

MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

EL SEGUNDO CITY HALL
COUNCIL CHAMBERS
350 MAIN STREET
EL SEGUNDO, CALIFORNIA

MONDAY, JUNE 2, 2003
10:30 A.M.

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

ORIGINAL

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

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1 CHAIRPERSON BUSTAMANTE: Thank you. We've got a
2 motion and then a second. So the minutes are unanimously
3 adopted.

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

6 Paul, may we have your report.

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

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

14 The second item I wanted --

15 CHAIRPERSON BUSTAMANTE: Is the Mayor still Mike
16 Gordon?

17 COMMISSIONER WESTLY: Yes.

18 CHAIRPERSON BUSTAMANTE: Thank you, Mike.

19 EXECUTIVE OFFICER THAYER: The second item I
20 wanted to raise is the ballast water enforcement actions
21 that we've recently taken. When we heard the ballast
22 water report at a meeting earlier this year, several of
23 the Commissioners were concerned whether or not we were
24 moving forward appropriately with enforcement against
25 those companies that were not complying with the State's

1 Ballast Water Program. And I wanted to report that we're
2 in the middle of proceedings on two different enforcement
3 actions.

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

7 COMMISSIONER WESTLY: None.

8 CHAIRPERSON BUSTAMANTE: None. Okay, good.

9 EXECUTIVE OFFICER THAYER: Thank you.

10 The first one has to do with an agent that was
11 responsible for submitting the reports from a variety of
12 shipping companies, and had not supplied I think probably
13 200 required reports and didn't respond to early letters.
14 That enforcement action has gone through the due-process
15 procedures that we've instituted administratively. All of
16 this is an administrative action. And may very well be
17 referred next week or the following week to the Oil Spill
18 Prevention and Response administrator for imposition of a
19 fine. We may be meeting one more time with the agent
20 before that occurs.

21 The second enforcement action involves Carnival.
22 Carnival's been the subject of litigation by an NGO that
23 was concerned about potential violations of the ballast
24 water program. Carnival settled that litigation and
25 admitted violations. We've sent out an initial letter to

1 start our own administrative proceedings that we --
2 potentially we could fine. And I'm going to be meeting
3 with representatives from that cruise line on Friday to
4 discuss this further review.

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

8 CHAIRPERSON BUSTAMANTE: Okay.

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

21 The fourth item I wanted to mention is that --
22 the Commission several years ago, it was brought to their
23 attention by the Attorney General's office that the East
24 Bay Municipal Utility District was not allowing people who
25 were recreating on the Mokelumne River to take out rafts

1 and kayaks at a point close to a reservoir.

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

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

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

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

25 EXECUTIVE OFFICER THAYER: It's an additional

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

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

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

20 CHAIRPERSON BUSTAMANTE: Great. Technology
21 again.

22 Okay. Anything else.

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

25 And then the last thing I wanted to mention is

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

9 CHAIRPERSON BUSTAMANTE: Okay.

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

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

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

24 CHAIRPERSON BUSTAMANTE: I really think we need
25 to, you know, review the whole issue of the lease, et

1 cetera. I've had a chance to talk with representatives of
2 Duke. They are just totally unaware of why they're
3 getting such negative press, and are unaware of why there
4 is so much angst over what's taking place, and have
5 promised their full cooperation in order to be able to try
6 to deal with this issue.

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

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

1 away to the competitors.

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

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

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

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

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

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

24 EXECUTIVE OFFICER THAYER: The next meeting for
25 this Commission will be August 19th. And then the next

1 one in San Diego will be October 7th.

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

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

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

19 EXECUTIVE OFFICER THAYER: I understand.

20 ACTING COMMISSIONER TAKASHIMA: Additionally, I
21 would like probably for the October 7th meeting
22 additional -- kind of a report from the Port of San Diego
23 of what's the status of the activity in the Port and their
24 revenues and where they're at today. Because they've had
25 some changes in the Port of San Diego configuration, and I

1 think it would be helpful for us as Commissioners to
2 understand what's happening in San Diego at this time.

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

6 ACTING COMMISSIONER TAKASHIMA: Right. And also
7 their reserves.

8 CHAIRPERSON BUSTAMANTE: Reserves. Okay.

9 (Laughter.)

10 CHAIRPERSON BUSTAMANTE: Okay, Mr. Commissioners.

11 (Laughter.)

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

14 Are there any changes on the consent calendar?

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

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

20 Seeing none, is there a motion?

21 COMMISSIONER WESTLY: So moved.

22 ACTING COMMISSIONER TAKASHIMA: I second.

23 CHAIRPERSON BUSTAMANTE: There's a motion.

24 Is there anyone here that would like to speak on
25 any of the issues on the consent calendar?

1 Seeing none, let the record show that the motion
2 passes unanimously.

3 I guess we'll move into the regular session at
4 this time.

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

7 Staff presentation please.

8 EXECUTIVE OFFICER THAYER: Thank, Mr. Chair.

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

12 (Thereupon an overhead presentation was
13 Presented as follows.)

14 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

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

20 --o0o--

21 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

22 MOUNT: Twenty-eight ninety-four is located near Gaviota.
23 That's north of Santa Barbara along the coastline. This
24 slide shows you 2894. There are two other leases there
25 associated with that lease, 2199 and 2920. All of those

1 leases were held by Harvest Petroleum. Right now you're
2 only considering the quitclaim of Lease 2894. The other
3 two will follow in the future when their abandonment
4 obligations are met.

