

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

COURTYARD BY MARRIOTT EMERYVILLE
5555 SHELLMOUND STREET
EMERYVILLE, CALIFORNIA

MONDAY, JUNE 28, 2010
10:31 A.M.

JAMES F. PETERS, CSR, RPR
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APPEARANCES

BOARD MEMBERS

Mr. John Chiang, State Controller, Chairperson, also represented by Ms. Cindy Aronberg

Mr. Abel Maldonado, Lieutenant Governor

Ms. Ana J. Matosantos, Director of Finance, represented by Ms. Cynthia Bryant

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Curtis Fossum, Chief Counsel

Mr. Colin Connor, Assistant Chief, Land Management Division

Mr. Mario De Bernardo, Legislative Liaison

Ms. Nicole Dobroski, Staff Environmental Scientist

Ms. Maurya Falkner, Environmental Program Manager I

Mr. Ken Foster, Land Management Specialist

Ms. Pamela Griggs, Senior Staff Counsel

Ms. Jennifer Lucchesi, Senior Staff Counsel

Ms. Kimberly Lunetta, Executive Assistant

ATTORNEY GENERAL'S OFFICE

Mr. Joe Rusconi, Deputy Attorney General

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Martin Adams, Los Angeles Department of Water and Power

Mr. Joe Angelo, INTERTANKO

Mr. John Berge, Pacific Merchant Shipping Association

Mr. Cruz Bustamante, National City

Mr. Andreas Cluver, Alameda County Building Trades Council

Mr. Michael Ghielmetti, Oakland Harbor Partners

Ms. Ruth Gravanis, Public Trust Group

Ms. Pamela Kershaw, Port of Oakland

Ms. Irene McCormack, Port of San Diego

Mayor Ron Morrison, National City

Mr. Andy Nelson, Oak to Ninth Community Benefits Coalition

Ms. Barbara Newcombe

Ms. Judith Offer

Ms. Joyce Roy

Ms. Naomi Schiff

Mr. Lee Strieb, UNITE HERE

Ms. Sandra Threlfall, Public Trust Group

Ms. Mariana Jeung Tran

Ms. Tam Tran

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1 space. If you get too close though, we won't hear
2 anything. It gets real distorted. If you keep about six
3 inches, speak clear, make sure the mike is pointed at your
4 mouth, we'll be able to record everything you say, which
5 is what I believe you want.

6 Okay, thank you. Have a good meeting.

7 CHAIRPERSON CHIANG: Thank you very much.

8 So the first item of business will be the
9 adoption of the minutes from the Commission's last
10 meeting. May I have a motion to approve the minutes.

11 ACTING COMMISSIONER BRYANT: I'll move approval.

12 CHAIRPERSON CHIANG: Thank you. Motion by
13 Cynthia.

14 Is there a second?

15 COMMISSIONER MALDONADO: I'll second.

16 CHAIRPERSON CHIANG: Second by Abel.

17 Without objection, the motion passes.

18 The next order of business is the Executive
19 Officer's Report.

20 Paul, may we have that report, please.

21 EXECUTIVE OFFICER THAYER: Thank you, and good
22 morning, Mr. Chair and members of the Commission.

23 I have three brief items. The first two have to
24 do with announcing new Division Chiefs that have been
25 recently hired for the State Lands Commission. They're

1 both very experienced in terms of Public Trust matters.

2 The first is Cy Oggins. Cy, if you could stand
3 up, in the back there with his hand up. Cy has been
4 chosen to be the new Chief of the Division of
5 Environmental Protection and Management. Cy has come to
6 us from the Department of Conservation, where he worked on
7 mine closure issues.

8 But prior to that, he'd been with the Commission
9 for six or seven years in that same Division, so he's very
10 experienced in the work that he's coming for.

11 The second one is a new Chief for our Land
12 Management Division, Brian Bugsch. Brian, right here.

13 Brian has just come to us from the Insurance
14 Commissioner's office, but he's a familiar face to some of
15 the people here, because he'd worked for the prior
16 Lieutenant Governor on State Lands issues. And as such,
17 he's very experienced with Public Trust matters and
18 several years in working on that.

19 The other item I wanted to mention is this is the
20 first meeting we've had in the Bay Area since the passing
21 of Eve Bach. And I wanted to take just a couple of
22 moments to acknowledge the role she's played in the Public
23 Trust doctrine in the State, and in essence, to thank her
24 for that.

25 She was active for her life in Berkeley civic and

1 political matters. And she worked in the city government
2 in Berkeley and rose to be Assistant Manager for Community
3 Development. After retirement from the city, she worked
4 on affordable housing issues. We saw her at numerous
5 State Lands Commission meetings, of course, particularly
6 down here, but she also would sometimes come up to the
7 Sacramento office.

8 She served as president of the Public Trust
9 Group. This group is, as far as I know, the only citizens
10 group in the State of California that's devoted solely to
11 working on Public Trust issues. And so we regard them as
12 our partner really in a lot of matters. And we think our
13 work has been improved because of this group and because
14 of Eve's input. So we miss her already. And I had to
15 acknowledge her role and her passing at this Commission
16 meeting.

17 And that concludes the Executive Officer's
18 report.

19 CHAIRPERSON CHIANG: Are there any comments by
20 the members?

21 Abel?

22 Thank you. Let me just congratulate, on behalf
23 of the Commission Cy and Brian. We look forward to your
24 strong work. And, Brian, on just a personal note, I'm
25 glad we were able to retain you or keep you here, having

1 worked alongside with you and your extraordinary work.

2 I do have some points I wanted to raise. Paul,
3 between now and the next meeting, I believe which will be
4 in August, I would appreciate it if the Commission would
5 review oil production operations in State waters,
6 especially in light of and in view of what took place in
7 the Gulf of Mexico.

8 Obviously, we've had oil spills here off the
9 coast of California. I remember working for the prior
10 Controller and going to the spot of that Huntington Beach
11 oil spill, and its consequences.

12 And then second, reveal our oil spill prevention
13 activities, both in State waters and the Oil Terminal
14 Prevention Program, to determine what the Gulf experience
15 shares and has in common or what's differentiated between
16 what's taking place here, and what further action,
17 including regulations, would need to be strengthened, so
18 that California can act promptly, timely, and effectively.

19 EXECUTIVE OFFICER THAYER: Certainly, Mr. Chair,
20 we will do that. And as the Chair points out, we do have
21 two different aspects or programs that deal with oil spill
22 prevention. One being our statutory authority and mandate
23 to prevent oil spills from marine oil terminals, since
24 it's done by our Marine Facilities Division.

25 And the second one to make sure that the

1 continuing production from our existing off-shore oil
2 leases is done in an absolutely safe way. And that's
3 carried out by our Mineral Resources Management Division.
4 So we will report back to the Commission at our August
5 meeting.

6 CHAIRPERSON CHIANG: That's appreciated.

7 The next item is an action item. It's the
8 Consent Calendar. Paul, please explain what items have
9 been removed from the Consent Calendar.

10 EXECUTIVE OFFICER THAYER: There are three items
11 in all. Two of them will be heard at a later date. They
12 are Items 63 and 85. And Item 35 will be removed and
13 heard at the end of our regular calendar today.

14 CHAIRPERSON CHIANG: Okay. Do any of the members
15 wish to pull any other items off the Consent Calendar?

16 COMMISSIONER MALDONADO: I do have a question.

17 CHAIRPERSON CHIANG: Please.

18 COMMISSIONER MALDONADO: Mr. Thayer, I received a
19 letter from Assembly Member Jim Silva. And I have it
20 right before me now. And I apologize for not talking to
21 you earlier on this issue. He makes a comment here that
22 for 25 years -- this is C57, 58, 60. I think it's the
23 cantilevered decks and probably in his district.

24 EXECUTIVE OFFICER THAYER: Right, yes.

25 COMMISSIONER MALDONADO: And he makes a comment

1 that these homes have been in place since the late 1970s,
2 for 25 years have never been charged a fee.

3 Can you explain that to me a little bit, please.

4 EXECUTIVE OFFICER THAYER: Certainly. What is at
5 issue here is the practice by a number of the homes there,
6 probably over 100, to construct cantilever decks that
7 extend out from their property out over the water, out
8 over the State Lands.

9 We don't have a regular inspection staff that is
10 able to go out and look for things like this. And by the
11 time we became aware of this practice, there were, as I
12 say, over 100 of them built. The Coastal Commission had
13 given permits for them as well as the city.

14 Technically, these improvements aren't consistent
15 with the Public Trust Doctrine. In essence, their
16 homeowners are expanding their back yards by doing this,
17 and converting really Public Trust Lands to private
18 residential use.

19 However, given the wide-scale practice that
20 already existed, and the fact that they'd gotten all their
21 other permits, not getting a lease from us though, we
22 decided to bring these facilities under lease rather than
23 requiring that they be removed. And so we conduct an
24 appraisal and charge fair market rent as we're required to
25 do by law. And that rent ranges anywhere from, I think,

1 three or four hundred dollars to \$1,200 or \$1,300,
2 depending upon the size of the deck. We've undertaken
3 that approach, I think, for the last two or three years
4 and have probably brought 20 or 30 of these decks under
5 lease.

6 There is some opposition from some homeowners
7 along the lines of the letter from the Assembly Member,
8 who feel that since they've done it for all this period of
9 time, there's been no objection from the State, they have
10 questions about why we're doing this.

11 But we think that the law is clear, that we're
12 suppose to charge fair market rent for these improvements.
13 And so that's what we're doing on a case by case basis. I
14 did -- myself and several other of the staff did go meet
15 with the Assembly Member several months ago and explained
16 all of this. And he still had concerns, which are
17 reflected in the letter that he sent to you.

18 COMMISSIONER MALDONADO: So in essence, a
19 homeowner went out and got a permit from the Coastal
20 Commission.

21 EXECUTIVE OFFICER THAYER: Right.

22 COMMISSIONER MALDONADO: They got a permit from
23 the local city. They got approval. The deck went up.
24 And then we find out, as a State Lands, that hey, these
25 are over State Lands' properties, and there should have

1 been a lease.

2 EXECUTIVE OFFICER THAYER: Yes.

3 COMMISSIONER MALDONADO: Now, these permits were
4 in place since the seventies, for 25 years, or this is
5 just new stuff?

6 EXECUTIVE OFFICER THAYER: These decks have gone
7 in over the last 25 or 30 years. I think the original --
8 when was the original subdivision?

9 CHIEF COUNSEL FOSSUM: They're relatively new, a
10 lot of them are new construction. In fact, the city's
11 ordinances relating to the size and length of these decks
12 has only been in existence for a number -- for a few
13 years. We only found out about it just a few years ago.

14 And I think the important thing is that there are
15 lots of people in Huntington Harbor who don't need a lease
16 from the State Lands Commission for these decks. They are
17 on privately owned or not under the Commission's
18 jurisdiction.

19 When the Commission settled title with the
20 developer of this area back in the early 1960s, there was
21 only two channels out of all the channels in Huntington
22 Harbor that became State property. So many people do have
23 these cantilever decks that don't owe the State any money,
24 because they're not on State property. But those that do
25 on these two main channels are using that area and are

1 paying -- when we bring them under lease, they do pay a
2 rent. I think generally it's less than \$1,000 a year.

3 COMMISSIONER MALDONADO: And their opposition,
4 the landowners' opposition, obviously is that they didn't
5 know. They thought they'd got the permit. It was a done
6 deal. And all of a sudden State Lands, under this letter,
7 it says that since the State is hurting for money, we're
8 going after them for putting a deck on.

9 EXECUTIVE OFFICER THAYER: We would go -- we're
10 required by law again to charge the fair market rent for
11 use of the State property, so the budget doesn't matter,
12 in terms of our interpretation.

13 COMMISSIONER MALDONADO: Sure.

14 CHAIRPERSON CHIANG: Technical question. Since
15 we had a discussion on matters that were -- a general
16 discussion on matters that involved items on Consent, do
17 we need to pull them off Consent, or can we --

18 EXECUTIVE OFFICER THAYER: No. I think we
19 usually put matters on Consent, unless there's opposition.
20 And if there's opposition, we pull them off. And the
21 letter from the Assembly Member, I think is a general
22 letter, which doesn't advocate that these leases not be
23 given. It's not particular to any particular lease, I
24 don't believe.

25 COMMISSIONER MALDONADO: Well, I think it's

1 pretty clear for the landowners -- excuse me, Mr. Chair.

2 CHAIRPERSON CHIANG: No, go ahead.

3 COMMISSIONER MALDONADO: -- that if they don't
4 want to pay, then they just take the deck down.

5 EXECUTIVE OFFICER THAYER: That's correct. And
6 we believe one landowner has done that.

7 COMMISSIONER MALDONADO: Okay.

8 CHIEF COUNSEL FOSSUM: In fact, there was a
9 newspaper article this weekend in a local paper, I
10 received an on-line copy of it, which shows the person
11 who's been involved in this and kind of sending letters to
12 all the neighbors saying you don't have to pay this. And
13 kind of starting a little bit of a revolt down there, I
14 think. And there is a -- and I'll be happy to forward
15 that to the Commissioner's offices, so that they can see
16 that.

17 But by and large, most people begrudgingly do pay
18 their rent and understand that. But any time -- some
19 people believe any time the government asks for money,
20 it's a tax. And in this instance, it's certainly not.
21 It's for use of State property.

22 CHAIRPERSON CHIANG: Very good. Now, for public
23 comment. Is there anyone in the audience who wishes to
24 speak on an item that is still on the Consent Calendar?

25 No.

1 Very good. Okay. So the remaining group of
2 consent items we'll be taken up as a single vote.

3 Is there a motion?

4 ACTING COMMISSIONER BRYANT: I'll move approval.

5 CHAIRPERSON CHIANG: Thank you very much. Motion
6 by Cynthia.

7 Is there a second?

8 COMMISSIONER MALDONADO: I'll second.

9 CHAIRPERSON CHIANG: A second by Abel.

10 Without objection, the motion passes.

11 The next item is the Regular Calendar. Under
12 Item 88, we will consider a pending bill before the
13 California Legislature regarding the Port of San Diego
14 trust revenues and federal bill before Congress regarding
15 school lands in the desert.

16 May we have the staff presentation, please.

17 EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.
18 The staff presentation will be made by Mario De Bernardo,
19 who's our legislative staff.

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

22 LEGISLATIVE LIAISON DE BERNARDO: Good morning,
23 Mr. Chair and Commission members. My name is Mario De
24 Bernardo the Legislative Liaison for the State Lands
25 Commission.

1 I will first be presenting Regular Calendar Item
2 number 88.

3 --o0o--

4 LEGISLATIVE LIAISON DE BERNARDO: In this
5 presentation, I will provide you with an update of 2010
6 legislative items that are relevant to the State Lands
7 Commission's operations.

8 After the legislative update, I will present two
9 pending bills, not included in the update, on which the
10 Commission may wish to take a position. So let me start
11 with the legislative update, and I'll try to be quick and
12 efficient about this.

13 First, I will start with the Assembly bills that
14 are currently pending. The first bill is AB 1998, which
15 deals with a ban on single-use shopping bags. The
16 Commission has adopted a resolution last year on this
17 particular issue, and supported this bill last Commission
18 meeting.

19 The bill would ban -- has been amended since the
20 last Commission meeting to ban single-use carry-out bags
21 in supermarkets and large retailers, starting on January
22 2012, and then expand that ban to convenience stores on
23 January 2013. It passed the Assembly. It is now going
24 through the Senate Committee process.

25 AB 2179 is a bill that is really a technical

1 non-controversial bill that staff has worked on and
2 supported. It grants recently acquired Trust Lands
3 approved in previous land exchanges by the Commission to
4 the cities of Santa Cruz and Long Beach for local
5 management. It passed unanimously in the Assembly. It is
6 now in the Senate Committee process.

7 --o0o--

8 LEGISLATIVE LIAISON DE BERNARDO: The next bill,
9 which is a bill that has not been presented to the
10 Commission, but is very relevant to the Commission's
11 operation, is AB 2503, which is known as the Rigs to Reefs
12 Bill.

13 It's authored by the Assembly Speaker. It
14 creates a program that allows a decommissioned oil
15 platform to become an artificial reef, rather than be
16 completely removed, if there is a net environmental
17 benefit and cost savings.

18 Staff has worked with the author's office to
19 ensure that the Commission's jurisdiction remains intact
20 in terms of leasing and other oversight. The bill also
21 gives the Commission responsibility to determine the cost
22 savings aspect of the reefing project. And the Commission
23 would be compensated by the owner of the platform.

24 Fifty percent of the cost savings must be paid
25 into various accounts, including the general fund. It

1 passed unanimously in the Assembly and is now in the
2 Senate Committee process.

3 AB 2598, which is sponsored by the Controller's
4 Office, our Chair, and the Commission officially
5 supported, requires certain trustees of granted Public
6 Trust Lands to prepare a sea level rise action plan by
7 July 1st, 2012. It passed the Assembly and is now in the
8 Senate Committee process.

9 AB 2601 is a bill that the Commission opposed.
10 It would have appropriated money from the T-Ridge oil
11 revenues to various firefighting programs. This bill
12 failed passage in the Assembly Natural Resources
13 Committee.

14 AB 2664 is a bill sponsored by the Commission.
15 It imposes penalties on unauthorized structures and
16 facilities on State Lands. It passed the Assembly with
17 only one no vote, and is now in the Senate Committee
18 process.

19 AB 2719 is a bill that the Commission opposed.
20 It would have circumvented the Commission's jurisdiction,
21 in terms of oil leasing and essentially would have allowed
22 for the approval of the T-Ridge lease. This bill failed
23 in the Assembly Natural Resources Committee.

