APPEARANCES

BOARD MEMBERS
Mr. Cruz Bustamante, Chairperson
Mr. Steve Westly, also represented by
Ms. Cindy Aronberg
Mr. Steve Peace, represented by
Mr. David Takashima

STAFF
Mr. Paul Thayer, Executive Officer
Mr. Jack Rump, Chief Counsel
Ms. Kimberly Korhonen, Executive Assistant
Mr. Paul Mount, Chief, Mineral Resources Management
Division
Mr. Blake Stevenson, Senior Staff Counsel

ALSO PRESENT
Alan Hager, Deputy Attorney General
<table>
<thead>
<tr>
<th>INDEX</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Call to Order</td>
<td>1</td>
</tr>
<tr>
<td>Confirmation of the Minutes of the Meeting of April 7, 2003</td>
<td>1</td>
</tr>
<tr>
<td>Executive Officer's Report</td>
<td>2</td>
</tr>
<tr>
<td>Consent Calendar C01-C045</td>
<td>11</td>
</tr>
<tr>
<td>Item 46 - Harvest Natural Resources Inc. (Formerly Benton Oil and Gas Company) (Applicant)</td>
<td>12</td>
</tr>
<tr>
<td>Item 47 - San Francisco Piers 27-31 LLC (Mills Corp)</td>
<td>19</td>
</tr>
<tr>
<td>Public Comment</td>
<td>77</td>
</tr>
<tr>
<td>Adjournment</td>
<td>90</td>
</tr>
<tr>
<td>Reporter's Certificate</td>
<td>91</td>
</tr>
</tbody>
</table>
PROCEEDINGS

CHAIRPERSON BUSTAMANTE: Call the meeting to order.

Is the representative of the Finance Department here? Mr. Takashima, is he here?

CHIEF COUNSEL RUMP: He is here.

CHAIRPERSON BUSTAMANTE: Okay. Good.

Call this meeting of the State Lands Commission to order. All the representatives of the Commission are now present.

I'm Lieutenant Governor Cruz Bustamante. And I am joined today by Controller Steve Westly and David Takashima representing the Department of Finance.

For the benefit of those in the audience, the State Lands Commission administers properties owned by the State as well as its mineral interests. Today we will here proposals concerning the leasing and management of these public properties.

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

May I have a motion to approve the minutes.

A motion to accept the minutes.

(Laughter.)

ACTING COMMISSIONER TAKASHIMA: I move them.

COMMISSIONER WESTLY: Second.
CHAIRPERSON BUSTAMANTE: Thank you. We've got a motion and then a second. So the minutes are unanimously adopted.

The next order of business is the Executive Officer's report.

Paul, may we have your report.

EXECUTIVE OFFICER THAYER: Thank you. Good morning, Mr. Chair.

I just have a few items that I wanted to mention. First, although I don't think we have a representative from the city here today, I wanted to thank the City of El Segundo for hosting us and offering us the use of the city council chambers.

The second item I wanted --

CHAIRPERSON BUSTAMANTE: Is the Mayor still Mike Gordon?

COMMISSIONER WESTLY: Yes.

CHAIRPERSON BUSTAMANTE: Thank you, Mike.

EXECUTIVE OFFICER THAYER: The second item I wanted to raise is the ballast water enforcement actions that we've recently taken. When we heard the ballast water report at a meeting earlier this year, several of the Commissioners were concerned whether or not we were moving forward appropriately with enforcement against those companies that were not complying with the State's
Ballast Water Program. And I wanted to report that we're in the middle of proceedings on two different enforcement actions.

CHAIRPERSON BUSTAMANTE: Are both commissioners familiar with the ballast water issue? Any explanation necessary?

COMMISSIONER WESTLY: None.

CHAIRPERSON BUSTAMANTE: None. Okay, good.

EXECUTIVE OFFICER THAYER: Thank you.

The first one has to do with an agent that was responsible for submitting the reports from a variety of shipping companies, and had not supplied I think probably 200 required reports and didn't respond to early letters. That enforcement action has gone through the due-process procedures that we've instituted administratively. All of this is an administrative action. And may very well be referred next week or the following week to the Oil Spill Prevention and Response administrator for imposition of a fine. We may be meeting one more time with the agent before that occurs.

The second enforcement action involves Carnival. Carnival's been the subject of litigation by an NGO that was concerned about potential violations of the ballast water program. Carnival settled that litigation and admitted violations. We've sent out an initial letter to
start our own administrative proceedings that we --
potentially we could fine. And I'm going to be meeting
with representatives from that cruise line on Friday to
discuss this further review.

So that's the present status from the middle of
it. And we'll report back to the Commission as things
proceed.

CHAIRPERSON BUSTAMANTE: Okay.

EXECUTIVE OFFICER THAYER: The third item I
wanted to mention is that the staff participated in a
science fair at the Capitol. This occurs every year up on
the Capitol grounds. A lot of state agencies provide
people from their staff who are scientists who explain the
equipment and procedures that we use in state government.
And we had several staff out there that were showing
surveying equipment and that kind of thing. I think there
were probably 500 school children that were there for the
event. So it was very well attended. I think represented
the Lands Commission was represented well with the people
we had there.

The fourth item I wanted to mention is that --
the Commission several years ago, it was brought to their
attention by the Attorney General's office that the East
Bay Municipal Utility District was not allowing people who
were recreating on the Mokelumne River to take out rafts
and kayaks at a point close to a reservoir.

The Commission, as part of its overall program of ensuring public access to public waters, authorized staff and the Attorney General's office to become involved with the FERC relicensing procedures that govern the reservoirs there and to say and basically suggest that East Bay MUD could do more to facilitate recreation, which was one of the requirements of the Federal Energy Commission for approving these reservoirs.

We got involved. A number of other private groups were involved. The local government was in support of what we were doing as well. And cumulatively the net result was that East Bay Municipal Utilities District decided they did want to put in a take-out point. And there was a large article in the Sacramento Bee -- I think we have copies up there -- which references the State Lands Commission involvement. I think it was a success story all around.

East Bay MUD was able to get some money from Boating and Waterways to help underwrite it, but put in a lot of their money and time as well. And it was a very well attended event and --

CHAIRPERSON BUSTAMANTE: So how much more space, how much more --

EXECUTIVE OFFICER THAYER: It's an additional
three miles of a run that wasn't available before or
wasn't available legally. There'd actually been
complaints filed. The local attorney, to his -- district
attorney, to his credit, refused to prosecute them. That
also -- but the net result now is that it's a wonderful
take-out. There's a parking space there so the people can
leave vehicles too. And it's used to take the rafts and
kayaks back. And there's a set of restrooms there as
well.

CHAIRPERSON BUSTAMANTE: I'm assuming also that
there are published in the local paper, et cetera, of the
amount of water that's going to be let from the dam on a
regular basis. I know they do that off the San Joaquin
River, which gives a tip to a lot of regulars as to when,
you know, the kind of water or rafting that is likely to
take place in that area.

EXECUTIVE OFFICER THAYER: And there's -- I think
you can go to the State Department of Water Resources
website and get some of the same information.

CHAIRPERSON BUSTAMANTE: Great. Technology
again.

Okay. Anything else.

EXECUTIVE OFFICER THAYER: It's been a real
success for us.

And then the last thing I wanted to mention is
that we've been working, as you know, with the various Commissioner offices to set up an advanced scheduled commission meeting so that the public will have a better understanding of when we're going to meet, over what we've done in the past, and plan appropriately for applications and attendance in these things. And I think later today we will get the next four dates up on the website so that the public will be aware of when we're meeting.

CHAIRPERSON BUSTAMANTE: Okay.

EXECUTIVE OFFICER THAYER: And that concludes the Executive Officer's report.

CHAIRPERSON BUSTAMANTE: Anything on the San Diego Port or on the Duke activities over there?

EXECUTIVE OFFICER THAYER: My understanding is that Duke is to make a report this month. And we've been in contact -- which we're looking forward to looking at. We've also been in contact with the Port and have copies of a lot of those underlying agreements that dealt with the purchase of the powerplant and the lease. We'll be reporting back, we're anticipating, at the next meeting that the Commission will have in San Diego, which will be in October. We'll hear the border plans issue at the same time.

CHAIRPERSON BUSTAMANTE: I really think we need to, you know, review the whole issue of the lease, et
cetera. I've had a chance to talk with representatives of Duke. They are just totally unaware of why they're getting such negative press, and are unaware of why there is so much angst over what's taking place, and have promised their full cooperation in order to be able to try to deal with this issue.

I think -- I mentioned to the representative who came that if this is an issue of which they're making a business decision to not comply to their contract and they're attempting to wait us out, that if that will require the Commission and staff to take a more aggressive role in compliance with their lease -- it is my belief, and I would like to have some type of opinion at some point, that we have complied with all of our requirements on their contract. And if that's the case, then their contract is now open for an additional either RFP or consideration to be let to someone else.

I think it's important that we try to use every means possible. They were supposed to be working on trying to get a new facility in a different location. It's been five years. They haven't done a thing. I haven't seen anything. They claim that they have. And their have been some who have claimed that announcing any kind of action has some effect on the proprietary nature of their business and therefore gives internal secrets
away to the competitors.

Bull shit. I want something soon. It's been five years. We need to have something by them fairly soon to show that in fact they are moving toward trying to deal with the issue that was clear, was clear in their contract, and was clear in the negotiations for that lease.

So in that San Diego meeting, with the consent of the Commission, I would like to make sure that we begin to flesh out with staff the parameters of a more detailed public hearing on the issue with the San Diego Port and that energy facility that Duke is running. And it's in Chula Vista.

EXECUTIVE OFFICER THAYER: We'll work with your staff in working that up.

CHAIRPERSON BUSTAMANTE: Are there any other items by the Commissioners they'd like to be presented at this time, or have any questions regarding any of the report by the Executive Director?

COMMISSIONER WESTLY: I would just like to concur with what the Lieutenant Governor said there.

And could you just remind me of when the next meeting is?

EXECUTIVE OFFICER THAYER: The next meeting for this Commission will be August 19th. And then the next
one in San Diego will be October 7th.

COMMISSIONER WESTLY: Which is what I was driving at. Would it be possible to get some feedback from the company before we get back to San Diego, perhaps at the August meeting, so we'll have a chance to review it before we're back in San Diego?

EXECUTIVE OFFICER THAYER: We should be able to do that. In fact, we've been getting the information to provide that. And I think what I see us doing -- and tell me if this is responsive -- is getting a report back to you in advance of the meeting so that if there's any input from the Commissioners' offices, we can make sure we're responding.

COMMISSIONER WESTLY: This is exactly at what I'm driving at. If you could let them know, it would not only be helpful but perhaps even in their best interests to get some feedback back to us along the lines of what the Lieutenant Governor requested.

EXECUTIVE OFFICER THAYER: I understand.

ACTING COMMISSIONER TAKASHIMA: Additionally, I would like probably for the October 7th meeting additional -- kind of a report from the Port of San Diego of what's the status of the activity in the Port and their revenues and where they're at today. Because they've had some changes in the Port of San Diego configuration, and I
think it would be helpful for us as Commissioners to understand what's happening in San Diego at this time.

EXECUTIVE OFFICER THAYER: So kind of a strategic plan for the future, that sort of thing, as well as their revenues?