5 --o0o--

6 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

7 MOUNT: Originally it was leased by Chevron and Shell in
8 1962, so it's quite old leases. They developed the leases
9 in the early sixties and continued to produce them until
10 Molino Energy acquired both interests in 1994. Molino
11 assigned 40 percent of the interest to Benton. Benton
12 then changed their name. They had some financial
13 problems, changed their name to Harvest Resources, who is
14 the current lessee for that lease.

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

19 --o0o--

20 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

21 MOUNT: Just a little bit on the -- just to give you an
22 idea of what's out there. This is a cross section of the
23 oil and gas formations out there. The green areas
24 represent oil. So the oil was spread across quite a large
25 area. And they're also shown on here, the gas, with the

1 red areas. Those were produced for a number of years.
2 There are still some remaining reserves out there as well.

3 --o0o--

4 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

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

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

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

11 There's a Caliente field located here.

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

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

18 --o0o--

19 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

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

24 Again, we anticipate getting a quitclaim for the
25 other two leases in the near future when they get those

1 wells abandoned that are still there.

2 --o0o--

3 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

4 MOUNT: I wanted to give you a quick rundown on the status
5 of our offshore leases. This shows all our offshore
6 leases off California, lands that were ever leased in the
7 history of the State Lands Commission.

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

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

18 --o0o--

19 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

20 MOUNT: So the next slide -- this slide -- sorry. Well,
21 let me go back one.

22 This slide represents our lease quitclaim
23 history. We had a maximum of about 59 leases here in
24 19 -- right before 1970. It's been declining ever since,
25 to about 33 leases here in 2005. This is the cumulative

1 number of quitclaim leases since 1965 represented by the
2 red line.

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

6 --o0o--

7 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

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

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

23 --o0o--

24 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

25 MOUNT: And that ends my presentation. Do you have any

1 questions?

2 CHAIRPERSON BUSTAMANTE: That's really good.

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

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

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

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

1 So either one of those cases.

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

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

14 COMMISSIONER WESTLY: I'm in agreement.

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

22 CHAIRPERSON BUSTAMANTE: Okay.

23 EXECUTIVE OFFICER THAYER: I should also add that
24 at the time that the Commission looked at this more
25 carefully, we did a very extensive staff report, lease

1 status report. That report is available on the Internet.
2 And we regularly update it each time another quitclaim
3 occurs. So the numbers are accurate, and they are
4 available to the Commissioners or to the public.

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

7 COMMISSIONER WESTLY: So moved.

8 ACTING COMMISSIONER TAKASHIMA: Second.

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

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

15 Staff presentation please.

16 EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

17 Let me give a brief overview of this project, and
18 then Blake Stevenson, one of our staff attorneys, will
19 present the project in greater detail.

20 This project, as the Chairman mentioned, is
21 proposed for restoring several piers along the waterfront
22 in San Francisco, Piers 27 through 31. There's some good
23 public trust uses there that were part of the original
24 proposals, some good public access along the wharfs, a
25 marine supply store, boating facilities, some uses that

1 are the classic public trust uses. But there are also
2 some other uses that present public trust issues.

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

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

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

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

1 considered to be consistent with the public trust
2 doctrine.

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

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

19 With these changes, staff is recommending today
20 that the Commission find the project to be consistent with
21 the public trust doctrine and the Burton Act, which was
22 the granting legislation. The Commission's determination
23 would be subject to the development of an enforceable
24 implementation mechanism, which is yet to be worked out,
25 involving the Port, the developer and the Commission.

1 For more details on the project I'd like Blake
2 Stevenson, the attorney who's worked on it, to make a
3 presentation. I'd also like to mention that in addition
4 to Alan Hager, who's represented the Attorney General's
5 office on this throughout, Dave Plummer and Grace Kota,
6 who are in the audience as Commission staff, have spent a
7 lot of time on this.

8 CHAIRPERSON BUSTAMANTE: Okay. Before we get
9 into the report, Alan, we had a report memo from you,
10 representing the Attorney General, on this entire issue,
11 which indicated that the project was not in public trust.

12 Have you had a chance to look at the changes to
13 the project?

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

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

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

24 CHAIRPERSON BUSTAMANTE: Okay. Thank you.

25 ACTING COMMISSIONER TAKASHIMA: Based on that,

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

10 ASSISTANT ATTORNEY GENERAL HAGER: I'm sorry, but
11 again I can't answer that because to commit to that -- I
12 myself can't commit to it, because anything that would
13 come out would have to have approval of people above me.

14 I can say, as I just said, that the project the
15 memo addressed on May 5th is not the project that is
16 before you now. That project has trust problems. And
17 this project still has some problems too, but we think of
18 it as, you know, coming to the point where we could say
19 that it is a trust --

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

23 ASSISTANT ATTORNEY GENERAL HAGER: Absolutely.

24 CHAIRPERSON BUSTAMANTE: We appreciate the fact
25 you have stated on the record that in fact the position of

1 the Attorney General's office is that it is -- your belief
2 it is now in compliance and that the memo that was
3 previously written was written before the -- I don't know,
4 how many changes were made?