24 --o0o--

25 LEGISLATIVE LIAISON DE BERNARDO: Now, going to

1 State Senate Bills. SB 1034 was a bill that the
2 Commission supported. It would require a court to order
3 restitution to a State agency when a person is convicted
4 of tampering with archeological resources on State Lands.
5 The Commission has dealt with archeological resources on
6 State Lands, such as shipwrecks and the Brother Jonathan.
7 This has passed the Senate unanimously and is now in the
8 Assembly Committee process.

9 SB 1350, which is a bill that the Commission
10 supports. And there is also an element that it did not
11 officially support, but is more of a technical staff issue
12 that staff supports. It codifies two things.

13 First, the Commission's existing land reporting
14 practice to the Department of General Services, that's the
15 aspect that staff supports.

16 The third -- the second portion of this is what
17 the Commission supported. It would codify common law,
18 which basically holds that management of granted Public
19 Trust Lands is a statewide concern, and cannot be
20 subjugated by local initiative. This passed the Senate
21 and is now in the Assembly Committee process.

22 SB 1488, which is a Commission sponsored bill is
23 actually a Committee bill that has received unanimous
24 support. It cleans up the City of Pittsburg's grant
25 Public Trust Lands -- the granting statute to Pittsburg.

1 bill would require the Port of San Diego to dedicate
2 Public Trust revenues, on an annual basis, for cooperative
3 infrastructure and capital projects on and off tidelands.
4 These projects would directly address marine industrial
5 impacts by the Port in the city of National City and San
6 Diego. The State Lands Commission would act as the final
7 arbiter of any disputes regarding eligibility and approval
8 of projects.

9 Staff recommends a position of oppose unless
10 amended. Staff's problems with the current bill drafted,
11 that the bill could potentially give the city of National
12 City and San Diego Public Trust funds to be used for
13 municipal purposes, which is a violation of the
14 Constitution's gift clause. Staff's analysis explains a
15 little bit more in detail some of the other legal problems
16 associated with this bill.

17 I'd also like to add that this bill making the
18 Commissioner the final arbiter, first, doesn't provide any
19 sort of additional funding to the Commission to act in
20 this role. We only have one staff member that deals with
21 granted Public Trust Lands. And to prepare the Commission
22 to act as an arbiter would require additional staff.

23 Moreover, the Commission doesn't normally deal
24 with day-to-day regular land-use decisions made by a
25 trustee. And this bill doesn't really present compelling

1 reasons to change that and make the Commission an arbiter
2 on these type of land-use decisions.

3 The Commission and the staff -- or, excuse me,
4 the staff report has a proposed amendment that would be
5 acceptable to staff. This bill may change form several
6 times before it's actually voted on the Assembly floor.

7 If this is the case, staff recommends that the
8 bill establish a formal capital project development
9 program for the Port and require that the Port consult
10 with the member cities, and that the overall language is
11 drafted in consideration of the legal concerns expressed
12 in the staff report.

13 The second bill is Senate Bill 2921, which is the
14 California Desert Protection Act of 2010.

15 ACTING COMMISSIONER BRYANT: Mario, I don't
16 have -- did we get a written staff report?

17 LEGISLATIVE LIAISON DE BERNARDO: There should be
18 a written staff report attached to Calendar Item 88.

19 ACTING COMMISSIONER BRYANT: I just have just the
20 green short summary. Was there another one? I might have
21 just not gotten it.

22 Thank you.

23 LEGISLATIVE LIAISON DE BERNARDO: The staff
24 report details the issues with mitigating impacts on
25 Public Trust Lands and using Trust funds to address those

1 impacts. This bill establishes a process where the Port
2 would basically mitigate various types of impacts related
3 to marine industrial activities on the Port. It does not
4 create a criteria that requires a port to determine
5 whether or not there's a nexus and whether or not there's
6 proportionality between the Public Trust revenues used to
7 mitigate the impact and the impact itself. And that's one
8 of the main legal reasons why staff has come out in
9 opposition to this bill.

10 If you have -- I can continue on the next bill or
11 if you have any questions, I can answer them either now or
12 later on.

13 CHAIRPERSON CHIANG: Please proceed.

14 LEGISLATIVE LIAISON DE BERNARDO: Okay. So the
15 California Desert Protection Act is a comprehensive bill
16 to designate new lands in the California desert for
17 conservation to enhance recreational opportunities and to
18 streamline and improve the federal permitting process to
19 advance large-scale wind and solar development on suitable
20 lands.

21 Commission staff was involved with drafting nine
22 pages of this bill to help facilitate the land exchange
23 process between the State Lands Commission and BLM, in
24 order to consolidate lands in the desert that would be
25 suitable for renewable energy. The State would hopefully

1 require -- or acquire these large parcels of consolidated
2 desert lands where it can lease these lands out to
3 renewable energy to companies and generate revenue for the
4 California Teachers' Retirement Fund.

5 That's the end of my report.

6 Oh, I should state that for Senate Bill 2921, at
7 this time, staff is not recommending any action. This is
8 more bringing this to you for informative purposes. The
9 reason why there is no recommendation of action is because
10 there have been issues brought up by the environmentalists
11 and industry concerned with this bill. And the author's
12 office has stated that she's committed to working with
13 these groups to amend the bill. And so I suggest -- or
14 staff suggests that possibly at a future date, we bring
15 this bill to the Commission when it's in its more final
16 form.

17 CHAIRPERSON CHIANG: We would appreciate that.
18 Thank you.

19 We have three individuals who have signed up to
20 make comment. You have a three-minute time limit. The
21 first is a former Chair and our distinguished Lieutenant
22 Governor -- I guess we have a Lieutenant Governor's
23 Association meeting here. Cruz Bustamante.

24 Cruz.

25 Followed by Mayor Ron Morrison representing the

1 City of National City. And third is Irene McCormack, the
2 assistant vice president of the Port of San Diego.

3 MR. BUSTAMANTE: Mr. Chairman, if you would, I'd
4 like to defer my position to the Mayor to speak first --

5 CHAIRPERSON CHIANG: You may.

6 MR. BUSTAMANTE: -- and then I'd like to speak
7 following --

8 CHAIRPERSON CHIANG: Sure.

9 MR. BUSTAMANTE: -- if that's okay?

10 CHAIRPERSON CHIANG: Mayor Morrison, welcome.

11 NATIONAL CITY MAYOR MORRISON: Oh, thank you very
12 much. And I certainly want to thank the Commission for
13 hearing us today. And indeed, we see this bill as a
14 maritime enhancement and protection bill, and as we take a
15 look at those communities that are directly impacted by
16 maritime, so that they make sure that they receive some of
17 the benefits also, and so that there is a desire to
18 enhance that maritime and continue that maritime within
19 their communities.

20 We know maritime is under attack all up and down
21 the west coast, and that's the last thing we want.
22 Personally, I'm a product of maritime. I spent most of my
23 life, before I kind of went to the dark side and got
24 involved in politics, working on these two terminals that
25 are discussed in this bill.

1 And so I understand the importance of those jobs
2 and how we protect those jobs. But I really want to say
3 that we have worked -- our staff has worked very
4 diligently with the Commission and their staff to try to
5 look at compromise and try to look at consensus language.
6 And we're very appreciative of all the work that's been
7 done. And we're looking very forward to kind of closing
8 the remaining minor issues and items to basically deal
9 with this long-term concern, which basically has been 40
10 years of inequity that we've had within the San Diego Port
11 district.

12 So I really want to just take this time, and say
13 we are doing amendments. We are working together with
14 your staff on that, and your staff has done, you know, a
15 fantastic job. I know when someone -- you know, I know
16 I've got a great staff, and that's one thing. But when
17 someone comes and tells you that, it just reinforces that
18 much more.

19 And believe me, your staff has done a great job
20 in both of its creativity and its energy, its
21 innovativeness, and in taking a look at, you know, how we
22 protect maritime use. And, at the same time, balance that
23 with protecting the Public Trust Doctrine, and also
24 looking at the public benefits and the social inequities
25 of this situation, and dealing with some positive changes

1 for these two adjacent communities to these maritime
2 communities.

3 So as I say, we want to continue to work with you
4 as we work through these changes. We have looked at the
5 changes that your staff has recommended. We've worked
6 very closely with them on those, and we are very much in
7 agreement with those changes.

8 Thank you very much.

9 CHAIRPERSON CHIANG: Thank you, Mayor.

10 Mr. Honorable.

11 MR. BUSTAMANTE: Mr. Chairman and members, this
12 bill is a concept bill. It's a bill that has gone through
13 Senate level government, passed in a bipartisan fashion.
14 It passed off the Senate floor with no no votes, 33-0.

15 The basic understanding of the bill is to resolve
16 an inequity, an inequity that's been 40 years. And the
17 idea is to try to figure out how to resolve the issues of
18 making sure that the Port is still able to meet its
19 fiduciary responsibilities, manage its business, and be in
20 compliance with the Public Trust and still deal with an
21 inequity that occurs only in this particular port.

22 It's a five-city port. And unlike all other
23 ports, which are one-city ports, sometimes both the
24 benefits and the burdens would accrue to the same city.
25 In this particular case, in the five cities, a lot of the

1 burden has accrued to two communities within those five
2 cities. And what we're trying to do is to make sure that
3 the benefits also accrue to those same two communities,
4 just like the burdens have.

5 The sequestering of all of the industrial uses
6 have been placed in National City and Barrio Logan. And,
7 as a result, the truck traffic and other kinds of things
8 that move through cities in order to get to the port
9 become an issue.

10 This is not a bill to take back the port areas.
11 It's not a bill to stop maritime use. In fact, providing
12 a buffer area that has been requested by the Port was done
13 by National City. Creating planning areas, making policy
14 decisions that are commensurate with the maintenance of
15 maritime uses has all been done by this community.

16 But when you have streets being torn up by
17 trucks, there should be some acknowledgement that there,
18 in fact, are impacts to the city, and that there become
19 some kind of fund that is used to be able to use the --
20 for those funds to help with those particular impacts.
21 That's what we're trying to do. We're faced with a
22 conundrum. We're hoping that this concept bill will
23 continue moving forward. We believe it will. And with
24 the support of the staff, who we are very, very close, I
25 believe, to having resolved all of the issues, I think

1 that we'll be able to do that.

2 And in the following weeks or so, I think you'll
3 see a bill that the Commission can support, or at least be
4 neutral on, as we try to resolve that inequity at the
5 local level.

6 CHAIRPERSON CHIANG: Mr. Bustamante, what areas
7 of difference remain between where the legislation as is,
8 is different from what the staff recommendations are?

9 MR. BUSTAMANTE: We had presented quite a few
10 ideas to the staff. And there were so many ideas that
11 staff said well maybe we should just start from scratch
12 and prepare our own document, which they did. And it was
13 a good thing that they did, because it was able to put a
14 foundation under which the types of issues of the Public
15 Trust and management and those kinds of issues were able
16 to be put on sound footing. We worked all day Thursday,
17 and a part of Friday to try to be able to close that gap.

18 We believe we came very, very close to having a
19 final document. Obviously at the time, the Executive
20 Director was not there, so he still had to review the
21 information. We still had to go back to the author. But
22 between the sponsor, the State Lands, we became very, very
23 close in the language. And we believe that we're at the
24 point of being able to make the kinds of amendments to the
25 bill that will be using State Lands' language to be able

1 to resolve the issue and move forward.

2 CHAIRPERSON CHIANG: Thank you.

3 Next, we have -- questions -- Irene McCormack.

4 Welcome, Irene.

5 MS. McCORMACK: Thank you, Chairman. My name is
6 Irene McCormack, assistant vice president for the Port of
7 San Diego. The San Diego Unified Port District Board of
8 Port Commissioners voted to oppose SB 1039, unless it's
9 amended, at its last meeting, following more than an hour
10 of discussion. And it's something that they've been
11 discussing for the last three months as well.

12 Even though the bill has been amended, and
13 despite the changes, the Board still voted to oppose
14 unless it's amended. Port Commissioners stated that the
15 bill is unnecessary and may undermine the Board's
16 fiduciary responsibility as trustees of public tidelands
17 in the five member cities that make up the Port of San
18 Diego. The Port supports Commission staff's
19 recommendation to oppose the bill unless amended.

20 Thank you very much.

21 CHAIRPERSON CHIANG: Thank you. Are there any
22 other members of the public who would like to make a
23 comment?

24 Okay. Is there a motion from -- comments from my
25 colleagues?

1 No.

2 Is there a motion?

3 Then I'll make a motion to move staff
4 recommendation.

5 ACTING COMMISSIONER BRYANT: And I'll second.

6 CHAIRPERSON CHIANG: Okay. Please take roll.

7 EXECUTIVE ASSISTANT LUNETTA: Controller Chiang?

8 CHAIRPERSON CHIANG: Aye.

9 EXECUTIVE ASSISTANT LUNETTA: Lieutenant Governor
10 Maldonado?

11 COMMISSIONER MALDONADO: I'm abstaining.

12 ACTING COMMISSIONER BRYANT: I'm abstaining as
13 well.

14 CHAIRPERSON CHIANG: Motion fails.

15 Then we will go on to the next item.

16 EXECUTIVE OFFICER THAYER: Okay. The next item
17 is Item 89. This is a resolution that was brought to the
18 Commission at the request of the Controller and has to do
19 with supporting the San Francisco Bay Improvement Act of
20 2010. The presentation will be made by Mario De Bernardo.

21 CHAIRPERSON CHIANG: Very good.

22 (Thereupon an overhead presentation was
23 Presented as follows.)

24 LEGISLATIVE LIAISON DE BERNARDO: Good morning,
25 Commissioners.

1 HR 5061 would dedicate significant funds over a
2 10-year period to assist and support the San Francisco
3 Estuary Partnership's Comprehensive Conservation and
4 Management Plan, which is focused on restoring and
5 maintaining the environmental integrity of the San
6 Francisco Bay through projects, such as water quality
7 improvement, wetland and estuary restoration and
8 protection, near shore and endangered species recovery,
9 and adaptation to climate change.

10 Staff recommends approval of the resolution.

11 CHAIRPERSON CHIANG: Okay. Are there any public
12 comments?

13 Are there any member comments?

14 ACTING COMMISSIONER BRYANT: I'm abstaining again
15 as well.

16 CHAIRPERSON CHIANG: Okay. Is there a motion?

17 COMMISSIONER MALDONADO: I'll make a motion.

18 CHAIRPERSON CHIANG: Please.

19 ACTING COMMISSIONER BRYANT: I'll second.

20 CHAIRPERSON CHIANG: We have a motion and second.
21 Without objection motion passes.

22 Next item, please.

23 EXECUTIVE OFFICER THAYER: Could I clarify, just
24 in terms of what the vote then would be.

25 ACTING COMMISSIONER BRYANT: I abstained.

1 EXECUTIVE OFFICER THAYER: Okay, so it's 2-0-1
2 then?

3 CHAIRPERSON CHIANG: That's correct.

4 EXECUTIVE OFFICER THAYER: Thanks very much.

5 The next item, Item 90, has to do with a staff
6 recommendation that the Commission direct staff to send a
7 letter of support to the nomination of the San Francisco
8 Bay Estuary as a Ramsar Wetland of International
9 Importance.

10 Mario De Bernardo will give the staff
11 presentation on this.

12 LEGISLATIVE LIAISON DE BERNARDO: The staff
13 recommends that the Commission support the nomination of
14 the San Francisco Bay Estuary as a Ramsar Wetland of
15 International Importance. The Ramsar Convention on
16 Wetlands of International Importance, especially as
17 waterfowl habitat, is a treaty that provides a framework
18 for voluntary international cooperation for wetland
19 conservation.

20 The convention does not prejudice the exclusive
21 sovereign rights of the United States or California. The
22 U.S. has 26 designated sites, one of which being Tomales
23 Bay. Under the convention, the Commission support is
24 required for the designation, since it is the landowner of
25 most of the San Francisco Bay's tide and submerged lands.

1 The designation would increase funding
2 opportunities and interest in scientific studies in the
3 San Francisco Bay estuary.

4 CHAIRPERSON CHIANG: Thank you. We have one
5 public comment. Ruth Gravanis.

6 Ruth, welcome.

7 MS. GRAVANIS: Thank you. Good morning. I'm
8 Ruth Gravanis. I'm speaking at the moment for the San
9 Francisco group of the Sierra Club.

10 More than a dozen years ago, a bunch of us bay
11 advocates from the Sierra Club, Golden Gate Audubon
12 Society, the Citizens Committee to Complete the Refuge all
13 got together and worked very closely with the Fish and
14 Wildlife Service at the Don Edwards National Wildlife
15 Refuge to try to put together a nomination package for the
16 bay as an official Ramsar site.

17 And due to many different mishaps, illnesses,
18 files getting lost in office moves and things, somehow it
19 all fell through the cracks. So I can't tell you how
20 delighted I am to see that this is coming before you again
21 today. It's long overview. It's quite obvious to many of
22 us that the San Francisco Bay-Delta Estuary being the
23 largest estuary on the coast of North America absolutely
24 deserves this designation. And so I'm pleased to support
25 the staff's recommendation and urge you to give your

1 strongest approval to dedicating the Bay as a Ramsar site.

2 Thank you.

3 CHAIRPERSON CHIANG: Thank you, Ruth.

4 Any other members of the public wish to comment?

5 Are there any comments from my colleagues?

6 Is there a motion?

7 ACTING COMMISSIONER BRYANT: I'll move approval.

8 CHAIRPERSON CHIANG: We have a motion to move
9 approval.

10 Is there a second?

11 COMMISSIONER MALDONADO: I'll second.

12 CHAIRPERSON CHIANG: We have a second.

13 Without objection, the motion passes.

14 Next item, please.

15 EXECUTIVE OFFICER THAYER: The next time, Item
16 91, is consideration of a proposed boundary line and land
17 exchange agreement involving parcels of land held by the
18 Port of Oakland in the Oakland estuary.

