

MEETING  
STATE OF CALIFORNIA  
STATE LANDS COMMISSION

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

MONDAY, OCTOBER 20, 2003  
2:00 P.M.

JAMES F. PETERS, CSR, RPR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 10063

ORIGINAL

APPEARANCES

BOARD MEMBERS

Mr. Cruz Bustamante, Chairperson, also represented by  
Ms. Lorena Gonzalez

Mr. Steve Westly, also represented by  
Ms. Cindy Aronberg

Mr. Steve Peace, represented by  
Ms. Shelley Mateo

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Jack Rump, Chief Counsel

Ms. Lorna Burks, Public Land Management Specialist

Mr. Curtis Fossum, Senior Staff Counsel

Mr. Dwight Sanders, Chief, Environmental Planning  
Management Division

ALSO PRESENT

Mr. Mike Aguirre, Self

Mr. Skip Baldwin, Wilmington resident

Mr. John Bowman, Jeffers, Mangels, Butler & Marmaro

Ms. Mary Brown, Rhodia Inc.

Mr. David Cornman, SFPPLP

Mr. Howard Coleman, Bel Air Bay Club

Mr. Gail Ruderman Feuer, NRDC

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Richard Gunha, Clark Trucking Service, Inc.  
Ms. Janet Gunter, San Pedro Homeowers Coalition  
Mr. Alan Hager, Deputy Attorney General  
Mr. Ricardo Hernandez, Central Contra Costa Sanitary District  
Mr. Robert Hertzfeld, San Francisco Cruise Terminal, LLC  
Mr. Nephi Honcack, IBEW Local 569  
Mr. Steve Hoye, Access For All  
Mr. Albert Huang, Environmental Health Coalition  
Ms. Laura Hunter, Environmental Health Coalition  
Ms. Lupita Jimenez, Green Part of San Diego  
Mr. Bret Lobner, General Counsel, San Diego Regional Airport Authority  
Mr. Jim Peugh, San Diego Audubon Society  
Mr. Bruce Reznik, San Diego Bay Keeper  
Ms. Allison Rolfe, San Diego Bay Keeper  
Mr. Andrew Marderich, San Pedro Peninsula Homeowner  
Mr. Martin Murphy, self  
Mr. George Smith, Bel Air Bay Club  
Mr. Allen Shur, IBEW Local 569  
Mr. Jess E. Van Deventer, Chairperson, Port of San Diego

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1 properties.

2 The first item of business will be the adoption  
3 of the minutes from the Commission's last meeting.

4 May I have a motion to approve the minutes?

5 COMMISSIONER WESTLY: So moved.

6 ACTING COMMISSIONER MATEO: Second.

7 CHAIRPERSON BUSTAMANTE: Let the record show it's  
8 a unanimous vote, they have been unanimously adopted.

9 The next order of business is the Executive  
10 Officer's Report.

11 Mr. Thayer, can we have your report.

12 EXECUTIVE OFFICER THAYER: Good afternoon, Mr.  
13 Chair and members of the Commission.

14 I'd like to cover just two items. First, when we  
15 were last here in San Diego, there were a number of  
16 citizen groups that made presentations during the public  
17 comment period. And I wanted to briefly cover how we  
18 responded in the interim to the issues that they've  
19 discussed.

20 I think there are three main issues that came up.  
21 One had to do with the South Bay Power Plant. There were  
22 a number of concerns about when that plant would be  
23 replaced, how long it would stay on the waterfront. Some  
24 of the Commissioners of course had similar questions about  
25 that issue. We prepared a staff report and worked closely

1 with Duke and the port in terms of determining the length  
2 of time that it would take to build a new power plant and  
3 also to determine the relationship between Duke and the  
4 port and finally the jurisdiction of the Commission in  
5 this matter. And I think our response is contained within  
6 the staff report. It's a public document for this  
7 Commission meeting and will be discussed later.

8           The second issue that they raised the Chula Vista  
9 Bay Front Development, their proposals by a developer  
10 there to put in a major new development along the  
11 waterfront. There are several citizens groups that are  
12 interested in seeing that some sort of swap could be  
13 conducted with the port so that the developer would  
14 develop lands that perhaps would be less environmentally  
15 significant and some of that waterfront could be kept as  
16 wetlands. We've been working with those citizens groups  
17 on the legal issues involved; and, in fact, we'll be back  
18 next month to be part of the workshop that they're  
19 conducting.

20           So we're continuing to provide that service, to  
21 provide advice on what technically is necessary to come up  
22 with a swap that can pass muster.

23           We should point out that ultimately of course  
24 that what we're talking about here are not state tidelands  
25 anymore but granted lands to the port, and that any

1 proposal for a swap would have to come from them, but we  
2 would then have the authority to approve or disapprove.  
3 But, again, the citizens groups were interested in finding  
4 out what the parameters of that swap would be and so we've  
5 been -- trying to be helpful to them in the matter.

6 CHAIRPERSON BUSTAMANTE: Well, is this the --  
7 parts of the L.A. Port?

8 No, this is down here in San Diego where there's  
9 some proposals for development of Chula Vista, and the  
10 port has --

11 CHAIRPERSON BUSTAMANTE: Okay. Thank you.

12 EXECUTIVE OFFICER THAYER: And then, finally,  
13 there was some concern expressed about sediment  
14 remediation at the Campbell Shipyard. The port has  
15 development plans for the shipyard. And there have been  
16 studies to indicate that there are sediment problems  
17 there. They're going to need to comply with the Regional  
18 Water Quality Control Board mandates on that. And  
19 ultimately any dredging that would occur there would  
20 require approval from the Commission.

21 So we think that that process is still working  
22 its way forward through the Regional Water Quality Control  
23 Board and their review and ultimately will come before the  
24 Commission as a separate matter as well. And we'll  
25 continue to work with the groups.

1           Any questions on this item?

2           Then the last thing I wanted to mention is that  
3 at our last meeting the Commission adopted a resolution  
4 opposing the inclusion of the offshore oil and gas  
5 inventory. The Senate version in the U.S. Congress of  
6 that energy bill provided for this inventory, which has  
7 been widely perceived as sort of a foot in the door, a  
8 first step towards potential renewed offshore oil and gas  
9 leasing and then development off of a number of coasts in  
10 the United States. But particularly of concern to us of  
11 course was off of California.

12           At this point, there isn't a final resolution of  
13 that issue. Over the last couple of weeks the conference  
14 committees of both houses of Congress have been meeting on  
15 this. And there's been a lot of public debate about that  
16 issue. A resolution did pass -- a motion did pass in the  
17 House directing that its representatives on the conference  
18 committee oppose inclusion of that provision. So there's  
19 some hope that that will be the final result.

20           Copies of course of the resolution that you all  
21 adopted were sent to all of the congressional delegation  
22 in California, the President, and then the important --  
23 committee chair and congressional leaders. And we'll let  
24 you know what the final disposition of that is.

25           CHAIRPERSON BUSTAMANTE: Yeah, you've already

1 been informed by the Commission of the strong position  
2 they have on offshore oil drilling. So keeping us  
3 constantly informed on this issue so that we don't get any  
4 surprises would be --

5 EXECUTIVE OFFICER THAYER: Absolutely. We'll  
6 make that we do that.

7 CHAIRPERSON BUSTAMANTE: Thank you.

8 EXECUTIVE OFFICER THAYER: That concludes --

9 CHAIRPERSON BUSTAMANTE: If there's something  
10 else that we should be doing, whether it's as a commission  
11 or individuals, to reinforce that, even to the point of  
12 showing up at hearings and to testify in those kinds of  
13 activities, you should let us know as well.

14 EXECUTIVE OFFICER THAYER: I will do that.  
15 And that concludes the Executive Officer's  
16 report.

17 CHAIRPERSON BUSTAMANTE: Okay. We're at the  
18 consent calendar.

19 Does anybody have any issues with the consent --  
20 either staff or any of the other members of the  
21 commission?

22 EXECUTIVE OFFICER THAYER: There are several  
23 items that the staff will be removing.

24 C 11 is one that we haven't finished work on.

25 C 50 involves some artifacts that have been

1 recovered on state lands in the Owens Lake. And staff  
2 would like to take additional time to ensure that the  
3 native American groups that might be concerned would be  
4 consulted. So we'd like to take that one off.

5 CHAIRPERSON BUSTAMANTE: That's C 11 and C 50?

6 EXECUTIVE OFFICER THAYER: Yes.

7 C 4, we've received a couple of letters of  
8 opposition. This is a gas pipeline proposed by Santa Fe  
9 and Kinder Morgan. And we'd like to hear that on the  
10 regular calendar today.

11 CHAIRPERSON BUSTAMANTE: Okay.

12 EXECUTIVE OFFICER THAYER: And then, finally, we  
13 would note -- well, two additional items at the request of  
14 the Controller's office. There are two items that deal  
15 with offers to dedicate at Malibu, as I understand, you  
16 have some concerns about. And because of some legal  
17 technical points, we've consulted with our staff who have  
18 looked at the offers to dedicate. And there will be no  
19 problem with putting them over. They won't expire, so  
20 they won't be a threat to the public access that they  
21 would provide by hearing it at the next meeting.

22 CHAIRPERSON BUSTAMANTE: And those numbers are?

23 EXECUTIVE OFFICER THAYER: Nineteen and  
24 twenty-eight, I believe.

25 CHAIRPERSON BUSTAMANTE: Nineteen and --

1 EXECUTIVE OFFICER THAYER: -- 28.

2 CHAIRPERSON BUSTAMANTE: -- 28.

3 COMMISSIONER WESTLY: Right.

4 EXECUTIVE OFFICER THAYER: And then one other  
5 item would be RTO, which is on regular calendar, Item 63,  
6 we've put that in the regular calendar because at the time  
7 we were forming the agenda we had some opposition on the  
8 record. We've since learned that those folks who had  
9 opposed that item have dropped their opposition. And so  
10 if there's no objections from the Commission, we would  
11 move that to the consent calendar.

12 CHAIRPERSON BUSTAMANTE: Sixty-three from to  
13 consent -- sixty-three from regular so consent?

14 EXECUTIVE OFFICER THAYER: Regular to consent.  
15 And then --

16 CHAIRPERSON BUSTAMANTE: Any objection from --

17 COMMISSIONER WESTLY: No.

18 CHAIRPERSON BUSTAMANTE: Any objections on any of  
19 the consent items to be removed from anyone?

20 I also wanted to talk about Item 34, paul. Is  
21 there any problem with moving C 34 to the next meeting?  
22 Will it create any problems?

23 EXECUTIVE OFFICER THAYER: Let me just ask --

24 CHAIRPERSON BUSTAMANTE: It just seems a little  
25 odd that we're in San Diego and making a decision about

1 something that's taking place in San Francisco, that I'm  
2 sure people there would like to be able to talk about.

3 EXECUTIVE OFFICER THAYER: I haven't had a chance  
4 to talk with the applicant on that yet. But I believe  
5 there are representatives here who could state informally  
6 and quickly whether that presents a problem.

7 CHAIRPERSON BUSTAMANTE: Is there a  
8 representative --

9 EXECUTIVE OFFICER THAYER: -- from the Port of  
10 San Francisco?

11 CHAIRPERSON BUSTAMANTE: State your name.

12 MR. RHETT: Byron Rhett, Planning Director for  
13 the Port of San Francisco.

14 Yes, we are very close to closing on the lease  
15 for this first phase of development, the 140 or so  
16 condominiums. We're hoping to complete the closing the  
17 end of this year and be able to start construction on the  
18 project early next year. So we would hope to secure your  
19 approval today. And delay to another meeting would  
20 seriously affect our schedule.

21 CHAIRPERSON BUSTAMANTE: When would be the next  
22 meeting that we would have?

23 EXECUTIVE OFFICER THAYER: We're presently  
24 schedules to have one December 9th. And we were looking  
25 to potentially do that in San Francisco.

1 CHAIRPERSON BUSTAMANTE: It seems to make sense  
2 to move it to San Francisco in December.

3 MR. HERTZFELD: Excuse me. I'm the proponent  
4 working on the project.

5 My name is Robert Hertzfeld from the San  
6 Francisco Cruise Terminal LLC.

7 Our financing is all lined up. If we move it to  
8 December, we have to take approximately four months before  
9 we could get a clear title action. That would  
10 significantly delay the project and put the project at  
11 risk.

12 CHAIRPERSON BUSTAMANTE: How would it  
13 significantly delay?

14 MR. HERTZFELD: Because you need to -- the  
15 Governor has to sign the approval. Plus you have to wait  
16 approximately four months for an action for judicial  
17 validation in order to clear title to it. So we wouldn't  
18 be able to start the project until basically April. And  
19 the financial deal would be placed in jeopardy.

20 CHAIRPERSON BUSTAMANTE: This is the half acre?

21 EXECUTIVE OFFICER THAYER: Yes.

22 Another possibility of course is where there have  
23 been business exigencies that require us to act sooner  
24 than our next regular scheduled meeting, we would  
25 occasionally schedule meetings in the interim as well.

1 MR. HERTZFELD: Supervisors of the City of San  
2 Francisco. They passed legislation approving this with  
3 the knowledge that it would be on their calendar today.

4 CHAIRPERSON BUSTAMANTE: Well, it's a major  
5 project. And I know that the \$9 million that we need for  
6 the proposal is important for the other piece for the  
7 port.

8 I guess the folks in San Francisco -- I hope  
9 they'll understand.

10 MR. HERTZFELD: Thank you.

11 CHAIRPERSON BUSTAMANTE: We'll go ahead and  
12 withdraw my action to take off consent.

13 MR. HERTZFELD: Thank you.

14 CHAIRPERSON BUSTAMANTE: Anything else?

15 EXECUTIVE OFFICER THAYER: We also have a speaker  
16 slip here that says Mr. Bowman would like to speak on all  
17 of the offers to dedicate, Items C 18 through C 30. So --

18 CHAIRPERSON BUSTAMANTE: Even those that have  
19 been pulled?

20 EXECUTIVE OFFICER THAYER: Those would include  
21 those two. But I'm not sure if -- you might ask him  
22 whether his concerns are addressed by removing those two  
23 items.

24 CHAIRPERSON BUSTAMANTE: How about if we ask him  
25 when they come up?

1 EXECUTIVE OFFICER THAYER: These are consent.

2 CHAIRPERSON BUSTAMANTE: Well, do you want to  
3 just speak generally on all of the consent items?

4 MR. BOWMAN: If I may.

5 CHAIRPERSON BUSTAMANTE: Yeah, go ahead.

6 MR. BOWMAN: I'll be very brief.

7 Good afternoon, Mr. Chairperson and the  
8 Commission. My name is John Bowman with the law firm of  
9 Jeffers, Mangels, Butler & Marmaro.

10 I'm speaking today on behalf of our clients, Mr.  
11 Blair Frank, who is the owner of the property identified  
12 in Agenda Item C 19, and also Mr. and Mrs. Greg Nathansen,  
13 who are the owners of property identified in Agenda Item C  
14 28.

15 We very much appreciate the fact that those two  
16 items will be continued. I would simply ask that -- very  
17 respectfully, that this Commission consider, number 1,  
18 continuing that item for a period of 60 days rather than  
19 30. We have literally just been retained by these  
20 individuals. They've asked for our advice, opinions, and  
21 consultation on this matter, which we have not had a  
22 chance to --

23 CHAIRPERSON BUSTAMANTE: Well, the next meeting's  
24 going to be December. So --

25 MR. BOWMAN: Oh, the meeting's in December.

1           Okay. So it's 60 days continue -- I'm sorry.

2           Okay. Thank you.

3           The second item I would ask that you consider is  
4 that all of these items, basically items 18 through 30, be  
5 put over for the same period of time. Even though we  
6 represent the owners in only two of these items, we have  
7 not had a chance to look at how some of the other items  
8 may relate to the offers to dedicate as they affect our  
9 clients' properties specifically whether they're adjoining  
10 nearby. It could possibly have some bearing on the legal  
11 issues. So we would ask that all of those items be put  
12 over. And, again, I think in each case we're looking at  
13 offers to dedicate that might expire for many years, so we  
14 don't believe there would be any prejudice to putting all  
15 I think it's 13 items over.

16           CHAIRPERSON BUSTAMANTE: Yeah, and I would be  
17 opposed to that, that I believe would be -- other members  
18 of the Commission, is there any support for this proposal  
19 all of those items?

20           COMMISSIONER WESTLY: In deference to the  
21 gentleman from the public that just spoke, we're strongly  
22 supportive of holding over items 19 and 28 we discussed,  
23 not all of the items.

24           CHAIRPERSON BUSTAMANTE: Doesn't look like you  
25 have any votes here, sir. So we'll go ahead and move

1 those two items in abeyance until the next meeting. And  
2 the others will remain on consent.

3 EXECUTIVE OFFICER THAYER: Mr. Chair, there is  
4 one last individual who has put in a request to speak only  
5 if items were taken off consent from the offers to  
6 dedicate. And that's a Mr. Hoye. I don't know whether he  
7 still needs speak since --

8 MR. HOYE: No, I'm fine.

9 CHAIRPERSON BUSTAMANTE: No?

10 Okay.

11 EXECUTIVE OFFICER THAYER: Sorry for the length  
12 on that. But that takes care of all the housekeeping on  
13 the consent.

14 CHAIRPERSON BUSTAMANTE: Okay. So we have a  
15 consent calendar?

16 EXECUTIVE OFFICER THAYER: Yes, sir.

17 CHAIRPERSON BUSTAMANTE: Is there a motion?

18 COMMISSIONER WESTLY: So move.

19 ACTING COMMISSIONER MATEO: Second.

20 CHAIRPERSON BUSTAMANTE: Let the record show that  
21 there's a unanimous vote on the consent calendar.

22 The first item of business.

23 And does staff have any particular order that  
24 they would prefer at this point? Because we do have one  
25 item that was taken off of consent on to regular, which is

1 C 4.

2 Do you want to do that at the end? Is that --

3 EXECUTIVE OFFICER THAYER: We have -- I  
4 appreciate the Chair bringing that up. We have a couple  
5 staff people who need to be involved in that who also are  
6 required to be in Bakersfield tonight on staff business.  
7 And so if we could take that up first, that would be  
8 great.

9  
10 CHAIRPERSON BUSTAMANTE: Well, why don't we take  
11 it up after 61 then, which is the San Diego Unified Port  
12 District, Item Number 61. Then we'll take it up after  
13 that item. C 4 will follow 61.

14 Please, No. 61.

15 Mr. Thayer.

16 EXECUTIVE OFFICER THAYER: Item 61 is a review of  
17 the financial status of the Port District here in San  
18 Diego. This item was put on the calendar at the request  
19 of the representative from the Department of Finance.  
20 Staff has prepared the report. It's an informational item  
21 only.

22 I would note that this item has engendered a lot  
23 of interest because about ten days ago we'd gotten a  
24 request here at the Commission from the airport to review  
25 the possibility of transferring some parcels from the port

1 to the airport. And there has been some suggestion that  
2 this item may be close enough in subject matter to that  
3 request, that it all has to do with finances, that someone  
4 suggested it's being put over.

5 If the commission wants to go forward, I would  
6 have Dave Mercier from our staff make the presentation.

7 CHAIRPERSON BUSTAMANTE: Now, there's been  
8 issues -- as you seem to indicate, that there are major  
9 financial issues and land transfer issues?

10 EXECUTIVE OFFICER THAYER: Yes.

11 CHAIRPERSON BUSTAMANTE: So --

12 EXECUTIVE OFFICER THAYER: The --

13 CHAIRPERSON BUSTAMANTE: Are you recommending we  
14 take this item up for not?

15 EXECUTIVE OFFICER THAYER: I think it's at the  
16 discretion of the Commission. But there are certainly --  
17 there are financial implications to the request from the  
18 port. And it could bear on the ultimate conclusions of  
19 this report as to whether or not --

20 CHAIRPERSON BUSTAMANTE: And so why wouldn't we  
21 just postpone it till the next meeting?

22 EXECUTIVE OFFICER THAYER: I think that makes a  
23 lot of sense.

24 COMMISSIONER WESTLY: I'm strongly supportive of  
25 that. This is a very complex issue and something we

1 certainly need some discussion on.

2 CHAIRPERSON BUSTAMANTE: Again, it looks like the  
3 impression of the Commission is that to postpone it until  
4 the December meeting. Will that be enough time or are you  
5 going to need time -- more time than that?

6 EXECUTIVE OFFICER THAYER: We would have as a  
7 goal to return on December 9th. But because of the  
8 complexity, I'd rather just say we'll bring it back as  
9 soon as we can. And we'll probably be in conversation  
10 with the Commissioners' offices with some of the  
11 information that we've developed on this.

12 CHAIRPERSON BUSTAMANTE: Is there representatives  
13 of both the airport and the port authorities here? Are  
14 there representatives?

15 Could you both come up just for a moment.

16 Could you guys like figure it out.

17 (Laughter.)

18 CHAIRPERSON BUSTAMANTE: I mean I know that there  
19 are issues here. And I know there's a long history here.  
20 And even though I'm not from San Diego, I know that there  
21 is a lot of history here.

22 Is there a way that you guys can sit down and  
23 figure out a consensus? Because what you're going to get  
24 from us is a political answer. And if you want a  
25 practical one, you ought to come here with --

1 MR. HOLLINGSWORTH: Lieutenant Governor, I'm  
2 Bruce Hollingsworth. I'm the President and CEO of the  
3 port.

4 We do have a meeting between members of the  
5 Airport Authority Board and the Port Board -- scheduled to  
6 have a meeting on Thursday on this issue. And it is our  
7 hope as well that this is something that can be worked out  
8 at a local level. And I think the first part of that is  
9 to sit down, understand each other's positions and work  
10 towards a solution. So I would hope so.

11 And I'm not sure -- counsel, you might want to --

12 MR. LOBNER: Yes, I'm Bret Lobner, General  
13 Counsel for the Airport Authority. And we're looking  
14 forward to the discussion on Thursday regarding all of  
15 these issues.

16 CHAIRPERSON BUSTAMANTE: Does that mean, yes, you  
17 can come up with something?

18 (Laughter.)

19 MR. LOBNER: Most definitely.

20 CHAIRPERSON BUSTAMANTE: Excellent.

21 So we'll move that one until the next meeting in  
22 December then.

23 EXECUTIVE OFFICER THAYER: December or whenever  
24 we have enough information. If they're making progress,  
25 for example, we'll hear it when we need to hear it.

1 CHAIRPERSON BUSTAMANTE: Okay. So then you will  
2 communicate with Mr. Thayer and the staff, and we'll  
3 figure out if that's enough time. We really would like to  
4 resolve this thing as quickly as possible. So if you  
5 could have it done by the December meeting --

6 MR. HOLLINGSWORTH: We'll move it forward as fast  
7 as possible.

8 CHAIRPERSON BUSTAMANTE: Thank you, gentlemen. I  
9 appreciate it.

10 MR. LOBNER: Thank you.

11 CHAIRPERSON BUSTAMANTE: Okay. C 4 so we can get  
12 your folks out of here.

13 EXECUTIVE OFFICER THAYER: Thank you.

14 This Item will be presented by Lorna Burks from  
15 the staff.

16 MS. BURKS: Good afternoon, Commissioners.

17 My name Lorna Burks and I'm a Public Land Manager  
18 Specialist with the State Land -- with the Land Management  
19 Division. And I will be presenting background information  
20 regarding the proposed item before you today.

21 The applicant for the project is SFPPLP, a  
22 Delaware limited partnership. SFPPLP is owned by General  
23 Partner Kinder Morgan Energy Partners, LP, and by Special  
24 Limited Partner Santa Fe Pacific Pipeline, Inc.

25 The proposed project involves construction and

1 operation of a new 20-inch petroleum products pipeline  
2 extending from the existing SFPP Concord station in Contra  
3 Costa County to the existing SFPP Sacramento station in  
4 the City of West Sacramento in Yolo County, and  
5 maintenance of an existing 14-inch petroleum pipeline  
6 project known as Section Line 25, which is under the  
7 Commission's Master Lease PRC 5439.

8           The proposed new 20-inch pipeline is to meet  
9 projected demands for petroleum products in the  
10 Sacramento, Roseville, Chico, and Reno areas by replacing  
11 most of SFPP's existing 36-year-old 14-inch pipeline  
12 between Concord and Sacramento.

13           The new pipeline will carry gasoline, diesel  
14 fuel, and jet fuel. The total length of the new 20-inch  
15 pipeline is approximately 70 miles.

16           The proposed new 20-inch pipeline will cross  
17 state-owned land at Walnut, Grayson, and Pacheco creeks  
18 and Cordelia Slough and Contra Costa and Solano counties.

19           Approximately 5,500 feet of the existing 14-inch  
20 pipeline would continue to be used for the crossing of the  
21 Carquinez Strait until such time that replacement with a  
22 new 20-inch pipe using a single horizontal directional  
23 drill is feasible.

