APPEARANCES

BOARD MEMBERS

Mr. Cruz Bustamante, Chairperson, also represented by Ms. Lorena Gonzalez
Mr. Steve Westly, also represented by Ms. Cindy Aronberg
Mr. Steve Peace, represented by Ms. Shelley Mateo

STAFF

Mr. Paul Thayer, Executive Officer
Mr. Jack Rump, Chief Counsel
Ms. Lorna Burks, Public Land Management Specialist
Mr. Curtis Fossum, Senior Staff Counsel
Mr. Dwight Sanders, Chief, Environmental Planning Management Division

ALSO PRESENT

Mr. Mike Aguirre, Self
Mr. Skip Baldwin, Wilmington resident
Mr. John Bowman, Jeffers, Mangels, Butler & Marmaro
Ms. Mary Brown, Rhodia Inc.
Mr. David Cornman, SFPPLP
Mr. Howard Coleman, Bel Air Bay Club
Mr. Gail Ruderman Feuer, NRDC
APPEARANCES CONTINUED

ALSO PRESENT

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

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Opening remarks and Roll Call</td>
<td>1</td>
</tr>
<tr>
<td>II. Confirmation of minutes for the meeting of September 9, 2003</td>
<td>2</td>
</tr>
<tr>
<td>III. Executive Officer's Report</td>
<td>2</td>
</tr>
<tr>
<td>IV. Consent Calendar</td>
<td>6</td>
</tr>
<tr>
<td>C01-C03, C05-C10, C12-C18, C20-C27, C29-C48</td>
<td></td>
</tr>
<tr>
<td>Item 63</td>
<td></td>
</tr>
<tr>
<td>Regular Items</td>
<td></td>
</tr>
<tr>
<td>61 San Diego Unified Port District</td>
<td>15</td>
</tr>
<tr>
<td>62 San Diego Unified Port District</td>
<td>61</td>
</tr>
<tr>
<td>63 Rubicon Tahoe Ownders, Inc</td>
<td>6</td>
</tr>
<tr>
<td>64 Bel Air Bay Club</td>
<td>129</td>
</tr>
<tr>
<td>V. Public Comment</td>
<td>144</td>
</tr>
<tr>
<td>VI. Closed Session</td>
<td>173</td>
</tr>
<tr>
<td>Adjournment</td>
<td>173</td>
</tr>
<tr>
<td>Reporter's Certificate</td>
<td>174</td>
</tr>
</tbody>
</table>
PROCEEDINGS

CHAIRPERSON BUSTAMANTE: Call the meeting of the State Lands Commission to order.

All the representatives of the Commission are present. And I believe we have a presentation by the President of the Port.

How are you, sir?

MR. VAN DEVENTER: Thank you. It's a pleasure to have you here in San Diego again. You're getting to be quite a guest, Friday night and now here on Monday. We really appreciate having you. It has been a pleasure to have you here.

We also will provide you with an update of the South Bay Power Plant and the Port's financial status. We appreciate having the opportunity to do that later on in the agenda.

Thank you very much.

CHAIRPERSON BUSTAMANTE: Thank you, sir.

I am Lieutenant Governor Cruz Bustamante, joined here today by Controller Steve Westly and Shelley Mateo representing the Department of Finance.

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

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

May I have a motion to approve the minutes?

COMMISSIONER WESTLY: So moved.

ACTING COMMISSIONER MATEO: Second.

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

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

Mr. Thayer, can we have your report.

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

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

I think there are three main issues that came up. One had to do with the South Bay Power Plant. There were a number of concerns about when that plant would be replaced, how long it would stay on the waterfront. Some of the Commissioners of course had similar questions about that issue. We prepared a staff report and worked closely
with Duke and the port in terms of determining the length of time that it would take to build a new power plant and also to determine the relationship between Duke and the port and finally the jurisdiction of the Commission in this matter. And I think our response is contained within the staff report. It's a public document for this Commission meeting and will be discussed later.

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

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

We should point out that ultimately of course that what we're talking about here are not state tidelands anymore but granted lands to the port, and that any
proposal for a swap would have to come from them, but we would then have the authority to approve or disapprove. But, again, the citizens groups were interested in finding out what the parameters of that swap would be and so we've been -- trying to be helpful to them in the matter.

CHAIRPERSON BUSTAMANTE: Well, is this the --

parts of the L.A. Port?

No, this is down here in San Diego where there's some proposals for development of Chula Vista, and the

port has --

CHAIRPERSON BUSTAMANTE: Okay. Thank you.

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

So we think that that process is still working its way forward through the Regional Water Quality Control Board and their review and ultimately will come before the Commission as a separate matter as well. And we'll continue to work with the groups.
Any questions on this item?

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

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

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

CHAIRPERSON BUSTAMANTE: Yeah, you've already
been informed by the Commission of the strong position they have on offshore oil drilling. So keeping us constantly informed on this issue so that we don't get any surprises would be --

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

CHAIRPERSON BUSTAMANTE: Thank you.

EXECUTIVE OFFICER THAYER: That concludes --

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

EXECUTIVE OFFICER THAYER: I will do that.

And that concludes the Executive Officer's report.

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

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

EXECUTIVE OFFICER THAYER: There are several items that the staff will be removing. C 11 is one that we haven't finished work on. C 50 involves some artifacts that have been
recovered on state lands in the Owens Lake. And staff
would like to take additional time to ensure that the
native American groups that might be concerned would be
consulted. So we'd like to take that one off.

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

EXECUTIVE OFFICER THAYER: Yes.

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

CHAIRPERSON BUSTAMANTE: Okay.

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

CHAIRPERSON BUSTAMANTE: And those numbers are?