19 Jennifer Lucchesi, staff counsel, will make the
20 staff presentation on this item.

21 STAFF COUNSEL LUCCHESI: Good morning, Chair,
22 Commissioners. My name is Jennifer Lucchesi, staff
23 counsel with the Commission.

24 (Thereupon an overhead presentation was
25 Presented as follows.)

1 STAFF COUNSEL LUCCHESI: Commission staff
2 respectfully requests your consideration of Calendar Item
3 91, the Oak to Ninth boundary line and land exchange
4 agreement. Before I get into the substance of the
5 agreement and its elements, I did want to make one change
6 to the staff report. On pages 10 and 11, the staff report
7 outlines the implementation and liability measures that
8 are included in the proposed agreement before you.

9 Bullet number 8 -- they're not numbered, but
10 bullet number 8 should be stricken as being duplicative in
11 substance to bullet number 4.

12 The purpose of the agreement is to establish and
13 fix an agreed boundary between existing State sovereign
14 lands granted to the Port of Oakland and uplands acquired
15 by the Port using Public Trust revenues, better known as
16 after-acquired lands.

17 Additionally, the agreement will effectuate a
18 land exchange terminating the State's sovereign Public
19 Trust interests in certain parcels in exchange for
20 acquiring certain parcels known as the Army Reserve
21 parcels.

22 The agreement is between the State acting by and
23 through the State Lands Commission, the City of Oakland
24 acting by and through the Port of Oakland, and Oakland
25 Harbor Partners, a Limited Liability Corporation.

1 This agreement, if approved, will facilitate the
2 development of the Oak to Ninth project, a mixed use
3 development project that will include the creation and/or
4 improvement of parks and open space, residential, retail,
5 commercial, and marina uses.

6 --o0o--

7 STAFF COUNSEL LUCCHESI: As background, the Oak
8 to Ninth area is located along the Oakland Estuary and the
9 Embarcadero, east of Jack London Square and south of
10 Interstate 880. From this slide -- can I get some help
11 about getting the pointer.

12 Sorry.

13 Sorry for that.

14 Here's San Francisco Bay, San Francisco, downtown
15 Oakland here, the Oakland Estuary is here, Lake Merritt is
16 right here. And the Oak to Ninth property starts right
17 here, and goes down the Oakland Estuary to the right here.
18 So that's the site that we're talking about right now.
19 This is Interstate 880.

20 The Port is the State's Trustee of sovereign
21 lands within the Oak to Ninth property, pursuant to
22 various statutes beginning in 1852. As part of harbor
23 development, the majority of the Oak to Ninth property was
24 filled and reclaimed in order to support maritime uses.

25 This is a photograph staff believes from the

1 this is the center of the Oak to Ninth property. Here's
2 Clinton Basin Marina. Again, underutilized area with very
3 limited public access.

4 And finally, here's the Oak to Ninth -- excuse
5 me, the Ninth Avenue Terminal, and the end of the Oak to
6 Ninth property.

7 In 1999, the City adopted the estuary plan in
8 response to public and government agency concerns about
9 the lack of public access to the Oakland Estuary,
10 including the Oak to Ninth property. One of the purposes
11 of the estuary plan is to bring people to the Water Front
12 and to revitalize the shoreline. The estuary plan was
13 amended in 2006 by the Oakland Planning Commission to
14 incorporate the Oak to Ninth project. The amendment was
15 approved by the Oakland City Council later that year.

16 In 2004, the Legislature passed the Exchange Act,
17 enabling this agreement along with the sale of
18 other -- excuse me, of the sale of after-acquired lands by
19 the Port, with the expressed goals of revitalizing the Oak
20 to Ninth property through a land exchange supporting a
21 mixed use development.

22 --o0o--

23 STAFF COUNSEL LUCCHESI: The specific agreement
24 elements include the following:

25 The boundary line agreement, which is outlined in

1 purple here, right here. That establishes the agreed
2 ordinary high water mark. The purpose for that is to
3 legally distinguish between those lands here in kind of
4 inward of this line as being after-acquired lands owned by
5 the Port, and these lands on the outside of this line
6 being sovereign Public Trust Lands.

7 The trust termination parcels include those
8 parcels that are outlined in red. The final Public Trust
9 parcels that are part of this agreement are those parcels
10 that will be confirmed as Public Trust Lands and those are
11 all outlined in the black hatching, and include both water
12 covered and filled property, as outlined by the red
13 shoreline depiction.

14 The final Public Trust easement parcels that
15 you'll be hearing about are these in the green
16 cross-hatching and the blue cross-hatching.

17 And finally, the Trust exchange parcel --

18 --o0o--

19 STAFF COUNSEL LUCCHESI: -- which is -- it's
20 touchy -- closer to the Bay Bridge here. This is the
21 outer harbor of the Port of Oakland, and this is the
22 Oakland Army Base. And the two Trust exchange parcels are
23 these two doughnut holes in the middle of this Army Base.

24 --o0o--

25 STAFF COUNSEL LUCCHESI: A better picture are

1 these two parcels here, right here.

2 --o0o--

3 STAFF COUNSEL LUCCHESI: The Port and OHP have
4 entered into a companion real estate transaction that in
5 conjunction with the boundary line and exchange agreement,
6 effectuates OHP's purchase, remediation, and improvement of
7 the Port's after-acquired lands.

8 The Commission is not a party to this companion
9 real estate transaction. Upon this agreement becoming
10 effective, initially a boundary line agreement --

11 --o0o--

12 STAFF COUNSEL LUCCHESI: -- between the Port and
13 the State will fix the location of the agreed ordinary
14 high water mark between the uplands and the tide and
15 submerged lands subject to the Public Trust and the Port's
16 statutory trust.

17 Again, the area highlighted in darker gray are
18 the Port's after-acquired lands, and the lighter gray are
19 those sovereign Public Trust Lands granted to the Port.

20 --o0o--

21 STAFF COUNSEL LUCCHESI: The final Public Trust
22 parcels, and the Trust Exchange Parcel, will be confirmed
23 as land subject to the Public Trust and the Port's
24 granting statutes. This includes lands that previously
25 had been after-acquired lands, and which might otherwise

1 be subject to sale by the Port.

2 The Trust termination parcels will be owned by
3 OHP free from the Public Trust and the Port's statutory
4 trust. The fee and the Public Trust easement parcels will
5 be owned by OHP, but retain and exercised Public Trust
6 easement for vehicular, pedestrian, and bicycle public
7 access to the final Trust Lands.

8 The upland final Public Trust parcels currently
9 contaminated with hazardous material will be remediated at
10 no cost to the Port or the State. And with regards to the
11 hazardous material, sufficient implementation and
12 liability measures will be in place to protect the Port
13 and the State from liability.

14 The final Public Trust Lands will be preserved,
15 improved, or enhanced for Public Trust uses, such as open
16 space, public access, water-related recreation, commercial
17 services, and circulation to and along the waterfront.

18 This slide shows the final configuration of the
19 proposed development. You have lots of park spaces here,
20 an improved marina here, more public plaza areas here,
21 circulation around -- public circulation and access around
22 the entire Oak to Ninth property and parks and open spaces
23 here.

24 In addition to meeting all the legal elements
25 required by the State Constitution and the 2004 Exchange

1 Act, Commission staff believes the agreement is in the
2 best interests of the State for a variety of reasons,
3 including:

4 As redeveloped and improved the upland Public
5 Trust parcels, and the Public Trust easement street
6 parcels will be developed as open space or streets and
7 will include pedestrian bicycle access, and will serve the
8 Public Trust purposes of open space access to the
9 shoreline and shoreline circulation.

10 Additionally, and more specifically, the final
11 Public Trust Lands will be repaired and improved and
12 enhanced through the development of a wide variety of open
13 space areas, such as bike trails, walking and jogging
14 paths, marinas, the aquatic sailing center will be
15 improved and restaurants.

16 Final Public Trust parcels will be confirmed as
17 being the legal character of sovereign tide and submerged
18 lands, making these lands subject to the State
19 Constitution of -- State Constitutional prohibition on the
20 alienation of tidelands.

21 The final Trust Lands will be remediated again at
22 the sole cost of OHP. The acquisition of the Trust
23 exchange parcel will be useful to and in support of the
24 Port Maritime Improvement Plans, and as such, consistent
25 with the Public Trust and the Port's Statutory Trust.

1 Finally, the agreement settles very complex title
2 and boundary issues. Commission staff and the Attorney
3 General's office have reviewed the proposed agreement and
4 believe all necessary legal elements have been met.

5 Staff recommends that the Commission approve the
6 Oak to Ninth boundary line and land exchange agreement,
7 including the findings listed in the staff report, and
8 authorize its execution and the execution and recordation
9 of all documents necessary to implement it.

10 That concludes my presentation. I'm, of course,
11 available for any questions. I believe there's -- the
12 Port of Oakland staff is here to answer any questions.
13 OHP representatives are also here. And I also believe
14 there's a number of citizens of the area to speak both in
15 opposition of and in support of the project.

16 Thank you.

17 CHAIRPERSON CHIANG: Thank you very much. We
18 have 11 members of the public who have signed up to speak.
19 Again, you have three minutes. So let me call out the
20 first three, Michael Ghielmetti, Andreas Cluver, and Andy
21 Nelson. I apologize if I articulated anybody's name
22 incorrectly.

23 MR. GHIELMETTI: Good morning, members of the
24 Commission. Thank you for being here. I'm Mike
25 Ghielmetti, President of Oakland Harbor Partners Signature

1 Properties. We're the project sponsor. We've been
2 working with the Port and the staff for a number of years
3 to bring this before you.

4 First, I wanted to thank staff, both of the
5 Attorney General's office and the State Lands Commission,
6 for working diligently with us and the Port for the last
7 six years now, five and a half years, since the original
8 legislation was approved in 2004.

9 I quickly wanted to say that we're very proud to
10 have this project here before you. It's got the broadest
11 level of support of any project ever in Oakland, support
12 from the Central Labor Council, and the Building Trades
13 Council; support from a number of local and regional
14 environmental organizations, such as the Greenbelt
15 Alliance, which is a regional group; Friends of Oakland
16 Parks and Recreation, which is the largest park advocate
17 in the City of Oakland; a number of social justice groups,
18 which you'll hear from today; and also broadly speaking,
19 all the chambers of commerce of the City of Oakland; and
20 one of the few projects to receive support from the Bay
21 Area Council, which is the regional chamber of commerce,
22 for lack of a better term.

23 So we're very, very proud to bring this before
24 you. It's gotten near unanimous support from the City of
25 Oakland and the Port. This project will bring

1 approximately 10,000 jobs, badly needed jobs, to the
2 region. And with appropriate local hire agreements, such
3 that we -- there's a certainty that the local community
4 will benefit from some of those jobs.

5 It's over a billion dollar project with positive
6 tax benefits, both from redevelopment and in general fund
7 measurement for the city, and the redevelopment agency.
8 Approximately 50 percent of the site will be open space,
9 which we're very proud of. And these are spaces that are
10 as big or bigger than the Marina Green in San Francisco,
11 for regional context. It's a mixed use and mixed income.
12 And I think very importantly to say is it's a green,
13 sustainable and smart growth project, which will not only
14 remediate and bring to life an inaccessible and
15 unconnected area of the city, but also will bring in
16 retail, sales tax, jobs, affordable and market rate
17 housing both for rent and for sale, and I think, generally
18 be an example following AB 32 of and -- of smart growth
19 and an appropriate use of our scarce resources.

20 We're available for any questions you may have.
21 We are in full support of the staff recommendation, and
22 believe that this follows the spirit and the intent of SB
23 1622, which was signed into law in 2004. And other than
24 that, I want to thank you for your time here today. And
25 again we're available for any questions you may have.

1 Thank you.

2 CHAIRPERSON CHIANG: Thank you.

3 MR. CLUVER: Good morning. My name is Andreas
4 Cluver. I'm the Secretary-Treasurer of the Alameda County
5 Building and Construction Trades Council, representing
6 over 40,000 workers in the construction sector. In
7 addition, as a member of the executive board of the
8 Central Labor Council, I'm here also representing an
9 additional 100,000 workers in Alameda county.

10 And on behalf of both counsels, I think we
11 strongly support the approval of the proposed exchange,
12 for the Oak to Ninth project. In addition to it being a
13 much needed project for the area, going to greatly improve
14 it for all residents of Oakland, and the general area,
15 this project is also going to have a significant impact
16 both short term and long term on the area's economy.

17 As many of you may be aware, we're looking at
18 about 30 percent unemployment in the construction sector
19 right now, which is, you know, unprecedented. And
20 projects like these are going to gratefully help to
21 improve the employment picture for construction workers,
22 putting a lot of people back to work, saving homes and
23 improving the economy.

24 So we really appreciate your support, in terms of
25 approving the proposed exchange and letting this big

1 project get undertaken.

2 Thank you very much.

3 CHAIRPERSON CHIANG: Thank you.

4 MR. NELSON: Good morning, Commissioners. My
5 name is Andy Nelson. I'm speaking today as a coordinator
6 of the Oak to Ninth Community Benefits Coalition. The Oak
7 to Ninth Community Benefits Coalition worked for about
8 five years to negotiate affordable housing commitments and
9 local hiring and job training and placement commitments in
10 the Oak to Ninth project. We represent approximately a
11 thousand residents of the neighborhoods who are
12 immediately adjacent to this project.

13 I'd like to ask members of the Oak to Ninth
14 Community Benefits Coalition who are here today to please
15 stand briefly.

16 Thank you.

17 You'll hear from one of our leaders later on. We
18 just really wanted to urge you to approve the land
19 exchange that's before you today, in addition to the
20 benefits that your staff laid out for you on this project.
21 We want to really emphasize the creation of affordable
22 housing that's affordable to families making 30 to 50
23 percent of area median income in this project. We want to
24 emphasize the job training and placement opportunities for
25 significant numbers of Oakland residents in this project.

1 And I really look forward to seeing this project approved,
2 so that we can move forward and start to realize some of
3 these benefits, and thank you very much.

4 CHAIRPERSON CHIANG: Thank you. The next three,
5 Pamela Kershaw or Kenshaw, Tam Tran and Barbara Newcombe.

6 MS. KERSHAW: Good morning, Commissioners. I'm
7 Pamela Kershaw, the director of commercial real estate at
8 the Port of Oakland. And thank you so much for having us
9 here this morning.

10 In 2001, the Port issued an RFQ for the 64-acre
11 site. And in 2003, the Port selected Oakland Harbor
12 Partners, and executed an option agreement for the
13 property. In 2004, the Legislature adopted SB 1622
14 authorizing a tidelands trust exchange on the site. And
15 since 2004, the past six years have been spent securing
16 land-use entitlements and environmental remediation
17 approvals from various agencies.

18 Finally, in February of 2010, after holding a
19 public hearing, the Board of Port Commissioners voted to
20 authorize execution of this exchange agreement and other
21 transaction documents. It's an important project for the
22 Port, the city, and the region. It has been a very long
23 road to get here today.

24 I want to thank Executive Director Thayer and his
25 staff for their years, years of patience and hard work on

1 this project. We have read the staff report and fully
2 support all the findings and recommendations contained
3 therein, and respectively request your approval of this
4 exchange agreement this morning.

5 And I, as well as other members of the Port of
6 Oakland staff are here if you have any questions.

7 Thank you.

8 CHAIRPERSON CHIANG: Thank you.

9 MS. TAM TRAN: Good morning.

10 (Thereupon Ms. Tran spoke in her native
11 language.)

12 MS. MARIANA TRAN: Her name is Tam Tran. She is
13 living in the San Antonio area in Oakland over 10 years.
14 And you know there are many, many low income families.
15 We're living together in this area. So we really, really
16 want to see, you know, the affordable housing there,
17 because right now we cannot afford for the renting in
18 economic window.

19 So please approve the land action to us, so we
20 can see the affordable -- you know, affordable housing
21 soon coming to our area.

22 Thank you very much. Thank you for your
23 listening.

24 CHAIRPERSON CHIANG: And I'm sorry, I missed your
25 name. So could you say your name for the record again,

1 please.

2 MS. MARIANA TRAN: Are you asking my name?

3 CHAIRPERSON CHIANG: Yes, please.

4 MS. MARIANA TRAN: Mariana Jeung Tran.

5 CHAIRPERSON CHIANG: Thank you for being here.

6 MS. MARIANA TRAN: You're welcome.

7 MS. NEWCOMBE: Good morning, Commissioners. My
8 name is Barbara Newcombe and I'm speaking as a private
9 citizen. What I take from this is that whenever you hear
10 the phrase "underutilized land", take heed. I have
11 no idea why anyone would consider trading land which is on
12 the estuary, but between the highway and the estuary, with
13 the availability of being there on the water for land
14 which to me seems to be encapsulated by railroad tracks
15 and highways.

16 I happen to be the Mother of the Year of Oakland
17 for 2010. And I'm going to have to tell my grandchildren
18 that we have traded this land. And they are going to ask
19 me why anyone, in their right mind, would do this, even
20 for the short-term benefit of money accruing to the city,
21 and supposedly affordable housing. I'm very distrustful,
22 and I think that that is -- I know that that is the
23 message I will have to take to my grandchildren.

24 When it says "underutilized" and when there is a
25 real estate developer involved, watch out. Thank you for

1 your time.

