MEETING OF THE CALIFORNIA STATE LANDS COMMISSION

December 3, 1999
1:30 P.M.

300 South Spring Street
Los Angeles, California

REPORTED BY:
Dina M. Lossone
CSR No. 11340
Our File No. 1-61220
APPEARANCES:

CRUZ BUSTAMANTE, Lieutenant Governor, Chair
KATHLEEN CONNELL, State Controller, Member
ANNETTE PORINI, Chief Deputy, Department of Finance

COMMISSION STAFF:
PAUL THAYER, Executive Officer
JACK RUMP, Chief Counsel
RICK LUDLOW, Senior Staff Counsel
PAUL MOUNT, Chief, MRMD
DWIGHT SANDERS, Chief, Environmental Planning and Management
SHARON SHAW, Administrative Assistant II
KIMBERLY KORHONEN, Executive Assistant
MARIA C. GUTIERREZ, Executive Secretary I

ATTORNEY GENERAL'S OFFICE:
DENNIS EAGAN, Deputy Attorney General

BARNETT, UNGERMANN & ASSOCIATES (888) 326-5900
MR. BUSTAMANTE: I'd like to call the
meeting of the State Lands Commission. My name is
Cruz Bustamante. I'm joined today with Controller
Kathleen Connell and Annette Porini, chief deputy of
the Department of Finance. The State Lands
Commission was established to administer properties
owned by the state as well as its mineral interests.
Today we will hear proposals concerning the leasing
and management of these public properties. We will
have transactions by our legislative grantees a
request for the retrocession of jurisdiction. The
first item of business will be the adoption of the
minutes from the commission's last meeting.
MS. CONNELL: I move the motion.
MS. PORINI: Second.
MR. BUSTAMANTE: Next order of business
will be adoption of consent calendar. There was an
interest to add Item No. 73 to consent. Do I hear a
motion?
MS. CONNELL: I move the addition of
Item 73.
MS. PORINI: I second.
MR. THAYER: There are a couple
removals that I think we need to handle first.
MR. BUSTAMANTE: Which are those?
MR. THAYER: C-26, C-57, that's been
settled. C-59 is a matter dealing with the shell
mounds that we need to move to the regular calendar
because of an objection we received in the letter.

    MS. CONNELL: I will amend my motion.

I move the consent calendar with the subtraction of
Item 26, 57, and with the addition of Item 73.

    MS. PORINI: I second.

    MR. BUSTAMANTE: Does that take care of
all of it? Let the record show that the motion to
second passed unanimously. Executive officer's
report.

    MR. THAYER: I wanted to draw several
matters to the commission's attention. At the June
meeting there was a proposal by Long Beach to engage
in a study on subsidence in the Naples area. At the
time the commission approved that proposal but
suggested that the city cost share that study. It
was unclear at that time whether the city would be
for it. And I have the pleasure of announcing that
the city has decided to accept the condition that the
commission imposed and that study therefore will
proceed. With a total of around $150, the commission
staff will be working on this jointly with the city
to ensure that it's properly prepared. We expect the
study to be completed later --

    MS. CONNELL: $150?

    MR. THAYER: I'm sorry. $150,000.

    MS. CONNELL: Zeros matter to me as the
chief financial officer.

    MR. BUSTAMANTE: Is that better?
MS. CONNELL: At least we like to take account of $153,000.

MR. BUSTAMANTE: Any questions?

MR. THAYER: The second informational item I wanted to report when the commission reviewed the lease status report in September, this was the report on the status of all of our oil and gas leases. The commission requested that it receive regular updates, and we provide information on the Internet. I would like to say it has been placed on the Internet as well as the press release showing the commission's action in September to accept three quitclaims which changed the numbers. That has been put on the Internet as well. The consent calendar that was adopted by the commission, there's the quitclaim of another oil and gas lease. That will be updated on the Internet as well. Unless there's any questions, the next item I have is the amicus brief. There was a lawsuit in Seattle which had the potential -- it's going to the Supreme Court -- it had the potential to severely limit the authority of the Lands Commission to prevent oil spills in California.

After consulting with your offices, the attorney general filed an amicus on the state's behalf and on the Lands Commission's behalf to try and ensure that the ultimate Supreme Court decision would protect our decision and our responsibilities.
in this respect. I'd like to report that that now
has been filed and that, in fact, 27 states in all
join with California on this amicus. This amicus
showed great leadership on the part of the commission
in California. We had the Marianas join in as well.
My understanding is the Supreme Court will hear
arguments on this case next week. We'll let you know
what the results are.

I'd like to draw to the commission's
attention several awards that the commission and
staff have recently received. The first one is this
Orchid Award which actually went to the San Diego
Unified District. They have a local program out
there to give out orchids and onions.

MS. CONNELL: I'm glad you got the
orchid and not the onion.

MR. THAYER: The port district was
awarded because of the western salt project that the
commission heard earlier this year in which the port
bought out a lot of wetlands, and they'll be managed
by the Fish and Wildlife Service. What happened was
the port understood that this was a cooperative
effort and ensured we were received a copy of this.
They hoped that we would display this in our offices
as proudly as they display theirs. We appreciate the
relationship we have with the port, and we thank them
for making us part of this award too.

The second award I wanted to mention is
there's a BC oil spill task force. It involves the West Coast states in the United States as well as British Columbia. They had the first annual legacy for oil prevention this year. They awarded an award to the high velocity current study group. This group was convened by our marine facility division to address problems in high velocity water areas, area where there are strong current and terminals. We had occasional tankers that are trying to off and onload, and that can cause oil wells. It consists of governmental and industry representatives, and it received this award for its work.

The final award I wanted to point out is the NOA has an excellent award for coastal and ocean research landmarks. They participated jointly with the San Francisco Bay and Conversation and the San Francisco Regional Water Quality Control Board in establishing a one-stop permitting office depot in San Francisco. It has the effect of diminishing the processing time for dredging permits and at the same time ensuring that these agencies are working cooperatively. This Golden Hammer Award was presented by Vice President Gore. NOA is recognizing this effort as well as being for resource management. I wanted to make sure the committee was aware of these awards.

I think we're ready to move on to the regular calendar. We're ready to move on to the
regular calendar then.

MS. CONNELL: May I comment at this point that I want to thank staff for their effort on the workshop today. I attended it very briefly. A part of that Annette, I think, sat through most of it. I thought it was an extraordinary effort by our staff and amassed a great amount of input. I suggested at the workshop that we continue that input process and dialogue, and I certainly hope, Paul, that you and others will carry that forward because I think there's so much more to learn about what is a truly complicated process. But I do think that they did a good job, and I wanted to publicly acknowledge that.

MR. BUSTAMANTE: Thank you. Item No. 71.

MR. THAYER: Item 71, Mr. Chairman, is an informational item. It does not require commission action. We wanted to report to the commission on the efforts your staff have undertaken in response to the Y2K issue. There are two aspects of that issue. The first one has to do with our internal operations involving our own equipment working closely with the Office of Information and Technology. The commission has thoroughly reviewed its own equipment and made various hardware and software changes to ensure that Y2K will not be an issue for this agency.
The second half and perhaps more important half, look at what our lessees have done in response to this issue, oil operating facilities have done to respond to this issue. We've convened several workshops inviting representatives, our lessees, to come and talk about what they've done. We've required our lessees to present to us certification that they've taken the necessary steps to prevent Y2K from becoming an issue on their leases as well. That concludes my report.

MR. BUSTAMANTE: Any questions? If there's no action necessary, we'll go on to Item No. 72. We have in terms of requests to speak approximately 22 requests. We are going to have to limit the amount of time that the speakers will have so that we might be able to get to not only the reports as well as all the speaking that will take place afterwards. So why don't you go ahead and start on this side, Mr. Thayer, and then we'll see how long it goes. And we'll determine the amount of time for each of the speakers.

MR. THAYER: Mr. Chairman, this matter will be presented by Jim Frey of our legal staff.

MR. FREY: We're requesting you to accept an application for a relinquishment or retrocession of partial legislative jurisdiction over a portion about half of the Marine Corps Air Station at El Toro. If you noticed on this display here, the
base covers all of the areas with both yellow and
green presently accounting on the green area and the
United States on the yellow area. And it is this
green area that they would like to make a
retrocession on. If you accept their application and
decide to accept the retrocession, then the United
States will only be able to enforce federal law over
that portion, and the county will take over the
responsibility for exercising civil and criminal law
over the entire base.

Supervisor Smith is here representing
Orange County. He is assisted by Jack Golden and
Michael Gatzke. The United States is represented by
Mr. Jack Wells, and I understand you've had some
questions and concerns about toxics and hazardous
substances on the base. So we've asked Mr. John
Scandura from the Department of Toxic Substances
Control to come and address you, and he is here today
and can answer your questions about that also. And I
believe the Navy has brought some people who can
address your questions.

MS. CONNELL: I think it would be
helpful to know if the commission was to vote at some
point to agree to the retrocession, does that not
just put this issue, as controversial as it may be,
back into the hands of the local elected officials to
handle?

MR. FREY: The controversy is over the
use of the facility as an airport --

MS. CONNELL: We're not determining the
use of the facility. When we vote on retrocession,
what we are doing as a commission is simply
transferring this issue back to the local
jurisdiction; is that not correct?

MR. FREY: You're transferring the law
enforcement authority back to the jurisdiction.

MS. CONNELL: And allowing them to have
an authority however they wish whatever it may be on
this partial sell of land.

MR. FREY: That's correct.

MS. CONNELL: I don't see how our
decision is controversial. Deal with retrocession
and allow the decision to be made at a local level.
Why would that be controversial for us? I see where
it might create controversial issues at the local
level. I served as the keynote speaker for the
National League of Cities, and I was informed by
people at their executive session that the key issue
they have with state governments is the constant
interference of state government in their lives in
the lives of financing and land use decisions.

It would seem to me that we are doing
exactly what the National League of Cities cautioned
me to do at lunch which is give the governments the
opportunity to make their own decisions. Is that not
what we're doing here?
MR. FREY: The retrocession would be to give local government that responsibility.

MS. CONNELL: I'm sure speakers will speak to that issue, but I can't understand why we would not want to move our own process forward so that others can engage in what is rightfully, I think, a local issue here. I think there's strong feelings on all sides, and I benefited from receiving letters from people on both sides. And I think that's a decision that should be openly debated but hopefully at the local level.

MR. FREY: I finished my presentation.

MR. BUSTAMANTE: Do you have other folks to --

MR. FREY: Would you like to hear from Mr. Scandura?

MR. BUSTAMANTE: You didn't outline the folks who are going to be speaking.

MR. FREY: We can proceed as you wish.

MS. CONNELL: I think I raised, Mr. Chair, the toxics issue. I'm familiar from having done some work in Orange County and San Diego County and military bases, the problem that exists with having live ammunition on some of these military sites. And I was concerned from a liability viewpoint that we are going to proceed forward at some point with retrocession that we are certain that the site is not toxic or that later it was found to
be toxic that it had a tragic situation in north San Diego County within this last period of years in which land was deeded back to the city. And it was actually the county, and there was live ammunition still remaining on that base. And children were injured and got killed playing on that land.

I am just concerned that we have done everything in our power to make sure that this land is properly monitored for that --

MR. THAYER: I think we should, therefore, to respond to that concern from the representatives of the Department of Toxic Substances Control, and I believe there's an explosive expert here as well to respond to the ordnance issue.

MR. FREY: Should we proceed on that? Mr. Scandura, would you join us, please. And then maybe if the Navy would speak to this issue also after Mr. Scandura finishes.

MR. SCANDURA: Thank you very much, Mr. Chairman and commissioners. I do have a little bit more extensive testimony. For the sake of time, I'd like to narrow it down to strictly the toxics issues. If I can give a brief overview of the toxic situation including ordnance at the base.

MR. BUSTAMANTE: If you could expand that to include any other toxics, I know in many other military bases, there's a huge range of toxic materials that are either left or are aggregated on
MR. SCANDURA: My name is John Scandura, and I manage the Southern California office of the facilities. The Department of Toxic Substances Control is one of the two oversight agencies involved in the cleanup of El Toro, Santa Ana Regional Water Quality Control Board. And together the two agencies are responsible for ensuring that the environmental cleanup of the base applies with the applicable laws and regulations and that sound science and engineering is employed to protect public health, environment, and resources.

A federal facilities agreement was signed in 1990 with the U.S. Environmental Protection Agency and the Department of the Navy and delineates the roles and responsibilities of the regulatory oversight agencies and permits the Navy to have timely and enforceable cleanup schedules. And for your reference I am furnishing handouts to summarize contamination issues. That I did distribute to staff.

Over the years the base in the Department of the Navy has identified 830 locations of concern, and these include 24 verified historical contamination sites; 425 above and underground storage tank locations of which two thirds actually required cleanup; 124 PCB transformer areas; 200 waste management; 56 oil-water separators; and a
single area suspected to have unexploded organs. When further investigated, most of these areas were found to require no further action. Other areas have had remedial action or action as planned. These areas became contaminated as a result of military operations and waste management practices during nearly 50 years.

The contamination is a result of standard operating practices and bases in civilian airfields before the major environmental law. It's really no better or worse than these other types of locations.

Provided that Congress allocates sufficient funding, the Navy plans to clean up all of the contaminated sites so that the property can be available for unrestricted land use. The exception of that is four sites where landfills for development for housing of schools would be prohibited. In your handout there's a map that shows these sites, and these sites are Nos. 2, 3, 5, and 17. They're all landfills. The Navy has proposed to cap these landfills, and the regulatory agencies are working with the agencies to ensure that the capping is effective and there are appropriate land use restrictions.

There is groundwater contamination beneath the base and off site. Most of it is solvent associated. The Navy is actively considered to be a
source of the groundwater contamination. It is in
the final stages of negotiating with the local water
districts and joint remediation effort for the
groundwater contamination. There is purchase power
particularly near site 1 which I'll talk about in a
second. This is an ingredient of propellents for
rockets, missiles, and they have been found in the
groundwater near site 1.

MR. BUSTAMANTE: Going back to this
chart, am I reading this right that there are 13
superfund sites yet to be dealt with?

MR. SCANDURA: Either they're going
through the investigation phase, or they're actually
going through the public --

MR. BUSTAMANTE: We don't know in those
13 sites what kind of remediation we need.

MR. SCANDURA: There's a pretty good
idea of what it's going to be. There's a few where
they need to do a little better studies before we
come up with a cleanup.

MS. CONNELL: Is it the intention of
the federal government to remediate all these sites?

MR. SCANDURA: All these sites can be
remediated to land use. You can develop pretty much
whatever you want. The exception of those are
landfills. The problem with those four landfills, it
is expensive, plus there's health and safety
ramifications going in there removing and excavating
all the waste. What they plan on doing is capping those landfills. Those landfills can be and those being hospitals, offices, day care centers, and schools. And two of those sites are actually in the area. This green area up here in the northeast corner at this time is scheduled to go to another federal agency for part of a wildlife refuge. The others are within the yellow area, and they're areas that are plants for open space or golf courses.

There is one plant that does call for site 5, some housing development on that. If that reuse plan ever went through, they want to put houses on that landfill, they would have to do the extensive cleanup so they could have --

MR. BUSTAMANTE: That's 3 and 4, site 3 and 4?

MR. SCANDURA: Site 5.

MR. BUSTAMANTE: I don't see site 5 here. Here it is. So you're going to on site 5, you're going to cap it because it's harmful to people, and you're going to make it a wildlife refuge?

MR. SCANDURA: Site 2 and 17 would be part of the wildlife refuge.

MR. BUSTAMANTE: Site 2 and 17.

MR. SCANDURA: Sites 3 and 5, they can't provide. There's capping and monitoring and control systems to control landfill gases and
landfill leaching. They can't put on commercial or
industrial use or open space use for golf courses,
not the sensitive uses that I had mentioned.

MS. CONNELL: Is there any negative
impact from having landfills even if they are capped
adjacent to residential housing or hospitals or day
care centers?

MR. SCANDURA: If it's adjacent,
provided there are proper monitoring and control
systems in place such as gas extraction systems. So
any gas that comes up to the boundaries, those suck
up the gas before they move on to the adjacent
property where there's the sensitive land uses.
There has to be proper monitoring and operations and
maintenance.

MR. BUSTAMANTE: What about runoff?

MR. SCANDURA: Runoff is also control.
What they do with caps is design and engineer so it
runs into culverts and off the property, but in no
way does it percolate down into the landfill and
become part of the contamination. The other big
ting about the cap is not only does it prevent
runoff, but it prevents rainfall and filtration into
the landfill and ultimately to the ground.

