

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

STATE CAPITOL
ROOM 437
SACRAMENTO, CALIFORNIA

TUESDAY, OCTOBER 1, 2002
1:30 P.M.

MICHAEL MAC IVER
SHORTHAND REPORTER

ORIGINAL

APPEARANCES

Kathleen Connell, Chairperson

Cruz Bustamante, Lieutenant Governor

B. Timothy Gage, Director of Finance, represented by Annette Porini

STAFF

Paul Thayer, Executive Officer

Jack Rump, Chief Counsel

Jennifer Lucchesi, Public Land Management Specialist

Dave Mercier, Chief of Finance and Economics

Don Hermanson, Marine Safety Operations Supervisor

Gary Gregory, Marine Facilities Division Chief

Jane Smith, Public Land Management Specialist

Curt Fossum, Senior Staff Counsel

ALSO PRESENT

Alan Hagar, Deputy Attorney General

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1 ACTING COMMISSIONER PORINI: Second.

2 CHAIRPERSON CONNELL: It's been moved and seconded
3 and unanimously adopted.

4 Mr. Thayer, can we have your report.

5 EXECUTIVE OFFICER THAYER: Thank you, Madam Chair.

6 I just have three or four different items that I
7 wanted to talk about. The first has to do with the strike
8 or the impending strike, the labor dispute at the ports.
9 It's been in all the papers, of course. And the ports are a
10 significant part of the public trust operations in
11 California. So I wanted to just go over some of the
12 highlights to make sure the Commission was aware of them.

13 The main issues, as I understand them, have to do
14 with pension and benefits and the method of implementation
15 of new technology which is proposed for the ports. In
16 response to a perceived worker slowdown, management has
17 instituted a lockout. The initial lockout was last Friday.
18 It was due to end on Sunday, but it was reinstated later
19 that day.

20 Some of the estimates that I see in the paper as
21 to economic impact of up to \$1 billion day for the first
22 five days.

23 CHAIRPERSON CONNELL: Is that in California or is
24 that throughout the nation? I thought that was a national
25 number.

1 EXECUTIVE OFFICER THAYER: I believe that's a
2 national number.

3 CHAIRPERSON CONNELL: Yes. In fact, I'm certain
4 it is a national number, because we're tracking this very
5 carefully for California revenues.

6 EXECUTIVE OFFICER THAYER: And, of course, there
7 are some differences on that. Others point out though that
8 the cost is likely to rise after the first five days because
9 there will be business closures and that kind of thing so
10 the cost per day will go up. Auto assembly plants or some
11 of the facilities that are thought to be affected first.

12 Oil shipments are not affected, so the imports of
13 oil and the moving of oil products around in the state are
14 not affected.

15 CHAIRPERSON CONNELL: How is that possible? Are
16 they letting the freighters through?

17 EXECUTIVE OFFICER THAYER: I think it's different
18 unions that are involved, so it's not a labor dispute with
19 the terminals and the tankers, so they can come in.

20 There are union/industry discussions. They met
21 for about an hour and a half yesterday, and from the reports
22 I read, they have more discussions today. Federal mediation
23 has been offered, but it hasn't yet been accepted by all
24 sides. I think there was an invitation to go to Washington
25 on Thursday, but not all sides are agreed to that yet.

1 The President could declare a national emergency
2 and order workers back. There hasn't been any firm
3 indication of when or if the President would do that.

4 CHAIRPERSON CONNELL: Well, just a second. Order
5 the workers back? I mean isn't this a lockout by
6 management?

7 EXECUTIVE OFFICER THAYER: Yes.

8 CHAIRPERSON CONNELL: So doesn't he have to order
9 management to end the lockout?

10 EXECUTIVE OFFICER THAYER: Yes, that's correct.
11 But he could in effect order the operations to resume.

12 CHAIRPERSON CONNELL: Right.

13 EXECUTIVE OFFICER THAYER: But, again, the
14 indication I'm hearing -- you're absolutely right in terms
15 of how to properly characterize what's going on there.

16 CHAIRPERSON CONNELL: I'm assuming we ought to be
17 clear on this.

18 EXECUTIVE OFFICER THAYER: Absolutely. So I'll
19 continue to monitor this and keep the Commissioners informed
20 as things develop. If there's any particular developments
21 that would involve the Commission's jurisdiction, in
22 particular, I'll get back to you right away.

23 The second item I wanted to talk about was the
24 recent Prevention First Conference.

25 CHAIRPERSON CONNELL: Can we just wait a moment

1 for further questions by the Board. This is an important
2 issue, not only to the economy of California, but to the
3 ability of our manufacturers in California. I mean not only
4 to the economy of the ports, but to the ability of our
5 manufacturers and farmers in California to export their
6 goods.

7 I am particularly concerned about whether or not
8 the continued decay of items along the ports, items which
9 are not able to be maintained beyond a few days that are
10 perishable, in any way affects the health and safety of
11 people along the port community, and specifically what
12 liability, if any, we might have for the problem as it
13 continues forward. I am aware that there are large
14 containers of fruits and vegetables that are frozen at the
15 ports, and as these materials continue to decay, not only is
16 the odor a problem, but the sanity of those facilities is a
17 problem, and the infestation that it can cause by the
18 continued decay of these products is a problem.

19 EXECUTIVE OFFICER THAYER: I'll keep monitoring it
20 for that issue.

21 CHAIRPERSON CONNELL: Who is maintaining some
22 health and safety watch over these containers as a result?

23 EXECUTIVE OFFICER THAYER: I think the ports would
24 be responsible for that, but we can certainly monitor that
25 situation.

1 CHAIRPERSON CONNELL: I do not want these products
2 dropped into the water and soiling the waters of California,
3 as a result of an easy way of dealing with getting rid of
4 them, that we don't want to be having our shores damaged by
5 this material.

6 EXECUTIVE OFFICER THAYER: We'll communicate with
7 the ports on that issue.

8 CHAIRPERSON CONNELL: Yes. They need to be
9 vigilant.

10 Are there any other questions by Board Members on
11 this?

12 All right, let's move on.

13 EXECUTIVE OFFICER THAYER: The second item I
14 wanted to discuss was last month's Prevention First
15 Conference. The Commission sponsors a conference every two
16 years on oil spill prevention technology, and this was held
17 last month in Long Beach. Four hundred participants
18 attended. There was a good discussion on issues like port
19 security, terminal engineering standards, and the ballast
20 water program. These are all issues which are very
21 important to the safe operation of California's ports and
22 the safe transportation of oil upon which we rely. And I'd
23 like to thank Eric Gregory who heads up our Marine
24 Facilities Division. That division was responsible for
25 putting on this event, and I think it turned out very well.

1 The next item I wanted to talk about, and with
2 some regret, with a lot of regret, is that we've had two
3 recent deaths amongst our staff, unexpected, amongst
4 existing staff. John Kloman, the Planning Chief for the
5 Marine Facilities Division died in late August after a long
6 illness. He was a thoughtful and dedicated professional,
7 and he was well respected both by staff and industry in how
8 he carried out his work. And then more recently, Cheryl
9 Stewart died about two weeks ago, very suddenly. She was a
10 tremendously cheerful person with a great disposition and
11 she kept the Marine Facilities Division. She also worked
12 for MFD. Going in happy in good times and bad, and their
13 loss is felt by everybody on the staff, but particular
14 within the office in which they worked. I wanted to make an
15 announcement today to acknowledge --

16 CHAIRPERSON CONNELL: What was her cause of death?

17 EXECUTIVE OFFICER THAYER: She had a heart attack,
18 as I understand. But I wanted to make this announcement at
19 a public meeting like this of the Commission, because
20 they've worked for a long time for the Commission and --

21 CHAIRPERSON CONNELL: Well, I would like to
22 suggest, as we do at some of the other boards, that we send
23 not only official condolences to the families, but I do
24 think a certificate would be appropriate for their length of
25 service with the organization. If you would make sure, Jack

1 and Paul, that that is prepared. I'm sure all Board Members
2 would like to sign that.

3 EXECUTIVE OFFICER THAYER: We'll make the
4 arrangements. Thank you.

5 And then, finally, our next Commission meeting
6 scheduling. We would anticipate, as we have the last few
7 years, scheduling the next meeting in about two months.
8 That would take it immediately after Thanksgiving and before
9 the Christmas season starts. And we'll contact your offices
10 to arrange for a mutually agreeable date.

11 And that concludes the Executive Officer's report.

12 CHAIRPERSON CONNELL: Excellent. The next order
13 of business will be the adoption of the consent calendar,
14 and I call on our Executive Officer to indicate which items
15 have been removed.

16 EXECUTIVE OFFICER THAYER: There are two items
17 that we would like to remove. We've received letters of
18 opposition to Item 40. This has to do with the build up of
19 a berm at Del Mar. So we'd like to have that removed from
20 the consent calendar and we would like to hear it today and
21 we just put it at the end of the regular calendar.

