

BOARD MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

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

THURSDAY, OCTOBER 16, 2008

10:14 A.M.

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

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

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

Mr. John Garamendi, Lieutenant Governor,
also represented Mr. Brian Bugsch

Mr. Michael Genest, Director of Finance, represented by
Mr. Tom Sheehy

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Curtis Fossum, Chief Counsel

Mr. Mario De Bernardo, Legislative Liaison

Ms. Jennifer Lucchesi, Staff Counsel

Ms. Kimberly Lunetta, Executive Assistant

Mr. Jim Trout, Retired Annuitant

ATTORNEY GENERAL'S OFFICE

Mr. Joe Rusconi, Deputy Attorney General

ALSO PRESENT

Mr. Stephen Cushman, Vice Chair, San Diego Port
Commissioner

Mr. Frank Gallagher, San Diego Community Solutions

Ms. Aimee Graham, General Dynamics NASSCO

Councilmember Janice Hahn, Los Angeles City Council

Ms. Bella Heule, San Diego World Trade Center

Mr. Mike Jacob, Pacific Merchant Shipping Association

Dr. Geraldine Knatz, Port of Los Angeles

Ms. Melissa LinPerrella, Natural Resources Defense Council

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Jesse Marquez, Coalition for a Safe Environment

Dr. John Miller, Port of Los Angeles Community Advisory
Committee

Mr. Michael Montoya, Longshoreman

Mr. Ed Plant, San Diego Port Tenants Association

Mr. Tim Schott, California Association of Port Authorities

Ms. Melissa Stephens, American Lung Association

Ms. Diane Takvorian, Environmental Health Coalition

Mr. Eric Townsend, Environmental Legal Clinic, University
of San Diego Law School

Ms. Dorota Valli, Animal Protection Rescue League

Mr. Brian Whatley, Local 29, International Longshoremen &
Warehouse Union

Mr. Dan Wilkens, Port of San Diego, Assistant Port
Director

Ms. Kathleen Woodfield, San Pedro Peninsula Homeowners
Coalition

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 PROCEEDINGS

2 CHAIRPERSON CHIANG: Good morning, everybody.
3 I'll call this meeting of the State Lands Commission to
4 order. All the representatives for the Commission are
5 present. I am John Chiang, the State Controller. I'm
6 joined this morning by Lieutenant Governor John Garamendi
7 and Tom Sheehy -- welcome, Tom -- who represents the
8 Department of Finance.

9 For the benefit of those in the audience, the
10 State Lands Commission administers properties owned by the
11 State, as well as its mineral interests. Today we will
12 hear proposals concerning the leasing and management of
13 these public properties. The first item of business will
14 be the adoption of the minutes from the Commission's last
15 meeting.

16 May I have a motion to approve the minutes?

17 ACTING COMMISSIONER SHEEHY: I would move the
18 minutes.

19 COMMISSIONER GARAMENDI: Second.

20 CHAIRPERSON CHIANG: Motion by Tom second by
21 John. Without objection, the motion passes.

22 The next order of business is the Executive
23 Officer's report. Paul, may we have that report, please.

24 EXECUTIVE OFFICER THAYER: Thank you. Good
25 morning, Mr. Chair and members of the Commission. I have

1 3 items I want to cover. The first will be the usual
2 report on the status of violations that we're pursuing.

3 The second --

4 COMMISSIONER GARAMENDI: Paul, can I interrupt
5 for a moment. Who's this guy at the end down here?

6 (Laughter.)

7 EXECUTIVE OFFICER THAYER: I'm sorry.

8 (Laughter.)

9 COMMISSIONER GARAMENDI: Maybe we ought to
10 introduce him.

11 EXECUTIVE OFFICER THAYER: I think that's an
12 excellent idea.

13 COMMISSIONER GARAMENDI: We need to break him in,
14 don't we?

15 (Laughter.)

16 EXECUTIVE OFFICER THAYER: The first part of this
17 has to be to express our regrets that Anne Sheehan is no
18 longer representing the Department of Finance. We've
19 enjoyed her representation on the State Lands Commission
20 for several years. But we're pleased that her
21 replacement, Tom Sheehy, is someone who's worked in a
22 variety of public roles and with the Department of Finance
23 for several years. He and I met, first, I think when he
24 was working for Assembly Member Brulte in the legislature
25 and I was working for Assembly Member Sher. So I know he

1 has a long history in Sacramento and he'll do a great job
2 on the Commission.

3 You should know that he's arranged for a
4 background meeting. I think we spent 3 and a half hours
5 going over the issues. So he's obviously very interested
6 in what the work of the Commission is and he's very
7 interested in doing a great job.

8 So Tom Sheehy from the Department of Finance.

9 COMMISSIONER GARAMENDI: Welcome, Tom.

10 ACTING COMMISSIONER SHEEHY: Thank you.

11 COMMISSIONER GARAMENDI: I look forward to
12 working with you.

13 ACTING COMMISSIONER SHEEHY: Thank you,
14 Lieutenant Governor. It's a pleasure to serve with you on
15 the State Lands Commission.

16 CHAIRPERSON CHIANG: Yeah. I just wanted to
17 point out, Tom, you have big shoes to fill. Anne did a
18 first-rate job while she was here. She is a consummate
19 public servant. We stole her for one of the other 75
20 boards that I serve on. Obviously, she has investment
21 capacity at CalSTRS now. And we need to maximize
22 risk-adjusted returns. But we are very pleased to have
23 you join us.

24 ACTING COMMISSIONER SHEEHY: Thank you very much.

25 CHAIRPERSON CHIANG: Paul, can you continue your

1 Executive Officer's Report.

2 EXECUTIVE OFFICER THAYER: Thank you. And thanks
3 to the Lieutenant Governor for reminding me that we needed
4 to introduce Mr. Sheehy.

5 On that straw, I also have to mention and proudly
6 announce that Curtis Fossum, who was our former Assistant
7 Chief Counsel, has been selected -- I've selected him to
8 replace Jack Rump, who retired. Curtis has worked for the
9 Lands Commission for over 30 years. I don't think there's
10 a better expert on the Public Trust Law anywhere in
11 California. So we're fortunate, not only to have him
12 working all these years for the State Lands Commission,
13 but we think he'll do an excellent job as Chief Counsel.
14 I know he's familiar to all of you from briefings and that
15 kind of thing, but I wanted to publicly acknowledge his
16 new role.

17 So with that, turning back to the Executive
18 Officer's Report. Again, I'll talk a little bit about the
19 status of the enforcement actions. And then I want to
20 give an update to the Commission on the enforcement action
21 or the remediation actions regarding shipyard sediments
22 here in San Diego, something the Commission has looked at
23 for the last couple years, having been down here. And
24 finally we'll talk a little bit about the Dana Point
25 Boaters Association concerns that were expressed at the

1 Commission's last meeting. I'll give you an update on
2 that.

3 So turning to the violations. These are the same
4 violations we've talked about in the past. The South Bay
5 Yacht Club, which has until December to remediate some of
6 the poor conditions on the docks down there, the excess
7 growth and vegetation and the abandoned vessels that are
8 in the vicinity. Basically, they've been steadily working
9 on all those issues. We believe all the boats that were
10 stranded in the sediment there in the State lands, as well
11 as in the adjacent water district lands, have been
12 removed, with the exception of 2 where these boats are
13 going to be taken apart. They're too big to have been
14 just taken out whole.

15 There has been delay in some of the removal of
16 some of this debris, because the contractor is doing work
17 with the adjacent water district as well. But progress is
18 being made on that.

19 BCDC has still not issued its final permit for
20 repairing the docks, but that's progress that's -- that
21 work is in progress.

22 And the yacht club has also submitted its
23 application to the Department of Fish and Game for removal
24 of the vegetation in the area, which needs to be done in
25 order to get in there and repair the docks.

1 The yacht club has submitted a letter -- I think
2 it was directed to the Lieutenant Governor -- which
3 requested additional time, past the December deadline, and
4 requested that it be able to use the Environmental Impact
5 Report that's being prepared by the District for similar
6 adjacent activities, rather than having to do one itself.

7 I think our approach so far has been to tell the
8 District, you know, you should be doing everything you can
9 to comply with the December deadline that the Commission
10 outlined. And if you're unable to comply with that, let's
11 talk once you've reached that deadline and see what more
12 needs to be done after that. But I think first and
13 foremost they should be working as hard as they can to
14 comply with that deadline.

15 There may be some merit to what they're
16 suggesting in terms of using that environmental review.
17 And that may be the fastest way to get this job done. But
18 for now, let's let them keep working.

19 Moving onto the next item. This is Jeanne Bird
20 Taylor. She's the owner of a dock and an adjacent cabin
21 that overhung into State lands, or over State lands, and
22 the house boat. This is down in the Delta. The
23 Commission directed staff to work to have that house boat
24 removed. It was a residential use on State lands, which
25 isn't permitted under the Public Trust Doctrine.

1 She, without getting a lease amendment from us,
2 which we had said was the right way to go, shortened her
3 dock, sold her house boat, and chopped off a bunch of the
4 overhanging cabin. So she's done a lot of what we wanted
5 her to do, albeit not quite procedurally correctly, but
6 progress has been made.

7 (Laughter.)

8 EXECUTIVE OFFICER THAYER: We've notified her
9 that she really needs to come in and get a lease amendment
10 and file an application, that what she's chopped off of
11 the cabin doesn't quite take care of it. It's still a
12 little bit over the line over into State property. And in
13 selling the house boat, as I mentioned at our last
14 meeting, she sort of transferred the problem to another
15 waterway. It's now anchored in, I think, Elk Slough or
16 Georgiana Slough nearby.

17 We contacted the new owner and he says that he
18 understands that it's not allowed, that he can't have
19 residential use. And he says he's going to convert that
20 house boat to some other use, and he'll file an
21 application. We've encouraged him to do that. We're
22 going to continue our discussions, and not letting this
23 go. But clearly, no one can live on it.

24 With respect to the Courtland docks, this is an
25 old marina in the town of Courtland, again in the Delta,

1 just south of Sacramento. These docks had fallen into
2 disrepair. A new couple bought the docks and were
3 assigned a lease, but they had delayed repairing the
4 docks. An adjacent house, once again, was overhanging
5 into Public Trust Lands.

6 At this point, they have repaired all the docks.
7 They've cut back the house, so it's not overhanging State
8 lands anymore. The one missing thing is that they still
9 haven't completed getting their bond, which we want. We
10 want an assuery bond to make sure they don't do this sort
11 of thing again. We've got money to remediate it if they
12 do. And it will cover any remediation. It's not the sort
13 of bond we require in a marina.

14 They say they still are unable to get that, in
15 part because some of the neighbors -- if you recall that a
16 lot of attention was brought to this in front of the
17 Commission was because neighbors objected to some of the
18 things that these 2 were doing. They still have
19 litigation and so they're unable to get the bond. We're
20 working with them on an alternate way to do this sort
21 of -- potentially going to set aside money every month.
22 Instead of getting a bond, they'll end up with a fund that
23 will cover this sort of thing.

24 So great progress made. We're going to keep
25 working on this until they comply with each aspect of the

1 violations.

2 Turning to Hulbert. This is the gentleman who
3 overbuilt the dock. We've given -- the Commission had
4 given a lease for a dock with a covered house boat on it.
5 He built it, I can't remember, 9 feet higher than the
6 Commission had given permission for and somewhat larger.
7 We offered a compromise. He didn't accept it. He sued
8 us. We thought okay this will give us the opportunity to
9 pursue our interests in this. He's basically let his
10 lawsuit languish.

11 So the Attorney General's office yesterday filed
12 a cross-complaint so that rather than letting this
13 languish, we can pursue it on our own in the courts, and
14 we'll be doing that.

15 The Spirit of Sacramento. This is still an
16 ongoing project. We've worked with the Attorney General's
17 office. This is, I think, a former ferry that has been
18 tied up just south of downtown Sacramento, I think, on the
19 Yolo county side, where there's no lease for the pilings
20 to which it's tied. And we've notified the -- at the
21 Commission's direction, have notified the owner that this
22 thing is going to have to be removed. We haven't really
23 gotten any satisfaction from the owner. And we're working
24 with the Attorney General's office to file in court, which
25 we're obviously going to have to do to move that out.

1 Then there's 2 other vessels, large vessels,
2 about 300 feet long each. The Faithful and the San Diego,
3 again located in the Delta. There's a theme here.
4 There's violations in the Delta.

5 And these are very large vessels that are in
6 Horseshoe Bend, near the city of Rio Vista. We brought
7 this to the Commission earlier this year. The fundamental
8 problem is that the people who own these vessels probably
9 don't have the means to get rid of them, but we've been
10 trying to work with them to find salvors who would want to
11 take them for the value of the vessels.

12 There's a man in San Diego that's expressed
13 interest. There have been a couple foreign ones. We're
14 continuing to push that. Because, again, if they don't
15 have the means to store them, they've got to find some
16 other place to get rid of them. And so we're trying to be
17 innovative and think outside the box. It's not just a
18 violation -- it wouldn't do any good to take these guys to
19 court, if they can't get rid of the ships. So, again, a
20 work in progress. We're not done there. And we don't
21 have as much progress on those 2 as we'd like, but we're
22 trying to figure out ways to move these on.

23 Just as an ancillary to that, we are looking at
24 potential legislation to increase our authority over boats
25 like this and to try and get us some money. We had a

1 meeting a couple weeks ago with the Department of Boating
2 and Waterways. They have a program where they put some
3 money into local governments to remove abandoned vessels.
4 They weren't very receptive to the idea of having another
5 State agency get involved with this. But we said, look,
6 there's these vessel out here and you need to -- it's on
7 our property. We think we've got a mission equal to the
8 Boating and Waterways in dealing with these issues.

9 So once again another work in progress, but we're
10 working towards that. And I suspect we'll come back to
11 the Commission in December when these ideas are fully
12 fleshed out and see if the Commission wants to sponsor.

13 COMMISSIONER GARAMENDI: Paul, if I might
14 interrupt for a moment. I think that legislation is
15 really necessary. With the way that the Department of
16 Boating and Waterways presently allocates money -- and
17 they do have money available, and apparently the
18 Department of Finance didn't find it, so they didn't sweep
19 that particular closet out.

20 (Laughter.)

21 COMMISSIONER GARAMENDI: But there is money
22 available. But it relies upon an application by a county
23 agency to apply for the money and then use it to remove
24 these abandoned vessels and other objects that would be
25 harmful to navigation. Sacramento County doesn't. Some

1 other -- a couple of other counties in the Bay Area do.
2 But we do have the responsibility. It is State land and
3 it would be beneficial for the State Lands Commission to
4 take the initiative, if we had the money. And the money
5 is there. We just need to figure out how to get our hands
6 on it so that we can cleanup these waterways, remove these
7 derelict vessels and the hazards to navigation.

8 EXECUTIVE OFFICER THAYER: And staff agrees with
9 the Lieutenant Governor on this. When we talked to
10 Boating and Waterways, they agreed that they did not have
11 the independent authority themselves to go out and cause
12 removal. They just had this grant program to give money
13 to local governments when local governments are concerned
14 about a particular vessel. But there's no opportunity
15 there -- I mean, if the vessel is off in some other
16 location that the locals don't care about it, but it's
17 still on our land and it creates a navigational hazard or
18 there's oil on board that sort of thing. We do have some
19 authority to remove those. We don't have any money to do
20 it.

21 And, again, no fault in Finance. We regularly
22 put in requests for additional funding. Generally, of
23 course, it has to be from the General Fund and there's not
24 much of that around these days.

25 But Boating and Waterways has authority under

1 statute to use up to \$1,000,000 a year from their
2 revolving fund for this. So far they've only gotten half
3 a million a year. And, you know, why not that other half
4 million, is that something that we could tap into to help
5 remove the vessels. I'd be happy to talk with
6 Commissioner Sheehy a little bit further to get Finance's
7 perspective on what we're doing.

8 ACTING COMMISSIONER SHEEHY: Yeah. If there's
9 anything the Department of Finance can do to assist the
10 State Lands Commission staff on developing a proposal or
11 taking a second look at a proposal, we're happy to do
12 that.

13 EXECUTIVE OFFICER THAYER: Great.

14 So that completes our report on the violations,
15 unless there's any questions.

16 Then moving on to the second issue, which is the
17 update on the shipyard sediments here. As the Commission
18 may recall, in 2006 -- we meet down in San Diego once a
19 year. And at our meeting in 2006 at the urging of some of
20 the environmental groups here -- I think Bruce Reznik is
21 here. He was one of them that was involved. We adopted a
22 resolution urging the Water Board to expedite an abatement
23 order over the contaminated sediments in San Diego Bay.
24 And a year later that order still hasn't been released.
25 And Bruce and others were here asking the Commission to

1 take further action.

2 In this case, the last year the Commission sent a
3 letter to the Port of San Diego saying, well, when the
4 thing is finally issued -- the order is issued, please --
5 or I think we actually directed the Port to do everything
6 it could to expedite the implementation of that order, so
7 that the sediment would finally get cleaned up.

8 It's sort of like the violations, there's some
9 progress that can be reported a year later, but the order
10 still is an issue. The thing that was holding up the
11 whole process was this electronic indexing and committing
12 to an electronic data form all of the information. And I
13 don't remember how many pages were involved, but it was a
14 lot. I think it was about a third of a million pages of
15 documents. There were a lot of delays in getting that
16 done. That has been accomplished. And so they can get on
17 to the substance of it.

18 A hearing officer has been appointed. I think
19 all sides agree to enter into mediation. And that
20 mediation process is ongoing. Two 90-day stays of the
21 work of the Hearing Officer were issued. The most recent
22 one was, I think, was just in the last month. Let's see,
23 there was one issued September 5th, which delays for
24 another 90 days further proceedings in an effort to get
25 the mediation -- to give the mediation time to work. So

1 that's where it stands right now. Ongoing remediation is
2 not occurring yet. And this is still, you know, under the
3 Board to decide what kind of order to issue or whether
4 this can be resolved through mediation.

5 Then finally, at our last meeting, a
6 representative of the Dana Point Boaters Association spoke
7 before the Commission questioning whether some of the new
8 harbor improvements at Dana Point were consistent with the
9 Public Trust Doctrine. The concern was -- well, there
10 were several different concerns. They also questioned
11 whether the annual fiscal statement, which all grantees
12 are required to submit to us, was up to snuff.

13 Since that time, we've talked about this both
14 with the Boaters Association and with the Harbor. We
15 believe that this financial statement is sufficient to
16 meet the statutory requirements. However, we worked with
17 the Harbor and the Association to get additional
18 information provided to the Association, information they
19 wanted to have, so that that need has been met.

20 Just 2 days ago, we got an additional letter,
21 which I think copies are on your desk, from the Dana Point
22 Boaters Association further questioning this development
23 and questioning whether it was consistent with the terms
24 of the grant. We've researched the grant and we think
25 it's pretty clear that in addition to harbor uses, the

1 legislative grant allows for other kinds of businesses to
2 be there. They have to be public-trust consistent, but I
3 think the boaters believe that the only thing that could
4 occur on this grant was a harbor. And the new
5 redevelopment plan calls for things like restaurants and
6 other public-trust consistent uses, but which aren't just
7 strictly harbor related.

8 The letter again that you just received requests
9 that the State Lands Commission oppose at the Coastal
10 Commission approval of the plan for the redevelopment.
11 Staff doesn't think this is warranted, because again our
12 investigation so far to date says that what's being
13 proposed here is consistent. There is still uncertainty
14 about this, of course, because there are going to be some
15 commercial uses under this plan. And exactly what those
16 uses are hasn't been detailed yet.

17 And so just as has been the case here in Lane
18 Field -- I know the Controller has been concerned about
19 that -- we think that as part of the Commission's
20 oversight responsibility, we, as staff, will be looking at
21 and tracking what uses that are actually going into these
22 new buildings when they go in to make sure they're
23 consistent with the Public Trust Doctrine. We'll be
24 working to make sure that these leases are set up right.

25 But at this point, there's nothing on the face of

1 what's being proposed by the Harbor District which is
2 inconsistent with the Public Trust Doctrine. So we think
3 it's inappropriate for us to oppose before the Coastal
4 Commission.

5 This agency doesn't have any direct jurisdiction
6 in terms of yea or nay on any of this. We just have our
7 oversight responsibility. This is on granted lands.

8 This matter won't go before the Coastal
9 Commission until January or February. We'll be meeting
10 again in December, and so we'll look into this further and
11 report back to you in December. We just, as I say, got
12 this letter 2 days ago. Our inclination, at this point,
13 is not to get involved.

14 And I believe that concludes the Executive
15 Officer's Report.

16 CHAIRPERSON CHIANG: Thank you, Paul.

17 The next item of business is the Consent
18 Calendar. Paul, have any items been pulled?

19 EXECUTIVE OFFICER THAYER: Yes. There are 3
20 items pulled. They'll be heard at a future Commission
21 meeting. They are Items C17, 32, and 47. And upon advice
22 of Curtis, counsel, I wanted to publicly mention an item
23 which I think I mentioned to all of you in the briefings,
24 which is that I have a potential conflict of interest on
25 Item 18, which has to do with some restoration for

1 Steelhead habitat in the American River. And I've
2 directed Curtis to manage this item. I wasn't involved
3 with it at all. And I wanted to make sure that you and
4 the public were aware of that.

5 CHAIRPERSON CHIANG: Thank you.

6 Okay, Items C17, 32 and 47 have been pulled.
7 Item 18, please note nonparticipation by Paul Thayer.

8 Is there anyone in the audience who would like to
9 make any comment on any of the consent items?

10 Hearing none, is there a motion on the consent
11 agenda?

12 COMMISSIONER GARAMENDI: So moved.

13 ACTING COMMISSIONER SHEEHY: Second.

14 CHAIRPERSON CHIANG: Motion by the Lieutenant
15 Governor, second by Tom.

16 Without objection, the motion passes.

17 Next item, please.

18 EXECUTIVE OFFICER THAYER: The next item starting
19 the regular calendar here is Item 56. This is a
20 resolution that the Commissioners requested staff to bring
21 back for its consideration opposing the initiative here in
22 San Diego, Proposition B, which would amend the Port of
23 San Diego's master plan as it relates to the 10th Avenue
24 Marine Terminal.

25 Jennifer Lucchesi will make this presentation.

1 STAFF COUNSEL LUCCHESI: Good morning, Chair
2 Chiang and Commissioners. My name is Jennifer Lucchesi,
3 and I'm staff counsel for the Commission.

4 Proposition B, a local initiative. This
5 initiative involves the 10th Avenue Marine Terminal
6 located on State-owned tide and submerged lands held and
7 managed in trust by the San Diego Unified Port District on
8 behalf of the citizens of California.

9 The 10th Avenue Marine Terminal consists of
10 approximately 100 acres and is an important port facility
11 in San Diego Bay. Despite the misleading title of the
12 initiative, this initiative is not sponsored by the Port
13 District. In fact, the Board of Port Commissioners
14 unanimously opposes this initiative.

15 In addition, a wide array of environmental,
16 labor, maritime, industry, governmental, military and
17 chamber of commerce groups have expressed their opposition
18 to this initiative. These groups include the San Diego
19 Imperial County Labor Council, the Environmental Health
20 Coalition, the San Diego Port Tenants Association, the
21 Pacific Merchant Shipping Association and the California
22 Trade Coalition among many others.

23 Additionally, 5 members of Congress,
24 representative Susan Davis, Darrell Issa, Duncan Hunter,
25 Brian Bilbray and Bob Filner have expressed their

1 opposition to this initiative. And even the Secretary of
2 the Navy, Mr. Donald Winter, has expressed his opposition.

3 The State Legislature, pursuant to the Port Act,
4 designated the Board of Port Commissioners as a
5 policy-making body with exclusive and sole responsibility
6 for managing these lands on behalf of all California
7 citizens. This includes the authority to determine what
8 land uses are appropriate for the 10th Avenue Marine
9 Terminal, as well as the remainder of State-owned granted
10 lands in the San Diego Bay.

11 The land-use decisions that the Board makes
12 concerning these Public-Trust lands is a statewide affair
13 and cannot be affected by the local initiative process.
14 Proposition B attempts to subvert the Port's Harbor
15 Commissioner's authority as trustee of the State by
16 amending the Port District master plan to allow for
17 non-maritime uses at the 10th Avenue Marine Terminal.

18 Commission staff believes that this initiative
19 presents a clear case of an attempt to interfere with
20 matters of statewide, if not, national and international
21 concern. As such, staff recommends that the Commission
22 adopt the resolution before you opposing Proposition B.