MR. BUSTAMANTE: Are those people who
are going to buy homes in that area, are they given
notice that they're living near an area that has been
capped?
MR. SCANDURA: There are disclosure laws both if you had a piece of property, residential property, you have to disclose if you have a hazardous waste or hazardous substance problems. There are disclosure laws for any landfill sites. I forget the exact distance. It's 1,000 or 2,000.

MS. CONNELL: Paul, may I ask a question of you at this point? If you have a staff recommendation here for retrocession, were we expected to vote for all this land to go back, or would you exclude these four properties? That appeared not to be ready to be released by the federal government?

MR. THAYER: The staff has investigated because there have been some commission questions on this score at the last meeting in September. Staff has investigated whether or not the commission could accept a portion of the land that the Navy would like retrocession on, and we believe that legally the commission can do that so that it could exclude areas that it didn't wish to grant retrocession on today. And so that would be a possible option. I suspect that -- well, so that is an option that's available for the commission.

MS. CONNELL: I would like to ask again a timing question here, Mr. Chair. How long is it going to take to get total retrocession -- I mean, total remediation of all these properties, or is it
impossible in some cases?

MR. SCANDURA: The plan is that we should have all the records and decision which outline the cleanup actions for all the sites including the 13 sites that the chairman mentioned within the next two years as far as actually finishing the actual remediation. All of the final decisions for remediation should be done within the next five years include capping of the landfills.

What would be afterwards is superfund sites, long-term operations, and maintenance. That would be for those four landfills.

At this time one thing I might mention is that, when the base was first closed, one of the things that the Navy had to do was assess or identify the clean areas on the base. Back in 1995, they identified, I believe it was 63 percent of the base property as clean. The very latest figure now is that 85 percent of the base property is clean enough for either property transfer or lease.

MS. CONNELL: It's 85 percent now?

MR. SCANDURA: It's 85 percent.

MS. CONNELL: And that means that we are getting a clean bill of health from the federal government on this?

MR. SCANDURA: The federal government and the state government.

MS. CONNELL: Because the California
State Department of Toxics has signed off on it.

MR. SCANDURA: That's correct. That all came out of an environmental baseline survey.

Both our agency and the U.S. Environmental Protection Agency reviewed current findings of those, and later on the federal government proposed to release or sell or transfer property. What they do have to do is run findings of suitability to lease or findings of suitability to transfer. They have to have our agency and USEPA review on those findings before it gets transferred.

MR. BUSTAMANTE: Once the retrocession takes place, is the Navy and the federal government relieved of their responsibilities for cleanup?

MR. SCANDURA: The Navy will stay on the hook as far as their cleanup responsibilities. They will continue to be out there performing the investigation and the mediation and the state and federal oversight agencies that seem to be involved. We would not expect retrocession to have an impact on this at all.

MS. CONNELL: Didn't you do this in Northern California? Didn't you transfer a base up there?

MR. SCANDURA: I believe George Air Force Base. There was a similar problem there.

MS. CONNELL: There's still sites remaining to be remediated in that base?
MR. SCANDURA: There's groundwater contamination that still needs to be finalized.

MR. BUSTAMANTE: Any more?

MR. SCANDURA: There was mention about an area where there might be some unexploded ordnance explosives that Commissioner Connell mentioned. I'll talk a little bit about that. This is what's called site 1, and that is actually located up in the green area. That's the only area -- that site is the only area where we know there may be unexploded ordnances or munitions. This site was used for the disposal of the small munitions such as flares, small ordnances. There's an area of waste contamination present. The plans for this site have included incorporation into a habitat conservation area, but there is also consideration to have this site continue to operate for use by federal and local enforcement agencies.

For this particular site --

MS. CONNELL: Does that mean you value wildlife more than you do law enforcement? Law enforcement can use the ordnance area but not wildlife? Why would anyone be allowed to use it until it's cleaned up?

MR. SCANDURA: Actually this is a site that was a disposal site used by the Marines while it was in operation. When closure was proposed, one of the considerations was to go in there and clean up that particular site, and that's what they intend to
do. And the plan was to turn that over as a wildlife
refuge or habitat conservation. We heard that they
may want to use that particular site, that particular
area for ordnance disposal, munitions disposal.

MS. CONNELL: It wouldn't be a training
ground. They would continue to pollute the property?

MR. SCANDURA: What we have told the
Navy as well as the others interested, they have to
go in there and clean up all the soil contamination
to very strict standards. There's also groundwater
contamination. I mentioned chlorines, that
by-product of explosives. That too would have to be
remediated. All of that would have to be cleaned up
first before they can reuse this. They would have to
go through a permitting process. They'd also have to
get a hazardous waste facility permit and air quality
permits from A.Q.M.D. There may be other agencies to
get permits from. There's a lot of considerations
before they can reuse that as an ordnance range.

MS. CONNELL: We don't need to worry
about that because that is not part of the property
we are addressing today?

MR. SCANDURA: Yes.

MS. CONNELL: Thank you.

MR. BUSTAMANTE: You said you had the
chairman of the board of supervisors here?

MR. SMITH: I'm Chuck Smith, and I'm
chairman of the Orange County Board of Supervisors.
I'm urging you to vote yes on the registration jurisdiction of El Toro. In October 1998, the Orange County Board of Supervisors voted unanimously to support the Navy's application for retrocession. All five members, despite differing degrees of ideas about how the base was to ultimately be used, agree that the public's interest and the public safety will best be served by retrocession approved by your commission. This action is vital for public safety on the base. The military presence at El Toro has essentially ended. The primary activities require base civilian residents of the county.

Facilities such as the base child development center, the golf course, and the officers club are now used by the public by interim lease agreement with the Navy. From a practical realistic point of view, local law enforcement is equipped to handle public safety on the base. Without retrocession, state and county law enforcement is hampered. Orange County Sheriff Mike Corona, who is represented here today by Assistant Sheriff Rocky Hewitt and a few other sheriffs has written to you, and the letter should be in your packet in support of the recommended action. And it urges your support of this item.

Retrocession will enable the Orange County Sheriff's Department to maintain good order on the base as a frontline law enforcement agency with
community policing as its primary responsibility.
The current public safety requirements have
arrangements which rely on federal officers focused
on white collar crime is not for expanding civilian
use and not favored by other law enforcement
agencies. The bottom line is that technically the
agency, though, they have a presence on the base and
are not authorized to make arrests and bring people
into state court for violations of the law. They
have to follow the federal marshals and take them
into federal court.

In summary, your staff report notes
today's recommended localizing law enforcement and
MCAS El Toro. This has no bearing on the reuse plan,
and it has no bearing on the toxic cleanup on the
base. So I respectfully request on behalf of the
people of Orange County, on behalf of the entire
board of supervisors, and Sheriff Mike Corona that
you vote in favor of this retrocession and that you
allow the sheriff's department to take over law
enforcement on the base.

With that I'd be pleased to answer any
questions you might have on this, and we do have as I
noted before, we have Assistant Sheriff Rocky Hewitt
here to answer any questions that you might have on
law enforcement. And we also have a program manager,
Mike Lapin, here and our legal adviser Mike Gatzke.

MR. BUSTAMANTE: Is there any other
formal presentations, Paul, on the agenda?

MR. THAYER: No, sir.

MS. CONNELL: I have a question of Supervisor Smith. Supervisor, do you want us to actually take action that would encompass all of these areas even though they don't appear to be remediated yet, or would you prefer that we transfer back the 85 percent which appears to be remediated? I'm concerned about the exposure.

MR. SMITH: As far as law enforcement is concerned, I would assume retrocession has the jurisdiction of the entire base. If you want to hold back the areas to be remediated, you could do that. The only problem I would see there is the sheriffs may not have the legal ability to make an arrest on those toxic areas if they get trespassers. They would have to detain the person and call in the federal law enforcement agencies to make the arrest. That would be the only problem. But all it does is it gives the sheriffs control, legal control of people who commit crimes on the base or are trespassing.

MS. CONNELL: I understand your law enforcement issue. I just don't want you to be hung with the exposure that kind of liability might represent to you, and I'm trying to protect you against that kind of liability.

MR. SMITH: I understand that, but it
really doesn't make any difference. We're protected by existing laws as part of the Navy's and the Marines's cleanup is concerned, and we have the state Environmental Protection Agency and the national environmental laws to help us there. And we cannot accept deep transfer either. We can't accept ownership of the base which eventually we attempt to do until that toxic cleanup is satisfactorily completed.

MS. CONNELL: Thank you.

MR. BUSTAMANTE: There's no other formal presentation. We'll go to those folks who are here to speak. We have now about 22 folks who'd like to speak. We're going to limit the remarks to one minute so we can try to get through them. We'll try to go in as much of an order as possible in support and oppose alternating. I'm going to give the first two, and then please move quickly to the microphone. The first person is Chuck Smith, who is speaking in support.

MR. THAYER: He just spoke.

MR. BUSTAMANTE: Michael Lapin in support and John Scandura.

MR. THAYER: Just spoke.

MR. BUSTAMANTE: Just spoke. Allan Songstad in opposition.

MR. LAPIN: My name is Michael Lapin.

I am program manager for the Orange County El Toro
Reuse Program office. I had indicated that I would be available to speak in response to any questions that you may have, and I only have at this point one item that I feel by your conversation and discussions that needs to be emphasized. This request for retrocession, retrocession itself does not involve the conveyance of any interest. Retrocession is a legal principle which will probably be explained by other speakers, but it has solely to do with who exercises legal jurisdiction on the base. It has nothing to do with transfer of ownership to the land by the county or state or environmental responsibilities. Those responsibilities will stay intact as they are for retrocession. Retrocession is merely a device which will enable jurisdiction to pass to where it should be.

MR. BUSTAMANTE: Ten seconds.

MR. LAPIN: That is the issue before the commission today. If you have any more questions, I'll be available to answer.

MR. BUSTAMANTE: Why don't we hold -- I'm going to go ahead. If you have a question, we can. Allan Songstad.

MR. SONGSTAD: Mr. Chairman, members of the State Lands Commission, I'm Allan Songstad. I'm vice chair of the El Toro reuse plant authority. I'm also a city councilmember in the city of Laguna Hills. I'm here to urge you to consider the report
of facts as part of your consideration. I don't have very much time here, but we would like to point out as you know this is a very, very contentious issue in Orange County. The entire process of the county government has been called into question, and despite Chairman Smith's remarks almost everything to do with this airport is negative votes being the people who are most supervised.

These communities are affected by the airport. There are a number of actions that are about to take place that we believe, facts for this commission to consider because we believe as our legal counsel will explain in a minute, this process insofar as it relates to the airport, there are interim leases that are certainly subject to the CEQA process --

MR. BUSTAMANTE: Ten seconds.

MR. SONGSTAD: Those actions are judged to be doing the supplemental E.I.R. which has been supplemented by the county. The Navy and the department is preparing for the process of preparing an E.I.R. The city of Irvine has released an E.I.R., and there is a local ballot measure.

MR. BUSTAMANTE: Your time's up. I think that in order for us to be able to get through this, we're going to have to not have all the introductory remarks. I think you have to get right to what you're going to say. We have quite a few
people to speak. If you have a person who's going to come up and speak on some legal points, you might as well not introduce them. You might as well save your time and talk about what you're going to say. And if you'd like to submit any of the more detailed information for the record, we'd be more than happy to accept it.

MR. SONGSTAD: My remarks are in writing. We will submit them.

MR. BUSTAMANTE: Mr. Tom Wall. And after Mr. Wall, Ms. Mimi Walters. And then after that Peggy Ducey and then Michael Brown.

MR. WALL: My name is Tom Wall. I used to teach the base closure process in the Pentagon. I'm a past Orange County lands commissioner. I spent 12 years on the commission. I know the dilemma you face because there is a controversial issue. I urge you to stick to the issue at hand today, and that is retrocession. As has been stated, the only people who will suffer if we do not transfer authority for civil and criminal actions on the base are those people who are using the base, the residents of Orange County who now participate in activities like the officers club, the golf course, the stables, and the recreational facility. Those people do not have the benefit of law enforcement on the base until you transfer that jurisdiction. It will happen anyway.

Your staff report was completely
accurate in that this issue does not deal with
anything but the transfer of that liability. It has
nothing to do with toxic cleanup which will be the
responsibility of the federal government. It has
nothing to do with other issues which are peripheral
to the controversy that exists in Orange County. I
urge you to consider retrocession favorably today.

Thank you.

MR. BUSTAMANTE: Thank you, sir.

MS. WALTERS: I'm Mimi Walters. I'm on
the planning authority board and mayor pro tem for
the City of Laguna Niguel, and I'm opposed to the
airport. I'm here to address critical issues
relative to the item before you at this time. First,
in December 1996, the County of Orange certified the
E.I.R. No. 1063 as a result of a court challenge.
The Superior Court of San Diego invalidated the
E.I.R. and ordered several revisions. That has not
been CEQA. In other words, there is no valid E.I.R.
for the base property at this time. Major
contaminations issues have been found in surface and
subsurface soils. There is groundwater. There is a
possibility there is radionuclidean contamination
throughout the base.

Several state agencies have raised
major concerns and questions regarding the base
contamination. None of these agencies whose purpose
is to ensure public health, safety, and welfare from
environment and public health perspectives --

MR. BUSTAMANTE: Ten seconds.

MS. WALTERS: -- comprising of over a million people have issues related to the potential impacts of the property. These issues have not been addressed and remain outstanding today. The Department of Navy offered approximately a thousand acres of prime habitat area to the Department of the Interior. However, the DOI has refused to accept jurisdiction over major concerns regarding contamination of the potential risk for the liability of the Department of the Interior.

MR. BUSTAMANTE: Your time's up.

MS. CONNELL: I have a question for Ms. Walters if I may. Even assuming that we agreed with all of your concerns, why wouldn't we let you address them at the local level? Why would you want us to withhold retrocession? Why shouldn't you begin addressing those issues at the local level?

MS. WALTERS: We are concerned if you transfer over the retrocession issue, the concern of the toxics in the county would take on that liability, and we as taxpayers in Orange County are very concerned about that liability.

MS. CONNELL: Your county supervisors told us they don't have a problem.

MS. WALTERS: He's not the supervisor that represents us. Jerry Mitch does have that
concern. I as a resident have a concern. Thank you.

MS. DUCEY: Peggy Ducey, Orange County Regional Airport Authority. The Regional Airport Authority is composed of 15 Orange County cities that are urging you to support this application for retrocession. We're doing it on the basis of we feel it's good public policy not only from a public safety perspective but an economic perspective. The county to use that base completely, the full use of its resources will generate ultimately and can defray the cost of maintaining that base. We urge you to approve that.

MR. BUSTAMANTE: Did Michael Brown come up?

MR. BROWN: My name is Michael Brown, and I'm working with the City of Irvine as a consultant working on the cleanup of the environmental contamination of the El Toro base. I'd like to address several aspects of base cleanup postpone your decision not because of the pieces that Mr. Scandura talked about which are being conducted but because there are some outstanding questions. I'd like to highlight a couple of them in a brief minute. First off for about 15 years, the Marines ran a radium point room to radium dials on the aircraft. That room was dismantled and distributed somewhere on that base. It is unknown where the debris was put from that demolition. Because it's
unknown, there is going to be a radiological survey
done. That survey is expected to be completed in
spring 2001. Until it is complete, there may be
areas of significant radiological contamination that
are unknown and raise significant risks for human
health.

MR. BUSTAMANTE: Ten seconds.

MR. BROWN: We're waiting until the
completion of the survey work to determine, if any,
of them by contamination are germane to your decision
about retrocession. Thank you very much.

MR. BUSTAMANTE: Thank you. We have
Jack Golden speaking. Jack Golden, Jeffrey Metzger,
Michael Gatzke, and Charles Bennett.

MR. GOLDEN: Jack Golden, deputy county
counsel for the County of Orange. I direct you to
the letter of Richard C. Jacobs, attorney.
Commission was sent one on December 1, 1999.
Mr. Jacobs's letter is well written, reads well,
and sounds very convincing. But it's based on two
incorrect factual predicates. The first is that the
letter is written as if the County of Orange is
asking for retrocession so it can institute air
cargo. The real fact is the Department of Navy is
asking for retrocession so it can see law enforcement
responsibility and prior responsibility back to local
agencies.

The second incorrect factual predicate
of the letter is no civilian activities will be
allowed until retrocession is done. That is a former
Navy policy that has been abandoned as to whether or
not they will prove it while they retain ownership of
the property. Further environmental laws will have
to be complied with on a federal and state level. So
we do encourage retrocession today. Thank you.

MR. BUSTAMANTE: Thank you, sir.

Jeffrey Metzger, Michael Gatzke, Charles Bennett.