22 The second item is Item 65. This is the Long
23 Beach gas contract. We haven't yet reached agreement with
24 the city on the shape of that contract, and so we would
25 request that that be taken off the consent calendar and

1 heard at our next meeting.

2 CHAIRPERSON CONNELL: All right. Any opposition
3 to either of those? Is there anyone that wants to speak on
4 the consent calendar in the audience?

5 ACTING COMMISSIONER PORINI: Move approval.

6 CHAIRPERSON CONNELL: If not. Excellent.

7 COMMISSIONER BUSTAMANTE: Second.

8 CHAIRPERSON CONNELL: And it's been moved and
9 seconded. It is a unanimous vote.

10 Okay. Item 67 is off calendar, as I recall, Mr.
11 Thayer. So let's move to Item 68 which concerns the
12 consideration of your report entitled Port-Community
13 Relationships. And if you would begin your presentation.

14 EXECUTIVE OFFICER THAYER: Thank you, Madam Chair.

15 As the Commissioners will recall, at our April
16 meeting, during the discussion on the potential secession of
17 the Harbor area from the City of Los Angeles, and in other
18 instances, the Commissioners have heard from members of the
19 public who have had concerns about port relationships with
20 the surrounding communities and their environmental
21 compliance record. The Commission directed staff to review
22 these issues and to prepare a report and bring it back to
23 the Commission. We've done so. It contains a number of
24 recommendations, and we're asking the Commission approve the
25 report or adopt the report and their recommendations at this

1 time.

2 I would like to call on Jennifer Lucchesi, the
3 principal author of that report, to give the staff
4 presentation and more details on this matter.

5 CHAIRPERSON CONNELL: Can you identify yourself
6 for the record, Jennifer?

7 PUBLIC LAND MANAGEMENT SPECIALIST LUCCHESI: Madam
8 Chair and Commissioners, my name is Jennifer Lucchesi,
9 Public Land Management Specialist for the Commission.

10 In response to the concerns raised by the public
11 about port development projects and their impacts on local
12 communities, the Commission at its April 9th meeting
13 directed staff to review the relationships of the five major
14 ports, including the Ports of San Francisco, Oakland, Los
15 Angeles, Long Beach, and San Diego to their surrounding
16 communities. The Commission identified three major
17 objectives, which include conduct a review of environmental
18 issues. Number two, conduct a review of the relationship
19 with the cities, the regulatory agencies, and the
20 surrounding communities to the ports. And number three,
21 examine alternatives in which the Commission can positively
22 influence such relationships.

23 California ports rank as some of the world's
24 largest trade gateways. The contributions to the local and
25 regional economies, as well as to the state and national

1 economies are far reaching. California has 17 ports and
2 harbors which when combined create 838,000 jobs, contribute
3 \$27.3 billion to the state's gross domestic product, pay
4 over \$1.5 billion in state taxes.

5 CHAIRPERSON CONNELL: Every penny of which we
6 need.

7 (Laughter.)

8 PUBLIC LAND MANAGEMENT SPECIALIST LUCCHESI: Yes.
9 And generate \$32.5 billion of personal income. In addition,
10 California ports carry 31 percent of the nations waterborne
11 international trade cargo and contribute \$40.6 billion to
12 the national gross domestic product, helping to make
13 California the sixth largest world economy.

14 While California ports are an essential part of
15 the California and U.S. economies, they must address major
16 challenges associated with planning and environmental
17 issues. These include port planning and management
18 concerns, environmental review process challenges, and
19 environmental issues, such as air quality, water quality,
20 and traffic congestion.

21 To prepare the report for the Commission today,
22 staff gathered information via personal and telephone
23 interviews, meetings, public forums, internet searches, and
24 a review of published documents. This information was
25 collected from ports and their associations, local

1 municipalities, various local, state and federal agencies,
2 and approximately 20 various citizen and environmental
3 groups throughout the state.

4 The character of port-community relationships is
5 defined in part by the environmental impacts and planning
6 issues germane to each port. These relationships are
7 complex, because each entity, including the ports, the
8 cities, the regulatory agencies, and citizen and
9 environmental groups concerned with port activities have
10 their own perspective of issues, issue identification,
11 approach, and resolution.

12 Staff found that the ports acknowledged the
13 tensions which exist with their surrounding communities.
14 However, the ports feel that they are taking the necessary
15 steps to address these tensions, and that these
16 relationships are gradually improving. The relationships
17 between the ports and their related cities range from one of
18 tension to complete satisfaction. However, most cities feel
19 that the relationships are gradually improving as well.

20 The regulatory agencies report that the
21 relationships with the various ports have not always been
22 positive. However, current relationships with the ports are
23 good due to increased communication, awareness, and
24 responsiveness on both sides. The majority of the community
25 and environmental groups acknowledge that the ports have

1 generally gotten better in terms of communicating. However,
2 there is still dissatisfaction with some port activities.

3 In sum, the ports appear to relate to regulatory
4 agencies and their cities better than to their associated
5 communities, although criticisms are not made by all groups
6 or individuals. In response, the ports have established
7 various community outreach programs to help facilitate
8 communication and promote a better relationship. However,
9 these relationship challenges, complicated by significant
10 planning and environmental issues are far from being
11 resolved. While local, state, and federal agencies are
12 continuously working to resolve these issues, these
13 considerable challenges will always require ongoing efforts
14 and coordination.

15 In addition, relationships between the ports and
16 their surrounding communities will also require continuous
17 efforts to improve communication, while preserving the
18 ports' mission to facilitate the ongoing need for trade and
19 commerce.

20 Land occupied by the five major ports in
21 California and the development activities associated with
22 them are subject to the protections and restrictions of the
23 public trust doctrine. The California legislature is vested
24 with the primary authority over sovereign public trust lands
25 within the state. Soon after, the state legislature began

1 to grant certain waterfront public trust lands to local
2 jurisdictions, such as cities and ports. As the
3 legislature's delegated trustee of these sovereign public
4 trust lands, the cities and ports have the primary
5 responsibility and authority to manage their trust grants on
6 a day-to-day basis. While the ports generally have
7 authority over port planning and management, the Commission
8 can litigate port decisions which are inconsistent with the
9 grantee's trust responsibility. More importantly, though,
10 the Commission can positively influence port planning and
11 management through consultation, coordination, and
12 education.

13 Based on the existing legal framework and its
14 review, staff of the State Lands Commission identifies in
15 the report before you today several program options for the
16 Commission to consider and also recommends various actions
17 for the five major ports to implement, which staff believes
18 could help promote better relationships between the ports
19 and their surrounding communities. These options range from
20 increased State Land Commission participation in the
21 regulatory process, improved educational and informational
22 outreach, and expanded participation and influence in the
23 legislative proposals enacting grantee responsibilities and
24 the State Lands Commission and its responsibilities.

25 Staff, therefore, recommends that the Commission

1 accept the report and direct staff to carry out those
2 recommendations identified in the report.

3 CHAIRPERSON CONNELL: Are there any members of the
4 public that are here on this issue or any other issues? I
5 don't have any public -- here it comes. Excellent. Let's
6 see, is there anyone here on this issue? This is Item 68.
7 Yes, there is.

8 Jim Lites. Jim, please come forward. Identify
9 yourself for the record. And let's see, I'm not sure which
10 one -- this is Queensway project, is that correct?

11 EXECUTIVE OFFICER THAYER: My understanding in
12 reading that is that the gentleman, Mr. Lester Denevan,
13 would like to speak during the public comment period at the
14 end.

15 CHAIRPERSON CONNELL: Oh, okay. Fine. All right.
16 Go ahead.

17 MR. LITES: Hi, my name is Jim Lites representing
18 the California Association of Port Authorities. Thank you
19 for the opportunity to be here today.

20 We'd like to briefly comment on the staff report
21 Ports-Community Relationships, and thank the Commission
22 staff for being quite responsive to our questions about the
23 report.

24 The report appears to be a very balanced overview
25 of ports and regulatory and municipal and community

1 relations. By and large, the ports enjoy solid working
2 relationships with these groups and the ports have worked
3 hard to develop productive stakeholder communications.
4 Generally, the ports are quite proud of their work in this
5 area, yet we're aware that stakeholder issues cannot always
6 be resolved to everyone's satisfaction.

7 The Port of Sacramento, for example, while not a
8 tidelands trust port, faces a ballot initiative to change
9 local zoning that could actually threaten the port's very
10 existence.

11 The Port of Los Angeles has been the subject of
12 legislation to reauthorize tidelands trust land to be
13 developed for nonmaritime uses.

14 At the Port of Oakland, the Vision 2000 Port
15 Expansion Program was met with various community challenges,
16 but the initiative is moving forward as a result of
17 successful resolution of various issues, which includes the
18 creation of a Division of Social Responsibility at the port,
19 the first that we know of at a port anywhere in the country.