ACTING COMMISSIONER TAKASHIMA: Right. And also their reserves.

CHAIRPERSON BUSTAMANTE: Reserves. Okay.

(Laughter.)

CHAIRPERSON BUSTAMANTE: Okay, Mr. Commissioners.

(Laughter.)

CHAIRPERSON BUSTAMANTE: Next will be adoption of the consent calendar.

Are there any changes on the consent calendar?

EXECUTIVE OFFICER THAYER: We'd like to remove File Item 9. We'll hear that at a future meeting.

CHAIRPERSON BUSTAMANTE: Okay. Any other changes? Any other thoughts by the Commissioners with regard to the consent calendar?

Seeing none, is there a motion?

COMMISSIONER WESTLY: So moved.

ACTING COMMISSIONER TAKASHIMA: I second.

CHAIRPERSON BUSTAMANTE: There's a motion. Is there anyone here that would like to speak on any of the issues on the consent calendar?
Seeing none, let the record show that the motion passes unanimously.
I guess we'll move into the regular session at this time.

Item Number 46, the quitclaim of an offshore oil and gas by Harvest Natural Resources.

Staff presentation please.

EXECUTIVE OFFICER THAYER: Thank, Mr. Chair.

Paul Mount, who's Chief of our Mineral Resources Management Division, will give the presentation on this item.

(Thereupon an overhead presentation was Presented as follows.)

MINERAL RESOURCES MANAGEMENT DIVISION CHIEF MOUNT: Good morning, Commissions. I'm Paul Mount, Chief of Mineral Resources Management Division. I'm here today to provide you information concerning the quitclaim of our Lease 2894. And also give you a status or an update on our current lease situation offshore of California.

--o0o--

MINERAL RESOURCES MANAGEMENT DIVISION CHIEF MOUNT: Twenty-eight ninety-four is located near Gaviota. That's north of Santa Barbara along the coastline. This slide shows you 2894. There are two other leases there associated with that lease, 2199 and 2920. All of those
leases were held by Harvest Petroleum. Right now you're only considering the quitclaim of Lease 2894. The other two will follow in the future when their abandonment obligations are met.

--o0o--

MINERAL RESOURCES MANAGEMENT DIVISION CHIEF
MOUNT: Originally it was leased by Chevron and Shell in 1962, so it's quite old leases. They developed the leases in the early sixties and continued to produce them until Molino Energy acquired both interests in 1994. Molino assigned 40 percent of the interest to Benton. Benton then changed their name. They had some financial problems, changed their name to Harvest Resources, who is the current lessee for that lease.

Chevron drilled two wells offshore. Both were sub-sea completions on this list, and they've both been abandoned. The wells produced about 32 billion cubic feet of natural gas between 1963 and '84.

--o0o--

MINERAL RESOURCES MANAGEMENT DIVISION CHIEF
MOUNT: Just a little bit on the -- just to give you an idea of what's out there. This is a cross section of the oil and gas formations out there. The green areas represent oil. So the oil was spread across quite a large area. And they're also shown on here, the gas, with the
red areas. Those were produced for a number of years.
There are still some remaining reserves out there as well.

--o0o--

MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

MOUNT: The potential projects that could be developed
from those leases, but will probably not be developed:

There's one, the Gaviota, which is that field
located there.

There's another field which is larger called the
Molino field located in this area here.

There's a Caliente field located here.

And then there's two fields located -- that also
cross into OCS waters, Manatee and South Molino.

As you can you see, this is the dividing line
between the federal and state waters. And here Platform
Hondo is located in the federal waters and still is
producing today from federal leases.

--o0o--

MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

MOUNT: Resource reserves in place. This is what we feel
is left out there in the field. A total of 535 to 635
billion cubic feet of gas and about 137 to 157 million
barrels of oil. That's across all three leases.

Again, we anticipate getting a quitclaim for the
other two leases in the near future when they get those
wells abandoned that are still there.

MINERAL RESOURCES MANAGEMENT DIVISION CHIEF
MOUNT: I wanted to give you a quick rundown on the status of our offshore leases. This shows all our offshore leases off California, lands that were ever leased in the history of the State Lands Commission.

The color coding shows, for example, the light green here, those leases that were quitclaimed from 1965 to '75; this color, from '75 to '85; this green, from '85 to '95; and the darker color represents those leases quitclaimed from 1995 to 2005.

So you can see there's been a number of leases quitclaimed along the coast. This is northern California, Santa Barbara here, Ventura here. And this is southern California. Long Beach is right up here and Huntington Beach right here.

MINERAL RESOURCES MANAGEMENT DIVISION CHIEF
MOUNT: So the next slide -- this slide -- sorry. Well, let me go back one.

This slide represents our lease quitclaim history. We had a maximum of about 59 leases here in 19 -- right before 1970. It's been declining ever since, to about 33 leases here in 2005. This is the cumulative
number of quitclaim leases since 1965 represented by the red line.

So we've had a number of leases quitclaimed over the years, and we anticipate more to continue within the next couple years.

--00o--

MINERAL RESOURCES MANAGEMENT DIVISION CHIEF
MOUNT: This summary spreadsheet gives you the details on that, the total number of leases over here in this column, how many producing leases, how many non-producing leases. As you can see -- and you might wonder -- well, right now we only have 17 producing leases and 14 are non-producing. Many of those leases were recently transferred to other ownership. We currently have a number of projects in the mill for those leases. Some of them they want to continue development, and you will be hearing about those probably within the next year. And some of the other leases are scheduled for quitclaim and only awaiting some abandonment obligation that the companies need to meet before we accept the quitclaim.

But you can see that the total leases quitclaimed to date have been 28, and this is the lease numbers.

--00o--

MINERAL RESOURCES MANAGEMENT DIVISION CHIEF
MOUNT: And that ends my presentation. Do you have any
questions?

CHAIRPERSON BUSTAMANTE: That's really good.

The number of non-producing leases and the number of developed leases, that's a total of 18. And at the beginning when we started talking about the issue of try and get these quitclaimed, we asked staff to look very carefully at those that were not producing and undeveloped for the purposes of persuasion and to be able to get those leases quitclaimed back to the State.

Are we still doing that review on these 18 leases? And is there a group of leases that are substantially less production today than they have been in the past? And as a result, we're looking at those particular leases for the purposes of quitclaims. Are we --

MINERAL RESOURCES MANAGEMENT DIVISION CHIEF MOUNT: Well, there are -- currently we have quitclaims for three more leases. However, we haven't brought those to the Commission because there are obligations that haven't been met on those leases yet. So we have in-house three quitclaims.

We are continuing to pursue those other leases that are nonproducing. But, again, they have either -- they are in the process of abandoning facilities or wells or they have submitted to us an application to develop.
So either one of those cases.

CHAIRPERSON BUSTAMANTE: For the newer members, just to let you know, that a couple of years ago, we entered into a process with staff to become much more aggressive with quitclaiming of leases. And the -- I don't know what the -- I'm assuming the new board would want the staff to continue the same policy objectives. Since most of us are opposed to offshore oil drilling, we clearly wanted to have them move aggressively at quitclaiming as many of those leases back to the State as possible.

Any of the Commissioners would like to comment on the report or --

COMMISSIONER WESTLY: I'm in agreement.

MINERAL RESOURCES MANAGEMENT DIVISION CHIEF MOUNT: As far as your question about the low producing leases, until they had where the leases are uneconomic to produce, it's very difficult for us to pursue any course of action other than to pressure them to either increase their production or to quitclaim it; which we've tried both ways and we're still working on those.

CHAIRPERSON BUSTAMANTE: Okay.

EXECUTIVE OFFICER THAYER: I should also add that at the time that the Commission looked at this more carefully, we did a very extensive staff report, lease
status report. That report is available on the Internet. And we regularly update it each time another quitclaim occurs. So the numbers are accurate, and they are available to the Commissioners or to the public.

CHAIRPERSON BUSTAMANTE: Okay. Is there a motion to accept the quitclaim?

COMMISSIONER WESTLY: So moved.

ACTING COMMISSIONER TAKASHIMA: Second.

CHAIRPERSON BUSTAMANTE: All right. It's been moved and seconded. Let the record show that we unanimously agree to accept the quitclaim back to the state.

Item Number 47, a Commission evaluation for a project at Piers 27-31, the Port of San Francisco.

Staff presentation please.

EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair. Let me give a brief overview of this project, and then Blake Stevenson, one of our staff attorneys, will present the project in greater detail.

This project, as the Chairman mentioned, is proposed for restoring several piers along the waterfront in San Francisco, Piers 27 through 31. There's some good public trust uses there that were part of the original proposals, some good public access along the wharfs, a marine supply store, boating facilities, some uses that
are the classic public trust uses. But there are also
some other uses that present public trust issues.

And we've been working for the last several
months and intensely over the last month to try and
resolve those. Let me go over those briefly.

In projects that we will restore historic
buildings on trust lands, some non-trust uses are
permitted. But there has to be a balance between public
trust and non-trust uses. And we felt that the project as
proposed was much too much weighted in the direction of
non-trust uses, particularly retail and private office
spaces.

A second point on the project. For YMCA, which
is part of this project, it's proposed for a new building,
and doesn't therefore -- that building doesn't enjoy the
same sort of balance requirement that is in there for
historic buildings. Instead, the entire use has to be
public trust.

And while the Y had -- reflecting part of it as a
whole, had some good public trust uses in it -- there were
some swimming pools, there's some facilities that would be
useful for boaters, that kind of thing -- there are also
the typical Y spaces which involved community meeting
rooms, team clubs, that kind of thing, which serve more
purely local needs and aren't generally therefore
considered to be consistent with the public trust doctrine.

The third issue we concentrated on was historical resources. If these buildings are going to be restored in some cases with some non-trust uses, then we felt that those historic resources should be available to the public for viewing or be otherwise accessible. So we asked for a number of changes to be made so that the building would be opened up more to public access.

To resolve these issues, staffs of the State Lands Commission with the San Francisco Bay Conservation Development Commission, the Attorney General's office have met with representatives from the developer of Mills, the Port of San Francisco, the YMCA, and America True, which is running a boating facility, over the last few months for many hours. And together we've agreed upon a set of project changes that will bring the project into compliance with the public trust doctrine.

With these changes, staff is recommending today that the Commission find the project to be consistent with the public trust doctrine and the Burton Act, which was the granting legislation. The Commission's determination would be subject to the development of an enforceable implementation mechanism, which is yet to be worked out, involving the Port, the developer and the Commission.
For more details on the project I'd like Blake Stevenson, the attorney who's worked on it, to make a presentation. I'd also like to mention that in addition to Alan Hager, who's represented the Attorney General's office on this throughout, Dave Plummer and Grace Kota, who are in the audience as Commission staff, have spent a lot of time on this.

CHAIRPERSON BUSTAMANTE: Okay. Before we get into the report, Alan, we had a report memo from you, representing the Attorney General, on this entire issue, which indicated that the project was not in public trust. Have you had a chance to look at the changes to the project?

ASSISTANT ATTORNEY GENERAL HAGER: Oh, yes. I've been involved in it all on that. And the memo was written, as you know, on May 5th. And that's when -- that's before a lot of changes started being made.

CHAIRPERSON BUSTAMANTE: Do you have an opinion now as to compliance with the public trust?