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

7 CHAIRPERSON BUSTAMANTE: Along with another
8 technical number, Jack.

9 CHIEF COUNSEL RUMP: A lot.

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

12 Mr. Controller.

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

16 Let me just say, this is an extremely complex
17 case. And as a new member, you know, I've come on board
18 and I and our staff have spent a huge amount of time
19 reviewing this to make sure we get to the right place.
20 And let me just say, I had very substantial initial
21 concerns both with the original AG's opinion as well as
22 some of the concerns of the staff articulated. Our belief
23 is that through, frankly, what is an awful lot of work
24 that I think really represents the best in state
25 government, knocking heads with the developer on the

1 project, trying to make compromises that were not only
2 appropriate but in the public interest, that we've gotten
3 to a place where I am not only comfortable with this, but
4 as you know I moved to support it.

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

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

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

20 The Commission and its staff have considered
21 several developments along the San Francisco waterfront in
22 recent years. This is but one of them. And we've seen a
23 lot of benefit derived from this in the new revamped Ferry
24 Building, which has just opened up, Pier 1, which is the
25 home of the Port of San Francisco.

1 These all represent attempts by the City of San
2 Francisco and its port to try to revitalize the old finger
3 piers of the city. And a lot of this work was reflected
4 also in what's known as the special area plan for this
5 area of San Francisco that was worked out between the Port
6 and BCDC and blessed by the Legislature two years ago.

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

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

24 Your determination today will guide the executive
25 officer as he advises BCDC and the Port on these matters.

1 Let's turn to the maps to have a sense of the
2 setting for the project. Let's look at Exhibit A to your
3 calendar item, which is this.

4 It's a 19-acre site comprised of three piers:
5 27 -- this is an as-built rendition, but the old one. I
6 want to emphasize that's the newer one.

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

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

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

18 The port developer currently is seeking
19 historical designation status from the federal government
20 for this whole complex, but for 27, which would come out.

21 They're looking to have it listed on the national
22 register of historic places, which is the same going on
23 for having us be able to find that any rehabilitation here
24 is a public trust project.

25 If they get that listing, they will then go an

1 extra step to have a rehabilitation qualified for tax
2 credits. To do that, they have to abide by standards
3 which are put in place by the U.S. Department of the
4 Interior as to every step of the project, literally every
5 railing, every window. And that is their intention to do.
6 And it's certainly to their financial benefit as well,
7 given the tax credits.

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

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

19 But at Pier 1, they have it too. But this is the
20 biggest site that would be out there. But if you anchored
21 at the south end by a plaza, true enough the plaza's going
22 to be built no matter if this project goes forward. It's
23 required by the special area planning referred to earlier.
24 What this does though is it moves up the timing
25 substantially, to bring them -- to compel the Port to

1 utilize money here derived from this project for the early
2 completion of that plaza, which was so important to many
3 people in the Bay Area.

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

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

19 Over here in 31 the situation was even somewhat
20 worse. The ground floor plate, which is this -- this is
21 the second floor plate. On the ground floor plate you had
22 almost all office space, just general offices. At the
23 back it was backed by a restaurant, a boating center. And
24 down here in the corner a marine museum. Upper floor was
25 completely office space.

1 So what we have negotiated through the course of
2 the last few weeks was large scale changes in these areas,
3 to try to concentrate on the strength of the boating
4 activity here and the strength of the public nature of the
5 uses in the area.

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

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

20 The restaurant would remain in place. Maritime
21 office space here, I mentioned. But also that central
22 corridor would be opened up. When you go into these piers
23 you see Norm's Trust Work over the top of them. They were
24 used for breakable cargo at one point in time. And there
25 was a creation of this large cavern space. This -- by

1 having this open would be viewable. The marine museum has
2 been shifted from down in the corner here to out here, and
3 a second mezzanine level added. Again, you could see the
4 cutouts going both directions. You see here, the white --
5 the light stuff here. They can look down these large
6 historic areas.

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

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

1 shoppers and people going to and from restaurants. Their
2 objective is to come out here to the boating center, get
3 into the water, do what they do there, and come back.

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

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

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

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

24 This is along the Embarcadero, along that walkway
25 that everybody likes to take. In one room here they'll

1 actually have a fixed boat that will rotate over time.
2 And they'll use the boat for training in outside water,
3 but also they'll be showing the public walking along and
4 what that's all about.

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

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

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

1 make certain that these kinds of uses are put in place
2 into the future.

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

5 Questions?

6 CHAIRPERSON BUSTAMANTE: Okay. Several.

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

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

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

23 EXECUTIVE OFFICER THAYER: I've spoken with Save
24 The Bay as recently as this morning. We've kept them
25 advised right along, and their concerns -- this process is

1 just beginning for them. The EIR is not even done on this
2 project yet.

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

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

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

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

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

22 EXECUTIVE OFFICER THAYER: That's right. Again,
23 they're being very careful about preserving their future
24 options here. But their concerns were largely guided by
25 the Attorney General's concerns in that memo, and they're

1 taking guidance from his approach to this.