23 CHAIRPERSON CHIANG: Thank you.

24 EXECUTIVE OFFICER THAYER: That concludes staff
25 presentation. I believe there's some who want to speak.

1 I believe that one of the proponents from the initiative
2 is here, Mr. Gallagher. And I know that there's a Port
3 Commissioner Steve Cushman who's here.

4 CHAIRPERSON CHIANG: Very good. We'll have Mr.
5 Cushman speak first followed by Mr. Gallagher.

6 SAN DIEGO PORT COMMISSION VICE CHAIRPERSON
7 CUSHMAN: Good morning, Lieutenant Governor Garamendi,
8 Secretary Chiang and Mr. Sheehy. I'm Stephen Cushman,
9 Vice Chairman of the Board of Port Commissioners for the
10 San Diego Unified Port District. It is a pleasure to have
11 the esteemed Commission here at the Port. And I thank you
12 for your consideration hearing this item earlier.

13 Welcome to your house in San Diego.

14 (Laughter.)

15 SAN DIEGO PORT COMMISSION VICE CHAIRPERSON
16 CUSHMAN: On behalf of myself and 2 fellow Port
17 Commissioners that are here today, Dukie Valderrama and
18 Laurie Black, we welcome you.

19 I am here to ask the Commission to adopt a
20 resolution in opposition to Proposition B, the election
21 ballot measure that would amend the Port of San Diego
22 master plan regarding development of the 10th Avenue
23 Marine Terminal.

24 First, let me thank you publicly for filing the
25 amicus brief in August on the Port's behalf, as we sought

1 to quash this initiative via the court. The judge ruled
2 only that the electorate must have its say. He did not
3 rule on the merits of the case, and that's important to
4 note.

5 State Attorney General Jerry Brown, on behalf of
6 the State Lands Commission, laid out the State's case,
7 which I believe a court will eventually uphold if the
8 proposition passes. Let me briefly give you a bit of
9 history.

10 In mid-04, we've been down this road before. A
11 similar situation, then like now, the marine terminal was
12 targeted as a possible site for a new football stadium.
13 And then like now, our allies rally. Former Lieutenant
14 Governor, Cruz Bustamante appeared before our Commission
15 in this room. The Port Commission voted to preserve the
16 terminal's maritime use on a 6-to-1 vote.

17 Now, developers have taken different tactics.
18 They avoided coming before the Port Commission with their
19 proposal. They circumvented public discourse before
20 circulating the initiative. The difference between 2004
21 and today is the hidden agenda. We don't know what the
22 ultimate goal is. Perhaps, as one section of the
23 initiative suggests, incompatible uses could be built at
24 grade, setting the groundwork for maritime's demise. This
25 is one of the reasons we believe this initiative is

1 dishonest and misleading.

2 Another is its name, which suggests we back it.

3 We do not back it in any way, shape or form.

4 Prop B also claims it will cost the taxpayers
5 nothing. Upon closer examination, it appears that any tax
6 collected, above and beyond those collected now from the
7 property, would go into the development. Could that mean
8 sales tax, property tax, transient occupancy tax? The
9 initiative is vague quite frankly in this area.

10 The initiative promises better jobs, but it
11 doesn't say what kind. In today's economy, we need to
12 know what they're talking about. We already have 19,000
13 jobs tied to maritime cargo operations. The average pay
14 for these jobs is \$62,000 a year. Do we want to replace
15 family-sustaining jobs with minimum wage service industry
16 jobs?

17 Key to the State's interest is the legality of
18 the initiative. It would change the land-use designations
19 outlined in the Port's master plan in violation of the
20 legislative action that created the Port in the early
21 1960s.

22 We, the Port Commissioners, are trustees of
23 tidelands for the State pure and simple. We understand
24 that. That trust is for all California citizens. It is
25 not to be piecemealed by local jurisdictions. In many

1 respects, government's role is to balance public benefit.

2 Regional economic balance and national regional
3 security. Regional economic balance is important.

4 Maritime operations provide that in San Diego. In fiscal
5 2007, maritime operations brought in \$39 million in
6 revenue, up 12 percent from the previous year.

7 We had a 62 percent gain in break bulk cargo,
8 which includes steel for ship building, steel coils for
9 home building and windmill parts for alternative energy.
10 Those commodities come through the 10th Avenue Marine
11 Terminal, which has increased its growth by 74 percent in
12 the last 5 years.

13 In total, our maritime operations and the
14 business associated with the working waterfront
15 contributes 7.6 billion in economic impact to our region.

16 We work cooperatively with the military as well.
17 The Port of San Diego provided over 50 percent of the west
18 coast lift for the war effort. The Secretary of the Navy
19 was in San Diego yesterday and expressed and reiterated
20 his opposition to this plan. The country cannot afford to
21 lose a deepwater terminal. The nation's system of ports
22 brings the goods necessary for our families and their
23 businesses.

24 I urge you to adopt the resolution in opposition
25 to Prop B. Thank you. If you have any questions, I'd be

1 happy to answer them.

2 CHAIRPERSON CHIANG: Mr. Cushman, thank you for
3 your comments this morning.

4 If we could have Mr. Gallagher, please.

5 COMMISSIONER GARAMENDI: Before Mr. Gallagher
6 comes up, I understand that the Secretary of the Navy
7 submitted a letter yesterday. If we can get that letter
8 and put it in our file as part of this testimony.

9 EXECUTIVE OFFICER THAYER: We'll do that.

10 CHAIRPERSON CHIANG: Please join us.

11 MR. GALLAGHER: Good morning.

12 CHAIRPERSON CHIANG: Morning.

13 MR. GALLAGHER: Thank you for allowing me the
14 opportunity to speak.

15 I would like to first address so many statements
16 that started in the parking lot and that have been
17 reemphasized here today. When we hear --

18 CHAIRPERSON CHIANG: If you would give us your
19 full name and title, please.

20 MR. GALLAGHER: Oh, I'm sorry. I'm Frank
21 Gallagher. And I'm the managing member of San Diego
22 Community Solutions. We are the proponent that put the
23 initiative on the ballot.

24 CHAIRPERSON CHIANG: Very good. Thank you.

25 MR. GALLAGHER: There were at least a half a

1 dozen comments made about 19,000 jobs. And just for a
2 point of clarification, I'd like to make sure that
3 everyone here understands that the Port of San Diego
4 combines 2 terminals, the terminal in National City and
5 the terminal in San Diego as if they were one operating
6 entity, which means they've got one financial statement.
7 They've got one expense statement. They've got one
8 revenue statement from 2 terminals in 2 different cities.

9 So when we hear 19,000 jobs, we're talking about
10 impacts that are downstream, that are the byproduct of
11 product that's brought into National City that has nothing
12 to do with this initiative.

13 So as an example, the automobiles that come in
14 from the Pacific Rim are unloaded at 24th Street by a ship
15 that does not stop at 10th Avenue. So those cars that
16 then are transported out to the western United States are
17 part of the economic impact. Now, this has nothing to do,
18 once again, with the terminal in San Diego. So the
19 jobs -- part of the 19,000 jobs, there's actually 822 jobs
20 at the 10th Avenue Marine Terminal. This is on the Port's
21 own website.

22 And what we are contending is that there is an
23 opportunity to combine elements of trade that are for the
24 benefit of the community. We knew full well when we wrote
25 this initiative that we would be in front of you at the

1 point in time when there was a project. The reality is,
2 is that there is no project. The initiative calls for
3 this collaboration to occur after the vote by the
4 stakeholders, which is the Port of San Diego, the City of
5 San Diego, Working Waterfront, Port Tenants Association,
6 Environmental Health Coalition. All of the stakeholders
7 that would have a stake in this terminal in this
8 approximately 100 acres would be part of the process.

9 This would need to be a collaboration. This
10 isn't something that we have proposed. We're proposing
11 that dialogue start. We're proposing that it become an
12 opportunity for communities to get involved with their
13 stakeholders to find out if there's a way to generate the
14 4 components of the Public Trust Doctrine that we believe
15 that the initiative complies with, which is maritime --
16 and as you read the initiative, you find that the maritime
17 industry is a mandatory byproduct of the passage.

18 This means that nothing can happen at that
19 terminal unless the maritime is preserved and enhanced and
20 protected. So any other use has to be supportive of the
21 maritime. But we're also very well aware of the
22 environmental requirements, the economic requirements and
23 also the public access requirements that we find in the
24 Public Trust Doctrine.

25 So the intent behind this program is to have a

1 collaboration, which obviously includes the Port of San
2 Diego. So we would ask that everyone understand that we
3 are not presenting a project, because the project won't be
4 defined until after the initiative. I understand what
5 counsel said about their belief that the Port Act is not
6 subject to the initiative. That's one discussion. As far
7 as the project, that's a different discussion, because the
8 project hasn't been defined yet.

9 So I would just like everyone to understand that
10 we are talking about a process that would occur after the
11 election for the benefit of the community, the benefit of
12 the City and the benefit of the Port of San Diego.

13 CHAIRPERSON CHIANG: Thank you very much.

14 Okay, the remaining speakers we will allot 2
15 minutes. And I will call you 3 at a time. The first is
16 Aimee Graham, the second, Diane Takvorian -- I apologize
17 if I articulated a name incorrectly -- and Brian Whatley.

18 MS. GRAHAM: Good morning. My name is Aimee
19 Graham. I'm here representing General Dynamics NASSCO.
20 We're one of the leading shipyards in the United States,
21 and the only remaining full shipyard left on the U.S. west
22 coast. We've been designing, building and repairing ships
23 for the U.S. Navy and commercial customers in San Diego
24 for over 50 years.

25 We are not only a port tenant, but we're also a

1 heavy user of the 10th Avenue Marine Terminal. NASSCO
2 employs 4,700 people directly and an additional 1,500
3 long-term subcontractors on our facility. Along with the
4 port jobs, we feel NASSCO jobs would be jeopardized by
5 this initiative.

6 Redevelopment of industrial land will eliminate
7 one of the few remaining career paths for skilled
8 technical workers to become financially independent in San
9 Diego.

10 NASSCO has identified the 10th Avenue Marine
11 Terminal as a critical supply chain link to domestic and
12 international supplies of raw materials, finished goods
13 and equipment utilized in the shipyard in direct support
14 of our operations.

15 We anticipate growth in ship construction and
16 repair activities that will result in an increase in
17 material deliveries through 10th Avenue Marine Terminal to
18 the shipyard. In the last year, NASSCO moved 30,000 tons
19 of goods and cargo through 10th Avenue Marine Terminal.
20 That cargo was handled and stored on acreage that the
21 proponents of this initiative have described as
22 under-utilized or unused.

23 That 30,000 tons included steel plate and bulk
24 flats for use in the construction of Naval vessels, 4
25 engines for each of the U.S. Navy's T-a-k-e auxiliary

1 ships -- we're producing 2 of those ships a year -- one
2 engine each for product tankers, propeller motors,
3 rudders, and a new environmentally friendly blast and
4 paint facility.

5 Inconsistent use of waterfront lands will
6 seriously undercut the Port's ability to execute one of
7 its cornerstone missions to preserve the waterfront
8 commercial maritime use.

9 I appreciate your time and urge you to oppose
10 Proposition B.

11 Thank you.

12 CHAIRPERSON CHIANG: Thank you.

13 MS. TAKVORIAN: Good morning, Commission members.

14 My name is Diane Takvorian and I'm the director of the
15 Environmental Health Coalition. We're a 28 year old
16 Environmental Justice organization here in San Diego. We
17 have 5,000 members in the San Diego region and many of
18 them reside in the adjacent communities to the port
19 terminals.

20 Many of our members hold good jobs at the 10th
21 Avenue Marine Terminal, and they do reside in the adjacent
22 communities. The largely Latino community right adjacent
23 to the 10th Avenue terminal is Barrio Logan. As you might
24 imagine, there are often pollution issues associated with
25 having a port terminal right next door to a residential

1 community.

2 Not all of them are solved, but I wanted to let
3 you know that the Port of San Diego is working closely
4 with the community of Barrio Logan and with Environmental
5 Health Coalition and many others on their clean air plan.
6 And we have a lot to do. But they have already stepped up
7 and are retrofitting many trucks that service the
8 terminal. They have on their own gone forward and had a
9 truck rerouting plan that's been put into place, so the
10 trucks are no longer coming through the community. And
11 they've just announced a new ship cold ironing program
12 that will take effect soon.

13 Conversely, we have seen in the proponent's
14 proposed initiative, they have specifically deleted
15 reference to collaboration with the Barrio Logan
16 community. It is struck out. So I would just ask you to
17 take into consideration that we don't think that the
18 proponent's claims that they want to work with
19 stakeholders is truly authentic, because we believe that
20 they would have come to the various places where they
21 could have talked with stakeholders, and the community
22 before they put this measure on the ballot. And we'd
23 prefer to continue to see the 10th Avenue terminal
24 continue to thrive and we'll all look forward to a clean
25 and safe port together.

1 Thank you for your time.

2 CHAIRPERSON CHIANG: Thank you.

3 We have Brian followed by Ed Plant.

4 MR. WHATLEY: Good morning. I'm Brian Whatley,
5 president of Local 29, International Longshoreman and
6 Warehouse Union. And as president of Local 29, I speak on
7 behalf of all the longshoremen that oppose Proposition B.

8 We know this initiative will do nothing to
9 preserve maritime operations. And, in fact, it will
10 eliminate our good-paying jobs. There's a lot of work
11 that comes in and out of 10th Avenue Marine Terminal. I
12 work there every day as a steady mechanic. And over the
13 past 6 years, I've just seen an increase in cargo coming
14 through there. And we're here on behalf of the ILWU to
15 ask you guys to support us in opposing Proposition B.

16 Thank you.

17 CHAIRPERSON CHIANG: Thank you, Brian.

18 MR. PLANT: Good morning. Thank you for being in
19 San Diego.

20 CHAIRPERSON CHIANG: Ed, if you'd share with us
21 your full name and title for the record.

22 MR. PLANT: Oh, I'll get there. My name is Ed
23 Plant. I happen to be Chairman for the San Diego Port
24 Tenants Association at this time, and was one of the
25 original founders of the working waterfront here in San

1 Diego.

2 But I think more importantly, I'm a tenant on the
3 10th Avenue Marine Terminal. We handle fruit and
4 perishables that come in from South America and Central
5 America and Australia. One of the things that we're
6 involved with is that we bring in 43 percent of all the
7 bananas that come to the west coast of the United States.
8 So I don't know if people understand that, but that's
9 about 600,000 tons plus that come in. We have a ship
10 every week that comes into the port at San Diego.

11 But the biggest thing that I'd like to talk
12 about is encroachment. I feel that, you know, we've been
13 on the terminal for more than 10 years and we have 20 more
14 years to go on our lease down there. And you know
15 it's -- we steadily get challenges on maintaining our
16 terminal. It is one of 2 deepwater ports here in San
17 Diego. They're tough to replace, as you probably are
18 aware of.

19 So I'm pretty passionate about this situation.
20 And the Port of San Diego has a very balanced port, we
21 believe. We have the commercial side, between the
22 maritime, but we also have the hotel/recreation side. And
23 it's, you know -- we have, I think, 77,000 employees on
24 the Port of San Diego total. It's a big economic boost
25 for this area. And I think this proposition as stated is

1 a threat to the Port of San Diego itself.

2 And therefore, I urge you to adopt the resolution
3 that's in front of you.

4 Thank you very much.

5 CHAIRPERSON CHIANG: Thank you.

6 Next speaker, please.

7 MR. SCHOTT: Good morning, Commissioners. Tim
8 Schott on behalf of the California Association of Port
9 Authorities, which is comprised of the State's 11
10 commercial publicly-owned ports. We just want to express
11 our opposition to Prop B today and for all the reasons
12 stated previously, including our firm belief that the
13 proposition contradicts the Public Trust Doctrine and urge
14 your opposition to the measure.

15 Thank you.

16 MS. HEULE: Good morning. My name is Bella
17 Heule. I'm President and CEO of the San Diego World Trade
18 Center.

19 Imagine entertaining visitors from Amsterdam,
20 enjoying lunch on the beautiful San Diego Bay, when all of
21 a sudden a shipping crane swings by your window to load
22 railroad cars below with steel coils and energy-producing
23 windmills. It simply does not make sense that these 2
24 types of activities could coexist.

25 Why then would anyone propose a ballot initiative

1 to create such a thing at the 10th Avenue Marine Terminal?
2 Perhaps to eventually remove the crate terminal and the
3 economic development it generates.

4 The fundamental element of the San Diego World
5 Trade Center's mission is economic development through
6 international trade and commerce. We want to see our
7 region continue to thrive, maintaining and enhancing the
8 diversity of business activities. Our robust maritime
9 trade port is part of the equation.

10 The World Trade Center agrees with the points
11 made by those who preceded me. I wish to emphasize that
12 the most important issue here is to educate the voting
13 public on the key points of what the ballot initiative is
14 not.

15 It's not an initiative proposed by the Port.
16 It's not a way to create high-paying trade jobs. We ask
17 does our region want a robust diverse economy that can
18 better withstand major economic changes, such as we're
19 going through now, or do we want to have a narrow
20 service-based economy that is more vulnerable to those
21 economic changes that are inevitable?

22 Cargo operations at the 10th Avenue Marine
23 Terminal add to the diversity of our waterfront businesses
24 and sustain a core of well paying jobs that support our
25 regional economy. This is why keeping this key element of

1 maritime industry in San Diego is so crucial to a
2 prosperous future for us all. Careful planning and
3 resource allocation by the Port Districts helps these
4 businesses operate in a competitively sustainable
5 environment.

6 I urge you to oppose Prop B.

7 Thank you.

8 CHAIRPERSON CHIANG: Thank you, Bella.

9 Mike Jacob.

10 MR. JACOB: Good morning, Commissioners. Mike
11 Jacob of the Pacific Merchant Shipping Association in San
12 Francisco, California.

13 Just briefly to join the other voices in
14 opposition to the measure in support of your resolution.
15 I did want to commend the staff of the Commission on their
16 very well plead brief as amicus, in the Port versus
17 Seiler, and also let you know that we joined as amicus in
18 that action as well.

19 I'll confine our comments just to the issues of
20 Public Trust. We think that those issues have been well
21 laid out before the Court. As you heard from Port
22 Commissioner Cushman, the issues have not been addressed
23 with prejudice. The previous action was simply to decide
24 whether or not the initiative actually met the procedural
25 aspects of being added to the ballot for this November.

1 With that being said, we anticipate that if this
2 does go forward, all of us that were previously involved
3 in litigation would continue to be involved in litigation.
4 We will be working with you, your staff and with the Port
5 of San Diego and the other interested parties who filed to
6 make sure that we're upholding all the Public Trust
7 Doctrine. We believe that the initiative itself
8 contradicts the plain letter of the law. And the Port
9 Grant is very specific with regard to who gets to amend
10 the Port Master Plan. It's the Port itself acting as
11 trustees.

12 So we appreciate your vote on the resolution.

13 Thank you.

14 CHAIRPERSON CHIANG: Thank you.

15 Those are all the individuals who have signed up
16 to speak this morning. Is there anybody else who wishes
17 to speak?

18 Okay. Are there questions, comments?

19 COMMISSIONER GARAMENDI: You've got one more.

20 CHAIRPERSON CHIANG: Please join us and introduce
21 yourself.

22 MR. MONTOYA: Good morning. I'm Michael Montoya
23 a Longshoreman in San Diego.

24 CHAIRPERSON CHIANG: Welcome, Michael.

25 MR. MONTOYA: I'm also in the construction

1 industry at National Steel and Ship Building, straight out
2 of the Marine Corps and got hired over there. Got to a
3 point of being a rigger and running cranes and then
4 becoming a foreman. Then I went out into the outside work
5 of construction on cranes. And I was working both that
6 and a longshoreman.

7 It's amazing, because it's been almost 14 years
8 and I've seen the membership grow literally 3 times, not
9 counting all the casual workers that we have and the
10 amount of work. You can go down there one day and see it
11 empty as can be and the next day, just like this last
12 week, we got all these windmill towers into the yard
13 inside the warehouses. We've got all these steel coils.

14 We get so much work down there, it's unreal. But
15 the thing is that while looking at this initiative, I
16 mean, I challenge the guy at the court outside in the
17 courtroom. I says, why don't you just take Seaport
18 Village. You want something so bad, just pull the trees
19 up and take it. It's a boring place anyway.

20 (Laughter.)

21 MR. MONTOYA: Go there one time, you don't want
22 to go no more.

23 (Laughter.)

24 MR. MONTOYA: Ripley's Believe It or Not wanted
25 to put something down there, an aquarium. Everybody wants

1 to do something. The only thing I would approve is
2 Disneyland and Magic Mountain out there in that big old
3 parking lot. Give me that and I'd be happy. Save me the
4 trip to L.A.

5 (Laughter.)

6 MR. MONTOYA: On the other hand, San Diego is a
7 beautiful place to be in. I would encourage you guys to
8 bring me the Iowa, put it next to Midway. I'd enjoy that.
9 You'd have a line of people. People come off a cruise
10 ship, hey let's go see a Battleship. Something they never
11 get to see unless they go to New Jersey or Hawaii.

12 The thing is that we are a Navy type down. We've
13 got plenty of hotels. And then the biggest thing is I
14 like your neighborhood. You know, you got a nice --
15 nobody wants to move. Let me build one above you. That's
16 what this dummy is trying to tell us. And it's pathetic.

17 You know, so please I encourage you guys to take
18 this up and say leave.

19 Thank you.

20 CHAIRPERSON CHIANG: Thank you very kindly.

21 Okay.

22 Comments by the Commissioners.

23 COMMISSIONER GARAMENDI: I would propose that we
24 move this resolution opposing Proposition B. We've heard
25 the testimony here.

1 Proposition B is a direct threat to the
2 commercial maritime activities at the 10th Avenue Marine
3 Terminal. And therefore, it should be defeated on the
4 ballot. If it's not, then I suspect we would vote to
5 proceed with our lawsuits, but that's a next issue.

6 Just defeat this at the ballot and then be done
7 with it and keep this terminal in place. The jobs are
8 important. The commercial activity, the marine commercial
9 activity is extremely important to the region, to this
10 State and to the nation.

11 Therefore, I move the resolution.

12 CHAIRPERSON CHIANG: Okay. We have a motion by
13 the Lieutenant Governor. I will second it.

14 Tom, do you want to make any comments?

15 ACTING COMMISSIONER SHEEHY: I just want to say
16 that I appreciate all the testimony this morning. I'm
17 going to withhold any vote on this matter. Our view is
18 that if this were to pass, then we would deal with it
19 accordingly. We just think it's premature, at this point,
20 for us to take an action at this point. So my lack of
21 voting shouldn't be reflected as support or opposition in
22 any way to what's before the local voters here in this
23 port district.

24 CHAIRPERSON CHIANG: Okay. Per Tom's request,
25 please take roll.

1 EXECUTIVE ASSISTANT LUNETTA: Lieutenant

2 Governor?

3 COMMISSIONER GARAMENDI: Aye on the resolution.

4 EXECUTIVE ASSISTANT LUNETTA: Controller Chiang?

5 CHAIRPERSON CHIANG: Aye.

6 EXECUTIVE ASSISTANT LUNETTA: And Tom Sheehy?

7 ACTING COMMISSIONER SHEEHY: Not voting.

8 CHAIRPERSON CHIANG: Motion passes.

9 Next item.

10 EXECUTIVE OFFICER THAYER: The next item would be

11 normally Item 57. However, in consultation with the

12 Chair's office, there's a recognition that for Item 60

13 we've established a panel on an item that the Lieutenant

14 Governor asked us to put on the agenda. And we wanted to

15 provide more time certainty to when the panelists would

16 have to appear. And so we've, again in consultation with

17 your office, established a process where we would take up

18 that matter as the first matter after 11 o'clock. And 11

19 o'clock having passed, the next item therefore under that

20 process would be Item 60. Once Item 60 is concluded,

21 we'll come back and take up the other items.

22 So the staff -- we will have a panel discussion

23 on this matter. And the panelists will be sitting up

24 here. But first before that starts, again Jennifer

25 Lucchesi, staff counsel with the State Lands Commission,

1 will give a presentation on this item.

2 STAFF COUNSEL LUCCHESI: Good morning again. At
3 the request of Lieutenant Governor Garamendi, staff
4 prepared this informational report discussing the
5 relationship between the Public Trust Doctrine and
6 mitigating port impacts.

7 As California ports are faced with an ongoing
8 need to accommodate growth, port operations can have
9 adverse impacts on the environment and local communities
10 surrounding these operations. The question that arises
11 is, can there be proper and effective non-CEQA required
12 mitigation that complies with a trustee's fiduciary
13 obligations under the Public Trust Doctrine and the
14 California Constitution?