ASSISTANT ATTORNEY GENERAL HAGER: We believe that if the -- project as presently proposed as of last Friday afternoon, that we believe that it would be consistent with the public trust.

CHAIRPERSON BUSTAMANTE: Okay. Thank you.

ACTING COMMISSIONER TAKASHIMA: Based on that,
would the Attorney General's office write a letter stating that this project as proposed as of Friday at noon would be in compliance with the public trust based on -- because I'm a little concerned because you have your document on May 5th saying that there's a lot of -- there's serious concerns here of the project from the Attorney General's view. And I would -- I think it would put the developer and the community in some concern if the May 5th letter resides out there alone without a back-up letter.

ASSISTANT ATTORNEY GENERAL HAGER: I'm sorry, but again I can't answer that because to commit to that -- I myself can't commit to it, because anything that would come out would have to have approval of people above me. I can say, as I just said, that the project the memo addressed on May 5th is not the project that is before you now. That project has trust problems. And this project still has some problems too, but we think of it as, you know, coming to the point where we could say that it is a trust --

CHAIRPERSON BUSTAMANTE: In courtesy to the Commissioner though you'll go back and check to see if that's possible to do?

ASSISTANT ATTORNEY GENERAL HAGER: Absolutely.

CHAIRPERSON BUSTAMANTE: We appreciate the fact you have stated on the record that in fact the position of
the Attorney General's office is that it is -- your belief
it is now in compliance and that the memo that was
previously written was written before the -- I don't know,
how many changes were made?

EXECUTIVE OFFICER THAYER: I couldn't even count
them up.

CHAIRPERSON BUSTAMANTE: Along with another
technical number, Jack.

CHIEF COUNSEL RUMP: A lot.

CHAIRPERSON BUSTAMANTE: A lot doesn't -- okay, a
lot.

Mr. Controller.

COMMISSIONER WESTLY: I'm sure there's going to
be a public discussion and questions here. But I'd like
to go ahead and move for the adoption of the staff report.

Let me just say, this is an extremely complex
case. And as a new member, you know, I've come on board
and I and our staff have spent a huge amount of time
reviewing this to make sure we get to the right place.

And let me just say, I had very substantial initial
concerns both with the original AG's opinion as well as
some of the concerns of the staff articulated. Our belief
is that through, frankly, what is an awful lot of work
that I think really represents the best in state
government, knocking heads with the developer on the
project, trying to make compromises that were not only appropriate but in the public interest, that we've gotten to a place where I am not only comfortable with this, but as you know I moved to support it.

But I just want to commend the staff because -- and give you a number. My staff tells me over 30 changes, considerations were made. This is an extraordinary number. It's just the sort thing we don't often see happening. And I just wanted to say that given the fact we've resolved some of both the AG's legal concerns as well as many of the staff's concerns and we now believe this is fully in compliance with the public trust doctrine and the Burton Act, I am very comfortable supporting this.

CHAIRPERSON BUSTAMANTE: Okay. Why don't we go ahead and move to -- the motion's on the table. We'll move to the staff presentation.

SENIOR STAFF COUNSEL STEVENSON: Thank you, Chairman Bustamante and Commissioners. I'm Blake Stevenson, the Senior Staff Counsel for this Commission.

The Commission and its staff have considered several developments along the San Francisco waterfront in recent years. This is but one of them. And we've seen a lot of benefit derived from this in the new revamped Ferry Building, which has just opened up, Pier 1, which is the home of the Port of San Francisco.
These all represent attempts by the City of San Francisco and its port to try to revitalize the old finger piers of the city. And a lot of this work was reflected also in what's known as the special area plan for this area of San Francisco that was worked out between the Port and BCDC and blessed by the Legislature two years ago.

The focus today is whether this particular development is consistent with the public trust doctrine and the Burton Act. The Burton Act of course is the act by which the Legislature entrusted the waterfront of San Francisco to that city acting through its port. Many parts of government are going to consider this following today.

Perhaps one of the most important is BCDC, which under the special area plan has to find as -- this board has to find that the project is trust consistent and consistent with the Burton Act. That will be done either when the major permit is given for this project or through what's called an early review process, again set up by this special area plan. That early review process, at the choice of the Port and the developer, could come very early, could come by July 1st. They meet fairly frequently in BCDC.

Your determination today will guide the executive officer as he advises BCDC and the Port on these matters.
Let's turn to the maps to have a sense of the setting for the project. Let's look at Exhibit A to your calendar item, which is this.

It's a 19-acre site comprised of three piers: 27 -- this is an as-built rendition, but the old one. I want to emphasize that's the newer one.

Currently there's a short pier running on this side. That's number 27. Number 29 is here in the center and 31 is here.

You'll see how 31 and 29 nicely bracket an inland water basin, which the project intends to make very substantial use of. It's really gone into.

As they are the structures are not being used to their potential. They're not being used for shipping. From what we've seen there, they store leased cars, various floats -- beneficial uses, but really not related to the kind of waterfront uses we would hope for.

The port developer currently is seeking historical designation status from the federal government for this whole complex, but for 27, which would come out. They're looking to have it listed on the national register of historic places, which is the same going on for having us be able to find that any rehabilitation here is a public trust project.

If they get that listing, they will then go an
extra step to have a rehabilitation qualified for tax credits. To do that, they have to abide by standards which are put in place by the U.S. Department of the Interior as to every step of the project, literally every railing, every window. And that is their intention to do. And it's certainly to their financial benefit as well, given the tax credits.

But what it does for the State and the people of the state is it preserves an historic maritime structure and the elements that went into that in the history of San Francisco. And with our guidance and their own plans, we hope to make this viewable by people coming to the site.

Now, right from the start it's evident that the developer and the Port already proposed many solid uses along the perimeter of the development. Complete access all the way around so when the development is done, a person can walk all the way around the entire thing. This is not unusual. I mean the other developments vary.

But at Pier 1, they have it too. But this is the biggest site that would be out there. But if you anchored at the south end by a plaza, true enough the plaza's going to be built no matter if this project goes forward. It's required by the special area planning referred to earlier. What this does though is it moves up the timing substantially, to bring them -- to compel the Port to
utilize money here derived from this project for the early
completion of that plaza, which was so important to many
people in the Bay Area.

However, the positive developments -- excuse
me -- positive elements didn't offset the fact that almost
all the historic piers under this project as it had
existed were to be put to non-public trust uses in the
form of typical office space, large store selling, general
recreational goods and clothes and a bowling alley.

These aren't public trust uses. So our purpose
was to achieve a balance of trust uses within the project
and to cut back on the non-trust uses in the form of
typical non-trust office space and things like unspecified
indoor recreation. If you look at the before map, if you
will; you'll see a bowling center here in 29; you'll see
indoor recreation here, here, and here; large retail here,
which, by the way, will remain. But this outer plan was,
in our sense, not -- in our view, non-trust uses.

Over here in 31 the situation was even somewhat
worse. The ground floor plate, which is this -- this is
the second floor plate. On the ground floor plate you had
almost all office space, just general offices. At the
back it was backed by a restaurant, a boating center. And
down here in the corner a marine museum. Upper floor was
completely office space.
So what we have negotiated through the course of the last few weeks was large scale changes in these areas, to try to concentrate on the strength of the boating activity here and the strength of the public nature of the uses in the area.

And that's where we go to Exhibit C of the calendar item. And what we see there is in the area of Pier 31, basically a lot of non-trust office space will be struck, out to the cross -- the mid-pier public accessway leading through here. On the water side facing this basin there would be non-trust public office uses. That's distinct from allowing some trust-oriented office uses facing the north. They're in negotiations now with some boating companies to try to bring them in. There's less office space over here.

But what we hoped for was that the area focusing on the basin would have non-trust -- excuse me -- non-office uses of any type. It would just be retail or some other public trust use.

The restaurant would remain in place. Maritime office space here, I mentioned. But also that central corridor would be opened up. When you go into these piers you see Norm's Trust Work over the top of them. They were used for breakable cargo at one point in time. And there was a creation of this large cavern space. This -- by
having this open would be viewable. The marine museum has
been shifted from down in the corner here to out here, and
a second mezzanine level added. Again, you could see the
cutouts going both directions. You see here, the white --
the light stuff here. They can look down these large
historic areas.

Over in 29, the use is basically from about here,
about midway out to the end would be public trust uses,
with a good firm anchor right around the middle, that are
both restaurant uses, the boating center, which is being
relocated from down here to over here. And also, again, a
larger opening, an extended opening to see this trust
work, which is even broader in this somewhat broader
building. That would be right here.

The burnishing, you might say, from a public
trust standpoint, of this central access corridor has a
lot of positive effects. One is to link this inner basin
with the YMCA, which will have a back-door entrance,
that's shown here by a series of dots, leading into the
showers. And basically you'll have kids and people who
aren't so young coming from the water out here to boating
classes and back. What we're hoping for is to have some
dedicated area, and I think they're willing to do this.
It's a small jump. But they have a dedicated area within
this walkway so that folks like that aren't mingling with
shoppers and people going to and from restaurants. Their objective is to come out here to the boating center, get into the water, do what they do there, and come back.

The activities out there will be in the initial year or two run by a group called America True. Dawn Riley is here today representing them. They will bring a variety of classes for people of different ages. And it will be anchored there in the basin, but also supported by the Y.

The rooms at the Y will have crossover uses, no doubt. But they are necessary for the actual teaching of classes, sometimes multiple classes of children, at different levels. There will also be other amenities within the Y which are necessary for boat training.

The pools obviously serve the public as you learn to swim there before you can get into the basin and get into a kayak. But also they'll be used to learning things like rolling over kayaks, which looks dangerous every time I see it. The methodology behind that will be taught there in the pools as well.

Also, the front rooms were problematic for us. But I think we've made a substantial amount of headway here.

This is along the Embarcadero, along that walkway that everybody likes to take. In one room here they'll
actually have a fixed boat that will rotate over time. And they'll use the boat for training in outside water, but also they'll be showing the public walking along and what that's all about.

They'll also have some other facilities that are sort of cross over, like ropes training will be there to learn how to climb and rigging. I understand they'll even have a mast for something related to training, which Don and others can go into more.

Also, one important element about the Y is that they have committed to open up their rooms, really make it a regional facility for free use by environmental groups and other groups focused on the San Francisco Bay and Pacific Ocean preservation and fisheries and recreation. We see this as a very positive step.

A final aspect of this approval is that the developer and the Port will need to enter an agreement with the State Lands Commission to make certain that public trust uses of the project are protected. The project is still in the early planning stages. Actual retailers names aren't known. Specific uses aren't known. That we have to basically have an agreement in which we closely monitor and have a participatory role in the determination of these things, and an assurance that by the end of it we will be in a role to require, enforce,
make certain that these kinds of uses are put in place
into the future.

With that kind of an agreement, we support the
recommendation we have made to you. Thanks.

Questions?

CHAIRPERSON BUSTAMANTE: Okay. Several.

Now, the last time that a project was presented
to us that had initially so much non-trust use was the
cruise ship terminal. And as we've indicated to the
developers of this project, we did not yield on the public
trust that time. In fact, because they didn't believe
they could make the sufficient changes necessary to meet
the public trust, they went around us through the
Legislature to get that particular project in place.