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

7 EXECUTIVE OFFICER THAYER: That's right.

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

11 EXECUTIVE OFFICER THAYER: Yes.

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

16 EXECUTIVE OFFICER THAYER: That's correct?

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

23 EXECUTIVE OFFICER THAYER: Yes, sir. The Ferry
24 Building and Pier 1 that Blake alluded to earlier are
25 other examples of where we've gone through this process.

1 CHAIRPERSON BUSTAMANTE: So these are not
2 projects -- this is not use that would be normally allowed
3 on another waterfront?

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

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

15 EXECUTIVE OFFICER THAYER: No.

16 CHAIRPERSON BUSTAMANTE: -- with this action?

17 EXECUTIVE OFFICER THAYER: That's correct.

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

20 EXECUTIVE OFFICER THAYER: That's correct.

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

24 Now, it was my understanding in -- it didn't come
25 out in the staff report, but it was my understanding that

1 the park service specifically requested that the parking
2 be allowed to remain on that upper floor.

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

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

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

24 CHAIRPERSON BUSTAMANTE: So either way, again,
25 there is no new precedent that's being set --

1 EXECUTIVE OFFICER THAYER: That's correct.

2 CHAIRPERSON BUSTAMANTE: -- by taking this
3 action?

4 EXECUTIVE OFFICER THAYER: That's correct.

5 CHAIRPERSON BUSTAMANTE: Okay. The YMCA -- well,
6 first of all, the bowling alley is now struck, is that
7 correct?

8 EXECUTIVE OFFICER THAYER: Yes, sir.

9 CHAIRPERSON BUSTAMANTE: Good.

10 And the YMCA, there have been major changes in
11 terms of the YMCA in terms of making sure that its
12 programming that would normally be done along a more
13 structured YMCA is now going to be structured in a way
14 that meets the public trust.

15 Could you elaborate just a little bit on that?

16 EXECUTIVE OFFICER THAYER: Certainly.

17 This was one of the most problematic areas
18 because a YMCA, as all of us know, serves a lot of
19 community needs. It's a very important institution, and
20 one that I think we all support. But the question was,
21 did it qualify for use of public trust lands? And I think
22 your classic YMCA could not because -- the public trust
23 uses have to meet two different standards. One is, the
24 use itself has to be maritime. But the second standard is
25 that it's of greater importance than just local.

1 So --

2 CHAIRPERSON BUSTAMANTE: So how did they change
3 their programming to meet the public trust?

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

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

22 CHAIRPERSON BUSTAMANTE: For public trust uses?

23 EXECUTIVE OFFICER THAYER: Yes.

24 And then, finally, there are three rooms at the
25 very front that Blake was talking about, they were right

1 next to the Embarcadero, that were devoted to what they
2 call a soft zone for kids to play. A rope climbing area
3 and a rock wall. All of these uses are more community
4 related or non-trust related. But they've agreed to
5 modify those where necessary so that the training
6 that's -- the above-deck training that's necessary for
7 sailing to occur there.

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

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

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

20 EXECUTIVE OFFICER THAYER: The only Y that has
21 been approved -- and it was subject to court action -- was
22 one which was a residential Y in the Long Beach area. It
23 wasn't the one that you see here. It was more when Y's
24 used to provide a lot of low-income or single-person
25 housing. And the reason that was approved is it was

1 largely intended to be a place where sailors between
2 cruises could stay. And with that understanding that it
3 was going to be for that use and not for the general
4 public use, it was approved by the courts. We're not even
5 quite sure if it was built.

6 CHAIRPERSON BUSTAMANTE: But it was approved?

7 EXECUTIVE OFFICER THAYER: It was approved.

8 CHAIRPERSON BUSTAMANTE: And so, in essence, we
9 are not again setting any new precedent. Although it is
10 very difficult for various projects like the YMCA to fit
11 into this square public-trust-doctrine box, there are
12 occasions in which it has met the requirements. And in
13 this particular time you believe that this meets all the
14 public trust and this is not a new precedent that we're
15 setting?

16 EXECUTIVE OFFICER THAYER: Yes, sir.

17 CHAIRPERSON BUSTAMANTE: Okay. Any other
18 questions?

19 ACTING COMMISSIONER TAKASHIMA: Let me go off on
20 the issue of public trust. And I just need some
21 clarification from the attorney.

22 ACTING COMMISSIONER TAKASHIMA: On page 5 of your
23 memo letter of -- on Cinco de Mayo --

24 (Laughter.)

25 ACTING COMMISSIONER TAKASHIMA: -- you

1 mentioned -- I use that -- may I use that?

2 CHAIRPERSON BUSTAMANTE: Absolutely.

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

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

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

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

25 ASSISTANT ATTORNEY GENERAL HAGER: No. And had

1 there been, I would have cited it.

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

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

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

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

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

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

22 ACTING COMMISSIONER TAKASHIMA: Okay. One thing
23 I did ask staff a couple of days ago was to give me a list
24 of projects the last ten years of items that had been
25 qualified as public trust. Being a native of San Diego,

1 I've thought that a lot of the hotels and the Shelter
2 Island area and near the airport would qualify. And being
3 new to the Commission, I just -- I kind of struggled with
4 the issue of public trust. And I'm learning it and I've
5 read a lot of this material.

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

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

24 And I think the piers are very significant. And
25 maybe these piers themselves are not -- not historical

1 from the story of the Asian migration from China and
2 Japan, but they -- it plays a role. And I've asked the
3 development to look into that, and they have. And I
4 appreciate their effort there.