MR. METZGER: My name is Jeff Metzger.
I'm chairman of the Citizens for Safe and Healthy
Communities, a grassroots citizen group in Orange
County which has fueled an initiative entitled the
Safe and Healthy Communities Initiative on the March
ballot. This initiative will require that the
construction or expansion of airports, jails, or
toxic dumps must be approved by a two thirds pass by
the county voters. This initiative qualified 192,000
signatures, most accomplished exclusively by
volunteers. We would request in three months that
approving retrocession will create the appearance
that this commission has chosen to decide this
emotional debate.

As Commissioner Jacobs has pointed out
in his letter to you, we believe Orange County's
purpose of being here is to attempt to begin flying
cargo in and out of El Toro. The main reason for our
initiative, however, is to determine who gets to make
the decision on whether the jail or standard airport
or toxic dumps. Approving retrocession at this
time --

MR. BUSTAMANTE: Ten seconds.

MR. METZGER: It will interfere for the
right which the Orange County voters will be entitled
to passage of this initiative. This will be so
because the commission will be seen providing
indirectly the County of Orange the essential ability
to conduct aviation activities before the people have
their say.

MS. CONNELL: The same question to the
speaker. I applaud the grassroots effort that is
going on here, but I do not understand why you would
not want us to put this back at the local level and
allow the dialogue and the debate to continue. If
you have the initiative on the ballot in March, I
think you should be focused on trying to get the
initiative passed so that you can make your concerns
clear to the county board of supervisors. I don't
understand why you want to delay a discussion of this
at the local level. It's obvious you're all
discussing at the local level. The retrocession if
it was to be taken today would simply give you that
opportunity to continue the dialogue. We're not
directing you to do one thing or the other, the
decision to build an airport or not build an airport.
The decision to build a national habitat is yours.
It should be yours just as it is in Northern California, just as it is across the country. The retrocession does not reflect any posture --

MR. METZGER: We're concerned --

MS. CONNELL: I think you should be concerned about the politics of whether you have the votes that the Orange County Board of Supervisors votes with the people of Orange County.

MR. METZGER: We're certainly concerned with that.

MR. GATZKE: My name is Michael Gatzke. I'll be very brief. I know the record on this matter is voluminous. The reality is that the sole issue that is being presented to this commission under the laws of the state of California on the matters under your jurisdiction or whether or not it's in the best interests of the state of California that the laws of the state of California should apply to activities that occur on approximately 2,000 acres of land that's located in a part of one of the most populous urban counties in the state of California.

The answer to that question is obvious. Of course, it's in the interests of the state of California to be able to apply its criminal and civil laws to actual activities that occur on the land within the state of California. I think the fact that neither the record or the issues that are being raised by those speaking in opposition ever addressed
that simple fundamental question is an indication of the fact that they are trying to revert this issue. The tactic clearly is change the issue. Change the question. The questions before this commission is simple defined by statute. The staff has summarized it accurately in the staff report --

MR. BUSTAMANTE: Ten seconds.

MR. GATZKE: -- would urge you to follow the staff's recommendation.

MR. BUSTAMANTE: Thank you.

MR. BENNETT: Charles Bennett. I'm with RAB, a citizens' group regarding the El Toro closure. This point of retrocession may be a very serious issue if, after the process of retrocession is allowed, the county then goes ahead and does a transfer of land with the federal government. My desire is to protect the state from having another valve. As an environmental chemist, I'm aware of the issues associated with El Toro, and my concerns have to do with the 85 transfers going to go ahead. One of them is building 296 on the southern portion of the base. Waste from that plant was sent to the sewage treatment plant, and from there the waste water effluent went to water the golf course.

From that you can see that the distribution of radioactive material could have gone to many places on the base. It is currently being worked on by the agency, but it won't be ready or
complete for at least 12 months. I would urge the
commission not to urge retrocession at this time and
wait until a more appropriate time. I would like to
prevent the state from incurring liability in the
future.

MS. CONNELL: It's an issue as I
referred to before, and I would like to know whether
or not you think the state has any liability for the
remediation activity or whether this is federal
remediation responsibility.

MR. EAGAN: There's no implications
regarding liability in connection with the action
that this commission is being asked to take today
which is to approve the retrocession. Whatever other
involvement the state may have had over the years,
I'm not aware of that. In terms of the action here
today, that's a liability neutral.

MR. BUSTAMANTE: Mr. Wells, Marcia
Rudolph, Mike Stevens.

MR. WELLS: My name is Jack Wells, and
I'm for the Navy base closure in San Diego. I think
all of the things that I wanted to cover have almost
been covered by other people. I did want to make one
point, though, and I think the attorney general
pretty much made it for me a moment ago. The
Department of Defense is required prior to the time
that it disposes of property by deed to warrant that
all of the remedial action has been taken and also to
warrant that in the event that further environmental remedial work needs to be done that the Department of Defense will come back and do it. We clearly have an obligation to do these things, and neither the state nor the county is going to incur any liability as a result of retrocession.

I also wanted to remind the members of the commission that not too long ago, perhaps two-and-a-half years ago, the matter of retrocession involving Long Beach Naval Station and Long Beach Naval Shipyard was before you. There was a great deal of environmental cleanup that remained to be done and still remains to be done today at the time that the commission acted favorably upon the request for retrocession. I would just ask that the commission take action in accordance with the staff's recommendation and that it take an action that's consistent with other actions that's taken in the state in connection with retrocession of other base closures. Thank you.

MR. BUSTAMANTE: Thank you, Mr. Wells.

Rudolph? Marcia Rudolph.

MS. RUDOLPH: Good afternoon. I'm Marcia Rudolph, councilmember of the city of Lake Forest and more importantly a founding member and continuing member of the Restoration Advisory Board for MCAS El Toro. I was community co-chair for two years. The concern that I have is one that I'm sure
you're addressing, and that is the fact that you're mandated to make sure that the state doesn't get us into some kind of environmental mess. I can tell you when I got involved with the rep, I thought the Navy walked on water.

We have had too many errors and omissions and slicing and dicing of sites where they look for TCE here and on this side they look for TPH and they don't seem to think TPH. We have which was not an issue until Dr. Bennett and I put radium 226 dials on one of the landfills. The issues are too strong and too many for retrocession to take place at this time. I believe it is the wrong time to do it. Let us wait until we have a completed site investigation by the Department of the Navy which they are promising us and we have an oversight of USEPA doing their full investigation and their full oversight of what is happening.

And frankly the environmental risk here is to provide retrocession so the County of Orange and I as a citizen of the County of Orange pay for what they very well may sign off on and take liability for. The state ends up being the deep pocket in that issue. So please not today. Thank you.

MS. CONNELL: Are we in danger of being a deep pocket here?

MR. EAGAN: No.
MS. CONNELL: The answer is what?

MR. EAGAN: No.

MS. RUDOLPH: Sorry. I don't agree.

MR. BUSTAMANTE: Just to correct you on one item, we don't have the need to be concerned about the environmental consequences of our actions today. But I believe I have an ethical responsibility to review those environmental issues until I can feel secure that we are not passing along an environmental disaster. Although I'm not required to, I believe it's my responsibility to.

MS. RUDOLPH: And I really appreciate the situation you're in. As somebody who's been looking at this base for five years, I'm really concerned, and I hope that you can set this aside for three to six months until we have some more answers. Thank you.

MR. STEVENS: My name is Mike Stevens from L.A. Expansion South Central Los Angeles and Inglewood-Lennox, the working class. What you have here today is a group of people who are pretty much what the issue here is this. And I hope you'll vote yes for retrocession to the county. The reason is this. LAX, we carry the burden of these elite people who are here today. We don't have high-priced attorneys that are here today. Lake Forest, Mission Viejo, Rancho Santa Margarita. This issue of El Toro is what this is all about. They voted for it not
once, but they voted for it twice. The people of Orange County did. But an elite group which is here today has asked you not to vote for retrocession because they don't want it to go to the county.

What will happen is this area here that does not have one school, one school -- the dots represent schools inside the north contour. They're not even impacted, not one school. Even if they want to say there's a private one, they're not in the north contour. Take a look at my neighborhood. Take a look at the working class what they have to deal with. Over 40 schools within that flight contour with thousands of people. What's on your table right now is this. We ask you, the working class --

MR. BUSTAMANTE: Ten seconds.

MR. STEVENS: -- to vote yes for the retrocession so the county can put an airport so Orange County can carry their fair share. One minute.

MR. BUSTAMANTE: Done.

MR. STEVENS: Thank you, sir.

MR. BUSTAMANTE: I gave you an extra 30 seconds. You were all wound up. Thank you, sir.

MS. CONNELL: I think that was the most extraordinary amount of information in a limited time. They should use you for scripting 30-second commercials. Very well done.

MR. BUSTAMANTE: We're obviously going
generally over the one minute in many cases but
Mr. Jacobs, Hanna Hill, Charles Bennett.

MR. JACOBS: Richard Jacobs. I wanted
to make sure that my December 1 letter is part of the
record, and I have additional copies for you. You
know from your staff report that Orange County leased
several parcels from the federal government so that
the public could use existing facilities at El Toro
that operated when the base was operational the
stables, the officers club, golf courses. But as you
can see from this map, the retrocession is much, much
broader than those parcels of land.

Supervisor Smith told you it is
necessary to add civilian jurisdiction over those
parcels. This map demonstrates that this request is
much, much broader than that purpose. There's no
need to have state jurisdiction over the airfield for
the purposes advanced Mr. Smith. That's the reason
for this application, and I suggest to you the answer
is that this is a major step towards the interim air
cargo operations that the county has planned for
years. This is the first step to facilitate that
operation. That's what it is about. This is proper
independent obligations.

MR. BUSTAMANTE: Ten seconds.

MR. JACOBS: If I could, there's two
errors I think in the staff report that I think is
essential.
MR. BUSTAMANTE: You'd better make them very quick.

MR. JACOBS: It's appropriate to accept retrocession where military operations have seized and closed military installation has been converted to civilian use under leasing or under arrangements. That's not correct. The central airfield has not --

MR. BUSTAMANTE: Paul, you want to address that?

MR. THAYER: I think the reference in the staff report is to the other interim uses that Mr. Jacobs described around the airfield.

MR. JACOBS: This retrocession application is far too broad. It's unnecessary to clear the entire airfield as part of that, and I would make the same comment with regard to the very last sentence in the staff report that says now that the entire 2,319 acres have been subjected to civilian operation control, retrocession is appropriate. Again, that's not true.

MR. BUSTAMANTE: Would you like to --

MR. THAYER: I think Mr. Eagan has a comment.

MR. EAGAN: The purpose of the staff involvement with staff in its drafting was to say what is said on page 2 that the Navy -- actually Marine Corps is no longer there and ceased being operational on July 2. It's true that some of the
activity on the base is passive. It's primarily the
least active ongoing activities, but that doesn't
mean that the airstrip is any less maintained by
authority of the county cooperative agreement
regarding base caretaking with the Navy.

MR. BUSTAMANTE: One last counterpoint.

MR. JACOBS: I think the point I would
make is that, if as Supervisor Smith said
retrocession is appropriate to provide jurisdiction
over the parcels that leads to this much too broad.
It goes much further than that.

MS. CONNELL: You would agree with
releasing, say, the 85 percent which has been
cleared?

MR. JACOBS: I couldn't make that
commitment without talking to my client, but I'm not
referring to the 85 percent application issue. I'm
referring now to the small number of parcels and the
acreage over which there are actually civilian
operations as compared to the actual airfield. I
think the airfield was probably 95 percent of this
whole retrocession request. If I could, I also have
one more map from the federal application which I
think demonstrates that even a bit more clearly. The
map I just handed to staff is from the federal
government's application, and I think it quite
dramatically shows that really what we're talking
about here is the heart of the base, the airfield
operations.

MS. CONNELL: You would basically -- may I see if I understand this? I'm not sure I understand this. We have so many different maps here today, and maybe the commission is not operating. Keep that one up for just a minute. You would basically say this area is the area that you are part of the issue you want to see (indicating)? Which part of it are you saying?

MR. JACOBS: What I'm suggesting is this whole area of the runway former military airfield, that's unnecessary because none of those parts are leased to the County of Orange.

MS. CONNELL: You would have a problem, or you would not have a problem?

MR. JACOBS: We do have a problem absolutely. The other map here shows where the parcels are. For example, you see "rec" on this map. Those are all parcels in the perimeter of the airfield, and the major part of the airfield is not necessary to provide civility.

MS. CONNELL: Mr. Chair, do we have the added law enforcement still here from Orange County? Wasn't somebody here from Orange County?

MS. PORINI: I believe the sheriff is here.

MS. CONNELL: I'd like to have a response to that comment.
MR. BUSTAMANTE: The comment was?

MS. CONNELL: You don't need an airport
to provide civilian jurisdiction. I'm not sure how
you get to those areas. I don't know the
transportation routes for that area.

MR. SMITH: Chuck Smith, chairman of
the Orange County Board of Supervisors. They're
suggesting that the airstrip itself not be allowed
into jurisdiction, but currently the Navy hobbyists
use those airfields to use their model airplanes. So
the county or the law enforcement is present on the
base, and they should be able to handle law
enforcement on the airstrip as well as outside the
airstrip. If I can pose a hypothetical case where
supposing a bunch of kids took their hot rod to the
air base without retrocession of jurisdiction, our
sheriffs will not have the power to stop them to ask
them to detain them.

MR. BUSTAMANTE: For the reporters
please don't give that as an example in the story.

MS. CONNELL: Cruz and I are parents of
young children, and we were thinking this would be an
attractive weekend adventure. We don't want to
encourage thoughts along that line if there's still
live ammunition out there.

MR. SMITH: There are other entities,
the one that used the airstrip for various for
parking for events and various activities nonrelated.
MR. BUSTAMANTE: Hanna Hill, Charles Bennett, Tristan Krogius.

MS. HILL: Hanna Hill of Orange County. I represent no one. Ms. Connell, you are correct that local issues should be determined at local levels. Staff also is correct that retrocession does not imply a specific activity. However, the situation of Orange County is different. Had it not been for the jurisdiction, there would have been interim cargo operation last July leading to full operation.

Ms. Connell, you offered before to protect the county by keeping 15 percent out of retrocession, and we need the protection of this commission. Five years ago, exactly five years ago, this county declared bankruptcy, the worst in the history of the nation. We believe there is an airport in there is not enough demand to have all of the operation to support revenue bonds. We already have. John Wayne Airport had $200 in revenue bonds. So yes, we do need to determine it on local level with or without a retrocession, but to act now, we need the protection of this commission. The taxpayer of this county need the protection. Thank you.

MR. BENNETT: Charles Bennett. I have already spoken, but I would be glad to add ten seconds about it if you'd let me.

MR. KROGIUS: Tristan Krogius. I'm
with Taxpayers for Responsible Planning, T.R.P., a grassroots political organization headquartered in Orange County devoted to responsible land use decisions. I'd like to just address the question of why should the retrocession decision not be pushed down to the local level. My answer is that the base reuse process in Orange County has essentially been hijacked by the special interests. The law specified that base reuse decisions should be made by the affected communities, but we have an airport being mandated by a three to two majority of the Board of Supervisors acting as the LRA which does not represent the best interests of the community adjacent to the base who should be making the base reuse decisions. For all reasons set forth in the letter of February 2, T.R.P. strongly urges this commission not to approve retrocession. Thank you.

MS. CONNELL: I have a question, Mr. Chair.

Are you suggesting we never approve retrocession ever?

MR. KROGIUS: Not at this time.

MS. CONNELL: That's different from what you just said.

MR. KROGIUS: I'm trying to condense my reports.

MS. CONNELL: You have no time period in which you expect this commission to act? We're
going to sit here and hijack the decision?

MR. KROGIUS: As set forth in the letter, we think retrocession should take place at the appropriate time but not now.

MR. BUSTAMANTE: Kate Keena. And last but not least Deborah Acker. Did I miss anybody besides that?

MR. GRIFFIN: Charles Griffin.

MR. BUSTAMANTE: You'll go last then, sir.

MS. KEENA: Kate Keena, South Orange County Chamber of Commerce, the largest business organization in south Orange County. I respectfully request as Mr. Krogius requested to postpone your decision until there is more information. It is extremely controversial. It is three to two as far as the Board of Supervisors is concerned. As a business community request, we ask that you postpone your decision until at least after March 7. Thank you.

MR. BUSTAMANTE: Thank you. Deborah Acker.

MS. ACKER: Deborah Acker from Ontario, California. I have been retained to do some aviation marketing at Ontario International Airport, and I would like to note that we are working very hard to develop Ontario's airport to a greater air cargo capacity. And it is my understanding that, if this
retrocession takes place, a first of the year air
cargo could be processed in El Toro. Immediately
they would have to move out of Orange County. We are
doing a lot of work, and it's come to our attention
that L.A. has not been marketing air cargo.

