work that out.

13 (Thereupon an overhead presentation was  
14 presented as follows.)

15 MS. SOLMER: My name is Gabriel Solmer, staff  
16 attorney at San Diego Coastkeeper. And I'm also a member  
17 of the San Diego Bay Council, which is a coalition of  
18 environmental organizations. We're dedicated to the  
19 protection and restoration of San Diego coastal waters.  
20 And members of the Bay Council include Environmental  
21 Health Coalition; San Diego Coastkeeper; the Surfrider  
22 Foundation, the San Diego chapter there; San Diego Audubon  
23 Society; and the San Diego chapter of the Sierra Club.

24 I just wanted to tell you a little bit more about  
25 the history. I thank staff for giving you that

1 introduction. What we have here is almost 50 years of  
2 primarily shipyard-induced bay contamination of the  
3 sediments which underline the bay. And in 1997, a NOAA  
4 report was issued that found San Diego Bay to be the  
5 second most toxic in the nation, just behind New Jersey.

6 Not much has changed since 1997. Obviously, we  
7 have hot spots and we have environmental and economic  
8 impacts from that contamination.

9 And as staff mentioned, the Port has reposted  
10 those piers, fishing piers, with advisories. But really,  
11 we think that we need to move beyond warning, to action,  
12 at this point.

13 We push for the pier advisories, but we really  
14 need to move beyond there.

15 --o0o--

16 MS. SOLMER: So where we are today, we were here  
17 three and a half years ago, before the State Lands  
18 Commission, with fishers and their families to ask you to  
19 provide your leadership on this issue. So in one way, we  
20 have some changes. We have some posted advisories. We  
21 have a tentative cleanup order, but there hasn't been much  
22 movement other than that.

23 And thanks to a survey done by the Environmental  
24 Health Coalition of the piers, the fishing piers, we know  
25 that the majority of the people eating the fish out of the

1 Bay are minority families, that they eat the fish that  
2 they catch, that they feed it to their families.

3 We have a draft cleanup and abatement order, so we  
4 are moving in the right direction. It would remove  
5 885,000 cubic yards of sediment and set some protective  
6 standards, but we're not there yet, mostly because that  
7 action and that order has not been implemented.

8 --o0o--

9 MS. SOLMER: So we are pursuing state legislation.  
10 We're working actively with state legislation to make that  
11 happen.

12 We're reaching out to the governor, to provide  
13 appointments for the Board, the Regional Board, to make  
14 that happen at the Board level. And we're working  
15 cooperatively with the Port District and with agencies,  
16 such as the State Lands Commission.

17 So what we are asking for today is policy  
18 direction from the State Lands Commission that reinforces  
19 this goal of protective levels of sediment remediation and  
20 protecting the Public Trust.

21 ACTING CHAIRPERSON ARONBERG: Thank you.

22 Ms. Hunter?

23 MS. HUNTER: I'm just here in support of the  
24 resolution.

25 ACTING CHAIRPERSON ARONBERG: Thank you.

1           ACTING COMMISSIONER SHEEHAN: Question. Who is  
2 the responsible party?

3           EXECUTIVE OFFICER THAYER: There are a number that  
4 are actually named. In the abatement order, a number of  
5 them are named. They include --

6           ACTING COMMISSIONER SHEEHAN: Are they shipping  
7 companies, or is this also going back to the Navy?

8           MS. SOLMER: There are a number -- there are eight  
9 named potentially responsible parties. Two of them are  
10 the major shipyards: NASSCO and the former Southwest  
11 Marine Shipyards. We always have the Navy; we have the  
12 City of San Diego; and we have a number of oil companies  
13 and refineries: Chevron, Arco, BP, those kinds of groups.

14           ACTING COMMISSIONER SHEEHAN: And the order -- the  
15 abatement order has already been issued. But is it just  
16 the enforcement of this? Where are we in this regulatory  
17 process?

18           MS. SOLMER: Well, that is the big question.

19           The tentative cleanup abatement order has been  
20 issued, but it's been stalled at the Regional Board level.  
21 We're now waiting for a technical report, which any time  
22 you follow the Regional Board, should be out by the end of  
23 the week and another two months. So that is our  
24 frustration, that the cleanup abatement order was issued  
25 over a year and a half ago.