20 We recognize that the pressure to respond to
21 concerns raised by community stakeholders has never been
22 higher. However, the ability to conduct the port industry's
23 primary mission of facilitation of seaborne commerce is
24 often made more difficult.

25 We hope that this report will ultimately lead to

1 an enhanced partnership between the Commission and the ports
2 to ensure that the maritime cargo shipments that transit
3 through California ports is protected, along with the \$27.3
4 billion in gross state product generated each year.

5 We'd like to respectfully request the Commission
6 defer any formal action today and allow the port industry to
7 provide the staff with additional information regarding our
8 community relations activities. The report's been in our
9 possession about a week, which has unfortunately coincided
10 with a major west coast labor crisis which has been
11 described to you already this afternoon. We'd appreciate
12 the opportunity to provide the staff with a little bit more
13 thoughtful comment before any formal action is taken by the
14 Commission.

15 Again, the ports sincerely hope that this report
16 and subsequent considerations result in the creation of
17 policy that makes waterborne transportation a priority in
18 California. While west coast docks are idle, America's
19 economy bleeds red. In the meantime, California may run the
20 risk of experiencing a dwindling deepwater port
21 infrastructure that once lost, cannot be replaced. We need
22 to preserve the priority of the working ports in the
23 tidelands. We look forward to working with the Commission's
24 staff as recommendations from this report are considered
25 further.

1 And thank you, again, for the opportunity to
2 convey our views.

3 CHAIRPERSON CONNELL: Excellent. Are there any
4 questions of Members of the Board for our speaker? No. Mr.
5 Bustamante.

6 COMMISSIONER BUSTAMANTE: Madam Chair, I'd like to
7 move that this is an informational item so that we don't
8 take any formal action today to allow the ports to go ahead
9 and add additional information so we might give a full
10 review to what they believe to be the problems and the
11 challenges of the ports. I too believe that the report
12 could go into some additional detail and would hope that as
13 being involved with the management of the ports that we
14 might be made aware of what the current challenges are of
15 the various ports. I'd like to see something a little bit
16 more detailed in a future report. I'd like to be able to
17 discuss this with staff and also with the ports further. So
18 I would hope that we would make this item today an
19 informational item.

20 CHAIRPERSON CONNELL: I certainly would second
21 your idea of making it informational. Perhaps you can give
22 either now or at some later point additional detail to staff
23 as to where you would like to see the report expanded. If
24 there's a particular arena of discussion that you think is
25 either shortchanged or missing in this report, if you can

1 give that guidance, I think that would be appreciated.

2 COMMISSIONER BUSTAMANTE: Sure.

3 ACTING COMMISSIONER PORINI: I am fine on having
4 the item be informational today.

5 CHAIRPERSON CONNELL: I have no additional aspects
6 of the report that I'm going to need to have enhanced. But
7 I would ask that you then delay this matter, and secondarily
8 that you work with Mr. Bustamante and his office in regards
9 to enhancements to the report.

10 EXECUTIVE OFFICER THAYER: Thank you, Madam Chair,
11 we will.

12 CHAIRPERSON CONNELL: Excellent. Now we are on
13 Item 69, which was Proposed Bid Rejection of Royalty Oil
14 Sales from the Huntington Beach Field. And can we have
15 details on this item, Mr. Thayer?

16 EXECUTIVE OFFICER THAYER: Yes, Madam Chair. Dave
17 Mercier from our Mineral Resources Management Division will
18 give the report on this item.

19 ECONOMICS AND FINANCE CHIEF MERCIER: Good
20 afternoon, Madam Chair and Honorable Commissioners. My name
21 is Dave Mercier and I work in the Mineral Management
22 Division and I'm in charge of finance and economics. This
23 is going to be pretty brief. I don't have a lot to --

24 CHAIRPERSON CONNELL: Brevity is always
25 appreciated.

1 (Laughter.)

2 CHAIRPERSON CONNELL: Never feel that you need to
3 make an excuse.

4 FINANCE AND ECONOMICS CHIEF MERCIER: Yes, okay.
5 During the June 18th, 2002, Commission meeting, the
6 Commissioners authorized the sale of the Huntington Beach
7 crude oil. The state's share of the production was about
8 800 barrels of oil per day. After sending out the public
9 notices inviting bids, Paramount Petroleum Company on July
10 15th, 2002, the only bidder, bid a little bit over 26 cents
11 above the base price, or 25 cents, or a penny above the
12 minimum price. The contract started on January 1st, 2003,
13 and ended January 1st, 2004.

14 Staff compared this bid to other bonuses of like
15 quality, and had a meeting with the field operator, Era
16 Corporation. Staff concluded that it was the best interest
17 of the State to recommend rejection of this bid. It's
18 important to note that the State has rejected royalty
19 selloff bids historically that were found to be
20 significantly below market value. The State is currently
21 receiving more than \$1.25 per barrel over the base for
22 similar Wilmington oil that is being sold by two different
23 State operators, Oxidental Petroleum and Tidelands Operating
24 Company.

25 By rejecting this bid, the operator is obligated

1 to sale this oil and provide the State, per the lease
2 agreement, a reasonable price for the oil as determined by
3 the State. The operator, Era, which we've been working with
4 very closely, has assured State staff that we'll be
5 receiving a better price. We're looking at probably in the
6 dollar range. The additional money, just off the additional
7 bonus from the corporation, is a little over \$300,000 a
8 year.

9 In addition to that, this royalty, the price of
10 oil for this particular crude, is tied to a sliding scale
11 royalty. A price-based sliding scale royalty. So when we
12 get more money from that, the royalty will go up and we
13 should make an additional seven or eight hundred thousand
14 dollars a year.

15 CHAIRPERSON CONNELL: Sweet music to my ears.

16 (Laughter.)

17 FINANCE AND ECONOMICS CHIEF MERCIER: Yes, I
18 always like to bring good news.

19 CHAIRPERSON CONNELL: Every penny counts in
20 today's budget, does it not, Annette?

21 ACTING COMMISSIONER PORINI: Absolutely.

22 FINANCE AND ECONOMICS CHIEF MERCIER: So, yes, we
23 can, I think, because of this rejection, increase State
24 revenue over a million dollars a year, just for this next
25 year.

1 So that's all I have.

2 CHAIRPERSON CONNELL: Excellent.

3 Any other comments on this matter?

4 And I think it was good judgment to defer. Thank
5 you for doing so.

6 FINANCE AND ECONOMICS CHIEF MERCIER: Thank you.

7 CHAIRPERSON CONNELL: There is no reason to sell at
8 the bottom of the market. We're not panic sellers here.
9 The oil is not going to in any way lose its value as a
10 result of our inability to sell it during a time in which
11 the market is not responding to realistic market valuations.
12 That's excellent.

13 Good. Then we will move on. Thank you for your
14 help.

15 Can we have a motion on that?

16 COMMISSIONER BUSTAMANTE: Yes, moved. Please.

17 ACTING COMMISSIONER PORINI: Second.

18 CHAIRPERSON CONNELL: Okay. That's unanimous.

19 Now, we're on Item 70, which is an informational
20 item concerning security at California ports. And I believe
21 we all asked for this item, given concern on the homeland
22 security front.

23 Mr. Thayer.

24 EXECUTIVE OFFICER THAYER: Thank you, Madam Chair.
25 Gary Gregory, who's the Chief of our Marine Facilities

1 Division will make -- I'm sorry, Don Hermanson, who actually
2 prepared this report, will --

3 MARINE SAFETY OPERATIONS SUPERVISOR HERMANSON:

4 I'm not Chief yet.

5 EXECUTIVE OFFICER THAYER: Not Chief yet.

6 (Laughter.)

7 EXECUTIVE OFFICER THAYER: He will make the
8 presentation on this item.

9 MARINE SAFETY OPERATIONS SUPERVISOR HERMANSON:

10 Good afternoon, Madam Chair, Commissioners. My name is Don
11 Hermanson, I'm the Marine Safety Operations Supervisor at
12 the Marine Facilities Division of the California State Lands
13 Commission. As was mentioned, this information was asked
14 for at the April Commission meeting in Los Angeles. And our
15 inquiry into the security posture included these California
16 seaports.

17 In order to set the foundation for this briefing,
18 however, I'd like to review for you what the security
19 posture of California's seaports were prior to 9/11/01. And
20 that is that prior to that awful day, lighting was used
21 essentially for safety at marine terminals, for example,
22 lighting pathways or operating areas. Fencing was more or
23 less used to demark property lines, to keep out stray
24 animals, and the odd fisherman and the curious. Radios and
25 telephones were used for conducting the business of the

1 marine terminal. And vessels were viewed as either
2 commercial in nature or recreational, though that did begin
3 to change after the USS Cole incident.