24           In addition to the proposed new 20-inch pipeline,  
25 a new 12-inch diameter pipeline branch, which is

1 approximately 8/10 of a mile long, to service Wickland Oil  
2 Company will be constructed to supply fuel to the  
3 Sacramento International Airport. This pipeline would  
4 connect to Wickland's existing 12-inch pipeline via its  
5 metering station at a location north of West Capital  
6 Avenue in West Sacramento.

7 After construction of the new 20-inch pipeline is  
8 complete, with the exception of the portion across the  
9 Carquinez Strait, the existing 14-inch pipeline will be  
10 taken out of service. This procedure is estimated to be  
11 complete within 60 days after construction of the new  
12 20-inch pipeline.

13 SFPP would maintain the pipeline in  
14 out-of-service status in accordance with the California  
15 State Fire Marshal requirements until a decision regarding  
16 final use of the pipeline is made. The existing 14-inch  
17 pipeline could possibly be used for other purposes such as  
18 waste water conveyance, a conduit for underground  
19 electrical utilities, cable television, fiber optic lines,  
20 telephone or data circuits, and other suitable service,  
21 ones appropriate to CEQA document, has been prepared and  
22 adopted.

23 To conclude, there are three actions that staff  
24 is asking the Commission to take today. First is the  
25 certification the Environmental Impact Report that has

1 been prepared for the pipeline project.

2           The second action involves the amendment of  
3 Master Lease No. PRC 5439 to remove the existing 14-inch  
4 line from the lease and incorporate it into the new  
5 proposed lease.

6           And the third action is to authorize issuance to  
7 SFPP of a new lease for proposed construction of a new  
8 20-inch petroleum pipeline.

9           Under CEQA, the California State Lands Commission  
10 as the lead agency prepared an Environmental Impact Report  
11 and a Mitigation Monitoring Program for the project. Mr.  
12 Dwight Sanders, Chief of the Environmental Planning  
13 Management Division will discuss the environmental  
14 process.

15           Thank you.

16           ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF  
17 SANDERS: Good afternoon, Commissioners.

18           And very briefly because I know this afternoon is  
19 full. But I wanted to apprise you that the environmental  
20 process started in February of last year with a public  
21 scoping meeting; then in June of this year, notification  
22 of the draft Environmental Impact Report. And proposed  
23 comment meeting was mailed to 1393 entities, which  
24 included landowners along the proposed pipeline route,  
25 within 300 feet of that pipeline route. With a long

1 linear project we have a goodly number of landowners and  
2 entities involved.

3 That notice was also sent to environmental  
4 justice groups and government agencies and published in  
5 local newspapers.

6 We had a public hearing in Fairfield in July of  
7 this year. The draft Environmental Impact Report was  
8 circulated from June 12th of this year to July 28th of  
9 this year, a full 45 day-comment period.

10 And on October 3rd we mailed notification of the  
11 availability of that final environmental document again to  
12 approximately 1322 entities, which included, again,  
13 landowners and the same type of folks that received the  
14 notice of a draft Environmental Impact Report.

15 CHAIRPERSON BUSTAMANTE: Was there any -- wasn't  
16 there some recent negotiations taking place just this last  
17 week?

18 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF  
19 SANDERS: We received two letters following the issuance  
20 of the final Environmental Impact Report, one from Clark  
21 Trucking Company located in West Sacramento that voiced  
22 some concern with the proposed right-of-way near their  
23 facility. We have been working with representatives of  
24 that firm in trying to get the parties -- the applicant,  
25 SFPP, and representatives of the trucking company --

1 together to discuss their mutual concerns and interests in  
2 this regard.

3 In the end that portion of the route will be  
4 determined by the City of West Sacramento, presumably  
5 using the environmental document that we are asking you to  
6 certify today, so that that type of consideration can be  
7 given to subsequent portions of pipeline.

8 The second letter was from the Costa Contra  
9 County Sanitation District voicing concerns with the  
10 routing of the pipeline through their property. The line  
11 was proposed in an existing utility corridor with  
12 approximately five pipelines currently in place. Again,  
13 we have tried to work with the applicant and the Contra  
14 Costa Sanitation District to get the parties together and  
15 see if there is some resolution to be had. The latest  
16 information that we have -- and perhaps the applicant  
17 could speak to it further -- but an offer to the Contra  
18 Costa District has been afforded from SFPP to relocate the  
19 pipeline in the event that the property is needed in 10 to  
20 15 years for uses of the district.

21 So that is the last of at least information that  
22 we have on negotiations in that regard, Mr. Chairman.

23 CHAIRPERSON BUSTAMANTE: What about with regard  
24 to Clark?

25 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

1 SANDERS: There does not appear to be a resolution at this  
2 point.

3 CHAIRPERSON BUSTAMANTE: What were their  
4 concerns?

5 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

6 SANDERS: They were concerned with -- first of all they  
7 had a concern with notice. They indicated that in spite  
8 of our efforts to mail it to them and other landowners in  
9 that area, they indicate that they did not receive either  
10 the notice for the draft Environment Report and the final  
11 report and, thus, did not know of the project.

12 CHAIRPERSON BUSTAMANTE: Have they suggested any  
13 substantial issues other than notice?

14 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

15 SANDERS: They brought up the consistency of the project  
16 with the recently adopted Sacramento River Waterfront  
17 Master Plan. Ironically enough, both the pipeline and the  
18 trucking company would be considered nonconforming uses  
19 under that land-use plan, but the implementation of that  
20 plan is really probably 5, 10, 15 years --

21 CHAIRPERSON BUSTAMANTE: They were grandfathered  
22 in into the land-use plan.

23 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

24 SANDERS: As a replacement pipeline, yes.

25 CHAIRPERSON BUSTAMANTE: No, I'm talking about

1 Clark Trucking.

2 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

3 SANDERS: It's an existing facility, sir.

4 CHAIRPERSON BUSTAMANTE: So they were  
5 grandfathered in?

6 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

7 SANDERS: Yes.

8 CHAIRPERSON BUSTAMANTE: So they are appropriate.

9 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

10 SANDERS: Well, yes, what's termed a nonconforming --

11 CHAIRPERSON BUSTAMANTE: They're within --

12 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

13 SANDERS: They're within -- with the existing -- they're  
14 entitled to be there until the plan really gets in place.

15 CHAIRPERSON BUSTAMANTE: All right. I just to  
16 make sure that it's clear that you're not saying that  
17 they're --

18 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

19 SANDERS: No, sir.

20 CHAIRPERSON BUSTAMANTE: -- operating out of --

21 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

22 SANDERS: No, they're perfectly legal, have every right to  
23 be there. And of course the SFPP -- the pipeline feels  
24 they have the same rights.

25 CHAIRPERSON BUSTAMANTE: That way the Clark

1 Trucking representatives don't have to come up and defend  
2 themselves.

3 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF  
4 SANDERS: Well, he is in the audience.

5 CHAIRPERSON BUSTAMANTE: I'd rather have it done  
6 here than have any other problem.

7 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF  
8 SANDERS: Yes, Mr. Chairman.

9 The last issue that they brought up was an issue  
10 of ingress-egress and safety for the employees. The  
11 current --

12 CHAIRPERSON BUSTAMANTE: To what extent? I mean  
13 what do you mean by safety for the employees?

14 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF  
15 SANDERS: In the construction of line there will be  
16 disruption of the roadway in which the pipeline is  
17 planned. So for a period of one to two weeks there would  
18 have to be flaggers and, you know, diversion of traffic.  
19 And there may be some inconvenience to the trucking  
20 company as far as ingress and egress during construction.  
21 After that, it's been -- concerns been voiced as to having  
22 a 20-inch line carrying gasoline and diesel fuel or jet  
23 fuel adjacent to his firm. And at present the existing  
24 14-inch line is on the west side of the trucking company.  
25 The new pipeline right-of-way would be on the east side of

1 the trucking company.

2 CHAIRPERSON BUSTAMANTE: Okay. Well, I guess  
3 we'll let the Clark representative, Richard --

4 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF  
5 SANDERS: Mr. Cunha?

6 CHAIRPERSON BUSTAMANTE: Yes -- come in and talk  
7 about the more substantial stuff.

8 Any else?

9 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF  
10 SANDERS: No, sir, other -- I was going to go into the two  
11 letters that. You've provided me the entree to do that.

12 CHAIRPERSON BUSTAMANTE: Do we have any other  
13 questions by the Commissioners?

14 Okay.

15 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF  
16 SANDERS: Thank you, Mr. Chairman.

17 CHAIRPERSON BUSTAMANTE: Anything else by staff  
18 on this before we go to public testimony?

19 EXECUTIVE OFFICER THAYER: I think the two  
20 letters were in the packets, so they can be -- as well as  
21 I think representatives are here from California. We also  
22 have staff here, the engineers who reviewed the pipeline  
23 for the safety issues, they are here for answering  
24 questions.

25 CHAIRPERSON BUSTAMANTE: Who would be the person

1 that would resolve questions with regard to the piping  
2 over, say -- that would endanger the water or underground  
3 aquifers or river or any other kind of -- who would be the  
4 person who would have dealt with that?

5 EXECUTIVE OFFICER THAYER: I believe that would  
6 be the Regional Water Quality Control Board. But  
7 Dwight --

8 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF  
9 SANDERS: Yes, Mr. Chairman, that's correct. The Regional  
10 Water Quality Control Board would have jurisdiction in  
11 that area.

12 CHAIRPERSON BUSTAMANTE: And those folks were  
13 checked?

14 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF  
15 SANDERS: Yes. We received no comments from the Regional  
16 Board other than -- I mean their comments were of the  
17 nature of concern about the Rhodia parcel, not --

18 CHAIRPERSON BUSTAMANTE: There was nothing with  
19 respect to either the expansion of additional lines along  
20 a particular route nor the new routes that are being  
21 proposed that would give any cause for pause or concern  
22 with respect to anything dealing with water issues?

23 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF  
24 SANDERS: No, sir. There is substantial mitigation  
25 specified within the environmental document to not only

1 prevent spills, but to respond to them. And that  
2 documentation was provided to all of the pertinent  
3 agencies that have jurisdiction.

4 CHAIRPERSON BUSTAMANTE: Okay. I guess we'll go  
5 to public testimony, unless there's any other questions?

6 We'll go to public testimony then.

7 Mr. Cunha.

8 MR. CUNHA: Thank you, Mr. Chairman, Commission  
9 members.

10 My name is Richard Cunha. I'm appearing on  
11 behalf of the Clark Trucking Service, west Sacramento  
12 California. We are a agricultural trucking company.  
13 We've been established since 1957. We've been in this  
14 particular location since 1961.

15 We haul up and down the valley from that  
16 location.

17 As was mentioned earlier -- and I won't be  
18 redundant -- I'm here to tell this Commission that notice  
19 was ineffective. We never received any notices on this  
20 project until the October 3rd notice.

21 I further checked with other people along the  
22 route, families that own land fronting on South River  
23 Road, the proposed new route. Four families that owned  
24 over 50 percent if you exclude the city land indicated  
25 that they never received notice. I am not faulting and

1 saying it wasn't mailed. I'm saying it wasn't delivered.

2 So we come late in the game. We have not been  
3 contacted concerning this. So I brought my concerns via  
4 letter the day after I got the information from Ms. Brown  
5 in Sacramento, which she was very helpful providing to me  
6 everything that I have.

7 My understanding under CEQA is consideration of a  
8 range of alternatives for a project or a project location  
9 that feasibly could attain the basic project objectives  
10 and avoid any substantial lessening -- excuse me -- avoid  
11 a substantial lessening impact on the proposed project.  
12 And those are the objectives of CEQA.

13 What we're looking at, as was said, is a 70-mile  
14 project. I'm asking to review about a half a mile at the  
15 end of the project.

16 The gentleman that just preceded me indicated  
17 we're moving -- the request is to move the pipeline from  
18 the east side of our property to -- from west side to the  
19 east. But there presently is a railroad right-of-way not  
20 on our property on the west side. It can still be used.  
21 I've seen no reason why it cannot be used. And it goes  
22 directly into the SFPP pump station.

23 Instead of that the proposal is to run up almost  
24 another mile a 20-inch line up and around our property and  
25 in front of at least four to six other landowners and, in

1 addition, the City of West Sacramento. And it makes no  
2 sense to me as to why that has to be done when you have an  
3 existing right-of-way in existence.

4 Now, granted --

5 CHAIRPERSON BUSTAMANTE: The chances are it's  
6 probably money.

7 (Laughter.)

8 MR. CUNHA: Well, it seems like you're spending  
9 more, because you'd be going a longer distance.

10 Now, I can see replacing a 14-inch line with a  
11 half a mile of 14-inch line when you're already using  
12 6,000 feet of it in another place. Doesn't seem to  
13 diminish the supply.

14 CHAIRPERSON BUSTAMANTE: Although the issues of  
15 notice are important. And I don't mean to say anything  
16 with regard to notice because that's fundamental in any of  
17 these proceedings. I would ask you to get to what you  
18 believe to be the strongest issues that you have with the  
19 proposal. Are we only talking about a Route No. 1 at this  
20 point? Or which route are we talking about? Because  
21 there's three --

22 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF  
23 SANDERS: Yes, Mr. Chairman. It's the proposed project in  
24 the location of West Sacramento, which we can put up a  
25 board that shows that information, if you'd like,

1 geographically. But it is the proposed project in this  
2 particular location, its terminus. CHAIRPERSON

3 BUSTAMANTE: I just have a map here that came with it that  
4 shows, you know, three different routes here.

5 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

6 SANDERS: All right. That, Mr. Chairman --

7 MR. CUNHA: The map where the -- the item would  
8 be on the 2240-W-525, which is the last fold-out map that  
9 shows the last leg of the proposed project. And that was  
10 prepared for the first meeting in June.

11 CHAIRPERSON BUSTAMANTE: And where did they both  
12 end up?

13 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

14 SANDERS: Up to here.

15 CHAIRPERSON BUSTAMANTE: And they're coming down  
16 this particular right-of-way because they don't have  
17 access over here to some other fee server?

18 MR. CUNHA: No. Mr. Chairman, that's the whole  
19 point. They're coming in across here. This is a  
20 right-of-way coming right down into their facility now.  
21 The whole point of my being here is they're coming across  
22 Jefferson Boulevard, which is now under construction.  
23 They want to go up and around and down, when presently  
24 they're doing -- they're going across Jefferson moving  
25 northbound into their facility into the existing line.

1 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

2 SANDERS: Perhaps the applicant can address the reason  
3 that this route was currently in --

4 CHAIRPERSON BUSTAMANTE: We'll have them do  
5 that -- we'll have them do that next.

6 MR. CUNHA: Would you like to keep this up here?

7 Yes, I think we would.

8 Up here.

9 Yeah, just leave it right there.

10 Thank you.

11 MR. CUNHA: You want me to --

12 CHAIRPERSON BUSTAMANTE: Go ahead and finish your  
13 presentation.

14 MR. CUNHA: As was mentioned earlier, the City of  
15 Sacramento and West Sacramento just completed the  
16 waterfront master plan. And it includes -- the property  
17 that we're presently located on, the water treatment  
18 system is directly across the street from us. The only  
19 mention of that in the CEQA documents, the EIR, is the  
20 lower interceptor system, which will be connected within  
21 the next couple of years, at which time the water  
22 treatment plant directly across from our facility will be  
23 decommissioned. That is going to be torn down, made into  
24 a community park. Consequently, then the development,  
25 which in the next couple of years, will start with our

1 property, the property next door, et cetera, on down the  
2 street to Raley Field, which is already in existence.

3 I think to introduce a 20-inch gas pipeline with  
4 its intended valve 12, which is right on the corner, just  
5 is inappropriate in that environment.

6 CHAIRPERSON BUSTAMANTE: Inappropriate or does it  
7 affect your future plans for development, sir?

8 MR. CUNHA: I have none at this time. But --

9 CHAIRPERSON BUSTAMANTE: Okay. Is there any  
10 other future plans for development in that area or any --

11 MR. CUNHA: It's all been --

12 CHAIRPERSON BUSTAMANTE: Is there going to be a  
13 park and that would create a problem? What is --

14 MR. CUNHA: Park is across the street. Our  
15 property -- although we are there, as you indicated,  
16 grandfathered in, future development indicates residential  
17 and commercial mixed use, waterfront mixed use. A  
18 marina's to go in off the bluff -- Stone Locks Bluff is  
19 right there.

20 So we're talking about residential, recreational.  
21 And introducing this when there seems to be no good reason  
22 to introduce it at that location when there's presently --  
23 and according to Mr. Cornman in his testimony in Fairfield  
24 back in July, they're trying to use the existing railroad  
25 rights-of-way. Well, there's one right there that they're

1 using. Why not continue to use it?

2 CHAIRPERSON BUSTAMANTE: Yeah, I'm just trying to  
3 figure out what it is that your interests are here, sir.  
4 That's all.

5 MR. CUNHA: My interests are protecting the land  
6 that we're on, protecting my employees, and not having to  
7 disturb everybody's business along the way in order to  
8 achieve this without any really -- a proper justification.  
9 And then subsequent the diminution of property values.  
10 Then in fact we will have to leave that area because of  
11 development down the years.

12 CHAIRPERSON BUSTAMANTE: Oh, I see.

13 So you're saying that this particular pipeline  
14 down the middle of this piece of property would diminish  
15 its future value for development?

16 MR. CUNHA: I don't know about city planners,  
17 whether they would look at it -- I would assume when you  
18 have a large valve -- and the picture is in one of the  
19 documents that have been provided to you -- and you're  
20 introducing children and families and residents in that  
21 area, it just is incompatible.

22 CHAIRPERSON BUSTAMANTE: All right, sir.

23 Anything else?

24 MR. CUNHA: What I'm suggesting -- I'm not  
25 suggesting this project not be implemented. All I'm

1 suggesting is take another look at this last half mile.  
2 It just makes common sense not to do what is proposed on  
3 this last piece once Jefferson Boulevard is crossed.

4           If you do not cross Jefferson Boulevard, there  
5 are no significant impacts on the environment or  
6 surroundings. It does not thwart the objectives for the  
7 project. It does not diminish the project. But it  
8 alleviates the attendant problems that come along with  
9 this type of construction. It does not interfere with the  
10 short or long-term planning for the area, as I've just  
11 indicated, if you do not allow this. It shortens the  
12 project, which has to be a savings because it's a mile  
13 less of pipeline and a mile less of dredging. It does not  
14 introduce the chaos into that area. And I don't find any  
15 overriding justification to make the modification  
16 requested.

17           So I'd ask that the EIR revisit that last half  
18 mile before accepting it.

19           CHAIRPERSON BUSTAMANTE: All right, sir.

20           MR. CUNHA: Thank you very much.

21           CHAIRPERSON BUSTAMANTE: Thank you.

22           So the senior project manager, I guess, or the --  
23 David, you and Mary, which one of you guys -- I suppose  
24 you're both interested in speaking. From the senior  
25 project manager or the director of the project permitting,

1 which of you would like to go first?

2 MR. CORNMAN: With Kinder Morgan, Santa Fe, sir.

3 CHAIRPERSON BUSTAMANTE: I have Santa Fe.

4 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

5 SANDERS: That's Kinder Morgan, Mr. Chairman.

6 CHAIRPERSON BUSTAMANTE: All right. Why don't  
7 you go ahead and come on up then.

8 MR. CORNMAN: Good afternoon. My name is Dave  
9 Cornman. I'm the Director of Project Permitting for  
10 Kinder Morgan and SFPPLP.

11 I don't have any prepared remarks. I just want  
12 to speak to the particular issues that were raised by  
13 Clark Trucking. And then I can respond later to other  
14 issues.

15 First of all, I can't speak to the mailing  
16 notices. As I understand it from staff, the Clark  
17 Trucking was on the mailing list that was used for all of  
18 the mailings on this project. And so to the extent that  
19 they didn't receive mailings is something that I can't  
20 speak to.

21 We had no other complaints from anyone else on  
22 this project that they did not receive mailings along the  
23 entire 70 miles.

24 The range of alternatives that were evaluated in  
25 the EIR were evaluated for their potential significant

1 impacts. Along South River Road where the Clark Trucking  
2 Company is at I don't believe there were any significant  
3 impacts that needed to be evaluated with respect to the  
4 range of alternatives.

5 We selected the route very early in the project  
6 that we proposed as part of our application to State Lands  
7 after having a lot of discussions with people like the  
8 mayor of South Sacramento, City Manager from City of  
9 Sacramento -- West Sacramento, and a variety of  
10 politicians in that area as well the regulators. And  
11 ultimately we elected not to route our pipeline  
12 immediately adjacent to our existing pipeline, which is in  
13 a railroad right-of-way along Jefferson, because -- as the  
14 gentleman suggested, pipelines do occur in railroad  
15 rights-of-way. But as you may not know the history of the  
16 old Santa Fe Pacific pipeline system -- it was owned by  
17 the railroad and 1800 miles of our pipelines on the west  
18 coast currently reside in the railroad -- we are no longer  
19 affiliated with the railroad. We are completely separate.  
20 Kinder Morgan had purchased the Santa Fe Pacific pipeline,  
21 the SFPPLP, from the railroad. And now in fact we are at  
22 odds with the railroad. In fact we're in litigation with  
23 the railroad.

24 An so it's really almost legally infeasible for  
25 us to be proposing, and we would not on this project under

1 any circumstance propose, to put our new pipeline, our  
2 replacement pipeline in a railroad right-of-way. In fact,  
3 there are conflicts between our engineering standards that  
4 we have to live by, which is regulated by the U.S.  
5 Department of Transportation, and what our called arena  
6 standards with the railroad. The railroad prefers to have  
7 pipelines down about 11 feet deep. You know, DOT requires  
8 a minimum of three feet of cover so you can properly  
9 inspect your pipelines. We have to be able to properly  
10 inspect these high-pressure gasoline pipelines to make  
11 sure that things are safe.

12 So we have major conflicts with respect to design  
13 of pipelines in railroad rights-of-way, plus we have the  
14 legal issues that we just can be in them.

15 In addition to that, on Jefferson Boulevard  
16 there's a lot of residential property. We as a -- you  
17 know, as a responsible owner-operator looked for routes on  
18 this pipeline that would minimize or avoid sensitive  
19 receptors, one of which are residential properties. And  
20 so we purposefully routed this thing through the Port  
21 Authority railroad property and then on across Jefferson  
22 up the back way to come in down South River Road. South  
23 River Road is a largely industrial commercial property.  
24 And, again, down South River Road would be strictly within  
25 the street. We're not going to be on any of the

1 properties either side of the street. We'll be in the  
2 street.

3           And of course we've assured -- and I spoke with  
4 Clark Trucking as a matter of fact on Friday, trying to  
5 understand their concerns and help resolve those, because  
6 we have an outstanding offer to work with them on the  
7 construction issue. They have concerns that we're going  
8 to have impacts on their trucking, on the traffic flow.  
9 And they're obviously -- the City of West Sacramento is  
10 going to approve what's called a traffic plan for this  
11 project. And that traffic plan will be everything about  
12 avoiding rush hours, avoiding peak traffic hours, and  
13 avoiding cutting off any businesses along that road as  
14 well as along the rest of the pipeline route.

15           So we're working very closely with the city, as  
16 well as offering to work with this gentleman on his  
17 concerns with respect to traffic.

18           He made mention that our 12-inch -- our valve was  
19 going to be -- Valve No. 12 was going to be located in a  
20 location. I must add that the valve location now is going  
21 to be down right at the station on South River Road. So  
22 that valve location in the final design that we're working  
23 on right now is not properly reflected on the drawings  
24 that you see in the EIR. It will be actually right at the  
25 station.

1           And with respect to safety, I'll just say that if  
2 you've ever been out on South River Road, you know that  
3 there are major tank forms out there, tank forms that take  
4 the gasoline, the diesel and jet fuel from our pipeline  
5 and store it. Now, if the gentleman is concerned about  
6 safety with respect to pipelines, he ought to have equal  
7 or greater concerns with respect to major tank forms on  
8 that same road. In other words we are not the only  
9 potential risk, if you will, out on that road.

10           I guess that's all that I have to say, except to  
11 say that when we looked at Jefferson -- there were also  
12 two other issues on Jefferson Boulevard, initially the  
13 residential and the railroad issues, and, that is, that it  
14 was originally owned by the CalTrans. CalTrans does not  
15 allow longitudinal egress of pipeline -- gas in pipelines  
16 in their rights-of-way. It has since been taken over by  
17 the City of West Sacramento. But now they have a  
18 two-year -- at least a two-year moratorium on cutting that  
19 street, again preventing us from putting a new pipeline in  
20 that street without repaving the entire street.

21           So we have reasons again of not wanting to go out  
22 on to Jefferson.

23           So that's all I have to say about his remarks.

24           CHAIRPERSON BUSTAMANTE: It seems to me that the  
25 concerns about putting another pipeline near existing

1 residential are a concern I have. I'm sorry, but I'm not  
2 going to give weight to your current legal concerns with  
3 your parent company. But -- or what was once your parent  
4 company. But we are talking about putting a pipeline near  
5 existing residential property.