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

CHAIRPERSON BUSTAMANTE: Nineteen and --
EXECUTIVE OFFICER THAYER: -- 28.
CHAIRPERSON BUSTAMANTE: -- 28.
COMMISSIONER WESTLY: Right.
EXECUTIVE OFFICER THAYER: And then one other item would be RTO, which is on regular calendar, Item 63, we've put that in the regular calendar because at the time we were forming the agenda we had some opposition on the record. We've since learned that those folks who had opposed that item have dropped their opposition. And so if there's no objections from the Commission, we would move that to the consent calendar.
CHAIRPERSON BUSTAMANTE: Sixty-three from to consent -- sixty-three from regular so consent?
EXECUTIVE OFFICER THAYER: Regular to consent.
And then --
CHAIRPERSON BUSTAMANTE: Any objection from --
COMMISSIONER WESTLY: No.
CHAIRPERSON BUSTAMANTE: Any objections on any of the consent items to be removed from anyone?
I also wanted to talk about Item 34, paul. Is there any problem with moving C 34 to the next meeting? Will it create any problems?
EXECUTIVE OFFICER THAYER: Let me just ask --
CHAIRPERSON BUSTAMANTE: It just seems a little odd that we're in San Diego and making a decision about
something that's taking place in San Francisco, that I'm sure people there would like to be able to talk about.

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

CHAIRPERSON BUSTAMANTE: Is there a representative --

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

CHAIRPERSON BUSTAMANTE: State your name.

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

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

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

EXECUTIVE OFFICER THAYER: We're presently schedules to have one December 9th. And we were looking to potentially do that in San Francisco.
CHAIRPERSON BUSTAMANTE: It seems to make sense to move it to San Francisco in December.

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

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

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

CHAIRPERSON BUSTAMANTE: How would it significantly delay?

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

CHAIRPERSON BUSTAMANTE: This is the half acre?

EXECUTIVE OFFICER THAYER: Yes.

Another possibility of course is where there have been business exigencies that require us to act sooner than our next regular scheduled meeting, we would occasionally schedule meetings in the interim as well.
MR. HERTZFELD: Supervisors of the City of San Francisco. They passed legislation approving this with the knowledge that it would be on their calendar today.

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

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

MR. HERTZFELD: Thank you.

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

MR. HERTZFELD: Thank you.

CHAIRPERSON BUSTAMANTE: Anything else?

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

CHAIRPERSON BUSTAMANTE: Even those that have been pulled?

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

CHAIRPERSON BUSTAMANTE: How about if we ask him when they come up?
EXECUTIVE OFFICER THAYER: These are consent.
CHAIRPERSON BUSTAMANTE: Well, do you want to just speak generally on all of the consent items?
MR. BOWMAN: If I may.
CHAIRPERSON BUSTAMANTE: Yeah, go ahead.
MR. BOWMAN: I'll be very brief.

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

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

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

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

MR. BOWMAN: Oh, the meeting's in December.
Okay. So it's 60 days continue -- I'm sorry.

Okay. Thank you.

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

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

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

CHAIRPERSON BUSTAMANTE: Doesn't look like you have any votes here, sir. So we'll go ahead and move
those two items in abeyance until the next meeting. And
the others will remain on consent.

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

MR. HOYE: No, I'm fine.

CHAIRPERSON BUSTAMANTE: No?

Okay.

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

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

EXECUTIVE OFFICER THAYER: Yes, sir.

CHAIRPERSON BUSTAMANTE: Is there a motion?

COMMISSIONER WESTLY: So move.

ACTING COMMISSIONER MATEO: Second.

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

The first item of business.

And does staff have any particular order that
they would prefer at this point? Because we do have one
item that was taken off of consent on to regular, which is
C 4.

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

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

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

Please, No. 61.

Mr. Thayer.

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

I would note that this item has engendered a lot of interest because about ten days ago we'd gotten a request here at the Commission from the airport to review the possibility of transferring some parcels from the port
to the airport. And there has been some suggestion that
this item may be close enough in subject matter to that
request, that it all has to do with finances, that someone
suggested it's being put over.

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

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

EXECUTIVE OFFICER THAYER: Yes.

CHAIRPERSON BUSTAMANTE: So --

EXECUTIVE OFFICER THAYER: The --

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

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

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

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

COMMISSIONER WESTLY: I'm strongly supportive of
that. This is a very complex issue and something we
certainly need some discussion on.

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

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

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

Could you both come up just for a moment.

Could you guys like figure it out.

(Laughter.)

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

Is there a way that you guys can sit down and
figure out a consensus? Because what you're going to get
from us is a political answer. And if you want a
practical one, you ought to come here with --
MR. HOLLINGSWORTH: Lieutenant Governor, I'm Bruce Hollingsworth. I'm the President and CEO of the port.

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

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

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

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

(Laughter.)

MR. LOBNER: Most definitely.

CHAIRPERSON BUSTAMANTE: Excellent.

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

EXECUTIVE OFFICER THAYER: December or whenever we have enough information. If they're making progress, for example, we'll hear it when we need to hear it.
CHAIRPERSON BUSTAMANTE: Okay. So then you will communicate with Mr. Thayer and the staff, and we'll figure out if that's enough time. We really would like to resolve this thing as quickly as possible. So if you could have it done by the December meeting --

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

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

MR. LOBNER: Thank you.

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

EXECUTIVE OFFICER THAYER: Thank you.

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

MS. BURKS: Good afternoon, Commissioners.

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

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

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

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

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

The proposed new 20-inch pipeline will cross state-owned land at Walnut, Grayson, and Pacheco creeks and Cordelia Slough and Contra Costa and Solano counties. Approximately 5,500 feet of the existing 14-inch pipeline would continue to be used for the crossing of the Carquinez Strait until such time that replacement with a new 20-inch pipe using a single horizontal directional drill is feasible.