4 There is a hierarchy of seaport security here in
5 California. Logically, it starts at the federal level. You
6 see the major stakeholders there on the screen. And then it
7 percolates down to the state, and then finally the local
8 stakeholders.

9 At the federal level, the US Coast Guard has the
10 lead for seaport security here in California. The U.S.
11 Coast Guard has divided California's coastline into three
12 zones, three captain-in-the-port zones. They are San Diego,
13 Los Angeles/Long Beach, and San Francisco Bay. You may be
14 pleased to know that the Coast Guard's Sea Marshals' Program
15 began in San Francisco Bay captain-in-the-port zone. The
16 purpose of those sea marshals is to board special or high-
17 interest vessels before they get to California ports and
18 inspect them for contraband, stowaways, and essentially
19 anything that looks out of the ordinary. They also provide
20 escort service to the berth.

21 Safety and security zones are essentially
22 exclusionary zones established by the Coast Guard to
23 prohibit vessel entry. Two important examples of these are
24 at the naval base in Coronado and the naval submarine base
25 in Mission Bay, San Diego. Both of these zones have been

1 increased in size to prevent another USS Cole-type terrorist
2 attack.

3 The U.S. Customs, through their partnership
4 with --

5 CHAIRPERSON CONNELL: Excuse me. They've been
6 increased to prevent that, that was post 9/11 though, am I
7 following this report correctly?

8 MARINE SAFETY OPERATIONS SUPERVISOR HERMANSON:
9 Yes, post 9/11.

10 CHAIRPERSON CONNELL: We're now in the post 9/11?

11 MARINE SAFETY OPERATIONS SUPERVISOR HERMANSON:
12 Yes. I'm sorry, I did not make that clear.

13 CHAIRPERSON CONNELL: All right.

14 MARINE SAFETY OPERATIONS SUPERVISOR HERMANSON:
15 The advance notice of arrival has also been updated in light
16 of what has occurred. It used to be 72 hours. Now, the
17 Coast Guard is requiring a 96-hour advance notice of arrival
18 for vessels coming here to U.S. ports. This gives the Coast
19 Guard additional time to prepare should they need to board
20 these vessels. Security guidelines were developed by the
21 Coast Guard, in consultation with the Marine Facilities
22 Division, and also the Maritime Transportation System
23 Advisory Council of California. These guidelines are
24 basically a Coast Guard directive for shoreside facilities,
25 in particular, port facilities, and vessels, measures to

1 take to essentially harden their facilities against
2 terrorist attacks.

3 And, finally, under the Coast Guard, a marine
4 safety and security team has been established in San Pedro.
5 Basically, this is a responsive organization to respond to
6 various threats as determined by the Coast Guard.

7 Customs. Through their trade partnership against
8 terrorism, has enhanced supply chain security. What this
9 does, essentially it's a carrot-and-stick approach. The
10 stick is you get on board with our security program, the
11 carrot is, if you do so, and I'm speaking to freight
12 companies here, if you do so, your products as they arrive
13 in the United States will receive expedited processing at
14 U.S. ports.

15 And the Container Security Initiative, essentially
16 what that does is it pushes out U.S. borders to foreign
17 ports. It places Customs inspectors in ports such as
18 Rotterdam, Hong Kong, Singapore, to assist those local
19 authorities in inspecting containers bound for the United
20 States. Prior to September 11th, 2001, the Customs
21 inspection rate for containers was one to three percent.
22 Now it's up to approximately 15 percent.

23 The INS, another major stakeholder, now requires
24 passenger and crew manifests to be sent to them prior to
25 ship arrival in the United States, or if it's already here,

1 prior to departure. This information must include the names
2 of the crew or passengers, dates of birth, and places of
3 birth.

4 And, finally, at the federal level, the Department
5 of Transportation, with consultation from the Coast Guard
6 and the Maritime Administration, has essentially given these
7 funds to California's ports for upgrading or enhancing
8 security.

9 At the state level, the Marine Facilities Division
10 soon after 9/11/01 developed a 13-point checklist for marine
11 terminal physical security. These surveys were developed
12 based on what was available in the Coast Guard and the
13 Navy's physical security manuals. We then went to the
14 marine oil terminals. We conducted the physical security
15 surveys to give us a baseline as to what we actually had at
16 the marine oil terminals with respect to security. And then
17 we developed very quickly emergency physical security
18 regulations for marine oil terminals. And those became
19 effective on the 7th of March of this year. We're now
20 working through the process of developing permanent physical
21 security regulations, and those are in the public review
22 process now.

23 The Mineral Resources Management Division has also
24 been active in the security vein. They directed operators
25 producing oil and gas in the state's tidelands to update

1 their terrorism alert and response plans. They've also
2 directed offshore operators, for example, platform
3 operators, to seek safety zone establishment from the U.S.
4 Coast Guard.

5 CHAIRPERSON CONNELL: Do we have any idea if there
6 has been any security problem at these ports post 9/11? Do
7 we get any security report from the federal government?
8 What about this Homeland Security Department that's been set
9 up?

10 MARINE SAFETY OPERATIONS SUPERVISOR HERMANSON:
11 Well, the Homeland Security Department has not yet been
12 constituted, Madam Chair, the federal government is still
13 working on establishing that department. We do have some
14 rather anecdotal information on some security breaches post
15 9/11/01. However, they turned out not to be really security
16 breaches in nature. We had one report of a person walking
17 with a rifle on the shoreline in the vicinity of one of our
18 terminals. The local sheriff's department responded to the
19 scene and it turned out to be a hunter who had just wandered
20 in the near vicinity of that terminal.

21 In another case, we had a report of a diver in the
22 Carquinez Straight approaching one of our marine oil
23 terminals. Going into the water right next to the wharf
24 structure and the vessel that that person arrived on
25 departed. Well, that was investigated and that turned out

1 to be essentially some research work done by one of
2 California's universities. Other than that, we have no
3 direct information on security breaches at the marine oil
4 terminals.

5 COMMISSIONER BUSTAMANTE: We don't have anything
6 from the Coast Guard either? I mean aren't they the ones
7 who provide us the major part of security and evaluations?

8 MARINE SAFETY OPERATIONS SUPERVISOR HERMANSON:
9 Yes. They are, as I mentioned earlier, a major player.
10 However, the Coast Guard's position has been that they will
11 elevate security status at ports as they feel necessary.
12 Now, the captain-of-the-port at Los Angeles/Long Beach got
13 into some hot water earlier this year about some reported
14 terrorists entering the United States in containers. And
15 essentially that stemmed from an interview that that
16 captain-of-the-port was having with a maritime related
17 newspaper or a maritime related publication. And he seemed
18 to confirm that, yes, there were some terrorists that
19 perhaps entered the country via that mode, however, the
20 government's position and the Coast Guard's position has
21 always been that they would neither confirm nor deny these
22 kinds of reports.

23 COMMISSIONER BUSTAMANTE: So you could neither
24 confirm nor deny we have valid safety and security measures?

25 CHAIRPERSON CONNELL: This is indeed my problem

1 with this whole report. I mean I don't understand where we
2 go here, because if we don't know whether or not we're
3 having any security problems, Mr. Lieutenant Governor, I
4 don't know how we know whether we're adequately protected.

5 COMMISSIONER BUSTAMANTE: If I could also just
6 suggest that one of the things I think we could do, rather
7 than getting into a situation that's been reported, one
8 agency doesn't speak to another, what we might want to do is
9 anything that we do with respect to security that we make
10 sure that we send a copy to George Vinson, who is the
11 Special Advisor on State Security, so that we begin to at
12 least centralize some of the information. And my
13 understanding is that he is reviewing with the other law
14 enforcement officials in the state, coordinating with OES,
15 and this would be just another piece that we could offer to
16 him for review. So at least the information starts to
17 become a bit more centralized.

18 I'm a little confused. You said the MSSTs, are
19 they at each of the ports or they only in San Pedro?

20 MARINE SAFETY OPERATIONS SUPERVISOR HERMANSON: In
21 California, Mr. Lieutenant Governor, they are only in San
22 Pedro at this point.

23 COMMISSIONER BUSTAMANTE: Is there a reason why
24 they are not at the other ports, or do they cover the other
25 ports, or is there some kind of a special threat at San

1 Pedro that's at none of the other ones?

2 MARINE SAFETY OPERATIONS SUPERVISOR HERMANSON: I
3 don't believe that's the case. The Coast Guard could answer
4 that better than I could, but --

5 COMMISSIONER BUSTAMANTE: But they don't confirm
6 nor deny any kind of problems?

7 MARINE SAFETY OPERATIONS SUPERVISOR HERMANSON:
8 Well, the marine safety and security teams are rapid
9 response in nature. So I would guess that they would be
10 able to respond to threats or conditions in other ports
11 other than Los Angeles/Long Beach.