6 And I think that the concerns that are being  
7 raised by Clark probably have some merit. I don't know if  
8 additional time would help you guys put together, you  
9 know, a proper schedule. But I don't think I hold so far  
10 that the weight of the proposal that was presented by the  
11 Clark representative -- to me it doesn't seem like putting  
12 it near a residential at this point makes any sense.

13 I don't if there's any questions by the  
14 Commission. We'll just keep going through the others  
15 unless you have concern.

16 COMMISSIONER WESTLY: Just two questions --  
17 remarks. First, I want to thank Mr. Cunha for coming. He  
18 raised some very good points.

19 Second, I just want to make sure I understood.  
20 Mr. Cunha said suggested that there is a more direct  
21 route. And you're suggesting that in fact the problems  
22 with that more direct route because of poor relationships  
23 with the railroad or it's in fact more difficult to do.

24 MR. CORNMAN: In fact it's infeasible. I would  
25 use the word "infeasible" because there's a moratorium on

1 cutting in Jefferson right now, which would be the only  
2 other alternative short of going through residential  
3 neighborhoods. Going up Jefferson right now is that  
4 there's a moratorium on new construction and for cutting  
5 that street for two years.

6 COMMISSIONER WESTLY: Got it. Okay. Well, I  
7 appreciate it's precisely the conflict between the state  
8 and the railroads that gave us the recall. So maybe we  
9 shouldn't let that be added.

10 (Laughter.)

11 COMMISSIONER WESTLY: The other question I had to  
12 ask is, Mr. Cunha's saying he didn't get proper notice or  
13 didn't get the -- and what I'm hearing is that in fact the  
14 notice was sent to several people, seven miles worth. And  
15 I'm just trying to understand how many --

16 MR. CORNMAN: Seventy, sir.

17 COMMISSIONER WESTLY: Seventy people.

18 -- how many people were mailed to, if maybe staff  
19 could help me with that.

20 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF  
21 SANDERS: The first mailing was 1322. The second mailing  
22 was of like number. And we do have at least record that  
23 Clark Trucking is one of the addresses that we have on our  
24 mailing list and which we used. I verified the address  
25 with Mr. Cunha this morning.

1           COMMISSIONER WESTLY: So of the thousand plus  
2 people we mailed to twice, has anybody other than Clark  
3 Trucking come back with a concern?

4           ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF  
5 SANDERS: No, sir. And we have other individuals that are  
6 landowners on South River Road also on our mailing list.  
7 T-Con Pacific, which is Clark Pacific, and Frank and  
8 Joanne Ramos, who are large property owners in the area.  
9 And I'm afraid this is the only incident that has come to  
10 our attention.

11           COMMISSIONER WESTLY:

12           CHAIRPERSON BUSTAMANTE: Mr. Cunha did indicate  
13 that they had four or five other folks that they knew of,  
14 but --

15           COMMISSIONER WESTLY: That's all. Thank you very  
16 much.

17           But I'd like to hear Mr. Cunha's response, Mr.  
18 Chair, if that's appropriate.

19           CHAIRPERSON BUSTAMANTE: Sure.

20           MR. CUNHA: My response is --

21           CHAIRPERSON BUSTAMANTE: Come up to the podium.

22           MR. CUNHA: The response to the notice issue, Mr.  
23 Westly, is the people that were just mentioned, the Ramos  
24 families that own the big parcels, and T-Con Pacific are  
25 precisely the people I talked to Friday, Saturday, and

1 this morning and have no indication that they got any  
2 mailing, were totally unaware of what was going on until I  
3 explained it to them. I asked if I could make  
4 representation today that that in fact was the case to  
5 this Board. And they said, yes.

6 CHAIRPERSON BUSTAMANTE: And so they're opposed  
7 to this project?

8 MR. CUNHA: They don't know about it, the content  
9 of it, other than the fact one of the responses I won't  
10 repeat about tearing up South River Road again was issued  
11 by one of the family members, "Don't tell me they're going  
12 to do that again," et cetera, et cetera. So until they  
13 know what it involves, I will leave that up to them.

14 Thank you.

15 CHAIRPERSON BUSTAMANTE: All right, well, we can  
16 go ahead and go on and listen to the contra Costa Sanitary  
17 District. And we have Mary Brown after that. And then I  
18 guess we'll come back to staff with regard to notification  
19 and what other concern up to a logical conclusion.

20 MR. HERNANDEZ: Mr. Chair, members, my name is  
21 Ricardo Hernandez. I represent Central Contra Costa  
22 County Sanitary District. We're a waste water treatment  
23 facility in Martinez, California. We have an elected  
24 board of directors. And we're a special district. And we  
25 treat -- we're a major waste water treatment facility in

1 that area, serving 440,000 residents in the area.

2           What we wanted to do today was voice our concern  
3 over the selected route through our treatment plant and  
4 through one of our adjoining properties that we've been  
5 using as a separation between our plant and residential  
6 communities in the area.

7           Recently there was a number of developments  
8 proposed adjoining our plant. And although we have been  
9 working with SFPP on their route alignment, recent -- like  
10 I mentioned, recent developments adjacent to our plant has  
11 shown that we need to look at how development is affecting  
12 our treatment possibilities.

13           We have an outpump -- a 72-inch diameter outpump  
14 of some data that's being threatened by adjoining  
15 developments, by U.S. Development Company, and also BNSF  
16 Railroad. That is our main outpump for our waste water.

17           If that was to -- if anything was to ever happen  
18 to that we would have, worst-case scenario, maybe 400  
19 million gallons through our basins and of course the  
20 alignments proposed. And to that end we were requesting  
21 that alternate alignments would be considered. It was in  
22 a request be made during the draft EIR. And unfortunately  
23 in the final EIR we didn't see any alternate alignments  
24 through our property.

25           We have discussed with Paragon Partners, which I

1 believe is the right-of-way consultant for SFPP, a number  
2 of mitigations for that. And what we would -- I guess  
3 what we would propose as a practical solution, I guess,  
4 would be to -- if they were willing to agree to relocate  
5 their pipeline along with their existing pipeline if we  
6 ever need to expand our capacity for the plant or if we  
7 ever need to develop our adjoining property.

8           And the philosophy here is that development in  
9 our service district is not diminishing any, increased it  
10 by 1.5 percent. And the plant won't be there  
11 indefinitely. And the pipelines -- the proposed pipeline  
12 and also existing pipelines through our facility will  
13 eventually reach their life expectancy, at which time they  
14 would be in place.

15           So, in essence, what we're trying to do here is  
16 we're trying to reclaim our retention basin and our  
17 property through which the proposed pipeline and also  
18 other existing lines run through at this time.

19           We have -- like I said, we have discussed options  
20 for relocation possibilities. And if the applicant would  
21 be willing to agree to that, then we would withdraw our  
22 complaints.

23           CHAIRPERSON BUSTAMANTE: Okay. Any questions?

24           Thank you.

25           Mary Brown.

1 MS. BROWN: First I'd like to wish a good  
2 afternoon to the Commissioners, staff and representatives  
3 of Kinder Morgan and SFPP.

4 My name is Mary Brown with Rhodia, Inc. And I  
5 have a brief statement to read for the record.

6 For those of you who do not know Rhodia, we are  
7 a multinational specialty chemical manufacturing company  
8 with a facility located in Martinez on the southern shore  
9 of the Carquinez Strait, which is in segment 1 of the  
10 proposed pipeline.

11 Rhodia's interest in this pipeline project is  
12 easy to understand. For several years Rhodia has been  
13 planning a major environmental remediation and restoration  
14 project pursuant to an order issued by the San Francisco  
15 Regional Water Quality Control Board. Our CEQA-approved  
16 project reflects the concerted efforts of multiple state  
17 and federal permitting agencies in the interested parties.

18 Initially, SFPP proposed a pipeline route that  
19 would have traversed a very significant portion of  
20 Rhodia's project site. It could have had significant  
21 ecological and project related consequences for which we  
22 were obligated to identify during the CEQA review process.

23 Our concerns which focused on the originally  
24 proposed project route involved sensitive environmental  
25 resources, including critical wetland habitat, as well as

1 impacts of long-term restoration activities that we've  
2 committed to undertake.

3           Since expressing those concerns there's been a  
4 great deal of interaction and communications among SFPP,  
5 State Lands staff, Rhodia, and other interested parties  
6 and agencies. We now understand that SFPP has formally  
7 committed to modifying the pipeline route. In a letter to  
8 staff dated October 10th, 2003, SFPP describes a route  
9 modification that substantially avoids the issues that  
10 have been identified during the draft EIR phase.

11           Rhodia has no reason to believe that constructing  
12 segment 1 in this manner will not address the comments  
13 that have been submitted with respect to the originally  
14 proposed project. Based on this understanding, Rhodia  
15 supports the modified project route.

16           We want to thank staff and SFPP's team for  
17 working with us and other interested parties to address  
18 the issues that were raised during the CEQA process.

19           We especially appreciate the energy and effort  
20 that staff, SFPP, and others committed to the interested  
21 party meetings that followed the initial comment period.  
22 These meetings brought together a tremendous amount of  
23 collective knowledge concerning the affected area, and  
24 allowed meaningful consideration of how to avoid and to  
25 reduce impacts to the Peyton Slough area.

1           We do have written comments on the final EIR  
2 which are being submitted for the purpose of preserving a  
3 record of our concerns regarding the project as originally  
4 proposed. With that said, we look forward to continued  
5 communication and cooperation with the SFPP team as our  
6 projects go forward.

7           Thank you for the opportunity to address the  
8 Commission.

9           CHAIRPERSON BUSTAMANTE: Thank you.

10          Mr. Controller.

11          COMMISSIONER WESTLY: I just wanted to ask if  
12 staff would be willing to respond briefly to the previous  
13 speaker, the one we just heard.

14          EXECUTIVE OFFICER THAYER: Certainly. But the  
15 one from the sanitation district?

16          COMMISSIONER WESTLY: Yes.

17          EXECUTIVE OFFICER THAYER: Yes. In fact I think  
18 if the applicant could come forward, I think what the  
19 district asked for in the way of an accommodation of  
20 something that the applicant is willing to make. And  
21 perhaps we can resolve that part of this right now, if the  
22 applicant could...

23          MR. CORNMAN: Thank you.

24          With respect to the sanitation district, let me  
25 just say that we have made an offer to the sanitation

1 district that for the new pipeline that we were proposing  
2 to build through their property, that we will at our own  
3 costs -- this is not normal -- would at our own costs we  
4 will relocate that pipeline in the future if the need  
5 requires with respect to their future uses of their land.  
6 So we have made that offer in writing to the sanitation  
7 district and that offer stands.

8           With respect to the other routing alternatives  
9 that they've suggested here, let me just note for the  
10 record, if I can, that it was started back in late 2001  
11 when our staff met with their staff in the field on the  
12 site, Mr. Jim Belcher and Mr. Ricardo Hernandez, to look  
13 at potential routing alternatives through their property.  
14 And we were directed to go along the proposed route that  
15 we are currently proposing, which is along where the other  
16 five pipelines are located.

17           It was subsequent to that that -- in fact future  
18 discussions in August of 2003 with a Mr. Russell Levitt  
19 that we had E-mail conversations back and forth about  
20 those same -- some other alternatives through the route --  
21 through that property that we talked about the  
22 infeasibility of two alternatives. One is going along a  
23 very small service road in the property that would  
24 literally cut off -- because of the narrowness of that  
25 road, very narrow road, basically a one-lane road, cut off

1 all the people who are using that road -- and there's more  
2 than one business in there -- for two weeks or more for us  
3 to construct in that road.

4 The other alternative they've suggested is going  
5 up on a very steep slope adjacent to the road, which is  
6 really not technically feasible because it's a very steep  
7 and fill slope.

8 COMMISSIONER WESTLY: This is very helpful. And  
9 it's going on a little longer than I think perhaps we'd  
10 intended. But I just want to ask for a quick nod, yes or  
11 no, does this solve the concerns that the sanitation  
12 district has?

13 MR. HERNANDEZ: No, not at all.

14 COMMISSIONER WESTLY: No. Okay.

15 I am inclined to move that this be postponed to  
16 the next meeting given the level of tension here.

17 ACTING COMMISSIONER MATEO: Just a point of  
18 clarification.

19 I'm sorry, but I understood you to have testified  
20 that you were substantially okay with mitigations if they  
21 were willing to relocate. I thought I just heard the  
22 gentleman say he was. So what did I miss?

23 MR. HERNANDEZ: Our last meeting -- or our  
24 conversation last Friday they proposed that they would be  
25 willing to in the future, if we needed them to, relocate

1 the proposed line and their existing pipelines.

2 That was a discussion I had with the present  
3 engineer Chris -- Chris Smart.

4 When the project originally began we were unaware  
5 that their existing pipelines through our property was  
6 being abandoned. Subsequent discussions with SFPP, they  
7 said, "Well, no, we're not abandoning the existing  
8 pipelines." When the offer to the sanitary district for  
9 the right-of-way through our plant was proposed two weeks  
10 ago, in writing they said they are decommissioning the  
11 existing pipe lines. So they --

12 ACTING COMMISSIONER MATEO: At this point I would  
13 agree with the Controller. This doesn't sound fully  
14 gelled.

15 MR. CORNMAN: So may I -- may I say one word?

16 CHAIRPERSON BUSTAMANTE: Go ahead.

17 MR. CORNMAN: We strongly request that the  
18 Commission not be swayed by one property owner out of the  
19 100 or more property owners that we have along this  
20 alignment to delay this proceeding. The reasons are many,  
21 but two of them -- the most important are that we have  
22 a -- a pipeline project has a full-time right-of-way group  
23 that goes out and buys easements from all the landowners.  
24 Inevitably along a long pipeline project like this you  
25 have one or two or three or five property owners that

1 don't want it in their backyard. Inevitably this happens.  
2 And we negotiate with those folks in good faith to give  
3 them fair market value for those easements. Where as a  
4 public utility we have the powers of condemnation. We  
5 don't like to use those, but we do have those.

6           And so I would just ask that -- and the second  
7 thing I'd like just to note is is that a delay of two  
8 months in this proceeding would have a significant and  
9 deleterious effect on our project. The reason being,  
10 that our intended construction start on this project is in  
11 March of this coming year, 2004. A two-month delay would  
12 encumber our 11-month construction period into the winter  
13 of the following year, which would preclude us from  
14 constructing much along most of this line and would  
15 effectively reduce our chances of doing anything next year  
16 because we wouldn't start and then remobilize the  
17 following spring. We would lose a year on this project,  
18 which could be a very significant impact worth at least \$2  
19 million to this company.

20           That's all.

21           COMMISSIONER WESTLY: Let me just respond to  
22 that.

23           As you know, I am typically very supportive of  
24 the staff, having been a staff member of the State of  
25 California myself in past lives. But unless I've missed

1 something here, I heard, "Please don't let this be delayed  
2 because of one property owner."

3 As I viewed here, it seems like we're seeing not  
4 one property owner who was problems, but two. And then  
5 the gentleman suggested there are others that have  
6 concerns. I just get a strong feeling that this staff has  
7 not fully vetted this issue at least for my perspective.  
8 There's multiple surprises here from my viewpoint.

9 MR. CORNMAN: The Clark Trucking Company is not a  
10 property owner. I mean we're not -- the pipeline is not  
11 on their property. We're going down the street. And it's  
12 just to clarify, sir.

13 COMMISSIONER WESTLY: Fair clarification.

14 Again, I'd heard there was only going to be one  
15 person speaking in opposition. Now there's a second. The  
16 first person says there are a number of others who don't  
17 even know about the project yet who have concerns. We're  
18 just -- I'm feeling a little caught by surprise here.

19 But I'd like to defer to the other members.

20 MR. CORNMAN: I just have one clarification.

21 Our project management staff just has made a  
22 further negotiated offer that we'd be willing to move both  
23 of our pipelines, our proposed pipeline and our existing  
24 pipeline. That as part of the Friday offer we are now  
25 offering that as well.

1           COMMISSIONER WESTLY: The point of this -- and I  
2 commend your flexibility and rapid movement. But the  
3 staff understands that ideally we like to see these things  
4 sorted out more than, say, 30 seconds before the vote is  
5 supposed to occur.

6           CHAIRPERSON BUSTAMANTE: One commissioner wants  
7 to postpone it. The other one wants you guys to step  
8 outside.

9           (Laughter.)

10          CHAIRPERSON BUSTAMANTE: And maybe what we can do  
11 is split the difference.

12          Paul, I think that this thing needs to be cooked  
13 a little bit more. Maybe if they can get together  
14 quickly, we can put together either a quick meeting -- I  
15 don't know what the notices activity would be. Is it 10  
16 days?

17          EXECUTIVE OFFICER THAYER: Right.

18          CHAIRPERSON BUSTAMANTE: And then that way it  
19 wouldn't jeopardize their building schedule if people were  
20 able to get this thing together quickly. I think we could  
21 probably put together enough of the people to -- once this  
22 thing has been a little a bit more -- just doesn't seem  
23 like it's --

24          EXECUTIVE OFFICER THAYER: Certainly.

25          CHAIRPERSON BUSTAMANTE: -- just right yet. And

1 you guys pride yourselves on having a win-win-win  
2 situation. And so right now it doesn't quite look like  
3 it's there.

4 EXECUTIVE OFFICER THAYER: We do pride ourselves  
5 on that.

6 CHAIRPERSON BUSTAMANTE: Yes, you do.

7 EXECUTIVE OFFICER THAYER: So, yes, we can  
8 certainly arrange for a meeting, you know, 10 days after  
9 agreement is reached as long as we can get a quorum of the  
10 Commission.

11 CHAIRPERSON BUSTAMANTE: And if Mr. Cunha and the  
12 other property owners can come forward with specific  
13 suggestions so that we can fully vet those, and then we  
14 can make our final decision.

15 EXECUTIVE OFFICER THAYER: Certainly.

16 I guess I feel some need as a representative of  
17 staff that's filling out this notice to say that, you  
18 know, the names of the Clark Company, those other  
19 representatives, are on our list. We can guarantee that  
20 we took every step --

21 CHAIRPERSON BUSTAMANTE: I understand. And we  
22 also understand that mailing them is presumed to have been  
23 delivered.

24 EXECUTIVE OFFICER THAYER: We also advertise in  
25 five newspapers.

1 CHAIRPERSON BUSTAMANTE: I understand. I  
2 understand.

3 And I think the Commission would like for it to  
4 go for a little longer, take one last shot at this.

5 They don't have to step outside.

6 (Laughter.)

7 EXECUTIVE OFFICER THAYER: Sir --

8 CHAIRPERSON BUSTAMANTE: So we would like to  
9 bring this back.

10 EXECUTIVE OFFICER THAYER: We'll do that.

11 CHAIRPERSON BUSTAMANTE: You want to do it in two  
12 or three weeks?

13 COMMISSIONER WESTLY: We're not going to do it by  
14 phone. But I think -- we do hear the concern that time is  
15 against us. We have seasonal issues here. So --

16 CHAIRPERSON BUSTAMANTE: Yeah, and it sounds like  
17 what we're talking about really is a construction schedule  
18 that meets with the property owners' trying to deal with  
19 their businesses. That's what -- I think that's probably  
20 the major concern on that side.

21 EXECUTIVE OFFICER THAYER: Indeed.

22 CHAIRPERSON BUSTAMANTE: That doesn't sound like  
23 it should be something overwhelming to deal with.

24 EXECUTIVE OFFICER THAYER: The biggest problem I  
25 think potentially is going to be the City of West

1 Sacramento. They have ripped up Jefferson before. So the  
2 reason they have this two-year moratorium on ripping it up  
3 again is based on that. And so that's what we're not --  
4 it won't be just the people in this room here. It will be  
5 dealing with the city for that alternative.

6 CHAIRPERSON BUSTAMANTE: The city would have to  
7 go before them to -- the city -- they would have to go  
8 before the city?

9 EXECUTIVE OFFICER THAYER: They would. In fact  
10 the city will have to ultimately approve the right-of-way  
11 through this area, not us. We're not actually approving  
12 that right-of-way. We're simply just approving the  
13 environment document.

14 ACTING COMMISSIONER MATEO: I'm just going to  
15 say, are we suggesting that they look again at Jefferson?  
16 I thought the arguments for going to the other street were  
17 pretty compelling.

18 EXECUTIVE OFFICER THAYER: Well, we can certainly  
19 talk with them. I'm just saying that there -- there are  
20 other parties who aren't in the room who have prevented  
21 use of Jefferson, the city in particular. But we will  
22 work with these people to see if we can come up with some  
23 solution. We'll give it another shot.

24 CHAIRPERSON BUSTAMANTE: Okay. Then we'll expect  
25 you to call us back in a couple weeks.

1 EXECUTIVE OFFICER THAYER: You bet.

2 CHAIRPERSON BUSTAMANTE: Okay.

3 COMMISSIONER WESTLY: As I think Chair has  
4 proposed a solid solution here, I would just urge the  
5 parties, while we have a number of them here, if they  
6 could step outside and they could start moving the process  
7 forward, I think that would be a great thing because we've  
8 got a bigger gap than I'd like. The sooner we can get it  
9 closed, the better.

10 EXECUTIVE OFFICER THAYER: Sure.

11 CHAIRPERSON BUSTAMANTE: Okay. Item 62.

12 EXECUTIVE OFFICER THAYER: Item 62 is discussion  
13 of South Bay Power Plant. This was put on the agenda at  
14 the request of the Commissioners.

15 The Commission asked that staff go out and do the  
16 background work and investigate the relationship between  
17 the Port of San Diego and the Duke Power Plant, South Bay  
18 Power Plant in terms of what the lease with the port  
19 required, as well as a cooperation agreement and, finally,  
20 the role of the Lands Commission overseeing implementation  
21 of those agreements. As I mentioned earlier, this is an  
22 item of great interest locally here for a lot of members  
23 of the public.

24 And I believe Jennifer's giving the  
25 presentation on the staff -- on the Commission staff is

1 giving the presentation.

2 MS. LUCCHESI: Good afternoon, Chairman  
3 Bustamante and Commissioners. My name is Jennifer  
4 Lucchesi. I'm the representative for the State Lands  
5 Commission.

6 I'll be presenting on Calendar Item No. 62,  
7 consideration of a report reviewing the various agreements  
8 relating to the South Power Plant.

9 At its June meeting the Commission directed staff  
10 to provide information on the lease and cooperation  
11 agreement between the Port District and Duke regarding the  
12 South Bay Power Plant.

13 I will address the following main points:

14 Whether there has been any violation of the lease  
15 or cooperation agreement;

16 The specific timelines associated with the  
17 development of a replacement plant;

18 And the Commission's jurisdiction should there be  
19 a violation of these various agreements.

20 The two main documents that were governing the  
21 port, Duke, and the South Bay Power Plant are the lease  
22 and cooperation agreement.

23 The lease is a binding agreement. It provides  
24 for Duke to operate the South Bay Power Plant and within a  
25 reasonable time after the expiration of the lease term

1 decommission, dismantle, and remove the power plant.

2           The lease term ends at the earliest February 1st,  
3 2010, three months after the requirement date of the bond  
4 payments. However, unless the ISO terminates the must-run  
5 obligation, the lease term could go on indefinitely.

6           The cooperation agreement has limited  
7 enforceability. It provides for Duke to use commercially  
8 reasonable efforts to develop and locate the replacement  
9 plant as an offsite plant in accordance with the  
10 development milestone schedule. If such a site is not  
11 available, Duke would have no further development  
12 obligations unless the Port District approves the  
13 development of the replacement plant on other property  
14 owned by the Port District, including the South Bay site.

15           If Duke violates the cooperation agreement, while  
16 there is some uncertainty, Duke could lose the air quality  
17 offsets which have commercial value.

18           Based upon staff's analysis of the information we  
19 have obtained, the Port District and Duke have not  
20 violated the terms of these agreements. So far Duke has  
21 met all of the development milestones. Duke commenced the  
22 site-selection process by June 30th, 2002. While the  
23 cooperation agreement provided for Duke filing a Notice of  
24 Intent by June 30th of this year, such a filing was not  
25 required by the Energy Commission.

1           The next milestone includes a formal filing of an  
2 application for certification by June 30th, 2006.

3           In addition, Duke has provided the Port District  
4 with progress reports every six months. These progress  
5 reports evidence Duke's obligation to use commercially  
6 reasonable efforts to develop a replacement plant.

7 According to these reports, Duke is focusing its efforts  
8 on one offsite alternative for the replacement plant.

9 However, because of growing local support for further  
10 investigation by Duke of an onsite replacement plant  
11 option, Duke is also looking into such an alternative.

12           While there has not been any apparent violation  
13 of these agreements by Duke or the Port District, Duke may  
14 need to push up the application for certification filing  
15 date earlier than required in order to achieve commercial  
16 operation of the replacement plant by early 2010, the end  
17 of the lease term.

18           Staff obtained information from the Energy  
19 Commission about typical timelines for power plant  
20 development, planning, permitting, and construction.  
21 According to staff analysis of these timelines, if Duke is  
22 going to have the replacement plant constructed by  
23 February of 2010, Duke may need to file an application for  
24 certification with the Energy Commission by February of  
25 2006. This is nearly five months earlier than provided by

1 the development milestone schedule.