In addition to the proposed new 20-inch pipeline, a new 12-inch diameter pipeline branch, which is
approximately 8/10 of a mile long, to service Wickland Oil
Company will be constructed to supply fuel to the
Sacramento International Airport. This pipeline would
connect to Wickland's existing 12-inch pipeline via its
metering station at a location north of West Capital
Avenue in West Sacramento.

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

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

To conclude, there are three actions that staff
is asking the Commission to take today. First is the
certification the Environmental Impact Report that has
been prepared for the pipeline project.

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

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

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

Thank you.

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

And very briefly because I know this afternoon is full. But I wanted to apprise you that the environmental process started in February of last year with a public scoping meeting; then in June of this year, notification of the draft Environmental Impact Report. And proposed comment meeting was mailed to 1393 entities, which included landowners along the proposed pipeline route, within 300 feet of that pipeline route. With a long
linear project we have a goodly number of landowners and entities involved.

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

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

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

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

ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF SANDERS: We received two letters following the issuance of the final Environmental Impact Report, one from Clark Trucking Company located in West Sacramento that voiced some concern with the proposed right-of-way near their facility. We have been working with representatives of that firm in trying to get the parties -- the applicant, SFPP, and representatives of the trucking company --
together to discuss their mutual concerns and interests in this regard.

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

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

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

CHAIRPERSON BUSTAMANTE: What about with regard to Clark?

ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF
SANDERS: There does not appear to be a resolution at this point.

CHAIRPERSON BUSTAMANTE: What were their concerns?

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

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

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

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

ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF SANDERS: As a replacement pipeline, yes.

CHAIRPERSON BUSTAMANTE: No, I'm talking about
Clark Trucking.

ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF SANDERS: It's an existing facility, sir.

CHAIRPERSON BUSTAMANTE: So they were grandfathered in?

ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF SANDERS: Yes.

CHAIRPERSON BUSTAMANTE: So they are appropriate.

ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF SANDERS: Well, yes, what's termed a nonconforming --

CHAIRPERSON BUSTAMANTE: They're within --

ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF SANDERS: They're within -- with the existing -- they're entitled to be there until the plan really gets in place.

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

ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF SANDERS: No, sir.

CHAIRPERSON BUSTAMANTE: -- operating out of --

ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF SANDERS: No, they're perfectly legal, have every right to be there. And of course the SFPP -- the pipeline feels they have the same rights.

CHAIRPERSON BUSTAMANTE: That way the Clark
Trucking representatives don't have to come up and defend themselves.

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

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

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

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

CHAIRPERSON BUSTAMANTE: To what extent? I mean what to you mean by safety for the employees?

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

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

ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF SANDERS: Mr. Cunha?

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

Any else?

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

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

Okay.

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

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

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

CHAIRPERSON BUSTAMANTE: Who would be the person
that would resolve questions with regard to the piping over, say -- that would endanger the water or underground aquifers or river or any other kind of -- who would be the person who would have dealt with that?

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

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

CHAIRPERSON BUSTAMANTE: And those folks were checked?

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

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

ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF SANDERS: No, sir. There is substantial mitigation specified within the environmental document to not only...
prevent spills, but to respond to them. And that
documentation was provided to all of the pertinent
agencies that have jurisdiction.

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

We'll go to public testimony then.

Mr. Cunha.

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

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

We haul up and down the valley from that
location.

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

I further checked with other people along the
route, families that own land fronting on South River
Road, the proposed new route. Four families that owned
over 50 percent if you exclude the city land indicated
that they never received notice. I am not faulting and
saying it wasn't mailed. I'm saying it wasn't delivered. So we come late in the game. We have not been contacted concerning this. So I brought my concerns via letter the day after I got the information from Ms. Brown in Sacramento, which she was very helpful providing to me everything that I have.

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

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

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

Instead of that the proposal is to run up almost another mile a 20-inch line up and around our property and in front of at least four to six other landowners and, in
addition, the City of West Sacramento. And it makes no sense to me as to why that has to be done when you have an existing right-of-way in existence.

Now, granted --

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

(Laughter.)

MR. CUNHA: Well, it seems like you're spending more, because you'd be going a longer distance. Now, I can see replacing a 14-inch line with a half a mile of 14-inch line when you're already using 6,000 feet of it in another place. Doesn't seem to diminish the supply.

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

ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF SANDERS: Yes, Mr. Chairman. It's the proposed project in the location of West Sacramento, which we can put up a board that shows that information, if you'd like,
geographically. But it is the proposed project in this
particular location, its terminus. CHAIRPERSON

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

ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

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

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

CHAIRPERSON BUSTAMANTE: And where did they both
end up?

ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

SANDERS: Up to here.

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

MR. CUNHA: No. Mr. Chairman, that's the whole
point. They're coming in across here. This is a
right-of-way coming right down into their facility now.
The whole point of my being here is they're coming across
Jefferson Boulevard, which is now under construction.
They want to go up and around and down, when presently
they're doing -- they're going across Jefferson moving
northbound into their facility into the existing line.
ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF SANDERS: Perhaps the applicant can address the reason that this route was currently in --

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

MR. CUNHA: Would you like to keep this up here? Yes, I think we would. Up here. Yeah, just leave it right there. Thank you.

MR. CUNHA: You want me to --

CHAIRPERSON BUSTAMANTE: Go ahead and finish your presentation.

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

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

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

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

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

MR. CUNHA: It's all been --

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

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

So we're talking about residential, recreational. And introducing this when there seems to be no good reason to introduce it at that location when there's presently -- and according to Mr. Cornman in his testimony in Fairfield back in July, they're trying to use the existing railroad rights-of-way. Well, there's one right there that they're
using. Why not continue to use it?

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

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

CHAIRPERSON BUSTAMANTE: Oh, I see.

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

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

CHAIRPERSON BUSTAMANTE: All right, sir. Anything else?

MR. CUNHA: What I'm suggesting -- I'm not suggesting this project not be implemented. All I'm
suggesting is take another look at this last half mile.
It just makes common sense not to do what is proposed on
this last piece once Jefferson Boulevard is crossed.