2 CHAIRPERSON CHIANG: Thank you, Barbara.

3 Next, we have Ruth Gravanis followed by Naomi
4 Schiff and then Judith Offer.

5 MS. GRAVANIS: I'm Ruth Gravanis with the Public
6 Trust Group. And I, first of all, want to clarify that
7 being in opposition to this particular exchange item that
8 you have before us, does not necessarily constitute an
9 opposition to the project itself, especially with some
10 modifications. So I don't want to be pigeonholed as an
11 opponent of the project.

12 But there are some severe problems with the
13 findings that we're using to declare that the lands we're
14 taking out of the Trust are indeed no longer suitable for
15 Trust purposes. And if I may, I'd like to relinquish the
16 rest of my time to Sandra Threlfall.

17 Thank you.

18 MS. SCHIFF: Hello. I'm Naomi Schiff. And I
19 thank you for the opportunity to address you. I do have
20 copies of my remarks if you would like them. I don't know
21 what to do with them.

22 CHAIRPERSON CHIANG: We would appreciate that.

23 MS. SCHIFF: I'm requesting that the State Lands
24 Commission continue this matter and request two things.

25 One, an earnest effort on the part of the Port of

1 Oakland Board and staff to come up with a better exchange,
2 and, B, assistance from the State Lands staff in achieving
3 a better public process and discussion of the
4 deacquisition of valuable land owned by us the citizens
5 of this State.

6 In its eagerness to do what makes economic sense
7 for the Port, is the Board of the Port credibly carrying
8 out its responsibility as trustee for public lands? The
9 answer is no.

10 Consistently, they and their staff have been
11 focused on facilitating the reuse of the public lands for
12 the promised housing under the OHP plan, and decided to
13 purchase and then designate already purchased maritime
14 support use for container handling. Not one of the higher
15 priority exchanges under SB 1622.

16 There is a conflict between the Port's
17 stewardship of State Lands and its Port mission. While
18 following the letter of the law, so that the paper trail
19 would be adequate, I do not believe that staff or Board
20 tried hard enough to carry out the intention of the
21 exchange in fulfillment of one of those higher priority
22 possibilities.

23 At the Board level, those issues have not been
24 fully discussed, except for staff advocacy of the Army
25 Reserve land as the only sensible swap.

1 The main effort to find a trade to fulfill the
2 higher priority recommendations in the legislation
3 occurred during the big real estate boom. With the same
4 changed circumstances now delaying the project, it would
5 make sense to take a second look at whether a better trade
6 is possible. There's no risk, since the Port forged ahead
7 and bought the army base land without waiting.

8 The same economic circumstances which slowed this
9 project and which formed the rationale for delayed payment
10 really mean that we have the opportunity to improve the
11 quality of the land exchanged on behalf of the public.

12 At the outset, when this was brought up, I held
13 up, as a bad example, the Long Beach exchange of
14 waterfront for a freeway median. People thought that was
15 funny and that nothing like that could happen here.

16 Now, we contemplate receiving an inaccessible
17 land-locked port services area in exchange for a valuable
18 coastal site. As people realize what's occurring, they
19 are going to be appalled.

20 Thank you.

21 CHAIRPERSON CHIANG: Thank you.

22 MS. OFFER: Good morning. My name is Judith
23 Offer. I'm a playwright and poet, and I was -- I'm a
24 former member of the Cultural Affairs Commission of the
25 City of Oakland. And I'm here to suggest that this is

1 really not what the people of Oakland want.

2 First of all, there was -- there were a series of
3 meetings and charrettes that were held when the first
4 proposal was made for what to do with this property. And
5 the citizens universally wanted this to be open land on
6 the bay. It's at the end of the channel, which comes from
7 the lake, which is, by the way right now, being currently
8 approved to allow better access.

9 This is the last beautiful open -- potentially
10 beautiful open space that would be available to the
11 citizens. And they were very excited about having this
12 part of their trail, part of the Bay trail. The exchange
13 property is totally ridiculous, totally. It's a little
14 bit of dry, you know, in the middle of all this port
15 activity, and it's just not right at all to exchange this.

16 This development group held open meetings, but
17 they never really gave you any opportunity to speak about
18 having the open land there. The land -- the 50 percent --
19 a lot of that 50 percent is in the middle of apartment
20 buildings. Nobody walking along a trail is going to go in
21 the inside courtyard of an apartment building. It's not
22 really -- it's not really welcoming.

23 At one time, the city council asked for -- was
24 going to do a measure on this. And we easily got
25 thousands of signatures against this exchange within a

1 week or a week and a half. And the city attorney figured
2 out a way to say that we had gotten the signatures on the
3 wrong measure just by a few words, which is the measure
4 that had been given to us to find by the city council.
5 And then we supposedly had gotten the signatures on the
6 wrong measure.

7 Another thing is, my understanding is that the
8 affordable housing, which we want to have, we like
9 affordable -- in Oakland, we really like affordable
10 housing, but it's not supposed to be on the property.
11 They're doing another kind of wibbang exchange, and we,
12 the citizens, are paying for the affordable housing
13 elsewhere.

14 I think, please you guys really need to look into
15 this. This thing has been pushed over on the citizens of
16 Oakland and a lot of people don't like it.

17 Thank you.

18 CHAIRPERSON CHIANG: Thank you.

19 Sandy Threlfall and Joyce Roy.

20 MS. THRELFALL: Good morning, Commissioners, and
21 welcome to the Commission, Lieutenant Governor Maldonado.

22 COMMISSIONER MALDONADO: Very nice.

23 MS. THRELFALL: Thank you. My name is Sandra
24 Threlfall. I'm on the executive board of the Public Trust
25 Group. And my issues today regard the 8.7 acres of

1 sovereign Public Trust Land that are involved in this
2 trade.

3 The Public Trust Group has been advocating since
4 1994 that sovereign Public Trust Land needs to be
5 preserved. We need to keep it where it is, as our
6 population grows, and our general stress level grows,
7 because coming to the shoreline helps. It's important.

8 Now, unfortunately, this trade is tied to a very
9 important development, as you have heard. The labor
10 groups, a number of community groups looking for low cost
11 housing want it to happen. The Public Trust Group is not
12 against the development. I think this is a very important
13 point. We are not against the development. We oppose the
14 trade of sovereign Trust Lands to expand the development.

15 And we're only talking about eight acres, give or
16 take, out of roughly 64 acres, as I recall. So we're
17 talking about a very small percentage. All right, more
18 than 10 percent, but it is a small amount.

19 Now, there are a couple of items having to do
20 with the legislation that quote permitted the trade, that
21 was carried by Senator Perata two years after the city
22 passed Measure DD, an almost \$200 million bond measure to
23 help build parks and open spaces along our waterfront and
24 our lake. We had 80 percent of the people vote yes for
25 this bond.

1 Two years later, Senator Perata writes a bill for
2 the trade that says that there are no longer Public Trust
3 uses on the sovereign acres. And the way he defines it is
4 that there is no commerce, navigation, or fisheries. That
5 definition is very old, and very limited.

6 And so my request to you is to continue this
7 item, so that your staff can pursue other accepted Public
8 Trust uses for these 8.7 acres. And I think you will find
9 that the uses are there.

10 I'd like to cite the example of Treasure Island
11 and Hunters Point. In both of these cases legislatively,
12 the sovereign lands were traded for uplands. And what
13 Perata's bill is saying that because these sovereign lands
14 are above mean high tide, therefore uplands they are no
15 longer of value to the Trust.

16 Again, we are not opposing the development. We
17 are asking that it be reduced by 8.7 acres because those
18 sovereign acres are important to the City of Oakland, to
19 the Measure DD community, which allotted money to develop
20 spaces there, and there's more.

21 A continuance will not, in any way, inhibit this
22 project right now. The Port of Oakland has given OHP an
23 extension to not have to start until 2015. And there is a
24 lawsuit appeal going on that will probably take a year.

25 So your staff researching legitimate Public Trust

1 uses, so that we can preserve the sovereign Public Trust
2 Lands would be very beneficial.

3 In addition, the condemnation act on the Army
4 base, and it is cited in your staff report, there is
5 conflicting evidence that the Trust Exchange Parcel
6 retains a Public Trust interest. To me, that is critical.
7 If the land that they're proposing as a trade already has
8 the Public Trust on it, then you can't do it. So to me,
9 that is another critical question that must be answered by
10 your staff. Is it or is it not Public Trust Land on the
11 Army base.

12 CHAIRPERSON CHIANG: Sandy, if you don't mind
13 concluding. Your time has expired, plus I made the
14 accommodation your friend --

15 MS. THRELFALL: Okay, I think that's it. I think
16 that's it. I, again, ask for a continuance on this item,
17 so that the research can be done. And we are not against
18 the project.

19 Thank you.

20 CHAIRPERSON CHIANG: Thank you very kindly.

21 MS. ROY: My name is Joyce Roy, and I also
22 request a continuance. This exchange is totally
23 unnecessary. There is plenty of non-Trust Land for a
24 significant housing project. No not maybe the 3,100
25 units, which is actually just totally unrealistic. That's

1 like nine Rincon Towers there on the estuary. But the
2 1,700, which was what the developer originally proposed,
3 would probably work without removing any Trust Lands.

4 And also, these Trust Lands are probably going to
5 become wetlands, because with global warming, it's
6 probably not even, from seismic reasons and global warming
7 reasons, a great place to put housing.

8 And it is not supported by the community, because
9 as some of us found when we were gathering signatures for
10 a referendum, all you had to say is, are you against a
11 developer putting 3,100 units on public land that was
12 designated for public space? And 9 out of 10 people would
13 sign that.

14 And it's certainly not smart growth. This is an
15 isolated site, with sort of like a bottleneck way of even
16 cars getting in there. There's no transit, so it's
17 just -- you can't call this smart growth at all.

18 And the community benefits that have been
19 mentioned are not being paid by the developer. They're
20 being paid by the public, by the city. The city has to
21 buy land from them to put housing for low income families
22 and low income seniors right next to the 880 Freeway on a
23 site that has no public transit, and that is not really a
24 public benefit.

25 Thank you. So please continue this and look into

1 this, because I think this is a totally unnecessary
2 exchange, and the builder can do a fine project without
3 taking any Trust Lands.

4 Thank you.

5 CHAIRPERSON CHIANG: Thank you very much.

6 Any other members of the public wish to speak?

7 Okay, let me pose some questions -- or pose a
8 question to the staff. Can you go over the appraisals.
9 There were questions about the exchanges and the benefits
10 on both sides.

11 EXECUTIVE OFFICER THAYER: Certainly. I'm aware
12 personally that the appraised value coming into the trust
13 is higher -- it's at around 10 million something versus
14 what's going out of the Trust. So that's one of the
15 criteria that has to be met.

16 But for the details, I'd defer to Jennifer
17 Lucchesi who made the staff presentation.

18 STAFF COUNSEL LUCCHESI: For the Oak to Ninth
19 site, there were two appraisals done, one in 2003 and one
20 in 2007.

21 The 2007 appraisal is the one that staff is
22 relying on as it's more accurate about the costs involved,
23 the infrastructure costs and the land values. And
24 we -- so without divulging any attorney-client privileges
25 here, we take a look at the appraisal, and look at --

1 that's one piece of evidence that we use when determining
2 the value of our Trust Termination Parcel. We look at
3 other materials, such as boundary and title evidence. And
4 we take all that into account in determining the ultimate
5 value of those parcels where the Public Trust interest is
6 being terminated.

7 With regards to the Army Reserve parcel -- and I
8 think this is where the question came up about any
9 residual Public Trust interest there -- that we looked at
10 valuation documents to come up to establish the land value
11 of those parcels. And then we looked at what Public Trust
12 interest claims there are according to historical title
13 and boundary evidence. And we analyzed that. We made a
14 case valuation about what any remaining public interests
15 there are there.

16 And the finding that the Commission needs to
17 make, and what staff was looking at, whether there was
18 equal or greater value, so whether the Army Reserve
19 parcels had an equal or greater value than the Trust
20 Termination Parcels at the Oak to Ninth property. And our
21 case evaluation -- staff's case evaluation and
22 recommendation is that there is equal or greater value.

23 CHAIRPERSON CHIANG: Why is a 2007 valuation
24 appropriate in 2010, in view of the material deterioration
25 that has taken place for real property? So if we can get

1 that on the record.

2 STAFF COUNSEL LUCCHESI: And maybe I might refer
3 to our appraiser, Colin Connor, who is also our Assistant
4 Chief of Land Management. Maybe I'll have you answer that
5 first.

6 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

7 Sure. As background, the first appraisal was
8 done in 2003. And by the time the process had gone on,
9 that value was hopelessly out of date. So another
10 appraisal was done. And unfortunately, the process has
11 continued to carry on.

12 At this point, that is the most current, and by
13 current I mean most recent, appraisal that we have. I
14 mean, another appraisal could be ordered. By the time it
15 is completed, you know, it might be several years down the
16 road again. It's like trying to appraise a moving target.
17 The difference is between the first appraisal and the
18 second appraisal included the development of the
19 additional details Jennifer noted on the property. The
20 project originally started out at 1,700 units. And there
21 was estimates of what the cost entailed, as well as
22 remediation.

23 As those numbers became firmed up, another
24 appraisal came in. By that time, the project had changed
25 to 3,100 units. You also had much higher costs. And the

1 costs -- the estimate for remediation was greater as well.

2 If we were to go forward again, we could
3 certainly get more recent information. You know, other
4 things might change as well, the costs. Even in the
5 market, while values have declined, costs have not. You
6 might get a situation where the value of the State's
7 property could, you know, be less.

8 CHAIRPERSON CHIANG: So in the movement in cost
9 and land valuation, is there any symmetry or is there no
10 symmetry?

11 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:
12 There's not always symmetry. Costs have
13 continued --

14 CHAIRPERSON CHIANG: Can you give me -- sorry for
15 interjecting. Can you give me a rough assessment for the
16 parcels that we're discussing currently.

17 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:
18 I'm not sure what you mean by assessment.

19 CHAIRPERSON CHIANG: On both sides. The -- I'm
20 just trying to get the -- obviously, things have changed.
21 I'm just trying to get a sense of whether it's still a
22 relatively fair exchange.

23 EXECUTIVE OFFICER THAYER: If I could. I think
24 what the Chairman might be asking is -- I mean, we have
25 parcels on both sides of the equation here. Presumably,

1 if the overall real estate market has gone down, then the
2 value of both properties have gone down. So the question,
3 I think, is whether or not the depreciation is somewhat
4 equal on both parcels.

5 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

6 That would be -- I wish it was that simple. On
7 the one hand, you have primarily a residential property,
8 that is the development -- the proposed development. On
9 the other hand, you have an industrial property. One
10 value set might have gone down greater. One set of costs
11 might have gone up more.

12 CHIEF COUNSEL FOSSUM: In fact, Mr. Chair, I
13 think, you are bringing into light the fact that there
14 have been two appraisals four years apart. What we did
15 find is that the value of the Trust property that was
16 being valued had gone down during that four years. So we
17 took another look at it and would quite likely be the case
18 again.

19 CHAIRPERSON CHIANG: And what methodology was
20 used to value the property? I mean, do we do comparable
21 sales? Do we do the salvage value? Do we do income
22 indicator?

23 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

24 The appraisal for the development of 3,100 units,
25 the appraiser looked at what a value for each -- the land

1 based on comparable sales for 3,100 units of
2 residential -- basically residential land sales for 3,100
3 units.

4 Then the developer -- or excuse me, the appraiser
5 subtracted out the cost to get the property to that, you
6 know, stage of development. That means site improvement
7 costs, remediation costs. And those were the costs that
8 were firmed up from the time of the first appraisal to the
9 time of the second appraisal.

10 CHAIRPERSON CHIANG: And then I'm not sure who's
11 the appropriate person to answer the question. What other
12 lands did we look for exchange were under discussion?

13 STAFF COUNSEL LUCCHESI: The search for an
14 exchange parcel began in earnest in 2005, shortly after
15 the 2004 Exchange Act was signed into law. The process
16 for looking for that exchange parcel is the Port of
17 Oakland hired a broker and went out, met with various
18 community members, and used their broker to search for
19 various parcels.

20 In addition, Commission staff met with community
21 representatives over the years. This lasted, you know,
22 until just recently this search. We meet on a monthly
23 basis with some of the community members that were
24 interested in helping to find an appropriate exchange in
25 parcel.

1 In addition, we had various additional specific
2 meetings with community representatives and Port staff,
3 and getting status updates about their search. In total,
4 the Port looked at 40 different parcels -- potential
5 parcels. And for a variety of reasons, such parcels were
6 not available for acquisition. Some of it being not a
7 willing seller. Some of it being not appropriate for --
8 some of the properties were not even within the four
9 priority area geographic areas, as outlined in the
10 legislation. Other considerations was the potential use
11 of those properties in the future.

12 And so the process was, you know, started in
13 2005, included a lot of communication and dialogue with
14 interested folks. And the Port hired a broker
15 specifically to go out on their behalf to search for
16 potential exchange parcels.

17 CHAIRPERSON CHIANG: Thank you. Any questions or
18 comments?

19 Is there a motion?

20 ACTING COMMISSIONER BRYANT: I'll move approval
21 of the staff recommendation.

22 CHAIRPERSON CHIANG: Okay, we have a motion to
23 approve staff recommendation. Is there a second?

24 COMMISSIONER MALDONADO: Yes, I'll second.

25 CHAIRPERSON CHIANG: We have a second.

1 Without objection, the motion passes.

2 Next item, please.

3 EXECUTIVE OFFICER THAYER: The next item on the
4 Agenda is Item 92. This has to do with proposed
5 Commission approval of a report to the Legislature
6 involving the Commission's Ballast Water Treatment
7 Program. The presentation will be made by Nicole Dobroski

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

10 STAFF ENVIRONMENTAL SCIENTIST DOBROSKI: Thank
11 you. Good morning, Mr. Chairman and Commissioners. My
12 name is Nicole Dobroski. I'm a staff environmental
13 scientist with the Commission's Marine Facilities
14 Division.