2 The Port District has the primary jurisdiction  
3 over the land occupied by the power plant, while the  
4 Commission has oversight jurisdiction. The Commission's  
5 review and approval in January of 1999 consisted of the  
6 acquisition of the South Bay Power Plant property.

7 There's no independent remedy provided by the Commission's  
8 approval of the acquisition for violation of the  
9 cooperation agreement or the lease. The Commission's  
10 approval was not conditioned upon any specific aspect of  
11 the cooperation agreement, the lease, or any of the  
12 ancillary agreements.

13 In conclusion, staff is recommending that the  
14 Commission authorize staff to issue a letter on behalf of  
15 the Commission urging Duke to make a site selection and  
16 file an application for certification in a timely manner,  
17 continue to monitor Duke's compliance with the various  
18 agreements and other applicable laws, and to monitor the  
19 situation to ensure that the Port District is not in  
20 violation of its statutory trust grant or the public trust  
21 doctrine. Staff would then report back to the Commission  
22 as to whether Duke had selected a site, moved up its date  
23 for filing an application for certification, and whether  
24 there have been any violations of the various agreements.

25 CHAIRPERSON BUSTAMANTE: You'd indicated that in

1 order for them to be in compliance that they should have  
2 an application to the FERC by February of 2006; is that  
3 correct?

4 MS. LUCCHESI: Yes.

5 CHAIRPERSON BUSTAMANTE: So as you -- do you have  
6 a general schedule of what needs to take place in order to  
7 make that application to FERC?

8 MS. LUCCHESI: Well, normally there is a --

9 CHAIRPERSON BUSTAMANTE: It's just a blank form  
10 you sort of turn in, it's a pro forma thing?

11 MS. LUCCHESI: Yeah.

12 CHAIRPERSON BUSTAMANTE: Or is there some type of  
13 business decision that has to be made prior to making such  
14 an application?

15 MS. LUCCHESI: Well, one business decision that  
16 needs to be made is they need to select a site for the  
17 replacement generation plant.

18 CHAIRPERSON BUSTAMANTE: And they would do that  
19 on the same times they would make application?

20 MS. LUCCHESI: They would need to make a site  
21 selection prior to making -- in order to make application  
22 for certification they'd need to have a site selected  
23 already. So they would actually need to make a site  
24 selected prior to the application.

25 CHAIRPERSON BUSTAMANTE: So that would mean

1 before February of 2006?

2 MS. LUCCHESI: Yes.

3 CHAIRPERSON BUSTAMANTE: Well, what do you think  
4 based on the information that you've gathered would be an  
5 appropriate time to do that?

6 MS. LUCCHESI: An appropriate timeline would be  
7 around July of 2004.

8 CHAIRPERSON BUSTAMANTE: July 2004.

9 Now, in order to be able to do their due  
10 diligence in order to be able to find a proper site, what  
11 would they need to do between now and then? What  
12 milestone would have to take place between now and then  
13 for them to be able to find and to begin the process of  
14 site selection?

15 MS. LUCCHESI: Well, they will -- excuse me --  
16 they have commenced site selection process already. And  
17 they started that last year -- last June of 2002. I  
18 believe that they would need to -- and I believe there's  
19 representatives from Duke that can maybe answer your  
20 question a little bit more clearly. But I believe that  
21 they would need to discuss what various property owners  
22 off port tidelands if they're considering an offsite  
23 alternative. And if they were going to consider an onsite  
24 alternative, to start negotiations with Port District  
25 staff in order to obtain the land in order to build the

1 replacement plant.

2 CHAIRPERSON BUSTAMANTE: My guess is that there  
3 has probably been more of these plants that have been  
4 built except for this particular plant, right?

5 MS. LUCCHESI: Yes.

6 CHAIRPERSON BUSTAMANTE: So this process is  
7 probably pretty standard in the industry?

8 MS. LUCCHESI: Yes.

9 CHAIRPERSON BUSTAMANTE: And so there is likely  
10 to be this whole range of activities that normally takes  
11 place in --

12 MS. LUCCHESI: Yes, they would need to --

13 CHAIRPERSON BUSTAMANTE: Is there such a document  
14 that kind of gives that generic information as to --

15 MS. LUCCHESI: There is on the Energy  
16 Commission's website.

17 CHAIRPERSON BUSTAMANTE: I know everything is  
18 different and each one will be different and the  
19 stakeholders will be different, then the land will be  
20 different, then the possibilities are very different. But  
21 in general --

22 MS. LUCCHESI: In general a good reference  
23 document to obtain for any interested person in obtaining  
24 the timelines and the steps needed to develop a plant  
25 could be assessed on the Energy Commission's website. And

1 there are various reports on that going through the  
2 different steps needed to be taken in order to develop  
3 such a plan.

4 CHAIRPERSON BUSTAMANTE: These stakeholder  
5 meetings that began last July you said --

6 MS. LUCCHESI: Stakeholder meetings in regards to  
7 what, the port or --

8 CHAIRPERSON BUSTAMANTE: Sorry. Maybe I used the  
9 wrong term.

10 There were meetings --

11 MS. LUCCHESI: Negotiations for the site  
12 selection?

13 CHAIRPERSON BUSTAMANTE: Yes.

14 MS. LUCCHESI: Yes, they were scheduled to begin  
15 according to the cooperation agreement June of 2002.

16 CHAIRPERSON BUSTAMANTE: And how many meetings  
17 have been held since then?

18 MS. LUCCHESI: I don't know that. Possibly Duke  
19 representatives can answer that question or the --

20 CHAIRPERSON BUSTAMANTE: Staff didn't ask?

21 MS. LUCCHESI: No.

22 EXECUTIVE OFFICER THAYER: Staff was aware that  
23 there was an interest in finding out how many -- or what  
24 stakeholders Duke had met with. And I think we do have a  
25 list of four or five -- and by stakeholders, I mean people

1 in the community who had an interest at stake in these  
2 decisions. And I think we did end up getting a list of  
3 three or four or five.

4 MS. LUCCHESI: Yeah, those -- I'm sorry. I  
5 misunderstood your question.

6 In terms of stakeholders groups or people  
7 interested in the power plant being built, those were the  
8 Environmental Health Coalition, Bay Keeper, the Utility  
9 Consumers Action Network. Those groups Duke has met with  
10 in order to talk about a specific -- or unless they talked  
11 about a replacement plant and site selection.

12 CHAIRPERSON BUSTAMANTE: What about financial or  
13 other affiliated -- like, for example, the ISO or other  
14 folks that are likely to have an impact on where and how  
15 that facility's going to be built?

16 MS. LUCCHESI: I'm not aware of any specific  
17 meetings between Duke and the ISO.

18 CHAIRPERSON BUSTAMANTE: We'll ask Duke.

19 MS. LUCCHESI: Yes, they can probably answer  
20 that.

21 CHAIRPERSON BUSTAMANTE: Any other questions by  
22 the Commissioners?

23 I think that the idea of having this activity for  
24 the history both of the Commission as well as for many  
25 members in the audience is that if there is going to be a

1 facility built, then there ought to be some kind of  
2 action, some kind of activity that shows in fact that  
3 that's what's going to take place. If there is a contract  
4 that basically says that at the end of a particular time a  
5 decision is going to be made, you need to figure out how  
6 you're going to make that decision in the event that it is  
7 in fact a possibility of compliance. If you're not going  
8 to be in compliance, then you should just sort of say so  
9 now, and we can move on and find a way remedying that.

10 But if in fact there is compliance to a contract,  
11 if you are going to comply, even though there is no  
12 timeline so far that's been missed, I think it's important  
13 that we see some kind of activity.

14 Clearly that facility over there is antiquated.  
15 It is destructive. It's an eyesore. It is many, many  
16 things. And the only reason that it's in existence now is  
17 because it provides some modicum of safety valve in terms  
18 of providing energy. And we're all very concerned about  
19 making sure we meet all of our energy needs. But,  
20 otherwise, it is one of the ugliest things you'll ever see  
21 and shouldn't be on the coast.

22 (Applause.)

23 CHAIRPERSON BUSTAMANTE: And it shouldn't be  
24 along the coastline, especially the way it was designed.

25 So if there is in fact a way to move this

1 proposal so that the port as well as those who are  
2 managing this facility can move toward a better situation,  
3 I think that's what the interest of the Commission has  
4 been in the past. So if the representatives of Duke are  
5 available and the port -- let's see here. There have  
6 been --

7 EXECUTIVE OFFICER THAYER: I believe that  
8 representatives of both Duke and the port are prepared to  
9 make presentations.

10 CHAIRPERSON BUSTAMANTE: Yes. Who's here from  
11 the port? I don't see anybody here from the port.

12 Yes, ma'am.

13 MS. ANDERSON: Commissioner, I am Chris Anderson.  
14 I'm the Chief Operations Officer for the Port of San  
15 Diego.

16 CHAIRPERSON BUSTAMANTE: Please.

17 MS. ANDERSON: If you'd like, we're prepared to  
18 make a presentation on the power plant and the master  
19 planning process in Chula Vista.

20 CHAIRPERSON BUSTAMANTE: Thank you.

21 MS. ANDERSON: Thank you.

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

24 MS. ANDERSON: Just to start off with an  
25 overview, we are engaged in a 300-acre master planning

1 process in Chula Vista which encompasses the power plant  
2 site.

3           We look at our agency in a number of ways. But  
4 we see ourselves in the form of regional benefits as both  
5 an economic engine -- three ways -- environmental steward,  
6 and a provider of public services. And you're handed out  
7 some cards just now that give you some idea of how we  
8 reflect in those areas.

9           We just completed a new fiscal impact study which  
10 identified \$8.4 million in annual economic input from the  
11 Port of San Diego's operations. We have about 59,000  
12 full-time jobs on port tidelands. And about 248 million  
13 of that comes from cruise ship activities.

14           We also are an environmental steward. We have a  
15 wonderful education program where we involve the schools  
16 of the area. We are a leader in urban runoff management.  
17 We are the lead agency for storm water management in San  
18 Diego Harbor. And we also have multiple wildlife and  
19 species reduction and production -- protection programs.

20           We also see ourselves in the area of community  
21 service and public services. We have 150 acres of  
22 parkland, 16 parks, 7 beaches, and 10 playgrounds, 20  
23 marinas, 3 sport fishing facilities. And we employ 130  
24 police officers as well as contract with the various  
25 cities along the harbor for police protection services.

1           So we're not just looking at one area. We're  
2 looking at a balance, a balance of opportunities, both  
3 with environmental opportunities as well as economic  
4 opportunities on the bay.

5                           --o0o--

6           MS. ANDERSON: And with that as a preview, what  
7 I'd like to do on the power plant issue is talk about our  
8 commitment on the power plant issue; give you a little  
9 overview of the master planning process that involves the  
10 whole 300 acres of Chula Vista, not just the power plant;  
11 talk specifically about the power plant site, the site  
12 layout, its constraints, acquisition, what our intent was  
13 in acquiring this property, and then a little bit about  
14 the agreements. Jennifer did a great job in her  
15 presentation and in the staff report about outlining the  
16 major elements of those agreements. And then talk a  
17 little bit about the process for replacing the generation,  
18 which is included in the cooperation agreement.

19                           --o0o--

20           MS. ANDERSON: What is our commitment? Like you,  
21 Commissioner Bustamante, Lieutenant Governor, we want to  
22 see the power plant come down. That was the intent when  
23 we acquired this property, was that ultimately we would  
24 have the ability to reuse this property for other uses.  
25 We brought it into the tideland resources with that intent

1 in mind.

2 In the original agreement it was our intent that  
3 the replacement plant would be off the tidelands, that  
4 first they would exhaust those efforts, then look at  
5 tidelands only as a last resort.

6 In June of 2002, at the request of the City of  
7 Chula Vista, the port and the city council met and agreed  
8 that rather than going through two processes and because  
9 of some very good tax benefits to the city, we allowed you  
10 to take a look at the onsite possibility. But we had  
11 conditions placed on that. It had to be environmentally  
12 friendly if the replacement plant was on tidelands. It  
13 needed to be economically feasible. And it needed to  
14 provide a benefit to the region, the port, and the City of  
15 Chula Vista, again looking at the balance in the effort.

16 CHAIRPERSON BUSTAMANTE: When you say  
17 environmentally friendly, what is it that you mean by  
18 that?

19 MS. ANDERSON: Well, a lot friendlier than the  
20 existing plant. We have not put a definition --

21 CHAIRPERSON BUSTAMANTE: Just about anything  
22 would be friendlier than that plant.

23 MS. ANDERSON: As I say, we have not defined  
24 that.

25 CHAIRPERSON BUSTAMANTE: Is there anything within

1 your plans that is focused on any particular technology or  
2 certain system, i.e., do you focus that closely at --

3 MS. ANDERSON: No, we have not.

4 CHAIRPERSON BUSTAMANTE: -- water cooled, air  
5 cooled --

6 MS. ANDERSON: We have not. There have been  
7 discussions of use of reclaimed water as opposed to Bay  
8 water. There have been discussions of air cooled. We are  
9 not the experts at the port in that area. But we are  
10 engaging in a various sense of public outreach process to  
11 take a look at all of those issues.

12 Just so you know, in the master plan effort we  
13 have already conducted numerous public workshops. We have  
14 a citizens advisory committee. And we are in the process  
15 of forming a working group related solely to the site of  
16 the power plant. So that working group will provide the  
17 citizens advisory committee with the kind of input that  
18 you're asking about right now relative to the various  
19 alternatives and what the pros and cons would be of each  
20 of those alternatives.

21 In the end we do not make those regulatory  
22 choices. I have a slide that shows you probably about 20  
23 different agencies that will get involved in that,  
24 probably long before the port does.

25 But our commitment is to work through the

1 stakeholders and try to identify the best alternative, the  
2 win-win from an economic standpoint as well as from an  
3 environmental standpoint so there's a balance in the end  
4 between both. And at this point we don't have the details  
5 to tell you exactly where that balance will occur.

6 --o0o--

7 The master planning area is 300 acres. The south  
8 side of the slide or the right-hand side of the your slide  
9 is the power plant site.

10 --o0o--

11 MS. ANDERSON: And the process in looking at  
12 these 300 acres is a one-year process for the planning.  
13 And that includes significant public outreach: The  
14 citizens advisory committee, the working group on the  
15 power plant issues, as well as working with the city and  
16 other agencies during that one-year process. Then there's  
17 an environmental review process that will take the  
18 concepts for the master plan area and go through the  
19 environmental process. Again that will include numerous  
20 stakeholder outreach as well as public input in the CEQA  
21 process.

22 Again there will be public outreach as part of  
23 the Coastal Commission review. We'll have to do a master  
24 plan amendment to incorporate the new land uses into our  
25 master plan. So that planning process should be completed

1 in '05, and that does include the power plant site.

2 --o0o--

3 MS. ANDERSON: The goals for that process are,  
4 first and foremost, consistency with the tideland trust.  
5 We have a significant education process to educate the  
6 public on what we can and can't do on state tidelands. A  
7 broad community input support by enhancing environmental  
8 resources, integration with adjoining areas, economic  
9 sustainability, revenue generation. The city is  
10 interested in bringing its east and west areas together.  
11 We're hopeful the project will help to do that. And then  
12 provide additional recreational uses, public art, and open  
13 spaces. We have a very extensive public art program, and  
14 we hope to incorporate that into this area.

15 --o0o--

16 MS. ANDERSON: As to the plant itself and the  
17 specific plant area, this is an enlargement of the plant  
18 site. The north tank form is now demolished. But it's  
19 still undergoing environmental remediation.

20 The switchyard, which is in the center of the  
21 area, is owned by STG&E and would remain even if the power  
22 plant is moved from the site, as well as the easements  
23 connecting to. And I have a slide right after this one  
24 that will show you that.

25 The power block is the plant itself. And the

1 south tank form, Duke has already started demolishing some  
2 of those tanks. And the LNG sites, the old natural gas  
3 site, the tanks have been removed. And that site could be  
4 a site for a replacement plant, but that site has not been  
5 specifically identified.

6 --o0o--

7 MS. ANDERSON: This shows you graphically the  
8 area that the switchyard takes up on the site. So this  
9 will present a reuse problem or challenge for us  
10 regardless of the location of the new generation plant.  
11 Because even if that's moved offsite, the switchyard does  
12 remain.

13 The green is the switchyard itself, the yellow is  
14 the transmission easement, and then the blue is the main  
15 transmission line which runs north and south in the  
16 county.

17 --o0o--

18 MS. ANDERSON: This is what the switchyard looks  
19 like. And, again, this will remain on the site even if  
20 the plant is removed.

21 --o0o--

22 MS. ANDERSON: So what was the intent of the  
23 original transaction? Again, it was our intent to acquire  
24 tidelands at no cost and minimal risk to the port and to  
25 the state, to be able to redevelop the property, to

1 decommission the existing plant at the end of the lease  
2 term, and to have any underlying ground and water  
3 environmental issues resolved at the site.

4 --o0o--

5 MS. ANDERSON: There are two key documents:

6 The lease agreement, of which Jennifer described,  
7 which provides for the use of the site during the term;  
8 and also it discusses actions to be taken at the  
9 termination, which is the decommissioning of the plant.

10 The cooperation agreement is what discusses the  
11 cooperation between the port and Duke relative to a  
12 replacement generation facility.

13 --o0o--

14 MS. ANDERSON: As Jennifer indicated, the lease  
15 term expires three months after one of these items, which  
16 is either November of 2009 or the release of the must-run  
17 status by Cal ISO. So the earliest possible termination  
18 date is February of 2010.

19 --o0o--

20 MS. ANDERSON: And Duke is required to begin  
21 decommissioning the plant under that agreement within one  
22 year after the lease expiration date.

23 --o0o--

24 MS. ANDERSON: In the cooperation agreement, if  
25 Exhibit L does provide the schedule which Jennifer

1 discussed, which the next step is to file the application  
2 for certification to the CEC by no later than June 30,  
3 2006. That could occur earlier, but this is the outside  
4 date by which that could occur. Development has to be  
5 determined to be commercially reasonable, or the  
6 replacement generation plant would not have to be  
7 constructed.

8 --o0o--

9 MS. ANDERSON: We do not have at the port the  
10 permitting authority over the replacement generation  
11 plant. That falls with the California Energy Commission.  
12 It will be the lead agency for CEQA and it will conduct  
13 the licensing and processing, including workshops again  
14 and public meetings. So we will have our outreach  
15 process, which we will do through our land-use planning  
16 effort. There would be a follow-up or an additional  
17 public outreach process through the licensing for the  
18 replacement generation plant, whichever site it ends up  
19 being placed on.

20 --o0o--

21 MS. ANDERSON: In addition to that -- and this  
22 was all we could fit on this screen -- there were numerous  
23 other oversight agencies that will have control over  
24 replacement generation. The port does not have that  
25 control. Our sole control would be if we entered into a

1 land-use agreement for a site on tidelands.

2 --o0o--

3 MS. ANDERSON: With that, again I would like to  
4 reiterate our commitment, which is to have the plant torn  
5 down, to make sure that it is environmentally friendly,  
6 and then we also have the commitment to continue to  
7 partner with State Lands, both the staff and the  
8 Commission, through status reports our cooperation and  
9 support. We will ensure conformance both on our side as  
10 well as Duke's with the lease and cooperation agreement.  
11 And we also commit to continue our open and transparent  
12 process, which includes sponsorship of public discussions  
13 and workshops.

14 And with that I'd like to turn this presentation  
15 over to Randy Hickock of Duke for their presentation. And  
16 then we'll be available for questions if you have any.

17 MR. HICKOCK: Good afternoon. My name is Randy  
18 Hickock, and I'm the Senior Director for Duke Energy's  
19 operations here in California, meaning that I have  
20 operational responsibilities for the four facilities that  
21 Duke has within the State. I've brought with me today  
22 Kelly O'Brien, who is in charge of development for Duke  
23 Energy North America. And she's available to help answer  
24 questions to the extent that you have them regarding what  
25 our activities have been to date and the like.

1 I will share with you all -- we have a letter  
2 addressed to the State Lands Commission, and I'll  
3 summarize it very briefly. This -- essentially Duke would  
4 like the State Lands Commission to know that we are in  
5 full compliance with our contract and our lease at South  
6 Bay. We have been diligently pursuing the development of  
7 a replacement generator plant. The nature of that process  
8 in the early stages, it's not one that makes it publicly  
9 obvious.

10 We intend to fully live up to the terms of the  
11 lease to try to make that plant happen, and in the  
12 meantime to operate that facility, you know, run it as  
13 cleanly as it can be operated, run it safety and reliably.

14 Other than that, I believe the presentations by  
15 the ports and the staff have largely covered the nature of  
16 the contracts. And I suspect you have a number of  
17 questions regarding what Duke has been doing and what we  
18 intend to do. So I'm here to answer your questions.  
19 We'll call Kelly up to the extent that I can't come up  
20 with the answer.

21 CHAIRPERSON BUSTAMANTE: Yes. In the process of  
22 making sure that a site is selected, I'd asked if there  
23 were different processes that would be pursued in order to  
24 be able to do your due diligence. And I don't know if any  
25 of that has been attempted or has been written out or if

1 there's been a memo that's indicated that you are pursuing  
2 any of those activities.

3 MR. HICKOCK: We have been pursuing those  
4 activities.

5 CHAIRPERSON BUSTAMANTE: In what way?

6 MR. HICKOCK: We got started shortly after we  
7 began the lease of the plant. And the focus initially and  
8 all of our focus on site selection has been along the  
9 lines of finding an offsite location for a combined cycle  
10 facility.

11 So we have been looking at a number of sites in  
12 San Diego County where you could put a replacement  
13 facility, looking at anything from a single two-on-one  
14 combined cycle configuration to a larger four-on-two  
15 combined cycle configuration, could be 500 megawatts up to  
16 1,000 megawatts. I believe we --

17 CHAIRPERSON BUSTAMANTE: Anything promising at  
18 this point?

19 MR. HICKOCK: Yes, we've narrowed the selection  
20 down to our favorite offsite location from I believe  
21 initial field.

22 Kelly, do you want to join me. I believe we've  
23 checked out --

24 CHAIRPERSON BUSTAMANTE: You're not giving up any  
25 trade secrets by letting us know what that is?

1 MR. HICKOCK: We'd prefer until we have site  
2 control over the parcel not to reveal the specific  
3 location.

4 One thing to appreciate is a lot of the nature of  
5 a replacement plant for the South Bay facility is tied up  
6 in the necessity of the plant to the grid. As you're  
7 aware, it's a must-run facility. Come next year all of  
8 the units will be back on must-run status even before it  
9 dropped off briefly for a year. And so there are grid  
10 reliability considerations that have to be taken into  
11 account if you're looking to site this plant. You can't  
12 stick it just anywhere because there is a need for some  
13 level of generation to be entering the grid, where the  
14 switchyard is or some -- in some comparable part on the  
15 electric power grid. So we couldn't, say take this and  
16 put it deep in Imperial Valley and meet the reliability  
17 needs. So in the broad geographic sense it's all been in  
18 the County of San Diego and largely south county.

19 Kelly, you want to jump in? Anything else?

20 MS. O'BRIEN: You may be up and down with this --  
21 between Randy and I.

22 Commissioners, we appreciate your interest in  
23 this matter. And as Randy said, that to date a lot of the  
24 work has really been done behind the scenes because it's  
25 been high level fatal flawed, due diligence kind of

1 studies that wouldn't be necessarily made available to the  
2 public.

3           We looked at to date nearly 30 sites around the  
4 San Diego area. And as Randy said, we came to the  
5 conclusion as we went through that process that in order  
6 to maintain the reliability of the grid, and in  
7 discussions with the ISO, some level of generation is  
8 going to be needed to be kept in the area where it can tie  
9 into the existing substation that's located onsite. So  
10 while most of the sites had fatal flaw issues, it came  
11 down to really focusing in on sites in the immediate area  
12 that could tie into this substation. And as Randy said,  
13 we've really essentially narrowed it to one site that we  
14 believe has a possibility of going forward.

15           But we looked at primarily sites that could  
16 support a 620 megawatt two-by-one combined cycle plant.  
17 And as we've gone through the process, and the market has  
18 changed in the power industry and in the economy in  
19 general, a lot of this project, whether or not it's  
20 commercially feasible to go forward will depend on having  
21 a long-term power purchase agreement in order to support  
22 financing a facility. And as we've had discussions with  
23 potential counter-parties for a power purchase agreement,  
24 it appears that there may be some difference of opinion in  
25 what people may be looking for as far as size of a new

1 plant, the type of technology that could be used, which  
2 could somewhat throw out some of the feasibility studies  
3 we've done to date as we focus in on what people are  
4 actually going to be willing to sign up for long-term  
5 carts for. We may be able to go back and look at other  
6 sites that we initially threw out. And it will help us  
7 hone in on what exactly we need in terms of infrastructure  
8 to support the project as we continue to process to try to  
9 get a long-term power purchase agreement.