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

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

CHAIRPERSON BUSTAMANTE: All right, sir.
MR. CUNHA: Thank you very much.
CHAIRPERSON BUSTAMANTE: Thank you.

So the senior project manager, I guess, or the --
David, you and Mary, which one of you guys -- I suppose
you're both interested in speaking. From the senior
project manager or the director of the project permitting,
which of you would like to go first?

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

CHAIRPERSON BUSTAMANTE: I have Santa Fe.

ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF SANDERS: That's Kinder Morgan, Mr. Chairman.

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

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

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

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

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

The range of alternatives that were evaluated in the EIR were evaluated for their potential significant
impacts. Along South River Road where the Clark Trucking Company is at I don't believe there were any significant impacts that needed to be evaluated with respect to the range of alternatives.

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

An so it's really almost legally infeasible for us to be proposing, and we would not on this project under
any circumstance propose, to put our new pipeline, our
replacement pipeline in a railroad right-of-way. In fact,
there are conflicts between our engineering standards that
we have to live by, which is regulated by the U.S.
Department of Transportation, and what our called arena
standards with the railroad. The railroad prefers to have
pipelines down about 11 feet deep. You know, DOT requires
a minimum of three feet of cover so you can properly
inspect your pipelines. We have to be able to properly
inspect these high-pressure gasoline pipelines to make
sure that things are safe.

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

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

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

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

He made mention that our 12-inch -- our valve was going to be -- Valve No. 12 was going to be located in a location. I must add that the valve location now is going to be down right at the station on South River Road. So that valve location in the final design that we're working on right now is not properly reflected on the drawings that you see in the EIR. It will be actually right at the station.
And with respect to safety, I'll just say that if you've ever been out on South River Road, you know that there are major tank forms out there, tank forms that take the gasoline, the diesel and jet fuel from our pipeline and store it. Now, if the gentleman is concerned about safety with respect to pipelines, he ought to have equal or greater concerns with respect to major tank forms on that same road. In other words we are not the only potential risk, if you will, out on that road.

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

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

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

CHAIRPERSON BUSTAMANTE: It seems to me that the concerns about putting another pipeline near existing
residential are a concern I have. I'm sorry, but I'm not
going to give weight to your current legal concerns with
your parent company. But -- or what was once your parent
company. But we are talking about putting a pipeline near
existing residential property.

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

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

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

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

MR. CORNMAN: In fact it's infeasible. I would
use the word "infeasible" because there's a moratorium on
cutting in Jefferson right now, which would be the only
other alternative short of going through residential
neighborhoods. Going up Jefferson right now is that
there's a moratorium on new construction and for cutting
that street for two years.

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

(Laughter.)

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

MR. CORNMAN: Seventy, sir.

COMMISSIONER WESTLY: Seventy people.

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

ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF
SANDERS: The first mailing was 1322. The second mailing
was of like number. And we do have at least record that
Clark Trucking is one of the addresses that we have on our
mailing list and which we used. I verified the address
with Mr. Cunha this morning.
COMMISSIONER WESTLY: So of the thousand plus people we mailed to twice, has anybody other than Clark Trucking come back with a concern?

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

COMMISSIONER WESTLY:

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

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

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

CHAIRPERSON BUSTAMANTE: Sure.

MR. CUNHA: My response is --

CHAIRPERSON BUSTAMANTE: Come up to the podium.

MR. CUNHA: The response to the notice issue, Mr. Westly, is the people that were just mentioned, the Ramos families that own the big parcels, and T-Con Pacific are precisely the people I talked to Friday, Saturday, and
this morning and have no indication that they got any mailing, were totally unaware of what was going on until I explained it to them. I asked if I could make representation today that that in fact was the case to this Board. And they said, yes.

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

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

Thank you.

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

MR. HERNANDEZ: Mr. Chair, members, my name is Ricardo Hernandez. I represent Central Contra Costa County Sanitary District. We're a waste water treatment facility in Martinez, California. We have an elected board of directors. And we're a special district. And we treat -- we're a major waste water treatment facility in
that area, serving 440,000 residents in the area.

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

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

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

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

We have discussed with Paragon Partners, which I
believe is the right-of-way consultant for SFPP, a number of mitigations for that. And what we would -- I guess what we would propose as a practical solution, I guess, would be to -- if they were willing to agree to relocate their pipeline along with their existing pipeline if we ever need to expand our capacity for the plant or if we ever need to develop our adjoining property.

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

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

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

CHAIRPERSON BUSTAMANTE: Okay. Any questions?

Thank you.

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

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

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

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

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

Our concerns which focused on the originally proposed project route involved sensitive environmental resources, including critical wetland habitat, as well as
impacts of long-term restoration activities that we've committed to undertake.

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

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

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

We especially appreciate the energy and effort that staff, SFPP, and others committed to the interested party meetings that followed the initial comment period. These meetings brought together a tremendous amount of collective knowledge concerning the affected area, and allowed meaningful consideration of how to avoid and to reduce impacts to the Peyton Slough area.
We do have written comments on the final EIR which are being submitted for the purpose of preserving a record of our concerns regarding the project as originally proposed. With that said, we look forward to continued communication and cooperation with the SFPP team as our projects go forward.

Thank you for the opportunity to address the Commission.

CHAIRPERSON BUSTAMANTE: Thank you.

Mr. Controller.

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

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

COMMISSIONER WESTLY: Yes.

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

MR. CORNMAN: Thank you.

With respect to the sanitation district, let me just say that we have made an offer to the sanitation...
district that for the new pipeline that we were proposing
to build through their property, that we will at our own
costs -- this is not normal -- would at our own costs we
will relocate that pipeline in the future if the need
requires with respect to their future uses of their land.
So we have made that offer in writing to the sanitation
district and that offer stands.