15 Today, I'll be summarizing the marine invasive
16 species program's legislatively mandated report assessing
17 the availability of ballast water treatment technologies
18 to meet California's performance standards for the
19 discharge of ballast water.

20 --o0o--

21 STAFF ENVIRONMENTAL SCIENTIST DOBROSKI: As a bit
22 of background, non-indigenous species, or NIS, are
23 organisms transported by humans to a region where they do
24 not occur historically. NIS may have serious negative
25 environmental, economic, and human health impacts in their

1 receiving environment.

2 NIS arrive in U.S. waters by way of a variety of
3 mechanisms or vectors, such as recreational boating,
4 intentional release and aquaculture. However, the ballast
5 water of ships is one of the most important vectors of
6 species release in marine and aquatic habitats. Ballast
7 water is used to maintain the trim and stability of
8 vessels at sea. And it is estimated that more than 7,000
9 species are transported around the world each day in the
10 ballast water of ships.

11 --o0o--

12 STAFF ENVIRONMENTAL SCIENTIST DOBROSKI:

13 Acknowledging the significant threat of species
14 introduction from ballast water release and the need to
15 more effectively manage ballast water discharges, the
16 California Legislature passed the Coastal Ecosystems
17 Protection Act in 2006, which directed the Commission to
18 implement performance standards for the discharge of
19 ballast water, and to write reports assessing the
20 availability of treatment systems to meet those standards.

21 The performance standards' regulations were
22 approved in October of 2007. The standards set limits for
23 organism concentration as a function of organism size,
24 class, and ballast water discharge. The standards will be
25 implemented on a graduated time schedule based on the

1 vessel's ballast water capacity and status as a new or
2 existing vessel.

3 --o0o--

4 STAFF ENVIRONMENTAL SCIENTIST DOBROSKI: The
5 first technology assessment report was completed in
6 December of 2007. The second in January of 2009. The
7 2009 report concluded that technologies were available to
8 meet California's performance standards, and therefore
9 Commission staff proceeded with the initial implementation
10 of the standards on January 1 of 2010.

11 When the Commission addressed this item in the
12 fall of 2008, there was no opposition to the item.
13 Because of the time required to build a vessel, any ships
14 for which construction began on or after January 1 of 2010
15 won't be actually ready for service and likely to reach
16 California waters in 2011 or later. So thus, at this
17 point, we have not seen any vessels in California required
18 to meet the performance standards.

19 The current report assess the availability of
20 treatment systems for new build vessels with ballast water
21 capacity of greater than 5,000 metric tons. The standards
22 will be implemented for this size class of vessel
23 beginning January 1 of 2012.

24 --o0o--

25 STAFF ENVIRONMENTAL SCIENTIST DOBROSKI: As with

1 previous reports, the assessment of available ballast
2 water treatment systems to meet California's performance
3 standards is challenging due to a number of factors:

4 Not all systems have data available for review.
5 And the data that is available does not cover every
6 environmental and shipboard condition.

7 The experimental designs for testing these
8 systems is not yet standardized across systems. And thus,
9 comparing one system to another can, at times, be an
10 apples and oranges situation.

11 There are many questions about how much ballast
12 water must be sampled to adequately assess the
13 concentration of organisms in ballast water. This
14 question is still up for debate as it brings together
15 statistical, political, scientific, and practicality
16 issues.

17 Finally, at this time, there are no methods to
18 assess the number and viability of all viruses in a sample
19 of ballast water, and thus Commission staff has had to
20 proceed with the assessment of treatment technologies
21 without considering this organism size class.

22 --o0o--

23 STAFF ENVIRONMENTAL SCIENTIST DOBROSKI: Using
24 the best available assessment methods, Commission staff
25 reviewed 46 ballast water treatment systems for this

1 report. Significantly more information was available for
2 this report than the last report, and the new data was of
3 much higher quality. Eight systems have data indicating
4 potential compliance with California standards. As the
5 available data does not cover all possible environmental
6 and shipboard scenarios, our assessment examines systems
7 for the potential to comply.

8 This assessment does not constitute an approval
9 of treatment systems nor does it guarantee compliance.
10 All eight systems are commercially available, and seven of
11 the eight are able to accommodate the ballast water pump
12 rates of this largest size of classes operating in
13 California waters.

14 Three systems show potential to meet the
15 standards under more rigorous assessment criteria, which
16 includes meeting the standards more than 50 percent of the
17 time over multiple tests. And two of those systems have
18 vendors that are willing to self-certify that their
19 systems will meet California standards.

20 While the Commission does not require this
21 certification, it may serve to assuage industry concerns
22 regarding the availability of systems to meet California
23 standards. Currently, no systems meet the standards --

24 CHAIRPERSON CHIANG: I'm sorry.

25 STAFF ENVIRONMENTAL SCIENTIST DOBROSKI: I'm

1 sorry?

2 CHAIRPERSON CHIANG: Can you explain why?

3 STAFF ENVIRONMENTAL SCIENTIST DOBROSKI: Why for
4 the self-certification?

5 CHAIRPERSON CHIANG: No. You drew this
6 conclusion, right, and then yet we don't have anything up
7 to standard yet. So there's a little gap for me, right.
8 I want to drive this technology forward. I want
9 compliance, but I'm concerned about people trying to
10 comply with the standards in place.

11 STAFF ENVIRONMENTAL SCIENTIST DOBROSKI: Of
12 course. Why if there are no standards -- systems that
13 meet the standards a hundred percent of the time are we
14 moving forward? I'm sorry, is that the question?

15 CHAIRPERSON CHIANG: You said it met staff's
16 concerns. So I just want to say if we don't have
17 technology -- recognized technology that can be there a
18 hundred percent, why staff's concerns are mitigated?

19 STAFF ENVIRONMENTAL SCIENTIST DOBROSKI: We are
20 doing this report 18 months prior to the implementation
21 date for the standards. So that date would be January 1
22 of 2012. And additionally, those vessels are for new
23 build vessels. So the vessels will begin construction as
24 of 2012. We likely won't see those vessels in California
25 waters until at least 2014, because of the lag time

1 required to build the vessels.

2 So we are looking at a snapshot of what's
3 available today and projecting three, four, even five
4 years down the road. There are systems that can meet the
5 standards on a regular basis, not a hundred percent of the
6 time, but, you know, a consistent basis. We believe that
7 given the rapid increase in rate of technology development
8 that these systems will be available for those vessels
9 when they hit California waters three to four years from
10 now.

11 CHAIRPERSON CHIANG: Yeah. I hope that we get
12 there to the -- I should let you -- let me let you finish,
13 and then I'll interject more.

14 STAFF ENVIRONMENTAL SCIENTIST DOBROSKI: Okay.

15 We are expecting to receive additional shipboard
16 and land-based data from testing soon, and several more
17 systems are expected to demonstrate the potential to meet
18 the standards in the near future.

19 --o0o--

20 STAFF ENVIRONMENTAL SCIENTIST DOBROSKI: Related
21 to environmental impacts and water quality. Vessels will
22 need to meet the conditions of the U.S. Environmental
23 Protection Agency's National Pollution Discharge
24 Elimination System permit for vessel discharges, which is
25 also known as the vessel general permit, and any

1 California specific provisions added to the permit by the
2 State Water Resources Control Board.

3 Commission staff conducted an initial review of
4 the availability of systems to comply with the existing
5 standards for chlorine as one toxicant due to its
6 widespread toxicity. All eight of the systems that
7 demonstrated the potential to comply with the performance
8 standards can either meet the EPA discharge standard for
9 chlorine or do not produce chlorine in the treatment
10 process.

11 Currently, California defers to EPA for the
12 regulation of chlorine discharges in ballast water, so
13 that's why we were looking at the EPA standard.

14 Vessels and technology vendors will need to
15 continue to work with the EPA and the Water Board to
16 ensure that treated ballast water discharges meet all
17 applicable laws, regulations, and permits.

18 --o0o--

19 STAFF ENVIRONMENTAL SCIENTIST DOBROSKI: So in
20 conclusion, technologies have advanced rapidly since the
21 2007 and 2009 technology assessment reports. However, the
22 scientific methods to evaluate system performance are not
23 yet keeping pace and will require further development,
24 particularly for bacteria and viruses.

25 Commission staff believe that given the data

1 currently available, multiple treatment systems have shown
2 that they can meet California's performance standards.
3 These systems will continue to be developed and refined as
4 we approach the January 1, 2012 implementation date for
5 new build vessels in this size class.

6 California's technology forcing standards serve
7 to further progress in the development of systems to
8 reduce or eliminate the discharge of non-indigenous
9 species. And staff will continue to monitor progress and
10 utilize adaptive management strategies as the standards
11 are implemented and challenges are encountered.

12 --o0o--

13 STAFF ENVIRONMENTAL SCIENTIST DOBROSKI: And
14 finally, in the report we make several recommendations to
15 the Legislature. First, we recommend that the Legislature
16 allow the Commission to proceed as planned with the
17 implementation of the standards for new build vessels with
18 a ballast water capacity of greater than 5,000 metric tons
19 on January 1 of 2012.

20 Secondly, we ask the Legislature to continue to
21 support staff involvement in the development of standards
22 at federal and international levels. Shipping is an
23 international industry and staff needs the flexibility to
24 attend meetings, and coordinate with resource managers, as
25 is necessary, to represent California and encourage the

1 development of uniform standards worldwide.

2 And finally, we ask the Legislature to maintain
3 accessibility for marine invasive species program funds.
4 The program is funded by an industry fee and does not draw
5 from the general fund. Thus, the Legislature should
6 ensure that the program funds are dedicated to priority
7 research needs and are not compromised, particularly given
8 the current budget climate.

9 With that, I'll take any questions.

10 CHAIRPERSON CHIANG: Thank you very much.

11 Do you have questions?

12 Please.

13 ACTING COMMISSIONER BRYANT: I just want to
14 clarify in the 2006 legislation, did that actually -- did
15 that put the standards that had previously been determined
16 by you into statute? Are the actual numeric standards in
17 statute or is it just authority for us to do the
18 standards?

19 STAFF ENVIRONMENTAL SCIENTIST DOBROSKI: It
20 required us to implement the standards that were set forth
21 in a previous report.

22 ACTING COMMISSIONER BRYANT: So the specific
23 California standards, you know, no detectible living
24 organisms. That specifically is in statute?

25 STAFF ENVIRONMENTAL SCIENTIST DOBROSKI: Yes, and

1 then we adopted them via regulation as well.

2 ACTING COMMISSIONER BRYANT: Okay, thanks.

3 EXECUTIVE OFFICER THAYER: And if I could respond
4 to some of the questions or the line of questioning from
5 the chair on this. I think Ms. Dobroski appropriately
6 described the purpose of this report, which is consistent
7 with the purposes of the prior reports that we're required
8 by statute to prepare, which is to steadily evaluate and
9 monitor and actually promote the technology that's being
10 developed to deal with California's standards.

11 You know, the basis for these standards, which
12 were developed not just by State Lands Commission staff
13 but through a working group, which involved
14 environmentalists, scientists, and the shipping industry,
15 is to come up with standards that would protect California
16 from the burden of these invasive species. And I think
17 the report talks in great detail about how expensive
18 invasive species have already been for the United States
19 and California, and the economic justification for trying
20 to avoid new impacts like that.

21 So it's a very serious problem. And these
22 standards were the ones that were believed to be best
23 suited to address those. The Chair and the Commission is
24 quite right for being concerned about whether or not
25 technology can meet those standards. As appropriate as

1 those standards might be, if they're impracticable, we
2 can't live with them. We can't get it done, and we don't
3 want to hamper the foreign trade.

4 It was as a result of that concern that after one
5 of the earlier staff reports, the Commission
6 recommended -- or the staff recommended to the Commission
7 and the Commission in turn passed this recommendation on
8 to the Legislature, that the initial implementation date
9 of these standards be delayed by a year for the smaller
10 vessels.

11 And so staff is not afraid to both characterize
12 the actual state of the technology -- we're not
13 cheerleaders for doing something that can't be done, and
14 we're not afraid to recommend that the implementation
15 dates be postponed.

16 We do think though, at this stage of the game,
17 the technologies have shown so much more practice -- or
18 practicability and implement -- they're more capable of
19 being implemented than they were just a couple years ago,
20 since the last report.

21 We would also note that the legislation requires
22 yet another report in another two years, which will be
23 before these are really in place in the new or larger
24 category of ships. So the Commission will have the
25 opportunity again, at that point, to review whether or not

1 we're hitting these -- the technology is going to be able
2 to hit these standards.

3 And so I think the Commission has an opportunity
4 to see whether or not the progress will continue and
5 whether industry is going to be able to meet those
6 standards.

7 CHAIRPERSON CHIANG: I think that's very
8 instructive. I think for those who would make comment
9 that we are imposing obligations that cannot be fulfilled,
10 that, in fact, is not the case. We demonstrated that, as
11 you pointed out, through the smaller vessels, and the fact
12 that we are trying to act timely. And that's why I want
13 to point out I think it's important that California, in
14 the position we are, continue to drive forward in making
15 these changes possible, but that we are sensitive to
16 what's taking place as to -- on a practical level.

17 We have one public speaker, John Berge. John, if
18 you'd please join us. And then we have another
19 individual, Joe Angelo. So, Joe, you would follow John.

20 MR. BERGE: Thank you, Mr. Chairman, and
21 Commissioners. John Berge with the Pacific Merchant
22 Shipping Association. We represent container and dry
23 cargo carriers that carry over 90 percent of the
24 containerized goods moving through California's ports.

25 We must respectfully disagree with certain

1 aspects of the report. We do appreciate State Lands'
2 efforts in mentioning in the body of the report some of
3 the shortfalls in treatment technologies and testing
4 methods available to assess their efficacy.

5 However, the report then proceeds to essentially
6 ignore its own findings to jump to the conclusion, and I
7 quote, "Given the data currently available, multiple
8 treatment systems have shown they can meet California's
9 performance standards with acceptable consistency."

10 I know that you've already raised some of these
11 issues in your questions, but we believe this, along with
12 some other statements in the report, is not accurate, is
13 not supported by valid scientific analysis. It is
14 misleading to California's elected officials. And this is
15 the opinion of leading academics, scientists, the U.S.
16 Coast Guard, the treatment technology vendors themselves,
17 and even the data in the report.

18 We provided abundant evidence to you on our
19 submitted written comments, so I won't elaborate here, but
20 I'd just like to point out two, I think, compelling
21 points. First, Dr. Mario Tamburri of the University of
22 Maryland and the Director of the Maritime -- or the
23 Maritime Environmental Resource Center, which is one of
24 only four recognized testing centers worldwide.

25 He wrote in May of this year, "Given the current

1 testing approaches used and the available data on
2 individual treatment performance, there are no treatment
3 systems that have been proven to meet anymore stringent
4 standards than the international standard", which is about
5 one thousand times less stringent than California's.

6 This is not simply due to limitations in
7 measuring stricter standards, but also a result of the
8 basic abilities of current treatment technologies.

9 We understand the fact that these ships won't
10 actually be built for approximately a year and a half.
11 However, ship owners are already in the process of
12 designing those ships, setting up a contract with
13 potential vendors. Therefore, I think the report really
14 needs to reflect the state of technology today, not what
15 it's going to be several years from now.

16 So we therefore ask that the Commission ask that
17 the report be amended accurately to reflect the fact that
18 no treatment technology is demonstrated that can comply
19 with the California standard on a consistent and regular
20 basis.

21 No testing protocols exist to determine, with
22 scientific validity, that a treatment technology can meet
23 that standard.

24 And finally, that the report recommend that
25 either the implementation schedule be postponed or the

1 standards amended accordingly.

2 Thank you. I'll be happy to answer any questions
3 you might have.

4 CHAIRPERSON CHIANG: We'll take our next speaker.
5 Thank you, John.

6 Joe Angelo. Is Joe still here?

7 MR. ANGELO: Good afternoon. My name is Joe
8 Angelo. I represent INTERTANKO, which is the
9 International Association of Independent Tanker Owners,
10 representing approximately 80 percent of the world's
11 independent tanker operators around the world, many of
12 which call on California.

13 Since I have limited time, I'll just simply say
14 that we fully agree with the comments that were just made
15 by John Berge of PMSA, emphasizing, number one, that the
16 treatment technology does not exist to meet this standard
17 right now. Number two, the protocol to test for this
18 treatment technology does not exist right now.

19 I want to make one other comment. Prior to
20 working for INTERTANKO I worked for the U.S. Coast Guard.
21 I was the director of the standards. I was the head of
22 the U.S. delegation that negotiated the Ballast Water
23 Management Treaty back in 2004. And the U.S. submitted a
24 document to that conference recommending a ballast
25 treatment standard identical to what you have here, 0.01

1 living organisms per milliliter. So I don't know if
2 California was following what the U.S. proposed back in
3 2004, but it is the same standard.

4 I can tell you emphatically that the U.S.
5 government, which consisted of the Coast Guard, EPA, NOAA,
6 the Department of State new back then that that standard
7 was not achievable, could not be achieved. We submitted
8 that proposal simply as a negotiating tactic, because the
9 standard that was on the table wasn't even as good as
10 ballast water treatment -- ballast water exchange. So we
11 needed some sort of negotiating tactic to move the number
12 from 100 to something lower than that.

13 We were somewhat successful in getting the
14 standard that we thought was a little bit more achievable,
15 but not what we wanted. But what we proposed back then,
16 we knew was not scientifically achievable.