In this particular situation, we again did not
yield on the public trust. We said that it had to meet
the public trust. And to that end, I want to make sure
that I am very, very clear on various issues that I have
so that in my mind it's clear that we are meeting all the
public trust items.

Now, first of all, I understand that Save The Bay
has pulled their letter of opposition; is that correct?

EXECUTIVE OFFICER THAYER: I've spoken with Save
The Bay as recently as this morning. We've kept them
advised right along, and their concerns -- this process is
just beginning for them. The EIR is not even done on this project yet.

CHAIRPERSON BUSTAMANTE: Right. We're not going to go through any of the environmental EIR issues, which are going to have to be done at BCDC.

EXECUTIVE OFFICER THAYER: And they wanted it very well -- clearly understood that they'll be looking at this project with respect to those issues independently of what's happening today.

But they did say that their focus was on the issues that were raised in the Attorney General's opinion and that they believe that with those addressed, especially as attested to by Alan, that their concerns are largely met.

They, I think, are very comfortable with what we're doing here.

CHAIRPERSON BUSTAMANTE: So they didn't pull their letter of opposition, but they have expressed to you that they feel that -- with the new review by the Attorney General, that they feel this project could at least move forward to the BCDC --

EXECUTIVE OFFICER THAYER: That's right. Again, they're being very careful about preserving their future options here. But their concerns were largely guided by the Attorney General's concerns in that memo, and they're
taking guidance from his approach to this.

CHAIRPERSON BUSTAMANTE: The next piece I wanted to make sure that we clarified is that we are looking at compliance of the public trust doctrine, not the environmental or EIR issues which will in fact be dealt with at the BCDC.

EXECUTIVE OFFICER THAYER: That’s right.

CHAIRPERSON BUSTAMANTE: Now, the historic buildings that are being restored in this project -- correct?

EXECUTIVE OFFICER THAYER: Yes.

CHAIRPERSON BUSTAMANTE: And in that the only time we have ever allowed these kind of non-trust uses such as office and retail has been in those historic buildings, is that correct?

EXECUTIVE OFFICER THAYER: That’s correct?

CHAIRPERSON BUSTAMANTE: And that as a result of allowing them in these historic buildings, in San Francisco it’s a fairly unique situation because they have the historic buildings and so it would allow for this kind of non-trust use to take place, and this has taken place before?

EXECUTIVE OFFICER THAYER: Yes, sir. The Ferry Building and Pier 1 that Blake alluded to earlier are other examples of where we’ve gone through this process.
CHAIRPERSON BUSTAMANTE: So these are not projects -- this is not use that would be normally allowed on another waterfront?

EXECUTIVE OFFICER THAYER: That's absolutely right. It's only because the buildings were about to fall down in some circumstances, and yet they represented a wonderful opportunity to appreciate the early shipping period for San Francisco, something that's not done anymore with the container ships. And so that historical value was going to be lost unless it could be restored. And it was only within that context that some non-trust uses --

CHAIRPERSON BUSTAMANTE: So we are not setting a new precedent --

EXECUTIVE OFFICER THAYER: No.

CHAIRPERSON BUSTAMANTE: -- with this action?

EXECUTIVE OFFICER THAYER: That's correct.

CHAIRPERSON BUSTAMANTE: Now, the office space is generally allowed only on upper floors?

EXECUTIVE OFFICER THAYER: That's correct.

CHAIRPERSON BUSTAMANTE: And there's a difference here because we're allowing some office space on the first floor.

Now, it was my understanding in -- it didn't come out in the staff report, but it was my understanding that
the park service specifically requested that the parking
be allowed to remain on that upper floor.

The problem was that you couldn't have the
cutouts that gave -- in the second floor there that gave
visual access to the second floor -- to the second story
and have the fumes coming up from the parking space on the
ground floor. So in terms of square footage, I think it
remains true that if the parking did not have to be
located on the second story in the bulkhead building
there, that all of the office space could have been
accommodated on the second floor alone and would not have
been on the first floor.

CHAIRPERSON BUSTAMANTE: And in fact that would
have been the normal course of action, for us to keep all
of the office space on that second floor?

EXECUTIVE OFFICER THAYER: That was certainly
done at the Ferry Building that way. On some of these
other buildings that we've talked about there has been
some ground floor office space. But in the case of the
Port Building, those are public trust offices. It's a
port office. And in the more recent one and a half three
five building, in that case the buildings were so small
that it was very difficult to work out an alternative.

CHAIRPERSON BUSTAMANTE: So either way, again,
there is no new precedent that's being set --
EXECUTIVE OFFICER THAYER: That's correct.
CHAIRPERSON BUSTAMANTE: -- by taking this action?
EXECUTIVE OFFICER THAYER: That's correct.
CHAIRPERSON BUSTAMANTE: Okay. The YMCA -- well, first of all, the bowling alley is now struck, is that correct?
EXECUTIVE OFFICER THAYER: Yes, sir.
CHAIRPERSON BUSTAMANTE: Good.
And the YMCA, there have been major changes in terms of the YMCA in terms of making sure that its programming that would normally be done along a more structured YMCA is now going to be structured in a way that meets the public trust.
Could you elaborate just a little bit on that?
EXECUTIVE OFFICER THAYER: Certainly.
This was one of the most problematic areas because a YMCA, as all of us know, serves a lot of community needs. It's a very important institution, and one that I think we all support. But the question was, did it qualify for use of public trust lands? And I think your classic YMCA could not because -- the public trust uses have to meet two different standards. One is, the use itself has to be maritime. But the second standard is that it's of greater importance than just local.
CHAIRPERSON BUSTAMANTE: So how did they change their programming to meet the public trust?

EXECUTIVE OFFICER THAYER: So what they did here is -- of course they had a number of elements that are consistent with trust, a swimming pool, that kind of thing. But all of the common areas, and there were about four -- there was a teen club, a multipurpose room, the gymnasium, and a community center -- for each of those they've agreed that up to 51 percent of the time that they're available and open, they would be available for meeting space for public trust groups and users. So, for example, if a fishermen's association needed some place to hold a meeting, they could use the gymnasium. If Save The Bay or any other environmental group needed to hold a meeting about some -- you know, a public trust related use, that they'd be able to use this.

So instead of being a Y with common spaces devoted to just local community purposes, it was a Y that was in essence providing meeting spaces, and the bulk of them, 51 percent, to public trust uses.

CHAIRPERSON BUSTAMANTE: For public trust uses?

EXECUTIVE OFFICER THAYER: Yes.

And then, finally, there are three rooms at the very front that Blake was talking about, they were right
next to the Embarcadero, that were devoted to what they
call a soft zone for kids to play. A rope climbing area
and a rock wall. All of these uses are more community
related or non-trust related. But they've agreed to
modify those where necessary so that the training
that's -- the above-deck training that's necessary for
sailing to occur there.

And, more importantly, in the soft zone they put
a boat on display for use in training. And they're also
going to site some boating simulators where they take
these small boats, connect them up with a computer, and
you can pretend to sail them indoors when the weather's
too rough or otherwise it's difficult to get out there,
they'll be able to do it indoors.

And so we're satisfied with those very important
changes, that this is a Y unlike any other Y and therefore
meets the public trust requirements.

CHAIRPERSON BUSTAMANTE: Has there been in the
past any Y that has ever complied with a public trust?

EXECUTIVE OFFICER THAYER: The only Y that has
been approved -- and it was subject to court action -- was
one which was a residential Y in the Long Beach area. It
wasn't the one that you see here. It was more when Y's
used to provide a lot of low-income or single-person
housing. And the reason that was approved is it was
largely intended to be a place where sailors between
cruises could stay. And with that understanding that it
was going to be for that use and not for the general
public use, it was approved by the courts. We're not even
quite sure if it was built.

CHAIRPERSON BUSTAMANTE: But it was approved?
EXECUTIVE OFFICER THAYER: It was approved.
CHAIRPERSON BUSTAMANTE: And so, in essence, we
are not again setting any new precedent. Although it is
very difficult for various projects like the YMCA to fit
into this square public-trust-doctrine box, there are
occasions in which it has met the requirements. And in
this particular time you believe that this meets all the
public trust and this is not a new precedent that we're
setting?
EXECUTIVE OFFICER THAYER: Yes, sir.
CHAIRPERSON BUSTAMANTE: Okay. Any other
questions?
ACTING COMMISSIONER TAKASHIMA: Let me go off on
the issue of public trust. And I just need some
clarification from the attorney.
ACTING COMMISSIONER TAKASHIMA: On page 5 of your
memo letter of -- on Cinco de Mayo --
(Laughter.)
ACTING COMMISSIONER TAKASHIMA: -- you
mentioned -- I use that -- may I use that?

CHAIRPERSON BUSTAMANTE: Absolutely.

ACTING COMMISSIONER TAKASHIMA: I'm kind of interested in the analysis of -- well, maybe it's not that -- page 7. Excuse me -- is the analysis that you come with the view that SBC Park, the baseball park of the Giants, is within public trust. I'm troubled by how you get that view, and so I'd like to hear about that a little bit from your analysis.

ASSISTANT ATTORNEY GENERAL HAGER: I'm really here relying on what our office did a while ago in connection with the approval of Pac Bell Park.

And the concern there was that it was an open, an outdoor project that availed itself of its waterfront location. And I think the main distinction I was trying to draw throughout the opinion between non-trust recreation and trust recreation is really outdoor versus indoor. I had a real problem with indoor recreation that does not avail itself of the water location and outdoor recreation that does.

ACTING COMMISSIONER TAKASHIMA: Has there been a legal case, the California Supreme Court distinguishing the recreation, public trust, indoor, outdoor, similar to this?

ASSISTANT ATTORNEY GENERAL HAGER: No. And had
there been, I would have cited it.

ACTING COMMISSIONER TAKASHIMA: Okay. Now, the
SBC park, I'm not familiar with, whether or not it came to
the Commission or did the Attorney General's office opine
at that time that it complied with public trust?

ASSISTANT ATTORNEY GENERAL HAGER: Our office at
the time worked with the staff of the State Lands
Commission and together agreed that the project was a
trust consistent project.

ACTING COMMISSIONER TAKASHIMA: Say that -- I
didn't hear that. Say it again.

ASSISTANT ATTORNEY GENERAL HAGER: Our office
worked with the staff of the State Lands Commission and
together agreed that the project was a trust consistent
project.

ACTING COMMISSIONER TAKASHIMA: Okay. And then I
guess, Mr. Thayer, we're then on record in supporting SBC
Park as a public trust with that entity?

EXECUTIVE OFFICER THAYER: That precedes my
tenure as executive officer as well. But Jack tells me it
did come to the Commission.

ACTING COMMISSIONER TAKASHIMA: Okay. One thing
I did ask staff a couple of days ago was to give me a list
of projects the last ten years of items that had been
qualified as public trust. Being a native of San Diego,
I've thought that a lot of the hotels and the Shelter Island area and near the airport would qualify. And being new to the Commission, I just -- I kind of struggled with the issue of public trust. And I'm learning it and I've read a lot of this material.

And now as a resident of San Francisco, I have to weigh the interests of not only San Francisco but of California of the importance of the land that we have -- a very limited land we have on shore yet to be developed and the needs of recreation.