1           And we're still waiting for that technical support  
2 to support those findings. So we think that any action  
3 that this Commission can give to let them know that --  
4 that this isn't just an academic exercise; there are  
5 people, every day, fishing out of the bay.

6           So this means a lot. Thank you.

7           ACTING COMMISSIONER SHEEHAN: I'm happy to move  
8 approval of the resolution.

9           ACTING CHAIRPERSON ARONBERG: Thank you,  
10 Ms. Sheehan.

11           I'm going to quickly make the remarks the  
12 Controller would make.

13           The pollution in the San Diego is harmful across  
14 the spectrum. It's destroying the ecosystem. It's  
15 harmful to people. As a result, the coastal economy  
16 suffers, and that impacts all of San Diego and all of  
17 California.

18           We have a \$42 billion ocean economy in this state,  
19 and it's value is directly tied to water quality. There's  
20 more than 50 years of harmful sediment piled on the bottom  
21 of the bay, and we can't wait any longer for action  
22 because the risks are too great. As Ms. Solmer mentioned,  
23 the Regional Water Quality Board's cleanup and abatement  
24 order claimed eight parties, identified 885,000 cubic  
25 yards of contaminated sediment to be removed. And it even



1 identified the cost. Now it's time for action.

2 This order needs to be final, and it needs to be  
3 expedited. And that's what this resolution is asking for.

4 So I think I second the motion. But again, I will  
5 second it.

6 All in favor?

7 (Ayes.)

8 ACTING CHAIRPERSON ARONBERG: The motion carries.

9 Moving now back to Item 49, which is a resolution  
10 concerning protection of the Klamath River.

11 Staff presentation?

12 EXECUTIVE OFFICER THAYER: Certainly.

13 Historically, Klamath River has been one of the most  
14 important salmon streams on the West Coast. Scientists  
15 calculate that over a half million salmon come back to  
16 that annually -- historically, not nearly that today.

17 Other species, such as steelhead, which have over  
18 a million coming to that stream, and lamprey, were  
19 abundant. These fish sustained local Native American  
20 tribes and became an important part of their culture.

21 After statehood, a commercial fishing industry was  
22 established and was dependent on these fish.

23 Over-harvesting by the industry probably initiated the  
24 decline of the fish populations, but other factors have  
25 become more important today. The most significant are the

1 construction of a series of hydroelectric dams and the  
2 diversion of water for agricultural purposes.

3 The low populations of the large fish kill in 2002  
4 and controversy over diversions in Oregon have focused  
5 attention on restoring the river.

6 There are settlement discussions among the water  
7 users and dam owners, other stakeholders, and government  
8 entities. Licenses for several of the dams are expiring  
9 and requiring removal by the Federal Energy Regulatory  
10 Commission.

11 Many have suggested that removal of dams which do  
12 not supply a large amount of electricity would be the most  
13 effective measure to help us clear the river.

14 Dam removal would make upstream spawning grounds  
15 available again, and would result in lower water  
16 temperature. One study states that the dam removal would  
17 be less expensive than the construction of fish ladders  
18 and other alternative measures. The dam removal has been  
19 supported by a variety of stakeholders. The Humboldt  
20 County Board of Supervisors, State Senator Wesley Chesbro,  
21 and others. The Pacific Corp. has indicated that it is  
22 not opposed to dam removal if alternative energy supplies  
23 were available, as property ownership was concerned two  
24 weeks ago. Dam removal on the Klamath was discussed at a  
25 meeting with the Ocean Protection Council.

1           As chair of the Commission, the Controller  
2 participated in this meeting just two weeks ago. Because  
3 fisheries are an important public trust resource, the  
4 Controller afterwards asked staff to draft a resolution  
5 regarding Klamath.

6           While the official comment period on the dam  
7 relicensing has ended, these other settlement discussions  
8 are still going forward. So staff believes that adoption  
9 of this resolution of this Commission will contribute to  
10 that discussion at that meeting.