17 It is still not scientifically achievable. We
18 commend the efforts of the Commission in moving forward
19 and proactively trying to lead, not only the U.S., but the
20 world in trying to achieve the proper standard, but we
21 think there needs to be a little more time in developing
22 the proper protocol, and the proper scientific technology
23 to develop such a standard.

24 Thank you.

25 CHAIRPERSON CHIANG: Thank you.

1 Any questions or comments?

2 COMMISSIONER MALDONADO: I have a question, Mr.
3 Chair.

4 CHAIRPERSON CHIANG: Please.

5 COMMISSIONER MALDONADO: Mr. Thayer, a question
6 for you. I voted for the legislation that is before us,
7 because I looked at it at the time, and I thought it was
8 an important piece of legislation.

9 But when you have a process where someone is
10 spending millions and millions of dollars on a ship, and
11 they're in the process of building it now, and they're
12 being asked to put equipment on that ship that might not
13 meet standards in two years or a year, how do I sit here
14 and vote for this and say, you know, well you'll have to
15 just take that equipment out and put some new equipment on
16 in two years, when we find the stuff that meets the
17 standards? You know what I'm saying?

18 EXECUTIVE OFFICER THAYER: Absolutely. I think
19 that's a great question and it's entirely appropriate for
20 the Commission to consider that.

21 Again, our view is that the standards we're
22 looking at now are the standards that will be imposed on
23 newly built tankers for which the construction won't start
24 for another year and a half. The standards apply to
25 vessels where the construction has started after January

1 1, 2012.

2 And our experience, in terms of compliance for
3 the smaller vessels now, is that some of these vessels are
4 under construction now, that have to meet these standards.
5 And their approach, at this point, is to say, hey, look,
6 you know, we can build most of this vessel before deciding
7 which one we're going to put on, so they leave space on
8 the ship, so that they can put on whatever technology is
9 necessary.

10 So in terms of dealing with this issue for Mr.
11 Berge's clients who are the large container ships, that
12 kind of thing, 2012 isn't the date by which they will need
13 to have identified the technology. It's going to be more
14 like about 2014 before they reach the stage in their
15 construction where they have to actually put in the
16 technology.

17 That's four more years. And when you consider
18 how far we've come in the last four years, we really do
19 think that we're going to reach that. As Mr. Berge
20 pointed out, we don't hide anything in our staff report.
21 And there's lots in there in the way of data that lead to
22 the concerns, which you've expressed and which the members
23 of industry have also expressed, that there are problems
24 in terms of developing these technologies. It is new
25 technology.

1 And then this problem of measurement. Although,
2 on that particular issue, we believe that if the
3 measurement does not show that the organisms are there,
4 then the technology passes. So to some extent, that
5 aspect of technology, the measurement of technology
6 trailing, doesn't create as much problems potentially
7 whether or not the treatment technology has reached the
8 appropriate point.

9 But again, we're not, as a staff, afraid to come
10 to the Commission and say let's postpone the date until
11 more is done. We don't think we've reached that stage
12 yet, given how much time there is left, and that there
13 will be this subsequent opportunity for the Commission to
14 go back to the Legislature and say, you know, it's not
15 there. The technology is not there. We have to return
16 back to the Commission with a new report by July 1st of
17 2012, which is a year and a half before we think they'll
18 actually be putting this technology on the new ships. So
19 that there is still adequate time to back off from the
20 compliance date, if necessary.

21 It's not a problem that we think -- we're not
22 done with our consideration of this issue or the
23 implementation of this program with this report. It's
24 just the latest in a series of reports. And are there
25 more milestones that have to be met? You're absolutely

1 right.

2 CHAIRPERSON CHIANG: Have you concluded?

3 COMMISSIONER MALDONADO: Yes.

4 CHAIRPERSON CHIANG: Cynthia.

5 ACTING COMMISSIONER BRYANT: You just confused me
6 a little bit. I thought that ships that were currently
7 being built need to have this new technology put on them?

8 EXECUTIVE OFFICER THAYER: For the smaller
9 vessels, that's right. And that that we expect sometime
10 in 2011 or getting towards 2012, that those will be ready
11 to be launched. And those --

12 ACTING COMMISSIONER BRYANT: But we still don't
13 have -- they're still not --

14 EXECUTIVE OFFICER THAYER: They're still working
15 on the same issues. That's correct.

16 ACTING COMMISSIONER BRYANT: Still not the
17 technology that we know for sure works.

18 EXECUTIVE OFFICER THAYER: That's right.

19 ACTING COMMISSIONER BRYANT: So even a smaller
20 ship would be having to be built with uncertain
21 technology.

22 EXECUTIVE OFFICER THAYER: That's correct.

23 ENVIRONMENTAL PROGRAM MANAGER I FALKNER: Excuse
24 me. I'm Maurya Falkner.

25 EXECUTIVE OFFICER THAYER: Staff is correcting

1 me. I may have this wrong.

2 ENVIRONMENTAL PROGRAM MANAGER I FALKNER: No, no,
3 no. I just think it's very important that everybody
4 remember that we are not requiring installation of ballast
5 water treatment systems. We are requiring a discharge
6 standard. Vessels can meet that discharge standard by
7 retaining all ballast water on board, by discharging that
8 ballast water to a shore-side treatment facility or a
9 barge mounted facility of which there are few folks who
10 are looking at that business plan.

11 Third would be to install a treatment system. So
12 we are not mandating installation of a treatment system.
13 And I think it's really important to remember that. There
14 are other options.

15 EXECUTIVE OFFICER THAYER: Maurya Falkner, who
16 just spoke, and heads up our ballast water program, has a
17 good point, which I neglected to mention, which is even
18 for the existing much easier to comply with management
19 program, which involves these mid-ocean exchanges of
20 ballast water, ships often decide for various reasons that
21 they don't want to comply with that. Say they're coming
22 from Mexico and they don't want to go the 200 miles at sea
23 that they're supposed to go in order to find mid-ocean
24 water, which wouldn't have the same invasive species on
25 them, and instead choose to maintain -- keep the ballast

1 on board.

2 And, in fact, the vast majority of the ships that
3 call in California do not charge ballast -- or discharge
4 ballast water, in part to avoid having to meet that
5 requirement. The same operational implementation of the
6 standards is possible for this.

7 CHAIRPERSON CHIANG: Actually, I see, John,
8 you're shaking your head no. Did you want to respond?

9 MR. BERGE: Yeah, thank you, Commissioner,
10 Chiang.

11 MR. CLAYTON: Could you come forward to the mike.

12 MR. BERGE: Sorry for the delay.

13 Yes, that is true, of course, there are options,
14 such as not discharging ballast. And some ships have that
15 ability. Some ships do not. It's strictly a function of
16 their cargo mix. For instance, if a ship is loading and
17 discharging at the same time, they can counter balance
18 whatever cargo they've lost with cargo they've added on.
19 So therefore, they might have that option.

20 But a lot of ships don't. For instance, grain
21 ships, ships carrying rice out of Sacramento or Stockton,
22 those ships really don't have the luxury of not
23 discharging. Their only luxury would be, or their only
24 option would be to stop calling California.

25 COMMISSIONER MALDONADO: What percentage of the

1 ships are those?

2 MR. BERGE: I'm not sure what percentage of the
3 ships that is, in terms of the entire population. I'm
4 guessing it's --

5 COMMISSIONER MALDONADO: One percent?

6 MR. BERGE: -- in the teens or something like
7 that.

8 ENVIRONMENTAL PROGRAM MANAGER I FALKNER:
9 Approximately nine percent.

10 MR. BERGE: Nine percent, okay.

11 CHAIRPERSON CHIANG: Thank you.

12 MR. BERGE: Thank you.

13 ACTING COMMISSIONER BRYANT: Can I just make one
14 more comment.

15 CHAIRPERSON CHIANG: Please.

16 ACTING COMMISSIONER BRYANT: So I actually -- you
17 know, I think we're -- I'm trying to just look at this
18 with what's in front of me, which is whether or not we let
19 this report, as currently written, go forward to the
20 Legislature.

21 And I do actually think that in the report all
22 the information is there. It's really interesting and
23 really well done, but I do think that in our effort to
24 push -- I mean, there is this thing that you want to push
25 the regulated community very hard to meet our standards.

1 And obviously, California has very strict standards,
2 because we're usually a leader in this area, and obviously
3 I support that.

4 But I think that report, if you're someone who
5 just looks at the executive summary or someone who just
6 looks at the conclusion, it doesn't really -- I don't want
7 to say it's not -- I don't want to -- because I don't want
8 to criticize it particularly, but I don't think it's very
9 fair in bringing up that there's lots of questions
10 remaining. And I don't even think if you were to look at
11 the first few pages or the last few pages of the report,
12 that, as a policy maker over in the Capitol, you would
13 say, gosh, I better keep an eye on this, because we may
14 have to make changes between now and 2012. And there's
15 nothing -- it doesn't suggest that, when you look at it.
16 If you skim it, it looks like, hey, this is easy. We can
17 do this technology.

18 So I do actually have a little bit of concerns
19 about how it's drafted. I don't have specific changes,
20 because I'm not scientific enough, I don't think, but I
21 don't think that it adequately -- unless you read it very
22 carefully do you sense that the staff has any concerns at
23 all about our ability to meet this. Like even what your
24 comments just were, Paul. I don't think it comes out in
25 the report.

1 EXECUTIVE OFFICER THAYER: Right. There are
2 various ways to handle that. Of course, I'm looking at
3 the executive summary here, which says that -- again
4 repeats the same stat that was mentioned in the staff
5 presentation, that three passed more than 50 percent, and
6 no system has yet met California's standards a hundred
7 percent of the time for either land-based or shipboard
8 testing. So we try not to hide the ball even in the
9 executive summary. And if we weren't successful in that,
10 we'd be glad to go back and put something --

11 ACTING COMMISSIONER BRYANT: I guess it doesn't
12 say something like, and in fact, it might -- you know, it
13 might be impossible in an onboard thing. Although, I
14 think the point you just made, when you were speaking too
15 isn't really necessarily in here, because I'd kind of
16 forgotten about that, even though I read that in the
17 report, that there's other technologies.

18 But I think that to raise this specter that we
19 are driving ourselves to a very strict standard, and we
20 need to make sure that we have, you know, all the options
21 on the table, and we don't want to end up having a big
22 bunch of closed signs at our ports. Although, I don't
23 really, after reading this, feel that's as big a risk as
24 some might argue.

25 EXECUTIVE OFFICER THAYER: There's, again, a

1 couple of options. If that's the main concern of the
2 Commission, the staff recommended action allows for minor
3 editing to clarify the information presented. And if the
4 Commission would like, we can go back either -- if the
5 Commission wanted to approve it today, we'd go back and
6 add some language, which would emphasize the fact that the
7 Commission remains very concerned about whether the
8 technologies are going to be available and will be looking
9 at this question again in 2012, and make those changes.
10 Otherwise, we can make the changes and bring it back in
11 August. There's different approaches that can be made.

12 ACTING COMMISSIONER BRYANT: I think my
13 preference would be to see it again.

14 EXECUTIVE OFFICER THAYER: Okay.

15 CHAIRPERSON CHIANG: I'm comfortable with the
16 report as is. I think it's well done. I want to commend
17 the staff for doing so, but I want to accommodate my
18 colleagues to articulate their concerns.

19 And then there is the issue of the pace of
20 innovation. So I don't know -- Nicole, I don't know how
21 much onus you want added to your life. But if it's
22 instructive, since that is a key measure, at this point in
23 time, if perhaps we can do an interim report. Because
24 we're talking about innovation, technology, development,
25 instead of waiting till 2012, I don't have a clear sense

1 of how much is developing by day, by month, by year, if we
2 could do one in between to see how far along we are.

3 Now, I don't know if you view that as
4 constructive use of staff time, but if that is a
5 determinant, we ought to be monitoring it or at least if
6 we don't get a full report, the Board, the Commission,
7 ought to have a sense of how those developments are
8 unfolding.

9 EXECUTIVE OFFICER THAYER: Well, I think if the
10 Commission is concerned, it's a good use of staff's time
11 to address those concerns, because it also reflects
12 concerns of the industry and that kind of thing. So we'd
13 be happy to come back with an interim report, not wait the
14 full two years. We could come back in six months or we
15 could come back in a year, when we would have more data to
16 really present.

17 And again, wanting to be accommodating of
18 Commissioner Bryant's concerns, would -- but not -- and
19 also wanting to meet the July 1st deadline, if the
20 Commission is comfortable with a package, in essence,
21 which would have us reword -- and we could work with your
22 office on this -- the conclusions. Pass out the report
23 today. Work with you, in terms of making sure the
24 conclusions make sense. If we can't reach accommodation,
25 we'd bring it back, but then have this additional report

1 in a year to look at all of this anew.

2 ACTING COMMISSIONER BRYANT: And I think in the
3 rewrite, we could put language in a rewrite that would
4 suggest that the Commission is concerned about -- you
5 know, wants to stay on top of this, and that we've put
6 upon ourselves to do a second report.

7 EXECUTIVE OFFICER THAYER: Sure.

8 ACTING COMMISSIONER BRYANT: I think that would
9 make it a whole lot better for me.

10 EXECUTIVE OFFICER THAYER: And we, in fact,
11 brought back, I think, in December an auxiliary report to
12 the Commission just to update the Commission this last
13 year that wasn't required by the legislation, as something
14 we thought was important for the Commission to review.
15 And so we're happy to do that.

16 ACTING COMMISSIONER BRYANT: Well, for this
17 Commissioner, December would be a good month.

18 (Laughter.)

19 EXECUTIVE OFFICER THAYER: Well, I understand,
20 but I'm not sure how much --

21 ACTING COMMISSIONER BRYANT: Yeah, I think that
22 what -- and I thought -- I also wanted to make this other
23 one comment.

24 CHAIRPERSON CHIANG: Wait, you're going to be
25 here in December, right?

1 ACTING COMMISSIONER BRYANT: Yeah, that will be
2 my last meeting.

3 The number two on the recommendations I think is
4 critically important. And I think one of the things this
5 has done for me is elevate the issue. And I think part of
6 the report and doing our own interim report is to this
7 notion of really working on this federally and
8 internationally, because we don't want to do is, A, it
9 would be nice if everyone adopted our standards, and B, it
10 would be really nice if we didn't set up a system where it
11 makes it difficult to come to California for shippers.

12 I'm not persuaded that's an issue yet, but I
13 think it's an important issue that we stay on top of, that
14 we make sure that we don't, in our quest for having the
15 strictest environmental standards, that we don't somehow
16 or another, create a system where we just have lots of,
17 you know, just empty ports in the State.

18 EXECUTIVE OFFICER THAYER: I understand. I guess
19 I would say though, in terms of preparing a report for
20 December, I'm not sure what -- how much of an increment we
21 would -- more that we'd know by the time we actually
22 prepared the report we'd be done with it in four months.

23 ACTING COMMISSIONER BRYANT: That's okay. I'll
24 continue to follow your activities in my private life.

25 (Laughter.)

1 EXECUTIVE OFFICER THAYER: So I guess I would
2 ask, as staff, whether Commissioner Bryant would be
3 satisfied with these changes if the Commission adopted
4 this now, and was directed by -- staff was directed by the
5 Commission, as we proposed in the action, we're proposing
6 to make whatever clarifying changes the Commissioners
7 want, and that we would work with your office to make
8 those changes. If not, then we could bring it back in
9 August and do it however you want.

10 ACTING COMMISSIONER BRYANT: That works for me.

11 CHAIRPERSON CHIANG: The initial proposal to keep
12 working on it and then come back with changes to --

13 EXECUTIVE OFFICER THAYER: I think what we would
14 do is take advantage of the authority, which we already
15 authorized in the proposed action, which would enable
16 staff to make clarifying changes in the report, but have
17 the Commission approve it today. We would work with
18 Commissioner Bryant's office to make sure we were
19 addressing her concerns. If we can't, we would bring it
20 back.

21 But I think we would try -- and over the next
22 couple of weeks do that and get it to the Legislature.
23 But if we're not able to reach a resolution, then we would
24 bring it back in August. That way we make sure that
25 there's a fail-safe for Commissioner Bryant's concerns to

1 be addressed.

2 And then otherwise, we would then -- so our
3 recommendation is that the Commission go ahead and approve
4 this today with that understanding -- with that direction,
5 that we work with Commissioner Bryant to make sure the
6 concerns are addressed, and then bring back a whole new
7 report in a year, which would be a year sooner than we'd
8 otherwise be doing.

9 ACTING COMMISSIONER BRYANT: I think I'd prefer
10 if it came back, just as I'm sitting here.

11 EXECUTIVE OFFICER THAYER: Okay.

12 ACTING COMMISSIONER BRYANT: Yeah, that would
13 be -- if it just could come back for a once over in
14 August, so my colleagues could see it. And with the
15 interim -- with a report in a year, that would be perfect.

16 EXECUTIVE OFFICER THAYER: We can do that.

17 CHAIRPERSON CHIANG: Have we scheduled our August
18 meeting?

19 EXECUTIVE OFFICER THAYER: We have not yet.

20 CHAIRPERSON CHIANG: Because I'd like to conclude
21 this as quickly as possible, so it's provided to the
22 Legislature.