Now as a San Franciscan, I know the limited resources we have in San Francisco. And in fact I -- my first place I lived in San Francisco was a few blocks away from here, from this location. And yesterday I took a walk around the area. I went up to Coit Tower to kind of visually see what I can see in the horizon from these piers. And as I talk to the developers, there's some significant views from these piers. I mentioned Angel Island, an area where a lot of the Asian immigrants first came to the United States. And I believe that as my grandfather came through here to San Francisco, he went through here three times before the war and after the war and later on, but through these piers.

And I think the piers are very significant. And maybe these piers themselves are not -- not historical
from the story of the Asian migration from China and
Japan, but they -- it plays a role. And I've asked the
development to look into that, and they have. And I
appreciate their effort there.

But what I get troubled with public trust in a
discussion is I see SBC Park on one side, I see Pier 39 on
the other side, and I see a great need in San Francisco
for the people to recreate and to enjoy either the bay --
I don't know if anyone wants to enjoy that part of the bay
right now, but I walk through that area -- but to do
activity. When I first came here I had to buy a
membership at this place called The Bay Club, which is
ever expensive. It doesn't give access to people who
maybe will live in China Town or who are the Gen-X kids
with admission.

But, you know, San Francisco has a great need --
and I guess, Mr. Bustamante, I know that bowling alleys
offend you I think on this issue, but --

(Laughter.)

ACTING COMMISSIONER TAKASHIMA: -- bowling
alleys --

CHAIRPERSON BUSTAMANTE: No, not -- it's just not
a matter of public trust.

ACTING COMMISSIONER TAKASHIMA: Well, bowling
alleys -- but for the Japanese American community a
bowling alley was a big issue recently in San Francisco. One had to be torn down for development in Japan Town in San Francisco.

And so I'm --

CHAIRPERSON BUSTAMANTE: I would support a bowling alley in Japan Town.

(Laughter.)

ACTING COMMISSIONER TAKASHIMA: Right. But I want to show you that recreation is very important. I have to -- but I want to be clear that I'm troubled by the opinion of the Attorney General. And I would hate that we would use that as a guideline, because we do have other opinions out there. And if we put it forward, I think we'd want to also look at the City Attorney's opinion, too.

CHAIRPERSON BUSTAMANTE: Thank you.

And I think only to be fair for full disclosure, I believe that at the time of that particular opinion, I believe Dan Lundgren was the Attorney General.

ASSISTANT ATTORNEY GENERAL HAGER: Regarding Pac Bell Park, I believe so.

CHAIRPERSON BUSTAMANTE: Yeah.

(Laughter.)

CHAIRPERSON BUSTAMANTE: Okay. There's a motion on the floor.
Is there a second?

We have at least several speakers.

ACTING COMMISSIONER TAKASHIMA: I had questions about the actual motion. Is it -- the motion is based on the staff recommendation as a motion or is it a motion supporting the project?

CHAIRPERSON BUSTAMANTE: My understanding is that it's a motion to accept staff and the Attorney General's recommendation to send a letter of public trust compliance to the BCDC. That's my understanding.

EXECUTIVE OFFICER THAYER: And we've sketched out --

CHAIRPERSON BUSTAMANTE: -- only a letter of compliance. That's all we're required to do. This is not a motion on behalf of the proposal or the project, but merely that it complies with the public trust doctrine.

COMMISSIONER WESTLY: That's exactly right. But I do want to make sure we hear from the public. That's very, very important to me.

CHAIRPERSON BUSTAMANTE: Yes, we will.

Is there a second?

EXECUTIVE OFFICER THAYER: And the language of it is detailed in -- all detailed in the staff report there, in essence, what would constitute the motion there.

SENIOR STAFF COUNSEL STEVENSON: It makes
reference to the actual exhibits. It makes reference to
the text in the calendar item.

I do want to bring it up so there's no
uncertainty on it. It also says that the standards in a
future agreement regarding public trust compliance are per
the actual May 5th advice letter and the formal position
of this Commission that was taken in September 2001 in
connection with the Greensway development.

CHAIRPERSON BUSTAMANTE: Is there a second?
We'll go forward with the public comments.
We have Ron Rouse. Let's see, is this on -- no,
it's a different issue. Sorry about that.

David D'Onofrio.

MR. D'ONOFRIO: I'll defer my time.

CHAIRPERSON BUSTAMANTE: Defers.

Steve Jacobsen.

MR. JACOBSEN: Yes.

CHAIRPERSON BUSTAMANTE: The Chair will allow two
or three minutes for presentations.

MR. JACOBSEN: Okay. Thank you.

Good afternoon, I think it is.

Yes.

Lieutenant Governor and members of the
Commission, thank you very much. On behalf of Mills
Corporation, I'm Steve Jacobsen, Executive Vice President
of Mills.

Before I get into my specific comments, I would like you to know that we're no stranger to California. We currently have about a half a billion dollars invested in real estate in this state. And I'm proud to say within the next couple years we're probably going to double that investment.

We're a public company. We're very successful. We look at ourselves as kind of the creators of the 21st century retail entertainment destinations. And so we're very bullish on California. So I think that's a message first of all we'd like to convey to the Commissioners, that this is a state that we believe in and we're going to invest quite a bit into over the next few years.

As others have said, this has been an exhaustive process. I think I've aged through it. The last couple months have been pretty tough.

But even before that there was two and a half years in which we actively negotiated with stakeholders, BCDC, New Wagon, others in the community. And the plan that is on your left here, the furthest left was a result of that. When we did meet with the staff, there was issues that had to be addressed, and it was a struggle. I'm not saying it was an easy process on both sides. But, Commissioner Westly, as you had stated, it truly was a
showpiece of how government can work.

But there were issues that came up that there were changes to the plan in. And specifically the significant changes were approximately 51,000 square feet of recreation has now been eliminated and replaced with trust-consistent use. And approximately 19,000 square feet of office, of which I believe Blake Stevenson said earlier, a portion of it will be hopefully for a boating maritime office space.

A couple things that I think that is important for everybody to understand before I defer my time here is that our vision here is really to create affordable recreation, create a place for all San Franciscans and Californians to enjoy. Not being from California, I thought it was natural here with water. Everybody had access to it, it was pretty easy to get to the waterfront. And to my surprise, it wasn't the case. And so from a non-Californian, I'm truly impressed really what the company's done and this collective effort to really create waterfront that's going to be open to everybody.

Just a couple highlights.

You know, we're creating 8.6 acres of public access. And what's important to also understand is that the Mills Corporation is obligated to maintain that for 66 years. So it's not just we're going to build this and
it's going to look nice for the next few years. But for
the next 66 years our company will be obligated per the
lease with the Port to maintain that.

This will be water-enhanced recreation, as we had
said earlier. There'll be over $100 million worth of
historic preservation, $17 million of seismic upgrades.
There's the berthing along Pier 27, which we'll be
enhancing. And there'll be additional -- we'll create new
berths along 31.

And also at the core of this whole thing is the
maritime. And not to mention the core of this project,
which is America True and the YMCA and the bay.

And the last note that I'd like to leave you with
is that it's important to understand that these affordable
recreations from America True and the YMCA would not be
possible without the Mills Corporation. We are
subsidizing these uses as well. The YMCA is basically
paying the dollar for rent. And, again, we're obligated
to maintain those piers for the full duration.

So on behalf of the Mills Corp., we're very
excited, we're very bullish on California and this
project. And we thank the Commission. And I'd like to
thank Cindy Aronberg for her time spent. Of those many
hours spent, a lot of those calls have been with her after
hours and on weekends as well as others to get to the
means here, which is to create a successful project and an affordable project, recreation for all San Franciscans and Californians.

So thank you very much.

CHAIRPERSON BUSTAMANTE: Byron Rhett, Planning and Development Director of the Port of San Francisco.

MR. RHETT: Commissioners. Thank you for the opportunity to speak again. My name is Byron Rhett. And I'm the Planning and Development Director for the Port.

What I wanted to do is just briefly talk about the goals of the Port in reference to this development and in reference to the development of the waterfront in total.

As has been mentioned by staff -- of your staff and the other speakers, these piers -- 27, 29, 29 1/2, and 31 -- were designated in our waterfront plan for this mixed use and recreation project. And that plan was approved in 1997 after a 7-year community planning process. And it was important within that plan that there be a mix of activities along the waterfront that brought people to the San Francisco waterfront that reconnected them with the waterfront, but there'd be a variety of uses.

Other uses have been mentioned, whether it's Pacific Bell Park or the Ferry Building and it's food
related uses, Pier 1, where our port offices are. This is another in a series of those -- of developments that we think will bring people to the waterfront. People who might not come to the Ferry Building we believe will come to this recreational facility. And we think this is very important.

It's also another in the series of negotiations we've had with your staff. And we believe successful negotiations, the ones that were mentioned before. And this particular negotiation we believe has been a successful outcome to addressing the various goals of the Port.

We mentioned those a bit more specifically. This $200 million of investment will preserve this 19 acre -- these 19 acres of piers; make the substructure improvements; and as Steve Jacobsen has mentioned, will have the developer not only make these improvements but maintain this property for the 66-year life of the lease. So that will address major concerns that we have. Also preserving the finger piers. As Blake Stevenson mentioned, the Beltline Railway Building will be preserved.

These are all major goals of the waterfront plan and of the special area plan that BCDC adopted in 2000 that triggered the RFP that led to this.
So I just wanted to thank you, Commissioners, and your staff for working closely with us on this project. And we look forward to working with you in future developments along the waterfront.

CHAIRPERSON BUSTAMANTE: Dawn Riley.

MS. RILEY: Hello. I'm Dawn Riley. I'm the CO of America True. And I'm basically a professional sailor and also a foundation that does outreach to make sailing accessible nationwide to those that are at risk of not going sailing.

(Laughter.)

MS. RILEY: I wanted to start off by describing the feeling of this project as how we envisioned it. And the idea is is that sailing, which used to be called yachting, is really cut off from the public. The public doesn't understand that they get out there and do things, especially in San Francisco Bay, where you had the Embarcadero Freeway and you still have the bulkhead buildings and you have a hard edge to the water.

What we wanted to do was build a village in a community where you could come and participate and be part of the water, feel like you are a member of the club but there is no membership required to participate here.

We looked at it from a couple of different ways. One is to bring people on boats to the city front. And
that is what the marine basin is about with the moorings, so that you have 20 to 40 foot boats that come into the area from other parts of the Bay, other parts of the state.

We do envision that some of the office commuters will -- office people will be commuting via boat. You also will have access to that for visiting boats. There's no permanent dock, so it's for visiting boats for events.

We also have been working with Bay Access, which are kayakers that are attempting to put a water trail all the way around San Francisco Bay up to the Delta so that you can go from place to place, transport your boat, go camping. It sounds like a phenomenal program in the city of San Francisco.

Again, because of the hardscape, there's not a lot of access. And this will be one of those access points for storage for the beginning and the ending, but also because of the other activities there for a stopping-off point on some of their trails. Right now I believe it's 7 miles that they have. And this is about in the middle of a 7-mile hardscape that they cannot get out from the water if they needed to.

We also have been talking to groups like the Tall Ships, so that when they come they can use this facility, as well as regattas. The Far Forties right now come down
to southern California to do their events because there is no congregating place other than a few yacht clubs, which don't have the facilities in northern California in the Bay Area, which has awesome sailing but no facilities to be able to bring major events to that waterfront.