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

It was subsequent to that that -- in fact future
discussions in August of 2003 with a Mr. Russell Levitt
that we had E-mail conversations back and forth about
those same -- some other alternatives through the route --
through that property that we talked about the
infeasibility of two alternatives. One is going along a
very small service road in the property that would
literally cut off -- because of the narrowness of that
road, very narrow road, basically a one-lane road, cut off
all the people who are using that road -- and there's more than one business in there -- for two weeks or more for us to construct in that road.

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

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

MR. HERNANDEZ: No, not at all.

COMMISSIONER WESTLY: No. Okay.

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

ACTING COMMISSIONER MATEO: Just a point of clarification.

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

MR. HERNANDEZ: Our last meeting -- or our conversation last Friday they proposed that they would be willing to in the future, if we needed them to, relocate
the proposed line and their existing pipelines.

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

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

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

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

CHAIRPERSON BUSTAMANTE: Go ahead.

MR. CORNMAN: We strongly request that the Commission not be swayed by one property owner out of the 100 or more property owners that we have along this alignment to delay this proceeding. The reasons are many, but two of them -- the most important are that we have a -- a pipeline project has a full-time right-of-way group that goes out and buys easements from all the landowners. Inevitably along a long pipeline project like this you have one or two or three or five property owners that
don't want it in their backyard. Inevitably this happens. And we negotiate with those folks in good faith to give them fair market value for those easements. Where as a public utility we have the powers of condemnation. We don't like to use those, but we do have those.

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

That's all.

COMMISSIONER WESTLY: Let me just respond to that.

As you know, I am typically very supportive of the staff, having been a staff member of the State of California myself in past lives. But unless I've missed
something here, I heard, "Please don't let this be delayed because of one property owner."

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

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

COMMISSIONER WESTLY: Fair clarification.

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

MR. CORNMAN: I just have one clarification.

Our project management staff just has made a further negotiated offer that we'd be willing to move both of our pipelines, our proposed pipeline and our existing pipeline. That as part of the Friday offer we are now offering that as well.
COMMISSIONER WESTLY: The point of this -- and I commend your flexibility and rapid movement. But the staff understands that ideally we like to see these things sorted out more than, say, 30 seconds before the vote is supposed to occur.

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

(Laughter.)

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

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

EXECUTIVE OFFICER THAYER: Right.

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

EXECUTIVE OFFICER THAYER: Certainly.

CHAIRPERSON BUSTAMANTE: -- just right yet. And
you guys pride yourselves on having a win-win-win situation. And so right now it doesn't quite look like it's there.

EXECUTIVE OFFICER THAYER: We do pride ourselves on that.

CHAIRPERSON BUSTAMANTE: Yes, you do.

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

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

EXECUTIVE OFFICER THAYER: Certainly.

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

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

EXECUTIVE OFFICER THAYER: We also advertise in five newspapers.
CHAIRPERSON BUSTAMANTE: I understand. I understand.
And I think the Commission would like for it to go for a little longer, take one last shot at this. They don't have to step outside.

(Laughter.)
EXECUTIVE OFFICER THAYER: Sir --
CHAIRPERSON BUSTAMANTE: So we would like to bring this back.
EXECUTIVE OFFICER THAYER: We'll do that.
CHAIRPERSON BUSTAMANTE: You want to do it in two or three weeks?
COMMISSIONER WESTLY: We're not going to do it by phone. But I think -- we do hear the concern that time is against us. We have seasonal issues here. So --
CHAIRPERSON BUSTAMANTE: Yeah, and it sounds like what we're talking about really is a construction schedule that meets with the property owners' trying to deal with their businesses. That's what -- I think that's probably the major concern on that side.
EXECUTIVE OFFICER THAYER: Indeed.
CHAIRPERSON BUSTAMANTE: That doesn't sound like it should be something overwhelming to deal with.
EXECUTIVE OFFICER THAYER: The biggest problem I think potentially is going to be the City of West
Sacramento. They have ripped up Jefferson before. So the reason they have this two-year moratorium on ripping it up again is based on that. And so that's what we're not -- it won't be just the people in this room here. It will be dealing with the city for that alternative.

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

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

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

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

CHAIRPERSON BUSTAMANTE: Okay. Then we'll expect you to call us back in a couple weeks.
EXECUTIVE OFFICER THAYER: You bet.

CHAIRPERSON BUSTAMANTE: Okay.

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

EXECUTIVE OFFICER THAYER: Sure.

CHAIRPERSON BUSTAMANTE: Okay. Item 62.

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

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

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

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

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

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

   I will address the following main points:

   Whether there has been any violation of the lease or cooperation agreement;
   The specific timelines associated with the development of a replacement plant;
   And the Commission's jurisdiction should there be a violation of these various agreements.

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

   The lease is a binding agreement. It provides for Duke to operate the South Bay Power Plant and within a reasonable time after the expiration of the lease term.
decommission, dismantle, and remove the power plant.

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

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

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

Based upon staff's analysis of the information we have obtained, the Port District and Duke have not violated the terms of these agreements. So far Duke has met all of the development milestones. Duke commenced the site-selection process by June 30th, 2002. While the cooperation agreement provided for Duke filing a Notice of Intent by June 30th of this year, such a filing was not required by the Energy Commission.
The next milestone includes a formal filing of an
application for certification by June 30th, 2006.

In addition, Duke has provided the Port District
with progress reports every six months. These progress
reports evidence Duke's obligation to use commercially
reasonable efforts to develop a replacement plant.
According to these reports, Duke is focusing its efforts
on one offsite alternative for the replacement plant.
However, because of growing local support for further
investigation by Duke of an onsite replacement plant
option, Duke is also looking into such an alternative.