I was in a conference that had no
information about Ontario. Ontario's trying to get a
route to China. We are the U.P.S.'s second largest
air facility in the world, their gateway to the Asian
Pacific. This would hamper job growth to the city
equivalent to the size of Chicago. What will happen
is that the jobs will be in Ontario. The Inland
Empire residents would have to commute, and this is
taking jobs from our community and putting them in an
Orange County where there's already a job surplus.

Thank you.

MR. BUSTAMANTE: Mr. Griffin, the last
speaker.

MR. GRIFFIN: My name is Charles
Griffin. I'm from Newport Beach. Our county has
suffered already damages from delays in not being
able to start our air cargo service. And we can
start the air cargo service probably immediately as
soon as we get a lease from the Navy that we do not
have to transfer the deed at this time. We do not
have to get the liability of the contamination at
this time, and this is a national asset. Property is
owned by the government and the Navy, but really it
is being transferred essentially to the Department of
Transportation because the county will act as
proprietor and get the land at no cost because it is
essentially a national asset.

And it's a national asset because, when
you look at this map, you can see that there are no
homes from one end of the county to the other with at
least a four-mile broad. I know that today I'm
urging you to get restitution because it has been
used as an excuse to get real damages on us by
delaying the air cargo operation. Thank you.

MR. BUSTAMANTE: Thank you, sir.

MR. GRIFFIN: I have one more sentence.

That is the Safe and Healthy Act is patently
unconstitutional because this involves interstate
commerce, and the first article in the Constitution,
Section 6 says that that is given to Congress. That
power that is given to Congress in Article VI says
that no local law like this referendum can override
the congressional action. Thank you.

MR. BUSTAMANTE: Thank you, sir. We've
heard a lot of testimony, and we've had a chance to
read a lot more before coming here. And frankly I
don't know about the rest of the commission, but I'm
still not -- well, actually I'm a little confused.
I'm not quite sure as to what the appropriate issues
are here. We have local government cities against
counties. You have a split on the Board of
Supervisors. There's still major concerns, and although it may not be an absolute legal requirement that I consider environmental issues in my decision, I feel responsible to be able to do that.

There's an election on the March ballot, I guess, again, and there is no plan although there's a concept of a partial retrocession. There is no plan for that. And so if there is some interest in potentially looking at partial retrocession, I would be open to discuss something along those lines. But at this point I'm not interested in that. In fact, I would ask the staff, is there at this point a way to have this item be listed as an informational item for board action to be taken in the future?

MR. THAYER: I think the item was listed as informational, but there's no reason -- listed as an action item, but there's no reason why the commission cannot decide that it would like to seek additional information and delay its final decision.

MR. BUSTAMANTE: I'd like to hear from the other commissioners, and maybe we can deal with that issue.

MS. PORINI: Mr. Chair, I agree with your comments. Instead of getting clarification, I am confused. Today is the first time that we've actually heard that there was a possibility of
dividing up the retrocession so that it could be related to some discrete parcels as opposed to the entire area. I would like to see if we can get staff to pursue that issue to come back to us.

MS. CONNELL: I would like to take action today, but I don't think I've got a second vote to do that. It doesn't sound like the second vote is there. My concern is that having sat on this commission now for five years, we face this difficult situation in almost every case whether it's retrocession or it's another environmental matter. And we have been lambasted for the five years I've sat on this commission for being the spokesperson for local governmental decisions. We were told just recently in oil wells in Santa Barbara, "Get the hell out of oil issues and let local government make the decisions. Let the counties in California that are impacted by this pollution play a bigger role."

When we were in Northern California on the Mono Lake problem, they said, "Stay out of it. Let local government take care of the problem." In San Francisco before Cruz and Annette sat on the board, the governor and I, Governor Gray Davis and I were told to stay out of the city of San Francisco and let the City of San Francisco take responsibility for an environmental matter up in the Bay Area.

I have been pounded now for five years by local government of the importance of staying out
of their jurisdictional disputes. I come into this meeting today, and I hear some people from local governments saying, "Be our protector." I find it such an ironic situation to be in because I'm trying to be truly sympathetic to the need for local government to take control of their destiny here. And yet I hear this kind of fractured view as to why you want the State Lands Commission to continue to delay. I am not of the opinion that a delay gets us anything here because at the end of the day, local government is going to have to bite off this problem. And I understand there is this three to two problem at the Board of Supervisors. I understand there is tremendous concern and fear that this land is going to be turned into an airport facility albeit maybe a cargo facility and there are many who are opposed to that.

I don't think the state should continue to intervene. I do have a severe concern, and that's why I asked for the toxic review that this land be passed clean to the counties and that we not have a situation where we would be passing land to the county that would later have a polluted situation although we've been assured by our attorney general and would tell me that we have no legal liability in such matters. I would have liked to have seen us take action today. I can see we're not going to do that.
If we're not going to do that, can I stipulate a couple of things I'd like to see happen? If we're going to delay today which is not my initial choice, I would like to see the following sources of detailed information coming back to this commission immediately.

I would like to know exactly what we can do in terms of the ability to define retrocession other than in total matter. Is it possible to segregate out certain land areas whether -- I believe there were two, maybe four that the original gentleman, the toxics expert from the federal government referred to.

MR. BUSTAMANTE: A partial retrocession?

MS. CONNELL: He referred to four sites that were not concluded, and he named them. I think they were two --

MR. BUSTAMANTE: You're talking about having something come back?

MS. CONNELL: I want to know whether we have that authority, and, if so, how would you distinguish the sites that you would include and the sites that you would not include? I'm not interested in the politics of local government here. I'm interested in only the environmental issues. My concern here is to move forward on retrocession, and I want to protect the state or protect the counties
from those sites which may be polluted only if they
cannot be assuredly transferred. So I want to know
can we get some further clarification from the
attorney general on what that exposure might be?
Secondarily I am not interested at an
extended discussion of this issue and an extended
delay. I do think this issue belongs at the local
level. I am the one that audits local government,
and I am constantly berated for having to get engaged
in local government issues whether it's the school
district audits, whether it's the government audits,
whether it's the audits of the superfund sites. We
are constantly attacked for not giving that authority
back to local government, and here we have an
opportunity to do that. I would like to see local
government leaders rise to the occasion and deal with
this issue as contentious as it might be and have
those debates.
If we're going to have a further
discussion of this matter, what are we going to
discuss in the future? I don't want to go to an open
hearing where we have 22 or 45 or 77 people come
before this board because at the end of the day, we
have got to have some alternative actions that we're
willing to consider here as a board and move forward
on them.

MR. BUSTAMANTE: First, I can't wait
for the locals to take this issue. I can't wait to
give it to them, but I don't recall this year. Maybe
the staff can correct me. What I don't recall having
been lambasted for is getting involved with projects
that have delayed projects. My recollection is that
we worked cooperatively with many jurisdictions up
and down the coast, inland throughout the state on
major projects dealing with all kinds of development
issues, issues of endangered species, issues of
coastal protection, issues of just about everything
there is.

MS. CONNELL: And we have a delay.

MR. BUSTAMANTE: We have moved many,
many, many projects off to the side that we've moved
including today's consent calendar which had several
dozen. And so although I'm very interested in
allowing the local governments to deal with this
particular issue, I don't know that I've fulfilled my
responsibility yet as the chair of this commission
and look forward to a time soon that we can, in fact,
move this item. I'd make a motion that we make this
today an informational hearing and we move this for
board action at some future board meeting.

MS. CONNELL: Are we going to set a
date for that?

MR. BUSTAMANTE: I have no date in my
motion. I'd like to set it as soon as possible.

MS. CONNELL: Do we have a meeting
planned, Paul?
MR. THAYER: Our next meeting normally would be in February if that was coincidental with the commissioner's schedules if we could bring one in about two months hence.

MR. BUSTAMANTE: If we can go through all the information, we might be able to set it for that. There's a motion. There's a second. Those in favor say aye.

MS. PORINI: Aye.

MR. BUSTAMANTE: Those opposed.

MS. CONNELL: I'll abstain.

MR. BUSTAMANTE: Let the record show that the vote was two ayes and one abstention. We want to thank all of the members from local government and all the speakers, all the presentations for having come here and given us a lot more information. Maybe we can get to a decision here soon. Thank you all.

Let's go on to the next item. Item No. 73 was placed on consent and passed.

Item 74, adoption of emergency regulations for implementation of the commissioner's new ballast water management program.

Mr. Thayer?

MR. THAYER: Thank you, Mr. Chairman.

Maurya Falkner --

MR. BUSTAMANTE: Please be courteous on your way out, please. We're still conducting
MR. THAYER: She is an environmental specialist who will present this item.

MS. FALKNER: I would like to talk to you about California's control program that we're asking you to adopt today.

On October 8, 1979, Assembly Bill 703 was signed into law as the Ballast Water Management for Control of Nonindigenous Species ("the Act"). This provides a mandatory statewide multiagency ballast water management program that becomes effective January 1, 2000. Scientists have long recognized that organisms are transported from one part of the world to the other to shipped ballast water. Ships transport ballast water in order to provide civility and maneuverability. It was taken on at one court and discharged in another court concerning normal operating procedures. The amount of ballast water that's carried on any given vessel and potentially discharged into a port varies considerably but can be up to 20 million gallons.

Small organisms are easily pumped into and out of ballast water tanks during these normal operating procedures, and studies have shown in a single ballast tank, greater than 1 million organisms can be found in there. Fortunately most of the organisms don't survive out of their native habitats. The few that do can cause severe ecological and
MR. BUSTAMANTE: Excuse me.

Commissioner Porini?

MS. PORINI: I know I'm going to cut off your presentation here. I had one concern as I was going through this item, and I'm concerned about the impact that this has on the smaller shipping lines. And I know we're setting the fee at $600 per inspection in our emergency regulations. I just wanted to see, first of all, if we could come back before 120 days for emergency regs if we can come back before that point in time so we can evaluate what kind of impact this is having on the smaller shipping lines because I didn't think that was the intent of the original legislation.

MR. THAYER: I think we're on the essential issues today on this item. We've already drafted the permanent regulations, and we expect or we have drafts of those permit regulations. We expect to be having workshops in the next couple months. It's only a question of compliance with the OAL requirements and the ability to work out an agreement amongst the different competing and sometimes commercial shipping interests that might prevent us from moving that quickly. I'm not sure that will be ready for the February meeting. There is a status report which might be able to give you an update which we could discuss this. Would that be
the commissioner's concerns?

MS. PORINI: That would. I think in
the interests of time, we're all prepared to go ahead
with this item. I would move that we adopt staff's
recommendation on this emergency --

MS. CONNELL: I second.

MR. THAYER: There may be speakers on
this.

MR. BUSTAMANTE: Item number?

MR. THAYER: Number 74.

MS. CONNELL: If they're in favor,
maybe they would like to -- when you're ahead of the
game. You're opposed to it. You definitely want to
speak then.

MR. BUSTAMANTE: Let's get to the
speakers.

MS. PORINI: I'll withdraw my motion
until we've heard from the speakers.

MR. BUSTAMANTE: Lynn Korwatch, Kenneth
Levin, R.D. Kleist, and John Winter.

MS. KORWATCH: We're all set to take
some action. My name is Captain Lynn Korwatch, and
I'm the general manager at Marine Ops. at Matson
Navigation Company. We have already submitted our
comments to each one of your respective offices, but
I'd like to take a few minutes to expand on it if I
may. Our chief concern --

MR. BUSTAMANTE: You have two minutes.
MS. KORWATCH: With the proposed $600 flat fee, this isn't consistent with the statute because it fails to take into account impact of the fees on the Hawaii trait. We're primarily a domestic carrier currently making 26 voyages between the West Coast and Hawaii every year. In contrast most involved in the Asia Pacific trade make 10 voyages. Because of the high volume of vessel terms Hawaiians service, the imposition of a uniform per voyage chart ballast water management program would severely burden trade even though our management -- even though our Hawaii vessels, the cost to the state in monitoring compliance of vessels in this trade would not be much different than reviewing the vessels in various foreign trades which call it state ports.

We have a policy applicable to all our vessels, a known vessel pattern regular ships' officers and management personnel accessible within the state and already enacting a policy of compliance with the California law, all of which should speed up monitoring. We do not intend to not ballast. Yet under a flat fee arrangement, each Hawaii vessel would bear 2.6 times borne by the Hawaiian trade. U.S. flag carrier and a domestic subject to U.S. and state tax law requirements and vessels are subject to all of the requirements of the United States Coast Guard.

None of the operators of the
foreign-bound vessels are in the same situation. State statute mandates that the impact of the fees on the Hawaii trade be taken into account. We have heard the State Lands Commission is interested in resolving this issue before the permanent regulations go into place. Paul Thayer has offered to meet with us, and we would like to take advantage of that opportunity.

We ask for a commitment fee schedule in the permanent regulations and provide lower rates for vessel Hawaiian services. We believe this is required by the statute. Thank you.

MS. CONNELL: I raised this concern too in our briefing and I was assured, and I'd like maybe Mr. Thayer to again ensure us publicly that they intend to have public workshops on this matter so they can decide ways to structure the fees for companies with shorter trips. I think your point is well taken. I understood that it would be addressed in the adoption of the nonemergency regulations; is that correct, Mr. Thayer?

MR. THAYER: Yes, Madam Controller. We believe the law is clear that we do need to consider those factors, and I've assured the Matson representatives that I've spoken to in the past that we will look at that issue. It's a complex matter because the total program is going to run up costs of around $6.4 million. Not all of that is coming to
the Lands Commission. There are several studies that are going to be undertaken by the state agencies. Those need to be funded. For every vessel where the fee is reduced, we must receive assurance that the requirements of the legislation be carried out and funded. Given those constraints, we intend to meet the requirements of the legislation. We will meet with these steamship companies in an attempt to do that, and we expect when we bring back the permanent regulations that they will show we are going to be considering those factors.

MS. CONNELL: Does that meet your concerns?

MS. KORWATCH: Yes. Because we have frequency, we're not suggesting we pay less. We resent having to pay more. We want to pay equal. Thank you.

MR. BUSTAMANTE: Mr. Levin.

MR. LEVIN: I'm Kenny Levin of Foreign Ship Owners Association, vice president. We represent most of the vessels that service California. First, let me say that we supported AB 703 in the form that it is now, and we certainly support most of the emergency legislation with one minor exception. I'd like to take a correction in the staff report. It says that ballast borders the primary source of the base of species. That's not true. We are a major source, and we are one of the
primary sources. We are part of the problem in the shipping industry, and we want to be part of the solution. We are not the primary source.

In the mitton crab paragraph, there is probably something brought in on foodstuffs out of some Chinese restaurant. But since we're going to take the blame for mitton crab population, this winter mitton crab production went way down due to, I think, cold weather. Since we're taking blame, we'll take the credit for that also. There's some concern also about the effectiveness of the program's compliance, and people are looking at the Coast Guard program which started in July and seems a very terrible compliance. I think it should be brought to your attention that the Coast Guard sent out their electronic format of reporting. I received mine in November, and there's a pamphlet telling you what to do. I received it last week.

No wonder the first quarter's been a slow one. I don't think the State Lands Commission is going to have that problem. The one area where I do have a concern and where I do want to see a change in the emergency reg is in the actual fee designation number. I believe they're proposing $600 which is in Exhibit M. If you look at their numbers, $6.4 million is the best forecast of what it's going to cost for four years, and serving California, we have roughly 10,000 vessels a year which comes out to
40,000 over four years of this program.

Now, not all will be required to pay this. There's quite a bit of exemption. If we drop it down to 60 percent, 6,000 vessels a year, you run the numbers. If you have a calculator up there, great. If not, it's under $400 per voyage as opposed to $300 per voyage. If we go ahead and use a deadbeat number -- I don't know what you want to call it -- 70 percent. It's still a low number to the point where $500 per voyage exceeds the actual cost -- not actual cost. The forecasted costs by probably 50 percent and $600 per voyage by nearly a hundred percent. We don't have a problem with --

MR. BUSTAMANTE: Ten seconds.

MR. LEVIN: We have no problem with the emergency regs. We'd like to see it dropped to a more realistic number.

MR. BUSTAMANTE: R.D. Kleist. I believe that's the way you pronounce it.