And they're looking forward to it because it's not only a place to dock their boats, but it's a place to have the restaurants, a place to go and work out at a Y and keep on your training regime while you're competing in a regatta. So it's the whole package that they're excited about, not just the fact that there's a place to dock boats.

America True does outreach. We will have lessons and boat rentals and sailing, kayaking, paddling. And as part of all those lessons, I just want to point out, we always have environmental and safety education. So that's just a given that we assume people know, but often they don't.

One other point I want to point out is that it's not like that movie, the "Field of Dreams," if you build it, they will come. People need to have the outreach. They need to have the familiarity with the area to get out onto the water. It seems like there's this barrier. And that's where the YMCA comes in, and it's critical for us. America True does outreach, but YMCAs are the experts at
it, bar none.

So we will be using them to help with the outreach. We see that there's a lot of crossover use between the other indoor recreation and outdoor recreation and just the familiarity in being there that, "Hey, gee, maybe I'd want to try to take a sailboat lesson." So there's a lot of the crossover users there.

And the other part is with the Y, we will be using -- we've gotten creative and we figured out ways to use the facilities that they would have. And on the Y there will be some of the normal Y stuff. But we've taken a lot of their normal and created and made it into something that will be extremely useful for the sailors, like having a mast in the climbing wall where you can go up in a boson's chair and you can have proper instruction on how to go up and down a mast and not drop your friend into the water.

Simple, but important things.

I think the bottom line is that this is just a phenomenal facility. And I was talking to Martie Bolsinger from the YMCA, who could not be here today, and we said collectively that Mills is like a gift from heaven. They've dropped down. They've given us this opportunity. It's going to help our programs, the people we serve, and it is something that there is no way we
would have contemplated doing without them.

    Thank you.

CHAIRPERSON BUSTAMANTE: Thank you.

Paul Scott, in opposition.

MR. SCOTT: Representing the Telegraph Hill Dwellers; is that correct?

MR. SCOTT: Yes.

Good afternoon, Lieutenant Governor and fellow Commissioners. My name is Paul Scott. I'm with the Telegraph Hill Dwellers. It's the neighborhood organization whose boundaries encompass these three piers.

I have written a letter previously regarding this matter on behalf of our organization, basically expressing our agreement with much of what the Attorney General's office previously said regarding the problems with the public trust.

We have only recently learned through newspaper articles and some informal conversations about the compromise that has been struck with the staff of the State Lands Commission. And much of it we are in favor of and we think that the project has been approved.

But one thing stands out glaringly for us and is making a lot of people hysterical back in San Francisco; and, that is, the removal of this bowling alley, not because we are so wild about bowling alleys. In fact,
plenty of people agree with you, Lieutenant Governor, that that's perhaps not the best use of the space. But the concern is that it be replaced with something like retail or other commercial uses, which completely take away from the recreation theme that was originally the concept when the RFP was originally issued.

What we would like to see -- and I think you have a letter from Supervisor Peskin, whose district again encompasses these piers -- is if the bowling alley and its 50,000 square feet have to go, replace it with recreation -- a recreational use. And one idea that we've discussed -- I've discussed with Alan Hager in the Attorney General's office is an ice rink, which is something that has its history in frozen ponds and lakes and rivers. And from what I understand from Mr. Hager, informally at least, he saw it as a trust-consistent use, and I've had other people respond favorably the same way.

CHAIRPERSON BUSTAMANTE: It is?

ASSISTANT ATTORNEY GENERAL HAGER: I think it's -- well, I think we have a little bit of dispute on that, but --

EXECUTIVE OFFICER THAYER: I think -- I've talked about it with Mr. Scott just on Friday. And we haven't analyzed this very far at this point. I think the larger point here is though, just as Blake indicated in his
presentation, that the exact uses aren't yet known for
this project, that the public trust overlays we're talking
about here are broad. And if they wanted to come back and
come up with an alternative public trust use that wasn't
retail -- for example, I know there's some concern about
making it too much like Pier 39. I, of course, think of
California Canoe & Kayak, which is over there in Jack
London Square, which would be a very appropriate retail
use, and generally uses the amount of space that we have
there.

But if there were other recreational uses that
were public trust related that they wanted to put in there
instead, we wouldn't have any objection to that. We fully
expect that as this project moves forward, we'll probably
be called upon to look at some of these alternative uses
and render an opinion on it.

On the skating rink point --

CHAIRPERSON BUSTAMANTE: Allowing this to move
forward doesn't prohibit --

EXECUTIVE OFFICER THAYER: That's correct.

CHAIRPERSON BUSTAMANTE: -- that kind of change
to take place?

EXECUTIVE OFFICER THAYER: That's correct.

CHAIRPERSON BUSTAMANTE: And since the original
developers were looking for some other kind of
recreational activity, they might -- maybe there's some other things that are not normal that may be -- and it should be offered as a list of public trust uses to both the dwellers as well as the developers and maybe some other type of recreational uses could be done.

I don't mean to interrupt the presentation. And so if you still had something to --

EXECUTIVE OFFICER THAYER: Well, and I just wanted to say specifically on a skating rink, we took some time on each of the proposed uses and didn't come back instantly and say, "Oh, yes, you can do that," or, "Oh, no, you can't do that." I'd rather be thoughtful about this particular proposal too than answer here today.

CHAIRPERSON BUSTAMANTE: All right. You should understand is that the reason -- one of the reasons was to put it back into the public trust, the uses into the public trust rather than issues that or activities that are not within the public trust.

MR. SCOTT: I understand.

CHAIRPERSON BUSTAMANTE: That's what we're required to do. And so --

MR. SCOTT: And at least we're supportive of that. We understand the need to follow the law.

CHAIRPERSON BUSTAMANTE: Have you had a chance to look at the -- what the Controller referred to as over 30
changes that were made?

MR. SCOTT: I haven't seen it in great detail. I've read about it to some extent. And much of what's been described to me sounds okay. It sounds like a beneficial --

CHAIRPERSON BUSTAMANTE: Is there any way to be able to provide them with the kinds of changes that have taken place, either by our staff or by Mills, whomever is the developer or --

EXECUTIVE OFFICER THAYER: We'd be happy to sit down with them. And I think the staff report includes as exhibits the listings of changes that Mills had proposed, that kind of stuff. But we'd be happy to sit down with them.

CHAIRPERSON BUSTAMANTE: And if you'd like -- I'll pull the exhibit right out of my book, if you'd like, and give it to you so you can take a look at that as well.

MR. SCOTT: I appreciate that. I guess there's a certain momentum to the proceeding here, I expect though, and I don't know if you're talking about actually postponing a conclusion on the matter until there's been some review back in San Francisco and some further input. That's one possibility, I suppose.

Otherwise --

CHAIRPERSON BUSTAMANTE: I think that other than
making sure that we have something in writing from the Attorney General's office, I think that's probably about all we --

MR. SCOTT: You're waiting for him?

CHAIRPERSON BUSTAMANTE: -- I think that's about all we have left to do at this point.

Any of the Commissioners would like to speak on that, they'd be more than --

COMMISSIONER WESTLY: Let me just add. I think the Lieutenant Governor's absolutely right on that point. But I'm going to ask my -- the staff person sitting here to work toward it with you and the neighborhood group. Please let them know we're genuinely concerned about hearing some of their thoughts and wishes and that we will certainly interface between you and the developer to make sure that those are heard and adequately explored.

MR. SCOTT: And is that -- is the message there that decision of the Commission is going to be postponed pending that discussion, or no?

COMMISSIONER WESTLY: I think those are two separate issues.

MR. SCOTT: All right. I understand. Just to kind of refer back to them. One point I think that Mr. Hager made in his letter early on was the idea of a central feature. And you've reiterated the idea
again of there being something about this place that makes
it a water-related marine-oriented, something that has to
do with, you know, activity surrounding or involving
water.

And right now what you have in the newspaper
running on Saturday in San Francisco is a headline that
refers to the Pier Mall. And that's directly the opposite
of what we were supposed to get from the RFP that was
originally promulgated some few years ago to start this
project up.

So that's what our concern is. And we're trying
to do what we can to maintain a thematic feel to it that
will be consistent with the recreational intention of the
request for proposals and also satisfy your concerns as
well. And that's why we've made the suggestion that we
have. And we've had generally positive feedback on it.
The Mills folks have -- it was expressed to me at least
that they don't like what they're having to do in terms of
additional retail. Despite being a shopping mall
developer, I'll take them at their word.

And so we hope that they would be behind us on
trying to accomplish something like this which would lead
to a better project.

I guess what I would ask the Commission to do,
again seeing that something's going to happen here today,
is that it leave open the possibility of doing something
like what I'm suggesting, that it's a decision made very
clear that when we go to the next level and the Mills
people are trying to advance their project, that putting
in a rink, say, or some other water-related activity,
would be satisfactory use of that 50,000 square feet
rather than more shopping.

Because, I'll tell you, it's driving people crazy
the idea of having, you know, something that not only
competes with Pier 39 -- they've written a letter as well,
they're unhappy about it -- but also just in terms of the
neighborhood, it's not going to sell.

CHAIRPERSON BUSTAMANTE: I think the maker of the
motion could probably incorporate that into his motion. I
think it's pretty much already been stated, is that that's
the normal course of action through the staff that there's
a monitoring process that has to take place and that
between now and the end of this project as it's being
completed is that these kinds of items or trust uses will
be monitored.

I mean to say it again, I guess it could be said.
But that's normally what the actions are that take place.
And so nothing is closed except that we're going to look
very unfavorably on non-trust uses.

MR. SCOTT: Understood. I appreciate that. And
I guess what I would just ask is if there could be specific delineation of at least the rink concept or some other water-related reference like that, or both, then we will have something that we can work with later on and we won't have to come back to the Commission.

CHAIRPERSON BUSTAMANTE: I think it's a statement that could either be incorporated in the motion or said very clearly publicly that we would be in favor of all trust recreational uses.

MR. SCOTT: Understood.

CHAIRPERSON BUSTAMANTE: So if it is determined to be -- if the rink or anything else is determined to be a trust use, that we are very open to that.

MR. SCOTT: Okay. And that would be passed upon then by counsel, I assume, for the two -- for the Commission and also the AG's office?

CHAIRPERSON BUSTAMANTE: We are not wedded to retail space. We are wedded to trust use activities.

MR. SCOTT: Thank you. I'm clear on that. All I'm trying to understand is how are you going to make that call down the line as to something getting substituted into that retail space?

CHAIRPERSON BUSTAMANTE: We're open.

MR. SCOTT: Okay. Thank you.

CHAIRPERSON BUSTAMANTE: Okay.
MR. SCOTT: I guess what I'm -- I guess the thing that's unclear to me is how is it going to get decided that a rink, for example, is okay or is not or some other water-related use is or is not okay in the Commission's view? How is that decision -- are you going to expect us to go through counsel for the Commission, or how would you like us to approach that?

CHAIRPERSON BUSTAMANTE: Well, my understanding -- Paul, you can be clearer. My understanding is that that monitoring process with the direction of the Commission is then reviewed with the developer and to ensure that the issues that we've identified that are trust-related activities are in fact in compliance.