15 Can a port conduct itself as a good neighbor to
16 its surrounding communities while also serving as trustee
17 of State assets on behalf of the citizens of the State of
18 California?

19 Commission staff believe the answer to these
20 questions is a clear yes. However, there are limits to
21 what constitutes lawful expenditures of Public Trust
22 revenues.

23 I will explain these limitations during my
24 presentation by providing background on the legal status
25 of public trust lands and assets, discussing CEQA and its

1 requirements for mitigation, and conclude by looking at
2 the Port of Los Angeles as an example of how mitigation
3 and the Public Trust Doctrine interface with each other in
4 the real world.

5 Following my presentation, there will be a panel
6 discussion which will include perspectives from a range of
7 stakeholders, including local community groups, 2 ports,
8 the maritime industry and the Attorney General's office.

9 Beginning in 1911, the California Legislature
10 entrusted to local jurisdictions the State's Public Trust
11 lands for the primary purpose of developing ports. The 5
12 major ports of California can all trace origins back to
13 these grants. These ports hold and manage the State's
14 Public Trust lands as a trustee of the State on behalf of
15 all the citizens of California.

16 So what constitutes a proper use of public trust
17 lands or revenues?

18 Guided by various California Supreme Court and
19 Appellate Court decisions, it is clear that in order to
20 constitute proper trust uses of Public Trust Lands and
21 proper expenditures of trust revenues, the use or
22 expenditure must, 1, either, directly benefit the port and
23 stimulate commerce and navigation through the port or be
24 necessarily incidental to these purposes;

25 Or, 2, the use must promote the statewide as

1 opposed to purely local public's enjoyment of these Public
2 Trust lands.

3 Since it's enactment in 1970, the California
4 Environmental Quality Act has required that California
5 ports mitigate the adverse impacts of their proposed
6 projects on the environment. It is essential to
7 distinguish between, 1, CEQA-required mitigation; 2,
8 discretionary mitigation that is not CEQA mandated, but
9 sufficiently justified in mitigating port impacts; and, 3,
10 proposals that a port is asked to pay for that are not
11 CEQA-required mitigation as they are not associated with
12 any one particular port project or impact and for which no
13 CEQA-like analysis has drawn a nexus.

14 A mitigation measure that has been developed in
15 response to a port project specific impact and has been
16 sufficiently justified and documented pursuant to CEQA,
17 will be consistent with the Public Trust Doctrine as it is
18 mandated by law and is necessary in facilitating a Public
19 Trust project.

20 Beyond project-specific mitigation, discretionary
21 mitigation, not mandated by CEQA in projects that are
22 proposed to offset impacts from general operations of the
23 port, must comply with the Public Trust and the California
24 Constitution. This can be done by establishing a nexus
25 between port operational impacts and the proposed project

1 using a CEQA-like analysis.

2 Some have suggested that an appropriate off-site
3 project can never have the required nexus to port
4 operations. This is not true. Neither does it mean that
5 the port may not acquire lands or improve property to
6 mitigate impacts of port operations. Such an off-site
7 project will be consistent with the Public Trust if it
8 establishes a nexus that can be justified, documented and
9 that is proportional to the Port's operational impacts.

10 Further, some have suggested that ports are
11 responsible for activities by third parties that take
12 place off port property. An example is a container
13 storage facility on private property in the vicinity of a
14 port, which may cause blight and negative esthetic impacts
15 to the community. These types of impacts are not
16 necessarily the responsibility of the Port. The Port
17 doesn't necessarily have control over these activities.
18 It is the City who has jurisdiction with zoning and
19 permitting authority over such activities.

20 The Port of --

21 COMMISSIONER GARAMENDI: Excuse me. That's not
22 to say there's not a nexus.

23 STAFF COUNSEL LUCCHESI: That's true. But the
24 Port does not have control necessarily over the land uses
25 on those properties that are not under its jurisdiction.

1 COMMISSIONER GARAMENDI: So is the key issue here
2 the control of the Port or is it the nexus of the economic
3 or commercial activity?

4 STAFF COUNSEL LUCCHESI: I think it's both.
5 There has to be a nexus between the impacts and port
6 operations. But at the same time, the Port also has to,
7 if they're going to expend money on property outside of
8 their jurisdiction, there may be a situation where they
9 have to obtain some sort of property interest in that in
10 order to lawfully expend those revenues.

11 COMMISSIONER GARAMENDI: So there's 2 factors.
12 You're arguing 2 factors. One is a nexus that is somehow
13 tied to the marine activity, and secondly, a legal, either
14 ownership, lease or some other. So the 2 factors you're
15 arguing have to be in play.

16 STAFF COUNSEL LUCCHESI: That's correct, if the
17 Port is going to improve property outside of their
18 jurisdiction.

19 EXECUTIVE OFFICER THAYER: I think though to
20 interject another thought on this, is that -- I'm sure the
21 Commissioners are aware that there's kind of a cascade of
22 impacts from any activities in society. And it's
23 difficult to decide who has what role -- I mean, this is
24 really the fundamental issue here -- who has what role to
25 mitigate those impacts?

1 And I think staff, in analyzing this,
2 understanding that at some point a truck carrying a
3 container from the Port of LA to Des Moines is going to be
4 an example of something that could be an impact
5 attributable to the Port, but which most people would
6 decide that's outside of the ambit of the Port to deal
7 with it.

8 And I think staff, in looking at the range of
9 impacts and the ability to address those impacts, believes
10 that secondary sorts of operations, which are subject to
11 permitting and regulation by other entities, have the
12 opportunity -- are raising -- are creating impacts that
13 are typically dealt with within that other jurisdiction's
14 roles and responsibilities.

15 So, for example, for these off-site secondary
16 activities, such as truck repair facilities around the
17 Port, there's a whole realm -- if you went out with your
18 staff and drove around Wilmington, you could see examples
19 of this. There's no doubt that the location there is at
20 least, in part, due to the Port, that these serve the
21 Port.

22 But who's responsible for addressing those
23 impacts? And some of the pictures, for example, provided
24 by Mr. O'Brien showed a stack of tires that was on the
25 street. Well, those tires are probably used in -- may

1 have been used on trucks servicing the Port. But is that
2 a zoning violation that should be corrected by the City of
3 Los Angeles, and is what we're seeing as a failure of the
4 City potentially to enforce existing zoning requirements,
5 that kind of thing?

6 And so that's really one of the central policy
7 issues of what we're debating here today. And I think
8 this is something the Commission has to, as the policy
9 setter for this agency, will need to consider.

10 COMMISSIONER GARAMENDI: Yeah. I was just
11 wanting to note that staff has considered 2 requirements
12 or 2 hurdles. One being the nexus to the marine activity
13 and a second being jurisdiction, if you will.

14 EXECUTIVE OFFICER THAYER: Right. And I would
15 say that, you know, these are not black and white
16 boundaries, none of this is.

17 COMMISSIONER GARAMENDI: Indeed, that's correct.

18 (Laughter.)

19 EXECUTIVE OFFICER THAYER: And so there are
20 sometimes activities that are undertaken by the Port that
21 may be under jurisdiction of another agency. I mean, it's
22 a big world and there are a variety of examples out there
23 and there's not a hard and fast rule, but it comes down to
24 allocating responsibility.

25 COMMISSIONER GARAMENDI: Did the Ports have any

1 role in the Alameda corridor?

2 EXECUTIVE OFFICER THAYER: Yes. They supplied a
3 lot of money for that. Not all of it, but a portion of
4 it.

5 COMMISSIONER GARAMENDI: Was there some point in
6 the geography of the Alameda corridor at which the Port's
7 interest stopped?

8 EXECUTIVE OFFICER THAYER: I think they just
9 decided that the Port would pay, I think it was, 40
10 percent. Dr. Knatz, I'm sure, can give the percentage.

11 COMMISSIONER GARAMENDI: So it was -- the
12 geography wasn't 1,000 yards or 10,000 meters, it was the
13 project.

14 EXECUTIVE OFFICER THAYER: In that case, it was
15 the project, because that project marked --

16 COMMISSIONER GARAMENDI: But it didn't go as far
17 as Des Moines.

18 (Laughter.)

19 EXECUTIVE OFFICER THAYER: No, it did not go as
20 far as Des Moines. Although, there are discussions about
21 whether the Port should be paying as far as San
22 Bernardino. So this is a very real issue that is being
23 worked through every day.

24 COMMISSIONER GARAMENDI: Thank you.
25 Please.

1 STAFF COUNSEL LUCCHESI: I was going to now focus
2 on the Port of Los Angeles to highlight, kind of, a
3 spectrum of mitigation that the Ports may fund, that is
4 both Public Trust Doctrine and the California
5 Constitution.

6 The significant expansion of the Port over the
7 last 200 years has resulted in the Port to date
8 facilitating the transportation of the highest number of
9 container cargo shipments in the United States. In the
10 past, the Port focused solely on expanding its operations
11 with some would say minimal mitigation. However, with the
12 recent amendment to its granting statutes to include the
13 full panoply of Public Trust uses, it has embarked on a
14 variety of programs aimed at improving the environment
15 surrounding its operations both in terms of air and water
16 quality, but also with increased public access and
17 water-related visitors serving recreational opportunities.

18 Examples of these types of programs include the
19 Clean Air Action Plan, which also includes the clean truck
20 program, which is estimated to cost about \$1.6 billion by
21 2012. Two other waterfront development projects are the
22 Wilmington Waterfront Development Project and the San
23 Pedro Waterfront Development Project, which can be shown
24 here.

25 The San Pedro Waterfront Development Project

1 encompasses 400 acres. And it's estimated to cost \$1
2 billion by the end of its construction. And it includes
3 400 acres and provides a number of open space,
4 recreational, waterfront-related types of visitor-serving
5 uses, that are generally consistent with the Public Trust
6 and the California Constitution.

7 Second, the Wilmington Waterfront, which includes
8 about 58 acres of waterfront redevelopment project that
9 actually also acts as a buffer between heavy port
10 operations here and the community here. It's 58 acres.
11 And it's estimated to cost at completion \$225 million.

12 These programs are all generally consistent with
13 the Public Trust Doctrine, the California Constitution and
14 the Port's granting statutes. But they also provide
15 direct and incidental benefits to the local communities of
16 San Pedro and Wilmington.

17 There are only a few select projects that have
18 been proposed to mitigate --

19 COMMISSIONER GARAMENDI: Excuse me, before you
20 leave those projects, the jurisdictional issue. Does the
21 Port own the land or otherwise have jurisdictional control
22 over those specific areas?

23 STAFF COUNSEL LUCCHESI: Yes, it does. In fact,
24 in the past it has spent a lot of money and a lot of time
25 acquiring these properties back here, originally for

1 expansion of its port operations. But with the amendment
2 to their granting statutes and also working with the
3 communities and environmental groups down there, they have
4 changed their plans to develop this Wilmington Waterfront
5 Development Project.

6 COMMISSIONER GARAMENDI: Thank you.

7 STAFF COUNSEL LUCCHESI: There are only a few
8 select projects that have been proposed to mitigate port
9 impacts outside of CEQA-required mitigation that the State
10 Lands Commission staff believes are not necessarily
11 consistent with the Public Trust.

12 These select projects arose under the China
13 Shipping settlement, 1 of 2 types of mechanisms designed
14 to have the Port fund projects beyond and outside the CEQA
15 process. The China Shipping settlement and the TraPac
16 MOU, the second mechanism, have raised issues regarding
17 consistency with the Public Trust and the California
18 Constitution.

19 The China shipping settlement was a result of
20 litigation between the Port and various community groups,
21 including the NRDC. The settlement provided, among other
22 things, for a general mitigation payment allocation, which
23 included 10 million to the Gateway Cities program, which
24 involved port-related diesel powered trucks; 20 million to
25 air quality mitigation, which was aimed at reducing air

1 quality impacts from port operations; and 20 million to
2 community-esthetic mitigation, which was aimed at reducing
3 the esthetic impacts from port facilities and operations.

4 Commission staff has not questioned any of the
5 projects approved for funding under the Gateway Cities
6 program or the air quality mitigation program. However,
7 through the procedure for funding the community-esthetic
8 mitigation, Commission staff is able to comment as to
9 whether any particular project is consistent with the
10 Public Trust.

11 Commission staff generally believes that this
12 mechanism has worked within the context of the China
13 shipping settlement of litigation. And it could be
14 appropriate in other contexts as well.

15 Commission staff has approved over a third of the
16 projects as being consistent with the Public Trust
17 amounting to over \$24 million. The disagreement on the
18 standard by which staff holds these projects to, this
19 standard has been guided by ports. And this standard --
20 the disagreement in the standard that staff uses can
21 really be highlighted by 2 projects.

22 The San Pedro Welcome Park and the Wilmington
23 Green Belt. These 2 projects were determined by
24 Commission staff as being inconsistent with the Public
25 Trust because both were located a significant distance

1 from port property, were long-planned community projects,
2 and there was no documentation put forward that
3 established a nexus between specific impacts of port
4 operations and these parks as mitigation for those
5 impacts.

6 Because of this lack of nexus, the use of Public
7 Trust funds for these projects would have constituted the
8 use of the Trust monies for purely municipal purposes,
9 found impermissible by the California Supreme Court and
10 the California Constitution.

11 The TraPac MOU, the second mechanism, resulted --

12 COMMISSIONER GARAMENDI: Excuse me, before you
13 move to that. The inconsistency with the Constitution has
14 to do with what activity or what part of the proposal?
15 There was no nexus?

16 STAFF COUNSEL LUCCHESI: The California
17 Constitution, Article 6 prohibits the gift of public
18 funds. The Port's revenues are statewide assets. They're
19 supposed to be used for the statewide public. In putting
20 forth of port revenues to develop a park that is solely
21 for a local, a municipal purpose as opposed to having any
22 kind of statewide benefit, that constitutes a violation of
23 the Constitution.

24 COMMISSIONER GARAMENDI: Under the gift of public
25 funds?

1 STAFF COUNSEL LUCCHESI: Yes.

2 COMMISSIONER GARAMENDI: Okay. And the
3 jurisdictional issue?

4 STAFF COUNSEL LUCCHESI: In that particular
5 situation, the Port -- the proposal was for the Port to
6 actually purchase the property and then develop the park.
7 And so the Port would have -- would own the property. So
8 there wasn't -- it's more the Port expending the funds to
9 purchase that property for --

10 COMMISSIONER GARAMENDI: A small segment of
11 California.

12 STAFF COUNSEL LUCCHESI: Exactly.

13 COMMISSIONER GARAMENDI: Okay. But if it's a
14 large segment of the California public, it would have been
15 okay?

16 STAFF COUNSEL LUCCHESI: If it had -- if its
17 purpose was to provide a benefit to the statewide public
18 in order for that public to enjoy the Public Trust lands
19 the Port has jurisdiction over, yes.

20 EXECUTIVE OFFICER THAYER: If I could --

21 COMMISSIONER GARAMENDI: I'm trying to get a
22 sense of magnitude here or the population magnitude.

23 EXECUTIVE OFFICER THAYER: And it's as much
24 purpose as anything else. In other words, you can't say
25 oh, well we're going to just serve the whole LA County and

1 that would be sufficient. It's supposed to be for more
2 the statewide purposes.

3 So, for example, when money is spent on
4 improvements that improved the utility of the Public Trust
5 lands for their purposes. So, for example, putting in a
6 terminal in the Port of Los Angeles is of statewide
7 benefit, because all of the citizens benefit from what
8 comes through there.

9 The buffer zone, when we showed the picture up
10 here, is of statewide benefit, because it mitigates for
11 the impacts for that port activity, which is of statewide
12 benefit. The concern over the Wilmington Park and the
13 Welcome Park in San Pedro is that first there wasn't a
14 nexus to show that it was mitigation. And so if it's not
15 mitigation, then it's merely constructing what is really a
16 community park. It's not a buffer. It doesn't -- it's
17 not mitigating for a project that couldn't otherwise go
18 forward. It is just a community park.

19 If the Port had taken out some park, then it
20 should replace that park. And that would be an example of
21 putting in a replacement park that would work where parks
22 could be mitigation. Or if, as we showed, there is a
23 buffer, then there's a park that really is being a park
24 that benefits the community, but it's also benefiting
25 statewide, in San Pedro.

1 You see the same thing at Marina Green in San
2 Francisco, where you have an activity -- a place there
3 where people can picnic. There's no doubt it's a benefit
4 to the community as well, but still it provides an
5 opportunity for the people throughout the state to come
6 and enjoy the San Francisco waterfront. And that sort of
7 connection wasn't there -- either of those 2 connections.
8 There wasn't the statewide benefit and the benefit for the
9 Public Trust property, which is the Public Trust Doctrine,
10 and there wasn't mitigation demonstrated. And those are
11 the 2 general reasons that the Port can spend money on
12 projects that might benefit the community.

13 COMMISSIONER GARAMENDI: Thank you. I'll try not
14 to interrupt so much.

15 STAFF COUNSEL LUCCHESI: No. No. I'm glad
16 you're asking the questions.

17 The TraPac MOU, the second mechanism, resulted
18 from the TraPac Appellants' appeal to the Los Angeles City
19 Council after the approval of the TraPac Final EIR by the
20 Port.

21 It is important to note that Commission staff
22 does not generally oppose the projects specifically
23 identified in the MOU for funding. However, staff has
24 concerns about how the MOU will be implemented legally.
25 Staff's concerns revolve around the MOU allowing for a

1 permanent dedication for a Wilmington buffer. The staff's
2 concerns also revolve around the funding rationale for the
3 establishment of a community mitigation fund and the
4 creation of a third party, outside of the Port, to manage
5 this fund.

6 These 3 concerns raise legal issues under the
7 California Constitution, the Public Trust and the Port's
8 fiduciary duty as a trustee for the State.

9 In conclusion, as trustees of State Public Trust
10 lands, ports have the duty to be good stewards of these
11 unique and scarce lands. Towards that end, ports clearly
12 have the obligation to mitigate impacts on the surrounding
13 communities stemming from port projects.

14 Further, ports also have a responsibility to act
15 as good neighbors to their surrounding communities.
16 However, ports also have a fiduciary duty as trustees of
17 the people of the State to manage their Trust lands and
18 revenues in a manner consistent with the Public Trust
19 Doctrine and the California Constitution.

20 Projects that buffer local communities from port
21 operations by creating open space and parks that provide
22 public access to the waterfront are notable amenities for
23 the surrounding communities and are generally consistent
24 with the Public Trust.

25 Further, projects that are mitigating port

1 impacts that can be sufficiently justified and documented
2 and are proportional to the impacts caused by port
3 operations are also generally consistent with the Public
4 Trust.

5 However, projects which are removed from the Port
6 and function solely as community or local amenities and do
7 not relate to the Port or its documented impacts, may not
8 be supportive of Public Trust revenues.

9 COMMISSIONER GARAMENDI: Perhaps, you'd better
10 hear from others before I go on here, but I would like you
11 to be available for some questions.

12 STAFF COUNSEL LUCCHESI: Of course. So that
13 concludes my presentation and I'd like to introduce the
14 panel at this point. Panel members.

15 Just to introduce our panel members. First,
16 thank you all for agreeing to participate in this.

17 First up to make a presentation will be Melissa
18 LinPerrella. She's an attorney with the Natural Resources
19 Defense Council. She represents the TraPac appellants.
20 Following Ms. LinPerrella will be Joe Rusconi from the
21 Attorney General's office. Following Joe will be Dr.
22 Geraldine Knatz, the Executive Director of the Port of Los
23 Angeles. And after that will be Mike Jacob from the
24 Pacific Merchant Shipping Association. And finally will
25 be Dan Wilkens, the Assistant Port Director from the Port

1 of San Diego.

2 COMMISSIONER GARAMENDI: Thank you.

3 MS. LINPERRELLA: I guess I'm first.

4 Good morning. My Name is Melissa LinPerrella.

5 I'm with the Natural Resources Defense Council. As you
6 know, NRDC has been involved in trying to reduce impacts
7 from port operations for some time now, most specifically
8 in the context of trying to reduce port air pollution.

9 As mentioned, NRDC was also one of the parties to
10 the TraPac MOU. I want to thank the Commission for the
11 invitation to discuss off-port impacts and to highlight an
12 opportunity that we have before us today, and that's an
13 opportunity that is embraced by the communities of San
14 Pedro and Wilmington, the Port and City of Los Angeles, in
15 addition to labor and environmental groups, and that is
16 the opportunity of implementing the TraPac MOU.

17 I also want to thank staff for the extensive work
18 they put into their staff report and coordinating this
19 panel so quickly. And I also thank staff for their
20 statements that they are willing to work with the parties
21 of the TraPac MOU within the framework of that agreement,
22 even despite some of the concerns that they have over its
23 implementation. And my hope is that we can resolve those
24 concerns and fashion an outcome that will allow for the
25 addressing of off-port impacts in a manner that is

1 consistent with the Public Trust Doctrine.

2 So I'd like to really split my presentation into
3 2 parts. The first is to generally discuss the TraPac MOU
4 and respond to some of the issues that staff has raised.
5 And second, I'd like to generally discuss what are
6 off-port impacts and how addressing those impacts will
7 further the Commission's Environmental Justice policy.

8 The TraPac MOU. As you may know, it was
9 negotiated by environmental, labor and community groups
10 with the Port and City of Los Angeles. The purpose of the
11 MOU was to enable the TraPac Terminal Expansion Project to
12 move forward without litigation while creating a mechanism
13 for addressing near-port impacts.

14 Specifically, the MOU creates a monetary fund for
15 addressing near-port impacts. The amount of the fund will
16 increase if port operations increase. The rationale is
17 that as port operations grow so will their impacts and so
18 will the need for mitigation. However, if no growth
19 occurs, additional monies will not be placed into the
20 fund.

21 The fund will be spent on projects that will
22 reduce near-port impacts and be administered by a
23 nonprofit entity. Prior to the establishment of the
24 nonprofit entity, an interim entity will research the
25 structure of the nonprofit to ensure that it administers

1 the funds in a manner consistent with the Public Trust
2 Doctrine.

3 Now, I know staff has raised concerns over
4 whether a nonprofit entity can administer the funds.
5 Specifically, staff has urged that the Port cannot
6 abdicate their role as a trustee. No one has suggested
7 here that the Port would be abdicating its role as the
8 trustee. Right now, the Port outsources its mitigation
9 programs all the time. An example was cited earlier,
10 where the Port of LA has given over \$10 million to the
11 Gateway Cities COG to help the Port retrofit and replace
12 dirty old trucks. It's my understanding that one or both
13 of the San Pedro ports are currently outsourcing portions
14 of its clean trucks program.

15 I site the examples to illustrate that ports give
16 monies to third parties all the time. And so there must
17 be some middle ground between the Port abdicating its role
18 as the trustee and the Port having to do every single
19 mitigation program in-house.

20 And it's this middle ground that the interim
21 entity will research and which will inform the structure
22 of the nonprofit entity. We only ask that the Commission
23 and the staff not prejudge that research or the structure
24 of the nonprofit.

25 Also, the MOU provides for 2 independent studies

1 that will provide a CEQA-like analysis to support
2 near-port mitigation. Staff's memorandum or report
3 supports moving forward with these studies and suggesting
4 that to comply with the Public Trust Doctrine, mitigation
5 must either arise within the CEQA context or have a nexus.
6 The studies will provide the evidence-based or nexus
7 needed for any mitigation funded through the nonprofit.

8 Like staff, we also acknowledge that the Port has
9 already taken some very -- undertaken some very ambitious
10 mitigation programs. However, I think it's important to
11 keep in perspective that while the Port has initiated a
12 lot of mitigation, there is still a lot of work to be
13 done.

14 To provide some perspective on the enormity of
15 port operations and their impacts, at full build out the
16 TraPac expansion project -- this is one port terminal
17 expansion project -- will process the same number of TEUs
18 as the entire Port of Oakland currently processes today.
19 And, as you know, Oakland is the 3rd busiest port in
20 California, the 4th busiest port in the nation.

21 A memorandum that was attached to this staff
22 report includes background on what we see are some of the
23 near-port impacts. Those are impacts on public health,
24 public safety, land use, noise and others that are created
25 by port operations that do not necessarily stop at the

1 Port's fence line.

2 For example, in terms of public health, we have
3 become increasingly aware that port air pollution
4 disproportionately affects port-adjacent communities.
5 Rates of childhood asthma and communities adjacent to the
6 Ports are approximately 22 percent compared to 15 percent
7 for the Los Angeles region overall and 14 percent
8 nationally.