12 COMMISSIONER BUSTAMANTE: But we don't know?

13 MARINE SAFETY OPERATIONS SUPERVISOR HERMANSON: I
14 don't know.

15 COMMISSIONER BUSTAMANTE: Okay. Is there any way
16 to find out?

17 EXECUTIVE OFFICER THAYER: We'll see if can.

18 CHAIRPERSON CONNELL: And I would just speculate
19 that the location at San Pedro might well be because of the
20 focus on Southern California with the borders and the fear
21 that now exists about people crossing both the Canadian and
22 Mexican borders as a way of coming into the country. And I
23 would just assume that that would have been San Diego, you'd
24 think, more than San Pedro, if that would be the issue.

25 COMMISSIONER BUSTAMANTE: We'll first responders

1 respond to difficult situations, and there seems to be both
2 employees at each one of the facilities, there seems to be
3 residential around most of the facilities, and so why it
4 would be placed in only one facility with only the
5 responsibility of one facility makes me a little -- it
6 leaves a lot of questions in my mind. So if they're
7 supposed to be the first responders to all the ports or if
8 they're limited, I'd like to know.

9 EXECUTIVE OFFICER THAYER: We'll find out.

10 COMMISSIONER BUSTAMANTE: You'll find out. Also,
11 in your review, do the ports themselves have any kind of an
12 evacuation plan for employees or residential areas in and
13 around the ports in the event that something takes place?
14 Is there any kind of plans of any kind for that?

15 MARINE SAFETY OPERATIONS SUPERVISOR HERMANSON: I
16 know that the individual marine facilities have those
17 evacuation routes and plans established, Mr. Lieutenant
18 Governor, but for the ports themselves, for the entire port
19 area, I'm not sure.

20 COMMISSIONER BUSTAMANTE: Well, there is a port
21 authority?

22 MARINE SAFETY OPERATIONS SUPERVISOR HERMANSON:
23 Yes.

24 COMMISSIONER BUSTAMANTE: So it seems to me that
25 they would have some thought about how you might evacuate

1 people in a difficult situation. And I'd like to know first
2 of all, if you could check to see if they each have an
3 evacuation plan of some type, and under what circumstances
4 it's utilized, whether it's, you know, chemical, biological,
5 I don't know. Whatever they might have, I'd like to know
6 what they might have, or if they don't have any at all, then
7 I would follow up with some additional requests.

8 And the enhancements that you indicated in one of
9 those charts. If you could back up to that chart. There's
10 about \$15 million, or maybe it was more, federal funds that
11 went directly to ports.

12 MARINE SAFETY OPERATIONS SUPERVISOR HERMANSON:
13 I'm Powerpoint challenged.

14 COMMISSIONER BUSTAMANTE: Well, can you find out
15 then --

16 MARINE SAFETY OPERATIONS SUPERVISOR HERMANSON:
17 This one?

18 COMMISSIONER BUSTAMANTE: Yes, that one. Do we
19 know what those enhancements were?

20 MARINE SAFETY OPERATIONS SUPERVISOR HERMANSON: I
21 don't.

22 COMMISSIONER BUSTAMANTE: Did we get halfway to
23 the goal that we needed to get to? Did we get all the
24 enhancements necessary? Did it cover it all, did it cover
25 part of it?

1 MARINE FACILITIES DIVISION CHIEF GREGORY: I'm
2 Gary Gregory. I'm the Chief of the Marine Facilities
3 Division. On these particular port security grants, each
4 one of them was for a particular item, a particular request,
5 that was forwarded through to the federal government,
6 reviewed by the local Coast Guard captain-of-the-port. They
7 are not looked at as a system, they are individual projects,
8 like in the Port of Long Beach, that add up to a total of
9 \$4.3 million.

10 COMMISSIONER BUSTAMANTE: I understand generally
11 how grants go. I'm just wondering what else needs to be
12 done?

13 EXECUTIVE OFFICER THAYER: Gary, isn't it true
14 that at many of the ports they had lists that were longer?

15 MARINE FACILITIES DIVISION CHIEF GREGORY: Much
16 longer. This was a first look and based upon the limited
17 numbers of dollars that were available nationwide.

18 COMMISSIONER BUSTAMANTE: So if we were going to
19 look at the -- let's make it simple. If we were going to go
20 to LA and to the LA port and we were going to look at its
21 security needs, it has a -- my guess is it has a list, a
22 wish list, of things that it would like to have in order to
23 be able to what it believes feel secure in it's operations,
24 yes?

25 MARINE FACILITIES DIVISION CHIEF GREGORY: There a

1 number of such wish lists by various sundry agencies.

2 COMMISSIONER BUSTAMANTE: Exactly. And by each of
3 the ports?

4 MARINE FACILITIES DIVISION CHIEF GREGORY: Yes.

5 COMMISSIONER BUSTAMANTE: Okay. So at some level,
6 one would feel secure or a greater sense of security, and
7 I'm just trying to figure out how much is there left to do?
8 How many more agencies? I mean which ones are in better
9 shape than others, do we have any kind of a grading, do we
10 have any kind of an analysis on each of the ports? Is the
11 Long Beach port so much worse off than the LA port or the
12 San Diego port? I mean, how do we know what kind of
13 condition they're in with respect to their security?

14 MARINE FACILITIES DIVISION CHIEF GREGORY: Well,
15 we don't have a good idea of that now. And under the
16 bills --

17 COMMISSIONER BUSTAMANTE: How can we get that?

18 MARINE FACILITIES DIVISION CHIEF GREGORY: -- that
19 are in the U.S. Congress right now, there will be threat and
20 risk assessments done on the various major U.S. ports of
21 which Los Angeles, Long Beach, San Francisco Bay would be
22 part. But we don't have those comprehensive risk
23 assessments done yet.

24 COMMISSIONER BUSTAMANTE: And who does those?

25 MARINE FACILITIES DIVISION CHIEF GREGORY: Those

1 will be done through the U.S. Coast Guard.

2 COMMISSIONER BUSTAMANTE: The Coast Guard?

3 MARINE FACILITIES DIVISION CHIEF GREGORY: Yes.

4 COMMISSIONER BUSTAMANTE: And when they get them
5 done, we won't know what they are and what their needs are
6 because they don't confirm nor deny?

7 MARINE FACILITIES DIVISION CHIEF GREGORY: I
8 believe that general parts of the information will be made
9 available to the public, but specific information that's
10 considered high risk will not be made available.

11 COMMISSIONER BUSTAMANTE: I guess I'm trying to
12 figure out, is there something, if we're going to be
13 responsible to any degree on how to assist the ports to get
14 into a better position to provide security, we have to have
15 some basic understanding of where they're at and where they
16 need to go.

17 MARINE FACILITIES DIVISION CHIEF GREGORY: Yes,
18 sir.

19 COMMISSIONER BUSTAMANTE: Does that make sense?

20 MARINE FACILITIES DIVISION CHIEF GREGORY: Yes,
21 sir. And unfortunately a year later, we're still at the
22 very beginnings of all of that process. And we as an
23 organization are working closely with the Coast Guard in
24 terms of their local view of risk assessments. But in terms
25 of the national and the larger view and the intelligence

1 information that they have, they will not share that
2 information with us.

3 CHAIRPERSON CONNELL: Annette, you have been
4 waiting patiently.

5 ACTING COMMISSIONER PORINI: Well, let me just add
6 on to what the Lieutenant Governor has talked about.
7 Because I also suggested to staff that George Vinson would
8 be a person that we ought to consult with. And maybe that's
9 the point of contact where Mr. Vinson may have the ability
10 to get some of that information about what the actual risk
11 assessments are at the federal level and be able to work on
12 a confidential basis to create a plan or at least create the
13 information that this Board needs to feel the ports are
14 secure.

15 CHAIRPERSON CONNELL: Well, I know Congresswoman
16 Jane Harmon and her counterparts in the south bay have
17 already spoken to this issue. And they -- and Christopher
18 Cox as well, it's a bipartisan effort on the part of both
19 the congressional leaders to make this a priority. And I
20 know the Coast Guard, from their vantage point, is going to
21 embark on this at some point.

22 I think the Homeland Security Bill is actually
23 being voted on either this week or next week in Congress.
24 So assuming it's voted on and signed by the President,
25 hopefully this will be one of the first tasks of the Coast

1 Guard. But that's an excellent suggestion. I think George
2 Vinson is the ideal person because of his confidential
3 status in the state. He is designated by the Governor to be
4 the recipient of so much of this information. Maybe he
5 would receive it, since they are unlikely to give it to us
6 and distill it in such a way, if necessary in closed
7 session, Mr. Bustamante, so that we can be informed.

8 I absolutely believe we should be informed. The
9 ports are a major asset of the state, and if something
10 happens to them, contrary to the institutional belief that
11 the federal government is responsible, we are here. We are
12 the neighbors to the port, and it will be California, and
13 indeed the Lands Commission that will carry a great deal of
14 involvement if we need to repair those ports or if we need
15 to do anything to keep them operational.