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

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

19 (Laughter.)

20 ACTING COMMISSIONER TAKASHIMA: -- bowling
21 alleys --

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

24 ACTING COMMISSIONER TAKASHIMA: Well, bowling
25 alleys -- but for the Japanese American community a

1 bowling alley was a big issue recently in San Francisco.
2 One had to be torn down for development in Japan Town in
3 San Francisco.

4 And so I'm --

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

7 (Laughter.)

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

16 CHAIRPERSON BUSTAMANTE: Thank you.

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

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

22 CHAIRPERSON BUSTAMANTE: Yeah.

23 (Laughter.)

24 CHAIRPERSON BUSTAMANTE: Okay. There's a motion
25 on the floor.

1 Is there a second?

2 We have at least several speakers.

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

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

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

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

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

20 CHAIRPERSON BUSTAMANTE: Yes, we will.

21 Is there a second?

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

25 SENIOR STAFF COUNSEL STEVENSON: It makes

1 reference to the actual exhibits. It makes reference to
2 the text in the calendar item.

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

9 CHAIRPERSON BUSTAMANTE: Is there a second?

10 We'll go forward with the public comments.

11 We have Ron Rouse. Let's see, is this on -- no,
12 it's a different issue. Sorry about that.

13 David D'Onofrio.

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

15 CHAIRPERSON BUSTAMANTE: Defers.

16 Steve Jacobsen.

17 MR. JACOBSEN: Yes.

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

20 MR. JACOBSEN: Okay. Thank you.

21 Good afternoon, I think it is.

22 Yes.

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

1 of Mills.

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

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

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

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

1 showpiece of how government can work.

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

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

21 Just a couple highlights.

22 You know, we're creating 8.6 acres of public
23 access. And what's important to also understand is that
24 the Mills Corporation is obligated to maintain that for 66
25 years. So it's not just we're going to build this and

1 it's going to look nice for the next few years. But for
2 the next 66 years our company will be obligated per the
3 lease with the Port to maintain that.

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

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

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

20 So on behalf of the Mills Corp., we're very
21 excited, we're very bullish on California and this
22 project. And we thank the Commission. And I'd like to
23 thank Cindy Aronberg for her time spent. Of those many
24 hours spent, a lot of those calls have been with her after
25 hours and on weekends as well as others to get to the

1 means here, which is to create a successful project and an
2 affordable project, recreation for all San Franciscans and
3 Californians.

4 So thank you very much.

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

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

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

14 As has been mentioned by staff -- of your staff
15 and the other speakers, these piers -- 27, 29, 29 1/2, and
16 31 -- were designated in our waterfront plan for this
17 mixed use and recreation project. And that plan was
18 approved in 1997 after a 7-year community planning
19 process. And it was important within that plan that there
20 be a mix of activities along the waterfront that brought
21 people to the San Francisco waterfront that reconnected
22 them with the waterfront, but there'd be a variety of
23 uses.

24 Other uses have been mentioned, whether it's
25 Pacific Bell Park or the Ferry Building and it's food

1 related uses, Pier 1, where our port offices are. This is
2 another in a series of those -- of developments that we
3 think will bring people to the waterfront. People who
4 might not come to the Ferry Building we believe will come
5 to this recreational facility. And we think this is very
6 important.

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

13 We mentioned those a bit more specifically. This
14 \$200 million of investment will preserve this 19 acre --
15 these 19 acres of piers; make the substructure
16 improvements; and as Steve Jacobsen has mentioned, will
17 have the developer not only make these improvements but
18 maintain this property for the 66-year life of the lease.
19 So that will address major concerns that we have. Also
20 preserving the finger piers. As Blake Stevenson
21 mentioned, the Beltline Railway Building will be
22 preserved.

23 These are all major goals of the waterfront plan
24 and of the special area plan that BCDC adopted in 2000
25 that triggered the RFP that led to this.

1 So I just wanted to thank you, Commissioners, and
2 your staff for working closely with us on this project.
3 And we look forward to working with you in future
4 developments along the waterfront.

5 CHAIRPERSON BUSTAMANTE: Dawn Riley.

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

11 (Laughter.)

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

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

24 We looked at it from a couple of different ways.
25 One is to bring people on boats to the city front. And

1 that is what the marine basin is about with the moorings,
2 so that you have 20 to 40 foot boats that come into the
3 area from other parts of the Bay, other parts of the
4 state.

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

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

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

23 We also have been talking to groups like the Tall
24 Ships, so that when they come they can use this facility,
25 as well as regattas. The Far Forties right now come down

1 to southern California to do their events because there is
2 no congregating place other than a few yacht clubs, which
3 don't have the facilities in northern California in the
4 Bay Area, which has awesome sailing but no facilities to
5 be able to bring major events to that waterfront.

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

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

19 One other point I want to point out is that it's
20 not like that movie, the "Field of Dreams," if you build
21 it, they will come. People need to have the outreach.
22 They need to have the familiarity with the area to get out
23 onto the water. It seems like there's this barrier. And
24 that's where the YMCA comes in, and it's critical for us.
25 America True does outreach, but YMCAs are the experts at

1 it, bar none.