9 These impacts require mitigation both on and off
10 port lands and could include the installation of air
11 filtration systems in Wilmington and San Pedro schools
12 that are in close proximity to the Port.

13 In addition to public health impacts, there are
14 other impacts like impacts to land use, noise, and
15 esthetics. Some of these impacts are caused by port
16 operations that occur off of port lands. For example,
17 container storage yards and truck service facilities
18 facilitate commerce, maritime and other traditional port
19 operations, but are located not on port land but in
20 communities near homes, schools, daycare centers and
21 playgrounds.

22 And I want to address the issue of jurisdiction
23 in a second, but I want to show a couple photos. So if
24 you could pull up my PowerPoint.

25 (Thereupon an overhead presentation was

1 Presented as follows.)

2 MS. LINPERRELLA: Now, this is a photo that shows
3 the proximity of port operations to port communities here.
4 This is part of the community of San Pedro.

5 Next slide.

6 --o0o--

7 MS. LINPERRELLA: This is a Wilmington container
8 storage yard. This facility is not only an eye sore, but
9 creates tremendous noise on the weekends as containers are
10 restacked and reshuffled.

11 COMMISSIONER GARAMENDI: Who owns the facility?

12 MS. LINPERRELLA: Excuse me?

13 COMMISSIONER GARAMENDI: Who owns the facility?

14 MS. LINPERRELLA: It's my understanding that it's
15 privately owned.

16 This is a picture of the same facility.

17 Next slide.

18 --o0o--

19 MS. LINPERRELLA: But on the other side you can
20 see that it is close to a church and other residences.

21 Next slide.

22 --o0o--

23 MS. LINPERRELLA: This is one of the many
24 privately owned truck staging areas in Wilmington that is
25 used for storage, repair and sales.

1 for example, to mitigate an eye sore, you could very well
2 provide open space, a beautification project. You don't
3 have to necessarily reduce that harm specifically coming
4 from that facility.

5 All of these impacts create an Environmental
6 Justice problem in the communities of San Pedro and
7 Wilmington. This is a map that provides a glimpse of the
8 income levels in the harbor area. As you can see, many
9 areas adjacent to the Port -- that square that's white --
10 Wilmington is more in the top -- if I'm saying it right,
11 the upper right-hand side. San Pedro, the lower left-hand
12 side. As you can see, many areas that are in white appear
13 on that map, and those are areas that have low household
14 incomes.

15 Next slide.

16 --o0o--

17 MS. LINPERRELLA: This map provides a glimpse of
18 the Latino populations in the harbor area. As you can
19 see, significant portions of Wilmington and San Pedro are
20 comprised of Latino populations. The TraPac EIR even
21 acknowledges the project would result in quote
22 "...disproportionate effects on minority and low-income
23 populations."

24 Next slide.

25 --o0o--

1 MS. LINPERRELLA: This map comes from the TraPac
2 EIR. It shows a high percentage of minority residents
3 living near the TraPac project. The yellow outline is the
4 project area. The areas that constitute very high
5 percentages of minority populations are in dark maroon.
6 The dark maroon areas specifically are areas where the
7 minority population is greater than 90 percent.

8 Next slide.

9 --o0o--

10 MS. LINPERRELLA: This map provides the Port of
11 Los Angeles' analysis of low-income residents near the
12 TraPac project. Again, the yellow outlined is the project
13 area. The darker blue areas indicate places with very
14 high percentages of low-income residents.

15 Next slide.

16 --o0o--

17 MS. LINPERRELLA: As you know, in 2002, the State
18 Lands Commission adopted an Environmental Justice policy.
19 And as part of that policy the Commission pledged to
20 infuse Environmental Justice considerations into its
21 decision making, and concluded that in so doing, it would
22 be consistent with the Public Trust Doctrine principles
23 that the management of the Trust lands is for the benefit
24 of all the people.

25 Within its EJ policy the Commission committed to

1 work with other government agencies and to foster research
2 to better define cumulative sources of pollution,
3 exposures, risks and other impacts. We believe that the
4 MOU furthers these policy objectives.

5 To that end, we requested the Commission support
6 our efforts to perfect a mechanism for addressing
7 near-port impacts. Specifically, we asked that the
8 Commission find that port operations are creating
9 environmental impacts in Wilmington and San Pedro and that
10 these impacts are creating an Environmental Justice
11 problem.

12 Also, we would like the Commission to direct
13 staff to provide updates to the Commission at a public
14 meeting on its efforts to ensure near-port impacts are
15 being mitigated, including updates on the implementation
16 of the TraPac MOU.

17 Now, if there are barriers to implementation of
18 the MOU, we would ask that staff describe those barriers
19 and hopefully propose solutions that could ensure the
20 swift implementation of that agreement. And when those
21 updates are provided, we ask that a member of the TraPac
22 appellate group, as well as other interested parties, also
23 be given an opportunity to comment on the implementation
24 of the MOU.

25 And that concludes my comments.

1 Thank you.

2 DEPUTY ATTORNEY GENERAL RUSCONI: Commissioners,
3 my name is Joe Rusconi. I'm one of your counsel and I've
4 been asked this morning to discuss, in a general way, the
5 duties of public trustees and their interactions with the
6 Commission, and the propriety of spending Public Trust
7 funds for various purposes.

8 Upon admission to the union in 1850, California
9 received title to its tidelands, submerged lands of its
10 navigable lakes and rivers to be held in a unique way in a
11 trust for all the people of the state. Traditionally that
12 trust is described in terms of commerce, navigation and
13 fisheries.

14 However, it has recently been found to be much
15 broader and to include the rights to hunt, bathe, swim and
16 the right to preserve the lands in their natural state.
17 The courts have held that California's power to control
18 and to regulate its Public Trust lands, when acting in the
19 terms of the Trust, is absolute.

20 California, however, may grant its lands to
21 municipalities as it has done throughout the state. Here
22 the grant to the City of Los Angeles is for the
23 establishment of the harbor, wharves, et cetera. And it
24 was recently amended to expand the uses for open space,
25 wildlife, habitat and other activities in furtherance of

1 the Public Trust.

2 Now, after California grants its lands to
3 municipalities, it still remains the ultimate trustee.
4 And it retains the power to require that monies generated
5 from these lands be spent only for Public Trust purposes.
6 And even to remote -- revoke, excuse me, alter or amend
7 the granting statute.

8 This Commission has been delegated by the
9 Legislature California's retained trustee and
10 supervisory powers to the lands that have been granted
11 to the municipalities. The grantees are required to
12 submit detailed accounts of their Trust revenues to the
13 State Lands Commission each year. And the Commission
14 oversees the operations of the Port to ensure that they're
15 consistent with the Trust.

16 Now, grantees obligations.

17 Oh, excuse me, before I move on. The Commission
18 takes this role very seriously, and has, in the past, sued
19 grantees who it believes have misspent Trust revenues,
20 both the City of Los Angeles and the County of Orange.

21 Now, this office has, in the past, published
22 Letters of Advice to grantees outlining their ability to
23 spend Trust revenues. And, in general, the duty of the
24 trustee, here the Port or the City, is to manage its
25 granted lands in the furtherance of the Public Trust and

1 not for purposes that are inconsistent with that Trust and
2 with the granting statute.

3 The Port is a trustee in all of the legal and
4 technical sense of that word. It has been given the
5 property of another, and the revenues from the property of
6 another, the People of the State of California, to manage
7 according to the terms of a instrument, that granting
8 statute and the requirements of the Public Trust. And the
9 courts have held that these local government grantee
10 trustees are governed by the traditional Trust concepts.

11 Revenue generated from Public Trust property is
12 impressed with the Public Trust must be segregated and
13 accounted for in a separate fund; must only be used for
14 Public Trust purposes; and may not be used for purely
15 municipal purposes, such as parks and recreational
16 facilities on non-Trust properties.

17 However, we have advised that payment of Trust
18 funds to municipalities, for example, for necessary
19 services rendered, are proper. Trustees are entitled to
20 repayment of Trust funds for all expenses actually and
21 properly incurred in the performance of Trust duties.
22 Thus, trustees may use Trust funds to pay municipalities
23 for necessary services, such as fire and police
24 protection, provided that: One, the service provided by
25 the local government is a proper Trust expense; the

1 service must be performed on Trust property or must
2 provide a direct benefit to the Trust property; the cost
3 of the service is reasonable; there must be a system of
4 billing/payment in place which can be audited; neither the
5 Trust nor its concessionaire tenants is already paying
6 fees for this service, such as through possessory interest
7 taxes; and the fees-for-service contract must be entered
8 into before the services is provided. Payment for past
9 services as a reimbursement is not permissible.

10 Now, how do we apply those to the question here
11 today, and that is to the payment of Trust funds for
12 mitigation of adverse impacts for Port operations?

13 First, trustees should attempt to lessen impacts
14 of its operations rather than to mitigate.

15 Second, trustees may use Trust funds to mitigate
16 impacts that have a direct and quantifiable nexus to its
17 operations. This mitigation may take place, and usually
18 does, on trustee-owned property on adjacent property and,
19 in rare circumstances, on property that's situated farther
20 from Port operations. That's the nexus requirement.

21 The impacts must be direct and quantifiable.
22 Usually circumstances would be mitigation for impacts
23 identified through the CEQA process. However, on a
24 case-by-case basis, other direct and quantifiable impacts
25 that are demonstrated by other reliable studies and

1 sources may be considered for mitigation by the trustee.

2 The amount of money that would be spent must be
3 the actual and reasonable cost to perform the mitigation.

4 The impacts must not already be in the process of
5 mitigation by another entity or must not be the
6 responsibility of other State or local government
7 entities. And I think this was where the Lieutenant
8 Governor's question was. And the courts have drawn up a
9 distinction between purely municipal affairs, which while
10 they may benefit a large segment of the population, have
11 been traditionally handled by municipalities, versus
12 statewide commerce, navigation and fisheries matters,
13 which are handled by the State and its grantees.

14 And, obviously, it's not a hard and fast line,
15 but that's where the courts have drawn such a line.

16 COMMISSIONER GARAMENDI: If I might. The
17 analysis that you're providing is very, very helpful. I'm
18 curious as to the timeframe in which that analysis was
19 originated. Is it a current analysis or is it one that
20 dates back historically?

21 And the reason I ask the question is that the
22 Ports have grown enormously. And the impact of the Ports,
23 because of that growth, has spread beyond the traditional
24 area of the Port. At least that's my take of it. And I
25 think I just heard that argument from Melissa. And

1 therefore, the analysis that you have given may be out of
2 date. Could you comment on that.

3 DEPUTY ATTORNEY GENERAL RUSCONI: I think that
4 the legal principles are still alive and are still very
5 viable. Our latest advice letter to the Port of Los
6 Angeles was a little over 10 years ago and those impacts
7 were certainly noticeable at that time.

8 COMMISSIONER GARAMENDI: In the next to the last
9 portion of your statement, you seem to have substantial
10 wiggle room.

11 DEPUTY ATTORNEY GENERAL RUSCONI: Yes. Well, I
12 wouldn't describe it as wiggle room.

13 (Laughter.)

14 COMMISSIONER GARAMENDI: Discretion.

15 DEPUTY ATTORNEY GENERAL RUSCONI: The language
16 that was used by the courts in the Morse and Mallon cases,
17 the ones that established these principles, is absolutely
18 -- they talk about not spending revenues for municipal
19 purposes, period. And our office has advised the
20 Commission and the Port that, you know, there is room.
21 That properly -- if the nexus is proper, you can mitigate
22 impacts. You can pay for services that were provided by
23 municipalities.

24 COMMISSIONER GARAMENDI: Not withstanding the
25 jurisdictional issue which was raised earlier. So we

1 could presumably authorize the expenditure of Port funds
2 for projects that are not owned by the Port?

3 DEPUTY ATTORNEY GENERAL RUSCONI: I think that in
4 the past that has happened, yes.

5 COMMISSIONER GARAMENDI: All right. Again, a
6 nexus directly to the Port. I use the word "directly".
7 Perhaps, that's a qualifier that's not appropriate here.
8 A nexus to the Port.

9 DEPUTY ATTORNEY GENERAL RUSCONI: To the Port and
10 its operations. A direct quantifiable nexus.

11 COMMISSIONER GARAMENDI: Once again, you use the
12 word "direct" as I did.

13 (Laughter.)

14 COMMISSIONER GARAMENDI: Again, that might be
15 subject to discussion.

16 DEPUTY ATTORNEY GENERAL RUSCONI: Correct.

17 COMMISSIONER GARAMENDI: Thank you.

18 DEPUTY ATTORNEY GENERAL RUSCONI: I'm just not
19 quite finished getting there.

20 (Laughter.)

21 DR. KNATZ: I tried.

22 DEPUTY ATTORNEY GENERAL RUSCONI: All right.
23 Now, the payment of Trust funds for municipal services.
24 All the decisions to spend Trust funds and actual payments
25 of Trust funds must be made by the legislatively

1 authorized trustee. Trustees may not provide Trust funds
2 to a non-trustee entity for that entity's discretionary
3 spending. The Trustee may not delegate authority to a
4 non-trustee entity to determine how Trust funds will be
5 spent.

6 To do either of these will violate the Trust
7 under which the grant is held. The Legislature granted
8 the property and revenue from the property to the trustee.

9 It would violate traditional Trust fiduciary
10 principles that restrict the actions of trustees. It
11 would also interfere with the State Lands Commission's
12 audit and oversight function. It has statutory ability to
13 audit and oversight the trustee.

14 COMMISSIONER GARAMENDI: The point here is that a
15 delegation can occur if it is consistent with the factors
16 that you've stated, that is the audit function, the
17 purpose -- the nexus function.

18 DEPUTY ATTORNEY GENERAL RUSCONI: No, I don't
19 think that's what I'm saying. I'm saying that to allow a
20 delegation would be a violation of these various --

21 COMMISSIONER GARAMENDI: Under any circumstances?
22 Under any qualifying --

23 DEPUTY ATTORNEY GENERAL RUSCONI: The Port
24 certainly contracts for services, but they retain the
25 ability to decide who to contract for and how the payment

1 is made. In other words, they retain ultimate control.

2 COMMISSIONER GARAMENDI: I guess I'm not being
3 very specific here, because there's a very specific case
4 before us, the TraPac and the nonprofit. And I'm trying
5 to understand the circumstances under which that can or
6 cannot take place.

7 Is there any circumstance, is there any
8 delegation possible to a nonprofit, period?

9 DEPUTY ATTORNEY GENERAL RUSCONI: I have not had
10 a chance to discuss this with you, my client, nor have we
11 discussed this -- I discussed it with my office -- with
12 the Port. And I prefer that happened first. But I will
13 say that Paul Thayer wrote a letter to the Port raising
14 some serious problems with that concept and I think our
15 office agrees with that letter.

16 COMMISSIONER GARAMENDI: We'll come around to
17 this, I think, in a few moments.

18 EXECUTIVE OFFICER THAYER: Do you want to hear
19 more or wait?

20 COMMISSIONER GARAMENDI: Let's just continue on
21 if it's okay with the Chair. And then I'm sure this is
22 going to come back. It's a key point.

23 DEPUTY ATTORNEY GENERAL RUSCONI: My last point
24 is that the trustee may not permanently be alienated or
25 otherwise encumber lands that are subject to the Trust, so

1 as to impair the ability of succeeding trustees to adapt
2 to changed circumstances. They may, however, lease or
3 otherwise encumber property for the statutory term which
4 is in their grant.

5 If there are any questions, I'd be happy to
6 answer them?

7 COMMISSIONER GARAMENDI: Again, that's a key
8 point to the TraPac.

9 DEPUTY ATTORNEY GENERAL RUSCONI: Correct.

10 COMMISSIONER GARAMENDI: One final question. Oil
11 revenues, are those Trust?

12 DEPUTY ATTORNEY GENERAL RUSCONI: Oil revenues
13 from the City of Long Beach were the genesis of most of
14 the law and how to spend Trust revenues.

15 COMMISSIONER GARAMENDI: So oil revenues that are
16 within the jurisdiction of Long Beach or LA, those are
17 available to the City?

18 DEPUTY ATTORNEY GENERAL RUSCONI: Those are not
19 available to the City. Those are impressed with the
20 Public Trust only be used for Public Trust purposes.

21 COMMISSIONER GARAMENDI: And oil revenues that
22 are outside of their jurisdiction?

23 DEPUTY ATTORNEY GENERAL RUSCONI: The State is
24 the ultimate trustee to make whatever use of its oil
25 revenues.

1 COMMISSIONER GARAMENDI: And those oil
2 revenues -- are the use of the oil revenues restricted in
3 any way?

4 DEPUTY ATTORNEY GENERAL RUSCONI: No, not that
5 I'm familiar with. I'm not an oil and gas expert. Alan
6 Hager is here and he can discuss that.

7 COMMISSIONER GARAMENDI: Unlike the revenues at
8 the Port, those revenues from oil outside of the Port can
9 be used for any purpose that the State chooses.

10 DEPUTY ATTORNEY GENERAL RUSCONI: I believe so,
11 yes.

12 COMMISSIONER GARAMENDI: Thank you.

13 Please continue.

14 DR. KNATZ: Okay. Members of the Commission,
15 thank you for giving me an opportunity to speak this
16 morning. I'm Geraldine Knatz, Executive Director for the
17 Port of Los Angeles. And I've been in that job for nearly
18 3 years. When I started at the Port of LA, the Port had
19 not approved a major capital improvement project for 5
20 years. And the reason, because we had not found a way to
21 address the impacts of port operations, specifically the
22 health impacts, on the surrounding community.

23 So my boss, Mayor Villaraigosa, gave me the
24 assignment to grow and green the Port. And you've already
25 heard our Clean Air Action Plan mentioned by staff and

1 Melissa.

2 When the Board adopted that Clean Air Action
3 Plan, we had positioned ourselves to then focus on a long
4 backlog of Environmental Impact Reports. It took us
5 nearly 2 years, but our board certified the first of those
6 EIRs for the TraPac project in December '07. This was the
7 first EIR and capital expansion project approved by either
8 port in San Pedro Bay in 7 years. Despite doing a good
9 EIR, one that showed we could grow the Port business and
10 still reduce pollution below background levels, the
11 document was appealed to the city council by the local
12 community groups.

13 And here is why.

14 When you do an EIR, you define the baseline
15 condition, which are the environmental conditions that
16 exist on the day you issue your public notice that you're
17 going to do an EIR. So can you hit carriage exchange for
18 me.

19 (Thereupon an overhead presentation was

20 Presented as follows.)

21 DR. KNATZ: In the California Environmental
22 Quality Act you identify the baseline condition and that's
23 that green line. The purpose of the EIR then is to
24 disclose the impacts of the project.

25 And say we take air quality for example. In our

1 area, the South Coast air basin has identified a threshold
2 of significance for the air pollutants. And if you hit
3 carriage exchange, you'll see that's the threshold, that
4 red line. And if your project goes over that red line,
5 then you're required to say that you have a significant
6 impact on the environment.

7 Now, for port projects, okay you can see, on the
8 orange line there, typically we find our impacts are over
9 the significant threshold. And so say for a TraPac
10 project, the air quality impacts are well over the
11 significant threshold. So we try really hard to reduce
12 the levels of pollution below that threshold of
13 significance. And if we get it down to there, we can say
14 we don't have an adverse impact. Our goal, however, at
15 Los Angeles, is to grow and green the Port, so we want to
16 reduce the impacts below the baseline.

17 So can you hit carriage return again.

18 --o0o--

19 DR. KNATZ: So that's our goal. Let's get the
20 impacts below the baseline. If we can do this, it means
21 we're allowing the Port customer to grow and he's
22 producing less pollution than we started with.

23 So we go through this process. We issue a
24 report. We may have some areas where we have no
25 significant impacts. And the community thinks that we're

1 crazy.

2 And why is that?

3 Hit the carriage return.

4 --o0o--

5 DR. KNATZ: Because every day they experience the
6 residual impacts from port growth, the historical growth
7 that has occurred over time; the air quality, the traffic,
8 the health impacts, all that were part of the baseline
9 condition. It's one thing to say you've mitigated back to
10 your baseline or below your baseline, but it doesn't
11 really do the job if your baseline level that you started
12 from is unacceptable.

13 Working through the TraPac EIR process in the
14 depth that we did was a real eye-opener. And personally,
15 I felt that I walked away from that process with the
16 realization that mitigating for EIR impacts only deals
17 with part of the problem, and that mitigations we include
18 in the EIR are only really part of the solution. Every
19 day the people that live around the Port experience the
20 impacts of port development, because there are those
21 residual impacts of the past 100 years of port growth.
22 These residual impacts do not really get addressed in the
23 EIR process. Although, we try to do that in the
24 cumulative impacts section.

25 The residual impacts resulted over time. They're

1 not reduced by the baseline. There are baseline impacts
2 that exist today that we didn't even know about 10 years
3 ago, like health risks, so they weren't addressed in the
4 previous EIRs. In the 7 years that I mentioned that our
5 port was unable to approve an EIR or a port development
6 project when we really weren't doing anything, that was
7 from the year 2000 and 2007, container volumes in Los
8 Angeles increased by 71 percent.

9 Ships happen.

10 (Laughter.)

11 DR. KNATZ: We need a way to mitigate for these
12 residual environmental impacts. These kinds of things
13 that the community experiences. And that was our
14 reasoning in proposing the Community Benefits Fund and
15 tying it to 2 things, the growth that occurs naturally
16 that's not included in EIRs and the future projects.

17 With our Community Benefit Fund, we're trying to
18 give the community a stake in the growth of the Port. So
19 that as port businesses grow, the community will realize
20 some benefits of that growth and have the resources to
21 reduce these residual impacts. Our philosophy at the Port
22 of LA is we need to mitigate for all the impacts in the
23 EIR process and outside of it. And, you know, we have no
24 hard and fast boundaries. And there's examples of
25 mitigation projects that have occurred outside the Port

1 boundaries.

2 This Commission was very involved in the
3 establishment of the China Shipping Mitigation Program.
4 This fund accumulated deposits of 30.1 million, and 16.9
5 million has been committed or spent. Community members
6 with very little guidance submit project ideas that go
7 through an extensive vetting by community committees and
8 State Lands Commission staff.

9 Only after this process occurs does the Port have
10 a role and then it is to only approve or disapprove the
11 project. The China Shipping Mitigation Project funding
12 process is fraught with problems that I really don't have
13 time to go into detail today. But in proposing the
14 Community Mitigation Trust Fund, we wanted to develop a
15 fund and a process that would address many of the issues
16 that plague the China Shipping Fund.

17 The most important element of the concept is that
18 the Board delegates the authority for grant making to a
19 new nonprofit organization. And granting mitigation funds
20 to others to manage is not a new concept, even to a
21 nonprofit.

22 I was involved in the creation of a very similar
23 fund as a mitigation for impacts associated with the
24 demolition of historic structures on the Long Beach Naval
25 Station when I worked for the Port of Long Beach. We took

1 a pot of money. I believe it was 4 and a half million
2 dollars. We spun off a nonprofit that had the
3 responsibility of selecting the projects meeting certain
4 criteria through an RFP process that is totally managed by
5 the nonprofit and the fund manager.

6 The interest of the fund accrues to the account.
7 And the beauty of it was after the Port of Long Beach
8 created it, the Port was no longer involved. It's called
9 the Long Beach Navy Memorial Fund. And it's managed by
10 the California Community Foundation, and it works
11 beautifully.

12 With the accrued interest, the Port of Long Beach
13 established a lasting legacy that contributes to historic
14 preservation projects all around the City of Long Beach on
15 properties, I must say, that are not owned by the Port of
16 Long Beach.

17 So I come over to the other side of the bay.
18 We're now proposing to use the same concept here at the
19 Port of Los Angeles just on a larger scale. Accrued
20 interest in the fund can be used to provide consultant
21 assistance to help the grantees develop their applications
22 and manage the grant process. In this way, we can create
23 a similar legacy that gives community members a stake in
24 assuring that Port projects are able to move through the
25 EIR process.

1 We've yet to develop the criteria for the grants,
2 but the criteria will ensure that the funds are used for
3 the types of things that address port impacts. Some of
4 the examples are already given in the MOU, like the air
5 filtration systems for schools that are impacted by port
6 operations. I have no doubt that we'll be able to
7 identify appropriate criteria that can be used to screen
8 projects.

9 We don't see a whole lot of difference between
10 this concept and the Navy Memorial Fund in Long Beach or
11 the \$10 million we gave to the Gateway Cities for a truck
12 replacement program, where we delegated the authority for
13 the grant-making process to another entity.