23 ACTING COMMISSIONER BRYANT: It could be in a
24 Consent item even in August, assuming that...

25 COMMISSIONER MALDONADO: I'm okay with August.

1 EXECUTIVE OFFICER THAYER: Then if that's the
2 Commission's direction, then that's what we'll do.

3 CHAIRPERSON CHIANG: Is that a motion?

4 ACTING COMMISSIONER BRYANT: So moved.

5 CHAIRPERSON CHIANG: Is there a second?

6 COMMISSIONER MALDONADO: Second.

7 CHAIRPERSON CHIANG: Second.

8 Without objection, the motion passes.

9 Next item.

10 EXECUTIVE OFFICER THAYER: The next item is an
11 informational item. This is an update on the dust control
12 measures being undertaken and management generally of
13 Owens Lake. As the Commission knows, it approved a
14 Consent Calendar item, which allowed for tillage to help
15 address this issue. But staff believed that because we've
16 visited this several times over the last year, that it's
17 appropriate to have a general update on what's happening
18 there.

19 (Thereupon an overhead presentation was

20 Presented as follows.)

21 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

22 Good afternoon, Mr. Chairman and members of the
23 Commission, and welcome, Lieutenant Governor.

24 My name is Colin Connor. I'm the Assistant Chief
25 of the Land Management Division. And I'm here to present

1 an update to the Commission on the status of various
2 projects on the dry bed of Owens Lake, including dust
3 control measures, the solar demonstration project,
4 groundwater monitoring wells, and progress on the master
5 plan.

6 --o0o--

7 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

8 This is very sensitive.

9 First, I want to start off with just some slides
10 showing Owens Lake. This is from the bed of the lake
11 looking west towards the eastern side of the Sierra
12 Mountains. This picture was taken in April. You can see
13 it's stark, but very beautiful in the background.

14 --o0o--

15 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

16 This is basically from the same spot. Now, I'm
17 looking southwest. And the reason I took this was you can
18 see the dust that's blowing across the bed of Owens Lake.
19 And also in the foreground -- or excuse me, kind of the
20 near background, if you will, so that area of shallow
21 flooding.

22 --o0o--

23 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

24 I'm going to start off the presentation with dust
25 control measures. There are presently three approved Best

1 Available Control Measures, that's known as BACM, that are
2 approved to control dust on Owens Lake. They are gravel
3 cover, managed vegetation, and shallow flooding.

4 I don't have a picture of the gravel cover.
5 First of all, in this picture right here, the blue areas
6 around the outside are areas of shallow flooding. The
7 yellow area towards the bottom is managed vegetation.
8 There is a very small area up towards the top that is
9 dust. And as I said, I don't have a slide of dust.

10 --o0o--

11 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

12 This is a picture of managed vegetation. You can
13 see it's in rows.

14 --o0o--

15 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

16 Here's another picture of managed vegetation.

17 --o0o--

18 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

19 This is an area of shallow flooding. You can see
20 they've built up berms on the side. The Sierras are in
21 the background. And there's some birds that use this for
22 coming down, landing in.

23 --o0o--

24 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

25 This is also an area of shallow flooding. But

1 what's interesting about it, is the native vegetation has
2 really taken over and pushed out. We'd like to see a lot
3 more of this on the lake.

4 --o0o--

5 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

6 All three of these measures have been used in
7 Owens Lake. However, because the City has recently had
8 efforts to control or limit the amount of water used for
9 dust control on the lake bed, there's a push to come up
10 with new methods of controlling the dust.

11 One option that was studied recently was for Moat
12 and Row. And that option was denied at the April
13 Commission meeting. It was denied, because it was found
14 to be inconsistent with Public Trust needs, resources, and
15 values of Owens Lake, and was not in the best interests of
16 the State.

17 --o0o--

18 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

19 So the City went back to the drawing board, and
20 on May 18th submitted an application for another dust
21 control concept. This one is tillage. And this is
22 actually a picture of a tillage that they did last year,
23 kind of as a temporary type measure.

24 Tillage is a process whereby the surface of the
25 soil is roughened or made uneven to make it more resistant

1 to wind erosion. The roughness reduces wind velocity
2 along the surface and provides furrows to catch windblown
3 soil particles. So that's an aerial of it.

4 --o0o--

5 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

6 And this is a -- the next couple slides are some
7 concept drawings that kind of give you an idea about it.
8 The furrows in the prior slide were straight. What we're
9 approving or what the Commission is considering today, it
10 would involve more wavy lines and give it more of a
11 natural appearance. There would be breaks in the tilled
12 rows to allow for maintenance vehicles, as well as animal
13 passage. The distance between the individual furrows
14 would vary depending on the soil type. The depth of the
15 furrows would also vary based on the soil types.

16 --o0o--

17 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

18 Benefits of tillage include relatively quick
19 implementation with immediate effectiveness. No
20 infrastructure is required. It has a low profile that
21 does not obstruct the views and does not use water.

22 Tillage does not -- excuse me, tillage also does
23 not have the same long term adverse impacts of Public
24 Trust values as did the Moat and Row proposal. The
25 difference is the Moat and Row is much higher and had sand

1 fences on the top. The tilled areas are very low lying,
2 so anyone on the lake bed isn't going to see a very large
3 structure. Another concern with the Moat and Row is it
4 could turn out to be permanent, especially if needed
5 armoring with gravel cover.

6 Tillage is intended to be a temporary method of
7 dust control until a long-term solution is found. Some
8 other options that may be explored in the future include
9 using brine instead of fresh water for shallow flooding.
10 And the reason for that is there's a large brine pool in
11 the middle of the lake. And they think that rather than
12 using water, if they can find a way of moving the brine
13 about into some of these shallow flooding areas, they
14 could save water.

15 So we have using brine instead of fresh water for
16 shallow flooding, a variation of gravel cover using rocks
17 and boulders of differing sizes to give a more natural
18 appearance, seeps and springs, which involves planting and
19 nourishing native vegetation around existing natural seeps
20 and does not only -- excuse me, not only to reduce dust,
21 but also to create habitat.

22 And that would be similar to that one picture of
23 the shallow flooded area that had a lot of native
24 vegetation. That's what's envisioned by the seeps and
25 springs option.

1 And lastly another method that is being
2 considered is using solar arrays in conjunction with
3 earthen berms and gravel cover to keep the dust down.
4 None of those have been implemented or tested.

5 Another idea that is being discussed is the use
6 of tillage, which we've just talked about, in conjunction
7 with shallow flooding. And that would be -- that's
8 another of the tillage concepts. This is tillage in
9 conjunction with shallow flooding.

10 --o0o--

11 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

12 This is that same area that was part of the prior
13 aerial. It was tilled first and then subsequently
14 flooded. The advantage to doing this is that -- and
15 actually it would be done in the reverse order. You would
16 have an area of shallow flood. You'd pump the water out
17 of that area, then you'd till it. The moist soil would be
18 more resistant to wind erosion and last longer than just
19 tilling dry soil.

20 --o0o--

21 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

22 So in summary, there's three approved BACM,
23 gravel, managed vegetation, and shallow flooding. There
24 are a number of alternative measures being proposed.
25 However, these alternatives will require more research and

1 testing before they can be approved as best available
2 control measures.

3 Commission staff continues to work with City
4 staff, as well as the staff of the Great Basin Air
5 Pollution Control District and Fish and Game to develop
6 effective dust control measures that do not adversely
7 impact Public Trust values on Owens Lake.

8 I'll now move on to discussing the solar
9 demonstration project.

10 --o0o--

11 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

12 Last summer -- just to kind of recap. Last
13 summer, the city approached Great Basin, the Air Pollution
14 Control District, with the idea of using solar arrays as a
15 dust control measure.

16 In response to that inquiry, the District
17 established criteria for dust mitigation through the use
18 of solar arrays. The general premise is to -- that the
19 solar arrays would prevent the wind from whipping up. And
20 therefore, the dust would stay down.

21 So on February 24th, the city submitted a lease
22 application to the Commission for the Owens Dry Lake Solar
23 Demonstration and Information Collection Study. The city
24 initially proposed to use an 80-acre portion of cell T1A-4
25 at the south end of Owens Lake to install and test solar

1 panel configurations.

2 --o0o--

3 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

4 And also to determine the ability to achieve dust
5 control. You can't see it here, but the original cell is
6 way -- excuse me, to the south.

7 I'll go back here.

8 The original -- let's see. Oops, that's not what
9 I wanted to do.

10 I'm going to walk over to the overhead. The
11 original solar dust control -- excuse me, solar
12 demonstration project was going to be right here, 80 acres
13 of that cell. And how would I get that off the -- thank
14 you.

15 All right, so the city's original plan called for
16 a schedule for the demonstration project that would
17 involve completing CEQA, and getting lease approval from
18 the Commission by August 2010, site preparation commencing
19 in October 2010, installation of solar equipment in
20 January of 2011, and commercial operation commencing in
21 July of 2011.

22 --o0o--

23 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

24 On June 2nd a meeting was held in Sacramento to
25 update Commission staff on the progress and changes to the

1 solar demonstration project. In the meeting, city staff
2 stated that they were no longer considering the 80-acre
3 site in the southern part of Owens Lake and were now
4 considering two separate 20-acre sites, one in cell T37-1,
5 which is to the left and the other is called Study Area 1.
6 Both of those are to the left of the screen.

7 The change in sites was necessitated by poor soil
8 conditions in cell T1A-4, which would significantly
9 increase the costs of the foundation for the solar arrays.

10 The two alternate sites will require additional
11 geotechnical study for the load bearing capacity of the
12 soil. City staff also discussed the challenges of meeting
13 the district's dust mitigation requirements for solar as a
14 Best Available Control Measure, and that to do so may also
15 involve the use of berms, gravel cover, or sand fences.

16 The berms will basically be placed around the
17 edges of the solar arrays to keep the wind from getting
18 underneath it.

19 City staff informed the Commission staff that
20 their next step will be to submit an application for a
21 geotechnical permit to study soil conditions in the two
22 areas. Once the investigation is concluded, the city
23 plans to revise their application to address the new
24 locations, and provide a detailed project description,
25 which would include the type solar array technologies that

1 would be used.

2 At this point, they're leaning towards standard
3 flat plate photovoltaic, which is what this is.

4 --o0o--

5 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

6 City staff believes that even with these new
7 intermediate steps that they could have a solar
8 demonstration project constructed and operating no later
9 than October 1st, 2011. And that concludes the update on
10 the solar demonstration project.

11 I'd next like to move on to the status of the
12 Owens Lake Groundwater Evaluation Project. In July of
13 last year, the city submitted an application for a lease
14 of seven clusters of monitoring wells. The purpose of the
15 groundwater evaluation project and these wells is to
16 evaluate the groundwater supply under Owens Lake to
17 determine if the water -- the groundwater can be used for
18 dust control measures on the dry lake bed.

19 The original proposal called for drilling of up
20 to 30 groundwater wells in clusters of three at various
21 locations on the lake bed. On January 28th of this year,
22 the city withdrew their application in order to conduct
23 additional analysis of existing seismic data.

24 As previously mentioned, city staff and
25 Commission staff met in Sacramento on June 2nd. The

1 status of this project was also discussed. City staff
2 stated that they have reviewed the existing seismic data
3 and have revised their project. The revised project will
4 involve fewer wells on sovereign land. There will be a
5 total of eight new wells drilled and one existing well
6 previously drilled by Great Basin will be utilized as
7 well. It will still be three clusters, but just three
8 clusters of three.

9 As previously proposed, the wells will be drilled
10 in clusters of three. Thus, there would be just three
11 clusters.

12 Let me go to the next slide here.

13 --o0o--

14 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

15 The three clusters are down on the lower side,
16 DWP 5, 6, and 7, the lower right-hand side of the lake.

17 Thank you.

18 Each cluster would have four -- excuse me, it
19 would have four-inch diameter bore holes.

20 --o0o--

21 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

22 This is what it would look like -- and it would
23 be drilled to different depths, with none being greater
24 than 1,500 feet.

25 All well drilling and associated site work would

1 be done after Snowy Plover breeding season, which ends in
2 mid-August.

3 These three wells are on DWP property. At the
4 time of our site visit in April, they had finished the
5 drilling. The footings around them were going to be
6 filled with concrete. But this is essentially what the
7 clusters on sovereign land would also look like.

8 --o0o--

9 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

10 These are the locations.

11 --o0o--

12 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

13 And basically, where the vehicle is, is
14 approximately where the wells would go. And this is the
15 existing well right here to the right of T-16.

16 --o0o--

17 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

18 Right there, thank you. And the well site here
19 would be kind of the dot on the other side of the managed
20 vegetation. This is all managed vegetation here on the
21 lower right-hand side.

22 --o0o--

23 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

24 The city anticipates resubmitting a lease
25 application for this project in the next few months. And

1 that's the update on the groundwater monitoring wells.

2 Lastly is the master plan. One of the conditions
3 of the eighth amendment to the lease, approved by the
4 Commission at its December 2009 meeting, is for a
5 long-term conservation plan or a master plan approved by
6 the Department of Fish and Game and the Commission.

7 On January 25th, 2010, city staff -- Los Angeles
8 City staff informed Commission staff that Ms. Gina
9 Bartlett with the Center for Collaborative Policy at
10 California State University, Sacramento, had been hired as
11 a facilitator to assist in the development of a master
12 plan.

13 Ms. Bartlett was here earlier, but I think she
14 had to take off for another commitment.

15 Ms. Bartlett has since identified the
16 stakeholders in the process, interviewed many of the key
17 players and formed a hierarchy of groups representing the
18 stakeholders and their interests. The stakeholder
19 structure consists of a planning committee, an agency
20 forum, a coordinating committee, a stakeholder forum, and
21 working groups that will be formed as needed.

22 The planning committee is the stakeholder group
23 that will work to develop a consensus-based plan and take
24 it to their respective agencies and organizations for
25 potential adoption.

1 To date, there have been four planning committee
2 meetings, one in March, one in April, one in May, and the
3 most recent on June 9th. The April meeting was a guided
4 site visit to the lake bed where some of the earlier
5 pictures were taken. Committee members were able to view
6 the various dust control measures on the lake and also
7 experience the wind-driven dust.

8 The topics that were discussed at the earlier
9 planning committee meetings included recognizing the
10 interests of the various stakeholders, identifying the
11 uses on or influenced by the lake, such as dust control,
12 wildlife habitat or mining, and creation of a charter to
13 guide the master plan process.

14 The most recent meeting was more focused, with
15 topics such as exploring water efficient dust control
16 measures, and solar projects on the lake bed. Future
17 planning committee meetings will address defining the
18 project area, identifying the vision for the lake bed,
19 drafting objectives, and recognizing stakeholder interest
20 and concerns within that framework.

21 The next planning committee meeting is scheduled
22 for this coming Wednesday, June 30th. In addition to the
23 planning committee meetings, an agency forum meeting was
24 held in Sacramento on June 16th. Present at the meeting
25 were representatives from the city, Inyo County, Great

1 Basin Air Pollution Control District, Department of Fish
2 and Game, the California Department of Water Resources,
3 the State Water Resources Control Board, and the
4 Commission.

5 The purpose of this meeting was to identify the
6 various agencies that may be involved in the master plan
7 process, what their roles would be, what their concerns
8 are, what their internal processes are, any potential
9 policies or practices that could impact or constrain the
10 master plan, and consider the type of legal framework of
11 the master plan.

12 There was also discussion about the sequence --
13 excuse me sequencing of the CEQA process relative to the
14 master plan process.

15 The master plan process is scheduled to be
16 completed by the end of this year, with the CEQA review
17 scheduled to be completed sometime in 2011. The master
18 plan and CEQA document could then be considered for
19 approval by the various agencies, including the
20 Commission.

21 This concludes my presentation on the update of
22 the various activities on Owens Lake. Staff is available
23 to answer your questions, and representatives from the
24 city are also here.

25 CHAIRPERSON CHIANG: Thank you. We have one

1 speaker, Martin Adams.

2 MR. ADAMS: Good afternoon. My name is Marty
3 Adams. I'm the Director of Water Operations for L.A.
4 Department of Water and Power. And I just would like to
5 quickly underscore what Colin has reported, and thank this
6 Commission and the Commission staff for participating with
7 us very actively in the master plan process, and in trying
8 to change the face of Owens Lake and what we're doing.

9 As Colin stated, we're making a lot of progress.
10 The Master plan is our guiding document that we're working
11 for toward the future. We do have interim dust control
12 measures that we have to do. We have an existing
13 commitment for October 1st dust control, with the loss of
14 Moat and Row, the gain of tillage today, with your
15 approval by Item 33, will allow us to at least make some
16 positive steps on the lake bottom, so we can control dust.
17 It does not exactly meet the SIP, but it does meet, we
18 believe, the spirit of what we're trying to do in terms of
19 controlling dust.

20 And last month, I attended the Great Basin board
21 meeting in Bridgeport. And the board was, across the
22 board, encouraged us to do whatever methods we could to
23 try to keep the dust down as much as possible by using
24 alternate methods, and have it done by October 1st next
25 year, so that we could continue to try to mitigate the

1 dust to the greatest extent possible.

2 I would like to reiterate that L.A. Water and
3 Power remains very concerned about water use on the lake.
4 Presently, we're using 95,000 acre feet a year of water on
5 the lake. That's the water supply for Long Beach and
6 Santa Monica. It is also the same amount of water that
7 the citizens of L.A. conserved this last year by going to
8 two-day a week watering.

9 Water on the lake now is costing the city about
10 \$46 million a year. So about one and a half months of the
11 average homeowner's annual water bill just pays for
12 replacement water in the lake. So this is a big financial
13 issue for the city, and we have probably about a billion
14 dollars invested at this point.

15 Lastly, we do continue to look to the Commission
16 for guidance on dust control in the future. Colin
17 mentioned gravel, which is an issue that is a question
18 about whether it's consistent with the Public Trust. We
19 are looking for alternatives for dust control that did not
20 involve water. We understand that Moat and Row is not
21 acceptable, and we've moved on from that.