16 COMMISSIONER BUSTAMANTE: Well, they're major
17 assets to the nation, and they happen to be in California.
18 So we have a responsibility not just for ourselves, we have
19 a responsibility for the nation to make sure they're in good
20 standing. So I'm just trying to figure out how we do that.
21 And I don't get a whole lot of good feedback as to
22 recommendations as to how the hell we do that.

23 EXECUTIVE OFFICER THAYER: I think that it's a
24 very difficult issue for staff, and I know the Commission as
25 well, to work on this. I think that port security is a very

1 complex issue and the discussions we've had with industry,
2 it's still an ongoing issue. This is sort of like the
3 environmental justice policy which we're going to be dealing
4 with next. It's something that's evolving and people find
5 out, oh, no, a certain method of communication won't work or
6 will work because of this kind of technology or whatever.
7 And it's been a year and some of this is still being worked
8 on. I suspect it will still be worked on next year, which
9 is a good thing. It means that people are looking for a
10 comprehensive --

11 CHAIRPERSON CONNELL: Well, it's a good thing only
12 if in the interim we are adequately protected. If, however,
13 the ports become the next targets of terrorist opportunity,
14 God forbid, and we are as uninformed then as we are today,
15 that would not be a good thing. So I am concerned about the
16 sensitivity of timing here.

17 EXECUTIVE OFFICER THAYER: And the difficulty we
18 have, staff, of course, doesn't have the expertise to know
19 whether a particular security measure is appropriate or
20 sufficient in any particular instance. We're not trained
21 anti-terrorists, we don't have the same kind of expertise of
22 the Coast Guard which has been handling security issues for
23 a long time has. So we're greatly reliant upon the
24 assessments we get from the experts to tell us how we're
25 doing. And so we're coming up against a little bit of a

1 roadblock here that has to do with the nature of security
2 itself. How much do they want to tell us. But I guess
3 we'll pursue the options you've talked about, in terms of
4 talking with the Governor's assistant on this and look for
5 other opportunities to try and get you an assessment.
6 Because I'm hearing you're frustrated with not knowing and
7 we have a lot of difficulty in ascertaining some of that
8 ourselves.

9 CHAIRPERSON CONNELL: I think we are all
10 frustrated, but I appreciate the need for confidentiality.
11 I mean we don't want information which is not valid to be
12 released and create even more anxiety and discontent. But I
13 do think we've probably run this issue out as far as we can
14 today.

15 I do want to just ask that you follow up
16 immediately with Mr. Vinson. And I'd also suggest that
17 maybe we contact our congressional offices as well. They're
18 all on the coast, because I do know there was a movement
19 forward by the California congressional delegation and this
20 subject initially was raised to play a leadership role. And
21 I know that at least two of those offices had those
22 discussions, so I'm assuming that others did as well.

23 Okay. Thank you. I don't think we need action on
24 that.

25 COMMISSIONER BUSTAMANTE: No.

1 CHAIRPERSON CONNELL: So then we're on Item 71,
2 which is the proposed adoption of an amended environmental
3 justice policy. And tell us what further work has been done
4 in this regard, if you will.

5 EXECUTIVE OFFICER THAYER: Certainly, Madam Chair.

6 At this year's April meeting, the Commission
7 adopted an interim environmental policy. Environmental
8 justice under state law calls for the fair treatment of all
9 people of all races, cultures, incomes, with respect to the
10 development, adoption, implementation, and enforcement of
11 environmental laws, regulations, and policies. The
12 Commission directed staff to obtain public comment on that
13 policy, the interim policy previously adopted, revise it as
14 necessary, and bring it back to the Commission for
15 reconsideration.

16 The proposed policy before you today is the result
17 of staff's efforts. We sent the policy to 51 different
18 citizens' groups from all over the state with an interest in
19 environmental justice and asked for their comments. We
20 placed the policy on the Commission's webpage with an
21 invitation to comment. We also asked other State agencies,
22 particularly the Office of Planning and Research, which has
23 an environmental justice steering committee to make
24 adjustments.

25 We received five public comments. We're

1 recommending refinements to the policy based on those
2 comments and additional review by staff. These changes are
3 not extensive, however, they reflect an effort to make the
4 policy more effective and comprehensive. For example, in
5 Statement 8, we made modifications which provide that
6 pursuant to that policy, when siting facilities that may
7 adversely affect relevant populations, alternatives will be
8 clearly identified that would minimize or eliminate the
9 adverse effects of the project. This information will
10 provide a more complete picture for the Commission's
11 evaluation in it's decision making.

12 Furthermore, two additional statements were added
13 to the list that was in the original draft. Statement 9
14 pledges that the Commission will work with other agencies at
15 all levels to ensure that disproportionate impacts on
16 relevant populations are taken into consideration. And
17 Statement 10 pledges the Commission's support to foster
18 research into the cumulative impacts of pollution and other
19 impacts. We believe all the statements taken together
20 provide a sound foundation for the Commission to use in
21 incorporating environmental justice in its environmental
22 analysis in decision making.

23 I should note that this is a public policy that's
24 in the evolution stage. I expect a lot of change in
25 California and federally, and that there will be additional

1 mechanisms identified that will be useful for the
2 Commission. And so we anticipate continual review of this
3 particular subject and continual improvement.

4 But the next step now is that after adoption,
5 which we're asking the Commission to do today, we will be
6 offering training to the Commission and locating it for
7 staff as well. We'll be working with OPR and other State
8 agencies to develop a training program that fits our needs.
9 And then I'm personally, and I think other staff members are
10 looking for the opportunities as well, looking to
11 participate in the tours given by some of these public
12 interest groups that we contacted of severely impacted
13 communities to learn firsthand and more effectively about
14 environmental justice issues and concerns.

15 We're looking forward to implementing this policy
16 on a day-to-day basis. We recognize that we have a lot to
17 learn. Undoubtedly, the greatest challenges lie ahead as
18 we're faced with tough decisions concerning the environment
19 and human health. We've already made staff-level changes in
20 how we conduct our environmental reviews, pursuant to the
21 California Environmental Quality Act. Now, there must be
22 specific analysis of environmental justice issues in
23 environmental documents that would be brought to the
24 Commission for its consideration.

25 In closing, staff recommends your adoption of the

1 amended environmental justice policy before you today and
2 that we believe this policy will better promote meaningful
3 participation for all people in the public processes,
4 decisions and programs of the Commission. So we ask that
5 you adopt the policy as it is revised and before you today.

6 COMMISSIONER BUSTAMANTE: So moved. So moved.
7 Madam Chair, with the request that the policy also be sent
8 to the ports, as well as to the Coastal Commission, so that
9 they know the kind of actions that we're taking and the
10 minimum standards that we're going to be using to make
11 decisions in the future.

12 CHAIRPERSON CONNELL: Fine. Ms. Porini, do you
13 have any comment on that?

14 ACTING COMMISSIONER PORINI: No. I second the
15 Lieutenant Governor's motion to adopt our new policy and
16 appreciate the speed with which staff has worked to get that
17 before us.

18 CHAIRPERSON CONNELL: Yes. Commendable, thank
19 you. I think that takes care of every item on the regular
20 calendar. Are there any speakers? I believe we have one.
21 Is it Peter?

22 EXECUTIVE OFFICER THAYER: I'm sorry, Madam Chair,
23 we had taken the Del Mar off the consent calendar.

24 CHAIRPERSON CONNELL: Oh, I'm sorry. Yes, let's
25 do that item. I'm sorry.

1 Then we will come to Lester Denevan.

2 EXECUTIVE OFFICER THAYER: I think is Lester
3 Denevan.

4 CHAIRPERSON CONNELL: Lester, I'm sorry. I can't
5 read this here. Lester Denevan.

6 EXECUTIVE OFFICER THAYER: The Del Mar
7 presentation, just by way of introduction, this is a project
8 to breach the berm which now separates a lagoon at Del Mar
9 from the Pacific Ocean. The same matter was brought to the
10 Commission two years ago because of a similar problem. The
11 lagoon becomes stagnant and it is no longer a good habitat
12 for fish and wildlife and presents health issues. And so
13 the City of Del Mar has asked for the approval of the
14 Commission to breach that berm. The staff presentation will
15 be made by Jane Smith.

16 CHAIRPERSON CONNELL: Great. Thank you. And I
17 believe we have some public speakers in regards to this one.
18 Three to be exact.

19 PUBLIC LAND MANAGEMENT SPECIALIST SMITH: Good
20 afternoon, Madam Chair and Members of the Commission. I am
21 Jane Smith, a Public Land Management Specialist with the
22 Land Management Division.