14 The Alameda Corridor Transportation Authority is
15 in the process of finalizing an EIR/EIS for State Route
16 47. And they have identified an area where they will
17 propose double-paned windows on homes as mitigation for
18 the project. And the first question I got from them is
19 could they pass the funds to our new organization to
20 manage that project.

21 Commissioners, solving the problems necessary to
22 allow the Port of Los Angeles to continue to grow means
23 doing things in a different way. The Lieutenant Governor
24 came to San Pedro a few weeks ago and made a speech about
25 the need to be able to change and respond to a changing

1 environment. We're trying to mitigate for impacts that a
2 few years back we never even identified.

3 I have a responsibility to grow the Port for the
4 benefit of all the citizens in California. And I can't
5 grow that port unless I really work on improving the
6 quality of life for the surrounding communities.
7 Investments that serve the local community have statewide
8 benefit, if they allow me to grow the Port. I have a
9 great staff, but I really prefer them to work on the
10 traditional port projects, and that's what you would
11 really want me to do, to ensure we're delivering on our
12 Trust grant. And creating another entity to manage these
13 community projects, dole out the grants under specific
14 criteria and take the Port out of the day-to-day
15 management is our solution for keeping this port's
16 economic engine running to benefit.

17 Commissioners, I hope you see the value in what
18 we're proposing to do. I hope you direct your staff to
19 work with us to make it happen. We haven't really got to
20 the point of working on the mechanics of the criteria, but
21 we expect to start soon once we finalize the interim
22 entity called for in the MOU.

23 I do want to make a few other comments in
24 response to some comments made by staff. And I think I
25 indicated already we don't feel that actual ownership of

1 the land is a necessity to carry out a mitigation project.
2 We've had landscaping projects that if we used that rigid
3 criteria, we would leave a gap on landscape in a long
4 thoroughfare. So some of these things are really common
5 sense. And we've tried to apply common sense and do what
6 really needs to be done.

7 I also want to make a comment about the buffer in
8 Wilmington that staff has raised questions about
9 designating that in perpetuity. And what we mean by that
10 is, we're making an investment in the greenbelt. It
11 serves as a buffer between the community and the Port. If
12 that was developed as originally conceived as a container
13 terminal, we would have people living right across the
14 street from the container terminal. That's not a good
15 land-use decision.

16 And so the community asked that the buffer be
17 maintained in perpetuity. And we want to ensure that that
18 happens. We want to ensure that future port managers
19 don't decide they're going to rip up the buffer and extend
20 the container terminal right across the street from the
21 homes. And so we've agreed to do that through a change in
22 the City's general plan and a deed restriction on the
23 property. And we think the buffer is an appropriate
24 designation.

25 Thank you.

1 COMMISSIONER GARAMENDI: A couple of questions,
2 if I might. I've got a lot of questions. Let's go ahead
3 and hear from the others. Thank you very much, Mr.
4 Chairman, for letting me butt in here.

5 MR. JACOB: Thank you and good morning. And let
6 me properly reintroduce myself. I'm Mike Jacob, Pacific
7 Merchant Shipping Association. And our association
8 represents marine terminal operators and ocean carriers
9 doing business on the west coast, in the states of
10 California and Washington. Our members operate at all 11
11 of California's public ports by the facilities. And our
12 members are responsible for moving approximately 90
13 percent of the United States cargo through the west coast.

14 And I'd just like to make a point that while
15 TraPac is a marine terminal operator member of PMSA -- and
16 its parent company and MOL America is also a member --
17 we're not advocating specifically for TraPac in this
18 hearing. We are representing the industry engaged in
19 containerized trade.

20 Our message today really is that we're here
21 because of our strong support for maintaining the
22 integrity of the Trust and the proposition that integrity
23 of the Trust is not mutually exclusive of the proposition
24 that you can mitigate port impacts. I think that everyone
25 at this table and staff from the Commission has said that.

1 I think it bears repeating that nobody believes that
2 there's some sort of prohibition on mitigating port
3 impacts. That's just simply not the case.

4 And, in fact, we embrace CEQA and sometimes NEPA,
5 EIR/EIS processes as the best example of an organized
6 practical bounded and a political basis for mitigation of
7 port-development projects that are required under the
8 Trust, for a couple of reasons.

9 And it's not simply to meet the letter of the
10 State law. The Trust analysis and nexus that's undertaken
11 through CEQA for new projects lays out for the Port, in
12 specific detail, the improvements that will have to be
13 made in mitigation achieved by the Port and its tenants
14 over the term of the lease in question or whatever other
15 project is EIR based.

16 But to us specifically, this is of utmost
17 commercial importance, because we need the certainty that
18 the EIR gives us. It allows a marine terminal operator a
19 quantified reasonable certainty of the costs and then
20 formulate a plan to amortize those costs over the term of
21 the 20-, 25-, 30-year lease, what have you, that you're
22 entering into.

23 When you get to the question of mitigation, in
24 general, I think that the staff presentation, and Dr.
25 Knatz's presentation, kind of hit the head -- hit the nail

1 on the head, because we're in a place where our
2 project-based mitigation measures complemented by
3 non-project based mitigation measures have produced the
4 cleanest, greenest and most aggressive port environmental
5 programs in the nation. It's something that I know that
6 our ports are proud of. It's something that we
7 participate in and everyone is better served by it.

8 By being able to improve the tidelands
9 specifically for the community and in terms of projects
10 that the Port of Los Angeles that are outside of the EIR
11 process or through projects that are EIR-based, everyone
12 benefits. And you've included the community in terms of
13 what the improvement mitigation measures in their EIR look
14 like through a very well understood public process that
15 everyone's familiar with.

16 And indeed just to reiterate, I think, what the
17 staff and the Commission said, I think we have the same
18 position. We don't have a problem with some of the
19 proposals that are listed in the draft MOU with TraPac.
20 Our issues are really a lot more procedural and with some
21 of the foundational issues. They're not with the
22 mitigation projects themselves.

23 With regard to the process and methods being
24 proposed for selecting, paying for, managing the TraPac
25 MOU, we specifically have a problem with the notion that a

1 non-governmental third party can essentially be given
2 Trust funds to administer without having to comply with
3 the terms of the Trust.

4 The question that's come up is can a third party
5 be used to administer Port funds? And the short answer to
6 that is yes, but in a limited ministerial or contractual
7 capacity. The third party cannot be delegated the
8 authority to administer the Trust itself. It doesn't have
9 the authority to exercise judgment, discretion and how to
10 spend Trust revenues and in what amounts.

11 You know, part and parcel of this problem is the
12 notion that's built into the MOU's funding structure, that
13 the Port allocate a fixed revenue stream for future
14 mitigation program, without even knowing what those
15 programs may be.

16 The Trust, in this regard, is important, because
17 if we take a step back from the particulars of this MOU,
18 we believe that it's important to look at the larger
19 context of the request from the TraPac EIR appellants, and
20 not just the legal limits on the Trust, but the policy
21 reasons for the Trust, because the trust reflects the
22 notion that tidelands must serve the people of the entire
23 state. And obviously we've talked about the specific
24 purposes, navigation and maritime use, et cetera. But
25 while the Trust allows for some flexibility in the gray

1 area that we'll be talking about, the fundamental
2 principles must always be kept in line as the Trust is
3 administered. And it's the Port's responsibility as the
4 trustee not to simply hand over the check book to a group
5 of potential Trust beneficiaries, but to establish a set
6 of objective criteria and standards to use to establish
7 the nexus and basis for the mitigation measures proposed.

8 I think we all sympathize with the challenges
9 that come with being a trustee, the challenges that
10 accompany the Port's responsibilities of being, not only
11 in this case, the Port of LA, not only being a modern
12 thriving seaport, but being the largest seaport in the
13 United States. There's a lot of challenges that accompany
14 those responsibilities.

15 And there's a lot of challenges to the Trust.
16 And some of those challenges are often the very political
17 and commercial landscape that the Port operates in. But
18 the responsibilities and challenges are not new. Just
19 because the challenges are great doesn't mean that the
20 responsibility they hold to the State changes. And the
21 challenges have been around for centuries and they really
22 speak to the needs for the Trust itself. The policy has
23 not changed, even though, unfortunately the term "ancient"
24 and "obscure" gets tossed around in front of -- as an
25 adjective in front of the term "tidelands trust". The

1 challenges and the pressures are still there.

2 They occur because of the people who live closest
3 to the Trust lands, who enjoy the greatest benefits as
4 well as incur the greatest burdens, while often being the
5 most vocal on how the lands and revenue should be used.
6 And this is true with municipal grantees as well. I think
7 that that just makes common sense. Again, nobody at the
8 table is going to deny that there are additional burdens
9 placed on local communities next to ports.

10 But the trustee's responsibility is really to
11 enforce the Trust, and everybody in the State benefits
12 from it. So moving forward, I think what we're looking at
13 is acknowledging that there are always going to be
14 pressures to relax the Trust to benefit local uses. And,
15 in that regard, these arguments aren't new arguments.
16 They've just been refocused. And the best way to avoid
17 these outcomes is to require the Port to act under the
18 terms of its grant, just like every other Trust lands
19 grantee.

20 And I guess you ask yourself the question, is the
21 Port allowed to mitigate its own impacts on the
22 environment and the community? The answer is yes, of
23 course it is, but it must act within the terms of the
24 Trust. It must act within the terms of its grant. It
25 must establish a direct nexus to the Trust for any

1 mitigation using objective standards and criteria. And I
2 think the real policy question before the Commission is,
3 can ports keep the Trust and its assets in tact, operate
4 under the terms of the Trust and still do proper
5 environmental community mitigation? And I think the
6 answer to this question is yes.

7 To do it, we all have to work together to make
8 sure the Trust is preserved. Because if we don't preserve
9 the Trust, eventually we'll be eroding our power to
10 actually properly mitigate projects as we grow the
11 economy.

12 And I just wanted to tell the Commission that
13 we're committed to the preservation of the Trust clearly,
14 but we're also at your disposal and further commit to work
15 with you and your staff to ensure the Ports can be both
16 good neighbors and good trustees.

17 And I would like to add a couple of things I
18 think to some of the questions that have been raised
19 earlier and some of the concepts and discussions that were
20 raised by the panelists and the staff discussion.

21 Clearly, this question about mitigation and
22 off-port and where the jurisdiction lies is a big rub.
23 And we'd like to clarify that there are 2 different ideas
24 here. One is whether or not you can do mitigation off
25 port. And I don't think that there's any question that

1 you can do that as long as you have a clear nexus to the
2 project that you're trying to mitigate or the existing
3 operations of the Port that you're trying to mitigate.

4 But it's being confused with this question of can
5 you use Port and Trust assets to mitigate off-port
6 infrastructure for non-Trust-related properties? And
7 those are 2 different ideas.

8 You know, there is a lot of gray area with regard
9 to what you can spend the money on. But one thing is
10 really black and white, you're either a Trust property or
11 not Trust property. You're either generating a Trust
12 revenue or you're not generating a Trust revenue.

13 What you do with that, I think, is a different
14 question. And both of those things should be discussed in
15 our debate, but I don't think those 2 concepts should be
16 confused.

17 COMMISSIONER GARAMENDI: Well, I've got a whole
18 bunch of questions.

19 Please.

20 MR. WILKENS: Thank you, Mr. Lieutenant Governor
21 and Mr. Chairman. I'm Dan Wilkens with the Port of San
22 Diego.

23 A couple of comments here and we'll proceed
24 pretty promptly to your questions, because I can sense
25 you'd like to get to them.

1 First of all, my comments this morning should not
2 be interpreted in any way, shape or form to either
3 criticize or impeach the efforts of the Port of Los
4 Angeles to move the projects that they need to move in
5 order to meet the challenges that we need to meet.

6 Secondarily, I need to perhaps give you one piece
7 of background about San Diego that's different. San Diego
8 is, in effect, not a political subdivision of the City.
9 When the Legislature granted the lands to the Port of San
10 Diego, it created, in effect, a free-standing government
11 agency, that is made up of appointees by the 5 cities
12 around the bay of San Diego.

13 And if Geraldine says that the Mayor of Los
14 Angeles is her boss, well my boss has 5 bosses, 5 mayors
15 of the cities around the bay, 7 members of his board, and
16 24 members of the city councils around the bay.

17 The basis by which we approach this matter is
18 pretty much consistent of a piece from what Geraldine is
19 telling you and what Mike is telling you. I think the
20 insight, if that's the right word, that I would offer for
21 this is that at the end of the day we've got to move these
22 projects. We have about 4,000 acres of property in San
23 Diego, more or less, of which around 600, more or less, is
24 devoted to peak water maritime activities. And then we've
25 got the rest of it that are in various types of land-use

1 designations.

2 As we go through this entitlement process in San
3 Diego, frankly, what you have is people in the communities
4 adjacent to our lands who, in our judgment, they have a
5 disproportionately greater burden being next door to the
6 Port than the benefits to which they received. It is not
7 unlike living under a flight path of an airport. And in
8 that context I may offer to you that model for you to
9 think about.

10 Airport funds are sometimes considered to be
11 federalized, if you will, and they have restrictions on
12 how those funds can be used. But one of the things that
13 the federal government has recognized through the FAA is
14 the allowance of airports to spend their funds off of the
15 property of the airport far and away outside of the ambit
16 of a specific EIR, a point in time, as Geraldine indicated
17 to you, in order to mitigate noise impacts and other
18 things under the continuous nuisance clause or approach,
19 if you will.

20 Having said all of that, we tend to take a pretty
21 conservative view of what we can and cannot do. We have
22 EIRs presently where the community groups, sophisticated
23 that they are, are seeking leverage. In some respects,
24 it's kind of a back-handed compliment to the Ports, if I
25 may, kind of toot our horn, in that these community groups

1 feel that there's certainty of outcome with the Ports. If
2 they can get us to commit to doing things, they feel
3 confident that those things will get done. Usually,
4 because they recognize that we've been good stewards of
5 our financial houses and that we have the means and, for
6 no other reason, the political will to get these things to
7 come to fruition.

8 I do not intend to imply that this is the case in
9 Los Angeles, nor do I criticize the cities and San Diego
10 that make up the Port District.

11 But we have been told over and over again that if
12 we commit to something, such as rerouting of major truck
13 thoroughfares, which is none of our concern, it is purely
14 a municipal and State function, that if we, the Port,
15 commit to that, it will get done and it did get done. We
16 have been told that if we commit to working with the
17 community groups in order to mitigate certain impacts on
18 other projects, be those projects traffic related, be they
19 air-quality related, be they environmental within the
20 context of the ecosystems, that it will get done. And
21 that is what has occurred in these other contexts.

22 So one thing you may wish to think about, to
23 close, is the FAA model, giving us some idea of what's
24 permissible and what isn't.

25 And secondly, perhaps even going a little bit

1 further, I would ask of you that you consider working with
2 us to help our trustees, our policy makers who start off
3 usually being representatives of the City and ultimately
4 become, to some understanding, to a greater or lesser
5 extent, depending on the individual, of their role as a
6 trustee. And how that could be done would be additional
7 discussions with your body or workshops. It could even be
8 some sort of legislative approach were that to be
9 something you may wish to consider.

10 And, again, I thank you on behalf of my boss,
11 Bruce Hollingsworth for coming to visit us this morning.
12 And you're always welcome. It's your home.

13 (Laughter.)

14 MR. WILKENS: We're happy to answer any questions
15 you might have.

16 CHAIRPERSON CHIANG: Thank you.
17 Lieutenant Governor.

18 COMMISSIONER GARAMENDI: Thank you very much, Mr.
19 Chairman.

20 This panel and these discussions have great
21 importance to the Commission. I appreciate the
22 opportunity to tour the Port. I'm not at all sure I
23 appreciate the opportunity to have to be getting into all
24 of this very complex issue, but it's important. The world
25 is changing rapidly. The Ports have grown, particularly

1 the Los Angeles area ports, Long Beach, Oakland have grown
2 substantially. We learned today that the Port of San
3 Diego has similarly grown and the impacts are now broader,
4 as a result of those growths. And therefore, it's
5 important that we have this discussion as a Commission to
6 set parameters for the use of Port money, the Trust money.

7 I don't think we're going to come to a conclusion
8 today as to what the parameters are, but there are some
9 things that I really want to try to pull out of this
10 discussion.

11 First of all, the issue of the impacts that are
12 not specific to a CEQA analysis. Geraldine, you made the
13 point that those impacts are preexisting, they are real,
14 and that they should be allowed to be mitigated by a
15 specific project, if I understood your point correctly and
16 the diagram you put up.

17 Is that allowable under the Trust Doctrine? Can
18 we allow for mitigation that is not specific to an EIR?
19 Is there any question about that?

20 DEPUTY ATTORNEY GENERAL RUSCONI: Are you asking
21 me?

22 COMMISSIONER GARAMENDI: I'm not speaking to the
23 nexus and all the other stuff, which I'm coming to. Can
24 we allow mitigation for non-CEQA impacts -- CEQA-related
25 impacts?

1 DEPUTY ATTORNEY GENERAL RUSCONI: I think the
2 answer is yes, if all of the other --

3 COMMISSIONER GARAMENDI: Very good. I just want
4 to make it clear that we can. Therefore, for impacts that
5 exist prior to a new project, we can use the Port money
6 for that purpose.

7 DEPUTY ATTORNEY GENERAL RUSCONI: Okay.

8 COMMISSIONER GARAMENDI: No disagreement on that.

9 With regard to a third party, a nonprofit third
10 party carrying out projects. I'm not getting into the
11 nexus issue. I'm not getting into all of that. But can a
12 nonprofit third party be used to carry out mitigation? Is
13 that possible? Is there any restriction on that?

14 DEPUTY ATTORNEY GENERAL RUSCONI: The restriction
15 is that the trustee must ultimately have the discretion
16 over the funds that are spent, as long as the trustee
17 retains the discretion then, as any business, as they say,
18 if it acts through other parties.

19 COMMISSIONER GARAMENDI: So we could allow
20 mitigation to be carried out by a third party, a
21 nonprofit, for example, or a contractor, for example?

22 DEPUTY ATTORNEY GENERAL RUSCONI: Correct.

23 COMMISSIONER GARAMENDI: Okay. As long as?

24 DEPUTY ATTORNEY GENERAL RUSCONI: Correct.

25 COMMISSIONER GARAMENDI: I'm taking these bit by

1 bit here. So, for example, the Long Beach Memorial Fund
2 is a third-party nonprofit organization that's carrying
3 out a specific mitigation resulting from the demolition of
4 the Naval base. And it has discretion -- it has the
5 authority to spend money for mitigating purposes. In this
6 case, I guess, that's mostly for the historic museum and
7 other kinds of things.

8 DR. KNATZ: Right. And the Port is not part of
9 your decision making on what grants are given out to what
10 organizations.

11 COMMISSIONER GARAMENDI: I'm coming to that. I'm
12 going to make sure I understand this.

13 The non-profit third party either contractually
14 or through delegation is circumscribed in what it can do
15 by a delegation of authority and responsibility? Is that
16 what happened in the Memorial Fund?

17 DR. KNATZ: Yes. There was an agreement that the
18 City and Port negotiated that basically specified the
19 types of things, the mitigations that the money could be
20 used for.

21 COMMISSIONER GARAMENDI: Now, the question then
22 is, are those criteria appropriate and consistent with the
23 Public Trust; is that correct?

24 DEPUTY ATTORNEY GENERAL RUSCONI: I don't -- I
25 have no knowledge about what Ms. Knatz has done, so I

1 would be very hesitant to speak about it.

2 COMMISSIONER GARAMENDI: Lets just speak in
3 general terms. And I understand we're talking here
4 without the time to do the detailed legal analysis. But
5 if there's a third party either contractually or
6 delegated, as long as their tasks are consistent with the
7 Public Trust, and therefore a set of criteria laid down
8 under which they would then operate, do we have a problem
9 with that?

10 DEPUTY ATTORNEY GENERAL RUSCONI: I think that we
11 still have a problem with a delegation of authority by a
12 trustee over Trust funds. The trustee must ultimately
13 have the responsibility of how to decide how those funds
14 are spent and cannot delegate that.

15 COMMISSIONER GARAMENDI: But apparently we have.

16 DEPUTY ATTORNEY GENERAL RUSCONI: I don't know
17 about that.

18 DR. KNATZ: And the concept was instead of
19 preserving a historic building down on the Port that
20 people couldn't use, let's mitigate where people could
21 experience the benefit of the mitigation in the city.

22 COMMISSIONER GARAMENDI: I'm not there yet.

23 (Laughter.)

24 DR. KNATZ: Oh, okay.

25 COMMISSIONER GARAMENDI: There's a fundamental

1 threshold here that we've got to get to and that is can
2 the authority be delegated?

3 Paul, help us here.

4 EXECUTIVE OFFICER THAYER: I would say, once
5 again, as we were talking when we earlier conversed, that
6 this is not a black line going on here. And I would
7 suggest that the Long Beach situation, might be going over
8 into the gray area, would have raised some concerns to us
9 if we'd been reviewing at the time, which we did not.

10 But I would say to advance the possibility of a
11 rule here, is there's no reason at all why a grantee can't
12 delegate implementation of mitigation, but the discretion
13 over what kind of mitigation is done or whether it's
14 needed is not so delegable. And so the examples that Dr.
15 Knatz was talking about were really specific in terms of,
16 in the case of Long Beach, there was an historic impact
17 that was identified in a CEQA document, that the taking
18 down of this historic Navy structure and that this process
19 was set out specifically through a CEQA analysis that said
20 okay we don't have a particular way -- a particular
21 structure that we can say right now, but there will be
22 other structures down the road where, you know, if we put
23 money to them, we'll be saving the historic nature or the
24 historic component of Long Beach.

25 With respect to the Gateway Cities' project, that

1 she also mentioned as an example of delegation by the Port
2 of expenditures of funds, a specific amount of money was
3 delegated for a specific purpose. It's not just air
4 quality. I think most of that money was spent on engine
5 replacement. I agree with Dr. Knatz that the Port -- or
6 the Port staff may not be well suited figuring out which
7 engines will we replace exactly and what models shall we
8 use. And that cries out for bringing in an outside entity
9 to administer that kind of project.

10 The other possibility as well is sometimes these
11 outside entities will be doing that work for a variety of
12 entities. They can do it for the Port of Long Beach.
13 They do it for LA. It makes more sense for one entity to
14 do that. But again, here you're really delegating
15 implementation of mitigation measures more than the
16 discretion. It's not an absolute rule. And in that
17 delegation there's some discretion that's inherent to it.

18 Our problem, to take just the last step into what
19 you're really looking at here, with what's proposed in the
20 TraPac agreement, has nothing to do with the fact that
21 mitigation should and needs to be done. Or even whether
22 it's, as the gentleman from PMSA stated, with individual
23 projects that are, in fact, laid out as the first project
24 that are supposed to be done under TraPac, it's the
25 mechanism that's established for the future projects where

1 the Port does not have review and approval over that. And
2 that's kind of the fatal weakness. It could easily be
3 cured, you know, if you amend that agreement, so that the
4 Port retains its discretion over those kinds of projects.

5 ACTING COMMISSIONER SHEEHY: May I ask a
6 question?

7 On your concern about the future projects and the
8 control there, does that also relate to the control of how
9 much Public Trust funds would be spent? I mean, in other
10 words, they don't have control of the projects. What
11 about the nexus of what it's going to cost and how much of
12 the Public Trust money would be spent for those projects?

13 EXECUTIVE OFFICER THAYER: There is some concern
14 about that as well. Although, the way the agreement is
15 worded, there is certain limitations on the total amount
16 of money that has a mechanism that describes the money
17 that's going to be raised that's pretty precise. We did
18 have -- we have 3 concerns about that agreement. That's
19 the second major concern that before -- this agreement
20 contemplates going out and doing a study to measure
21 impacts and then developing mitigation to deal with those
22 impacts. But the funding mechanism is already established
23 that generates a certain amount of money. It doesn't
24 necessarily relate to what the mitigation needs are. It
25 could be too much. It could be too little.

1 And so it seems to us that the agreement should
2 be set up in a way where the funding mechanism depends
3 upon the amount of money that's needed to develop a
4 proportional mitigation that will actually address these
5 impacts.

6 So from that perspective -- so there's 2 answers
7 to your question. The first is, we're not worried that
8 there's a the-sky's-the-limit mechanism set up in the
9 agreement. There's not. There's specific amounts of
10 money from specific projects that yield, I think, 50
11 million in the first 5 years. The agreement can be
12 extended. But for all, there'd have to be a lot of work
13 done to extend that agreement.