MR. KLEIST: Mr. Chairman, members of the commission, my name is Bob Kleist. I'm speaking on behalf of Evergreen Marine which is our parent company. Evergreen American Corporation is our agency in the United States. I'm also a member of the board of directors distinction association of Southern California. Before talking about this issue, I'd like to thank the commission because of its involvement in the so-called nexus study in nexus
suit which has demonstrated to us that the commission is sensitive to the costs of doing business in California courts. And that's simply the issue that I'm here. I registered in opposition to this only because, as Mr. Levin has pointed out, we believe that the proposed rate schedule is far too high.

When you're operating as we do five shifts a week into California ports, it amounts to a great deal of money. There are people who will say, "How does that compare with the number of containers you carry?" You can spread that out any way you like, but it would come to Evergreen in excess of a quarter million dollars a year. We do know and I'm sure you also understand that there are many costs which we bear here in the ports in California which are not borne by steamship operators in other ports throughout the world. So I totally support Mr. Levin's comments with respect to the rate level.

We believe that there's a need for the kind of study that is proposed under the proposed regulations. We support the idea. We're willing to support it economically, but we would hope that another look will be taken as to the level of that support. And we think that $400 still amounts to a lot of money. As I say, we have five ships a week. So we're talking about a lot of money per week even at the $400 level, and we'd request that you look at it from that point of view to keep California healthy.
1 from a maritime industry standard.
2 MR. BUSTAMANTE: Since we've had two
3 folks ask about moving it from $600 to $400, maybe we
4 can bring the presenter back and have her do
5 something where she explains the formula so that it's
6 clear because I'm sure can we cut off the time in the
7 presentation for doing just that.
8 MR. THAYER: The calculations that went
9 into that, the bill of that put a cap of $100 on what
10 could be charged. I think there was a quick study
11 done when that figure was generated that said,
12 "What's the most they required?"
13 We said, "We don't need a thousand
14 dollars. We can cut it back to $600." I think the
15 same way we're looking at these other factors once we
16 see compliance rates under the emergency regs, it may
17 very well be when we come back in the permanent regs,
18 we can reduce that further.
19 MR. BUSTAMANTE: When does that take
20 place?
21 MR. THAYER: Within the next three,
22 four, or five months. We have a limited period of
23 time under which we remain under emergency regs. We
24 have to come back with permanent regs.
25 MR. BUSTAMANTE: So then in the regs,
26 we have your recommendation today is to put it at
27 $600, but there will be an automatic review of that
28 rate in no more than five months?
MR. THAYER: Yes, because --

MR. BUSTAMANTE: In order to be able to lower, potentially change that figure whether it's up or down?

MR. THAYER: That's right. The emergency regs that were authorized today can last for a limited period of time. We will bring back the permanent regs which will last a longer period of time.

MR. BUSTAMANTE: And these will be notified of that process?

MR. THAYER: Yes.

MS. CONNELL: Mr. Chair, I have a follow-up question. What are the factors that would not enable us to reduce that rate?

MR. THAYER: The costs that we're trying to address here are twofold -- one, the studies that some of the agencies have to do, and the second is we're going to be conducting inspections in ports of these vessels to ensure they're complying with the ballast regs requirements. So we have some costs that the commission is going to be incurring to carry out this legislative mandate. The other reason we may not be able to reduce it is dependent on what the compliance record is. We think there's so many vessels that come in and out, we're not sure how many of those end up actually paying. When these are, say, onetime visit vessels if they're not paying, we
don't have that money.

MS. CONNELL: This is a question of compliance and enforcement.

MR. THAYER: Exactly.

MS. CONNELL: I don't know if any of you who are engaged in this and lawfully and appropriately paying your fees can help us or help our staff deal with that question because this problem is on the tax boards as well. Why should anyone else have to shoulder the burden for those who are failing to pay their taxes? It's the same thing here. We can reduce the fees across the board if everybody who was participating in these activities would pay their fair share.

MR. BUSTAMANTE: Do we have a deadbeat in this provision? They've got to pay in advance before they come in.

MR. THAYER: We should have that --

MR. BUSTAMANTE: We have a situation where folks who are doing something and they're playing by the rules, and you have other folks who are rolling in and out and you continue to bill them and they continue not to pay. It seems you're requiring them to shoulder the burden of that work.

MR. THAYER: We have a responsibility to see the program is enforced. There is a little bit of tension between speakers here. One speaker said, "Look. If you only charge $400 and you collect
it from anybody or 70 percent, you'd be fined."

Others think, "We should be charged less. We end up dropping down even further." It's a very complex issue. We want to be fair to everybody.

MR. SMITH: I don't think there's any dissension between Captain Korwatch on myself. We talked on two separate topics. I thoroughly support what she said.

MR. THAYER: If taken together if we establish a rate at a certain level and have to reduce that rate in consideration of the factors in some of the testimony asked that we do, we're really not collecting $400 for everybody. We're collecting $400 from some and less from others. It's dollars and cents. I'm not trying to create a wedge between the speakers.

MS. CONNELL: I would like to make sure that we keep our overhead costs minimal here. I would hate to think we had a bloated bureaucracy and that resulted in having higher fees here. I think we heard rather compelling testimony of the importance of keeping this rate lower and competitive.

MR. GREGORY: I'm Gary Gregory. I'm the chief of Marines facilities at the State Lands Commission. The program that's envisioned here is a multiagency program. In fact, the smallest dollar value of all of them comes to the State Lands Commission. These programs are approved. They've
gone through the approval proposed. They will be reviewed and part of the Governor's budget. As such, they create the dollar value of the program. Collecting more dollars than the dollar value of that program does none of the agencies any good. It is not additional funding which is available to us to use. I'm sorry you didn't get to see the whole presentation.

Our concern is up front that we have certain startup costs. Other agencies involved are doing studies. They need money up front to do those studies. We are uncertain of the number of vessels that are coming into our ports, and we are uncertain of the level of compliance. The Coast Guard level of compliance is about 48 percent.

At 48 percent at $600, we probably do not make our budget. And yet there is no other provision for funding this program. So the $600 fee was set up front in my mind. I'm the one who came up with the number basically to provide a prudent reserve if we had a compliance rate above 50 percent. The ability to get the program started up, the ability to get the contracting for the studies knowing that in 120 days we would be required to review and reset the fee, knowing that we would have a better opportunity. We would have funding to provide an opportunity to look at the issues of carriers and routes and how we might examine the fees.
associated with those carriers and routes.

But the $600 fee that we've set now based upon the best information that we have available to us, information that was given to us by the Pacific Merchant Shipping Association and other representatives that you see here leads me to believe that the $600 provides us with a prudent reserve, an excellent beginning to the program, and the ability to adjust without having to adjust up the fee for noncompliance of issues of shortfalls and funding.

MR. BUSTAMANTE: You have a baseline of 50 percent, and the suggestion was that you could if you were to have a 70 percent payment by all those who were billed that the number would go down substantially. Are you in agreement with the numbers? If you have 70 percent compliance --

MR. GREGORY: It's on one of the slides we didn't get a chance to show you. There would be a surplus. There would be sufficient dollars if you look at purely a per year basis.

MR. BUSTAMANTE: You think, Paul, you will be at a 50 percent rather than a 70 percent compliance?

MR. THAYER: I don't know what the results will be until we start going. The regulations we brought to you in spring will say specifically that the commission is authorized to reduce this fee if we don't need the money.
MR. BUSTAMANTE: I think you've heard from the controller and from me that we are interested in getting this down to a point that is as low as we possibly can and that a review in six months, we take a strong look at lowering this down. You would have plenty of time for an experienced reg. You would have plenty of time to see what the costs really are, and we'll be waiting for the reduction in costs in six months.

MR. THAYER: I understand, sir.

MR. BUSTAMANTE: Is there any -- do we have a Mr. Winter who has not spoken?

MR. WINTER: I'm the executive secretary of the Steamship Association of Southern California. I'd like to make several points.

MR. BUSTAMANTE: You have two minutes.

MR. WINTER: The ports of Los Angeles and Long Beach represent approximately 70, 75 percent of the shipping in California. The way this fee is structured, California, Los Angeles-Long Beach will be collecting the vast majority of it. And perception to overseas people will be that Los Angeles-Long Beach is a more expensive port. I encourage you to looking at the per port in proportion equally to achieve your same level of --

MS. CONNELL: Can you go through that again.

MR. WINTER: In other words, Los
Angeles-Long Beach has approximately 70 percent of the shipping that enters California. Los Angeles-Long Beach will be paying 70 to 80 percent of the fee. We'll be the place collecting the vast majority of that fee. The perception overseas is that, if you go to Los Angeles-Long Beach, you're going to pay more because it's only being collected at the first port of call. I encourage you to look at spreading the fee out. We concur with the Pacific Merchant Shipping Association on the total level per voyage, but it should be spread out over the ports of call.

Mr. Gregory's other half of the oil spill prevention program in Los Angeles already operates a fee that's collected on the voluntary basis in Los Angeles-Long Beach that collects, I would say, a hundred percent of what's being asked to pay for the oil spill prevention program. It's a voluntary program in Los Angeles. The ship owners, the captain of the Port of Los Angeles-Long Beach has told me as recently as two or three weeks ago that in Los Angeles-Long Beach, compliance is 90 percent, not 48 percent. That may be what it is in the Bay Area, but it's not in Los Angeles-Long Beach where the bulk of the shipping takes place.

MR. BUSTAMANTE: Interesting point. I don't know that I agree with it, but it's an interesting point. It does raise one issue, however.
Are there ports that will be experiencing different rates of collection? Will Long Beach-L.A. experience a 70 or 80 percent while other ports experience much lower? Will there be certain kinds of ships and certain kinds of industry activity that will have different kinds of experiences than others? And it may be that the gentlemen that are up here, you're going to experience a hundred percent return and in other areas, you may only get a 30 percent return.

I guess you're right. It's going to be complicated to get there. You have to find out where folks who are doing the job and are making the payments are not going to be heard in this whole process.

MR. WINTER: The fee is based on a voyage basis. The issue here is the ballast water and the introduction of invasive species. The fact there's a higher compliance rate in one port doesn't necessarily change dramatically the probabilities of introductions. Using the basis of 70 percent of the shipping comes into L.A.-Long Beach, and we should therefore reduce the fee knowing that the total cost of the program will remain the same would end up with Humboldt and Port Hueneme paying three, four or five or six times as much money per voyage as we see in L.A.-Long Beach where the risk is still associated with the per voyage introduction of invasive species.

MR. THAYER: But I understand the
commissioner's direction and that job is as hard as it is, and it's up to us to figure it out.

MR. BUSTAMANTE: Is there any action by the board?

MS. CONNELL: I move the staff recommendation at this point.

MS. PORINI: I second it.

MR. BUSTAMANTE: Move to second. Show that it moves unanimously.

On to Item No. 75, the 4-H shell mounds in Santa Barbara County. The proposed actions are for the scope of work, interim measures, and request for proposals. Staff?

MR. THAYER: This, of course, this item includes both the Item 75 and Item 59 that was proposed from the consent calendar, and I believe we can have discussion on the shell mounds and take two separate actions on the commission issue. One would be doing a bid to do the study, and the second part is what kind of interim measures for fishing should be imposed while this is occurring. Michael Valentine, our attorney, will be presenting these two items.

MS. CONNELL: I have a question for you, Michael. Can you name all of the structures out in Santa Barbara County?

MR. VALENTINE: I can.

MS. CONNELL: I asked you last time.
This is supposed to be a part of your life at this point. Like the seven dwarves, you should be able to roll these out. These all start with an H.

MR. VALENTINE: Thank you, Mr. Chairman and commissioners. We're here as Mr. Thayer indicated for two action items, one on a staff recommendation on the request for proposals and contract, the other pursuant to the commission's direction that we report back to you and make recommendations on interim measures regarding the shell mounds which are located at the site of the former 4-H platform.

Just a moment. I'll skim over the background. I know it's been a long afternoon and promises to get longer. I'll try to keep it as short as I can. '94 approved a decommission of the plan, a removal plan. It did so pursuant to CEQA which was approved at that same time. The decommission plan proved a method of platform removal, and it also contemplated that the shell mounds -- that is, the mounds of cutting to overlaying with substantial layers of shells -- would remain on the ocean floor. The permit issued by the commission on the decommission are subject to many stipulations or conditions.

One of those conditions was that a troll test would be conducted in the vicinity of the platforms so that the area couldn't be shown to be
The mounds were removed and the troll test was conducted. We received our report of the staff in March of '97 showing that the mounds had failed the test. That's enough background. I would like to briefly describe the scope of work which has been attached. We are requesting that the commission authorize us to issue a request for proposals to do analysis set forth in the scope of work. The purpose of the scope of work would be to develop options for future action by this commission and by the Coastal Commission with regard to the future of the shell mounds whether the mounds should remain where they are, whether they should be removed, or whether there are combinations of measures that would be suitable.

Chevron, Coastal Commission staff, and the Coastal Commission of the state, your staff, have been working on this scope of work for several months. It has been a subject of two discussions at the Coastal Commission. The scope of work would characterize the composition of the mounds. That is what's in there. How bad is it if it's bad at all? It would explore the impacts of various removal methods. If you move it out with a certain kind of clam shell, what would be the impacts of that? If you have to use explosives, what would be the impact of that? It would expand the impacts of leaving the shell mounds in the area too in addition to what
impacts they had without biology air water quality. It would identify the impacts of removal of mounds on commercial recreational fishing. And likewise, it would assess the impacts to commercial and recreational fishing of leaving the mounds in place.

We believe that the scope of work once completed that the amount represented by the scope of work will result in information which will be valuable to you when deciding what to do with the fact that a condition of its existing permit has not yet been complied with, that is, the area of the platforms is not trolled.

The second area for discussion today was as a result of some discussions. The commission asked us to come back and make recommendations on interim measures in light of those ballasts don't seem to be disappearing anytime soon. At the very least we can say whatever the future may hold, the platforms have been gone for three-and-a-half years now, and the mounds are still there. That discussion at the last meeting centered on three issues. The performance of the buoys at the mounds claims for damages as a result of the mounds and whether or not some kind of interim global positioning systems, navigational system should be provided to trollers in the interim.

I may say in introducing this part of the item that I think it could have been handled a
little differently. As I reread the column on the way down -- we read the column on the way down on the plane today -- we seem to be lashing Chevron more than I intended when I wrote it. Chevron has found itself where it has been unable to comply with existing State Lands Commission permits. They have been cooperative. They have done what they could to be helpful. That is not to say, however, that there are not still some improvements that could be made.

The buoys were placed, first set of buoys were placed in January of 1998 pursuant to requests by the State Lands Commission executive officer. The first set as was mentioned at the last meeting need improvement. That is, they damage. They laid down, pretended to lay down. Chevron replaced those with a better performing stat in June of '98. Those buoys have performed much better. However, the commission staff would like to recommend a series of measures to improve their performance. We would like the commission to direct and authorize staff to work with the Coast Guard to develop a buoy perfectly designed to this site that will provide a maximum amount of visibility for these mounds and to require to deploy those buoys once they're developed. Third, that Chevron be directed to maintain a spare to these buoys so when one disappears or sinks, its replacement can be used. Finally that a contract be maintained by Chevron for
the inspection at least twice a month of these buoys so we don't rely on the fishermen.

Some of this, Chevron is no doubt agreeable to some of these things and undoubtedly is doing or is planning to do some of these things, but it seemed to us that it would be beneficial to have these as part of the interim measures.

The second area of inquiry that was addressed at the commission was that claims for damages as a result of trollers have an impact with the mounds not being handled properly. I began by saying there have been no claims presented to Chevron this year pursuant to the longtime oil spill fishing liaison office procedure. There have been since the platforms were removed four claims made to Chevron. Three for a total of approximately $7,000 have been approved. One was denied. For the most part we believe that this longtime procedure has been operating satisfactorily.

The count does have some recommendations that we will summarize. We recommend that Chevron be directed to expeditiously act on all damage claims received as a result of the mounds, that is, provide an explanation in writing of why if they are that State Land staff be notified as soon as possible claims are received that Chevron contracted to third parties to inspect and report to Chevron on damaged equipment and finally that a mediation
procedure be created for the approval of the
executive officer for claims which are denied.

Finally on the subject of G.P.S.
equipment, the calendar has a recommendation that the
troll fishermen be provided with differential G.P.S.,
that is, equipment that can place the bulk of then
30 feet or so of the shell mounds. The problem is
that the trollers have no reference if the buoys are
not working properly because the platforms are gone.
They have, we are told, been providing a wider buffer
than they had been prior to the platform removal.
And, of course, they can't troll over the mounds.

Southern California Trollers
Association responded to the staff's suggestion on
the differential G.P.S. I'd like to indicate in
short that it wasn't adequate to their needs. The
differential G.P.S. would cost approximately a
thousand dollars a boat which would be in the range
of $30,000 to $40,000 for the trollers in the area.
The suite of equipment that the trollers of Southern
California Trollers Association is asking for would
cost approximately $3,300 per vessel or $132,000.
The difference between the two systems is that one
would have a plot where they would visually plot out
where they are, the differential by the coordinate
only which would have to be plotted under a chart
before you know where you are.