11           The resolution urges consideration of dam removal  
12 and other measures necessary to restore the Klamath River.

13           This concludes the staff presentation.

14           ACTING CHAIRPERSON ARONBERG: Thank you.

15           Ms. Sheehan?

16           ACTING COMMISSIONER SHEEHAN: In -- at courtesy of  
17 the Controller, I will move the resolution.

18           ACTING CHAIRPERSON ARONBERG: The controller  
19 appreciates that motion.

20           I know what he would say, if he were here, again,  
21 is that the problems are well documented. And what's  
22 causing those problems is well documented too. It's time  
23 that these dams and the damage they are causing are  
24 addressed.

25           There's a good deal of agreement here from Trinity

1 County to the California Energy Commission, to the  
2 Department of the Interior, and as Mr. Thayer mentioned,  
3 even Pacific Corp. doesn't oppose dam removal if certain,  
4 the Controller thinks, probably very reasonable conditions  
5 are met. So let's get the job done.

6 All in favor?

7 (Ayes.)

8 ACTING CHAIRPERSON ARONBERG: And opposed?

9 Go ahead, Paul.

10 EXECUTIVE OFFICER THAYER: Well, I -- that's fine.  
11 But I just wanted to add that Commissioner Sheehan raised  
12 a legitimate concern over the public availability of this  
13 resolution. And with her guidance, we will do our best to  
14 avoid that in the future.

15 ACTING CHAIRPERSON ARONBERG: I probably think  
16 that this, you know, is partially my fault, my personal  
17 fault. And we will 100 percent make the most effort that  
18 we can to have everything available with as much advance  
19 notice as possible.

20 ACTING COMMISSIONER SHEEHAN: We have an  
21 obligation to be transparent to the public on anything  
22 that we're voting on. And I just think people need to  
23 have it in front of them.

24 EXECUTIVE OFFICER THAYER: I couldn't agree with  
25 you more.

1           ACTING CHAIRPERSON ARONBERG: Just one little  
2 note, though, which may allay your concerns a little bit.

3           This issue has been out there for years. And as I  
4 mentioned, those other agencies have held hearings, and  
5 the issues have been discussed ad nauseam. So there's a  
6 great deal of agreement. Otherwise, I would be equally  
7 concerned about the public notice. So I think we --  
8 Mr. Attorney General, was that vote good enough for you?

9           ASSISTANT ATTORNEY GENERAL HAGER: Yes.

10          ACTING CHAIRPERSON ARONBERG: Okay. Looks like  
11 that is the end of the regular calendar. We've got some  
12 public commenters here.

13          Bruce Reznik, who is no longer in the room, but  
14 maybe someone is here to speak on his behalf.

15          And then Katheryn Rhodes, is she in the room  
16 still?

17          And Laura Hunter is no longer in the room.

18          Great. Ms. Rhodes.

19          MS. RHODES: Thank you. Katheryn Rhodes, and I  
20 live here in San Diego.

21          What I want to talk about was, there's  
22 Alquist-Priolo earthquake fault all along the San Diego  
23 Bay.

24          You know, there's the old police headquarters that  
25 they actually voted for coastal development, or the Port

1 did, when they knew in their Final EIR that they had to do  
2 the whole investigation. They didn't do the fault  
3 investigation. But during this meeting today, I heard  
4 that they are going to actually do it. So someone came up  
5 to me today and told me they are going to do it, so I'm  
6 happy about that.

7 But on the Navy Broadway complex, that site is  
8 right next to the old police headquarters. That's -- I  
9 think there's faults going straight toward there. There  
10 is the active Coronado fault, that just started being  
11 active, or known to be active in 2001. The Alquist-Priolo  
12 was redone in 2003. On Coronado, they just found the  
13 active portion of it in 2006.