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

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

The Port District has the primary jurisdiction over the land occupied by the power plant, while the Commission has oversight jurisdiction. The Commission's review and approval in January of 1999 consisted of the acquisition of the South Bay Power Plant property. There's no independent remedy provided by the Commission's approval of the acquisition for violation of the cooperation agreement or the lease. The Commission's approval was not conditioned upon any specific aspect of the cooperation agreement, the lease, or any of the ancillary agreements.

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

CHAIRPERSON BUSTAMANTE: You'd indicated that in
order for them to be in compliance that they should have an application to the FERC by February of 2006; is that correct?

MS. LUCCHESI: Yes.

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

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

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

MS. LUCCHESI: Yeah.

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

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

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

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

CHAIRPERSON BUSTAMANTE: So that would mean
before February of 2006?

MS. LUCCHESI: Yes.

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

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

CHAIRPERSON BUSTAMANTE: July 2004.

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

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

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

MS. LUCCHESI: Yes.

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

MS. LUCCHESI: Yes.

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

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

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

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

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

MS. LUCCHESI: In general a good reference document to obtain for any interested person in obtaining the timelines and the steps needed to develop a plant could be assessed on the Energy Commission's website. And
there are various reports on that going through the
different steps needed to be taken in order to develop
such a plan.

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

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

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

There were meetings --

MS. LUCCHESI: Negotiations for the site
selection?

CHAIRPERSON BUSTAMANTE: Yes.

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

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

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

CHAIRPERSON BUSTAMANTE: Staff didn't ask?

MS. LUCCHESI: No.

EXECUTIVE OFFICER THAYER: Staff was aware that
there was an interest in finding out how many -- or what
stakeholders Duke had met with. And I think we do have a
list of four or five -- and by stakeholders, I mean people
in the community who had an interest at stake in these decisions. And I think we did end up getting a list of three or four or five.

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

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

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

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

CHAIRPERSON BUSTAMANTE: We'll ask Duke.

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

CHAIRPERSON BUSTAMANTE: Any other questions by the Commissioners?

I think that the idea of having this activity for the history both of the Commission as well as for many members in the audience is that if there is going to be a
facility built, then there ought to be some kind of action, some kind of activity that shows in fact that that's what's going to take place. If there is a contract that basically says that at the end of a particular time a decision is going to be made, you need to figure out how you're going to make that decision in the event that it is in fact a possibility of compliance. If you're not going to be in compliance, then you should just sort of say so now, and we can move on and find a way remedying that.

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

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

(Applause.)

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

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

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

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

Yes, ma'am.

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

CHAIRPERSON BUSTAMANTE: Please.

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

CHAIRPERSON BUSTAMANTE: Thank you.

MS. ANDERSON: Thank you.

(Thereupon an overhead presentation was
Presented as follows.)

MS. ANDERSON: Just to start off with an
overview, we are engaged in a 300-acre master planning
process in Chula Vista which encompasses the power plant site.

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

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

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

We also see ourselves in the area of community service and public services. We have 150 acres of parkland, 16 parks, 7 beaches, and 10 playgrounds, 20 marinas, 3 sport fishing facilities. And we employ 130 police officers as well as contract with the various cities along the harbor for police protection services.
So we're not just looking at one area. We're looking at a balance, a balance of opportunities, both with environmental opportunities as well as economic opportunities on the bay.

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

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

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

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

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

MS. ANDERSON: Well, a lot friendlier than the
existing plant. We have not put a definition --
CHAIRPERSON BUSTAMANTE: Just about anything
would be friendlier than that plant.

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

CHAIRPERSON BUSTAMANTE: Is there anything within
your plans that is focused on any particular technology or certain system, i.e., do you focus that closely at --

MS. ANDERSON: No, we have not.

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

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

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

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

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

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

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

Again there will be public outreach as part of the Coastal Commission review. We'll have to do a master plan amendment to incorporate the new land uses into our master plan. So that planning process should be completed
in '05, and that does include the power plant site.

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

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

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

The power block is the plant itself. And the
south tank form, Duke has already started demolishing some of those tanks. And the LNG sites, the old natural gas site, the tanks have been removed. And that site could be a site for a replacement plant, but that site has not been specifically identified.

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

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

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

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MS. ANDERSON: So what was the intent of the original transaction? Again, it was our intent to acquire tidelands at no cost and minimal risk to the port and to the state, to be able to redevelop the property, to
decommission the existing plant at the end of the lease term, and to have any underlying ground and water environmental issues resolved at the site.

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MS. ANDERSON: There are two key documents:

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

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

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

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

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MS. ANDERSON: In the cooperation agreement, if Exhibit L does provide the schedule which Jennifer
discussed, which the next step is to file the application
for certification to the CEC by no later than June 30,
2006. That could occur earlier, but this is the outside
date by which that could occur. Development has to be
determined to be commercially reasonable, or the
replacement generation plant would not have to be
constructed.

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

MS. ANDERSON: In addition to that -- and this
was all we could fit on this screen -- there were numerous
other oversight agencies that will have control over
replacement generation. The port does not have that
control. Our sole control would be if we entered into a
land-use agreement for a site on tidelands.

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

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

MR. HICKOCK: Good afternoon. My name is Randy Hickock, and I'm the Senior Director for Duke Energy's operations here in California, meaning that I have operational responsibilities for the four facilities that Duke has within the State. I've brought with me today Kelly O'Brien, who is in charge of development for Duke Energy North America. And she's available to help answer questions to the extent that you have them regarding what our activities have been to date and the like.
I will share with you all -- we have a letter addressed to the State Lands Commission, and I'll summarize it very briefly. This -- essentially Duke would like the State Lands Commission to know that we are in full compliance with our contract and our lease at South Bay. We have been diligently pursuing the development of a replacement generator plant. The nature of that process in the early stages, it's not one that makes it publicly obvious.

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

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

CHAIRPERSON BUSTAMANTE: Yes. In the process of making sure that a site is selected, I'd asked if there were different processes that would be pursued in order to be able to do your due diligence. And I don't know if any of that has been attempted or has been written out or if
there's been a memo that's indicated that you are pursuing
any of those activities.