14 But we are concerned that the amount of money
15 that's defined isn't necessarily related to what you're
16 doing.

17 ACTING COMMISSIONER SHEEHY: And just so I
18 understand, Mr. Thayer, that Trust money that would be
19 used for those projects, if it weren't being used for
20 those projects, it would otherwise accrue to the State
21 General Fund, would it not?

22 EXECUTIVE OFFICER THAYER: No, it would be used
23 by the Port.

24 ACTING COMMISSIONER SHEEHY: So it wouldn't be
25 tidelands revenue that would go to the General Fund?

1 EXECUTIVE OFFICER THAYER: No.

2 ACTING COMMISSIONER SHEEHY: None of that would.

3 EXECUTIVE OFFICER THAYER: No, it would all be
4 used locally for Public Trust purposes -- for the
5 operation of the Port.

6 It has been true in one case, the Mallon case,
7 which I think we discussed with all the Commissioners,
8 where when the legislation was overturned, it allowed Long
9 Beach to use money for their purposes. The State then
10 turned around and took that money back. And just as I
11 think Jennifer outlined, if the Legislature determines
12 that the money is being improperly spent -- if, for
13 example, a mitigation program eventually becomes
14 criticized for that purpose, the State has the ability to
15 take that money and use it for whatever purposes it wants.
16 Which gets to one of your earlier questions, which if
17 you'd like I could respond to it, but the State can take
18 the oil revenues and spend them for non-water-oriented
19 Public Trust purposes, because it's spending it for the
20 benefit of the entire State. And those are the trustors,
21 the population in general.

22 The difference is that when Long Beach takes that
23 money and spends it, if it were to spend it, as was
24 overturned in Mallon, for specific municipal purposes,
25 it's not spending it for the benefit of the whole state.

1 It gets back to that same public funds distinction.

2 COMMISSIONER GARAMENDI: So once the money flows
3 to the General Fund, it's considered to be for the benefit
4 of the whole state, even though it might be used for a
5 swimming pool in Barstow.

6 (Laughter.)

7 EXECUTIVE OFFICER THAYER: Exactly.

8 (Laughter.)

9 ACTING COMMISSIONER SHEEHY: At the Department of
10 Finance, we frown upon those types of expenditures.

11 (Laughter.)

12 COMMISSIONER GARAMENDI: Nonetheless, they are
13 sometimes made.

14 CHAIRPERSON CHIANG: Let me ask a question to the
15 representative from the AG's office. Are there any legal
16 consequences to the trustee in the event of a breach of
17 the Public Trust?

18 DEPUTY ATTORNEY GENERAL RUSCONI: Well, as I
19 mentioned, the Commission has, in the past, sued and
20 recovered funds from trustees who have improperly spent
21 them. So, yes, there are consequences.

22 COMMISSIONER GARAMENDI: So back to this question
23 of the nonprofit organization. First, it is possible to
24 use a nonprofit, but it's area or realm of operations are
25 circumscribed. And in the case of TraPac, a nonprofit

1 organization could be established, if it is -- if its
2 role, the specific areas in which it could mitigate, are
3 circumscribed and related back to the nexus of the Port.

4 Is that -- am I --

5 DEPUTY ATTORNEY GENERAL RUSCONI: I think Mr.
6 Thayer outlined it. Yes, that assuming that the ultimate
7 authority --

8 COMMISSIONER GARAMENDI: And the authority.

9 DEPUTY ATTORNEY GENERAL RUSCONI: -- remains with
10 the trustees, yes, it could act.

11 COMMISSIONER GARAMENDI: So the delegation of
12 authority is possible, but it's going to have to be
13 circumscribed in some way and described in some way and
14 then reviewable by the Port?

15 EXECUTIVE OFFICER THAYER: I think what I tried
16 to say was that that ultimate discretion, not just as a
17 reviewer and audit function, but the discretion -- the
18 original decisions over whether the mitigations are
19 appropriate, should be done by the trustee and not audited
20 later.

21 So the work needs to be done, as it's going to be
22 done in this agreement, that there's going to be a study
23 to look at the impacts and to try to come up with
24 nex-ise", the plural of the word.

25 (Laughter.)

1 EXECUTIVE OFFICER THAYER: It's sort of like the
2 nurdle hurdle or something like that, to makeup the words
3 as you go.

4 But that ultimately that sort of decision should
5 be the Port's. It should look at what the impact is,
6 determine whether a nexus is there and therefore whether
7 it's appropriate to expend the funds. And then it can
8 turn around and say okay, we've seen there's this kind of
9 impact to trucks -- or from trucks on local traffic.
10 Therefore, we think it's appropriate to pay for new
11 signalization along the main streets in the area. We'll
12 give that money to whatever the equivalent of the
13 City -- of Gateway Cities is or even to the third-party
14 entity who could carry it out. But it's determining that
15 nexus is really the fundamental decision. And that I
16 don't think can be delegated.

17 DR. KNATZ: Can I add something?

18 I was just going to say I think we always
19 envisioned that we would have criteria. It may be school
20 filters, you know, for schools located in a certain
21 geographical area, you know, nearby transportation; goods
22 movement cars, what have you. It was not just going to be
23 here's a pot of money and come up with things. So
24 I -- and that process has yet to carry out, so we're
25 somewhat premature in really knowing if we've got issues

1 in that, because we need to actually do that.

2 But there's another key element to this, and that
3 is the fact that the money goes into the account 2 ways.
4 One is by sort of the natural growth that occurs. And
5 honestly, there would be no money going in because
6 we're -- our volumes are actually down this year.

7 But there's also money that goes in each time a
8 major development project is approved. So there's -- the
9 community has a stake in seeing that the Port grows and
10 EIRs move forward. And honestly, I looked at some of the
11 costs of doing filters on the school and the double-paned
12 windows and what our airports spend. And I don't think we
13 have an issue of insufficient money going into the
14 account.

15 COMMISSIONER GARAMENDI: Well, I think -- it
16 seems to me that it's possible to use a third party. It
17 appears to be rather clear that the activities of the
18 third party are ultimately -- must be reviewed by the
19 Trust -- by the Port and approved. I'm not sure that they
20 are specific to each individual window or school, but
21 rather to the general purpose. And that if the Port
22 decides that it is appropriate and then ultimately this
23 Commission has to say, yeah, that's okay, we can do school
24 mitigation or street lights or stop signs or whatever.
25 And then let the third party go get it done and do it.

1 Is that sort of where this might work?

2 EXECUTIVE OFFICER THAYER: I think so. So, for
3 example, the lists of projects that are in the agreement
4 are very specific projects. There's a filtration system
5 for schools, the windows for nearby buildings, residences,
6 whatever. There's funding for health clinics. I would
7 point out that that shouldn't be entirely funding for the
8 health clinic, but for the identifiable work that's done
9 by the health clinic to address impacts from the Port.
10 Those sorts of things. I think those are very specific.

11 And if the Port approved expenditures for those
12 purposes and then gave the money to a third-party entity
13 to do those purposes, we don't see any problem with that.
14 But the agreement is set up in a way that it would say
15 that once the study is done, then this entity would be
16 approving expenditures of the money in that fund for
17 mitigation to address the impacts identified in the study.
18 It doesn't really leave a role -- there's none identified
19 for the Port Board in that process.

20 COMMISSIONER GARAMENDI: So we've got a little
21 legal question about the way in which the MOU is drafted.
22 And so a redrafting might very well solve the question
23 that we have -- that the Commission staff has raised.

24 You went through a list of things here and I just
25 want to have some sense of that. Health, noise, safety,

1 transportation, these are all things that are within the
2 realm of mitigation?

3 EXECUTIVE OFFICER THAYER: Certainly. Those are
4 the same sorts of things that are done in CEQA.

5 COMMISSIONER GARAMENDI: How about education?
6 That is education -- for example, we're going to train
7 marine engineers and use the money from the Port to train
8 marine engineers or aquatic scientists.

9 EXECUTIVE OFFICER THAYER: I won't say that
10 that's impossible, but it's getting to be more difficult.
11 I'm not sure what the impact is that would be mitigated by
12 that measure.

13 DR. KNATZ: That's another discussion I'd like to
14 have at another time.

15 (Laughter.)

16 DR. KNATZ: Not under this. I don't view that as
17 an expenditure under this fund, but I think the Port has
18 an interest in making sure that people are being educated
19 in the maritime field so we can keep this operation going.

20 COMMISSIONER GARAMENDI: I didn't mean to connect
21 it to the fund specifically.

22 (Laughter.)

23 COMMISSIONER GARAMENDI: So, yeah, thank you for
24 drawing that distinction. But if, for example, the Port
25 of Los Angeles wants to support an educational

1 apprenticeship program for crane operators?

2 EXECUTIVE OFFICER THAYER: If that were done in a
3 way that anybody could apply, that wouldn't be so bad.
4 But if it was done just as an adjunct to a specific school
5 in San Pedro, there would be a problem, because you're, in
6 effect, providing a local benefit.

7 DR. KNATZ: However, if I'm short 200 crane
8 operators and I need to get the Port running and my major
9 labor pool is San Pedro and Wilmington, then an investment
10 in that area to train those people might be for the
11 benefit of the State.

12 COMMISSIONER GARAMENDI: Investing in specific
13 classes at any school in the area.

14 EXECUTIVE OFFICER THAYER: I'd want to look at
15 that more. It raises the issues, which you could
16 anticipate, which is that you're providing a benefit
17 locally that is not available to anybody else.

18 COMMISSIONER GARAMENDI: Well, let's say a school
19 in East Los Angeles decides to run an apprenticeship
20 program for marine crane operators?

21 EXECUTIVE OFFICER THAYER: It's still the problem
22 that you're benefiting that one school and you're not
23 benefiting any other school.

24 COMMISSIONER GARAMENDI: Community college?

25 (Laughter.)

1 EXECUTIVE OFFICER THAYER: We're getting better.

2 (Laughter.)

3 EXECUTIVE OFFICER THAYER: Well, the point is
4 that it's a community college or a UC or State college or
5 whatever is generally available to anybody to apply to.
6 Whereas, most high schools it's either -- there may be
7 some theoretical way that somebody from the outside can
8 get into, but frankly it's mostly available to locals.

9 COMMISSIONER GARAMENDI: Actually, I met a kid at
10 that high school in San Pedro that was from the eastern
11 part of the county of Los Angeles. So apparently they
12 have some potential to travel to it.

13 EXECUTIVE OFFICER THAYER: Charter schools,
14 sometimes more.

15 DR. KNATZ: I don't think we can just look at
16 that issue. I think you have to look at what the
17 employment needs are of the Port. I came on board -- I
18 had 200 vacancies. I've got to grow my own people.

19 COMMISSIONER GARAMENDI: What's the salary? I'm
20 looking for a job.

21 (Laughter.)

22 DR. KNATZ: Talk to me later.

23 (Laughter.)

24 EXECUTIVE OFFICER THAYER: If the Port wanted to
25 set up at the Port a training class for crane operators,

1 it could certainly do that. That would be available to
2 anybody. It's when it --

3 COMMISSIONER GARAMENDI: Why wouldn't the Port
4 want to do something at a school that already exists
5 rather than setting up a program on their own?

6 EXECUTIVE OFFICER THAYER: Well, the question is
7 whether the high school -- again, it's benefiting a
8 particular high school.

9 COMMISSIONER GARAMENDI: I think we may want to
10 be a little more broad minded.

11 I want to get back to the TraPac, because it is
12 the issue at hand. And apparently with regard to the
13 nonprofit entity, further negotiations, along the lines
14 that have been discussed here, could resolve most of the
15 issues. I suspect that would have to come back to us for
16 our nod and approval at some point that's within line of
17 the general requirements.

18 EXECUTIVE OFFICER THAYER: If everyone reached
19 agreement, the original parties, if they were involved
20 with the agreement as well and were satisfied with the
21 results, they could enter into that agreement themselves.
22 We wouldn't have any objection to it. It's just basically
23 with -- amongst these parties we would not have to approve
24 it.

25 DR. KNATZ: And I would suggest rather than

1 amending the MOU, we actually work on the structure of the
2 agreement that is going to be the implementing agreement
3 and have everybody then review that.

4 EXECUTIVE OFFICER THAYER: We don't care what the
5 mechanism is, as long as the result works.

6 MS. LINPERRELLA: I agree. It doesn't sound like
7 we need to reopen the agreement in order to address the
8 concerns that were raised.

9 COMMISSIONER GARAMENDI: I think you just heard
10 from the staff how they view this and I don't think this
11 issue is done.

12 ACTING COMMISSIONER SHEEHY: I'm not sure that
13 there's unanimous agreement on the comment you just made,
14 Ms. LinPerrella. And one of the things that I'm very
15 concerned about is something that is in the staff report
16 that said that both prior to the Board's approval of the
17 MOU and after the Commission staff had repeatedly offered,
18 apparently to no avail, to meet with the Port staff to
19 discuss specific concerns they had with the MOU, no
20 meetings took place. I don't know if that's accurate or
21 not, but I would hope that there's good open communication
22 between the Port staff and between the State Lands
23 Commission staff, because it seems to me a lot of details
24 could be worked out. Rather than bringing problems to us,
25 you could be bringing solutions to us and we could approve

1 it and move forward.

2 And so I don't know -- it's not my job to know
3 how that communication is happening. But I think that we
4 would all agree that you need to have good communication
5 on those points, specifically where the State Lands staff
6 had raised these concerns.

7 DR. KNATZ: Yes. And I did receive a letter from
8 State Lands. And I knew there were -- and also from PMSA
9 raising these very specific concerns. And I notified both
10 organizations that I can't answer those concerns and
11 questions yet. We have to wait till we get started. And
12 so the key thing was getting the interim entity on board,
13 so then -- we actually haven't started. I don't know that
14 we have problems. I was invited to come here and talk.

15 ACTING COMMISSIONER SHEEHY: I don't understand
16 the linearity that you couldn't work with them before you
17 got it started. Maybe, Mr. Thayer, could you comment on
18 that.

19 EXECUTIVE OFFICER THAYER: Well, again, I think
20 that's up to the Port. The Port was making some decisions
21 as to how to proceed, but certainly, you know, Dr. Knatz
22 and I had communicated before the agreement was brought to
23 the Board and she indicated some of the possible
24 directions the agreement might go. And I said there were
25 potential Public Trust problems with that. Please, could

1 we talk about that, so that we can try and cure those.

2 But I think that Dr. Knatz, and she should say,
3 but was under -- was dealing with a lot of local factions
4 that she felt she needed to deal with and were very
5 difficult, and had a lot of balls in the air, frankly, I
6 think. But we made that offer before the agreement was
7 finalized.

8 DR. KNATZ: Right. And we intend to take him up
9 on that offer. We just haven't gotten to the point of
10 starting that. And the key was getting this interim
11 entity, which is really -- its purpose is to corral the 12
12 TraPac appellant groups and to facilitate the process of
13 discussion under contract on board. And we're working on
14 that.

15 COMMISSIONER GARAMENDI: It seems to me that
16 there's some clarity that's been achieved here today about
17 where the State Lands Commission staff is and the
18 responsibilities that these -- that the 3 Commissioners
19 have to the Constitution and the Public Trust, and any
20 rigorous and thorough communication go forward between the
21 Port, the plaintiffs. Is that the right word here?

22 MS. LINPERRELLA: Appellants.

23 DR. KNATZ: Appellants.

24 COMMISSIONER GARAMENDI: Okay, that that take
25 place. I think you have a pretty good sense of the

1 concerns that the staff has and the obligations that we
2 have. And that there is a, it seems to me, a path that
3 can be followed that would be beneficial and solve the
4 issues at hand, both with regard to the nexus, with regard
5 to the nonprofit entity, responsibilities of the Port and
6 the Commission to carry out the Constitutional
7 requirements.

8 Also, the nexus issue is one that should not be
9 ignored or taken lightly. It is a very, very important
10 issue that I don't see a way for us to get around. I
11 think we can be creative. I do think you can educate
12 people to run your cranes at a school. I'm not exactly
13 sure that Paul has it correct as to where they may come
14 from. But nonetheless, I think you ought to proceed on
15 all of this through the course.

16 Are there -- yes.

17 MR. JACOB: Thank you, Lieutenant Governor. I
18 just wanted to make maybe one final comment, because I
19 think we agree with your summation 100 percent, Lieutenant
20 Governor, that a third party can be used to administer
21 funds. We call it ministerial. You may want to call it
22 administering or contracting it. I think you can do that,
23 so long as the trustee itself doesn't delegate their
24 exercise of discretion as a trustee.

25 What our concern really goes to is I think a

1 comment that Dr. Knatz made. And, again, we understand
2 the context in which it was made and it's certainly
3 defensible. We just don't think it's consistent with the
4 Trust, which is that the beauty of the agreement is that
5 the Port is no longer involved.

6 DR. KNATZ: In day-to-day operations.

7 MR. JACOB: Okay. Thank you for that. Because
8 you can't delegate the authority to a nonprofit. That's
9 the crux of the problem. You can certainly, and you
10 should, involve the community in these efforts. If a
11 non-profit is the best person to administer the process of
12 changing out the old windows and putting in new windows
13 and putting in filters, as long as they meet all the
14 requirements, that's the best way to do it.

15 Frankly, it's the trustee's money to do with as
16 they wish, in terms of making a determination of who the
17 contract is and how much they pay and all that stuff.

18 So I think we are all on the same page in terms
19 of what the goal is. What we're talking about is what's
20 the process to get there. And we would welcome what you
21 recommend, the collaborative approach about talking about
22 how to do that.

23 MR. WILKENS: If I might also. Again, I'm
24 speaking of the facts of this particular matter. I would
25 offer one cautionary note and that is that nothing happens

1 in a vacuum. And anything that we do will be looked upon
2 as setting expectations.

3 And let me put on the table something that staff
4 is very much aware of. There are member cities in San
5 Diego of our district who would love to contract with us
6 in order to provide services to mitigate problems that
7 they believe are very real in their city, based upon the
8 impacts of our agency.

9 And that's a slippery slope, as we all know.
10 Once we go down that slope, it's hard to come backwards
11 from it. And, again, don't take my comments as to mean,
12 Mr. Lieutenant Governor, anything in opposition to what
13 you're advancing in this specific instance. I'm just
14 asking you to be mindful that there's a very real
15 discussion going on between one of our member cities and
16 us and your staff, where that city simply wants money,
17 because they don't believe that they're getting the
18 possessory interest tax portion commiserate with the
19 impacts on their community, because a terminal doesn't
20 have the same -- throw off the same local taxes as say a
21 hotel or a restaurant or a visitor-serving use, in that
22 context.

23 So just a cautionary note. It may be perhaps
24 something that you may be hearing from us further about in
25 that context.

1 COMMISSIONER GARAMENDI: I'm certain we will hear
2 more.

3 (Laughter.)

4 CHAIRPERSON CHIANG: We will now take public
5 comment. Again, I will call 3 at a time.

6 EXECUTIVE OFFICER THAYER: I just wanted to note
7 with respect to that, we do have an elected official here
8 that wants to speak.

9 CHAIRPERSON CHIANG: I'm well aware.

10 The first 3 are Counsel member Janice Hahn from
11 the City of Los Angeles, Melissa Stephens and Tim Schott.

12 Great to see you.

13 LOS ANGELES CITY COUNCILMEMBER HAHN: Great to
14 see you, Commissioner. It's very good to be here in San
15 Diego. We welcome you to have this Commission meeting at
16 the Port of Los Angeles any time.

17 And I really want to thank you, Lieutenant
18 Governor, for your leadership in exactly bringing forward
19 this issue. I think it's rather historic that you're
20 actually taking up this item where you are having this
21 much debate and discussion on the idea of, you know,
22 off-port impacts. And we appreciate you doing that.

23 I am Los Angeles City Councilwoman Janice Hahn.
24 I represent the harbor area communities of San Pedro and
25 Wilmington. Communities that have for years been

1 affected, both positively and negatively, by operations at
2 the Port of Los Angeles.

3 And this all started when a group of civic,
4 environmental and public health organizations challenged
5 the Port's approval of the EIR for the TraPac Terminal
6 Expansion Project. This challenge was made in the form of
7 an appeal to the Los Angeles City Council, wherein it was
8 referred to the Trade, Commerce and Tourism Committee,
9 which I chair.

10 And my role in the formation of this MOU involved
11 many long hours sitting at the table with Port staff, with
12 members of the San Pedro and Wilmington communities,
13 including the San Pedro Homeowners Association, the Harbor
14 Watts Economic Development Commission, the Coalition for a
15 Safe Environment, the Sierra Club, the NRDC, the Coalition
16 for Clean Air, the Los Angeles Alliance for a New Economy,
17 the American Lung Association. And I will say there was a
18 comment that we should bring you solutions instead of just
19 problems, and that is how I see this.

20 We're actually bringing you a solution. And I
21 give great kudos to everyone who stayed at the table to
22 negotiate this MOU. I give great kudos to Dr. Knatz, the
23 President of the Commission, Dr. Freeman. It was really
24 quite an exercise in bringing everybody together to come
25 up with this solution.

1 My goal in this was to move -- was to find a way
2 to move forward with the TraPac project, because it will
3 bring good jobs to Los Angeles, and it will be good for
4 the regional economy. I worked to do whatever I could to
5 keep this appeal that was brought to the City Council from
6 turning into a lawsuit, which could have potentially
7 stalled this project for years to come.

8 Protecting the economic engine that provides
9 these good jobs throughout the region, throughout the
10 State of California, while protecting the health of
11 communities of San Pedro and Wilmington has always been my
12 biggest challenge, but it is my responsibility and
13 obligation I believe as a public servant.

14 This agreement provides the ideal mechanism to
15 provide that balance. Every container that enters the
16 Port of Los Angeles represents commerce. It represents
17 commerce to the whole state and to the entire country.
18 But every container that comes into the Port of Los
19 Angeles represents a risk, both to the safety of our
20 communities and to their health risk.

21 And under this agreement, every new container
22 representing growth that comes into this port will
23 represent finally a direct benefit to the communities of
24 San Pedro and Wilmington through this fund that will
25 mitigate past, present and future negative impacts of port

1 operations.

2 The community organizations that appealed the
3 certification of the TraPac EIR are incredibly well
4 coordinated and well represented by groups such as the
5 NRDC. And I believe that as long as we continue to ignore
6 the real impacts of Port operations on these communities,
7 we only mitigate for CEQA issues in our EIRs, while
8 continuing to ignore long-existing impacts of port
9 operations off port property, we will continue to be
10 challenged effectively and successfully as we attempt to
11 grow this port.

12 And, you know, I must take issue with one of the
13 statements that the local community gets the greatest
14 benefits and some negative impacts. I would venture to
15 say that the benefits that most communities in California
16 reap are positive benefits, while really the local
17 communities are reaping the most negative impacts of port
18 operations. My communities suffer the highest instances
19 of cancer and asthma and congestion of port traffic.

20 We can see for ourselves -- I now the Lieutenant
21 Governor when he came to the Port of Los Angeles a few
22 weeks ago, saw that port operations don't stay on port
23 land. Air emissions travel into our neighborhoods. Sound
24 pollution is constant. Cargo containers are piled high
25 next to homes. And there are heavy-duty trucks parked in

1 residential streets and barreling through our
2 neighborhoods.

3 It's no coincidence that it took 7 years for the
4 Port to bring forth an EIR for a port terminal project.
5 It is extremely difficult to move forward with projects
6 with such an engaged and vocal, and rightly so, challenged
7 community. If we want to continue to grow this port, it
8 must be done responsibly and we must address all vestiges
9 from current and past port operations.

10 In response to the staff report on, you know, who
11 has responsibilities and in some way suggesting that it
12 was lax city zoning laws that contribute to tires being,
13 you know, abandoned in communities, you know, I take real
14 issue to that. You know, it's the City's responsibility
15 in land-use -- you know, we had land-use codes that were
16 put into place long before the advent of containerization
17 in the 1970s. The City never planned for this Tsunami of
18 growth at the Port.

19 And what I've done under my tenure is actually
20 introduce new zoning laws, new ordinances. I have one
21 that we will prevent all future container storage sites in
22 Wilmington. But we could not obviously remove existing
23 uses. We would have been accused of inverse condemnation.
24 So those were all grandfathered in. But under my tenure,
25 we have changed some of the city zoning laws so that we

1 can deal with it.

2 And by the way, I don't have abandoned tires
3 anywhere else in the city of Los Angeles, like we do in
4 Wilmington. And it is a direct result of the trucks that
5 are there only for port operations that contribute to
6 that.