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

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

18 Simple, but important things.

19 I think the bottom line is that this is just a
20 phenomenal facility. And I was talking to Martie
21 Bolsinger from the YMCA, who could not be here today, and
22 we said collectively that Mills is like a gift from
23 heaven. They've dropped down. They've given us this
24 opportunity. It's going to help our programs, the people
25 we serve, and it is something that there is no way we

1 would have contemplated doing without them.

2 Thank you.

3 CHAIRPERSON BUSTAMANTE: Thank you.

4 Paul Scott, in opposition.

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

7 MR. SCOTT: Yes.

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

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

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

22 But one thing stands out glaringly for us and is
23 making a lot of people hysterical back in San Francisco;
24 and, that is, the removal of this bowling alley, not
25 because we are so wild about bowling alleys. In fact,

1 plenty of people agree with you, Lieutenant Governor, that
2 that's perhaps not the best use of the space. But the
3 concern is that it be replaced with something like retail
4 or other commercial uses, which completely take away from
5 the recreation theme that was originally the concept when
6 the RFP was originally issued.

7 What we would like to see -- and I think you have
8 a letter from Supervisor Peskin, whose district again
9 encompasses these piers -- is if the bowling alley and its
10 50,000 square feet have to go, replace it with
11 recreation -- a recreational use. And one idea that we've
12 discussed -- I've discussed with Alan Hager in the
13 Attorney General's office is an ice rink, which is
14 something that has its history in frozen ponds and lakes
15 and rivers. And from what I understand from Mr. Hager,
16 informally at least, he saw it as a trust-consistent use,
17 and I've had other people respond favorably the same way.

18 CHAIRPERSON BUSTAMANTE: It is?

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

22 EXECUTIVE OFFICER THAYER: I think -- I've talked
23 about it with Mr. Scott just on Friday. And we haven't
24 analyzed this very far at this point. I think the larger
25 point here is though, just as Blake indicated in his

1 presentation, that the exact uses aren't yet known for
2 this project, that the public trust overlays we're talking
3 about here are broad. And if they wanted to come back and
4 come up with an alternative public trust use that wasn't
5 retail -- for example, I know there's some concern about
6 making it too much like Pier 39. I, of course, think of
7 California Canoe & Kayak, which is over there in Jack
8 London Square, which would be a very appropriate retail
9 use, and generally uses the amount of space that we have
10 there.

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

17 On the skating rink point --

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

20 EXECUTIVE OFFICER THAYER: That's correct.

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

23 EXECUTIVE OFFICER THAYER: That's correct.

24 CHAIRPERSON BUSTAMANTE: And since the original
25 developers were looking for some other kind of

1 recreational activity, they might -- maybe there's some
2 other things that are not normal that may be -- and it
3 should be offered as a list of public trust uses to both
4 the dwellers as well as the developers and maybe some
5 other type of recreational uses could be done.

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

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

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

19 MR. SCOTT: I understand.

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

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

24 CHAIRPERSON BUSTAMANTE: Have you had a chance to
25 look at the -- what the Controller referred to as over 30

1 changes that were made?

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

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

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

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

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

24 Otherwise --

25 CHAIRPERSON BUSTAMANTE: I think that other than

1 making sure that we have something in writing from the
2 Attorney General's office, I think that's probably about
3 all we --

4 MR. SCOTT: You're waiting for him?

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

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

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

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

20 COMMISSIONER WESTLY: I think those are two
21 separate issues.

22 MR. SCOTT: All right. I understand.

23 Just to kind of refer back to them. One point I
24 think that Mr. Hager made in his letter early on was the
25 idea of a central feature. And you've reiterated the idea

1 again of there being something about this place that makes
2 it a water-related marine-oriented, something that has to
3 do with, you know, activity surrounding or involving
4 water.

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

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

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

24 I guess what I would ask the Commission to do,
25 again seeing that something's going to happen here today,

1 is that it leave open the possibility of doing something
2 like what I'm suggesting, that it's a decision made very
3 clear that when we go to the next level and the Mills
4 people are trying to advance their project, that putting
5 in a rink, say, or some other water-related activity,
6 would be satisfactory use of that 50,000 square feet
7 rather than more shopping.

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

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

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

25 MR. SCOTT: Understood. I appreciate that. And

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

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

10 MR. SCOTT: Understood.

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

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

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

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

23 CHAIRPERSON BUSTAMANTE: We're open.

24 MR. SCOTT: Okay. Thank you.

25 CHAIRPERSON BUSTAMANTE: Okay.

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

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

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

18 EXECUTIVE OFFICER THAYER: I wouldn't anticipate
19 doing that unless there was some issue on public trust.
20 And, again, I think Byron Rhett really set the tone,
21 representing the Port, that we have an ongoing
22 relationship with the Port and we often informally discuss
23 these kinds of things with them. And we'd be doing the
24 same thing -- obviously, if there was particular interest
25 in reviewing a particular kind of project, we're going to

1 work with the Attorney General's office in trying to be
2 active, in trying to be helpful on it, in terms of helping
3 them, assisting them.

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

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

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

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

22 COMMISSIONER WESTLY: Go, Ducks.

23 (Laughter.)