   MR. HICKOCK: We have been pursuing those
activities.

   CHAIRPERSON BUSTAMANTE: In what way?

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

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

   CHAIRPERSON BUSTAMANTE: Anything promising at
this point?

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

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

   CHAIRPERSON BUSTAMANTE: You're not giving up any
trade secrets by letting us know what that is?
MR. HICKOCK: We'd prefer until we have site control over the parcel not to reveal the specific location.

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

Kelly, you want to jump in? Anything else?

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

Commissioners, we appreciate your interest in this matter. And as Randy said, that to date a lot of the work has really been done behind the scenes because it's been high level fatal flawed, due diligence kind of
studies that wouldn't be necessarily made available to the public.

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

But we looked at primarily sites that could support a 620 megawatt two-by-one combined cycle plant. And as we've gone through the process, and the market has changed in the power industry and in the economy in general, a lot of this project, whether or not it's commercially feasible to go forward will depend on having a long-term power purchase agreement in order to support financing a facility. And as we've had discussions with potential counter-parties for a power purchase agreement, it appears that there may be some difference of opinion in what people may be looking for as far as size of a new
plant, the type of technology that could be used, which could somewhat throw out some of the feasibility studies we've done to date as we focus in on what people are actually going to be willing to sign up for long-term carts for. We may be able to go back and look at other sites that we initially threw out. And it will help us hone in on what exactly we need in terms of infrastructure to support the project as we continue to process to try to get a long-term power purchase agreement.

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

CHAIRPERSON BUSTAMANTE: Mr. Controller.

COMMISSIONER WESTLY: There's three points.

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

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

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

MS. O'BRIEN: Of course -- I'll only clarify one
thing. First, it's one offsite is what we narrowed it down to. There's always the option, I would assume, at some point looking at onsite, because all the infrastructure is there and it would have -- as far as building new additional infrastructure it would have the lowest impact from that standpoint.

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

However --

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

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

With regards to a power purchase agreement, to be honest with you, I don't have an answer on that right now, when we could expect to close a deal like that. There are just too many uncertainties going forward. And, as you know, some -- there's recently been an RFP that still needs to be -- continue to be fleshed out with one of
obviously the largest potential counter-parties in the area. And I could not tell you -- those discussions will be ongoing. But to give you an idea of when any discussions may close on that, I just can't do it right now unfortunately.

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

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

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

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

And certainly if you have any ideas on counter-parties or a way to get a long-term PPA, we'd certainly love to hear it. I mean what's happening in the Legislature in support of potentially tearing down the
older, less efficient plants certainly helps our cause as we go forward.

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

MS. O'BRIEN: Not these days.

CHAIRPERSON BUSTAMANTE: I know, I know.

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

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

The most material developments I think on that front, there will be some transmission upgrades on SDG&E's system that I believe are completed next year. And then we're waiting to see what the fallout from SDG&E's RFP is. We know that they've proposed buying power from Otay Mesa, they've proposed buying power from a new plant at Palomar. And the ISO I think will have to run some transmission studies with those scenarios and see what they think the must-run needs for South Bay are, you know, into the
My expectation is that there will always be some level of must-run need for South Bay at least for the next several years. Beyond that I think the California ISO is probably the best entity to give you an objective opinion.

CHAIRPERSON BUSTAMANTE: What if it was revoked?

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

CHAIRPERSON BUSTAMANTE: Especially for an inefficient one?

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

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

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

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

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

MR. HICKOCK: Yes.

CHAIRPERSON BUSTAMANTE: I see.

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

COMMISSIONER WESTLY: Thank you.

CHAIRPERSON BUSTAMANTE: Duke, can you keep yourself available?

MR. HICKOCK: Sure.

CHAIRPERSON BUSTAMANTE: Environmental Health Coalition.

Albert.

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

After I speak Al Shur from the International
Brotherhood of Electrical Workers Local 569 is going to speak, Bruce Reznik and Allison Rolle from San Diego Bay Keeper, and Jim Peugh from the San Diego Audubon Society. First we'd like to thank the Commission for holding these meetings in the power plant down in San Diego, because the public will have an opportunity to engage with you and speak with you. And as you know, the power plant is an issue of high concern public interest. So we appreciate when you guys hold meetings down in San Diego, just to let you know.

First I'd like to bring a couple things to the attention of the State Lands Commission that are relevant to the South Bay Power Plant. First, as you may know, recently California Environmental Protection Agency adopted pretty groundbreaking environmental justice guidelines in the State of California. And in your handout, this booklet that you have, I see Steve looking through already, is a book that kind of sums up the recommendations that have been adopted by Cal EPA, and it was created by EHC and other allied lied groups throughout the state.

The guidelines which apply to all departments of California EPA put California as a leader in the country in implementing a policy to protect the public health and impacted communities.
And just to quickly go through some of the things that would relate to South Bay Power Plant is the adoption of the precautionary principle. And that basically says if there's a reason for concern, like a public health risk or environmental risk, you take action immediately.

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

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

Finally, on the implementation guidelines it's called for ensuring a meaningful public participation. And I'm going to speak more about that later on. And that
really is talking about having more of the public role in the public process. So you actually impact the public process as opposed to just participating in it.

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

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

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

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

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

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

The key example again is the Chula Vista Bay
Front Master Plan. You have a handout there again that
shows you the properties. You can see the power plant is
clearly a crucial part in this redevelopment process. And
as far as we know, redevelopment process can only go
forward and really have a good planned-out redevelopment
plan if we have the power plant included in that. And we
believe this underscores a need for the creation of a work
group and to immediately address these concerns, and as
the power plant and the planning process has moved forward
on its own for the past couple months already.