10 So we're in a little bit of a Catch 22 right now.  
11 We've evaluated a lot of sites. But until we know exactly  
12 what kind of technology and what we need to build going  
13 forward, we can't really make a final decision on the site  
14 selection at this point.

15 CHAIRPERSON BUSTAMANTE: Mr. Controller.

16 COMMISSIONER WESTLY: There's three points.

17 First, I used to work for the Department of  
18 Energy, and I'm very familiar with a lot of the issues  
19 you're talking about. And I know firsthand that the  
20 improvements, not only efficiency-wise but  
21 environmentally, the new power plants are stunning. And  
22 the sooner we can get this plant turned off and a new one  
23 in place, everybody is going to be far better off from a  
24 liability standpoint, cost, and environment.

25 What worries me here -- and I am also a

1 businessman. I understand there are all sorts of  
2 regulatory issues. This isn't easy. But I just don't  
3 have a good grasp of how quickly this is moving forward.  
4 And what I have right here, "Sort of Catch 22, and we're  
5 looking at sites, we can't quite tell you. There's only  
6 one that really works." And that says to me, boy, if that  
7 one doesn't work, then we're back to square 1 and this  
8 process drags on interminably. I would really like to get  
9 from you -- and I'd urge you to speak more public in  
10 updating us and the community in terms of "Here's where we  
11 are. We expect to have more news for you in four weeks,"  
12 six weeks, eight weeks. You know, I know a lot about what  
13 I was like as a CEO, and I -- and as a senior executive --  
14 could never say, "Gee, I just really don't know where the  
15 heck this thing is." What I feel like I'm hearing is you  
16 just don't really know where the heck this thing is and it  
17 worries me.

18 So instead if you give us regular updates and  
19 say, "Here's where we are in terms of when we think we'll  
20 know when the plant goes on line. Here's where we are  
21 with the power grid. Don't have it yet, but expect to in"  
22 two weeks, four weeks, six weeks, eight weeks, whatever it  
23 is, it would just help me a lot in being able to evaluate  
24 this appropriately.

25 MS. O'BRIEN: Of course -- I'll only clarify one

1 thing. First, it's one offsite is what we narrowed it  
2 down to. There's always the option, I would assume, at  
3 some point looking at onsite, because all the  
4 infrastructure is there and it would have -- as far as  
5 building new additional infrastructure it would have the  
6 lowest impact from that standpoint.

7 So I would say there are probably two very  
8 feasible sites at this point, one offsite and one onsite  
9 that we've honed down.

10 However --

11 COMMISSIONER WESTLY: Just on that point, I'm  
12 delighted to hear there's an option, a Plan B. That's a  
13 great step. But in hearing the previous presentation, I  
14 didn't get a sense that the Plan B was maybe as real as  
15 one might think. But as long as you're coordinating with  
16 them, that's good news.

17 MS. O'BRIEN: We're working with the staff almost  
18 on a daily basis. I have discussions with port staff on  
19 various aspects of this project.

20 With regards to a power purchase agreement, to be  
21 honest with you, I don't have an answer on that right now,  
22 when we could expect to close a deal like that. There are  
23 just too many uncertainties going forward. And, as you  
24 know, some -- there's recently been an RFP that still  
25 needs to be -- continue to be fleshed out with one of

1 obviously the largest potential counter-parties in the  
2 area. And I could not tell you -- those discussions will  
3 be ongoing. But to give you an idea of when any  
4 discussions may close on that, I just can't do it right  
5 now unfortunately.

6 COMMISSIONER WESTLY: Could this drag out five 5  
7 or ten years?

8 MS. O'BRIEN: I would say potentially -- there's  
9 always the potential for this thing not to actually come  
10 to closure as far as the feasibility -- commercial  
11 feasibility of a replacement plant. Now, whether or not  
12 the existing plant will continue to have RMR status, you  
13 know, 10, 15 years from now, I can't address that either.  
14 That's going to depend upon what happens, you know, with  
15 Cal ISO and what happens with transmission grid.

16 COMMISSIONER WESTLY: Yeah, I think that would be  
17 a disaster for the environment. I appreciate these things  
18 aren't fully within your control. And we're highly likely  
19 to invite you by the office in the near future.

20 MS. O'BRIEN: We'd be willing to accept that  
21 invitation.

22 And certainly if you have any ideas on  
23 counter-parties or a way to get a long-term PPA, we'd  
24 certainly love to hear it. I mean what's happening in the  
25 Legislature in support of potentially tearing down the

1 older, less efficient plants certainly helps our cause as  
2 we go forward.

3 CHAIRPERSON BUSTAMANTE: You could tear this one  
4 down, build another one on spec.

5 MS. O'BRIEN: Not these days.

6 CHAIRPERSON BUSTAMANTE: I know, I know.

7 In terms of your must-run status, do you  
8 anticipate that actually being maintained next year or do  
9 you see any possibility of it being revoked?

10 MR. HICKOCK: Next year I believe it's a  
11 certainty. In September the ISO Board voted on  
12 designation -- must-run designation from the year 2004.  
13 And given the nature of what causes a unit to be  
14 designated must-run or not, there's nothing that will  
15 change about the transmission grid that makes the grid  
16 capable of doing without the capacity at South Bay.

17 The most material developments I think on that  
18 front, there will be some transmission upgrades on SDG&E's  
19 system that I believe are completed next year. And then  
20 we're waiting to see what the fallout from SDG&E's RFP is.  
21 We know that they've proposed buying power from Otay Mesa,  
22 they've proposed buying power from a new plant at Palomar.  
23 And the ISO I think will have to run some transmission  
24 studies with those scenarios and see what they think the  
25 must-run needs for South Bay are, you know, into the

1 future.

2 My expectation is that there will always be some  
3 level of must-run need for South Bay at least for the next  
4 several years. Beyond that I think the California ISO is  
5 probably the best entity to give you an objective opinion.

6 CHAIRPERSON BUSTAMANTE: What if it was revoked?

7 MR. HICKOCK: If the South Bay must-run were  
8 revoked? You know, then it's a plant that has no must-run  
9 contracts. It would have to earn its living out in the  
10 spot market, which is a pretty tight market anymore.

11 So --

12 CHAIRPERSON BUSTAMANTE: Especially for an  
13 inefficient one?

14 MR. HICKOCK: Particularly for an inefficient  
15 one. Yeah, it's -- we've got units that are -- they're  
16 largely 10,000 heat rates, which aren't bad by the  
17 standard of their day, but relative to a new combined  
18 cycle are inefficient. And we've got one unit that's  
19 12,000 megawatts. It's a Peaker. So, you know, it's --  
20 much of South Bay's existence is a function of its need  
21 for local reliability purposes.

22 CHAIRPERSON BUSTAMANTE: And do you think that  
23 you'll be given a -- you seem pretty sure that you're  
24 going to be given a must-run status next year. Is that  
25 because of the contracts being renewed --

1 MR. HICKOCK: Yes.

2 CHAIRPERSON BUSTAMANTE: -- in March of -- pretty  
3 much around March of what, 2004? Isn't it somewhere in  
4 that timeframe?

5 MR. HICKOCK: September 2004 is when we received  
6 word that we had been designated must-run for 2004. So  
7 we've received a designation for next year.

8 CHAIRPERSON BUSTAMANTE: You've received it for  
9 next year already?

10 MR. HICKOCK: Yes.

11 CHAIRPERSON BUSTAMANTE: I see.

12 Okay. We have several community members that are  
13 going to be coming forward.

14 COMMISSIONER WESTLY: Thank you.

15 CHAIRPERSON BUSTAMANTE: Duke, can you keep  
16 yourself available?

17 MR. HICKOCK: Sure.

18 CHAIRPERSON BUSTAMANTE: Environmental Health  
19 Coalition.

20 Albert.

21 MR. HUANG: My name is Al Huang, Environmental  
22 Health Coalition. I'm going to speak briefly. We have  
23 some handouts here that Mr. Ramos is going to hand out to  
24 everybody in just a moment.

25 After I speak Al Shur from the International

1 Brotherhood of Electrical Workers Local 569 is going to  
2 speak, Bruce Reznik and Allison Rolle from San Diego Bay  
3 Keeper, and Jim Peugh from the San Diego Audubon Society.

4 First we'd like to thank the Commission for  
5 holding these meetings in the power plant down in San  
6 Diego, because the public will have an opportunity to  
7 engage with you and speak with you. And as you know, the  
8 power plant is an issue of high concern public interest.  
9 So we appreciate when you guys hold meetings down in San  
10 Diego, just to let you know.

11 First I'd like to bring a couple things to the  
12 attention of the State Lands Commission that are relevant  
13 to the South Bay Power Plant.

14 First, as you may know, recently California  
15 Environmental Protection Agency adopted pretty  
16 groundbreaking environmental justice guidelines in the  
17 State of California. And in your handout, this booklet  
18 that you have, I see Steve looking through already, is a  
19 book that kind of sums up the recommendations that have  
20 been adopted by Cal EPA, and it was created by EHC and  
21 other allied lied groups throughout the state.

22 The guidelines which apply to all departments of  
23 California EPA put California as a leader in the country  
24 in implementing a policy to protect the public health and  
25 impacted communities.

1           And just to quickly go through some of the things  
2 that would relate to South Bay Power Plant is the adoption  
3 of the precautionary principle. And that basically says  
4 if there's a reason for concern, like a public health risk  
5 or environmental risk, you take action immediately.

6           The second is the creation of the Office of  
7 Pollution Prevention. And this requires implementation of  
8 less toxic alternatives. So applied to the power plant,  
9 once-through cooling, for example, is a technology that  
10 currently exists. But so is dry cooling, which is a  
11 technology that if implemented would eliminate the  
12 pollution, hence pollution prevention.

13           The next recommendation that was also adopted was  
14 an improved cumulative impact statement. CEQA, and you  
15 guys know, already has a cumulative impact statement. But  
16 this is an advanced form of that that ensures that we'll  
17 create new or worsening pollution problems. And  
18 especially with the bay front development. You heard  
19 about the role the South Bay Power Plant plays in it.  
20 When you have increased development in a high density  
21 populated area, you're going to have cumulative impacts to  
22 the environment.

23           Finally, on the implementation guidelines it's  
24 called for ensuring a meaningful public participation.  
25 And I'm going to speak more about that later on. And that

1 really is talking about having more of the public role in  
2 the public process. So you actually impact the public  
3 process as opposed to just participating in it.

4 First, I understand that State Lands Commission  
5 has already adopted an environmental justice policy on  
6 October 2002, led by this Chair. And we applaud you for  
7 that. And we also understand that State Lands Commission  
8 was the first lead agency to consider environmental  
9 justice impacts in EIR under CEQA. And you should  
10 definitely be commended for that.

11 However, as Cal EPA has demonstrated, we can do  
12 better. And as a result I'm here to request that State  
13 Lands Commission staff look into supporting legislation  
14 that allows the State Lands Commission and its departments  
15 to adopt these visionary environmental justice principles  
16 for the management of your lands under its jurisdiction.  
17 And these are the tools that our communities need to  
18 achieve environmental just. So at first we request that  
19 you look into -- your staff look into that option.

20 On the topic of the power plant, meaningful  
21 public participation has come up. And in regards to the  
22 South Bay Power Plant, we believe there's an urgent need  
23 to begin a full and thorough public discussion on the  
24 power plant and the concerns of the community.

25 As you have in your handout there's a Chula Vista

1 map on the large one. And you see the red circle. That's  
2 where the power plant is located. And as you can see,  
3 there's sense of wild lands -- wetlands on one side and  
4 thousands of residents living downwind of the plant. And  
5 so the public health impacts, I'm sure you have heard much  
6 about, are the emissions from the air emissions' impact on  
7 the coastal resources due to the use of water cooling and  
8 the uncertain future, as we just discussed here, while the  
9 lease is coming to a close in the near future and Duke is  
10 currently in the process of installing a replacement  
11 plant.

12 Now, just to respond to -- it seems like a little  
13 disingenuous for Duke to come out and say that they've met  
14 with stakeholders. I mean the only meeting that we know  
15 of with the Environmental Health Coalition was one  
16 meeting. And since then every attempt that we made to  
17 create a community working group that represents not only  
18 environmental interests but also labor and community-based  
19 interest has been blocked by Duke. And so I just want to  
20 raise that as a flag because I mean you hear them saying,  
21 "Oh, yes, we're bringing the stakeholders together, we're  
22 having this public process." We don't see it happening  
23 from our side. And as a result, in the past several  
24 months we have worked with stakeholders on our own and the  
25 port to create a work group that specifically addresses

1 these community concerns. And, again, I've only seen Duke  
2 kind of interfere with that process and delay it.

3 As you can see, I -- there's another handout you  
4 have here that has upcoming major events. As you can see,  
5 I mean the air permit is coming up for renewal in March of  
6 2004, the water permit is coming up for renewal in --  
7 sorry -- for reinsurance in June of 2004. You heard about  
8 the CEC process. The Chula Vista master plan, the first  
9 draft is due to be completed January of 2004. There's  
10 lots of events coming up. And the community hasn't had  
11 really an opportunity to really to address our concerns in  
12 regards to those issues. And we feel that creation of a  
13 work group will be the first step in kind of getting the  
14 community up to speed, exchanging information, having  
15 these discussions about alternatives, the concerns being  
16 aired. And we can move forward on all of these, including  
17 the planning process and the permits.

18 The key example again is the Chula Vista Bay  
19 Front Master Plan. You have a handout there again that  
20 shows you the properties. You can see the power plant is  
21 clearly a crucial part in this redevelopment process. And  
22 as far as we know, redevelopment process can only go  
23 forward and really have a good planned-out redevelopment  
24 plan if we have the power plant included in that. And we  
25 believe this underscores a need for the creation of a work

1 group and to immediately address these concerns, and as  
2 the power plant and the planning process has moved forward  
3 on its own for the past couple months already.

4 In addition, Duke again has -- you've heard  
5 already, has still not announced its plans for the  
6 demolition and/or its replacement. And -- but the port  
7 staff has been working with us and trying to get this work  
8 began. As we say, you know, that we haven't had this  
9 happen yet. As a result I mean the public side has been  
10 left out in the dark about this whole process, much -- as  
11 I hear Steve was saying before, you guys want to have more  
12 information about what's going to happen.

13 We request -- first of all we support the  
14 recommendations that the State Lands Commission staff has  
15 made.

16 We would request that you add one more  
17 recommendation, and that be to support the port's effort  
18 to recreate this work group. It will allow the community  
19 the opportunity to meet, discuss, exchange ideas and to  
20 prepare for the upcoming events.

21 If by December 1st this work group is not  
22 created, we ask the State Lands Commission to step in on  
23 their own and provide the leadership to make it happen.

24 Again, we thank you for this opportunity to  
25 address you.

1           And next will be Al Shur from IBEW Local 569.

2           MR. SHUR: Chairman Bustamante, Commissioners.

3 My name's Allen Shur. I represent -- I'm with IBEW Local  
4 569 here in San Diego. And I represent almost 3,000  
5 workers in the electrical industry and their families.

6           I'm here to help ensure that the South Bay Power  
7 Plant not only has quality jobs, but it's also good for  
8 the environment that our families live in.

9           We advocate replacing South Bay Power Plant with  
10 a dry cooled -- air cooled power plant. And it should be  
11 sited away from the coast if at all possible. The IBEW  
12 strongly supports cleaner sources of energy, solar power,  
13 dry cooled power plants.

14           We request that the State Lands Commission ensure  
15 the creation of this power plant working group to allow  
16 the members of the public, our workers, and  
17 environmentalists to meaningfully participate in the  
18 public process and to begin the discussion about the  
19 concerns that we have for the South Bay facility.

20           Thank you.

21           CHAIRPERSON BUSTAMANTE: Thank you.

22           Bruce.

23           MR. REZNIK: Honorable Chairman, Commissioners,  
24 thank you for this opportunity to speak. I am Bruce  
25 Reznik, the Executive Director of San Diego Bay Keeper.

1 I'm also testifying as a representative member of Surf  
2 Rider Foundation and other members of the San Diego Bay  
3 Council Alliance.

4 I should probably stop doing caffeine at lunch  
5 because I just sit in the back and get more and more  
6 frustrated as I hear some of the testimony that goes on.

7 The first thing I want to talk about is a win-win  
8 scenario. To make it very clear, a win for the  
9 environment is a win for the economy. It is that simple.  
10 There's also win for the communities being impacted by  
11 this power plant. Or as Sylvia Earl once said, a  
12 conservationist, "The economy is a wholly owned subsidiary  
13 of the environment." And if we continue to have a  
14 pollution of our communities, a pollution of our bay, and  
15 we continue to have our children in our communities sick  
16 from asthma because of archaic technology, that is a loser  
17 for everybody.

18 And the reality is I don't know who won when the  
19 markets -- the energy markets are being manipulated,  
20 prices are being manipulated. And I certainly don't think  
21 the communities of California won. There may have been  
22 some winners maybe in this room, but it certainly wasn't  
23 the vast majority of Californians. And I want to make  
24 that clear.

25 I would have been hoping for more at this point,

1 to be honest, in the process. I disagree with one thing.  
2 I think -- did a great job. The permit for the waste --  
3 or the discharge permit for water isn't coming up in June  
4 '04. It actually was up in December '01. Unfortunately  
5 that process has been delayed for two and a half years as  
6 Duke continues to need more studies and more time and more  
7 studies and more time. It's a process that I think the  
8 Commissioners are very familiar with and I think are  
9 getting frustrated with, as are the environmental  
10 communities.

11 This is an archaic plan. It's a polluting plan.  
12 We all know that. It was highlighted in the report that  
13 environmental groups issued in December of '01 called  
14 "Deadly Power," which I think you all have. You know, the  
15 reality is, based on the history of what has gone on in  
16 California with the energy industry -- I don't trust the  
17 plants to get this plant done and I don't trust the plants  
18 to get it off the bay. We need a dry cooled plant, we  
19 need a cool plant. That is -- an air cool plant. That's  
20 what's going to be good for everybody. That is the  
21 win-win situation.

22 Now, I do support the working group proposal that  
23 is out there. I support it somewhat reluctantly as a  
24 member of many, many working groups that often go nowhere  
25 for the environment, is often not represented, where we

1 are not listened to and we're up there as tokens. I will  
2 support the working group, but only if we can ensure that  
3 it is balanced, it is fair, and it is meaningful. And by  
4 balanced, I mean environmentalists are represented. Fair:  
5 We got to figure out a way to get them on there because we  
6 are always at a resource disadvantage when it comes to the  
7 other side. And meaningful: We need to actually be  
8 listened to, and we need strict deadlines, and we need to  
9 get this thing done.

10           Again, I have to echo what Al said about the  
11 stakeholder process so far. You know, as one of the  
12 people that's supposedly been involved in the stakeholder  
13 process, I missed it. And so it needs to be a real  
14 stakeholder process. We need to move this forward, get  
15 this plant, this old plant, this archaic plant, this dirty  
16 plant, we need to get it down. We need to do it. It's  
17 good for San Diego, it's good for Chula Vista, and it's  
18 good for our communities and our children.

19           Thank you very much.

20           CHAIRPERSON BUSTAMANTE:

21           Allison.

22           MS. ROLFE: Honorable Chairman, members of the  
23 Commission, thank you for the opportunity to speak to you  
24 today. My name is Allison Rolfe and I'm the Policy  
25 Director at San Diego Bay Keeper. And I'm also a member

1 of the Port Chula Vista CAC for Bay Front Planning.

2 We're encouraged that there's a process for bay  
3 front planning and that that's been established and  
4 underway. I've been working hard to make sure that it's a  
5 meaningful process and that the objectives of the CAC are  
6 analyzed and considered in the development of the latest  
7 alternatives for the bay front vision.

8 And for obvious reasons, air pollution, impacts  
9 to the bay and marine life, and the huge obstacle that the  
10 power plant presents for planning the Chula Vista bay  
11 front, we are here -- we want the plant closed and moved  
12 from the bay front.

13 But without getting into that in detail today, we  
14 want to emphasize the need for a focused discussion about  
15 the power plant. We need to discuss it. Otherwise we're  
16 all going to call into question the value of the bay front  
17 planning process.

18 What happens with the power plant is integral to  
19 the long-term plan for the bay front. It has a huge  
20 impact on the shape and character of the bay front. So we  
21 urge to form -- or we're urging the port and Chula Vista  
22 to form a technical advisory committee as a subcommittee  
23 of the CAC.

24 I was one of the people that met with Duke. We  
25 met once. And we certainly didn't have any input on site

1 selection. But we did talk about the need for a technical  
2 advisory committee and community involvement. The CHC  
3 should be invited to recommend representatives with  
4 appropriate expertise to sit on the technical advisory  
5 committee. And due to the urban location of the power  
6 plant, people will be watching. And some people will be  
7 skeptical about the authenticity and composition of the  
8 group. So it needs to be balanced and we need to ensure  
9 that.

10           Again, the urban environment that this power  
11 plant is located in means that there needs to be lots of  
12 community involvement and there needs to be a transparent  
13 process. And the tasks of the TAC and the mandates of the  
14 TAC needs to be fair and tangible. So we're urging and  
15 asking for a meaningful stakeholder process to the extent  
16 that that's not an oxymoron.

17           Thank you very much.

18           CHAIRPERSON BUSTAMANTE: Thank you.

19           Jim Peugh.

20           MR. PEUGH: I am Jim Peugh and I'm the Chairman  
21 of the Conservation Bay of San Diego Audubon Society?  
22 Well, much of what needs to be said has been said. You  
23 all know that this power plant grinds up fish eggs, it  
24 grinds up juvenile fish, and then grinds up the adult fish  
25 that should be reproducing instead of getting squashed.

1 It poisoned the water with -- and copper. And he took the  
2 bay to a tremendous extent disturbing some tire ecology.  
3 These are things we shouldn't be doing. We particularly  
4 shouldn't be doing them with public resources. This is --  
5 the power plant is on public land. We shouldn't be using  
6 public land to degrade the bay that belongs to the public.

7           There are a -- I would strongly urge you to ask  
8 really hard questions about this process. And as it --  
9 when it starts to lag, sort of, you know, kick people a  
10 bit about it. Hold the parties accountable to come up  
11 with a solution that really does protect and enhance  
12 environmental resources, like you've said in the new  
13 graft. And make sure the process stays very public. You  
14 know, as I hear today, this sounds like all three of you  
15 are very eager to do all of those three things, and so I  
16 really appreciate that.

17           Thank you.

18           CHAIRPERSON BUSTAMANTE: Thank you.

19           Mike Aguirre.

20           MR. AGUIRRE: Good afternoon. I'm a local  
21 attorney here in San Diego. And I've had an opportunity  
22 to review many of the internal documents that the port has  
23 with regard to the South Bay Power Plant.

24           First off, there is a little bit of a misnomer,  
25 because the power plant is not out of date. The power

1 plant has been upgraded many, many, many times. It is a  
2 relatively efficient plant. Three -- two mechanics and  
3 one engineer that work there, I've discussed it  
4 extensively with them. And they -- one of the things that  
5 they asked that it be pointed out is that the plant for  
6 purposes of generation of electricity has been on a  
7 continuous basis during the time that it was owned by  
8 SDG&E as well the time that it's been owned by Duke has  
9 been upgraded.

10           Secondly, there's a document that I request that  
11 you look at when trying to decide the RMR future of the  
12 power plant; and, that is, the prospectus that was used to  
13 describe the plant at the time that it was sold, because  
14 it described the congestion and the difficulty of getting  
15 electricity into San Diego during high periods of demand  
16 and how strategically important the power plant is. So  
17 the likelihood of it not becoming an RMR -- the RMR status  
18 changing is remote and it's remote for many, many, many  
19 years, if ever.

20           Number 3, I was disappointed to see that Duke  
21 slid into the record after your staff had made the report  
22 a letter dated October the 20th, which raised I assume  
23 under the commercial feasibility provision of the contract  
24 the condition that Duke be able to secure a third party  
25 power purchase agreement. That is a very significant

1 condition because what that tells us is that Duke is  
2 talking about obligating the plant to a third party and  
3 having a third party sign such a condition after it knows  
4 that the major retail consumer has declined to do that  
5 with Duke. So that's a significant condition that needs  
6 to be looked at.

7           The fundamental problem that Duke has standing  
8 before you today is a credibility problem. It's apparent,  
9 during the time that it was negotiating the unfortunate  
10 lease agreement and the cooperation agreement, entered  
11 into a secret agreement with the former chairman of the  
12 port commission in which Duke's parent agreed to make  
13 payments. That port commissioner has subsequently pled  
14 guilty to felonies in relationship to his relationship to  
15 those payments. That is significant because the port  
16 commissioner involved was the overall architect of the  
17 relationship. Every single condition that was placed into  
18 the lease agreement was tainted and was scarred by that  
19 relationship. And that information was not brought to  
20 your attention when you approved the original  
21 relationship. The original lease and the original  
22 cooperation agreement, when you allowed that to go  
23 forward, you were not told of that material information.