MR. BUSTAMANTE: I thought those were a
thousand layers.

MR. VALENTINE: Pardon me?

MR. BUSTAMANTE: I thought they were a thousand layers.

MR. VALENTINE: The one is, the staff recommendation is a thousand. The one that was requested by Southern California Trollers Association is approximately $3,300 per vessel. I want to pile like that approximately. That's based on two phone calls I made to vendors of this equipment. They were trying to sell the equipment, and I'm not a troller by any stretch of the imagination. And finally none of this equipment even if provided on the interim basis would be useful if at some point in the future the commission decided, "Well, we're going to leave the mounds in place and we're going to require the full suite of systems" that Chevron and the troll fishermen have discussed in the past that is location upon the nets. Those were very expensive per vessel. This equipment would have to be removed from the vessels, and new equipment would have to be installed. This would be on an interim basis only.

On a rather confusing note, would you like me to try to clarify that, or have you heard enough of this particular issue?

MR. BUSTAMANTE: You should wrap it up, but you should say what the amount is.

MR. VALENTINE: The amount is for the
two systems that are being discussed here right now.
The amount under the staff recommendation was a
thousand dollars. The amount for the equipment that
the Southern California Trollers Association
requested in their letter is $3,300 per boat
installed. I will, of course, be available for
questions in the event you want to hear any more from
me.

MR. BUSTAMANTE: Why don't you stay
handy?

Gordon Cota, C-o-t-a, I believe. Mike
McCorkle. C. Miller. George Steinbach. And then
David Frumkes, I believe.

MR. COTA: Good afternoon. My name is
Gordon Cota, and I am a troller. I don't get
seasick. I don't get queasy in an airport. I'm not
in favor of this sort of Band-Aid approach. I
appreciate the spirit of what the State Lands is
offering here and working at trying to help us, but
it doesn't address our problem. The one problem with
a digital readout on a differential G.P.S. is that I
would be looking at two lines of about eight numbers
at one time, and they would be either increasing or
decreasing. What I'm trying to find out whether I'm
increasing or decreasing my longitude or latitude,
I'm going to run into the shell mounds instead of
paying attention to what I'm doing. That is why we
suggest that the visual picture of a plotter would
make it easier for us to look at in which case we'd
be able to put in a weigh point where the shell
mounds used to be. That's going to give us a quick
visual reference.

Like I said, I appreciate the spirit of
trying to help us, but this is not any more than a
Band-Aid. If you want to give us a Band-Aid, give us
the $3,300 Band-Aid, not the thousand dollar
Band-Aid.

MS. CONNELL: $3,300 would be a
tourniquet then.

MR. COTA: It could be. We're losing
the area. We've lost it now for almost five years.
I personally would like to see State Lands stop
having Chevron wasting money for studies. I'd rather
see that money utilized into rehabilitation of the
estuary area that's inside of where these four shell
mounds are which is a nursery ground for halibut
which is why I'm at those shell mounds in the first
place trying to catch those halibut. You want to
leave those mounds there and take that money and
spend it and try to rehabilitate and enhance the
halibut habitat in the estuaries? I'm totally in
favor of that, and that's what I see as a much better
and more positive way to use this money instead of
doing study after study after study so I'm here seven
years from now. And we might be getting the
attorneys by then instead of just a Band-Aid. I
don't think that's a good utilization of the money to keep studying this thing.

MR. BUSTAMANTE: Thank you, sir. I think it should be noted for the record that, although there are a lot of studies that go around us in government, that this is actually a precedent-setting activity. This is the first of what in the future will be many such situations that we have to deal with and in trying to deal with -- in trying to figure out how to deal with it with some common sense, we have to be able to try to figure out how to deal with this first one even if it takes a little bit longer hoping to put down the work so the future actions will be moved a little bit quicker. I know it's more painful the first time around. We've known about these mounds for how long?

MR. THAYER: We were aware of them when the commission acted in '94 to take out the platforms, but it's only been since '97 that we found out we couldn't troller.

MR. BUSTAMANTE: I apologize for us taking so long to move on this.

MR. COTA: I actually --

MR. BUSTAMANTE: I realize it's taking us so long to move on it.

MR. COTA: I appreciate the concern you people have on this, and I really appreciate it. And that's why I think we should move forward, and I
really enjoy your comments about we're learning from it. This thing was produced and fell apart from the get-go because it was given a negative declaration. All of a sudden we had all the best and brightest standing around with their hands in their pockets looking at the shell mounds and saying, "Oh, wow." That's why I say we should learn what we've done here. Don't give them a negative declaration anymore. We did that this morning. We spent a lot of time on rigs to reef. We're on the right track.

In the meantime, we're hung out to dry. We don't fish there anymore because of the problems that's created there. I came -- I got hung up on the pipeline. I came at 30 years of fishing to the closest I've ever come to rolling my boat over. I don't go there anymore because I'm getting to the age where that's not good for my heart.

MR. BUSTAMANTE: So you prefer the mounds there?

MR. COTA: No, no, no. I prefer moving ahead enjoying what we've learned so far and quit wasting the money and use it to something positive like the rehabilitation of Carpinteria estuary which is a developing ground for halibut which gives me more opportunity in my halibut dragging to have more potential to catch halibut.

MR. McCORKLE: I feel the same way Gordon does. Our association feels that way about
the differential G.P.S. I've been gone all week, and
last week it was G.P.S. And I think we wrote a
letter and explained our feelings on G.P.S. Now,
we're hearing differential G.P.S. which is actually
better. But we need -- that's just a thing of
numbers. If it was a differential G.P.S. plotter
which caused a little more, it would make a big
difference to us, and we may be able to agree to
that.

I would like to thank State Lands for
their new support on the buoys. The buoys are
important to us. I think myself I found four or five
of them drifting miles away from the location. I'll
just be going along fishing, and there's a buoy.
It's supposed to be on a shell mound, and it's not
there anymore. It hasn't worked too good. I think
with the new recommendations, I think it will be a
big improvement on the buoys which will help
everybody.

One of the things I have a problem with
in this final scope of work is in the commercial and
recreational fishing impacts, and it says an
evaluation of the potential adverse impacts to marine
biological resources that will result from the
resumption of troll fishing in the shell mound area.
There is already still trolling going on. It hasn't
ever stopped. It's just moved away further from the
shell mounds. To me that -- and add onto that on the
last page the next to the last paragraph at the end, it says potential adverse impacts to the marine biological resources that will result from a continuation of troll fishing in the shell mound areas.

This is astounding that State Lands or Coastal Commission has something in this. This is something that should be looked at it. This should be looked at by the Department of Fish and Game. We take observers on our boats and fish in the area, fishing game observers, and we don't have any problem. The Fish and Game department doesn't have any problem with our fishing methods down there. To see something like this in there, we're wondering where it came from, and it upsets us and makes us feel like we're being accused of destroying this area when, in fact, we feel we're not. I'd like to see it taken out of that study.

MS. CONNELL: Maybe our staff can respond.

MR. THAYER: The scope of our work here represents a coordinated effort in the Coastal and State Lands Commission. Many of the things in here were elements the Coastal Commission thought were very important to their deliberations. Both commissions are going to need to act on how to resolve the shell mound issues and some of these features that I think are being discussed were ones
that the Coastal Commission wanted to put in there. There are other elements in there that are important to us. It seemed, though, ultimately more efficient to have one study even as part of that study were more important to one agency or another. Some of the things that are being identified here are the result of that collaborative effort.

MR. BUSTAMANTE: He disagrees with the statement.

MR. THAYER: I think that the perspective of those that wanted those in there that were mostly from the Coastal Commission were if the trollers can't troll close to the shell mounds now and are able to if the shell mounds come out that this represents a potential environmental impact. That was their concern if we're going to look at the various impacts of leaving the shell mounds out that that was one of the potential impacts. That's why that's in there.

MR. McCORKLE: That type of study looks to me like a commercial fisherman very hard to do to come up with some. How do you know what's there now? How do you know the impact? It's a real screwy thing that doesn't make a lot of sense to me how it could come out. It could come out if it stunk poorly. It could come out with some bad stuff that isn't exactly the way it really is which would really impact us for something that we're not really doing. Thank you.
MR. MILLER: Chris Miller, Commercial Fishermen of Santa Barbara. I just wanted to follow up on what Gordon Cota was talking about. I'd like to recommend that the staff expand the scope of this and get in touch with Wayne Ferrin, who is the wetlands manager for the San Eland estuary and is coordinator of the restoration project at that wetland. You can get in touch with him through the urbanian at the University of California at Santa Barbara.

In my conversations with him, he informed me since the estuary is downswelled of the Santa Barbara Harbor where there's continuous dredging that the flow of sand from that dredging project in the future will impact the water flow in the estuary which they need to maintain to keep the halibut nursery area at an optimum level. And so I've talked to the guys on the dock about this, and one of the concerns that the fishermen in Santa Barbara had, you're going to help the trollers, but what about future fishermen? This is taking one type of habitat and turning it into another. It's basically taking a troll ground and turning it into a recreational fishing opportunity. We thought a mutual thing that would help everybody is to help the nursery grounds for the halibut.
The other thing that is a concern like you said, what kind of precedent does it set for the rest of other offshore oil development and how we're going to look at this even though it is in the federal waters? Some we're worried about.

MR. BUSTAMANTE: Thank you.

Mr. Steinbach?

MR. STEINBACH: George Steinbach representing Chevron. I appreciate the opportunity to speak on this issue. I know there's been a little background that Mike gave, but I feel the need to provide a little bit to establish our position for the record. We see the central issue of this agenda item or this problem the completion of the decommissioning, removal of the 4-H platforms. The project was approved by the State Lands of '94 in accordance with CEQA. This project was executed in '96. Relative to the shell mounds with respect to the project, it's important to point out that all the permits issued for this call for the shell mounds to remain in place. This intent was discussed in preapplication meetings held with all the agencies and made clear throughout the approval process.

The shell mounds were considered a valuable resource for marine life substrate and some vertical relief in a soft mud bottom area. This makes them a reef that provides habitat for more diverse species that would be possible. So the
people reviewing the documents, the agencies reviewing the documents decided that it would be best for the shell mounds to remain in place. In fact, during project execution, special precautions were done to not disturb the mounds when the jackets were removed. At no time were the mounds considered to be debris.

The permits that we did receive and as Mike told you did assume the shell mounds would be trollered, and Chevron was required to confirm this. As you know, the tests were conducted in late 1996, and we discovered that the mounds could not be trollered without sagging. In early 1997, Chevron began working cooperatively with the State Lands to find a solution to the trollability issue. This includes providing the staff with supplemental data on the biology amounts. We also met with the affected parties and trollers and reached an agreement. Provide the affected fishermen with sophisticated G.P.S. equipment to allow them to safely troll very close to the mounds.

Chevron feels that this agreement adequately and barely addresses the trollability issue. But we have been prevented from implementing this final solution and one that I know that the trollers are very anxious to get to because this recommendation has not been accepted as appropriate mitigation for troll.
During this interim period while we've been discussing all this, Chevron has taken several actions in an attempt to make the situation tolerable. This included the buoys that we've talked about. They were installed and upgraded in 1999. That upgrade resulted in a 50 percent reduction in the failures of the buoys, and we have proposed further upgrades on a unilateral basis. We proposed these upgrades, these upgrades in 2000. We have a responsive claim system. Since the 4-H platforms were removed, we have received four claims, three approved and one denied. And it was denied only after an extensive investigation which included a vessel haul-out and a third party inspection.

We hadn't received any claims in the last year. We really do not see the need for the measures recommended by staff. We think that we can continue to work with the fishermen and with all fisheries' liaison office to make the period satisfactory to all by using existing practices. Some of them are very longstanding particularly with regard to claims.

Some of the items, however, have been incorporated by staff, but we have already agreed to do them on a unilateral basis. And we would certainly proceed with those.

We are now engaged in gathering further information on the shell mounds --
MR. BUSTAMANTE: Ten seconds. Your time is rapidly coming to a close.

MR. STEINBACH: I can just wrap it up very quickly. It looks like this interim period will be drawn out further. They negotiated with us for the agreement, and they're almost blaming us that we can't implement it. We would like to work with the State Lands to get to this private solution. Thank you very much.

MS. PORINI: Mr. Steinbach, which are the items that you unilaterally agree with the fishermen on?

MR. STEINBACH: We have proposed No. 4 -- No. 4 is a little more specific except that it has a time frequency. We do it periodically.

MR. THAYER: For our benefit could you identify one by one what those measures are.

MR. STEINBACH: Number 3 was the requirement to maintain a spare buoy. Number 4 was to -- No. 4 was to -- I'm paraphrasing -- was to have the buoys inspected twice monthly. Number 5, we as a common practice, we try to respond as fast as we can. One month I have no problems with. Sometimes if you involve a third party, that may be difficult to meet, however. Number 7 is the common practice. That No. 7 is to engage a qualified and experienced third party. We do that as a common practice, and we did that in the case of the one that was denied. The one
that was denied, that fisherman did have other claimed processes to move to.

He filed with the county fishermen's fund and was reimbursed for settlement. That's all.

MS. PORINI: Thank you.

MR. THAYER: To recapitulate the ones that you were not in agreement, Mr. Steinbach, were the better buoy design and deploying that better buoy, design the written letters or written findings that claim notifying the State Lands Commission of any claim in mediation by the executive officer and the differential G.P.S. Those were the elements you did not deal with.

MR. STEINBACH: The question was not agreed with once we implemented unilateral. I listed the ones that we have already in some sense and form placed. There are others, but there are some that fall into that category.

MR. FRUMKES: My name is Daniel Frumkes. I'm the director of the A.S.A. Conservation Network for the Sport Fishing Association. Basically our objective is to make more fish. We had a meeting recently with the director of the department with one of his lieutenants discussing what electronics the controllers currently had because we thought they could tell pretty closely. The general consensus was that most of the boats had very good equipment. It may be that most of the boats already have better
equipment than this. We want the boats to be safe.

In the interim they dealt with those
boats that need it. The idea of giving them the
differential G.P.S. is okay. But as I say, it's been
indicated in boats.

Another thing to note is that in 1969,
the union well blew out. In May 1971 the trollers
office in Santa Barbara were granted an almost unique
right to troll in state waters which is where these
platforms are after the platforms were built.
There's one other place in the Central Coast.
Otherwise, the state of California generally doesn't
allow trolling in state waters. What's being argued
about is less than 1 percent of an area which they
were already given as a unique compensation. We're
still trying to find out the origin of that, but
there's no question.

They have a unique situation. They've
asked now not to fish in 1 percent of it, and frankly
the settlement they're talking about is to get a lot
of money, not just equipment but a lot of money.
First of all, I agree with Gordon Cota and Chris
Miller that, after you do the evaluation of the shell
mounds, it's a tossup. Save the money from taking it
out and do something constructive for the marine
environment.

We agree with them entirely, and we
would like to see general construction the funds for
expenditures. We don't see the payoff for less than 1 percent. I agree with Thornton the negative dec was accepted --

MR. BUSTAMANTE: You have ten seconds.

MR. FRUMKES: All the previous workshops, everybody said don't take any shortcuts. It ends up being longer. The negative dec was a shortcut, and it's turning out to be longer. When we get to Belmont Island, the negative dec is a shortcut, and it's turning out not sufficient information.

MR. BUSTAMANTE: Thank you, sir. Linda Krop.

MS. KROP: My name is Linda Krop. I'm the chief counsel with the Environmental Defense Center, and I appear today representing the Environmental Coalition of Santa Barbara, Sierra Club, and Planning Association. And I also represent the Pacific Coast Federal. We appreciate the work that staff has done in not only addressing the scope of work issues but also the very diligent job they did responding to the commission's request for information about interim protection. These mounds have been in place for three-and-a-half years now, and they have impacted obviously -- there haven't been any recent claims is because they're not going there. No one wants to risk their life or property unnecessarily.
The original intent of the abandon permit in the negative declaration, there was an acknowledgement of the possible existence of the shell mounds, but the assumption was they would not be an obstruction. That's why they were left in place. The negative declaration said there would be site clearance of declaration. Given that the troll test failed in 1996 and '97, clearly the shell mounds in the permit do have to be removed. That is what makes the scope of work so confusing because the State Lands Commission permit says that Chevron must demonstrate site clearance. They must pass a troll test. Otherwise, they violate the permit.