7 You know, that's why, again, I believe that this
8 MOU is the perfect mechanism to address these issues.
9 Funds from this agreement will be used, as was said, for
10 paying things -- for things like air filtration systems in
11 local schools, window replacements. There was a reference
12 to airport and FAA funds. The Los Angeles International
13 Airport has entered into a community benefits agreement
14 with surrounding cities, where funds are used very
15 similarly to impact -- to mitigate impacts of the airport.

16 You know, we in the city of Los Angeles hold the
17 tidelands at the Port in Public Trust for the People of
18 California. I want to stress the words Public Trust,
19 because when we ignore the real impacts of port operations
20 and do not mitigate them, I believe we are betraying that
21 Public Trust And the public trusts us to do right by them,
22 and that includes using harbor revenues responsibly to
23 address public health and environmental impacts in the
24 nearby areas, as well as the region as a whole.

25 I hope that you will stand with us to acknowledge

1 that these impacts, off-port impacts, are real and are
2 only a result of port operations. And I hope you will
3 work with us as we set up the interim entity and the
4 nonprofit organization, which is the one way that I
5 believe we can uphold the Public Trust.

6 So 3 things. I would love for this Commission to
7 acknowledge that there is a nexus between port operations
8 and the negative public health and environmental impacts
9 in the surrounding communities.

10 Two, that you will direct your staff to work with
11 us to implement this MOU in accordance with the Public
12 Trust Doctrine.

13 And that this Commission will regularly request
14 updates on the progress of this historic agreement to
15 ensure that we are all working together towards the same
16 goal.

17 Thank you very much.

18 CHAIRPERSON CHIANG: Thank you, Councilmember.

19 MS. STEPHENS: Councilwoman Hahn, my name is
20 Melissa Stephens. I am with the American Lung
21 Association. So thank you for this segue way into some of
22 the environmental issues that were touched upon earlier
23 today and throughout. Again, I work for the Asthma
24 Coalition here in San Diego. And we do have partnerships
25 with our local port district as well here in San Diego.

1 The American Lung Association has offices throughout the
2 state, including LA, where we are involved in the TraPac
3 MOU as well with the Port of Los Angeles.

4 We believe this MOU provides a great example to
5 address community health impacts caused by existing port
6 operations and future operations at the expanding TraPac
7 terminal, because the increased port work will increase
8 air, noise, light and pollution in communities adjacent to
9 the terminal and the public streets utilized by trucks
10 going into and -- to and from the terminal.

11 The health impacts of air the pollution from the
12 combustion diesel engines are well documented as you know.
13 Pollutants like ozone, the particle pollutants, are
14 serious threats to public health. Numerous scientific
15 studies have linked these pollutants to lung cancer,
16 asthma attacks, heart attack, strokes and early death, as
17 well as increased hospitalizations for breathing problems.

18 The Childrens Health Study conducted by USC
19 indicates that children living in more polluted
20 communities have reduced lung function, more school
21 absences from acute respiratory problems, asthma
22 exacerbation in areas with more traffic-related problems
23 and more cases of newly diagnosed asthma.

24 These conclusions in the study correlate with a
25 critical asthma prevalence rate data from the Los Angeles

1 county -- Department of Health. And in 2005 the LA
2 County's Health Survey reported a 30 percent higher
3 increased rate of asthma for children in the harbor health
4 district area compared to the average county rate.

5 This MOU could provide the mechanism to continue
6 to build on this health data and continue to add -- or
7 continue to fully quantify community health impacts from
8 port operations.

9 While focusing on the TraPac MOU in the
10 communities of Wilmington and San Pedro, the nexus issue
11 is important for the State Lands Commission to consider
12 for all port communities including San Diego.

13 In San Diego specific, we are -- our data from
14 the Air Resources Board that quantifies that San Diego is
15 the 4th -- or 4th largest emitter of PM, Particle Mass, 10
16 in San Diego. So we're looking at this as a local issue
17 as well. The health data, that is not enough to reduce
18 pollution on port property. Mitigation measures need to
19 occur in the communities that are impacted, for example,
20 truck traffic facilitated by movements of goods. In order
21 to protect public health, it is important that most
22 impacted schools have the support to install local air
23 filtration systems into HVAC systems. And we strongly
24 support other mitigation projects outlined in the TraPac
25 MOU, Exhibit A, all with a clear nexus to the TraPac

1 project.

2 In conclusion, the American Lung Association
3 thanks the State Lands Commission for considering these
4 issues. And we look forward to working closely with you
5 in the future for the TraPac MOU.

6 Thanks again.

7 COMMISSIONER GARAMENDI: Thank you. Tim Schott.

8 MR. SCHOTT: Thank you, Commissioners. Tim
9 Schott again on behalf of the California Association of
10 Port Authorities, which is comprised of the 11 commercial
11 publicly-owned ports. We want to ask you to consider 4
12 issues, I suppose, or items.

13 The first is to make sure that the Commissioners
14 are aware of the very differences of California's
15 individual ports. We have a diverse port system here in
16 California. And there are 3 large containerized
17 facilities, LA, Long Beach and Oakland. But we're also
18 blessed with 8 smaller niche ports, if you will, that have
19 very important local, regional and statewide economic
20 benefits.

21 And not to suggest that there aren't also
22 environmental community impacts at those ports, because
23 there are. We want to make sure that you have an idea of
24 the scale -- the difference between the Ports.

25 LA, Long Beach and Oakland move somewhere north

1 of 90 percent of the goods coming into the state. And the
2 smallest 6 ports between them, between all of them,
3 handles just about 1 percent of the cargo. So it's very
4 important to understand that the impacts are different in
5 that the Ports are each unique and different in their
6 approach. And we want to make sure that the Commission --
7 we think it's important the Commission recognize those
8 significant differences and avoid sweeping changes to the
9 Public Trust Doctrine that could have diverse and
10 unintended consequences.

11 I think Dan Wilkens mentioned one of the
12 differences we see that while a lot of pressure is on the
13 larger ports to mitigate the impacts, what we're seeing is
14 a very real concern that some of the smaller facilities
15 are actually desired by some to take port property either
16 out of the Trust purpose entirely or to simply get at
17 Trust revenue.

18 So the second is to recognize that while
19 California ports all vary in different size, commercial,
20 scope and governance, what is not different is their
21 commitment to the local communities and to the
22 environment. And I think it's really my principle --
23 purpose here today, while we're having this discussion, is
24 to make sure that we don't lose site of the commitment of
25 all of our ports, the best possible management of their

1 facilities and related Trust properties.

2 All of California's ports have significant
3 community outreach and the public participation programs,
4 including advisory bodies and they incorporate community
5 input directly into the planning process.

6 In fact, the issue we're largely in discussion
7 here -- the controversy we're discussing here is because
8 one of our member ports has gone out of its way to make
9 sure that its commitment to the community is clearly
10 defined and precise. And, you know, it would be
11 challenging some of our Trust -- our Trust experience to
12 today.

13 California's ports are on the cutting edge of the
14 clean transportation debate and are national and
15 international leaders in everything from vessel emissions
16 reductions to the use of the hybrid locomotives to the
17 employment of off-peak work and congestion management
18 price. We're proud to say that the Ports are doing this
19 by working closely with those communities and cities and
20 by working closely with the businesses and tenants that
21 rely on the Ports and port facilities as well.

22 All of California's ports have programs to manage
23 and mitigate the impacts and work closely with the
24 communities. And they're aggressively doing that. I
25 think it's also important to keep in mind as the

1 Commission wrestles with some of these Trust issues that
2 we need to put some of that effort into the broader state
3 context as well and recognize that the State and many
4 other State entities, are aggressively working to reduce
5 emissions, improve environmental stewardship efforts and
6 mitigate community impacts as well. And we point to the
7 ARB as one clear example as it relates to ports, where
8 they not only have the direct port and goods movement
9 emissions reductions program, but they have specific
10 emission reductions programs for each of the major
11 emission sources that serve the Ports.

12 Because I think as we look at the residual
13 environmental impact, that does need to be addressed --
14 many of the members here are talking about needs to be
15 addressed at 100 years of residual, we have to recognize
16 that we want to make sure it shouldn't all fall on one
17 project -- or addressing that concern shouldn't fall on
18 one project, one area. And that the State, in fact, is
19 taking a very active role in addressing those concerns, a
20 historic role in addressing those concerns.

21 Then finally, we've mentioned we believe the
22 existing tideland Trust rubric has the flexibility to
23 address the impacts of Port activity and make appropriate
24 nexus decisions for mitigation and use the Trust resources
25 on a case-by-case basis. We don't believe it's necessary

1 to make any wholesale changes to the Public Trust Doctrine
2 in order to mitigate the impacts or manage the Trust
3 property appropriately.

4 We look forward to working with you and your
5 staff as this issue goes forward.

6 Thank you very much.

7 CHAIRPERSON CHIANG: Thank you.

8 John Miller, Jesse Marquez and Kathleen
9 Woodfield.

10 DR. MILLER: I'm Dr. John G. Miller an emergency
11 room doctor. I live in the diesel death zone town of San
12 Pedro near the Port of Los Angeles. I'm speaking today
13 about the health impacts and related health care costs of
14 diesel exhaust pollution created by the Port activity in
15 the communities near the Ports.

16 I speak as an ER doctor with 30 years of practice
17 in the South Coast air basin. A multitude of adverse
18 health effects, such as cancer, asthma, chronic
19 obstructive pulmonary disease, heart attacks and strokes
20 have been linked to diesel exhaust air pollution from the
21 Ports.

22 Surveys done in Wilmington reveal that more than
23 70 percent of families there report one or more family
24 members with some type of respiratory problem, including
25 lung cancer. It appears from the surveys that Wilmington

1 suffers from more than 120 times the national average rate
2 for lung cancer. Experts tell us that the non-lung cancer
3 effects of diesel exhaust, such as asthma, are 10 times
4 greater than the cancer effects.

5 Indeed, port-related activity accounts for 25
6 percent of the total air pollution in the South Coast air
7 basin, according to SCAQMD. Using data from the Union of
8 Concerned Scientists, the healthcare costs of Port-related
9 diesel emissions for 2004 were \$2.6 billion. This would
10 correlate to a healthcare cost of over \$450,000 per ship
11 call at the Ports.

12 The citizens of California are massively
13 subsidizing the shipping industry by paying these
14 externalized costs. And I submit to you that this is a
15 violation of the Public's Trust.

16 Analogous to the air quality problems that led to
17 wide spread call for change are the industrial uses in the
18 near-port communities, which have grown in tandem with
19 huge increases in freight volumes. Your otherwise
20 excellent staff report fails to mention 2 key points.

21 One, many of these near-port impacts were created
22 or sanctioned through discretionary actions by the Harbor
23 Commissioners, such as the container facility on the
24 McFarland Avenue, deep in a residential neighborhood,
25 reauthorized and expanded by the Board of Harbor

1 Commissioner's action September 2004.

2 The report claims that many of these activities
3 occur in quote "another jurisdiction", closed quote. It
4 fails to note that in the case of Wilmington and San
5 Pedro, we are both part of the City of LA as is the Port.
6 We are all in the same jurisdiction. Indeed, the
7 paperwork supporting these discretionary actions taken by
8 the Board of Harbor Commissioners often indicates that
9 they're acting for the City of Los Angeles and these
10 actions have to be approved by the LA City Council.

11 The Port and State Lands Commission cannot avoid
12 mitigating documented near-port impacts by saying they're
13 in some other jurisdiction. If you own the positive
14 impacts of something, such as all the jobs we've heard
15 about, all the economic activity, you must also own and
16 mitigate the negative impacts.

17 It should be a statewide benefit to mitigate
18 those negative impacts incidental to Port operations and
19 discretionary actions by the Ports that occur in near-port
20 communities.

21 Thank you for your kind attention to my remarks.

22 CHAIRPERSON CHIANG: Thank you, Doctor.

23 Jesse.

24 MR. MARQUEZ: Thank you for this opportunity to
25 speak. My name is Jesse Marquez. I'm a lifetime

1 Wilmington resident. I live 4 blocks from the TraPac
2 container terminal. I'm also the founder and executive
3 director of the Coalition for a Safe Environment.

4 I'm here to support the Port of Los Angeles and
5 the Memorandum of Understanding that was developed. My
6 request from you is that you direct the State Lands
7 Commission staff to be more thorough in their information
8 they're preparing and presenting to you.

9 I've given you a handout. I'm not going to read
10 it, because it goes into more detail, but I'll just gloss
11 over some of my concerns.

12 For example, in the earlier presentation, they
13 mentioned how the green park in Wilmington and the Welcome
14 Park in San Pedro would not be eligible for State Lands
15 funding, because it's limited in scope to the local
16 community. But on the other hand, had they had a public
17 meeting in Wilmington and San Pedro and had they
18 interviewed our organization, the San Pedro Homeowners
19 Associations and others, there would have been more
20 information revealed. And what would it have revealed?
21 The fact that the Port of Los Angeles purchased over 200
22 acres in Wilmington off tidelands property and over 200
23 acres in San Pedro off tidelands property.

24 So therefore in Wilmington, where we have a need
25 for soccer fields, girls softball fields and Pop Warner

1 Football fields, the land is not available, because the
2 Port owns it. In the case of San Pedro, a youth baseball
3 team field just got closed down because the land was sold.
4 But across the street the Port owns the land that's
5 currently being leased to a tenant, Amerigas, which is a
6 natural gas facility. Well, if that natural gas facility
7 wasn't there, then that land would be available for it.

8 Another example. I was attending an LA Unified
9 School District meeting in Wilmington for new potential
10 elementary school sites. They announced that 2 sites were
11 eliminated because of the high methyl bromide
12 concentrations in the area. And I'm thinking, methyl
13 bromide, that's been banned in 99 percent of the world.
14 Well, guess what? The Ports have an exemption to that
15 law. And what happened is that the Port of Los Angeles
16 had a warehouse for fumigation of containers on site.
17 They knocked it down, because they wanted it for container
18 back lands.

19 So what happens now? It forces the tenants to
20 have to go off-port property in a particular area to go
21 out into the public realm of things. So they contract
22 with a company who opens up a facility in a Wilmington
23 industrial park, but happens to be fence-lined to
24 Wilmington residents. Not only are they fumigating
25 containers, they're doing it outside in the back. They

1 throw a tarp over it like you termite a house. And 50
2 feet away are children playing there in their houses.
3 There's a church, there are apartments and there's small
4 businesses. In fact, Janice Hahn is only a block away.

5 It turns out that the City of Los Angeles does
6 not know that they are doing methyl bromide fumigation
7 there. The Port of Los Angeles never notified the City
8 Council, never notified City Planning that there could be
9 a potential impact. That's an example.

10 You've heard about some of the containers, these
11 storage yards were running rampant. You think oh, they're
12 pretty much benign, but there are millions of containers.
13 There's hundreds of thousands of them in Wilmington. They
14 become rat havens. The homeless are there. They are not
15 desanitized or decontaminated. So when we talk about the
16 West Nile Virus, they're mosquito havens. They're not
17 cleaned out for any bacterias, any funguses, any molds.
18 They're painted with lead paint. They pulverize,
19 deteriorate and fly into the community.

20 So these are just some of the few examples that
21 when staff does outreach, meets with the public, then they
22 can clarify in more detail that there are off-port
23 off-tidelands impacts that do need to be addressed.

24 And I thank you for this time.

25 CHAIRPERSON CHIANG: Thank you, Jesse.

1 MS. WOODFIELD: Good afternoon. And thank you
2 for having us on the agenda. I feel that it's just so
3 important to be here and I'm just so glad to be here to be
4 apart of this.

5 And I'm not sure how much I can actually
6 contribute to this, because so many people have so
7 eloquently stated everything I wanted stated. And I want
8 to thank Dr. Knatz and Melissa and Councilwoman Hahn
9 because really they said everything that I would hope they
10 would.

11 I am the vice president -- my name is Kathleen
12 Woodfield. I'm vice president of the San Pedro and
13 Peninsula Homeowners Coalition. We are about 14
14 homeowners groups that joined a coalition and we focus
15 very strongly on the Port, because it's one of our biggest
16 issues that impacts our daily lives.

17 And in that capacity, I'm also on the Port
18 Community Advisory Committee, which is a committee of the
19 Commissioners of the Port of LA. And I'm also one of the
20 TraPac Appellants.

21 But I think maybe what I bring here, if it's
22 anything that's unique, that I am a mother who's raising a
23 child in San Pedro. And I do worry all the time, not just
24 about my son, but about my husband who's had cancer. And
25 I worry about myself. I don't have the best of health

1 either. And I know that some of my health issues and our
2 family health issues are definitely exacerbated by the air
3 pollution.

4 I want to say to you -- although, I think it's
5 been inferred many times today -- that healthy communities
6 and healthy Californians that is a benefit to the State.
7 And we have a situation where you're undermining the
8 health of part of your citizens, and undermining the
9 economics of the citizens, then you are not helping the
10 state.

11 And so I was extremely pleased when Mr. Thayer
12 identified the Wilmington buffer area as being a
13 mitigation that absolutely has a statewide benefit. I
14 think actually he said if you mitigate impacts of Port
15 activities, then that has a statewide benefit. So that
16 seems to be pretty all-encompassing when you look at the
17 MOU and you look at our Exhibit A, which we worked very
18 hard on and were very careful to be conscientious and to
19 make sure that those types of mitigations that are in
20 Exhibit A and that MOU have a nexus, and everyone at the
21 table agreed that they had a nexus. And it was a diverse
22 group of people at the table, including the Port of Los
23 Angeles, that these had a nexus. And I'm so pleased to
24 hear that.

25 Also, everyone in this room who has spoken seems

1 to also agree that they have a nexus. So I am just so
2 pleased about that. And I wanted to ask you to please
3 recognize that the MOU requires an interim entity to get
4 involved in some of these legal issues. And it is the
5 purpose of that entity to sit down with the stakeholders,
6 and that includes State Lands, and to figure out -- is my
7 time up? I'm sorry. -- and to figure out some of these
8 legal issues.

9 So I just want you to know that the MOU does
10 allow for that. And please let's move forward and have
11 that happen. I am so excited to have this MOU move
12 forward. We are waiting for the benefits that the MOU
13 provides.

14 Thank you very much.

15 CHAIRPERSON CHIANG: That's great. Thank you,
16 Kathleen.

17 Questions or comments?

18 COMMISSIONER GARAMENDI: I think we've covered
19 this. I want to thank everybody for participating in this
20 and particularly the witnesses that have come forward.
21 It's an important issue. We are dealing with a much
22 larger port and a much greater impact. And we're
23 understanding the health issues and the environmental
24 issues that were really not part of the, somewhat ancient,
25 history of ports. So we'll move forward.

1 Thank you very much, Paul. You've got your work
2 cut out for you. Go get it done.

3 CHAIRPERSON CHIANG: Yeah. I think we'll just
4 have staff work with them. We agendized this as a
5 discussion item, so we can't take formal action. But we
6 can ask staff to work with you on the 3 points that were
7 raised.

8 Okay. Thank you.

9 Next item, please.

10 EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.
11 The next item is item -- the court reporter would like a
12 break.

13 CHAIRPERSON CHIANG: Sure. We'll take a
14 10-minute break.

15 (Thereupon a recess was taken.)

16 ACTING CHAIRPERSON ARONBERG: Okay, let's start
17 the meeting again.

18 EXECUTIVE OFFICER THAYER: Very good. And as the
19 audience will note the 2 Constitutional officers are now
20 represented. And just to acknowledge, the rules provide
21 that only one can be represented at a time. The other one
22 can't even participate. So there's going to be -- by a
23 mutual agreement, they're going to alternate back and
24 forth on the items as to who's going to be participating
25 in them.

1 ACTING CHAIRPERSON ARONBERG: We will figure it
2 out.

3 ACTING COMMISSIONER SHEEHY: Well, I'm glad
4 they're not going to fight over it.

5 (Laughter.)

6 EXECUTIVE OFFICER THAYER: So we're --

7 ACTING CHAIRPERSON ARONBERG: Are we on 57 now?

8 EXECUTIVE OFFICER THAYER: We're on 57. This is
9 a resolution requested by the Lieutenant Governor
10 regarding the use of school lands, which are managed by
11 the State Lands Commission, for alternative energy
12 projects. And our legislative liaison, Mario De Bernardo,
13 will make the staff presentation on this.

14 LEGISLATIVE LIAISON De BERNARDO: Good afternoon,
15 Commissioners. Like Paul said, my name is Mario De
16 Bernardo. And the State has hundreds of thousands of
17 acres under its jurisdiction called school lands. These
18 are not Public Trust lands. And by law the State Lands
19 Commission manages these lands and has a duty to take all
20 actions necessary to fully develop school lands into a
21 permanent and productive resource base.

22 Also, by law, the revenue from these lands go
23 into the State Teacher's Retirement Fund. And, as you
24 know, these school lands are -- they're mostly remote,
25 isolated land-locked desert lands. But they do -- they

1 may not sound like they have a lot of potential for
2 revenue, but they do have a potential for renewable energy
3 projects related to solar, wind, biomass and geothermal
4 projects.

5 Specifically, State Lands has managed these lands
6 for geothermal projects and has yielded 74 million
7 megawatt hours of electric power. These projects help
8 combat climate change, create jobs and contribute to our
9 national security, since they take us away from our
10 dependency on foreign oil.

11 So this resolution basically it supports the
12 environmental response -- the environmentally responsible
13 development of school lands under the Commission's
14 jurisdiction for renewable energy-related projects. And
15 it encourages the submission of applications for these
16 projects.

17 EXECUTIVE OFFICER THAYER: That concludes staff
18 presentation.

19 ACTING CHAIRPERSON ARONBERG: Great. Are there
20 any comments on Item 57 from the Commissioners?

21 Any public comment?

22 Please, go ahead.

23 ACTING COMMISSIONER SHEEHY: I was just going to
24 move approval. I apologize. I preempted you.

25 ACTING CHAIRPERSON ARONBERG: No problem, Mr.

1 Sheehy. We have a motion.

2 Is there any public comment on the motion?

3 Seeing none, is there a second?

4 ACTING COMMISSIONER BUGSCH: Second.

5 EXECUTIVE OFFICER THAYER: So I think if you're
6 running the meeting, I think you're participating on
7 these.

8 ACTING CHAIRPERSON ARONBERG: Okay. I think I'm
9 just not going to vote.

10 EXECUTIVE OFFICER THAYER: Oh, okay. That's
11 fine. Got it.

12 ACTING CHAIRPERSON ARONBERG: A motion and a
13 second. The motion passes 2-0 --

14 EXECUTIVE OFFICER THAYER: Thank you.

15 ACTING CHAIRPERSON ARONBERG: -- with me not
16 participating.

17 EXECUTIVE OFFICER THAYER: Thank you.

18 ACTING CHAIRPERSON ARONBERG: Is our next item
19 58?

20 EXECUTIVE OFFICER THAYER: Yes, it is. This is
21 an update by Jim Trout who's now a retired annuitant for
22 us and has been for some time. And I just have to
23 acknowledge that we're so glad he's been around for, how
24 long since you've official retired?

25 MR. TROUT: 38 years.

1 EXECUTIVE OFFICER THAYER: And when did you
2 officially retire?

3 MR. TROUT: I retired in '95.

4 EXECUTIVE OFFICER THAYER: Sorely.

5 (Laughter.)

6 MR. TROUT. Sorely.

7 EXECUTIVE OFFICER THAYER: So he understands the
8 ins and outs for the last 14 years and has continued to
9 carry that ball, after retirement, on the ins and outs of
10 Bolsa Chica. And he's here to give a report on the one
11 year progress that's occurred since the ocean entrance was
12 opened.

13 MR. TROUT: I know Cindy is familiar with this
14 project, as she --

15 ACTING CHAIRPERSON ARONBERG: Mr. Sheehy, did you
16 want to say something.

17 ACTING COMMISSIONER SHEEHY: Just before you
18 start, I just wanted to commend you on your service. And
19 I think that it's a great thing that you come back as
20 retired annuitant to serve on the State Lands Commission.
21 This Commission, like many other State government
22 agencies, really benefits from the service of people who
23 do come back and work. It's particularly important now.
24 I was just having a conversation with your colleagues
25 upstairs when I was trying to have a sandwich. You know,

1 with the Baby Boomers approaching retirement, we have more
2 and more brain drain from some of our key agencies. And
3 some I just wanted to publicly acknowledge, I think it's
4 great that you're continuing to serve and I appreciate
5 that, sir.

6 (Thereupon an overhead presentation was
7 Presented as follows.)

8 MR. TROUT: Thank you. I appreciate that.
9 There's a number of us that are still, I guess, fighting
10 on or laboring on in stuff that we are familiar with.