23 Calendar Item 40 concerns an application submitted
24 by the City of Del Mar requesting that the Commission issue
25 a public agency lease to the city to breach and maintain the

1 opening of the San Dieguito Lagoon mouth. The excavated
2 material will be used to replenish the beach.

3 As background, at your meeting of November 27th,
4 2000, the Commission authorized the issuance of a one-year
5 lease to the city to open the lagoon mouth. At that time,
6 the Commission also ratified, confirmed, and approved the
7 Executive Officer's September 15th, 2000, authorization for
8 that project to proceed prior to the November 2000 meeting.
9 The Commission's approval of the prior project on November
10 27th, 2000, was challenged in court by local property
11 owners, but upheld by the trial court judge. The matter is
12 now pending before the Court of Appeal, 4th Appellate
13 District.

14 Recently, the City advised Commission staff in
15 August of this year that the lagoon mouth has been closed
16 since November of 2001. The closure of the mouth has
17 resulted in decreased salinity levels. In addition, warm
18 temperatures during the months of August and September of
19 2002 have caused a dramatic decrease in dissolved oxygen
20 levels. Such levels falling to between zero and two parts
21 per million. These events triggered one of the special
22 conditions set forth in the California Coastal Commission's
23 June 12, 2001, permit under which the city is authorized to
24 breach the lagoon mouth. Specifically, when the dissolved
25 oxygen levels are less than five parts per million.

1 The Coastal Commission's permit requires the city
2 to obtain prior authorization from the State Department of
3 Fish and Game before opening the lagoon, and also requires
4 the city to submit annual monitoring reports, the first of
5 which is due April 1st, 2003. Those reports will analyze
6 the impacts of the openings on public access, recreation,
7 the biological productivity of the lagoon, and any external
8 factors which may have contributed to the need for lagoon
9 mouth openings. The city, the U.S. Fish and Wildlife
10 Service, and the State Department of Fish and Game have
11 concluded that the conditions present in the lagoon pose a
12 potential threat of malaria, encephalitis, and botulism from
13 increased mosquito levels, and pose potential significant
14 impacts to the habitat and associated fish and wildlife
15 within the lagoon and the San Dieguito Lagoon Ecological
16 Reserve.

17 The city advised Commission staff that it was
18 proposing to begin excavation on September 23rd, which
19 breaching expected to occur on September 30th, in order to
20 take maximum advantage of a high-tide event.

21 CHAIRPERSON CONNELL: May I suggest. We have this
22 report in front of us.

23 EXECUTIVE OFFICER THAYER: Yes.

24 CHAIRPERSON CONNELL: So it's not necessary to
25 read the whole report. Is there something outside the

1 report that we need to know?

2 EXECUTIVE OFFICER THAYER: I think the most
3 important matter is the one that Jane was about to get to
4 which is that --

5 CHAIRPERSON CONNELL: Let's focus on that then.

6 EXECUTIVE OFFICER THAYER: -- the Commission has
7 not breached the berm -- excuse me, the city has not yet
8 breached the berm and that the Commission's action will
9 determine whether that is going to be approved or not.

10 CHAIRPERSON CONNELL: Then let us make that the
11 subject of our discussion then.

12 PUBLIC LAND MANAGEMENT SPECIALIST SMITH: Okay.
13 Then I will continue on.

14 Based on the notification from the city, the
15 executive officer issued a letter of nonobjection dated
16 September 19th, 2002, allowing the city to proceed with the
17 project. Subsequent to that letter, the city notified
18 Commission staff that due to a delay in obtaining their
19 permit, the excavation schedule was revised and the project
20 would start on September 26th, with breaching expected on
21 October 4th. A follow-up letter from the executive officer
22 clarified that the breaching of the lagoon mouth would,
23 therefore, not take place until the State Lands Commission
24 had formally acted. The Coastal Commission, the Corps of
25 Engineers, the Regional Water Quality Control Board, and the

1 State Department of Fish and Game have all approved the
2 project.

3 Staff is recommending that the Commission ratify,
4 confirm and approve the executive officer's September 19th,
5 2002, letter and authorize the issuance of a public agency
6 lease to the City of Del Mar for breaching and maintenance
7 of the San Dieguito Lagoon mouth for a term of three years
8 plus, consistent with the Coastal Commission permit.

9 That concludes my presentation.

10 CHAIRPERSON CONNELL: Thank you. We've got three
11 people to speak on this matter.

12 Tim Dillingham. Are you here Tim?

13 MR. DILLINGHAM: Unless the Commission has some
14 questions for the Department of Fish and Game, I'll waive
15 the --

16 CHAIRPERSON CONNELL: Excellent. Dr. Hany Elwany,
17 is that right?

18 DR. EL MONTE: Yes. I'm here and I'm available
19 for any questions.

20 CHAIRPERSON CONNELL: Excellent. And then Tamara
21 Smith, the City Attorney of Del Mar.

22 MS. SMITH: I'm available for questions.

23 CHAIRPERSON CONNELL: Excellent, I love this. I
24 can't tell you how I appreciate you're not extending further
25 comments unless necessary.

1 Any comments of the Commission Members?

2 ACTING COMMISSIONER PORINI: No. I would move
3 approval of staff's recommendation.

4 COMMISSIONER BUSTAMANTE: Second.

5 CHAIRPERSON CONNELL: And I am in agreement as
6 well. Thank you all. Thank you all in the audience for
7 coming.

8 All right. Now we are at that point in the
9 meeting where we are concluding the regular calendar and we
10 will now move to the public comment period.

11 Lester Denevan, it is your chance to come speak to
12 us. And I see you're going to address us again on the
13 Queensway Project. Lester, could you try to keep your
14 comments to about three minutes. We would appreciate it.
15 We have closed door session as well.

16 And can you identify yourself for the record.

17 MR. DENEVAN: Lester Denevan, resident of Long
18 Beach. I'm here to speak about the Queensway Project in
19 Long Beach. I think most of you are familiar with the
20 geographic setting. And I do have a couple of clippings
21 from the Long Beach Telegram concerning the project.

22 CHAIRPERSON CONNELL: Oh, good.

23 MR. DENEVAN: Plus I have a map for your
24 reference, if you need it. So I will pass these out at the
25 outset. And then during my presentation, I'll refer to

1 Calendar Item Number 89, and that was on September 17, 2001.
2 If you go to page 6 on that calendar item, it defines the
3 project as it was approved.

4 The proposed 18 acre phase two development
5 involves the construction of approximately 627,000 square
6 feet of restaurant, entertainment, and retail uses on the 14
7 acres located northerly of Shore Drive, and the four acres
8 along the waterfront. The latest I've learned is that the
9 current project calls for 350,000. Now, that's according to
10 an article in the Long Beach Press Telegram. The project
11 then has been cut in half, and the question is what are the
12 current uses that have been approved and the leases signed.
13 Cost Plus has backed out of the project. The bookstore --

14 CHAIRPERSON CONNELL: Which one are you talking?
15 Are you talking about the selling leases here on page 2,
16 that these people are not real, is that what you are saying?

17 MR. DENEVAN: What page again?

18 CHAIRPERSON CONNELL: I'm sorry, Lester, I'm
19 looking at your --

20 MR. DENEVAN: Oh, the newspaper article.

21 CHAIRPERSON CONNELL: Yes, the newspaper article.
22 They have an impressive list of tenants here. Are you
23 saying they don't exist?

24 MR. DENEVAN: Okay. One third of the project is
25 supposed to be retail.

1 CHAIRPERSON CONNELL: Right.

2 MR. DENEVAN: And we need that information about
3 the leases for the retailing uses, as well as the
4 restaurants.

5 CHAIRPERSON CONNELL: Correct.

6 MR. DENEVAN : I know the uses -- what the
7 agreement was that there would be one-third retail, one-
8 third restaurants, and one-third entertainment.

9 CHAIRPERSON CONNELL: That's right.

10 MR. DENEVAN: And so the problem is that they cut
11 the project in half and it's not certain what some of these
12 uses will be. Now, one problem is that we haven't in Long
13 Beach been able to get access to those leases. I think
14 these are public documents.

15 CHAIRPERSON CONNELL: Well, I think that's a fair
16 question. I mean we did negotiate, as you recall, Lester,
17 rather directly with them about the fact that we need to
18 have a balanced project. And I can remember this discussion
19 of what we felt was entertainment, versus what we thought
20 was retail, versus what we thought was restaurants and other
21 activities.

22 Now, if they are overloading the project with
23 restaurants, why this of course is a debasement of our
24 agreement with them and we need to articulate our concern,
25 Mr. Thayer, about that. Because this was a hotly contested

1 item before we voted as a Commission. I remember spending a
2 great deal of time, and Lester undoubtedly does as well, in
3 articulating our concerns.

4 If they have reduced this project by some hundred
5 thousand square feet, they obviously have to have the same
6 percentage on a 250 that they did on the 350. So if they
7 have oversupported retail leases, they're going to have to
8 reduce some of the retail leases to accommodate their
9 requirement to make the other definitions.