14 And Manchester, with Perry Dealy there, they are  
15 not releasing fault investigation to the city, to CCDC, to  
16 the Port, to no one. And what I'm asking you, as part of  
17 the state agency, is to see if you could get -- they said  
18 they did a fault investigation, and there's nothing there.  
19 But if we could have that fault investigation because  
20 we're having an appeal to the City of San Diego regarding  
21 the EIR. And part of it, mine is, is that San Diego  
22 wasn't considered a -- in 1993, San Diego, the Rose Canyon  
23 fault zone, is now considered active.

24 This EIR was done in 1990. And because of that,  
25 you know, the fault investigation is needed. They are

1 saying the EIR is fine even though the laws have changed.  
2 The state laws have changed. The federal laws have  
3 changed regarding ports and ships coming into here. So we  
4 have so much more parking and so many different issues  
5 with this. So anything that you could do to help us get  
6 the new EIR as part of the Navy Broadway complex would be  
7 great.

8 And anything you could do to see if you could get  
9 Manchester, who's a tenant of the port and has port  
10 property, here, in San Diego, if you could get them to  
11 release the fault investigation that they said they did,  
12 for the Navy Broadway complex, and also they could  
13 release -- release the lease that they signed with the  
14 Navy, a couple weeks ago, so we will actually know what's  
15 in that lease, that would be great. If you guys could do  
16 anything, that could be wonderful.

17 Myself, since we can't get any information, I'm  
18 going to actually pay, with my own money, to get a fault  
19 investigation done on Port property. And hopefully, the  
20 Port is going to allow me to do that. I still have to get  
21 a right-of-entry permit. And so I plan on doing that and  
22 doing an investigation in about two weeks.

23 But the Port of San Diego supposedly is not in the  
24 downtown special study zone, even though there are so  
25 many -- there's a fault going straight here to the

1 public -- Public Trust tidelands property, or whatever you  
2 call it. It's going straight to this area, and they are  
3 considering that they don't really need fault  
4 investigations.

5 So I want to see if somebody could turn it around,  
6 in the state level, that says, you guys have to do fault  
7 investigations in San Diego, between Laurel Street, that's  
8 two blocks down, all the way downtown, just to the  
9 downtown special study zone.

10 Thank you.

11 ACTING CHAIRPERSON ARONBERG: Thank you, Ms.  
12 Rhodes. Thanks so much for your patience, through our  
13 long meeting as well.

14 And I think Mr. Wilkens has something to say about  
15 this.

16 MR. WILKENS: Thank you, Madam Chair. I just  
17 wanted to clarify two things for you: I'm not taking  
18 issue with the speaker's comments, but, one, the Broadway  
19 complex is a development that is between the Navy --  
20 United States Navy and the proposed developer, who happens  
21 to be the Manchester Group, which happens to be a Port  
22 tenant.

23 So the -- if you want to think of that, there's  
24 two separate Manchesters; okay? There's a Manchester  
25 who's the proposed developer of the Broadway Complex and



1 there's a Manchester who has developed the Marriott and  
2 the Hyatt, on property. That's just fact one.

3 ACTING COMMISSIONER SHEEHAN: Is it the same  
4 person?

5 MR. WILKENS: It's the same company, ma'am. Or  
6 least the LLC portion of it.

7 So that's the first thing.

8 Second thing, the old police headquarters  
9 property, which is part of a separate port development,  
10 Mr. Manchester has nothing to do with that. It's across  
11 the street from the Hyatt in one area and it's across the  
12 street from the Broadway complex in another.

13 And the speaker's concern at our meeting -- I'm  
14 not again taking issue here -- was that the developer of  
15 the old police headquarters. It's a historical building  
16 that is being adaptively reused, had not done, in her  
17 judgment, a sufficient earthquake study. There are some  
18 off-line conversations with technical people, including  
19 the developers and geotechnical people. I'm not up to  
20 speed on that. If she says that people are going to do  
21 things, I believe her.

22 And then finally, with regard to the earthquake  
23 fault under the Broadway complex again, that's the City of  
24 San Diego's Redevelopment Agency's responsibility.