11 What I wanted to do today, and basically maybe
12 leave you on a high note is that the State's been
13 involved -- the Commission and its staff has been involved
14 in the Bolsa Chica Lowlands since 1970 when the developer
15 first proposed to build massive subdivisions on the
16 property. And the question of whether the developer
17 actually owned the property was raised before the
18 Commission.

19 And over 3 years between 1970 and 1973, we worked
20 to clarify the title on a portion of the land, about 1,280
21 acres there. And it was determined the State already
22 owned 230 acres of the property. That created a major
23 problem for the title company that had ensured it.

24 And then in 1995, the Ports of LA and Long Beach
25 needed mitigation for an extensive multi-modal project

1 with a ecological reserve along the Pacific Coast Highway
2 at the bottom of the project.

3 --o0o--

4 MR. TROUT: The next slide shows the
5 after-restoration at full tide. This is what it looks
6 like at high tide.

7 --o0o--

8 MR. TROUT: The next slide shows what it looks
9 like at low tide and gives you an idea that the exposed
10 areas that show kind of green in there are tidal flats
11 that are used for loafing, for feeding, for growing things
12 like Eelgrass and Cordgrass. And so that's what it looks
13 like today.

14 I've got a few more slides to go over with you
15 just real quick.

16 --o0o--

17 MR. TROUT: We have several phases of monitoring.
18 Avian monitoring has indicated that there are literally
19 tens of thousands of birds in the area, in the season
20 between March and August, that are using the property.

21 The bird on the left is a Snowy Plover. It's a
22 State and federal rare endangered species. The slide at
23 the bottom right shows different birds, some Terns and
24 some others, as an example of the success that's been
25 going on there.

1 We've had a real good successful second year as
2 well and that report will be out soon.

3 --o0o--

4 MR. TROUT: The next slide shows the fish
5 monitoring, which our consultant did. In the lower left
6 is about a 2-year old halibut that probably came in from
7 the ocean. We haven't seen halibut hatch there yet. The
8 lower right shows Top Smelt, which is a numerous fish and
9 major food source for larger fish and birds.

10 --o0o--

11 MR. TROUT: The next slide -- one of the
12 requirements of the Corps of Engineers and the Coastal
13 Commission is that we are concerned about beach erosion.
14 So we were required to monitor the beach width monthly.
15 And this just illustrates the effect of doing that.
16 There's been no erosion and we haven't had to take any
17 steps.

18 --o0o--

19 MR. TROUT: The last slide is that we have to
20 monitor the vegetation. This is an example of some of the
21 vegetation that has returned.

22 The restoration is one of the largest undertaken
23 on the west coast. And it was financed largely with
24 Tideland Trust money from the Ports of LA and Long Beach.
25 And there was 20 million in State Park and water bond

1 funds put in there. But while it was a multi-federal and
2 State operation, the State paid 97 percent of the cost of
3 the restoration planning and all of that.

4 So I think that it was just good for us to be
5 reminded of what our goals are and what we're trying to
6 achieve here and to see some evidence of success.

7 This is the full report. If any of you are
8 interested, I can send it to you on a CD.

9 --o0o--

10 MR. TROUT: So the last slide is the water
11 quality monitoring, which shows that the ocean off shore
12 of the -- this is inside the project. But the ocean
13 waters off shore of the project are cleaner than they were
14 before the project was opened to the ocean.

15 So I think it's something that we, on the staff,
16 and you as Commissioners can be kind of proud of.

17 Thank you.

18 EXECUTIVE OFFICER THAYER: Thank you, Jim.

19 ACTING CHAIRPERSON ARONBERG: Thank you, Jim,
20 very much. And I am lucky to have been hearing from you
21 and working with you for too many years on this already.
22 I've always known you as a retired annuitant. And now I
23 know why, it's been a long time since you retired in '95.
24 Good for you for being here. I echo Mr. Sheehy's
25 comments. And I think he's got something to say.

1 ACTING COMMISSIONER SHEEHY: I just had a quick
2 question. You offered the report on a disk. Is the full
3 report available or could it be available as a link on the
4 website or does the --

5 MR. TROUT: This full report is available on CD.

6 EXECUTIVE OFFICER THAYER: We could put it on the
7 website.

8 ACTING COMMISSIONER SHEEHY: I mean is that -- I
9 don't want to make a special request, Mr. Thayer. Is that
10 something you normally do? I mean, this is such a
11 wonderful success story or appears to be headed in that
12 direction.

13 EXECUTIVE OFFICER THAYER: I don't know if
14 technically we couldn't put it up. I think you've got a
15 point and we'll do that.

16 ACTING COMMISSIONER SHEEHY: That would be great.
17 Then could you send me the link once it's up.

18 (Laughter.)

19 EXECUTIVE OFFICER THAYER: You bet.

20 ACTING CHAIRPERSON ARONBERG: Is there any
21 additional action required on 58?

22 EXECUTIVE OFFICER THAYER: No, it's just an
23 informational item.

24 ACTING CHAIRPERSON ARONBERG: So Item 59 is off
25 calendar.

1 EXECUTIVE OFFICER THAYER: It's off calendar.

2 ACTING CHAIRPERSON ARONBERG: And we've had Item
3 60 already, the panel presentation, out of order.

4 We have some public commenters, which is our next
5 agenda item, Mr. Thayer?

6 EXECUTIVE OFFICER THAYER: Yes, ma'am.

7 ACTING CHAIRPERSON ARONBERG: Great. I have a
8 few speaker slips here. You know, there are 3 of you, so
9 I'm going to call all 3 you of in this order, Bryan Pease,
10 the general counsel of the Animal Protection and Rescue
11 League. Dorota Valli, and then Eric Townsend. And
12 actually following that it will be Robert Ray.

13 So, Mr. Pease, if you're still here.

14 MR. TOWNSEND: I'm sorry Mr. Pease actually left.
15 He had something he had to take care of.

16 Okay, great. Is Ms. Valli here?

17 CHIEF COUNSEL FOSSUM: He may have ducked out
18 too.

19 ACTING CHAIRPERSON ARONBERG: Were you going to
20 speak on behalf of Mr. Pease?

21 MR. TOWNSEND: My name is Eric Townsend. I was
22 actually after that. There was the confusion.

23 Thank you, Commissioners for having me here
24 today. My name is Eric Townsend. I'm with the
25 Environmental Legal Clinic with the University of San

1 Diego Law School.

2 And we're here today because we're trying to
3 forward some legislative -- some legislation where the
4 Public Trust Doctrine where it's in conflict with actual
5 land grants that are given to certain municipalities or
6 cities. Where there's conflict that -- for one that there
7 be legislation to help -- to give overriding effect of the
8 Public Trust Doctrine over preexisting trust or deed
9 that's inconsistent with the Doctrine.

10 We're also here to seek your help in trying to
11 speak with maybe Senator Kehoe to have actual changes made
12 to legislation that was made in 1931, regarding the
13 Children's Pool in La Jolla. And that's what this is in
14 regards to.

15 ACTING COMMISSIONER SHEEHY: I missed that second
16 point. What was the second point?

17 ACTING CHAIRPERSON ARONBERG: This is concerning
18 the Children's Pool, which is a nearby beach, where
19 there's been a conflict for years about the seals or sea
20 lions on the beach and then used by humans, because of it.
21 And so maybe, Paul, do you want to discuss this and then
22 maybe respond.

23 MR. TOWNSEND: Forgive me. I didn't have a lot
24 of time to prepare this. We didn't know until yesterday
25 that this was actually available.

1 EXECUTIVE OFFICER THAYER: As the gentleman
2 indicated, in 1931 the Legislature granted this property
3 to San Diego for management in the same way a lot of other
4 grants have occurred.

5 However, prior to that time, I believe a
6 prominent woman in the area had created a breakwater, a
7 U-shaped breakwater to protect the area and allow it to be
8 used for children's swimming. And it's come to be known
9 as Children's Pool.

10 The language in the grant specifically recognized
11 this area for use as a children's pool, but also allows
12 for other uses to occur. In language it's a little bit
13 ambiguous, but there's no doubt that it refers to a
14 children's pool.

15 More recently seals have started to use this area
16 as a pupping area and protected, of course, under the
17 Marine Mammals Act. But those who have enjoyed using the
18 pool in the area for children or for bathing have been
19 foreclosed from using it. There have been docents there
20 who tell people they can't get a certain distance from the
21 marine mammals pursuant to federal law.

22 Water quality measurements indicate that the --
23 what the mammals leave behind in the water has ruined the
24 water quality and it's not safe to swim in. And I believe
25 there was even one incident where a woman was bitten by

1 one of the seals. And so effectively people haven't been
2 using the pool.

3 A lawsuit was filed. And the court determined
4 that the language of the grant favored the use of the
5 property as a children's pool. It required the City to
6 take steps to restore it to that use with dredging and
7 take steps that would keep the seals away.

8 From the State Lands Commission's perspective,
9 either one of those uses are Public Trust And the court's
10 decision with the grant required that a certain use be
11 favored have settled that issue. But I think from reading
12 this letter from the Animal Protection and Rescue League
13 and hearing this gentleman's comments, I think what
14 they're seeking is legislation to change the thrust of
15 what the Legislature is mandating, that the property be
16 used for and presumably would allow to be used for -- by
17 the seals rather than for swimming.

18 The State Lands Commission has no jurisdiction
19 over making that change itself. It's a product of the
20 law, that the statute that the Legislature enacted. And I
21 believe at least the letter suggests is that they have
22 approached Senator Kehoe to introduce legislation to
23 change it back to a seal use -- or change it to a seal
24 use. And that she has said that the Legislature can't
25 interfere with the courts.

1 I don't know her real reason for not wanting to
2 introduce this legislation, but, in fact, that's not
3 strictly true, because the Legislature could change how
4 these uses occur. We could certainly inform Senator Kehoe
5 of this if the Commission believes that we should. And
6 there's no action here.

7 I think as well, in reading this letter, it's
8 suggested here that, I think, the State Lands Commission
9 should support that kind of an amendment. And that would
10 be up to the Commission to decide. Generally, of course,
11 when it comes to grants we haven't weighed in on one use
12 versus the other. But we could certainly -- and you
13 couldn't do that today without noticing this to be heard
14 at a future date. But if it were the direction from the
15 Commission, the staff could write a letter to the Senator
16 indicating that this matter is amenable to legislation if
17 she chose to introduce it.

18 ACTING CHAIRPERSON ARONBERG: I guess I'm
19 concerned about the Marine Mammal Protection Act and how
20 does one move the seals out of the area without violating
21 the Marine Mammal Protection Act, which I think prevents
22 harassing --

23 CHIEF COUNSEL FOSSUM: This is Curtis Fossum,
24 Chief Counsel. We've been involved in this litigation in
25 the State Court. We took the position that the City, as

1 the trustee, would represent the State's interest in this
2 and they were unsuccessful in court. There was a separate
3 action brought in federal court trying to assert the
4 Marine Mammal Protection Act. And the result of that was
5 that there are exceptions to the Marine Mammal Protection
6 Act. And the court, in that instance, found that what was
7 proposed in dredging this apparently would not be in
8 conflict with the Act if it was done properly.

9 So --

10 ACTING CHAIRPERSON ARONBERG: It's not a matter
11 of chasing the seals away. It's a matter of dredging the
12 area?

13 CHIEF COUNSEL FOSSUM: Well, it's how it's done.
14 And one would expect that interference with marine
15 mammals, you know at certain points in time, could be in
16 conflict with the Marine Mammal Protection Act, but there
17 are exceptions, and the court pointed to those exceptions.
18 Clearly, the Legislature created this statutory trust.
19 The Legislature can amend it. And I think, as Paul said,
20 if it was the desire of the Commission we could inform
21 Senator Kehoe of that fact. That if she wants to carry a
22 bill or if anybody else does, that's her prerogative.

23 MR. TOWNSEND: There's a couple of things I'd
24 like to address there. One is that the actual Superior
25 Court judge is going to be ruling on the 21st of this

1 month. And he's requested to have a ruling on furtherance
2 of the order before the City has actually gone with what
3 they were supposed to do under the order. And he ordered
4 in an ex parte hearing about 2 weeks ago that whoever has
5 the power to remove the seals should be there at that
6 meeting, should be there at that next hearing.

7 So it sounds like they are going to forcibly try
8 to remove the seals, actually have them removed. So this
9 is kind of an urgent matter that we're -- that's the
10 reason why we're coming here today. It's an urgent
11 matter.

12 And the Marine Mammal Protection Act under
13 Section 109(h) is actually the exception. And the
14 exception is for animals that are -- the rule that allows
15 you to actually do that under nuisance is like, if you
16 have one rogue seal may be attacking fishermen or
17 attacking people in like one case or another. It never
18 has applied to a whole group of seals. And that's kind of
19 the point that we're stating here today.

20 It's like the Public Trust Doctrine, we have a
21 public interest in the natural resources and the
22 environment. And the seals obviously fit within that
23 purview. So we want to protect them under the Public
24 Trust Doctrine, under that interest. And to have that one
25 spot across the beach used as entirely for a children's

1 pool would completely remove the whole interest that we
2 have in the seals. There's nothing similar to this all up
3 and down the coastline of southern California. This is
4 the only place where visitors and people coming to visit
5 San Diego can see something like this that close to a
6 municipality. It's a great thing to have and it's really
7 going to be a big loss.

8 The other Public Trust is that people using the
9 beach for enjoyment and use, which there's 500 miles of
10 coastline up and down the southern coast of California,
11 for people to swim and use anyway they want.

12 ACTING COMMISSIONER SHEEHY: Excuse me. That
13 same argument could be used for the seals. I mean, you've
14 got to be logically consistent. I'd like to ask a
15 question of our staff.

16 ACTING CHAIRPERSON ARONBERG: Please.

17 ACTING COMMISSIONER SHEEHY: Mr. Thayer, is it
18 true that the Public Trust Doctrine would be met under
19 either scenario with this being used as a bathing pool for
20 humans or as an area that would be a protected area or a
21 special area for the seals?

22 EXECUTIVE OFFICER THAYER: Both uses -- and
23 Curtis can confirm or deny this -- are consistent with the
24 Public Trust Doctrine. Neither one are in violation.

25 ACTING COMMISSIONER SHEEHY: I thought that's

1 what I heard you say. It seems to me, and, you know,
2 others may feel differently, that this is not the type of
3 thing that the State Lands Commission would necessarily
4 want to stick its nose into and say we're in favor of the
5 seals or we're in favor of the children. I mean, I think
6 the optics of this either way are not pretty.

7 And if the land -- if in either case if it's
8 consistent with the Public Trust Doctrine, which our staff
9 is telling us, I would be reluctant to have the State
10 Lands Commission, you know, take a position in the middle
11 of this, because in either event it is our responsibility
12 to make sure that the Public Trust Doctrine is being
13 upheld, is going to be the case.

14 And so I appreciate your passion, but I just
15 don't think this is the right venue for that type of fight
16 to take place.

17 MR. TOWNSEND: We're aware of that, Commissioner.
18 The point -- the reason why we're here is just trying to
19 seek help. We're at a point now where there's pretty much
20 nothing that can be done. The actual issue of the Public
21 Trust Doctrine in the actual Superior Court was never
22 brought up. There was never an issue addressed.

23 The only addressed issue was the legislative
24 intent of the actual 1931 Act, and that's all. We feel
25 like we've been let down by the system basically, in that,

1 you know, when it comes to the Public Trust Doctrine and
2 the protection that the public has in its interests to
3 the, you know, Public Trust which incorporates habitat and
4 wildlife, that needs to be protected. That's something
5 that we can't just take the only source that we have of
6 this kind of rookery so close. So many people use it. We
7 have 80,000 visitors that they estimate a month that come
8 to view this. Tons of revenue that's coming in every
9 month from all these visitors, general tax revenue,
10 business revenue. And we're going to replace it with a
11 \$250,000 to \$500,000 a year cost of dredging that pool
12 every year. I mean, now we're going to take revenues --
13 now we're going to substitute revenues for cost.

14 ACTING COMMISSIONER SHEEHY: Madam Chair, I'm
15 afraid that with the 80,000 visitors a month, pretty soon
16 we're going to be hearing from the residents saying that
17 they want to do mitigation and use their Public Trust
18 funds in order to do that mitigation, because of all the
19 increased traffic through their neighborhood and tires on
20 the side road.

21 MR. TOWNSEND: The business owners are really
22 happy.

23 ACTING CHAIRPERSON ARONBERG: Mr. Townsend, would
24 a letter demonstrating what staff said, which is that
25 these are equivalent Public Trust uses, would that be

1 something that you'd be interested in? I mean, just --

2 MR. TOWNSEND: That would be fantastic.

3 ACTING CHAIRPERSON ARONBERG: Is that
4 something that --

5 EXECUTIVE OFFICER THAYER: It would be relevant
6 to either of the Public Trust uses. I think, as was
7 stated though, the court case turned on not the Public
8 Trust, but turned on what the grant said. And so the cure
9 for that particular issue, and there are several issues
10 that are raised here, remains that the Legislature could
11 decide to change the legislation and reverse that.

12 And so, again, we would be happy to write a
13 letter saying either is a Public Trust use, in general, if
14 that's helpful. And we could also, in that letter, say
15 that the Legislature, according to court ruling, has
16 already chosen between those uses, and, of course, has the
17 ability to continue to stay with that choice or it can
18 change its choices if it wants.

19 ACTING COMMISSIONER BUGSCH: Would it just be a
20 letter to Senator Kehoe or would this be a letter to --

21 ACTING CHAIRPERSON ARONBERG: Yeah, and --

22 CHIEF COUNSEL FOSSUM: Staff actually wrote the
23 letter to the City about 10 years ago outlining that same
24 position, that either of those uses seem to be consistent
25 with the Trust and it was really up to the City to manage

1 the lands. However, the court basically found that our
2 letter was not convincing to them. And so they ruled that
3 the pool was the only use that the City could have under
4 the statute. And so it's basically the statute that, as
5 interpreted by the courts, that's binding at this point,
6 and only the Legislature can change that.

7 EXECUTIVE OFFICER THAYER: And I think that
8 letter has been a little bit outdated just because the
9 court has ruled. But I'm not sure whether it would be
10 appropriate to write to Senator Kehoe. I mean, a variety
11 of legislators could decide to get involved in this. And
12 perhaps we could write a letter to this organization and
13 just say questions were raised at our meeting and a
14 response to those questions. Here's the view of staff.
15 Again, we can't -- the Commission can't take action on
16 this anyway, just because it's an informational item under
17 the public comment item.

18 But if it's acceptable to the Commission, staff
19 would write a letter laying out those points that both are
20 acceptable. The grant has been interpreted by the court
21 to allow only swimmers. And finally, you know, this is
22 legislation that's malleable and the Legislature can
23 either sustain or change its mind on this point.

24 Would that be helpful?

25 MR. TOWNSEND: That would be fantastic. We're

1 kind of -- obviously, we have an interest in keeping the
2 seals. We have kind of a -- we have an opinion that the
3 actual Public Interest, it's kind of if the seals were to
4 be removed, we would be removing the whole interest.
5 That's pretty much the only place that's similar to this
6 for the seals, where they're located at.

7 And there was actually a Supreme Court case that
8 was in -- that was determined in, I think, it was 18 --
9 the late 19th century. It was an Illinois case. It had
10 to do with a railroad that went across the waterfront of
11 Chicago. And basically the Supreme Court said where you
12 have a whole interest that's removed -- and the whole
13 purpose of the Public Trust I'm sure you guys, as
14 Commissioners, fully understand it. The Public Trust
15 Doctrine used to be so people could get to the water. It
16 used to be so they could travel up and down the rivers and
17 streams. And it turned into enjoyment and use. And now,
18 it's further been turned into where we're protecting the
19 environment.

20 But our opinion is, in that case, they actually
21 had trusts. They'd given a grant to the railroad, the
22 whole entire waterfront of Chicago. And the Supreme Court
23 came back and said you've removed the whole interest of
24 the public with the water. And they said this is not
25 allowable. You cannot give away the whole Public Trust

1 You can do small things in furtherance of it. And we feel
2 that this is analogous to where we're at now with the
3 seals. This is the only interest we have like this in
4 seals in a rookery where schools can come, you know,
5 elementary school kids can come and actually see how a --
6 what a rookery looks like, what a seal colony looks like.

7 This goes through a municipality. And there's
8 nothing similar to it. And that's what we tried to argue
9 is that having those bathers -- having it used as a
10 children's pool removes that whole interest. And having
11 the seals there, doesn't remove the whole interest of the
12 actual swimmer. The swimmers can go to any beach they
13 want.

14 I know you said the same thing about the seals,
15 but, in fact, that's not really the case, because the
16 seals -- that's a pretty unique environment for those
17 seals. They don't have other environments that are
18 exactly similar to that.

19 ACTING CHAIRPERSON ARONBERG: So to me I think
20 the sense of the Commission is that this letter would be a
21 fine thing for staff to write it. And I would agree that
22 it would be right for staff to provide such a letter. You
23 know, there's a -- near San Simeon, I think there's
24 elephant seals and a great docent program educationally
25 for Californians on the beach there. Maybe something

1 similar to that could be created here.

2 MR. TOWNSEND: That would be fantastic. That's
3 exactly what we're looking for.

4 ACTING COMMISSIONER SHEEHY: I think that's a
5 good solution, Madam Chair.

6 MR. TOWNSEND: Thank you for your help. I
7 appreciate your interest. Thank you very much.

8 ACTING CHAIRPERSON ARONBERG: We have a couple of
9 other speakers on this issue. Do they no longer want to
10 speak?

11 Ms. Valli?

12 MS. VALLI: I would like to make a brief comment.

13 ACTING CHAIRPERSON ARONBERG: Please limit your
14 comments to 3 minutes.

15 MS. VALLI: My name is Dorota Valli. I'm a
16 member of the Animal Protection and Rescue League. I'm
17 also a resident of La Jolla. And just to mention the
18 docent program already exists. We daily are asking people
19 not to disturbs the seals, and to indicate to them about a
20 safe distance from these animals. So we have it most of
21 the time. And it's very costly and a huge effort.

22 I would like to speak also as a taxpayer. The
23 recent court's ruling places a huge burden on the San
24 Diego taxpayers. We know that the budget is realty tight.
25 San Diego's budget is pretty much empty. And we feel like

1 there's -- the judge ordered and pretty much retired a
2 week later. It places a huge monetary burden on us
3 taxpayers.

4 Right now, the City is obliged to go through the
5 whole permit process to complete the dredging. Just the
6 Environmental Impact Report is a half a million dollars,
7 not to mention dredging itself, which has to be repeated
8 every year, too, because sand will keep building up.

9 Also, we don't feel like this ruling will be a
10 remedy to the conflict, because the public has a huge
11 interest in wildlife watching at this place. And this is
12 the only place they can do it, recreational wildlife
13 watching.

14 So we have a huge interest not only in preserving
15 the environment but also monetary interest in stopping
16 this process. And we feel like -- we feel discriminated
17 as the public. We know a majority of San Diegans would
18 rather have the seals protected. We sponsored an
19 independent Zogby poll.

20 So I would like to thank the Commissioners for
21 writing the letter to our organization and clarifying what
22 legislators can do in this matter, because we heard
23 comments, as the lawyer indicates, from Senator Kehoe
24 saying that she cannot change the current situation. And
25 right now, also we feel like, you know, just this bad

1 ruling has terrible consequences on the finances of San
2 Diego.

3 That's what I wanted to mention.

4 Thank you.

5 ACTING CHAIRPERSON ARONBERG: Thank you very much
6 for your comments.

7 ACTING COMMISSIONER SHEEHY: I just would like to
8 reiterate it sounds like this is the best advice -- the
9 best course of action for you is to try to get a change in
10 the law. I think without that you will be unsuccessful in
11 your efforts.

12 ACTING CHAIRPERSON ARONBERG: We have one final
13 speaker card. So if there's anyone else other than Robert
14 Ray please fill out a speaker card.

15 Is Mr. Ray still here?

16 Okay, Mr. Ray is not here.

17 I think we've reached the end of the open
18 session. Do you know of any other business, Mr. Thayer?

19 EXECUTIVE OFFICER THAYER: Not at all. We're
20 ready for closed session.

21 ACTING CHAIRPERSON ARONBERG: Great. Let's
22 adjourn by acclamation. And may we please have the room
23 cleared for closed session.

24 (Thereupon the State Lands Commission
25 meeting adjourned and recessed into

1 closed session at 2:23 p.m.)

2 CERTIFICATE OF REPORTER

3 I, JAMES F. PETERS, a Certified Shorthand
4 Reporter of the State of California, and Registered
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14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 23rd day of October, 2008.

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