10 COMMISSIONER BUSTAMANTE: Let me ask a quick
11 question first, Madam Chair. My understanding is that the
12 only involvement I think that we had was a small piece of
13 property --

14 CHAIRPERSON CONNELL: Right.

15 EXECUTIVE OFFICER THAYER: That's correct.

16 COMMISSIONER BUSTAMANTE: And so are we -- I mean
17 the Chair is right about what we had talked about, but to
18 what extent do we have authority to determine or to go into
19 a project that may be reduced or increased? I mean do we
20 have the authority after we swapped out the property
21 already, we've exchanged the property from that to another
22 piece, that was in the best interest of the trust lands, do
23 we still have authority to even get engaged in this
24 particular project? And if we do, to what degree?

25 EXECUTIVE OFFICER THAYER: Our approach to this

1 has been, of course, to carry out the Commission's
2 direction. There's two considerations here. The overall
3 project that we're looking at here, which is the last, or
4 one of several phases for Queensway. It's about 18 acres.
5 There was about four or four and a half acres that was
6 proposed for uses which the Commission held were not public
7 trust uses, the Cost Plus, that kind of thing. And so we
8 did a swap. And so the Commission was especially concerned,
9 and I think the Controller herself said that she didn't want
10 to see a 24-hour bar here or a --

11 CHAIRPERSON CONNELL: Right. A disco.

12 EXECUTIVE OFFICER THAYER: That sort of thing.

13 CHAIRPERSON CONNELL: Night clubs.

14 EXECUTIVE OFFICER THAYER: And so we are
15 monitoring the uses on the lands that were taken out of the
16 trust to meet the direction from the Commission to make sure
17 that uses weren't swapped.

18 On the other remaining portion of the project, it
19 was the Commission's belief and staff as well that the uses
20 like the restaurants and that kind of thing are consistent
21 with the public trust and are commonly used throughout
22 California, those are uses that show up. And so we are
23 monitoring those facilities to ensure that they continue as
24 public trust uses. So to the extent that public trust uses
25 are cut back on the lands that continue to be trust uses, we

1 believe that the Commission's direction was more focused on
2 the lands from which the trusts were going to be removed.
3 But you didn't want to be party to removing a trust
4 designation and having some sort of outlandish land use go
5 in there.

6 So the other point I'd like to make is that the
7 uses or the square footage has always been something of a
8 range, and our greatest concern would be if, in fact,
9 property, particularly on the areas from which the trust was
10 lifted, the use was switched to something else. But even if
11 it were another trust use within those four acres from which
12 the trust was lifted, that that was not permissible, that
13 the Commission wasn't approving something where the
14 switching could occur. But to the extent that they wanted
15 to remove, particularly there were some undefined uses on
16 the trust lands, without changing it to nontrust purposes.
17 That seemed consistent with the Commission's approval.

18 And so our view on all this is we need to monitor
19 the city's leasing policies right up until the time this
20 project is open. And so at any particular moment, it
21 appears to us, as I think it does to Mr. Denevan, that the
22 city has been most successful in leasing up areas that have
23 been made available for entertainment and for restaurant
24 purposes. They have not exceeded the amount that was
25 approved by the Commission in any of those. They have not

1 yet entered into leases for some of the areas that are more
2 commercial and retail in nature. That doesn't mean they're
3 in violation of their lease yet. It means that they have
4 not entered into those subleases yet.

5 CHAIRPERSON CONNELL: But where are we on the
6 balance here. I mean if we were to do a snapshot today,
7 Paul, are we achieving the balance that we had hoped as a
8 Commission?

9 EXECUTIVE OFFICER THAYER: When we reviewed this,
10 we reviewed -- we were concerned that the uses that were
11 going to go forward were the ones described. We didn't
12 necessarily look at this one-third, one-third, one-third.
13 That was not something that was part of their presentation.
14 Instead we wanted to make sure either, A, the uses were
15 public trust, or, B, that they were the ones described, and
16 they weren't going to sneak in ones that the Commission
17 hadn't had a chance to review.

18 Now, there they were coming to the Commission to
19 make one presentation about what the project was going to be
20 like and the proposed and different uses. So that's the
21 approach that we've taken, and in our reviews right along
22 where they have said they want to have a restaurant, they
23 put a restaurant. There have been some places outside of
24 the four acres where they do not have as much square footage
25 as in some of their original projections. But you look at

1 the permits that have regularly been granted, not only by
2 us, but by the Coastal Commission, and they all anticipate
3 that there would be a range.

4 The Commission, the Controller may recall, was
5 especially concerned that there would be phasing here and
6 that the project would be built over a long period of time.
7 We do not believe that that's what's happening here and
8 something we've been reviewing extensively for. In other
9 words, the city isn't saying, oh, we won't build this
10 hundred thousand acres now, or hundred thousand square feet,
11 we'll build it five or ten years from now.

12 SENIOR STAFF COUNSEL FOSSUM: This is Curtis
13 Fossum, Senior Staff Counsel. The agreement also provides
14 that if the city does fail to either put the use that they
15 have identified to the Commission that they were putting on
16 for a particular parcel, or if they phase in or attempt to
17 phase development of the parcel, that parcel would revert
18 back to the public trust and they would not be able to put
19 any use on it.

20 CHAIRPERSON CONNELL: But I don't hear us saying
21 that they are phasing it.

22 SENIOR STAFF COUNSEL FOSSUM: That's correct. But
23 we try to put the agreement airtight so that if any of these
24 contingencies came up in the future that there were concerns
25 expressed about, that the agreement would provide for that

1 and the state would be protected.

2 CHAIRPERSON CONNELL: Lester, did we answer your
3 questions today.

4 MR. DENEVAN: Can I have my other two minutes and
5 I'll --

6 CHAIRPERSON CONNELL: Yes. I thought you had more
7 than your three minutes, but I will be a generous person and
8 give you two more, Lester.

9 MR. DENEVAN: One of the primary issues was that
10 this project would enhance access to beaches and the
11 shoreline of Long Beach. If we don't know what the uses are
12 going to be and we don't see the entire plan, you cannot
13 make the argument that this is going to increase access and
14 use of the shoreline.

15 The second point is that the city made certain
16 representations to the Lands Commission which they have not
17 followed through on and we're dealing with a project that
18 has been scaled back. They've dropped some of their
19 tenants. Evidently you have not been informed of the
20 changes in the plan.

21 And number three is the scale of the project. The
22 Lands Commission staff makes the point that well, it's only
23 three acres, it's only four acres, but really you should
24 look at the entire plan and how far it's put together. And
25 there are other parcels in the past that were taken for

1 commercial uses and you have to look at the totality of the
2 project. You don't have the totality of the project before
3 you. I don't even know what's going on down there. I
4 cannot get copies of those leases.

5 Finally, just one last point, about well, we'll
6 wait and see it may be a year or two and they'll complete
7 construction, they'll build the project, and then Lands
8 Commission staff will look into it and say, well, it's okay
9 or it's not okay. Twenty five years ago when the City of
10 Long Beach spent 60 million dollars converting that ocean
11 liner, the Lands Commission sat on its hands for two years
12 and didn't do anything until the thing was built. Then it
13 was too late to have any impact on the uses. So I certainly
14 request that the Lands Commission not put this off to some
15 future date, but to address the matter today or as soon as
16 you can get the information on the leases from the City of
17 Long Beach.

18 CHAIRPERSON CONNELL: Paul, did you want to
19 respond?

20 EXECUTIVE OFFICER THAYER: Certainly. I think our
21 response would be that we're continuing to monitor this and
22 that it would be foolish for us to declare the city either
23 in compliance or not in compliance at this point because
24 it's an ongoing project and they can make changes down the
25 road. But our view is our responsibility as staff to the

1 Commission is we have to continually monitor this as it goes
2 forward.

3 CHAIRPERSON CONNELL: I want to put this on our
4 next meeting, Mr. Thayer.

5 EXECUTIVE OFFICER THAYER: So you would like a
6 staff report then?

7 CHAIRPERSON CONNELL: Yes.

8 EXECUTIVE OFFICER THAYER: Certainly.

9 CHAIRPERSON CONNELL: Then we can keep on top of
10 it. That would be good. Are there any other remarks here.

11 Thank you, Lester, for bringing this to our
12 attention. We will try to stay on top of it.

13 I think that concludes our open session today and
14 I'll ask that everyone please leave the room that's not to
15 join us for the closed session. And we will now immediately
16 convene into closed session.

17 (Thereupon the meeting of the State
18 Lands Commission was concluded at 2:55
19 p.m. on October 1, 2002.)

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CERTIFICATE OF SHORTHAND REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of October 2002.



Michael J. Mac Iver
Shorthand Reporter