I don't know if something -- if something is listed as retail or recreational and there's a change in that, do you come back to the Commission for that?

EXECUTIVE OFFICER THAYER: I wouldn't anticipate doing that unless there was some issue on public trust. And, again, I think Byron Rhett really set the tone, representing the Port, that we have an ongoing relationship with the Port and we often informally discuss these kinds of things with them. And we'd be doing the same thing -- obviously, if there was particular interest in reviewing a particular kind of project, we're going to
work with the Attorney General's office in trying to be active, in trying to be helpful on it, in terms of helping them, assisting them.

COMMISSIONER WESTLY: I think what Mr. Thayer said is exactly right. You should just know, by the way, I'm an inveterate skater. I own my own skates. I used to live in Minnesota. I get this. But I think what's not appropriate is for us to come in at the 11th hour and prescribe there must be a rink. I think what is the right thing is to ask the staff to work with you. We know what the guidelines are here. We want more public-use types of things. Now, whether that's a skating rink, which I would personally love, or something else that might be far more popular, I think that's up for staff to work with you and the community --

CHAIRPERSON BUSTAMANTE: Sounds like I have an advocate on the Commission.

MR. SCOTT: That's fine. I just want to understand the mechanism so we know how to go from here.

CHAIRPERSON BUSTAMANTE: So we'll refer all ice-skating rink issues to the Controller.

COMMISSIONER WESTLY: Go, Ducks.

(Laughter.)

MR. SCOTT: And/or other water-related rec. I mean we're certainly -- we want something other than a
shopping --

CHAIRPERSON BUSTAMANTE: We're clearly very open
to all public trust recreational uses. And water --
anything dealing with water obviously is a public trust
use, except for a water slide perhaps. But --

MR. SCOTT: Okay. Thank you for your time.

CHAIRPERSON BUSTAMANTE: We also have Neil --
help me with the last name -- deputy city attorney.

Would you come up and give us your name please.

MR. SEKHRI: Neil Sekhri, City Attorney --
representing the Port.

I just wanted to make a general comment about
recommendation 2B. We've had a great working relationship
with the staff and the AG, and we understand the intent of
this, that the State Lands Commission has an interest in
making sure that this gets enforced in the future.

Under the Burton Act the Port is the trustee for
the local -- for local issues and is very mindful of its
duties as the trustee.

So we just wanted to make sure that as we
negotiate this enforcement mechanism, it's done in such a
way that it doesn't make the lease unfinancable. To the
extent that you have a third party beneficiary that could
be looking over leases as they come, it could be a
problem. So we just want to make sure that in
negotiations the staff and AG are mindful that it's done
in such a way that this project can get built.

    That's just my own general comment.

EXECUTIVE OFFICER THAYER: If I could respond?
CHAIRPERSON BUSTAMANTE: Surely.

EXECUTIVE OFFICER THAYER: We of course do not
want to do anything to make this project infeasible. And
right along we've been working to make only the necessary
changes so it would qualify for the location to actually
pose the project.

    I guess the point of what Neil's talking about is
that we do think though that now this has been brought up
to the Commission level, the same way we would on any
other decision, we'd look for some mechanism to make sure
that the elements that the Commission found to be
necessary for the uses as a trust would actually occur.
And our goal is no more or less than that. And I'm sure
there's some mechanism to do that that would --

    MR. SEKHRI: Yeah, I'm comfortable we'll be able
to find something.

CHAIRPERSON BUSTAMANTE: A final question then
would be to staff and to the Attorney General.

    Is there any part of the public trust document
that you believe you've compromised on this project?

EXECUTIVE OFFICER THAYER: On behalf of the Lands
Commission staff, no.

ASSISTANT ATTORNEY GENERAL HAGER: I believe not. We have not compromised anything.

CHAIRPERSON BUSTAMANTE: And so I want to make sure that we do receive the remarks in some type of a memo form or in some written form with regard to your remarks here today, if not a letter directly from the Attorney General with regard to the memo. But at minimum I think at least a memo in writing regarding your remarks here today indicating that the changes that were made and your position now has been to ensure that this particular project, as changes have been made, now is in compliance with the public trust doctrine.

ASSISTANT ATTORNEY GENERAL HAGER: Yes.

CHAIRPERSON BUSTAMANTE: And that the movement of this to the BCDC will be dependent on that written memo from you with regard to this issue.

ASSISTANT ATTORNEY GENERAL HAGER: Okay, fine.

CHAIRPERSON BUSTAMANTE: Okay?

So there is a motion. Is there a second?

ACTING COMMISSIONER TAKASHIMA: I have a question.

CHAIRPERSON BUSTAMANTE: Yes.

ACTING COMMISSIONER TAKASHIMA: In the staff recommendation in C you had refer to a Commission policy
statement of September '01. And I didn't know whether or not I received a copy of that. I have not seen that. And maybe I missed it. And I just don't know whether or not the staff provided that for the Commission.

EXECUTIVE OFFICER THAYER: We may have included it in the briefing book because it was something that the Commission went through as we were moving through a variety of controversial projects. And this whole question of what the public trust was came up. And I believe the Lieutenant Governor directed that staff go out and prepare a document that would assist both Commissioners and the staff in knowing what the public trust document required.

I'll certainly go back and make sure that a copy has gotten to you.

ACTING COMMISSIONER TAKASHIMA: And so -- and I would really appreciate that because it would be helpful for this rookie on this Commission to understand all these issues.

CHAIRPERSON BUSTAMANTE: Perhaps new. Rookie, I don't think so.

ACTING COMMISSIONER TAKASHIMA: Old rookie. I've been in Single A ball for a long time.

(Laughter.)

ACTING COMMISSIONER TAKASHIMA: But, you know, I
do go back to some of the concerns of the Attorney
General's opinion as being part of your recommendation C, is you're trying to use the opinion of May 5th as kind of a guideline for you, that you cannot use -- are you saying that you cannot use the Commission statement of September '02 as your guideline?

EXECUTIVE OFFICER THAYER: We thought both was most illustrative because the Attorney General's opinion that was about this project really highlighted the issues that we're grappling with now and, you know, resulted in the changes that we'd asked for that we negotiated cooperatively.

So that seemed to be most on point.

Some of this had to do with, in fact, a little bit of a difference of opinion between the Port and the Commission's staff and Attorney General's opinion about what the Burton Act provided. And it seemed like unless we resolved this issue one way or the other, the Commission's action here today would still be left open to the same different interpretations.

ACTING COMMISSIONER TAKASHIMA: Yeah, I'm concerned of potential litigation in the -- in front of us potentially, or for the developer. And I just wanted to ensure that whether -- if we had a May 5th opinion and we had a city attorney opinion and you have other attorneys'
different views on this topic of public trust and how far
this Commission or any staff can push a developer, I just
would like to know are we going to make effort -- is the
Attorney General's office going to make some effort to get
clear where the public trust doctrine is at with the
varying offices that have opined on this issue before the
Commission? Especially the City Attorney's office of San
Francisco. And, you know -- and I just wanted to see if
you could make some effort to do that or not.

EXECUTIVE OFFICER THAYER: We certainly will.

CHAIRPERSON BUSTAMANTE: It's my understanding
that the motion does not refer to the initial Attorney
General's opinion, but that it takes the oral, verbal
opinion of the Attorney General's representative here, and
with the representation that in fact the current project,
which was not previously reviewed in writing by the
Attorney General, is now in a position to indicate that it
is in support, that it in fact indicates that their
opinion now is that this project complies with the public
trust doctrine, and will submit a written memo for the
record by Alan for our records in order to be able to
comply with that concern.

Is there a second?

I'll second the motion.

And we'll go to a vote.
Call the roll.

This is for whether or not there will be a motion
to accept staff and the Attorney General's recommendation
to send a letter of public trust compliance to the BCDC
and that it will be forwarded subsequent to a written memo
that the Attorney General now believes that this project
is in compliance.

Call the roll.

SECRETARY KORHONEN: Lieutenant Governor/Chair?
CHAIRPERSON BUSTAMANTE: Aye.
SECRETARY KORHONEN: Steve Westly, Controller?
COMMISSIONER WESTLY: Aye.
SECRETARY KORHONEN: And David Takashima,
alternate for Department of Finance.
CHAIRPERSON BUSTAMANTE: He's not voting.
So the vote is two ayes and one not voting.
So the letter will be forwarded to BCDC, and that
the compliance letter will be sent along with a record or
a written document from Alan regarding the representation
of the Attorney General that the project is in compliance
with the public trust doctrine for our records here.
COMMISSIONER WESTLY: Yes.
CHAIRPERSON BUSTAMANTE: Mr. Controller.
COMMISSIONER WESTLY: I just want to make a quick
statement.
I want to just publicly thank Blake Stevenson, the attorney for the staff, that he is really the unsung hero here. He simply put this as a project that I was not inclined to support a few weeks ago; and through, simply put, his tireless efforts to get the parties together to get this extraordinary number of concessions made -- Lieutenant Governor said, "How many concessions?" Always ask your Controller if you want things quantified. It is an extraordinary, I think, effort and, frankly, I think the staff needs to be recognized. And, Blake, a terrific job.

EXECUTIVE OFFICER THAYER: Absolutely.

CHAIRPERSON BUSTAMANTE: Okay.

EXECUTIVE OFFICER THAYER: And I'd say I want to mention Dave Plummer and Grace Kato, who worked with him to make the presentation.

CHAIRPERSON BUSTAMANTE: Okay. And unlike the cruise ship terminal, the folks in this particular project, instead of going around the staff and around the Attorney General and around the Commission, decided to negotiate and to put that oddly shaped proposal into a proposal that in fact met the public trust.

We have, at this point, no other regular calendar. But we do have a public comment period for people who would like to express their opinion about
issues concerning the State Lands.

So we have a two- to three-minute-per-person presentation.

First is Don May, President of the California Earth Corps.

After Don will be John Wilkes, Sierra Club, San Diego.

Then Leslie Percel, no representation, just a person who'd like to make comments.

And then Sabrina Vanquez, Legal Director of the Ballona Wetlands Land Trust.

Please.

MR. MAY: Thank you, Lieutenant Governor.

First, somebody left a very nice pen up here, before they leave.

My name is Don May representing California Earth Corps. And we're involved in a lot of wetlands restoration, in fact closing escrow on a big piece today.

The one thing we've noticed up and down the coast is one of the biggest problems, most of the areas left for wetland restoration have toxic waste on them. Toxic wastes from military aviation contractors in those days, in the '40s and '50s, were dumped off -- were taken to the nearest salt marsh and dumped. And they've been covered up, forgotten about.
One of the most egregious is down in San Diego. And we have a lot of the material on that. We should have perhaps chatted with your staff about this first, but it turns out on this particular spot the public trust has been lifted. One right directly across from it on Fiesta Island, this is on the south shore of Mission Bay. The one next to the one that we were concerned about and still have some problems regarding the trust agreement that was -- the public trust that was lifted apparently in some litigation back in 1950.

We weren't aware of -- besides four feet of record on this site, including deaths from people who have been exposed, hydrogen sulfide levels over -- from 1820 to 1860 parts per million, where the action level is about 10, where it starts doing harm from product exposure about 1 part per million. It's a very toxic spot.