24           Whether those payments constituted a bribe in  
25 connection with the agreement -- the lease agreement and

1 the cooperation agreement is an open question. That issue  
2 has not been investigated by our district attorney. It  
3 has not been investigated by our state attorney general.  
4 It has not been investigated by FERC. And it has not been  
5 investigated by the Port District.

6 And it seems to me that one of the things that we  
7 have to do in deciding whether to proceed ahead and how to  
8 proceed ahead is we have to understand the nature of the  
9 lessee and whether the lessee has in fact engaged in  
10 corrupt practices and improper practices.

11 The second part is even a more serious problem,  
12 also not having been -- not investigated. And that is the  
13 question of whether Duke during the time that it has  
14 controlled the power plant has used the plant to  
15 manipulate the prices of electricity in California, both  
16 by way of withholding -- and it's physical withholding of  
17 power in the market as well as by way of congestion  
18 manipulation.

19 The ISO conducted an investigation of 5,000 bids  
20 that Duke put into the market -- into the ISO market and  
21 determined that approximately 90 percent of those involved  
22 physical withholding. The Federal Energy Regulatory  
23 Commission has completely and totally failed -- and I  
24 think there's almost a unanimous opinion with perhaps the  
25 exception of Duke and the other power manipulators -- has

1 wholly failed to investigate these issues.

2           And so to summarize, although I think that the  
3 staff member who performed the review did as good a job  
4 under the circumstances as she could, I've had an  
5 opportunity to discuss the matter with her and she has  
6 invited a letter which I intend to write asking for a more  
7 thorough review of the alleged unlawful and perhaps bribe  
8 payments that were made to the prior chairman of the port  
9 commission as well as the issue of price manipulation.

10           I think that we have to resolve those issues as  
11 best you can. I know you're not set up to do that and  
12 it's going to be difficult. But since Duke has cooperated  
13 and has indicated that they will submit to your  
14 information requests, I think I can provide you in a  
15 letter sufficient detail to require additional information  
16 from Duke, which you -- and its parent, which you may want  
17 to avail yourselves, particularly the circumstances of the  
18 manipulation and the alleged bribe payments.

19           Thank you.

20           CHAIRPERSON BUSTAMANTE: Before you leave. From  
21 the attorney general's office, to what extent are we  
22 obligated or is the port obligated to involve themselves  
23 or to continue a contract in which the state government,  
24 ISO, indicates there has been physical withholding that's  
25 been taking place? Is there -- if that were to be found

1 to be true, is there then a recourse?

2 ASSISTANT ATTORNEY GENERAL HAGER: I don't know  
3 the answer to that, but I'd be glad to find out.

4 CHAIRPERSON BUSTAMANTE: Would you?

5 ASSISTANT ATTORNEY GENERAL HAGER: Yeah. And  
6 we'd assume that there's some criminal activity. And then  
7 in that case what is its effect on the contract at stake;  
8 that's your question, right?

9 CHAIRPERSON BUSTAMANTE: Well, the question is is  
10 that if there is -- if there in fact has been physical  
11 withholding in the process of using a facility that's on  
12 state lands and a state agency declares that 90 percent of  
13 the energy that was produced or 90 percent of the  
14 incidences had physical -- had physical withholding that  
15 was taking place, seems to me that we're kind of rewarding  
16 an entity, whether it's Duke or anyone else, an entity,  
17 allowing them to remain on state lands when we know that  
18 there was in fact damage that was done to the taxpayers of  
19 the State of California.

20 ASSISTANT ATTORNEY GENERAL HAGER: I understand.  
21 I'll have to find out.

22 CHAIRPERSON BUSTAMANTE: You will check on it?

23 ASSISTANT ATTORNEY GENERAL HAGER: Yes.

24 MR. AGUIRRE: May I add one point about that?

25 CHAIRPERSON BUSTAMANTE: Please.

1 MR. AGUIRRE: There is a provision in the  
2 contract, which I'll be glad to include in my letter, that  
3 provides that it is subject to termination if there is a  
4 finding that Duke has violated California law in the way  
5 in which it's operated the plant.

6 And so beyond -- or aside from the issue of what  
7 additional steps could be taken, the contract itself has a  
8 termination provision. And that's one of the issues that  
9 I will be raising in my letter to the Commission with  
10 regard to a possible review.

11 CHAIRPERSON BUSTAMANTE: Thank you. Those are  
12 very serious allegations. Of course that takes us to a  
13 completely different level.

14 My guess is that at this point, if you could just  
15 call us back -- or get back to us and let us know. My  
16 guess is that would be more in your domain than in ours.  
17 But we would like to have an update on what that would  
18 mean in this particular situation.

19 ASSISTANT ATTORNEY GENERAL HAGER: Yes.

20 CHAIRPERSON BUSTAMANTE: Michael, could you give  
21 a little bit more about this third party purchasing  
22 agreement?

23 MR. AGUIRRE: Right. The third party purchasing  
24 agreement basically would provide an insurance policy to  
25 Duke that there is a retail or a wholesale purchaser that

1 has committed itself to purchase a substantial portion of  
2 the output.

3 And really the only local purchaser is SDG&E.  
4 And at least up to this point, SDG&E has not indicated  
5 that it's willing to play that role for Duke.

6 So by inserting that as a condition -- and,  
7 again, I assume that that is in connection with the  
8 commercially reasonable provision of the lease -- duke is  
9 essentially setting up a barrier that it knows it's  
10 unlikely to be able to get over as --

11 CHAIRPERSON BUSTAMANTE: That was in the original  
12 agreement?

13 MR. AGUIRRE: Right. If you'd look at the  
14 PowerPoint that the -- I don't if they can bring up the  
15 PowerPoint that the port put on -- but you'll see that one  
16 of the conditions for the replacement plant is that it be  
17 found to be commercially reasonable. And that is the kind  
18 of subjective condition that up to now had not been fully  
19 defined. And it appears that what Duke is doing is  
20 defining it in such a way as to make it insurmountable.

21 CHAIRPERSON BUSTAMANTE: I see.

22 MR. AGUIRRE: Thank you.

23 EXECUTIVE OFFICER THAYER: If I could respond to  
24 that.

25 CHAIRPERSON BUSTAMANTE: Please.

1 EXECUTIVE OFFICER THAYER: I think you're making  
2 reference to this letter that they passed out today?

3 MR. AGUIRRE: Correct.

4 EXECUTIVE OFFICER THAYER: Right. That letter  
5 has no more status than -- you know, the opinion of  
6 Duke as to ways that this facility could be made more  
7 commercially feasible. And they raised -- they proposed a  
8 couple different ways that even the Commission -- they've  
9 solicited the Commission's assistance in legislation that  
10 would incentivize them to open up this power plant. This  
11 doesn't change the meaning of words in the contract on  
12 commercial viability. They're just talking about the ways  
13 they can helped in getting over that.

14 CHAIRPERSON BUSTAMANTE: But they're raising --  
15 the gentleman's raising that there is a potential of being  
16 able to utilize this particular standard in order to be  
17 able not to comply. I believe that that's --

18 MR. AGUIRRE: Right.

19 EXECUTIVE OFFICER THAYER: I think certainly from  
20 the State Lands Commission staff's perspective, that Duke  
21 can raise that issue, but that does not mean that they've  
22 redefined the term as it is in the contract. So I guess  
23 what we're saying is, I'm hearing his concern, but I don't  
24 believe we'd accept Duke's reasoning.

25 CHAIRPERSON BUSTAMANTE: I see.

1 MR. AGUIRRE: I think -- If I might respond. The  
2 language reads -- that I'm particularly concerned about,  
3 which I think puts us on notice, and that's why I say the  
4 last-minute notice -- I believe that this may have come in  
5 to provide last-minute notice. But it said -- it reads as  
6 follows: A key consideration that could affect the  
7 ultimate construction of an RGP will be Duke's ability to  
8 secure a third party power purchaser" -- I'm sorry -- "a  
9 third party power purchase agreement. And where it says,  
10 "A key consideration that could affect the ultimate  
11 construction" I think is an effort to put us on notice  
12 that they are in fact going to try to insert that as a  
13 part of the commercially reasonable condition.

14 CHAIRPERSON BUSTAMANTE: Thank you.

15 Does Duke want to respond to any of these or --  
16 rather than we going through other testimony, I thought  
17 I'd give you a chance to respond.

18 MS. O'BRIEN: Yeah, and I'd like to address  
19 basically the last issue. Randy may want to address any  
20 operational issues regarding allegations of withholding  
21 power.

22 But the issue with regards to commercial  
23 reasonableness and having a power purchase agreement to  
24 help support that concept of commercial feasibility of the  
25 plant, ultimately for the plant to be commercially

1 feasible going forward we have to be able to get  
2 financing. That's the reality of today's market as it is  
3 right now. Not to say it will be in 12 months or 24  
4 months. I don't know. But today's market we have to have  
5 financing to build a plant.

6           There are no more spec plants being built in the  
7 merchant industry, at least not by my company. And in  
8 order to get financing we're going to have to have at  
9 least some percentage of the output, probably a majority  
10 of the output sold under a long-term arrangement. And  
11 that's the situation as it is today. There are any number  
12 of other issues that could also factor into commercial  
13 feasibility. But that is one of the major hurdles that we  
14 will have to overcome.

15           MR. HICKOCK: There are a couple other issues I  
16 can address.

17           Regarding the withholding accusations. Duke has  
18 absolutely never withheld power. We've been fully  
19 investigated by the FERC. We have turned over as part of  
20 that investigation dispatch records for every hour of the  
21 entire period -- I believe it was a two-and-a-half-year  
22 period that the FERC investigated. The ISO similarly  
23 turned over their records. And we were absolved of any  
24 accusations of withholding power in California. And  
25 there's a very good reason for that, is because it

1 absolutely never happened.

2 Duke has run that power -- not only -- not only  
3 have we not withheld power; we've done everything in our  
4 power to get as much power out of that unit and all our  
5 units during the energy crisis as we could. The plant has  
6 never run any cleaner than it's running today. We've  
7 retrofit the plant with SCR. You know, we've tried to do  
8 everything right to ensure adequate supply to California,  
9 not conversely.

10 And I'm unaware of any unresolved ISO  
11 investigations or accusations that haven't been fully  
12 addressed on that. So you all can follow up on that. But  
13 that's Duke's position on that one.

14 Regarding the stakeholder process, I mean we  
15 fully support a stakeholder process. You know, I'm  
16 hearing some frustration that Duke hasn't been sitting at  
17 a roundtable with some stakeholders and talking about the  
18 plant. But part of that is we're not exactly sure what we  
19 would talk about until we know what sort of plant would be  
20 appropriate, what technology, what size, where it would be  
21 located. And much of that is: What is the need for  
22 incremental generation in San Diego and where would it be  
23 located? And, you know, we are trying to find somebody to  
24 buy -- to sign a power purchase agreement. And if we know  
25 that there is a home for the power, then we can get

1 started on the stakeholder process to talk about what that  
2 should look like. Now, if you want to start that earlier,  
3 we're happy to participate.

4 CHAIRPERSON BUSTAMANTE: Well, maybe the members  
5 of the audience here who are interested in participating  
6 with you can contact you and to begin that process.  
7 Because I think some of the issues that you just raised  
8 are some of the reasons that they would like to actually  
9 meet. Okay?

10 MR. HICKOCK: Okay.

11 Thank you.

12 MS. O'BRIEN: And I if I could --

13 CHAIRPERSON BUSTAMANTE: And I wanted to give you  
14 an opportunity to make sure that you said whatever you  
15 needed to say in defense of Duke's position on the record  
16 while you were here.

17 MR. HICKOCK: Okay.

18 CHAIRPERSON BUSTAMANTE: We didn't want you to go  
19 back to the office and they say, "How come you didn't say  
20 anything?"

21 MS. O'BRIEN: Yeah, I'd just like to reiterate  
22 what Randy said and that we're going to be fully  
23 supportive of the port's process as they go through and  
24 set up -- whether it's called a working group or a  
25 technical advisory group or whatever they do as part of

1 the CAC process. So we will be involved in that.

2 CHAIRPERSON BUSTAMANTE: Yeah, I think that the  
3 groups are not only well intentioned; I think that what  
4 they're basically saying is that they'd like to help you  
5 arrive at a decision that would be good for the community.  
6 It seemed -- I don't know, it seems like often times  
7 industry groups think of various environmental groups as a  
8 hindrance to them getting business done. Sometimes, you  
9 know, if you're going to come to a meeting for permit  
10 process, chances are you'd like to have them with you.

11 MS. O'BRIEN: Absolutely. I wasn't against --

12 CHAIRPERSON BUSTAMANTE: I mean I know it's a  
13 crazy thought.

14 (Laughter.)

15 CHAIRPERSON BUSTAMANTE: But, you know, having  
16 them engaged and letting them see your process and letting  
17 them see that, in fact, you are doing your due diligence;  
18 and the fact that if you did do that due diligence, they  
19 would be able to testify in your favor rather than raising  
20 questions as to what you're doing, if anything. Just a  
21 thought.

22 We have, if there's nothing else, Lupita Jimenez,  
23 and then Mr. Hancock.

24 MS. JIMENEZ: Good afternoon. Commissioner  
25 Bustamante and other Commissioners.

1 I am Lupita Jimenez. I am Co-chair of the San  
2 Diego County Green Party. And I wish to speak in favor of  
3 decommissioning the South Bay Power Plant and removing the  
4 plant from the Chula Vista bay front as soon as possible.

5 We have formed in Chula Vista a coalition of  
6 community groups. The EHC, Environmental Health  
7 Coalition; Friends of Wildlife; Bay Keeper; Cross Roads  
8 II; the Audubon Society; the Green Party; and several  
9 other groups are all members of the coalition.

10 Through a survey we undertook in April of this  
11 year we found that the community is overwhelmingly  
12 supporting this view of removal. We cite the air and  
13 water pollution that has been going on for thirty some  
14 years and the degradation of health in the downwind  
15 populations.

16 This coalition has worked mightily to bring about  
17 the joint planning of port lands with the privately hailed  
18 land called the mid-bay front, which is environmentally  
19 sensitive. The mid-bay front area is contiguous to the  
20 salt-water marsh wildlife habitat immediately to the  
21 north.

22 The port is now planning the development of lands  
23 under their authority. We demand of the two areas that  
24 this planning include the decommissioning of the South Bay  
25 Power Plant. With coherent joint planning we envision

1 development which will include a landmark park for the  
2 citizens of Chula Vista; a destination hotel, which will  
3 fill many needs for us; and sustainable mixed use  
4 development, with some imaginative low-rise residential.

5 We understand the city's concern for loss of  
6 tech's revenue from the power plant. We feel intelligent,  
7 out-of-the-box, creative problem solving on the part of  
8 Chula Vista, the port, and the development will culminate  
9 in our vision becoming a reality. We ask that this  
10 Commission facilitate the complex planning that is  
11 involved in this bay front development.

12 Thank you.

13 ACTING COMMISSIONER MATEO: Thank you very much.

14 Let me see if I can say this name correctly. Is  
15 this Nephi?

16 MR. HANCOCK: Nephi.

17 ACTING COMMISSIONER MATEO: Nephi. There we go.

18 MR. HANCOCK: My name's Nephi Hancock. I'm a  
19 resident of Chula Vista and I'm also a member of the IBEW  
20 Local 569.

21 I got involved with some of this because my local  
22 asked me to come to the port hearings sometime last year,  
23 and it was on the South Bay project. And since that time,  
24 because I live in Chula Vista and my children, grand  
25 children live there, that I am concerned about the

1 pollution, how we're going to deal with this. And I would  
2 definitely like to see that we have community input into  
3 what's going on. And we've tried -- these people have got  
4 up and spoke previously to me. I've been with them at  
5 committees, meetings and sat and listened. And it seems  
6 that a lot of the presentations are put on, but then  
7 they're out of time, and the people don't have a chance to  
8 respond. There's just not enough time. It's time to go  
9 home. We're all done. They don't get a chance to  
10 respond. The people need a chance to respond to all of  
11 these things that have been brought up previously to me  
12 speaking.

13 And I appreciate your time for coming down and  
14 listening to us. Thank you.

15 ACTING COMMISSIONER MATEO: Thank you.

16 Would the record please reflect that Cindy  
17 Aronberg is sitting for the Controller at this point and  
18 Lorena Gonzalez is sitting for the Lieutenant Governor.

19 Thank you.

20 ACTING COMMISSIONER GONZALEZ: Was there anybody  
21 who didn't get a chance to speak who still wanted to on  
22 this issue?

23 Okay. Before I call for a vote, I just have a  
24 clarification on -- and, excuse me, because stepped out, I  
25 think. Did the Lieutenant Governor ask the port about the

1 working group?

2 EXECUTIVE OFFICER THAYER: He has not.

3 ACTING COMMISSIONER GONZALEZ: Okay. I'm trying  
4 to read his comments.

5 He had wanted to ensure that the working group  
6 that the port had created -- or was thinking of creating  
7 was in fact going to happen, and wanted to know if you  
8 could get an agreement from the port that we could at  
9 least start on that process.

10 MS. ANDERSON: Yes. I think as we said in our  
11 presentation, the working group is being formed. There's  
12 a meeting of the Citizens Advisory Committee on November  
13 3rd, at which the details will be discussed as to how it's  
14 formed, who will sit on it, what its mission will be. So,  
15 yes, it will be formed in the next meeting of the CAC.  
16 That's November 3rd. That should be culminated.

17 ACTING COMMISSIONER GONZALEZ: And he also wanted  
18 to know that a representative of the State Lands  
19 Commission or a member could be a part of that group.

20 MS. ANDERSON: We would welcome their  
21 participation, yes.

22 Thank you.

23 ACTING COMMISSIONER GONZALEZ: Okay, great.  
24 Thank you.

25 ACTING COMMISSIONER MATEO: Okay. Was that an

1 informational item overall? Is there any action required?

2 EXECUTIVE OFFICER THAYER: We had suggested -- or  
3 recommended that the Commission direct staff to write the  
4 letter to Duke urging them to meet these timelines -- in  
5 an attempt to sort out whether or not Duke was going to be  
6 going forward, that there would have to be some public  
7 commitment by observing these time lines. And then  
8 reporting back -- the Commission directed staff to  
9 reporting back after each of these two timelines as to  
10 whether it had been done.

11 ACTING COMMISSIONER MATEO: You'd like a formal  
12 action on that?

13 EXECUTIVE OFFICER THAYER: Yes.

14 ACTING COMMISSIONER GONZALEZ: I'd like to move  
15 that that happens, along with I think the opinion that the  
16 Lieutenant Governor wanted from the Attorney General's  
17 office, and a commitment -- a follow-up -- sorry -- with  
18 the port concerning the working group.

19 Now, if I have missed what some of the groups  
20 wanted beyond that, please remind me, things that  
21 actually -- besides obviously decommissioning the plant --  
22 things that we missed. I know there was a separate call  
23 for the environmental justice policy. The Lieutenant  
24 Governor was also -- let me take the two separate because  
25 I think the two are two separate ideas.

1           But first I'd like to make a motion for those  
2 issues.

3           ACTING COMMISSIONER MATEO: Could you restate  
4 your motion for the record please?

5           EXECUTIVE OFFICER THAYER: If I could --

6           ACTING COMMISSIONER GONZALEZ: The motion --  
7 okay. Go ahead, Paul.

8           EXECUTIVE OFFICER THAYER: I would just interpret  
9 that as perhaps a second -- regarding the working group,  
10 that the proper place that should be directed to of course  
11 would be the port. And so I could also write a letter --

12           ACTING COMMISSIONER GONZALEZ: Just follow up  
13 with the port.

14           MS. ANDERSON: We're providing your staff with  
15 monthly status reports. We will include the status of the  
16 working group in those as we proceed.

17           ACTING COMMISSIONER MATEO: Paul, would you state  
18 for all of us what you believe we have come to now. It  
19 sound like two letters.

20           EXECUTIVE OFFICER THAYER: Yes. I understand  
21 that two letters and a request of the Attorney General's  
22 office. So the original recommendation was for a letter  
23 to Duke regarding meeting these two timelines, these two  
24 time goals. A direction to staff to report back to the  
25 Commission on the results of that. A request that the

1 Attorney General's office investigate the -- I guess the  
2 contract provision that called for it to be forfeited or  
3 affected if there was violations of state law and whether  
4 any of the allegations that were mentioned today could  
5 affect -- could bring about that result. And then finally  
6 a letter or a communication to the port urging them to  
7 establish the working group that has been requested.

8 Does that --

9 ACTING COMMISSIONER GONZALEZ: That sounds right.  
10 I'd like to make that motion.

11 ACTING COMMISSIONER MATEO: Okay. Do we have a  
12 second?

13 EXECUTIVE OFFICER THAYER: And of course --

14 ACTING COMMISSIONER MATEO: I second that.

15 All in favor?

16 (Ayes.)

17 ACTING COMMISSIONER ARONBERG: For the recorder,  
18 the Controller is supportive. Besides the fact that I  
19 don't think the law forbids us for procedural reasons from  
20 voting.

21 ACTING COMMISSIONER GONZALEZ: Now, I think the  
22 second part of that, there was a request made concerning  
23 Cal EPA's environmental justice guidelines and a request  
24 that we review those and see if we could actually  
25 strengthen ours. I understand that that might take

1 legislation. I was wondering if we could get for the next  
2 meeting maybe an item on sponsoring legislation that would  
3 do that. So it could still need a vote. But at least an  
4 item to come before you vote that would ask the Commission  
5 to sponsor such a legislation.

6 EXECUTIVE OFFICER THAYER: What we'll do is  
7 since...

8 ACTING COMMISSIONER GONZALEZ: All right. I'm  
9 going to withdraw that motion. And I will work out with  
10 the Controller's office then to see what we can do.

11 EXECUTIVE OFFICER THAYER: Certainly. Let me say  
12 though that in the spirit of I think what was said to the  
13 Commission, as was pointed out, the Commission was one of  
14 the first entities at which -- you know, the  
15 Commissioners -- to adopt an environmental justice program  
16 and that that has been adopted almost word for word by the  
17 resources agency. And when we brought that matter to the  
18 Commission, we indicated that we fully understood that  
19 this was sort of a frontier policy issue and that we  
20 expected that we would be bringing back changes. And we'd  
21 look for inspiration at any place for improvements. And I  
22 think the Cal EPA effort is one that we certainly want to  
23 look at.

24 My understanding is that there was a report put  
25 together by one of their action committees or groups that

1 was recently approved by one of the other groups at Cal  
2 EPA, but that perhaps the process isn't even done yet.  
3 But, no matter, we'll continue to look at that process and  
4 see if there's items in there from the Cal EPA process  
5 that would allow us to improve our product.

6 It's my somewhat naive understanding that in fact  
7 the Cal EPA process was directed by specific legislation  
8 and that they therefore may have different authority under  
9 the law than we have. And that led to some concern on my  
10 part that we might need legislation in order to do the  
11 same thing as Cal EPA. We need to look into that more  
12 fully.

13 But the spirit of what I'm trying to say is we're  
14 entirely in favor of what the witness suggested, and we'll  
15 go back and look at Cal EPA process and figure out where  
16 we need to go next. And that was my ideas.

17 ACTING COMMISSIONER GONZALEZ: And it's been  
18 suggested to me my motion should have said come back with  
19 an analysis of that --

20 EXECUTIVE OFFICER THAYER: Sure. And if we come  
21 up with some clear -- if there's some easy  
22 recommendations, we'll come back with those as well and it  
23 will be an action item for amendments.

24 ACTING COMMISSIONER GONZALEZ: Okay. And do we  
25 need a motion then to ask you to do that? Or that

1 just comes back, we need to do that?

2 EXECUTIVE OFFICER THAYER: I would suggest --  
3 whatever you're most comfortable with. But I certainly  
4 accept that as Commission direction.

5 ACTING COMMISSIONER GONZALEZ: Okay.

6 All right. I think that resolves then Item No.  
7 62.

8 Item 63 was moved to the consent item calendar.  
9 I believe we're on Item 64.

10 EXECUTIVE OFFICER THAYER: Yes, Madam Chair.  
11 Item 64 has to do with title settlement and boundary line  
12 agreement with the Bel Air Bay Club in Los Angeles.

13 And our staff attorney, Curtis Fossum, will make  
14 the staff presentation of this item.

15 SENIOR STAFF COUNSEL FOSSUM: Good afternoon,  
16 Commissioners.

17 Item 64 requests your consideration of approval  
18 of a title settlement agreement involving an eleven  
19 hundred thirty-five foot strip of beach lying between two  
20 segments of Will Rogers State Beach in the City of Los  
21 Angeles.

22 ACTING COMMISSIONER MATEO: Could you -- hold on  
23 a moment.

24 SENIOR STAFF COUNSEL FOSSUM: Sure.

25 ACTING COMMISSIONER MATEO: Could the audience

1 just stay sort of quietly, so that we can hear you, we can  
2 think.