25 And there is, apparently, a difference of opinion

1 between their technical experts and perhaps the speaker.  
2 I don't know, and I don't speak for either party. But I  
3 just want to kind of parse this so you understand moving  
4 parts. From the Port's point of view, and I'm the  
5 executive vice president of the Port, we're coming her way  
6 in trying to work through it. But we also have a tenant  
7 who has adaptive reuse plans in play and is getting advice  
8 from the City of San Diego in terms of what these issues  
9 may entail or not entail. So it's a long explanation.

10 ACTING CHAIRPERSON ARONBERG: Mr. Thayer has a  
11 couple of words.

12 EXECUTIVE OFFICER THAYER: Just real briefly, I  
13 don't think we necessarily have any particular expertise  
14 in fault lines.

15 If some of these projects are on Port property,  
16 and it sounds from Mr. Wilkens like at least most of them  
17 are not, then we'll certainly look into this. Otherwise,  
18 if there's some other avenue that we can develop for the  
19 speaker to pursue, we'll try and provide that information.

20 ACTING CHAIRPERSON ARONBERG: Great. We have the  
21 speakers' information, and we'll be in contact with her  
22 about that.

23 EXECUTIVE OFFICER THAYER: We have her number  
24 here.

25 ACTING CHAIRPERSON ARONBERG: Unless Ms. Hunter

1 returns, our last public speaker is Bruce Reznik.

2 MR. REZNIK: Thanks. I will be brief.

3 My name, again, is Bruce Reznik. I'm from San  
4 Diego Coastkeeper.

5 I just wanted to take this opportunity -- and Paul  
6 stole a little bit of our thunder -- but to thank the  
7 entire Commission, but particularly the two commissioners  
8 who this is their last meeting. And unfortunately, they  
9 both had to go. I had a chance to speak, at least,  
10 briefly, before Mr. Bustamante left.

11 This agency, under the leadership of these two  
12 gentlemen, has been the most aggressive and protective  
13 that we've ever seen in State Lands. I don't think we can  
14 understate the importance of opening up the process,  
15 bringing meetings throughout the state.

16 I don't remember going to a State Lands Commission  
17 hearing before the leadership of these two gentlemen. The  
18 resolutions, there are so many that have already been  
19 made. But the ones that particularly the Bay Council  
20 Groups had a role in -- the Copper Bay paint, marinas,  
21 ballast water, once-through cooling resolution, obviously  
22 today, we had sediments and of course the Woodfin decision  
23 to further protect our Public Trust lands.

24 So you set a very high bar for State Lands  
25 Commission. Hopefully -- I hope actually our next

1 commissioners even go above and beyond.

2 But we just wanted to recognize, on behalf of the  
3 Bay Council, which is San Diego Coastkeeper, Environmental  
4 Health Coalition, Surfrider, Sierra club, Audubon Society.  
5 And the California Coastkeeper Alliance called me and they  
6 wanted their name on this too.

7 We just put a plaque together for the outgoing  
8 commissioners, so thank you very much for all your effort.

9 ACTING CHAIRPERSON ARONBERG: Thank you,  
10 Mr. Reznik. I know that the admiration, at least from  
11 Controller Westly is definitely mutual. And I'm sure that  
12 Mr. Bustamante would say the same thing.

13 Thank you very much.

14 So that is -- unless there are any other public  
15 speakers, that is the end of the regular calendar.

16 We're going to have a very fast closed session.

17 If we could have the room cleared, please.

18 (The Commission recessed into closed  
19 session.)

20 (The State Lands Commission meeting  
21 adjourned at 5:00 p.m.)

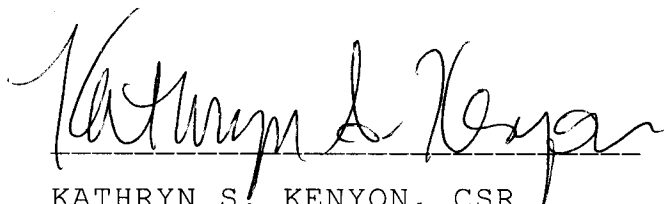
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9 I further certify that I am not of counsel or  
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11 way interested in the outcome of said meeting.

12 IN WITNESS WHEREOF, I have hereunto set my hand this  
13 26th day of December, 2006.

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