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

1 shopping --

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

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

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

9 Would you come up and give us your name please.

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

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

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

20 So we just wanted to make sure that as we
21 negotiate this enforcement mechanism, it's done in such a
22 way that it doesn't make the lease unfinancable. To the
23 extent that you have a third party beneficiary that could
24 be looking over leases as they come, it could be a
25 problem. So we just want to make sure that in

1 negotiations the staff and AG are mindful that it's done
2 in such a way that this project can get built.

3 That's just my own general comment.

4 EXECUTIVE OFFICER THAYER: If I could respond?

5 CHAIRPERSON BUSTAMANTE: Surely.

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

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

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

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

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

25 EXECUTIVE OFFICER THAYER: On behalf of the Lands

1 Commission staff, no.

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

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

14 ASSISTANT ATTORNEY GENERAL HAGER: Yes.

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

18 ASSISTANT ATTORNEY GENERAL HAGER: Okay, fine.

19 CHAIRPERSON BUSTAMANTE: Okay?

20 So there is a motion. Is there a second?

21 ACTING COMMISSIONER TAKASHIMA: I have a
22 question.

23 CHAIRPERSON BUSTAMANTE: Yes.

24 ACTING COMMISSIONER TAKASHIMA: In the staff
25 recommendation in C you had refer to a Commission policy

1 statement of September '01. And I didn't know whether or
2 not I received a copy of that. I have not seen that. And
3 maybe I missed it. And I just don't know whether or not
4 the staff provided that for the Commission.

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

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

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

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

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

24 (Laughter.)

25 ACTING COMMISSIONER TAKASHIMA: But, you know, I

1 do go back to some of the concerns of the Attorney
2 General's opinion as being part of your recommendation C,
3 is you're trying to use the opinion of May 5th as kind of
4 a guideline for you, that you cannot use -- are you saying
5 that you cannot use the Commission statement of September
6 '02 as your guideline?

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

13 So that seemed to be most on point.

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

21 ACTING COMMISSIONER TAKASHIMA: Yeah, I'm
22 concerned of potential litigation in the -- in front of us
23 potentially, or for the developer. And I just wanted to
24 ensure that whether -- if we had a May 5th opinion and we
25 had a city attorney opinion and you have other attorneys'

1 different views on this topic of public trust and how far
2 this Commission or any staff can push a developer, I just
3 would like to know are we going to make effort -- is the
4 Attorney General's office going to make some effort to get
5 clear where the public trust doctrine is at with the
6 varying offices that have opined on this issue before the
7 Commission? Especially the City Attorney's office of San
8 Francisco. And, you know -- and I just wanted to see if
9 you could make some effort to do that or not.

10 EXECUTIVE OFFICER THAYER: We certainly will.

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

23 Is there a second?

24 I'll second the motion.

25 And we'll go to a vote.

1 Call the roll.

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

8 Call the roll.

9 SECRETARY KORHONEN: Lieutenant Governor/Chair?

10 CHAIRPERSON BUSTAMANTE: Aye.

11 SECRETARY KORHONEN: Steve Westly, Controller?

12 COMMISSIONER WESTLY: Aye.

13 SECRETARY KORHONEN: And David Takashima,
14 alternate for Department of Finance.

15 CHAIRPERSON BUSTAMANTE: He's not voting.

16 So the vote is two ayes and one not voting.

17 So the letter will be forwarded to BCDC, and that
18 the compliance letter will be sent along with a record or
19 a written document from Alan regarding the representation
20 of the Attorney General that the project is in compliance
21 with the public trust doctrine for our records here.

22 COMMISSIONER WESTLY: Yes.

23 CHAIRPERSON BUSTAMANTE: Mr. Controller.

24 COMMISSIONER WESTLY: I just want to make a quick
25 statement.

1 I want to just publicly thank Blake Stevenson,
2 the attorney for the staff, that he is really the unsung
3 hero here. He simply put this as a project that I was not
4 inclined to support a few weeks ago; and through, simply
5 put, his tireless efforts to get the parties together to
6 get this extraordinary number of concessions made --
7 Lieutenant Governor said, "How many concessions?" Always
8 ask your Controller if you want things quantified. It is
9 an extraordinary, I think, effort and, frankly, I think
10 the staff needs to be recognized. And, Blake, a terrific
11 job.

12 EXECUTIVE OFFICER THAYER: Absolutely.

13 CHAIRPERSON BUSTAMANTE: Okay.

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

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

23 We have, at this point, no other regular
24 calendar. But we do have a public comment period for
25 people who would like to express their opinion about

1 issues concerning the State Lands.

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

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

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

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

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

12 Please.

13 MR. MAY: Thank you, Lieutenant Governor.

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

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

19 The one thing we've noticed up and down the coast
20 is one of the biggest problems, most of the areas left for
21 wetland restoration have toxic waste on them. Toxic
22 wastes from military aviation contractors in those days,
23 in the '40s and '50s, were dumped off -- were taken to the
24 nearest salt marsh and dumped. And they've been covered
25 up, forgotten about.

1 One of the most egregious is down in San Diego.
2 And we have a lot of the material on that. We should have
3 perhaps chatted with your staff about this first, but it
4 turns out on this particular spot the public trust has
5 been lifted. One right directly across from it on Fiesta
6 Island, this is on the south shore of Mission Bay. The
7 one next to the one that we were concerned about and still
8 have some problems regarding the trust agreement that
9 was -- the public trust that was lifted apparently in some
10 litigation back in 1950.