3 SENIOR STAFF COUNSEL FOSSUM: In your packet  
4 you'll see an Exhibit A and B. And we have two maps  
5 behind you. We have a map here to try and show you the  
6 area to get an idea of the lay of the land.

7 The goals of the proposed settlement are, first,  
8 for the state to obtain clear title to a 780 foot stretch  
9 of sandy beach lying in front of the Bel Air Bay Club.  
10 It's an area from which the public has been excluded for  
11 75 years.

12 The second element is that the Commission is  
13 being asked to enter into three lease agreements with the  
14 club for the following purposes:

15 Lease 8465 would be to maintain these  
16 pre-existing groins stretching from club property onto  
17 state tide lands, for a rental of \$13,323 a year. They're  
18 shown in orange on this map and on Exhibit B of your  
19 packet.

20 Lease 8466 is for a club recreational use of a  
21 small triangle of beach, less than 3/10 of an acre; at the  
22 rate of \$50,596 the first three years, followed by \$56,921  
23 for the next two years; and thereafter rent will be  
24 adjusted by the Commission. That area is shown, in this  
25 triangle, on the right-hand side of the photograph.

1           The third lease, 8467, is for construction of  
2 temporary sand berms by the club, in exchange for the club  
3 providing beach cleaning, lifeguard services, and  
4 construction of a stairwell or similar device that will  
5 allow public access across the city-maintained groin at  
6 the upper end of the club.

7           Right now off of the club's property but adjacent  
8 there's a groin that's been there also since the 1920's  
9 that is under lease from the Commission to the City of Los  
10 Angeles that prevents lateral access along the beach. And  
11 that's the motivation for that element of that lease.

12           First a little background information is  
13 necessary to put the settlement into context. In 1927 the  
14 club's predecessor and other nearby property owners  
15 constructed a series of groins into the ocean to protect  
16 their beach-front property from wave action. Sand  
17 accretion resulted from those groins.

18           In 1930 the Attorney General's office and the  
19 District Attorney of Los Angeles filed an action to abate  
20 those groins as a nuisance. The subsequent year the  
21 Legislature authorized the newly created Division of State  
22 Lands in the Department of Finance to permit such  
23 structures. The club's predecessor applied for permits in  
24 1932. And in the next few years considerable discussions  
25 between the club's engineers and State Lands Division

1 staff took place.

2 Nineteen thirty-seven however was a very critical  
3 year in analyzing the current situation. In April club  
4 representatives and Carl B. Sturzenacker, who was Chief of  
5 the Division of State Lands, discussed establishing an  
6 arbitrary mean high-tide line. That same month the state  
7 issued a 25-year lease -- excuse me -- 25-year easement to  
8 the club for \$2 a year for 3.3 acres of land under the  
9 Political Code Section 675.

10 In July the club requested a boundary line  
11 agreement with the state.

12 On October 29th Sturzenacker entered into a  
13 binding arbitration agreement with the club pursuant to  
14 Political Code Section 690.10. The arbitration decision  
15 was adopted by Arthur Alexander, a state petroleum  
16 inspector, and the club's civil engineer. It was signed  
17 November 2nd, establishing an ordinary high water mark, a  
18 line they established you see in this map, the dark line  
19 back there. Excuse me. The yellow line. The yellow line  
20 out on the beach was the line that they established.

21 On November 8th an agreement was executed setting  
22 that as the boundary line. And that agreement was  
23 recorded.

24 So since 1938 there's been -- excuse me -- '37  
25 there's been a recorded agreement establishing that yellow

1 line as the boundary.

2           The following year this agreement became a minor  
3 player, in it was a major controversy for Governor  
4 Merriam's administration. That controversy revolved  
5 around oil leasing by the Department of Finance and its  
6 Division of State Lands. The controversy had been going  
7 for about 10 years, but it came to a head in the election  
8 year of 1938. In March Governor Merriam called a special  
9 session of the Legislature. Item one was to create a  
10 State Lands Commission. While the Governor's version of  
11 the Commission makeup did not pass, he wanted two of the  
12 three Commissioners to be his cabinet members.  
13 Nonetheless he signed the bill on March 24th and the  
14 Commission became effective the following June.

15           Five days after the Commission came into  
16 existence the State Personnel Board began an investigation  
17 of Sturzenacker and of Alexander, the individuals who had  
18 arbitrated the boundary and were involved in the oil  
19 controversy. A complaint was filed with the State  
20 Personnel Board, and they were suspended by the  
21 Commission. Following months of investigation the State  
22 Personnel Board dismissed them both. However, in that  
23 dismissal no discussion of the Bel Air -- excuse me -- the  
24 Bel Air Bay Club boundary line was set forth in the  
25 findings by the Personnel Board.

1           On May 3rd, the following the year, the State  
2 Lands Commission denied a club application to modify the  
3 groins; and, in addition, repudiated the line of the  
4 ordinary high water mark entered into by Sturzenacker.

5           Three years later the Commission directed staff  
6 that an effort be made to effect readjust of the boundary  
7 line. Sixty-one years later we are here complying with  
8 that request.

9           (Laughter.)

10          SENIOR STAFF COUNSEL FOSSUM: Better late than  
11 never.

12          The Commission since its inception has been  
13 involved in modifications to the Bel -- the Bal -- the Bel  
14 Air Bay Club groins -- I've been involved in too many  
15 projects -- and the issuance of leases with the club more  
16 than a half dozen times. However, this is the first time  
17 staff has brought the readjustment to the Commission that  
18 it requested in '42.

19          The crux of this dispute and rationale for the  
20 settlement is that while the facts the Commission have  
21 developed indicate the accretions to this beach were the  
22 result of the groins, state officials entered into an  
23 agreement in 1937 that purported to fix the boundary. We  
24 have for the last 18 months researched facts and laws and  
25 subsequently argued and negotiated with club

1 representatives based on the strengths and weaknesses of  
2 our respective claims.

3           Your staff and the Office of the Attorney General  
4 have concluded that the proposed settlement, which  
5 provides for the state obtaining a stretch of beach in  
6 excess of three acres -- excuse me -- three quarters of an  
7 acre and 780 feet in length is a fair and equitable  
8 resolution of those claims.

9           Some people might ask: "Why make such a big deal  
10 out of such a relatively small beach area the public  
11 hasn't used in 75 years?" I believe it's important to  
12 note that this beach is the only stretch of sandy beach  
13 along the shore between Topanga Canyon and Palos Verdes  
14 peninsula that the public has no right of access and use.  
15 It may in fact be the only area similarly situated in Los  
16 Angeles County outside of Malibu.

17           In actions taken on Item 18 through 30 earlier  
18 today, except 19 and 28, you authorized acceptance of 11  
19 additional areas of public beach access and recreational  
20 use in Malibu. The Commission has now accepted a total of  
21 186 beach easements for the public at no taxpayers'  
22 expense. Obtaining these areas for public use without the  
23 expenditure of tens of millions of dollars is a remarkable  
24 accomplishment of the Commission.

25           The eleven easements accepted today total 640

1 linear feet of beach. The parcel to be deeded by the Bel  
2 Air Bay Club to the state covers 780 linear feet.

3 In conclusion, the settlement before you will  
4 open up for public use a stretch of beach which the public  
5 has been excluded from for over 75 years. It provides for  
6 maintenance of the beach and lifeguard services at no cost  
7 to the public, and will result in revenues to the General  
8 Fund of over one and a half million dollars over the lease  
9 term. Staff respectfully requests your approval.

10 I'll be happy to answer any questions.

11 ACTING COMMISSIONER GONZALEZ: The Lieutenant  
12 Governor just had one question, and I think you answered  
13 it. But I just for the record wanted to clarify.

14 He wanted to ensure that the Attorney General's  
15 office in fact felt like this was the best settlement we  
16 could get.

17 ASSISTANT ATTORNEY GENERAL HAGER: Yes, we do.

18 ACTING COMMISSIONER GONZALEZ: Thank you.

19 ACTING COMMISSIONER MATEO: Okay. I think we've  
20 got three folks who've indicated an interest in speaking  
21 on this item. I'd like -- we have a number of people  
22 after this who have signed up for public comment. So in  
23 the interests of time I'd like you all when you come up to  
24 limit your remarks to three minutes please, no longer.  
25 And I'd like the staff to keep track of the time.

1           The first one here is Mr. Martin Murphy.

2           MR. MURPHY: May I approach the Commission? I  
3 have some handouts.

4           My name is Martin Murphy. And I oppose the  
5 quitclaim deed to the Bel Air Bay Club for the following  
6 reasons -- four reasons:

7           First, it's unconstitutional. Article 15,  
8 renumbered as Article 10 of the Constitution, forbids the  
9 state from divesting itself of tidelands. Article 4 of  
10 the Constitution forbids the state from gifting tidelands  
11 to any person. Article 3 of the Constitution, Section  
12 31 -- Article 3 Section 3 requires the State to comply  
13 with State law. And the California Coastal Act Section  
14 30609.5 forbids the state from divesting itself of lands  
15 between the nearest public highway and the sea, which is  
16 Pacific Coast Highway.

17           Secondly, the original agreement under which  
18 the -- the original boundary line agreement entered in by  
19 Sturzenacker and Alexander was entered into in violation  
20 of the Constitution. These people were removed from  
21 office. As part of their removal from office it was  
22 charged that persons dealing with the state were required  
23 to pay money to an associate of theirs before their  
24 applications would be considered. In addition,  
25 Sturzenacker required a percentage of business from

1 certain people. And when we was questioned of his  
2 activities by the Director of Finance, he lied. So  
3 clearly any activity that Sturzenacker and Alexander  
4 engaged in while they were state employees was not  
5 authorized by the State. They had no authority to enter  
6 into these contracts. So the original boundary line  
7 agreement is void.

8           What was this original boundary line agreement?  
9 To simplify it I've -- this map in red and blue. And if  
10 you would look at that map, you will see that there was  
11 this uncertainty in 1937 as to where the tideland. But  
12 that uncertainty was only whether the tideland was 50 feet  
13 or 100 feet from Pacific Coast Highway. What Sturzenacker  
14 did, he granted the club a boundary line that was 275 feet  
15 from Pacific Coast Highway along a stretch of land that's  
16 1200 feet long. That's a lot more than a hundred thousand  
17 square feet. It's a couple of acres.

18           And such a boundary line agreement is void on its  
19 face. And you can not now correct that boundary line  
20 agreement by entering into another boundary line agreement  
21 because the requirements for a boundary line agreement is  
22 that there's a genuine dispute as to where the boundary  
23 line is. The genuine dispute was only between where the  
24 1923 and '15 boundary lines. There is no genuine dispute  
25 for the 1937 boundary line. It was an accretion.

1 Two more points. In addition to the --

2 ACTING COMMISSIONER MATEO: If I could ask you to  
3 wrap it up.

4 MR. MURPHY: -- wrap it up. Okay.

5 The proposed exchange -- if you could track to  
6 the last page of a photograph in the handout. What you're  
7 getting in return for giving up a couple of acres of  
8 land -- what you're getting is the patch of land between  
9 the yellow and the green over there on the diagram. And  
10 that is largely undersea. What you're giving up -- the  
11 state is giving up a prime beach land in return for land  
12 that's largely submerged to which it already owns access.

13 And I would strongly -- and I have a written  
14 submission attached to this because I knew the time might  
15 be limited. I would strongly urge you to take this matter  
16 under advisement.

17 And with respect to the burden of proof which I  
18 think has led to the staff's conclusion, I think the --  
19 you know, the arguments of the club have been heard not in  
20 public but in private. I think that the burden of proof  
21 in this matter is misplaced. The burden of proof is on  
22 the club to show that it's entitled to this land. This is  
23 a large piece of land in the most valuable portion of the  
24 Will Rogers State Beach that is most heavily used by the  
25 public in Los Angeles. And you're giving away millions of

1 dollars worth of state land in return for nothing.

2 So I would strongly urge that this matter be  
3 reconsidered.

4 ACTING COMMISSIONER MATEO: Thank you very much.  
5 The next testifier would be Mr. George Smith.

6 MR. COLEMAN: My name's Howard Coleman. I'm not  
7 George Smith. I'm the lawyer for George Smith. And I'll  
8 be very, very quick.

9 First, a boundary line agreement is not by  
10 definition a conveyance. It sets what the existing  
11 ownership is. So there is no conveyance. There is no  
12 restrictions based upon the Constitution because nothing  
13 is happening in terms of transferring property.

14 Secondly, with regard to Judge Sturzenacker and  
15 Mr. Alexander, there were allegation made with regard to  
16 their activities in the Bel Air Bay Club. There was no  
17 findings with regard to the fact that they did anything  
18 unlawful insofar as the Bel Air Bay Club boundary line  
19 agreement was concerned. So the inference is that they  
20 did nothing wrong in terms of the 1937 boundary line.

21 Thirdly, with regard to this presumption that we  
22 should have the burden of proof, there's -- in the Public  
23 Resources Code Section 6341 there's a statute of  
24 limitations with regard to boundary -- challenging  
25 boundary line agreements. And that has long since ceased.

1           And my last point is with regard to where the  
2 last natural condition of the line is. That's a very  
3 difficult question. It goes -- it could go beyond the  
4 area that's been talked about. And these hearings could  
5 go back to 1891 when the great wharf was built not too far  
6 away from this site.

7           Thank you.

8           ACTING COMMISSIONER MATEO: Thank you.

9           Do members have any questions of those who  
10 testified?

11          ACTING COMMISSIONER MATEO: Does staff have any  
12 comments?

13          EXECUTIVE OFFICER THAYER: No. I think -- I  
14 think the history of this has been very interesting for  
15 staff. And we've spent a lot of time going back. And  
16 Curtis Fossum, our staff attorney, spent a lot of hours in  
17 an attempt to go back and get all the records to find out  
18 the validity of these earlier agreements. And I think  
19 based on all of that research we think we've come up with  
20 an equitable situation -- or an equitable solution to the  
21 situation.

22          ACTING COMMISSIONER MATEO: Okay. We have any  
23 further comment?

24          ACTING COMMISSIONER ARONBERG: I know that has  
25 been a long, difficult one. For those involved in it, has

1 been hard work. And I want to sort of echo the speaker,  
2 limited question, which is: Is this the best that can be  
3 done on behalf of the State? And can you go ahead and  
4 make a little opinion about that one more time, in light  
5 of the speaker who raised some legal issues?

6 SENIOR STAFF COUNSEL FOSSUM: Commissioners, as  
7 Paul has indicated, we've spent about 18 months searching  
8 the record, analyzing the laws, reviewing legal arguments  
9 on all sides on this. And I guess our conclusions  
10 basically are that -- there's several elements to this.  
11 It's not just the three quarters of an acre that the  
12 public will now have that they haven't had for 75 years.  
13 But we also have three groins out there that are  
14 potentially hazardous to the public. We're going to be  
15 putting them under lease.

16 We're following the Commission's recent policy  
17 addressed to the staff to charge rent for those kind of  
18 structures. We're getting rent for those. We're getting  
19 \$50,000 plus a year for a small triangle.

20 And we're having all the other things that  
21 inhibit public access on the beach removed -- fences, all  
22 other kinds of items.

23 Now, that doesn't get the legal issue. But I  
24 wanted to say that there's more than just the property per  
25 se. That we're getting public access, which is a major

1 accomplish we believe in the face of an agreement that's  
2 been on the books since 1937 -- a recorded agreement.

3 I've been at the Commission now for 26 years.  
4 And one of the mantras that I was really taught was that  
5 we will never challenge a State Lands Commission boundary  
6 line agreement. And I was admonished early on this one.  
7 And I ultimately was successful I think by telling them  
8 that this was not a State Lands Commission boundary line  
9 agreement. It was a predecessor to the Commission that  
10 existed at the time. And so we are not challenging one of  
11 our agreements, but of the predecessor's. And we're  
12 challenging it, but that doesn't mean that we'd be  
13 successful in court. We don't know what would happen.  
14 It's the old adage of half a loaf or a bird in hand.

15 So we've all discussed it, the executive level,  
16 and the Attorney General's office. And our conclusion was  
17 this is in fact a very good deal for the State of  
18 California and we believe an equitable one for the parties  
19 involved. And it does not violate any provisions of the  
20 Constitution.

21 ACTING COMMISSIONER ARONBERG: Thanks for the  
22 clarification. WE appreciate it.

23 ACTING COMMISSIONER MATEO: We have before us a  
24 staff recommendation.

25 Do I have a motion?

1           ACTING COMMISSIONER ARONBERG: Move adoption.

2           ACTING COMMISSIONER MATEO: Second.

3           All in favor?

4           (Ayes.)

5           ACTING COMMISSIONER MATEO: That motion passes.

6           Paul, does that bring us to the section where we  
7 take general public comment?

8           EXECUTIVE OFFICER THAYER: Yes, it does.

9           ACTING COMMISSIONER MATEO: Okay. Then if I  
10 could ask you folks again to limit your comments to three  
11 minutes.

12           The first individual we have here is -- and if I  
13 say this incorrectly, I'm sorry -- Mr. Andrew Marderich.

14           MR. MARDERICH: That's all right. You can stop  
15 at Andrew.

16           And I'll also speak for Agustin, who had to leave  
17 early.

18           (Thereupon an overhead presentation was  
19 Presented as follows.)

20           MR. MARDERICH: On my comments you may want to  
21 turn around because 99 percent of it is visual.

22           No, you've got a monitor ahead of you. Great.

23           Okay. We wanted to let the Commission see what's  
24 happening in the Port of Los Angeles rather than give a  
25 narrative. And we isolated the presentation with regards

1 to blight through visual intrusion, a phenomena that  
2 hasn't been addressed in the past, and also related to  
3 project-specific mitigation.

4 --o0o--

5 MR. MARDERICH: A little over a year ago a  
6 question was asked at the Commission hearing: Why is it  
7 that with billions of dollars in Port of Los Angeles  
8 expansion over the last 30 years there has never been any  
9 project-specific mitigation in San Pedro or Wilmington off  
10 of port lands? That question still goes unanswered to  
11 date. Even though there was a staff report that was  
12 generated to that question, it was never answered.

13 --o0o--

14 MR. MARDERICH: Here's a scene of an intersection  
15 in the Wilmington area four blocks from the port. And you  
16 can see how overpowering these cranes are. Just so you  
17 understand, that these cranes -- the houses and the  
18 residences were here many, many years before the cranes  
19 appeared. The EIRs were silent with regards to the  
20 impact.

21 --o0o--

22 MR. MARDERICH: Here's another intersection,  
23 still four blocks away. And there's a forest of cranes.  
24 This is a predominantly Hispanic low-income residential  
25 area.

1           Real estate sells very cheap there, by the way,  
2 now.

3                           --o0o--

4           MR. MARDERICH: The port's EIRs remain silent on  
5 these blight generators. A survey was recently done of  
6 past EIRs by a community advisory group. And they found  
7 that issues with regards to visual intrusion and blight  
8 were either not addressed or not mentioned or nor was  
9 mitigation proposed in these projects.

10                           --o0o--

11           MR. MARDERICH: The blight extends far beyond  
12 these children's line of sight. The children are a little  
13 dark there on the street corner.

14                           --o0o--

15           MR. MARDERICH: And here you can see the same  
16 cranes from Wilmington extend miles beyond, over San  
17 Pedro's horizon, and into an adjoining city. So it's not  
18 restricted to just right adjacent. This blight, this  
19 visual intrusion, extends for miles.

20                           --o0o--

21           MR. MARDERICH: This is another shot a little  
22 further to the east of the horizon from Rancho Palos  
23 Verdes, which is one of the tenth most wealthy areas in  
24 the United States. And these people as well as the people  
25 in Wilmington have a right to a scenic horizon.

1                   --o0o--

2           MR. MARDERICH:  Going up the hill even further  
3 away, still the blight from Wilmington is inescapable.

4                   --o0o--

5           MR. MARDERICH:  Look a little to the south and  
6 you can see the China shipping cranes -- from the horizon  
7 in San Pedro.

8                   --o0o--

9           MR. MARDERICH:  Here you can see how the cranes  
10 dominate the sky line.

11                   --o0o--

12           MR. MARDERICH:  Now, this is an intrusion to the  
13 most extreme.  What you're doing is seeing a photograph  
14 taken from inside an individual's residence.

15                   --o0o--

16           MR. MARDERICH:  This -- yeah, thanks.

17           So this is what you would see if you sat in your  
18 living room and looked out, these cranes.

19           They were never mentioned in EIR.

20                   --o0o--

21           MR. MARDERICH:  The next shot is a view from the  
22 front porch.  And you can see the emissions coming out of  
23 the ship.

24                   --o0o--

25           MR. MARDERICH:  This is the ceiling fan coated

1 with port balloons in that individual's home. They have  
2 three asthmatic children that live at this residence. And  
3 you say why don't they clean it and so forth. But If you  
4 have a sealing fan, normally it dirty on the top. Take a  
5 look. This is dirty all the way around, everywhere. And  
6 it's a gooey substance. It's not a dust.

7 --o0o--

8 MR. MARDERICH: The community asks, will State  
9 Lands allow project-specific mitigation under CEQA off of  
10 port lands? That's' second question.

11 --o0o--

12 MR. MARDERICH: Now, we looked at the public  
13 trust doctrine and paraphrased it.

14 The Commission must also comply with the  
15 requirements of other applicable law, such as the  
16 California Environmental Quality Act. Then, again, why is  
17 it that with billions of dollars in port expansion, not  
18 one dollar has been spent on any project-specific  
19 mitigation in San Pedro or Wilmington off of port lands?

20 And then the new question: Will the Commission  
21 allow EIR project-specific mitigations under CEQA off the  
22 port lands?

23 ACTING COMMISSIONER MATEO: I need to ask you to  
24 wrap up please.

25 MR. MARDERICH: I've wrapped up. That's the end

1 of it.

2 ACTING COMMISSIONER MATEO: Thank you very much.  
3 Is Ms. Feuer here?

4 MS. FEUER: I'm Gail Ruderman Feuer. I'm here  
5 on --

6 ACTING COMMISSIONER GONZALEZ: Well, I'm sorry.  
7 If this is helpful at all -- and I know you probably want  
8 to present as well. But I know there are at least two of  
9 us who have gotten individual presentations on this  
10 matter.

11 I'd like to go ahead and ask the staff again to  
12 work on this.

13 Well, Lieutenant Governor's position is this:  
14 And I'll just be very clear. He's in support. You know,  
15 who's not in support of having more parks in areas that  
16 need parks? Absolutely supportive. We're concerned about  
17 the health of the children in this area. We're concerned  
18 about the quality of life issues.

19 Unfortunately, I don't think a right to a skyline  
20 view is one that we're given in California, at least  
21 that's what the Coastal Commission has told me when I  
22 asked for my rights to a scenic view. But we are -- we  
23 share your concerns. But we also have gotten concerns at  
24 least in our office from the attorney, not only in State  
25 Lands but also the Attorney General's office.

1           So in accordance to what I told Julie when she  
2 came from NRDC to speak with me, we want to see this  
3 happen, but we need NRDC or the -- is it the Homeowners  
4 Association there in San Pedro? -- to work with the  
5 Attorney General's deputy, the State Lands attorney, and  
6 for everybody to come together and form a consensus so we  
7 can allow it to happen in a way that's legal and that's  
8 constitutional. We don't want to be making exceptions  
9 even for environmental groups or even for good projects  
10 that we'd be -- later be forced to make for developers. I  
11 mean that's the problem that we run into.

12           So -- and you can go ahead and do your  
13 presentation. But the Lieutenant Governor's position on  
14 this -- it's not an item yet -- is that he'd like to see  
15 it as an item, but he would like first for NRDC and some  
16 homeowners association to get together, streamline some of  
17 the ideas; and see also the staff from State Lands as well  
18 as the Attorney General's office to work with them the  
19 same way that we worked with developers in San Francisco  
20 and other projects to make their projects consistent with  
21 public trust. Let's do that for these people so we can go  
22 forward and we can vote on a project that's both legal and  
23 makes sense for the community.

24           Now, that's what I'm asking staff to do.

25           ACTING COMMISSIONER MATEO: It would help me to

1 understand what the "it" was all the way through here. I  
2 don't know -- I really don't know what your issue was.

3 MS. FEUER: Okay. Well, those comments are  
4 helpful in terms of telling me -- giving us some  
5 direction. We have talked to staff. And I can tell you  
6 what the "it" is in a second.

7 We have met with staff and with the Attorney  
8 General's office, and we are eager to talk with them some  
9 more. And I think there is a general agreement that we'd  
10 like to make this work and to find a legal way to do it.  
11 We think there is a way to do it. We think there is a way  
12 to do it.

13 I should tell you from NRDC's perspective, we are  
14 very concerned about the improper use of public trust  
15 funds. You've probably seen us on other occasions saying,  
16 "This is an improper use." So one thing that we would  
17 like to see is to -- there's one of two ways out of this.  
18 One is to find a creative way to avoid this issue  
19 altogether. And we know this has been suggested both by  
20 staff and by the Commissioners. If we can find that  
21 solution, wonderful. If not, we would like to have on the  
22 agenda a policy item to help define what are the proper  
23 boundaries. And we think those boundaries would include  
24 these two projects.