They have to remove the mound because there's no other way to troll in the mound. The Coastal Commission does not require that. The commission permits says if the mounds are to be removed, a permanent amendment is removed. That's why you're mixing two different standards of review in one scope of work.

Rather than delay this any further, we say go forward. We have submitted some comments on November 24 in a letter to the commission that hopefully you saw. Let's move forward but recognize when it comes time for you to make your decision, the information from the scope of work will be more limited an application for you than for the Coastal Commission. You are in a permanent enforcement
situation. Your job is to enforce the permit. If it's not possible to remove the mounds in the site clearance, then your permit can be to avoid removal and various alternatives. It's a different standard of review.

MS. CONNELL: Can you go through that once more, Linda. I'm not sure.

MS. KROP: Your permit requires verification of site clearance. In this case the only way to accomplish that is to remove the mounds. The scope of work for your purpose should look at different methods to remove the mounds, what impacts might result, how to mitigate those impacts. If those cannot be mitigated, then you may look at other alternatives. So you have a pretty narrow standard --

MS. CONNELL: Do you think we're doing that now adequately with the studies we're doing, the rigs to reef workshop, et cetera?

MS. KROP: That's a different issue.

This is very case specific, and I think the scope of work will include what I just mentioned. But it includes a lot more, and I want to make sure when this comes back to you, you don't get caught up in all these other issues that the Coastal Commission is looking at. It would be helpful in finalizing the scope of work to list each item whether it's under the jurisdiction of the State Lands Commission or
Coastal Commission or both.

MS. CONNELL: I think that would be because this has been a discussion point all the way through these comments today.

MS. KROP: I don't know if all staff agrees with you.

MR. THAYER: I think staff work closely enough together that it would be hard at this point to tease too many pieces off. There's one or two that we could, but I'm also concerned that it would present -- I think that fundamentally the issues that both agencies have to review are the same. There are slight differences in the permits, but in terms of the charge the agency, each agency we have different jurisdictions. But, in fact, their responsibilities are very similar, and I'm not sure it would be a good idea to try to draw distinctions between the two agencies as we go through this process.

MS. KROP: Well, for example -- and the Coastal Commission staff informed their commission, in fact, that their standard is broader because to remove the mounds, they have to go and amend their permit and according to their analysis under the Coastal Act not just the permit. You are stuck with a permit. For example, some of those issues are things like impacts to recreational fishers. Another example is impacts for trolling. That's not relevant to your permit. The permit is established to a
specific. That's the purpose of their condition, the
two conditions in question. I think it is easy to
say which items are relevant to this commission.

MS. CONNELL: I just am more concerned,
Linda. Maybe it's an issue of definition or as Cruz
would say semantics, but I'm just concerned that the
study when it is done gives us enough information
that we can deal with this issue completely. I don't
want to so narrowly define the study where we are at
a point where there is questions raised by future
speakers at meetings like this and we don't have
correct data to analyze the validity of their
statement.

MS. KROP: The problem is you already
have issued a permit. You have a permit. It
requires site clearance verification. We've been
trying for three-and-a-half years to enforce this
permit. Two years ago the former executive officer
informed Chevron to apply then for an amendment if
they didn't want to remove the mound. It's been two
years.

MS. CONNELL: If your concern is the
timeliness of the study, we will get an answer back
quicker, and we can enforce the requirements against
Chevron. Is that an abbreviated --

MS. KROP: That's water under the
bridge. If the Coastal Commission needs to get this
other information, let them do it, and that's part of
the study. I don't have a problem with it. What I have a problem with is the standard of review for this commission when you get that study back. You have a permit condition to enforce. If you don't want to enforce it, direct Chevron to file an amendment. Let's be true to the permit is our point of view. We're here to enforce it.

MS. CONNELL: You don't have a problem with the study that we're about to embark on. You want to make sure when we get the information back that we enforce the standard.

MS. KROP: Thank you.

MR. BUSTAMANTE: Are we ready to go on?

MS. KROP: I just have one last. I wanted to comment briefly on the interim measures. If I may, I'll do this quite briefly.

MR. BUSTAMANTE: You have 30 seconds.

MS. KROP: Support differential G.P.S. with plodders, interim measures, not permanent.

PCFA has a concern that the provision of the equipment would only affect a certain class of fishers and not other fishers that have not trolled in the area for the last year or troll the area in the future. Thank you.

MS. CONNELL: Mr. Thayer may have talked about the Band-Aid versus tourniquet raised earlier. I'm not opposed to a tourniquet here. If the tourniquet is the higher amount which was -- what
was that amount? $3,300? I thought there was some rather strong information presented that suggested that, if we could go with this higher measuring device, it might be more helpful to the vessels in the area, and I normally as both Annette and Cruz will tell you that I want to cut down to the bare bones. But here it seems to me it might be prudent to go with the higher quality instrument.

MS. PORINI: I agree with that. I don't think we want anyone to lose their lives, and I was compelled while I'm not in the trolling business and I don't deal with plodders, I was compelled by the arguments that the differential G.P.S. with the plodder would provide more accurate and better information that could be quickly and easily used.

MR. BUSTAMANTE: Is there a motion?

MS. CONNELL: I move that we go to the higher mechanism at $3,300 per vessel.

MR. BUSTAMANTE: Does that include the rest of the staff recommendations, the exchange of that?

MS. CONNELL: I move the staff recommendation with that amendment.

MS. PORINI: I second.

MR. BUSTAMANTE: The vote is unanimous.

MR. THAYER: There's a second element to the shell mounds, and that is whether the commission would approve letting a contract for the
scope of work.

MS. CONNELL: I would agree. I will make that motion as well.

MS. PORINI: Second.

MR. BUSTAMANTE: With no other objections let the record show that the vote is unanimous. And by request we'll take a five-minute break.

(Recess taken.)

MR. THAYER: The next item, then, is the last item on our regular calendar which is Belmont Item 76. And the staff presentation will be made by Jeff Planck.

MR. PLANCK: You're all familiar with Belmont Island. Belmont Island as you know is within 42 feet of the water, a mile and a half off of Seal Beach, California. They made an application and an execution plan to decommission the platform in July of 1998, and an initial study and negative declaration developed in January of this year.

The staff recommendation on the June calendar was remove the island completely. It was met with strong and well-reasoned comment sportfishing interests. The commissioners decided that more information will be required to make a well-informed decision on a delicate matter. The commissioners directed the staff to conduct a two-prong approach to help them meet the challenge,
bring together as much information on artificial reef, rigs to reef idea which had considerable history; second to do a more thorough investigation of this site with particular regard to the local marine habitat work conditions, navigational safety, and what impacts scenarios on the current biological community that was Belmont Island.

The staff met the first prong by holding the rigs to reef workshop this morning attended by many in the room here. They relied on their associates to be the second prong. I think that one thing was clear from this morning's discussions is that each decommissioning will probably present its own unique situation for briefing opportunities.

Padre and DeWitt did an extensive survey of the area within a one-and-a-half mile radius of Belmont Island. This included a biological study conducted after a scoping meeting in consultation with Fish and Game, Coastal Commission, and the lands staff personnel. The results of the study are attached as Exhibit A. Copies were distributed to all who ask and to the commentators from the June hearing who we had current addresses.

An inventory of the surface area within a one-and-a-half mile radius was calculated. It revealed that the estimated 14,000 square feet of the surface area available at Belmont Island of the 8
million surface area available for such biological communities found around the site. There's a map of the general location of all these items here to the right. Further, the water clarity issue would seem unresolvable since it is at the mouth of the San Gabriel River and rather a turbulent area. It's also considered a navigation hazard. If anything is left there by the U.S. Coast Guard in the two high relief options that were discussed in the interim, the Coast Guard would definitely require some type of aides to navigation, probably lights, et cetera.

In the lower ones they withhold comment until they actually have something in front of them. The liability issue is unresolved. No one has stepped forward to be responsible for its care and feeding although I know that certain parties are working behind the scenes to resolve this issue or confuse it. Basically the staff decided that there was no evidence that Belmont creates a unique habitat in this area.

Therefore, all things considered, staff has come before you again with basically the same recommendations as June to certify and adopt the mitigated negative declaration, approve complete removal of the island and lease restoration as proposed, and require transport of rock components and really anything else Fish and Game feels comfortable with with the Bolsa Chica artificial reef
site off Huntington Beach.

MS. CONNELL: I have a question --

MR. PLANCK: Padre & Associates will have debate and short presentations that they made or answer any specific comments that the commissioners or others may have.

MS. CONNELL: I had a question. Isn't this the item which we discussed at LAX last time we met, and I raised the question wasn't there a river that came out here? And there was some concern expressed by community residents about it polluting this area.

MR. PLANCK: That's the San Gabriel River.

MS. CONNELL: Did we investigate that further? Remember someone raised that as a concern?

MR. THAYER: I think what was happening is we had prolonged discussion from Department of Fish and Game. They have an artificial reef program that has certain criteria to be met. They were concerned about the quality of water coming out resulted in excessive trepidity around the site. And therefore, this wasn't a good place to put a reef. The alternative site where this material will go to Bolsa Chica will be a much better place.

MR. PLANCK: The issue of the clarity of the water and from Fish and Game's point of view, the current location of Belmont Island is as they
said not ideal for an artificial reef. If we were starting over, they would not put a reef there. They prefer the water quality in the existing reef and use this material to augment that and provide more habitat with an area they consider more suitable for biological organisms.

MS. CONNELL: Thank you. You know, Mr. Chair, unless Annette chooses otherwise, I would forgo any further testimony on this, and I would move the staff recommendation.

MS. PORINI: I'll second that.

MR. BUSTAMANTE: We have several people who would like to speak on this issue.

MS. CONNELL: I will withdraw my staff recommendation.

MR. BUSTAMANTE: You can leave it there on the table. We'll just bring the speakers forward who may not change your mind. We have Milt Shedd, Tim Cagle, Daniel Frumkes. That was an S, not an L. Robert Osborn, Tom Raftican, and Bill Shedd. Milt Shedd. Mr. Shedd said that he -- well, he wasn't in support or opposition. He just wanted to speak.

MR. M. SHEDD: My name is Milton Shedd, and I testified earlier in the day. I've been involved in marine research projects ever since 1962. I'm saddened because I see a political process operating here that does not really pull together the science that is needed to tell you honestly what
cause and effect is going on in the marine

environment.

Commissioner Connell, you made
reference to the fact that it's very difficult to
make decisions when you don't know what you believe
when you don't really have the information that you
can rely on so that you know whereof you speak. It's
difficult. And this is a worldwide problem.

Resources the world over are being
destroyed because we man these resources by the seat
of our pants really. And you look at the attempts at
managing species, and they're constantly going
downhill. We don't know how destructive bottom
trolling is. And yet we are not perhaps creating a
Band-Aid or a tourniquet. We may be creating even
bigger problems for ourselves later when we find that
indiscriminate gear types such as bottom trolling or
gill netting or long lining which you can't control
is doing tremendous damage to the world's resources.

In terms of Belmont Island, I'm

hopeful -- let me back off for a minute. Where can
the science come from that will give you the kind of
guidance you want? Didi Albert has been in touch
with the University of California and state campuses,
and they're putting together a blue ribbon panel to
look at marine issues relative to the ocean
environment. I think that there is a potential
beginning. Didi Albert's bill isn't saying that this
bill is dictating that they're going to be rigs to reef. All it's really doing is saying, "Hey, this may be something that we're overlooking, and we ought to get the science together that we can believe in and take a look at it."

I saw the 4-H rigs go out of existence with nobody paying attention to any of the ecological damage that was being done there, and I sure as hell hope that you don't yank out Belmont Island before you really know what you're doing. That's about all I've got to say.

MR. BUSTAMANTE: I hope you're right too. I hope we're right too. Mr. Cagle?

MR. CAGLE: I'm Tim Cagle. I'm a staff engineer with Exxon Irvine. I wanted to express our support for State Lands Commission staff's evaluation in their report in the recommendations. We believe that dismantling this, using this to significantly augment Bolsa Chica is the appropriate solution for this facility, and our hope is that the commission will approve this recommendation today. And I'll be available also to answer questions for further discussion. Thanks.

MS. CONNELL: While the speaker's coming up, Mr. Chair, I have a question.

MR. BUSTAMANTE: Mr. Frumkes.

MS. CONNELL: How deep is this mound? Is it 40 feet deep or 20 feet deep?
MR. THAYER: The ocean floor, the area is 42 feet deep. The platform comes up and breaks the surface. It's not a platform. There's an island. It's a caisson with rock around it. The water level at the ocean floor is 42 feet.

MR. FRUMKES: Daniel Frumkes for the American Sportfishing Association. I'm very disappointed of the lack of desire to have information. The biological report which was ordered by your commission and was done by Padre Associates was not distributed to the adviser to the University of California Office of Research until a week ago. We've had one week to look at that report, and the first reaction of every coastal scientist that we've consulted said, "You can't make a statement of a snapshot. You can't go there one day, one week and make a statement." We know that some of the things he said are not generally true, but they were true when it was there. He has a good camera. He's a really good snapshot.

When the marine science center at U.C.L.A. was asked what it would take to evaluate the environmental impact removing the shell mounds which were known to the settlement areas or the rockfish, the marine science center said that it would take three years as a minimum because of the changes from year to year. So we're not given a chance. When we did evaluate the study, we said, "You can't make this
decision without going over time." This reef, it
turns out, is extremely popular in the fishing
community. It is highly used. It's right in front
of major marinas. There's shallow water before you
get to it. You have to run around before you get to
it or even after you cut it down. But it's very
popular. It's not even referenced in the report.

And I'll tell you frankly when I first
commented on the E.I.R., I didn't know how important
it was. I found out as we started discussing it.
Gee, that reef in that position is important. Is
there a way that we can keep it?

No socioeconomics. You think in terms
of cost effectiveness. The Department of Fish and
Game, our management agency, the resource agency,
they're all short of money. Do you have any idea how
much savings there might be? Suppose that reef is
not where Fish and Game would like to put it. It
definitely could be five times as productive, maybe
ten. These kind of measurements have been made.
You've read the paper. So suppose we said, "Yeah, we
can mitigate for any problems there are and it's good
and it's convenient and my God. We saved $3
million." That can be used for a constructive
purpose that the commercial fishermen were talking
about and we talk about.

They don't mention that. We don't care
about money for resources. Is that the statement
because it is irrelevant in the report. I meant to be very pleasant here today, but I'm sorry. I was really taken aback. We have a proposal. The stumbling block to keeping Belmont Island is the liability for a period of time. Obviously there should have been a complete E.I.R. Let me, please. We're working this really hard to do it well for everybody. It should have been a complete E.I.R. or we wouldn't be at this. That's what they learned from the shell mound. We haven't gotten that permit. We haven't made that mistake that Linda Krop talked about.

Exxon, it's been delayed. They've been giving mixed signals. It's kind of not fair. We have a compromise that we don't force them into a full E.I.R., but we enable them to support the social, economic, and biological effects of removing that platform. We do it in such a way as they do -- they get their contaminated stuff out right away which they're really anxious to do and everybody wants to do. They have to peel back some rocks to do it. We get together with the Coast Guard and everybody else to find out how high the reef should be.

You see if you look at those studies and say, "By God. The scientists tell us those are valuable studies." They're going to tell us something about ester which is going to come right in
front of us in the near future, and they're going to tell us about other things. It's valuable. And you say to yourselves, well, you know, if for such a limited period of time, we hold the liability so you can't get Exxon to do it. Assume for a limited period of time we think it's in the public interest to study this site. The reason we're keeping it there temporarily possibly is because it's in the public interest. It gives us a chance to get the information. It is unfair to Exxon.

Exxon will have signed up and put all the money they say it's going to take to remove the reef with the interest to the trust fund. There are university people, but it would be an RFP. Anybody could bid. Socioeconomics is needed. It's been done on the East Coast. It's never been done here. If you decide you don't want it there, you've already got a contract from Exxon to remove it for the amount of money that they put into the fund, and you give them the money as you remove it. You have no liability whatsoever.

And that rock can be taken to Bolsa Chica after you know what you're doing. And all you have to do is say to yourselves it is in the public interests for the Lands Commission to spend some time while Exxon spends some money and the scientist teaches. That's our proposal. We would like an opportunity for it to be evaluated. We think it can
work. Thank you.

MR. BUSTAMANTE: Does staff have a response?

MS. CONNELL: I have a question for the speaker. I'm sorry. I can't recall your name. How do you respond to the issue of this pollution of the San Gabriel River into this area of land?