We've requested that -- first of all, let me add to that the -- if you could send a letter saying when that -- what that litigation was or have your staff do that. But, more importantly, our question is: Are these old toxic dumpsites a violation of public trust doctrine? They're not a public trust use. Yes, they're old. They've been there a long time. But what is it that this Commission can do to reassert its authority over all these sites. And there's literally hundreds of them, an
enormous problem.

CHAIRPERSON BUSTAMANTE: That's a great question. And that would be of interest to find out. We'll direct staff to get us back some information on that and we'll begin to pursue that.

If you'd like to contact either the State Lands staff or any of the staff -- my person who lives in San Diego is Lorena Gonzales. I'd be more than happy to contact her regarding this issue. I'd be more than happy to move forward in trying to figure out that issue.

MR. MAY: Thank you very much, Lieutenant Governor. I will in fact be coming in to chat.

CHAIRPERSON BUSTAMANTE: And if we do have them within our jurisdiction, I think that you'll find us to be fairly aggressive.

MR. MAY: Thank you so very much. I appreciate it.

CHAIRPERSON BUSTAMANTE: It's a good one.

John.

MR. WILKS: Thank you, Mr. Lieutenant Governor and members of the Commission. I represent the 18,000 members of the Sierra Club in San Diego, which is San Diego and Imperial counties.

I am personally leading the project to try to clarify the public record of the status of the toxic waste
dump on Mission Bay. I have a document I'd like to leave with your staff. It's the document I provided the Coastal Commission which acted against staff's recommendation to decline the permit for Sea World to expand. So I think it's a very persuasive article.

The issue, sir, is this: When this was in the public trust the City of San Diego benefited monetarily by accepting all toxic waste from the Navy, Army, Air Force, six aerospace firms, and every other plater or paint or dry cleaner in the area.

Since that date, there has been zero mitigation or remediation. The EPA rated this site 61.61, which is identical with the score of the Stringfellow Acid Pits in Riverside. But a very influential former mayor of San Diego, then Governor, interceded, and the results were downgraded. Using three pathways, they were 61.61. Using two pathways, that site became a 32. Using only one pathway, it became a 14. When it hit the level of 14, it was no longer a Superfund site. It was no longer listed as a Class 1 site.

This is very inappropriate because since that time, within the last ten years, we have had a fatality. We have had hospitalizations. This is in what is considered to be a very public recreational area. It is between the San Diego River and Mission Bay.
And I'd like to conclude with this thought: The city has allowed Sea World to expand eight times. As it expands, it expands over the most toxic area of this dump. So I think we have an egregious public health and safety issue. And I thank you for anything you can do to cause a city to do the right thing, find out what's there, where it is, and remediate it with the best available techniques.

CHAIRPERSON BUSTAMANTE: First we'll have to check to see if it's within our jurisdiction.

MR. WILKS: Thank you, sir.

CHAIRPERSON BUSTAMANTE: We'll check that.

Thank you.

Leslie.

MS. PURCELL: Actually is it okay if Sabrina Venskus addresses you first about the Ballona Wetlands issue --

CHAIRPERSON BUSTAMANTE: Sure.

MS. PURCELL: -- because it's sort of related.

CHAIRPERSON BUSTAMANTE: You can do it together if you'd like.

MS. VENSKUS: Good afternoon, Honorable Commissioners. Actually we're -- I'm here on behalf of a completely separate issue.

I appreciate you allowing me to go first.
And, excuse me, but this is a little short, so let me try to figure out how this works.

CHAIRPERSON BUSTAMANTE: It'll pick you up. Just go ahead and speak into it.

MS. VENSKUS: This works?

CHAIRPERSON BUSTAMANTE: Yeah, I'm quite sure.

MS. VENSKUS: Okay, great. Thank you.

My name is Sabrina Venskus. I'm here on behalf of the Ballona Wetlands Land Trust. We're a nonprofit organization dedicated to the acquisition, preservation, and restoration of the entire 1,087 acre Ballona Wetlands ecosystem. And in case you're not familiar with the organization, we're the one that has been working so hard on getting the 73-acre parcel otherwise known as Area C that's owned by the State Lands Commission -- or within the State Lands Commission, to have that transferred into State Parks for perpetuity for a restoration and preservation.

Today, I'm actually here with an inquiry. I'm here to obtain information on the status of the land ownership of some parcel of the Ballona Wetlands in Area B, Area B being west of Lincoln Boulevard and south of Biona Creek. It's my understanding that some of the acreage in Area B was conveyed to the State Lands Commission pursuant to a settlement agreement that was
entered into I believe in 1993 by the developer, the City
of Los Angeles, Coastal Commission, and the State Lands
Commission.

And it's my understanding that this parcel --
this subject parcel that has been conveyed and that the
State Lands Commission owns title to, and we --

CHAIRPERSON BUSTAMANTE: So let's just ask it.

MS. VENSKUS: Yeah, I'm asking this question.

CHAIRPERSON BUSTAMANTE: Do we own Area B or Area

C?

EXECUTIVE OFFICER THAYER: Number one, we don't
owner Area C. The State Controller controls -- or
actually there's a trusteeship established on behalf of
the Controller which owns Area C. And the State Lands
Commission has no jurisdiction over that.

CHAIRPERSON BUSTAMANTE: Okay. So Area C is then
managed --

COMMISSIONER WESTLY: State owned.

EXECUTIVE OFFICER THAYER: It's state owned.

It --

CHAIRPERSON BUSTAMANTE: State owned.

MS. VENSKUS: I'm actually -- I appreciate
your -- I don't want to waste any of your time. My
specific question is on Area B. So --

CHAIRPERSON BUSTAMANTE: State owned and in trust
with the Controller is Area C.

Area B?

EXECUTIVE OFFICER THAYER: Area B as part of a
number of permits, and in consultation with the State
Lands Commission, there's an area at the intersection of
the southwest intersection of Jefferson and Lincoln which
is -- the Lands Commission has the authority to accept.
It's about 60 acres. It's been entitled the Fresh Water
Wetlands. Some of that is probably in the -- sort of
wetlands. And in 1998 the Commission in fact voted to
accept the first 34 acres of that. And it's hard to see
from here, but it's this little map right here. And I'd
be glad to --

MS. VENSKUS: Okay. Yeah, I'm familiar with it.
That's all --

CHAIRPERSON BUSTAMANTE: So we have a total of 34
acres and there's a total of 60?

EXECUTIVE OFFICER THAYER: We voted to accept it.
However, the conditions for acceptance hadn't been met at
the time. So --

CHAIRPERSON BUSTAMANTE: All right. Have they
been met now?

EXECUTIVE OFFICER THAYER: We have two binders
that came in in the last week in an attempt to demonstrate
that those conditions have been met.
CHAIRPERSON BUSTAMANTE: Well, then information to be forthcoming.

MS. VENSKUS: Okay, great.

My question to you is, does -- so the Commission does not actually hold title to that 34 acres?

EXECUTIVE OFFICER THAYER: That's right.

MS. VENSKUS: And could you clarify for me what the agreement is in terms of management of that parcel once it does become conveyed to the State Lands Commission.

CHAIRPERSON BUSTAMANTE: Okay. Why don't we have you sit down with staff and go through all these questions.

MS. VENSKUS: Great.

CHAIRPERSON BUSTAMANTE: If there's any additional public comment, we'd be more than happy to listen to it. But it sounds like there's going to be this Q and A thing. Maybe you guys can do that. I'm sure that they'd be willing to sit down and --

MS. VENSKUS: I sure appreciate that. Thank you so much.

CHAIRPERSON BUSTAMANTE: Absolutely.

Okay, Leslie. You sure you won't let somebody go now?

MS. PURCELL: No, thank you.
Actually, I did a little research on that permitting process, too. And I am concerned about that 60 acres of the fresh water marsh area. Because what I'm here to talk to you about is the west bluff of the Biona Wetland. And I passed out --

CHAIRPERSON BUSTAMANTE: West bluff?

MS. PURCELL: Yeah.

-- three or four packets. This is the only remaining upland bluff of the Ballona Wetlands ecosystem. It is directly above the fresh water marsh area. And, you know, it is the upland of that wetland area. Great Blue Herons fly back and forth every day. They feed on the gophers and mice that are on top of the bluff. There are a number of --

CHAIRPERSON BUSTAMANTE: What is it that you're talking about today?

MS. PURCELL: My concern, you know, is that the State Lands Commission has an interest in the fresh water marsh. The public has been working very hard to get funding to acquire the west bluff. We've had --

CHAIRPERSON BUSTAMANTE: Is that within our jurisdiction?

EXECUTIVE OFFICER THAYER: I don't believe so.

At the present time I don't believe so.

If you're talking about the area that extends up,
kind of where --

MS. PURCELL: Right, exactly.

EXECUTIVE OFFICER THAYER: Yeah. So as far as I know, without doing the elaborate record check, it's not in the tidelands area. And this whole area was subject to the Suma Tidelands case, and we had very little interest there even if it were. But I think your point is a different one. You want us to --

MS. PURCELL: Well, I'm here appealing for --

CHAIRPERSON BUSTAMANTE: You're looking for help?

MS. PURCELL: -- state agencies to help us. We have a window of opportunity right now between a couple court appeals, with no injunction. The developer is poised to move ahead even though they have said they will sell the land to the public.

CHAIRPERSON BUSTAMANTE: Is there anybody in the State that you can think of that might have some kind of interest or jurisdiction on this matter that we might be able to refer Leslie to to assist her in her effort?

EXECUTIVE OFFICER THAYER: I think maybe the best idea here is the same as you suggested for the previous speakers. We should discuss with her exactly the values of the property, kind of talk about finding other people within the administration to see if there's some way we can help.
CHAIRPERSON BUSTAMANTE: Why don't we do that.

MS. PURCELL: Yeah, I'd appreciate that very much.

And I wanted to make one more point about the immediate action of Catellus, the developer. They intend to have some kind of road abatement program. And at first they were planning to use this very toxic chemical poison that has huge secondary effects for birds and other wildlife, including neighborhood cats. And the EPA is poised to pull this off the market. In fact, they've just done a big study about it.

So it is a concern that these birds that -- you know, that fly up and down between the fresh water marsh area and the uplands, and there might be actually residue going over, down into the wetlands.

CHAIRPERSON BUSTAMANTE: If in the development -- which is an interesting point. If in the development of this west bluff project there are various materials that are used that would affect our jurisdiction, don't we then have interest?

EXECUTIVE OFFICER THAYER: We'll certainly check into it and see if there's something helpful we can do.

CHAIRPERSON BUSTAMANTE: Why don't we do that.

MS. PURCELL: Thank you very much.

CHAIRPERSON BUSTAMANTE: Absolutely.
Okay. I think that's all the items -- or all of the people who requested to speak.

Is that correct?

Is there anyone else who'd like to speak, any public comment of any kind?

Seeing none, that concludes all the business of the State Lands Commission for today.

Is there any other items?

EXECUTIVE OFFICER THAYER: No, we just have -- we have closed session, but nothing else in open session.

CHAIRPERSON BUSTAMANTE: Okay. That will close the regular calendar today. And we'll go into closed session.

Meeting is adjourned.

(Thereupon the California State Lands Commission meeting adjourned at 12:30 p.m.)
CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California State Lands Commissioner meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of June, 2003.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License No. 10063