25 And I apologize for doing this backwards. And

1 we'll get to the "it" of the two projects.

2 But what we think is a policy that would, we  
3 hope, allow these projects to go forward, what would make  
4 clear what is the boundaries so you don't have hundreds of  
5 inappropriate projects coming to staff or coming to the  
6 Board for approval.

7 Quickly, what the "it" we're talking about is --  
8 I represent NRDC and a number of homeowner groups in a  
9 litigation we call the China Shipping litigation. It's a  
10 lawsuit filed against the Port of Los Angeles to stop an  
11 expansion project at the port that did not have the proper  
12 environmental review. We won in court. What happened is  
13 the Court of Appeals stopped project. But as a result of  
14 a settlement of that lawsuit, the settlement set aside --  
15 did a number of things. But one of the things it did is  
16 it set aside \$20 million to mitigate the aesthetic impact  
17 of the port expansion.

18 And I should note this on the side. One of the  
19 issues raised in the litigation was the impact of huge  
20 cranes and containers on the view of the local community.  
21 And that was, we believe, an environmental impact that  
22 needed to be mitigated.

23 That money -- the number one use of that money is  
24 for park land. And so the question is there are now nine  
25 proposals for how to use money to those proposals, and

1 only two are for park lands, one in Wilmington, one in San  
2 Pedro. While clearly there's a local interest in having  
3 those parks, we at NRDC believe that the principal purpose  
4 is for the state. The state needs parks. The state needs  
5 parks near coastal property. The port would benefit from  
6 the park land because it would improve business at  
7 Catalina terminal and the cruise terminals.

8           And for a variety of reasons we therefore -- and  
9 also, as Andy Marderich just showed, there's been decades  
10 of impact on the community, and we believe this would be  
11 proper mitigation.

12           So to wrap up, we think that these two projects  
13 are a proper use of the funds. But we are eager to work  
14 with Commission staff, with the Commissioners, with the  
15 Attorney General's office and figure out a solution to  
16 deal with these. But our hope in the end is that these  
17 two parks really aren't -- shouldn't be approved for the  
18 local interest. They should be approved for the statewide  
19 interest. And that's why we are asking for it.

20           So we appreciate the time you've spent with us,  
21 the time staff spent with us. And we hope that we can  
22 reach a fix. And the fix may be in December to have on  
23 your agenda a policy item to figure out what is the scope  
24 of when these public trusts money is appropriate for park  
25 land and when it's not. Because some parks it's not

1 appropriate. There are a lot of projects that are not  
2 appropriate. We think these two are.

3 ACTING COMMISSIONER GONZALEZ: I just want to  
4 reiterate, if you'd please work with Mr. Lockyear's office  
5 and trying to present us something that would allow the  
6 Commission to go forward with confidence that it's going  
7 to uphold the law. We absolutely are in support and would  
8 like to see that happen. But I think we need to get some  
9 positive direction from the Attorney General's office.

10 MS. FEUER: We will do that, and we will call Mr.  
11 Hager tomorrow to start the process.

12 So thank you very much.

13 ACTING COMMISSIONER MATEO: And we just want to  
14 echo here from the Department of Finance perspective that  
15 the appropriate use of funds would be extremely critical  
16 to us, and we have questions here.

17 Thank you very much.

18 And I think the next person up would be Janet  
19 Gunter.

20 MS. GUNTER: Good afternoon, ladies.

21 Good afternoon, Ms. Aronberg. I spoke to you  
22 before when you worked in the -- a few times. Thank you.  
23 You were always very helpful.

24 MS. GUNTER: I think that the point was very  
25 clearly made by the two previous speakers. And I just

1 want to reiterate that I think that when people get  
2 creative, they can do lots of great things. And I mean  
3 the bay we have here, and that was the urgency of Pier  
4 400, Energy Island, and the predication of public safety  
5 as an alternative use for that property urged the port and  
6 State Lands to work together to find a relocation for the  
7 wetlands that they had to accommodate. And if you  
8 remember, part of the impetus for that was -- I have an  
9 article that I'd like to pass over to you to look at just  
10 real quickly.

11 In the eighties -- no, excuse me, 1972 there were  
12 a couple of explosions in a harbor which encouraged the  
13 port to relocate all the hazardous chemicals away from the  
14 local residents, because the residents are just within  
15 blocks of these facilities. And based on that they  
16 decided they would build a 195 or 190 acre parcel of land  
17 in the middle of the blue water out from the residences so  
18 that they would allow that safety factor to exist. And  
19 instead of that, once this group created legislation to  
20 find a home for the lease turn in the wetlands area, that  
21 became a 580 acre land mass that is totally used for parvo  
22 containing. And all of the hazardous chemicals still  
23 remain in the original locations that they were at the  
24 time.

25 And, by the way, this is also a view from my

1 house prior to Pier 400. And this is what it looks like  
2 today.

3 And in there EIR draft report, which I also have  
4 here, you will see that there is no recognition of any  
5 visual impact whatsoever. There's no disruption of a rock  
6 outcropping or anything else.

7 So the mitigation has not existed. The lies that  
8 have been circulated through the port and the analysis  
9 have missed oversight, and that's a real tragedy.

10 One element that was not mentioned is the word  
11 "blight." And blight, I believe that the State of  
12 California has a very strong -- in their Public Safety  
13 Code there is a three-page definition -- California Health  
14 and Safety Code -- regarding the obligation of the state  
15 to work with cities to eliminate blight. And this  
16 blight -- this blight is due to the industrialization of  
17 the port. So 30 years of industrialization and 400  
18 percent in growth over the past 15 years that's produced  
19 this blight. Which apparently some people -- staff people  
20 in State Lands have said we're not necessarily the culprit  
21 here, that it could be a number of factors. There is no  
22 other industry that has had that kind of growth in that  
23 period of time, yet it's completely overlooked.

24 One more thing and I will leave. You have copies  
25 of articles of a survey -- mentions a survey that I

1 conducted in 1999 to all the cruise passenger -- or cruise  
2 terminals. And it has to do with their input about the  
3 impression that the cruise terminal passengers have. They  
4 actually rated the Port of Los Angeles as the worst port  
5 in the nation. And they described it as dirty, concrete,  
6 industrial, ugly -- all of those things. The surrounding  
7 area reflects that as well. If we wanted to increase  
8 tourism, if we wanted to build that opportunity for the  
9 port, the port could do a lot, a lot to maximize that  
10 potential.

11 Thank you very much.

12 ACTING COMMISSIONER MATEO: Thank you.

13 Mr. Skip Baldwin.

14 MR. BALDWIN: Good afternoon, Commissioners. My  
15 name is Skip Baldwin I'd like to introduce myself as being  
16 a resident of Wilmington. And I'm also a member of the  
17 Los Angeles Community Advisory Board for the Port of Los  
18 Angeles. I'm Chairperson of the Land Use Committee of the  
19 Wilmington Neighborhood Council. And since you mentioned  
20 the community groups, I am the Chairperson of Wilmington's  
21 only homeowners association. It's called the Wilmington  
22 Citizens Committee.

23 I understood what you had to say today about  
24 working with the community, and you have your restrictions  
25 and so forth. I do -- since I'm here, come all this way,

1 I would like to read my public comments however.

2 I am here today to bring up the subject of  
3 mitigation funds designed to be spent in Wilmington by the  
4 stipulated superior court decision of the Los Angeles  
5 Superior Court, Case No. BS 070017.

6 The stipulations in this case state that the Port  
7 of Los Angeles must provide mitigation funds to Wilmington  
8 because of port-provided blight and other impacts on the  
9 community.

10 Spending the mitigation funds are carefully  
11 articulated in the stipulated judgment. In the judgment,  
12 projects of funds are to be spent for or prioritized as,  
13 first, open space and parks; second, landscaping  
14 implication; and, third, funding for educational arts and  
15 athletic facilities.

16 I asked our Los Angeles City Councilwoman Janice  
17 Hahn to request that mitigation funds stipulate we said  
18 we're willing to be spent in the East Wilmington Green  
19 Belt Park Projects.

20 Some of reasons are:

21 1) The Wilmington Green Belt Project doesn't  
22 just meet one of the prioritized stipulations. It exceeds  
23 all the prioritized stipulations.

24 2) The Wilmington green belt area is directly  
25 negatively impacted by many port actions. The direct

1 nexus between port activities and park area are too  
2 lengthy to enumerate here. But I can simply sum it up by  
3 saying, if there were no port, there would be no negative  
4 impacts.

5           3) The community bearing the negative port  
6 impacts may be described as low income, Spanish speaking,  
7 with an extremely low ratio of park space per person.

8           4) Spending court mitigation funds in a  
9 Wilmington green belt will trigger other grants to the  
10 park. Council Hahn has requested that funds be spent on  
11 the park. And the request has been denied on the basis  
12 that there was no nexus between the port and the park.

13           I have replied to the Lands Commission in  
14 writing, but received no reply from that. Therefore, my  
15 public comment today.

16           So I will be looking forward to appearing on any  
17 of your meetings in the future.

18           Thank you.

19           ACTING COMMISSIONER MATEO: Thank you.

20           Ms. Laura Hunter.

21           MS. HUNTER: Thank you. Good afternoon. And I  
22 will be very, very brief.

23           My name is Laura Hunter with the Environmental  
24 Health Coalition. And I just welcome the opportunity to  
25 quickly brief you on -- I know you've heard a lot about

1 the Chula Vista Bay Front Development today. But there's  
2 this one other little element that I just wanted to give  
3 you a quick update on -- clear your thinking on.

4           The Bay Front Development on Chula Vista you have  
5 both private property owned on the mid-bay front and then  
6 the port properties that you've heard a lot about today.  
7 What we have been working on is a joint plan of a  
8 comprehensive plan for the entire bay front. And I'm  
9 here -- and we believe that we have to plan the whole bay  
10 front together in order to get the best plan and actually  
11 to address some of the issues that you've heard about in  
12 other issues. You've got an underserved community in  
13 terms of park land. You have very sensitive resources.

14           The good news is we have a lot of land to work  
15 with, and so we're really pushing for a joint plan.

16           Part of what we think may be where we need to go  
17 is to look at some potential for some land trading between  
18 the port and the private property owner. I have good news  
19 on that score. So far we're very optimistic, that  
20 dialogue is happening and that we're moving forward. But  
21 there -- as you heard from earlier speakers, there are  
22 some questions about what's allowable under a land trade,  
23 what isn't.

24           So we just didn't leave it up to the four winds.  
25 We contracted with outside counsel in the form of

1 Schupolly & Weinberger in San Francisco, which is a law  
2 firm that has very extensive knowledge about these things,  
3 and asked them some questions that had been -- kept coming  
4 up for us locally. One is, is a land trade legal? Number  
5 2, is it doable? What are the conditions? What are the  
6 whereases, and all that kind of stuff. And third, which  
7 is more of a coastal commission question: If you downzone  
8 an area, does that constitute a taking under the  
9 California Coastal Act?

10           And we're all looking for very creative  
11 solutions. But we think they gave us a very good  
12 analysis. They said clearly it's legal, it's doable.  
13 They gave us the conditions. And in fact you can  
14 downzone. LZPs does not constitute a taking. And so  
15 we're very encouraged that we're hoping we will move  
16 forward on this.

17           I wanted to provide you a letter with that. And  
18 we will continue to keep you updated on our collective  
19 progress.

20           Thank you.

21           ACTING COMMISSIONER MATEO: Thank you.

22           Mr. Stanley Zobel?

23           Mr. Zobel's not here?

24           Then we're to Jim -- and I can't pronounce your  
25 last name.

1 MR. PEUGH: Peugh.

2 ACTING COMMISSIONER MATEO: Peugh.

3 MR. PEUGH: Something I heard and I learned to do  
4 it as a small child.

5 The State Lands Commission is obviously set up to  
6 protect unique public lands. The habitat areas around the  
7 bay front that Laura was just talking about are really  
8 special. They're among the highest quality wetlands left  
9 in the San Diego Bay. Unfortunately the properties they  
10 sit next to aren't necessarily the properties that will  
11 allow them to be best protected.

12 Laura talked about land swaps among -- between  
13 private property and tidelands. That's absolutely  
14 essential for being able to provide appropriate land uses  
15 next to these wetlands. And so we also hope that you'll,  
16 you know, look -- try and help people to look for create  
17 solutions and help facilitate, you know, some sort of an  
18 arrangement so that these really sensitive habitat areas  
19 can be better protected in the long term. We know this  
20 area is going to develop. We just want it to develop in a  
21 way that allow people to have both commerce and  
22 residential areas and wildlife areas and avoid the  
23 conflicts between them.

24 Thank you.

25 ACTING COMMISSIONER GONZALEZ: And, Paul, my

1 understanding is you've talked with Ms. Hunter and we are  
2 working with them to provide as much be expertise and --  
3 that we have.

4 EXECUTIVE OFFICER THAYER: I've spoken personally  
5 with her after our last meeting. And I believe there's a  
6 workshop coming up next month that we're going down to  
7 participate in. And we want to be as helpful as we can.

8 Ultimately of course the port has to work with  
9 EHC and the other groups to -- and the developer to  
10 formulate a proposal that would bring -- that the Lands  
11 Commission would then have to approve for it to become  
12 effective.

13 And we saw the letter that I guess came in last  
14 week from, which I think penalized a -- penalized a  
15 hypothetical proposal. But in fact it used swap -- it  
16 proposed swapping or analyzed swapping some lands that  
17 were now in the trust, which were somewhat removed from  
18 the waterfront, in fact had been swapped into the public  
19 trust I think a few years ago or something. And that's  
20 the sort of proposal that has some traction in it.

21 And so we're happy to continue working with them.

22 If I may, I'd also like to respond just briefly  
23 to the San Pedro-Wilmington project. And that is to say  
24 that we have spent a lot of time meeting with the folks  
25 who spoke today and some of the others as well.

1           And we also understand that the Commission as  
2 well as its staff firmly believe that the ports are not  
3 exacting any California environmental law and that they  
4 must comply with CEQA as well as the air and water quality  
5 statutes that the state has. And kind of the Public Trust  
6 Doctrine is not a shield that the Commission -- that the  
7 ports can use to prevent compliance with those laws. But  
8 there are a variety of ways that they can comply. And we  
9 think that the appropriate ways are to harmonize public  
10 trust requirements with these other statutes.

11           And as presented to us now, we disagree with the  
12 assertions of the attorney and several others. We think  
13 that these two particular projects -- expending port  
14 revenues on those projects are not consistent with the  
15 Public Trust Doctrine. But as the Commissioners have said  
16 time and time again, as we considered today, that we're  
17 interested in opening the situation as well. And that I  
18 think I've discussed with Ms Feuer as well as some of the  
19 other -- some of the Commissioners, some ideas that we've  
20 generated in-house -- Curtis actually was the initiator of  
21 it -- that have to do with sort of a three-legged swap,  
22 where the net effect would be that non-trust -- or trust  
23 expenditures would be used to buy good -- or land for good  
24 trust uses. And with the concurrence of the city perhaps  
25 some of that money would be revolved into buying these two

1 properties. And we would be able to protect the public  
2 trust precedent, which is extremely important up and down  
3 the state, and still end up with a situation where these  
4 parts, which have been enormously important to the  
5 communities here, the communities have been working on  
6 them for many years, before this settlement was entered  
7 into with China Shipping, and hopefully soon the work will  
8 be done and we'll all be successful.

9           So we're interested in having that, and we're  
10 working to that end. And in fact Ms. Feuer and others  
11 have sent us letters in the last couple weeks asking us  
12 not to respond with our view of what -- of the consistency  
13 of these projects with the Public Trust Doctrine, but  
14 instead you work longer on a win-win situation. And we're  
15 very happy to do that.

16           But having said that, I guess we're looking  
17 for -- there were several suggestions from the witnesses  
18 as to how the Commission might proceed.

19           ACTING COMMISSIONER MATEO: Well, we have one  
20 other person to testify.

21           Okay. I'm sorry.

22           ACTING COMMISSIONER MATEO: And so if you  
23 could --

24           EXECUTIVE OFFICER THAYER: -- hold that thought?

25           ACTING COMMISSIONER MATEO: -- wait to get that

1 in -- yeah, hold that thought.

2 Mr. Eichwald.

3 MR. MARDERICH: As I said, he asked me to speak  
4 for his behalf. But I think it very appropriate now to  
5 identify myself as the President of the San Pedro  
6 Homeowners United. And we are one of the litigations in  
7 China Shipping.

8 And we are not proposing any specific project.  
9 We don't believe in gifts, funds. We don't even subscribe  
10 to the report I mentioned about is communities abusing the  
11 trust. And we are concerned with a process. And we would  
12 like to sit down with State Lands and discuss a process  
13 where, if there's a negative impact in the community, that  
14 it be identified, quantified, and then a fair and  
15 reasonable effort made to mitigate it. It's simple as  
16 that. Follow the law in the process.

17 And I would like to enter into discussions with  
18 State Lands on just the process, not looking to make these  
19 fancy land swaps and these gifts that don't have a nexus  
20 to a project specific. And that was the kernel in my  
21 presentation, project-specific mitigation.

22 ACTING COMMISSIONER GONZALEZ: Can you hold on.  
23 I'm sorry.

24 The process that they're describing, is that one  
25 that would require us to change the law?

1 EXECUTIVE OFFICER THAYER: I'm not sure.

2 ACTING COMMISSIONER GONZALEZ: Can we look at  
3 that as a -- can we talk about a process and how we would  
4 go about adopting -- or looking at this process? I'm a  
5 little confused as well, because the process -- the end  
6 result of the process that he seems to be talking about  
7 would be in conflict with the public trust doctrine. Is  
8 that correct, Paul?

9 EXECUTIVE OFFICER THAYER: Well, I --

10 MR. MARDERICH: Let me help answer that, because  
11 there's one player that's missing here, and that's the  
12 Port of Los Angeles, who does the EIR, they're the lead  
13 agency, and approves it. And historically whenever they  
14 did an EIR, they were silent on this issue and it was  
15 never done. State Lands is not, how should I say, an  
16 active participant in that. But they've been doing it  
17 for -- a century now? And to now say, yes, there is a  
18 negative impact, to identify it, and say, this is how the  
19 community's been negatively impacted, it's a cultural  
20 change for the Port of Los Angeles.

21 And then you have throughout the state -- a  
22 perfect example is the City of Oakland, who's going into  
23 extremes. You have the rare and famous nexus lawsuit,  
24 which at one time our group was assigned to do an amicus  
25 brief on the side of the state because we thought that was

1 not proper use of state funds.

2 So we understand thoroughly the issue. It's a  
3 matter of active communication and just doing the process  
4 under CEQA. That simple.

5 ACTING COMMISSIONER GONZALEZ: So we can work  
6 with the Port of Los Angeles to ask them to include this  
7 process? The same way we've worked with the Port of San  
8 Diego to deal with some issues we've had down here, can we  
9 do the same with L.A., and then in the next Commission  
10 meeting hear the results or status report on that?

11 EXECUTIVE OFFICER THAYER: Well, I don't want to  
12 put words in Mr. Marderich's mouth. But what I understand  
13 him to say is that perhaps -- it would be his view that  
14 L.A. was not properly following CEQA the before, and that  
15 probably their lawsuit was a wake-up call and that they  
16 would anticipate that the kinds of issues he's talking  
17 about right now will be and should be dealt with by the  
18 port in the CEQA process. And it's not a separate  
19 process. I mean it's not something that can be done  
20 between now and December, but it needs to be done in this  
21 project.

22 MR. MARDERICH: We are in no rush, on a deadline  
23 for December. In other words, this process has been, how  
24 should I say, absent for a century at the Port of Los  
25 Angeles. So a month here, a month there. But I think

1 it's -- the Commission needs to give some guidance to the  
2 port, because you have people that have protected the  
3 city -- the state's interests to the degree where I can't  
4 do this because it's off of port land. And then when you  
5 have the issue where you overcharged the port for city  
6 services, that then was an overreaction. Now you can't do  
7 it. And so it's an educational type of thing, a cultural  
8 change. And I think the Commission and staff needs to do  
9 some training. But at the same time the community needs  
10 training on how not to abuse the system.

11 EXECUTIVE OFFICER THAYER: And so I would say --  
12 I mean it's sort of a continuum. And Mr. Marderich and us  
13 may not be that far apart in that. You know, we've been  
14 down there a year and a half or so ago to talk about what  
15 the Public Trust Doctrine meant to P-Cap. The Commission  
16 required that we put together a public trust policy to  
17 help try and explain and interpret. We're just not done  
18 yet. And I suspect that they'll be more discussions with  
19 the port and with the community.

20 So I'm not sure what we'd bring back because it  
21 would be more general principles along the lines of what  
22 we did in our public trust policy. I mean we'd be happy  
23 to take criticism --

24 ACTING COMMISSIONER GONZALEZ: Well, it sounds  
25 then -- correct me if I'm -- I may be completely off. I'm

1 now confused. I thought we were talking completely about  
2 these two parts. And it seems like there's two different  
3 things going on. There's the park issue and there's  
4 the -- you're not confident that the L.A. Port is going to  
5 continue in their process of looking out for these types  
6 of issues so we're not correcting them in the future, is  
7 that correct?

8 MR. MARDERICH: When it comes to the park issue,  
9 it was my preference that there should have been an EIR to  
10 find a negative impact and propose an appropriate nexus.  
11 It could be a park. It could be something else.

12 But what's happened is -- and even right now the  
13 port is asking for corrective measures before an  
14 evaluation is done. And the port unfortunately has a  
15 habit of never admitting or evaluating any negative  
16 impacts. So after the EIR process -- we're talking about  
17 real time now -- after their EIR process is over with,  
18 that there won't be any nexus of a record item. It was  
19 just six months ago when the staff stated that there was  
20 no record of negative impacts at the Port of Los Angeles.  
21 And they are absolutely correct because there is no  
22 negative impacts stated in any prior EIRs. They're right.  
23 I agree with them.

24 EXECUTIVE OFFICER THAYER: So I guess in response  
25 to your identification of this division of issues here --

1 you know, and that's what I was asking for direction more  
2 on, was what to do about the two parts. But what I hear  
3 Mr. Marderich talk about is the larger issue. And that's  
4 the one that I was responding to most recently and saying  
5 that this is not something that we could just bring back,  
6 but it's something we need to consider --

7 ACTING COMMISSIONER GONZALEZ: Something you can  
8 report on -- and let us know how the education process is  
9 going with the ports when it comes to issues pertaining to  
10 public trust and mitigation impacts.

11 EXECUTIVE OFFICER THAYER: And so then we turn.

12 MR. MARDERICH: Yes, that makes sense.

13 ACTING COMMISSIONER GONZALEZ: Then that makes  
14 you happy, part of a longer term.

15 MR. MARDERICH: As long as I have a two-way  
16 communication with that young gentleman here.

17 ACTING COMMISSIONER GONZALEZ: And if not, feel  
18 free to call us as well. But I know that they're very,  
19 very responsive.

20 And the second being the question of the parks.  
21 And that was the one where I asked on behalf of Lieutenant  
22 Governor that staff obviously continue to find creative  
23 solutions, to have NRDC or whoever's representing  
24 plaintiffs to talk to the Attorney General's office as  
25 well as our attorneys to make sure whatever is being

1 proposed or if anything comes forward, that it's something  
2 that the Commission can support comfortably. I mean  
3 obviously something that's legal. So that was what I had  
4 asked on behalf of Lieutenant Governor.

5 EXECUTIVE OFFICER THAYER: And so for the next  
6 meeting we should have some sort of report back obviously.  
7 And I'm not quite sure -- well, we can discuss it with the  
8 staff.

9 ACTING COMMISSIONER GONZALEZ: I don't think we'd  
10 have an item to direct you to write a letter to -- it's  
11 not legal. So I don't think that --

12 MR. MARDERICH: I'll help you with that one.

13 ACTING COMMISSIONER GONZALEZ: So it will be  
14 worked --

15 EXECUTIVE OFFICER THAYER: We'll continue to  
16 work, and we'll keep in contact with the Commission's  
17 office about the results.

18 ACTING COMMISSIONER GONZALEZ: Thank you.

19 ACTING COMMISSIONER MATEO: Is there anybody else  
20 from the audience who wishes to provide public comment?

21 Okay. That brings that section of the agenda to  
22 a close.

23 Are we going to have a reason to go into closed  
24 session?

25 EXECUTIVE OFFICER THAYER: Yes.

1           ACTING COMMISSIONER MATEO: Do you have anything  
2 that needs to be read into the record prior to that?

3           You just go into closed session?

4           This is a little different than some of the other  
5 boards and commissions I sit on. But we usually have a  
6 paragraph there.

7           Okay. At this time we are going to go into  
8 closed session. And I would ask the audience to leave the  
9 chambers please.

10           (Thereupon the California State Lands  
11 Commission recessed into closed session.)

12           (Thereupon the California State Lands  
13 Commission meeting adjourned at 5:45 p.m.)

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