11 We weren't aware of -- besides four feet of
12 record on this site, including deaths from people who have
13 been exposed, hydrogen sulfide levels over -- from 1820 to
14 1860 parts per million, where the action level is about
15 10, where it starts doing harm from product exposure about
16 1 part per million. It's a very toxic spot.

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

1 enormous problem.

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

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

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

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

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

18 CHAIRPERSON BUSTAMANTE: It's a good one.
19 John.

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

24 I am personally leading the project to try to
25 clarify the public record of the status of the toxic waste

1 dump on Mission Bay. I have a document I'd like to leave
2 with your staff. It's the document I provided the Coastal
3 Commission which acted against staff's recommendation to
4 decline the permit for Sea World to expand. So I think
5 it's a very persuasive article.

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

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

21 This is very inappropriate because since that
22 time, within the last ten years, we have had a fatality.
23 We have had hospitalizations. This is in what is
24 considered to be a very public recreational area. It is
25 between the San Diego River and Mission Bay.

1 And I'd like to conclude with this thought: The
2 city has allowed Sea World to expand eight times. As it
3 expands, it expands over the most toxic area of this dump.
4 So I think we have an egregious public health and safety
5 issue. And I thank you for anything you can do to cause a
6 city to do the right thing, find out what's there, where
7 it is, and remediate it with the best available
8 techniques.

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

11 MR. WILKS: Thank you, sir.

12 CHAIRPERSON BUSTAMANTE: We'll check that.

13 Thank you.

14 Leslie.

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

18 CHAIRPERSON BUSTAMANTE: Sure.

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

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

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

25 I appreciate you allowing me to go first.

1 And, excuse me, but this is a little short, so
2 let me try to figure out how this works.

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

5 MS. VENSKUS: This works?

6 CHAIRPERSON BUSTAMANTE: Yeah, I'm quite sure.

7 MS. VENSKUS: Okay, great. Thank you.

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

19 Today, I'm actually here with an inquiry. I'm
20 here to obtain information on the status of the land
21 ownership of some parcel of the Ballona Wetlands in Area
22 B, Area B being west of Lincoln Boulevard and south of
23 Biona Creek. It's my understanding that some of the
24 acreage in Area B was conveyed to the State Lands
25 Commission pursuant to a settlement agreement that was

1 entered into I believe in 1993 by the developer, the City
2 of Los Angeles, Coastal Commission, and the State Lands
3 Commission.

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

7 CHAIRPERSON BUSTAMANTE: So let's just ask it.

8 MS. VENSUS: Yeah, I'm asking this question.

9 CHAIRPERSON BUSTAMANTE: Do we own Area B or Area
10 C?

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

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

18 COMMISSIONER WESTLY: State owned.

19 EXECUTIVE OFFICER THAYER: It's state owned.

20 It --

21 CHAIRPERSON BUSTAMANTE: State owned.

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

25 CHAIRPERSON BUSTAMANTE: State owned and in trust

1 with the Controller is Area C.

2 Area B?

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

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

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

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

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

23 EXECUTIVE OFFICER THAYER: We have two binders
24 that came in in the last week in an attempt to demonstrate
25 that those conditions have been met.

1 CHAIRPERSON BUSTAMANTE: Well, then information
2 to be forthcoming.

3 MS. VENSKUS: Okay, great.

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

6 EXECUTIVE OFFICER THAYER: That's right.

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

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

14 MS. VENSKUS: Great.

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

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

22 CHAIRPERSON BUSTAMANTE: Absolutely.

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

25 MS. PURCELL: No, thank you.

1 Actually, I did a little research on that
2 permitting process, too. And I am concerned about that 60
3 acres of the fresh water marsh area. Because what I'm
4 here to talk to you about is the west bluff of the Biona
5 Wetland. And I passed out --

6 CHAIRPERSON BUSTAMANTE: West bluff?

7 MS. PURCELL: Yeah.

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

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

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

21 CHAIRPERSON BUSTAMANTE: Is that within our
22 jurisdiction?

23 EXECUTIVE OFFICER THAYER: I don't believe so.
24 At the present time I don't believe so.

25 If you're talking about the area that extends up,

1 kind of where --

2 MS. PURCELL: Right, exactly.

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

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

10 CHAIRPERSON BUSTAMANTE: You're looking for help?

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

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

20 EXECUTIVE OFFICER THAYER: I think maybe the best
21 idea here is the same as you suggested for the previous
22 speakers. We should discuss with her exactly the values
23 of the property, kind of talk about finding other people
24 within the administration to see if there's some way we
25 can help.

1 CHAIRPERSON BUSTAMANTE: Why don't we do that.

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

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

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

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

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

23 CHAIRPERSON BUSTAMANTE: Why don't we do that.

24 MS. PURCELL: Thank you very much.

25 CHAIRPERSON BUSTAMANTE: Absolutely.

1 Okay. I think that's all the items -- or all of
2 the people who requested to speak.

3 Is that correct?

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

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

8 Is there any other items?

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

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

14 Meeting is adjourned.

15 (Thereupon the California State Lands
16 Commission meeting adjourned at
17 12:30 p.m.)