MR. FRUMKES: I think of Belmont Island being the surfers' entrance to Malibu Creek, and they're screaming about the dirty water coming from Tapia and other sources. The problem is if there's contaminated water coming out of that stream, that is an issue that should be dealt with. Belmont Island gives us a clue about that. Belmont Island is the canary in the coal mine and is providing a service. In terms of the clarity of the water, the office of research at U.C.L.A. has a scientist. This is his area of expertise. His associates are saying they're not sure why the water is clear. They're not sure. They say it may be the dredging that's going on in the harbor. There's tremendous dredging going on in that harbor. Nobody has studied that current.

The kelp comes and goes. We may get kelp there. It comes and goes. It's been there in the past. But kelp reefs are not the only reefs. High profile reefs can be very productive. We don't know whether this reef can come to the surface and have the Coast Guard buoys until we talk to the Coast
Guard about something other than let's get it out because we've had two sides of this discussion. One side's saying, "Let's get it out." And the public is finally finding out. The public is saying and the scientists are saying, "You don't have the information. You cannot have it with a snapshot." And the public is saying, "We care." But what if it was a natural reef? Would you just go ahead, permanently get it out of here a natural reef, or would there be a hue and a cry? The fishermen, and they're the ones who know about what's going on there. And we've seen in the slides you can't tell a natural reef from an artificial reef after it's been encrusted. Where do you draw the line?

These are important issues. They're not easy. In some ways it's not fair for you to have it, but I think Lands should have it. I really think Lands should be the ones to decide what to do with these tidelands. You have the infrastructure to do it. You have the access that you need.

You're really the right people. You're in a position to get the information with a compromise. You got to know a situation. You'll know that you're not allowed to take a deep tack in that direction. It's illegal, and it's monitored.

MS. CONNELL: Thank you.

MR. BUSTAMANTE: Response?

MR. THAYER: We asked Fish and Game to
look at this before we came to you in June, and their basic response was -- I think staff said earlier this is the wrong place. Rather than take this out, what they recommended is it's better for the wildlife. It's better for the state. After our meeting in June, it was clear there were sportfishermen and recreational divers who liked having Belmont where it was. It was an amenity, a recreational opportunity for them. Okay. Maybe it's not the best place for a reef, but if people are using it for a reef recreational rather than habitat.

We did a study to see if we were missing on the environmental issue anything specific. There was nothing specifically valuable about this habitat existed that at the breakwaters of the nearby harbor, that kind of thing.

The second thing we did is ask the Coast Guard. They said they would prefer to have it moved. The final thing we looked at was management. We wrote letters to California Department of Parks and Rec. We wrote to Seal Beach. We wrote to Orange County. If this is a recreational management issue, can we find somebody to take that. Nobody accepted the responsibility. We thought it would be a win-win. We had the Coast Guard saying, "Take it up," and we have nobody else who's willing to take on the management responsibility. We went back to the original Fish and Game recommendation. The best
place for these rocks is off the Bolsa Chica.

MR. FRUMKES: May I respond?

MR. BUSTAMANTE: I think you've had ample time to respond, sir. Robert Osborn.

MR. OSBORN: My name is Robert Osborn, and I'm here representing myself. I'm a sportfishing enthusiast. While no one asked me to come here and represent me, I have friends and correspondents who share my feelings in this matter.

Belmont Island is a recreational facility. While we can fish in many areas, Belmont Island represents a special and important resource for myself and my fishing friends. Belmont Island is a fishing hole when the weather is bad, the wind blows. Fishermen in the interests of safety cannot travel far as the water conditions can be dangerous. Belmont Island and some of the other islands within a couple of miles of shore have outstanding fishing opportunities with a scenic distance of Long Beach and Huntington harbors. Belmont Island is outstanding. I also fish it on good weather days when I could go to more distant locations.

Too few are these type of locations. I know of no serious port fishermen that fish the barren areas that are so common to this area. I hear comments about how Belmont does not represent a good or ideal or best location for a reef. Well, there's probably only one location that is the best or ideal.
There are many locations where reefs can be productive. They say it's too shallow, they say. Yet many fishermen catch fish there. Much shallower water can catch fish. It's close to harbors and marinas. That's what it's especially good for especially in rough weather.

Water quality is too poor. It does not appear too poor for the fish because the fish are there. Removal of Belmont Island even if materials are used to build new reefs seems to be a process two steps backwards to accomplish one step forward.

Thank you.

MR. BUSTAMANTE: Thank you, sir. Tom Raftican. And then Bill Shedd on deck.

MR. RAFTICAN: My name is Tom Raftican. I'm president of United Anglers of Southern California. We're the largest association dedicated to restoring fisheries and marine habitat in Southern California with some 30,000 affiliated members. I was going to come up and tell a little bit of background about the habitat of Belmont Island and a little bit about the science there, but Mr. Frumkes and certainly Mr. Shedd covered those areas quite well.

I was going to come up and tell a little bit about angling on the island, but Mr. Osborn did a very, very good job of that. I think when you put the entire picture together, let's
see what we have here. We have the opportunity, the
existing opportunity right now when something that's
close in that's recreational fishing and close enough
to the harbors that virtually anybody can get there
in safety. It's an unusual situation. Bolsa Chica
is a great reef, but it's about four miles offshore.

You covered a number of areas there,
and I think the only one that really seemed like it
was much of a concern was the water quality issue
which relates to the San Gabriel River. Mr. Frumkes
put up a number of propositions. If the reef is left
in place, obviously there's going to be substantial
savings. It would seem that the savings could be you
could finish the Bolsa Chica reef with simply the
savings of leaving the existing reef in place.

Look at the water quality. Use this
to do a study on water quality around there and do
something to implement the changes in the San Gabriel
River. The word "artificial" goes in there, but it's
a reef. You've got lobster fishermen on it. You've
got recreational anglers on it now. It's a shame to
leave it, to take it away. Thank you very much for
your time.

MR. BUSTAMANTE: Thank you. Mr. Shedd.

Bill Shedd.

MR. B. SHEDD: Before I refer to the
letter in your packet of 2/12/99 from the CORE board
of directors, I want to clarify one point. It was
said that the Department of Fish and Game would not choose this as their first choice for a reef site. I think the point of clarification was on a new reef. This is an existing one. If they were to start over, there'd be other locations. You've got live habitat in this, a real difference. The California Official Reef Enhancement, or CORE, program is a 501c private benefit corporation with the goal being additional research and education about artificial reefs and their role in the ecosystem.

In past California decommissioning efforts, projects with clean materials which provided homes for living marine organisms were removed without considering their habitat. We're on that same path. That's been expressed here by the four or five folks before me. You guys have an impossible job. There really is no way to really understand what's happening. It's impossible. Can't do it. Just as I mentioned previously, the 4-H rigs, we had tons of material removed. A decision made by a similar board to yourself receiving similar information from similar experts, the bottom line is the habitat's gone.

It appears we're about to be on that same path. After removal of the inner island and other important materials which everybody agrees should get out of there that offer habitat value. Rather than requiring Exxon to spend money on the
removal of this rock habitat, we would encourage you
to work with Exxon and develop a plan to have a
portion of any money saved from removing this rock
habitat and create additional reef habitat as
determined by the California Department of Fish and
Game.

It is widely known that vertical
structure increases fish community-associated reefs.
Possibly by working with Exxon in not making a snap
decision here, additional vertical structure should
be added to increase the overall habitat value
similar to what exists today. Thank you.

MS. CONNELL: Mr. Chair, is there
another speaker?

MR. BUSTAMANTE: He's the last speaker.

MS. CONNELL: I'd like you to stay
there for a moment if you could. Mr. Shedd, is that
your name?

MR. B. SHEDD: Yes.

MS. CONNELL: I want to review the
three concerns you had about this. I think as the
evening has gone on, I can only remember two of the
three. One was the management liability issue. Who
would take responsibility for management liability?
The next is navigation issue by which I think was
kind of addressed although not really adequately in
my view in the Coast Guard letter. I don't know that
the Coast Guard has major concerns with that. What
was the third?

MR. THAYER: Fish and Game had some question based on water quality. I guess they generally only want new reefs in 60 feet of water or more, but I think that's probably more of a liability.

MS. CONNELL: This is not a new reef. We're dealing with an existing mound.

MR. THAYER: They thought the same substrate would be more valuable in Bolsa Chica because of the water quality being better there than if it were in front of the river. But again, I don't think any of those were absolute bars except for the navigation and the liability issue which would have to be resolved in keeping the island there. Our view was to find out some way to keep it there --

MS. CONNELL: I have no scientific background here. I'm exploring. It's like giving a child a chemistry kit who's three years old. I don't know what terms to be using correctly here. It seems to me there have been some compelling arguments that have been presented by the speakers. Is it possible to remove the portion of this Belmont Island that could create a negative problem, the remaining oil portion and put that away and leave some of the rock that remains at the bottom of Belmont Island so that you could still have some of this reef life going on?

MR. B. SHEDD: Bingo.
MR. THAYER: Absolutely one can do that. There are some studies like you getting myself potentially in trouble here, and I think the consultant here has done this kind of work. It would indicate what is left what is a low pile of rock. Right now the rock is held up because it uses riprap to protect the existing platform that, once that caisson is taken out, the rock becomes a mound in that area and that the value of that is much diminished. As we've heard this morning, generally it's the vertical habitat that creates the best, the vertical structure that creates the best habitat.

What we're left here is with a mound that's 10, maybe 15 feet high whereas the overall structure goes up 40 feet. If that's an amenity that the fishermen can still enjoy, I'm not sure it provides the same benefits. That could be left behind. There's still a liability issue that's left, and the Coast Guard preferred the high mounds than a lower island. Their preference was to take it out. Yes. It's technically feasible to remove the concrete and steel inner portion of this island along with a contaminated sand that's expected to be in there and leave those riprap rocks behind which is the substrate that is most valuable.

MS. CONNELL: I read some of the preparation stuff through rigs and reef discussion today. It seems to come down to we really don't know
a whole lot about this yet. We're really going to be pioneering a whole new response to what we do with these facilities that are out there in the middle of the ocean. I think there's probably not one clear solution to these problems, and I would hope that we can be adaptable as we go through each of these sites. What we can find for one might be quite different for another. I would be willing to pull back my motion here and kind of reconsider it. I would really like to see if we could do something that removes the oil portion of the Belmont Island, carts it away so we don't have environmental damage to the area.

I am willing to look at trying to keep part of the structure in place. I think it is a very sellable argument that we already have reef life there. Why destroy it? Why not let it continue? It might not be as vibrant as if you have had structure if you had the ecosystem, but perhaps it still has some value if it stays at a reduced level. I don't know. There are scientists sitting in this room to give us a sense. I don't know if that's more expensive or less expensive for Exxon, and I don't mean to be producing financial burden on this company. It seems to me that we might be able to try an opportunity here. We'd learn in two or three years how we were doing with this. We're going to have a generation where we're going to have to
dismantle these oil facilities up and down the coast of California, and the more alternatives we've explored, perhaps the more informed we're going to be ourselves as we get to the more difficult situations that lie ahead of the commission. Please give me a response. This may be completely off the wall.

MR. THAYER: If the commission chooses to go in that direction, we can figure out ways to facilitate that. It might end up entailing to saving some liability on this site.

MR. BUSTAMANTE: Would you like to defer action today in order to be able to have me come back with something?

MS. CONNELL: Yes. Is there an immediate need to take action here today?

MR. THAYER: I think Exxon needs to respond to that. No. I don't think there's immediate --

MR. BUSTAMANTE: Exxon.

MR. THAYER: The applicant here. I think the applicant has actually --

MR. BUSTAMANTE: Does the decision have to be made today?

MR. CAGLE: We would like to move forward with the project.

MR. BUSTAMANTE: Does the decision need to be made today?

MR. CAGLE: The concerns of the site as
suitable for a long-term reef. We share those
concerns. One thing I think we need to recognize
is --

MR. BUSTAMANTE: You said yes, and then
you said maybe.

MR. CAGLE: I said yes.

MS. CONNELL: Let me understand again.

What are the concerns of the Coast Guard here?
Quality of water? I've read that Coast Guard -- I
have some practice having been in elected life for
five years. And I read that letter, and it was the
most neutral presentation of facts I have seen.

MR. CAGLE: I guess the question is is
it going to be okay to leave the island in the
condition it is today for some period of time for
further investigation or evaluation? Is that the
question to come back with more information?

MS. CONNELL: If we're coming back to
this commission meeting anyway in February, I'm
intrigued with the idea of trying to come up with an
alternative here. I'm looking for that letter from
the Coastal --

MR. BUSTAMANTE: The next possible time
we could take it up is in February.

MR. THAYER: One other thing that our
environmental attorney points out is that the
commission what was evaluated was the impact of the
proposal, the riprap over to Bolsa Chica. If the
commission wanted to reach a decision to leave some
of the material behind, we would probably need to
work up the environmental deal before the commission
could act. If that was the direction the commission
wanted to go, we would recommend that it not act
today.

MR. BUSTAMANTE: I think what the
controller is suggesting, it should be an abeyance
item pending additional information that you would
provide to the controller so she could make a more
informed decision come February. The issue, then, is
does this have any bearing on your -- I'm ready to
move.

MR. CAGLE: I believe some of the
concerns that you may have are addressed in the
evaluations that have been done today in looking at
the different reef alternatives and the pros and cons
associated with those that in the biological survey
information details in that report. I think some of
the questions that you have are answered there. I
hear a great concern over the fishing resource of
this site. That has been found to be associated with
the piles and the wars, and under any scenario those
are going to be taken out, those will be removed
because they do pose a high hazard to navigation and
liability.

MR. BUSTAMANTE: What you're left with
is about 10 or 15 feet of rock?
allow us to really take a snapshot. What would
Belmont be like if we knock it down, ester as the
example?

We found a reef is not as active as the
current island itself, not as active as breakwater.
What we also found when we prepared species, and in
your staff report we have a comparison of the Bolsa
Chica although it's in deeper water. It's in clearer
water. The clarity issue is one of the big drivers
on the habitat Belmont Island. When we look at the
species there, what we would expect at Belmont at 30
feet down, they're comparable. So the net result of
our analysis was that design scenarios we're talking
about would require complete removal of peeling back
of the island in significant mortality on the
existing organisms on the island itself.

As far as trying to preserve what's
there, there would be significant disruption. When
it was moved into Bolsa Chica, it moved in deeper
waters than navigational issues have been reduced
already a permanent site. There's a state trusty
agency Cal Fish and Game that we would see the same
habitat in that location. It's not in the specific
location, but a lot of the constraints we've heard
about the navigational issues, the fact we're in an
active harbor or naval station would all be
eliminated. And we have an agency to take hold of
the riprap. So I concluded that looking at the
various scenario, recognizing that the high relief
would be the greatest productivity but the
constraints of navigational issues to a lower level.
Bolsa Chica offers a good relocation option.

I should note this morning we heard a
number of cases in the Gulf of Mexico for relocation
of the jacket preapproved permitted area is the net
result of their rigs to reef program. So we really
have a parallel here. Yes, the reef is going to
continue to act as a reef, but it will be relocated
to an area.

MS. CONNELL: Do you think there's
anything to be gained from a research viewpoint for
knocking it down to the lower level and maintaining
it so we have an alternative to look at as we move
forward on this effort of converting things from rigs
to reef?

MR. BROWN: That is platform ester.

MS. CONNELL: There's no scientific
value.

MR. BROWN: There is a snapshot. If we
wanted to go back and see what Belmont looks like in
ten years if we knock it down, ester at least gives
us a first glance of what that would be. Ester is a
little clearer water. It's a little shallower
actually by ten feet at the most. It gives us that
example of what we would expect to see. No kelp is
anticipated to grow on any of the scenarios. We
didn't see kelp in ester. That's what our
conclusions are what kind of habitat would we get.

MS. CONNELL: You don't see any value
for keeping it at a lower level. You would say go
ahead. Move it to Bolsa Chica.

MR. BROWN: That is our recommendation.
The net value has already a considerable amount of
material that would be more beneficial than leaving
this isolated small low lying area.

MR. BUSTAMANTE: Pleasure of the
commission?

MS. CONNELL: I'll put my motion back
on the floor if I have a second.

MS. PORINI: You do.

MR. BUSTAMANTE: Motion is seconded.

Let the record show it passes unanimously. Thank you
everybody for coming here today and for all the
presentations. We are going to closed session. If
you could do us a great favor and move quickly.

* * *
STATE OF CALIFORNIA

I, Dina M. Lossone, CSR No. 11340, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the foregoing proceedings were taken down by me in shorthand at the time and place named therein and were thereafter transcribed under my supervision; that this transcript contains a full, true, and correct record of the proceedings which took place at the time and place set forth in the caption hereto.

I further certify that I have no interest in the event of this action.

EXECUTED this 28th day of February, 2000.

DINA M. LOSSONE