22 We hope that tillage has a future, but we are
23 desperate for trying to find methods for control to
24 control additional areas. We currently have about five to
25 six miles of area that still need control. Other areas

1 will be ordered following that. And we have the existing
2 acreage, about 43 miles, on the lake that's controlled,
3 that we do need to convert some of that away from water.
4 So any guidance that this Commission could give us is
5 greatly appreciated.

6 Thank you very much.

7 CHAIRPERSON CHIANG: Great. Thank you, Marty.

8 Next item, please.

9 EXECUTIVE OFFICER THAYER: That concludes all of
10 the Regular Session items.

11 CHAIRPERSON CHIANG: Or do we have to do 35?

12 EXECUTIVE OFFICER THAYER: Oh, I'm sorry, you're
13 right. We have -- Item 35 was taken off the Consent
14 Calendar.

15 Item 35, the presentation will be made -- I'm not
16 sure -- do we need to make a presentation?

17 LAND MANAGEMENT SPECIALIST FOSTER: I have some
18 background information.

19 EXECUTIVE OFFICER THAYER: This is the item that
20 consists of a proposal by the Port of San Diego to lease
21 land from -- in San Diego Bay from the Commission, which
22 it would add to -- the Port would add to land that it
23 controls, in order to have one lease for the continued
24 restaurant use. There used to be a restaurant there,
25 which will be reconstructed and relocated at this site.

1 We have received opposition from the local union
2 down there, who I believe is here to represent their
3 perspective.

4 (Thereupon an overhead presentation was
5 Presented as follows.)

6 LAND MANAGEMENT SPECIALIST FOSTER: Good morning,
7 Commissioners. My name is Ken Foster. I'm a Public Land
8 Management Specialist with the Land Management Division.
9 And I'm going to present some basic background information
10 on Calendar Item 35, which asks you to consider
11 authorization of a lease of sovereign land to the San
12 Diego Unified Port District and approval of a sublease to
13 the Sunroad Asset Management Company for the redevelopment
14 of a floating restaurant in San Diego Bay at the end of
15 Harbor Island, that is known as the Reuben E. Lee.

16 Slide one, please.

17 --o0o--

18 LAND MANAGEMENT SPECIALIST FOSTER: As you can
19 see in the slide, the Reuben E. Lee is a replica of a
20 stern wheeled steam ship, but it has no internal means of
21 propulsion. It has served as a floating restaurant on the
22 east end of Harbor Island in San Diego Bay since about
23 1969, but it ceased operations in 2003 when Sunroad Asset
24 Management acquired it.

25 Slide 2, please.

1 --o0o--

2 LAND MANAGEMENT SPECIALIST FOSTER: The barge's
3 location on sovereign lands was not known to us, the
4 staff, until 2008, when Port staff actually brought the
5 issue to our attention, and subsequently submitted an
6 application to us for approval of the sublease -- or
7 approval of the lease and the sublease that's being
8 considered by you today.

9 --o0o--

10 LAND MANAGEMENT SPECIALIST FOSTER: Approximately
11 60 percent of the barge is located on ungranted sovereign
12 land with the remainder located within the Port's
13 legislatively granted sovereign land, as you can see in
14 the detail.

15 --o0o--

16 LAND MANAGEMENT SPECIALIST FOSTER: The detail on
17 the right there shows the proposed lease area and the
18 barge's orientation, with respect to the U.S. pier-head
19 line, and that happens to be the grant line as well.

20 Next slide, please.

21 --o0o--

22 LAND MANAGEMENT SPECIALIST FOSTER: Now, the
23 Reuben E. Lee was a stand-alone restaurant, but the
24 renovated barge is one component of the land-based
25 restaurant development that is to be known as 880 Harbor.

1 The barge is expected to be towed off site for
2 renovations to the South Bay Boat Yard, and that's in
3 Chula Vista. It's an approved vessel repair facility in
4 Chula Vista and it's expected to be returned to the same
5 location once renovations are complete. So there would be
6 no actual renovations done to the barge on site.

7 Renovations would include the demolition of the
8 superstructure down to the deck level, construction of a
9 galley and covered seating, and also provide for an
10 uncovered seating area. And you can see in -- this is a
11 conceptual of what the barge and the, as yet to be
12 constructed, upland restaurant facility is expected to
13 look like.

14 The first year's rent that's shown on the
15 calendar item is a minimum amount based on the value of
16 the submerged land occupied by the barge and its marine
17 protected pilings. The rent for the next two years
18 includes an increase in the minimum rent, as well as a
19 percentage of gross rent, which would be due once the
20 restaurant begins generating revenue.

21 The minimum and percentage of gross rent due in
22 the fourth year and on, assumes the restaurant will be
23 operating and generating revenue at full capacity. And
24 those are based on some pro forma projections.

25 Once the restaurant begins generating revenue, a

1 percentage of rent for the barge, as discussed in the
2 calendar item, would be based on a percentage of the gross
3 revenue received by the Port as the lessee, with a minimum
4 rental figure collected against a percentage of gross
5 revenue.

6 --o0o--

7 LAND MANAGEMENT SPECIALIST FOSTER: This
8 concludes my background presentation. And I'm available
9 to answer questions. And I understand Irene McCormack
10 with the Port is also available to answer questions as
11 well.

12 ACTING CHAIRPERSON ARONBERG: Thank you. I have
13 two speaker cards on this item. Do any of the
14 Commissioners have anything to say before we start calling
15 on speakers?

16 Let's call Irene McCormack followed by Lee
17 Strieb.

18 CHIEF COUNSEL FOSSUM: Madam Chair, I'd like to
19 mention one thing. In an earlier version of the staff
20 report, there was a statement as to approvals having been
21 acquired already involving the Corps of Engineers, the
22 Coastal Commission, Port District and regional water
23 quality control board. That's been amended to say that
24 those are required as a condition of our lease, rather
25 than they've already been obtained.

1 ACTING CHAIRPERSON ARONBERG: Thank you for the
2 clarification, Curtis.

3 Ms. McCormack.

4 MS. MCCORMACK: Hi. Good afternoon, Chairman.

5 My name is Irene McCormack, Assistant Vice
6 President of the Port of San Diego.

7 The item before you today has been continued
8 several times. And the Port is hopeful, in working with
9 your staff, that we have provided enough information for
10 you today.

11 The Board of Port Commissioners has been looking
12 forward to the redevelopment of this restaurant site since
13 2003, when the floating restaurant closed, hence shutting
14 down public access to one of the best public views of the
15 San Diego skyline.

16 The Reuben E. Lee, a now dilapidated faux steam
17 boat, had been in operation for more than 35 years,
18 providing dining and prom memories for San Diegans and
19 visitors alike.

20 After the Reuben E. Lee's closure, Port staff
21 realized in early 2008 that the Port needed to enter into
22 a lease with State Lands for the ungranted sovereign land
23 in which the restaurant floats.

24 If granted, the Port intends to sublease to
25 Sunroad Asset Management, which is to redo the restaurant

1 and improve public access to the east end of Harbor
2 Island.

3 In June 2008, the Board of Port Commissioners
4 accepted Port staff's determination that the project is
5 categorically exempt under the CEQA guidelines in Section
6 15302, Class 2, replacement or reconstruction, because the
7 project will be located on the same site and will have
8 substantially the same purpose and capacity as the
9 restaurant being replaced.

10 Moving the barge, which is more like a boat, to
11 the breakwater on the land, does not affect any
12 contaminants at this time.

13 Your approval of the lease is one of the first
14 steps in the process for the improvements of this outdated
15 facility. While under construction, and when fully
16 functional, it will provide revenue for both the Port and
17 State Lands. The Port supports Commission staff's
18 recommendation to authorize the issuance of a general
19 lease to the Port and authorize the approval of a sublease
20 to Sunroad Asset Management.

21 Thank you. And if you have any questions, I will
22 answer them to the best of my ability.

23 ACTING CHAIRPERSON ARONBERG: Thank you.

24 MR. STRIEB: Good afternoon, Commissioners. My
25 name is Lee Strieb. And I'm here today on behalf of UNITE

1 HERE Local 30, which is the San Diego hotel workers union.
2 And we're here today asking you to deny the approval of
3 this lease and sublease, and for the Reuben E. Lee
4 development until there's the proper environmental
5 analysis done for this project starting with a good
6 initial study.

7 You've received, I think, in your packets or on
8 your desks, a letter from our attorney at Adams,
9 Broadwell, Joseph, and Cardozo. I'll summarize the points
10 there quickly.

11 Basically, as you've probably read in the staff
12 report, the staff believes that the project is exempt from
13 CEQA. And our view is that that exemption from CEQA is
14 not proper for several reasons, primarily because the
15 project involves new development, including new
16 infrastructure for the barge, a new land-side restaurant,
17 in addition to what's happening in the water, as well as
18 removal of trees. And again, there's a removal of an
19 existing structure and its replacement with a new
20 restaurant on the barge. That whole project needs to be
21 reviewed and analyzed under CEQA. It's not simply a
22 replacement that's taking place here.

23 Furthermore, that exemption doesn't apply because
24 the project has changed since the exemption -- the CEQA
25 exemption was originally granted. Moving the barge now

1 involves taking out the breakwater and potentially
2 releasing contamination into an already contaminated part
3 of the San Diego Bay. And that potential impact is
4 another reason why the proposed exemption isn't proper.

5 Based on the documents that we've received, there
6 hasn't been that initial study prepared, and there's not
7 evidence that the Board of Port Commissioners itself made
8 the decision around this. It seems like it was a staff
9 level decision. And there really is not a rush here in
10 this case.

11 The Port approved Sunroad's request for an
12 extension of their option on this property, because of the
13 economy. And under the new schedule, the Port is not
14 expected to issue the development permits on this until
15 March of 2011. So, for all these reasons, we're urging
16 you to comply with CEQA and to reject the lease and
17 sublease in this case, and to direct staff to complete
18 their environmental analysis of the site prior to your
19 considering this further, the lease and sublease that are
20 before you today.

21 Thank you for protecting our coastal resources.

22 Thanks.

23 ACTING CHAIRPERSON ARONBERG: Thank you. Staff,
24 Mr. Strieb raises some issues that I think were raised in
25 a letter sent late last week. Did you want to address

1 them?

2 EXECUTIVE OFFICER THAYER: Certainly. We didn't
3 get this letter until Friday. And our attorneys in the
4 AG's office have taken a look at the allegations that were
5 made both in this presentation and in the letter, and I
6 think Pamela Griggs, who is one of our staff counsel, will
7 respond to those issues.

8 SENIOR STAFF COUNSEL GRIGGS: Good afternoon,
9 Commissioners. My name is Pam Griggs. I'm a Senior Staff
10 Counsel with the State Lands Commission.

11 We had a chance to review the letter. And I
12 think I'll just address the comments right now that were
13 addressed here. And then if there's additional questions
14 on contents of the letter, I'll address those.

15 First of all, we believe a categorical exemption
16 is appropriate. The State Lands Commission is acting as a
17 responsible agency in this case. The Port approved the
18 project in June of 2008. And the period for a challenge
19 to the project as a whole has already run.

20 The State Lands Commission, as you were shown on
21 the slides, is being asked to approve a lease just for a
22 portion of the sovereign ungranted lands, where the Reuben
23 E. Lee is floating. So our role is only to approve that
24 small portion of the project.

25 The land-side restaurant has already been

1 approved by the Port and is not under our jurisdiction,
2 under the State Lands Commission's jurisdiction.

3 Also, I believe there was a misunderstanding
4 about the breakwater. We have confirmed with the Port,
5 and I believe they can also answer to this, but the
6 breakwater will not be removed. So as far as sediments
7 being released from removal of the breakwater, that is not
8 going to occur.

9 So again, the exemption is appropriate for us,
10 State Lands Commission acting as a responsible agency. A
11 responsible agency is very limited in the actions it can
12 take, when an action has already been approved by the lead
13 agency. And there is a -- there are exceptions to when
14 you can use exemptions, if there are unusual
15 circumstances. But in this case, there are no unusual
16 circumstances. The boat is simply tethered to the shore
17 with mooring lines and can be backed out with any removal
18 of bay sediment.

19 ACTING CHAIRPERSON ARONBERG: Thank you, Ms.
20 Griggs.

21 Is there any comment from Commissioners?

22 Any other public comment?

23 Do we have a motion?

24 COMMISSIONER MALDONADO: I'll move approval.

25 ACTING CHAIRPERSON ARONBERG: We have a motion.

1 Is there a second?

2 ACTING COMMISSIONER BRYANT: Second.

3 ACTING CHAIRPERSON ARONBERG: Without objection,
4 Item 35 is approved, staff recommendation.

5 I have two public comment speaker cards, one from
6 Ms. Gravanis and one from Ms. Threlfall, but I see -- ah,
7 there they are.

8 Let's start with Ruth Gravanis and then Sandy
9 Threlfall and any other speakers during the regular public
10 comment period.

11 MS. GRAVANIS: Thank you. For the record, Ruth
12 Gravanis, the last time.

13 First, I want to thank Paul Thayer for
14 remembering Eve Bach, our friend and colleague. I will
15 inform her family that she was remembered here today, and
16 I know that that will mean a lot. Sandra Threlfall had to
17 leave. I think she's busy drowning her sorrow.

18 As you heard earlier, some of us are very
19 concerned about the way that we determine that a land --
20 a piece of land is no longer suitable for Trust purposes.
21 And one of my biggest personal concerns is with the
22 proposed exchange from Treasure Island to Yerba Buena
23 Island.

24 And what we have in the authorizing legislation,
25 SB 815, are statements that say that it's suitable to

1 impress the Trust on portions of Yerba Buena Island,
2 because of its great views of the hills and the bridges
3 and because of its potential for recreational uses.

4 Well, Treasure Island, the portions where we're
5 proposing to lift the Trust, also has views of the
6 surrounding hills and bridges and the water and the cruise
7 ships and the sail boats and the pelicans. So what we're
8 saying here is that looking at the hills from YBI is a
9 Trust use, but looking at the hills from Treasure Island
10 is not a Trust use.

11 And that's pretty hard to support. Obviously,
12 the recreational uses we're thinking about for Yerba Buena
13 Island are not at all water oriented. Those very same
14 recreational uses could also go on the parts of TI, where
15 we're proposing to lift the Trust. We need to think about
16 this. I don't think it sounds quite right.

17 I'm especially concerned about the challenge that
18 we have, a new an unprecedented challenge, where we're
19 actually proposing to place The Trust on hilltops Mare
20 Island, Yerba Buena Island and Hunters Point Hill. Here,
21 we really need to rethink this, because we're talking
22 about saying that when a piece of land is cutoff from
23 tidal action, that supports a finding that it's no longer
24 suitable for Trust purposes. And then we turn around and
25 we place the Trust on pieces of property that never ever

1 were anywhere near tidal action. How do we justify that?
2 How do we explain that?

3 I am not opposed to lifting the Trust from
4 portions of Treasure Island, so that we can put housing
5 there. I totally support the basic program being proposed
6 for TI/YBI development. But currently, we do not have a
7 proposal before us that guarantees that there will be a
8 net benefit to the public and a net benefit to Trust
9 values.

10 So I strongly urge that before we get too much
11 farther in the direction of the enabling action that this
12 Commission needs to take, that we address those issues.

13 I'm also concerned about training of the
14 trustees. We've talked about that before. It becomes
15 really important now, when we're asking the trustees
16 basically to take over the job that your staff has been
17 doing. Your staff has been educated for years and years,
18 and has been steeped in the meaning of the Trust and all
19 the applicable statutory laws and legislation. And now,
20 we're just saying to people who have no experience at all,
21 okay, well you decide what's Trust consistent and what's
22 not. I urge you to provide whatever resources you can to
23 your staff, so they can provide a meaningful education
24 program to your trustees.

25 And also, I see that my time is out, but a

1 particular concern on Mare Island and Yerba Buena Island
2 is that a very important Trust value, and one worth
3 putting the Trust on is the preservation of habitat. But
4 we don't currently have any means to assure that that
5 habitat will be indeed preserved. And right now, the very
6 Trust values that we say make it suitable to put the Trust
7 there are being lost as invasive exotic species take over
8 our wonderful native habitats.

9 I'm happy that this Commission is aware of the
10 damage done by the invasive microorganisms in ballast
11 water. Well, we have the same kind of problem in the
12 terrestrial species that are destroying the habitats that
13 are so important to our wildlife. So we have some issues
14 ahead of us that I hope will get a very, very thorough
15 discussion.

16 Thanks.

17 CHAIRPERSON CHIANG: Thank you.

18 Any other public speakers?

19 Okay, I think we've concluded.

20 EXECUTIVE OFFICER THAYER: And if I could just
21 respond to the last speaker. The Commission will be
22 hearing this Treasure Island exchange. I'm not exactly
23 sure of the timing on that. But an element of that, in
24 fact, will be a proposal to do just as the previous
25 speaker described, which would be to allow for the

1 elimination of the Public Trust designation from the
2 interior parts of Treasure Island, and impose it on Yerba
3 Buena Island.

4 And I think our perspective as a staff is that
5 we're doing everything to assure that public access along
6 the shoreline, a significant breadth of the shoreline,
7 will be preserved on Treasure Island, and that the Yerba
8 Buena Island sections we think are Trust consistent and
9 suitable for inclusion in the Trust, because they provide
10 wonderful views of San Francisco Bay, and we regard that
11 as Public Trust consistent.

12 But nonetheless, while that's our perspective,
13 ultimately this will be a policy decision for the
14 Commission, and you'll have free rein to decide whatever
15 you think is appropriate when we bring this matter to you.

16 CHAIRPERSON CHIANG: Very good.

17 We've concluded.

18 Thank you very much.

19 (Thereupon the California State Lands Commission
20 meeting adjourned at 1:14 p.m.)