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

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

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

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

Again, we thank you for this opportunity to
address you.
And next will be Al Shur from IBEW Local 569.

MR. SHUR: Chairman Bustamante, Commissioners.

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

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

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

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

Thank you.

CHAIRPERSON BUSTAMANTE: Thank you.

Bruce.

MR. REZNIK: Honorable Chairman, Commissioners, thank you for this opportunity to speak. I am Bruce Reznik, the Executive Director of San Diego Bay Keeper.
I'm also testifying as a representative member of Surf Rider Foundation and other members of the San Diego Bay Council Alliance.

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

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

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

I would have been hoping for more at this point,
to be honest, in the process. I disagree with one thing.
I think -- did a great job. The permit for the waste --
or the discharge permit for water isn't coming up in June
'04. It actually was up in December '01. Unfortunately
that process has been delayed for two and a half years as
Duke continues to need more studies and more time and more
studies and more time. It's a process that I think the
Commissioners are very familiar with and I think are
getting frustrated with, as are the environmental
communities.

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

Now, I do support the working group proposal that
is out there. I support it somewhat reluctantly as a
member of many, many working groups that often go nowhere
for the environment, is often not represented, where we
are not listened to and we're up there as tokens. I will support the working group, but only if we can ensure that it is balanced, it is fair, and it is meaningful. And by balanced, I mean environmentalists are represented. Fair: We got to figure out a way to get them on there because we are always at a resource disadvantage when it comes to the other side. And meaningful: We need to actually be listened to, and we need strict deadlines, and we need to get this thing done.

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

Thank you very much.

CHAIRPERSON BUSTAMANTE:

Allison.

MS. ROLFE: Honorable Chairman, members of the Commission, thank you for the opportunity to speak to you today. My name is Allison Rolfe and I'm the Policy Director at San Diego Bay Keeper. And I'm also a member
of the Port Chula Vista CAC for Bay Front Planning.

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

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

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

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

I was one of the people that met with Duke. We met once. And we certainly didn't have any input on site
selection. But we did talk about the need for a technical advisory committee and community involvement. The CHC should be invited to recommend representatives with appropriate expertise to sit on the technical advisory committee. And due to the urban location of the power plant, people will be watching. And some people will be skeptical about the authenticity and composition of the group. So it needs to be balanced and we need to ensure that.

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

Thank you very much.

CHAIRPERSON BUSTAMANTE: Thank you.

Jim Peugh.

MR. PEUGH: I am Jim Peugh and I'm the Chairman of the Conservation Bay of San Diego Audubon Society?

Well, much of what needs to be said has been said. You all know that this power plant grinds up fish eggs, it grinds up juvenile fish, and then grinds up the adult fish that should be reproducing instead of getting squashed.
It poisoned the water with -- and copper. And he took the bay to a tremendous extent disturbing some tire ecology. These are things we shouldn't be doing. We particularly shouldn't be doing them with public resources. This is -- the power plant is on public land. We shouldn't be using public land to degrade the bay that belongs to the public.

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

Thank you.

CHAIRPERSON BUSTAMANTE: Thank you.

Mike Aguirre.

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

First off, there is a little bit of a misnomer, because the power plant is not out of date. The power
plant has been upgraded many, many, many times. It is a relatively efficient plant. Three -- two mechanics and one engineer that work there, I've discussed it extensively with them. And they -- one of the things that they asked that it be pointed out is that the plant for purposes of generation of electricity has been on a continuous basis during the time that it was owned by SDG&E as well the time that it's been owned by Duke has been upgraded.

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

Number 3, I was disappointed to see that Duke slid into the record after your staff had made the report a letter dated October the 20th, which raised I assume under the commercial feasibility provision of the contract the condition that Duke be able to secure a third party power purchase agreement. That is a very significant
condition because what that tells us is that Duke is
talking about obligating the plant to a third party and
having a third party sign such a condition after it knows
that the major retail consumer has declined to do that
with Duke. So that's a significant condition that needs
to be looked at.

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

Whether those payments constituted a bribe in
connection with the agreement -- the lease agreement and
the cooperation agreement is an open question. That issue
has not been investigated by our district attorney. It
has not been investigated by our state attorney general.
It has not been investigated by FERC. And it has not been
investigated by the Port District.

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

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

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

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

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

Thank you.

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

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

CHAIRPERSON BUSTAMANTE: Would you?

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

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

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

CHAIRPERSON BUSTAMANTE: You will check on it?

ASSISTANT ATTORNEY GENERAL HAGER: Yes.

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

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

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

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

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

ASSISTANT ATTORNEY GENERAL HAGER: Yes.

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

MR. AGUIRRE: Right. The third party purchasing agreement basically would provide an insurance policy to Duke that there is a retail or a wholesale purchaser that
has committed itself to purchase a substantial portion of the output.

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

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

CHAIRPERSON BUSTAMANTE: That was in the original agreement?

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

CHAIRPERSON BUSTAMANTE: I see.

MR. AGUIRRE: Thank you.

EXECUTIVE OFFICER THAYER: If I could respond to that.

CHAIRPERSON BUSTAMANTE: Please.
EXECUTIVE OFFICER THAYER: I think you're making reference to this letter that they passed out today?

MR. AGUIRRE: Correct.

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

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

MR. AGUIRRE: Right.

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

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

CHAIRPERSON BUSTAMANTE: Thank you.

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

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

But the issue with regards to commercial reasonableness and having a power purchase agreement to help support that concept of commercial feasibility of the plant, ultimately for the plant to be commercially
feasible going forward we have to be able to get financing. That's the reality of today's market as it is right now. Not to say it will be in 12 months or 24 months. I don't know. But today's market we have to have financing to build a plant.

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

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

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

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

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

Regarding the stakeholder process, I mean we fully support a stakeholder process. You know, I'm hearing some frustration that Duke hasn't been sitting at a roundtable with some stakeholders and talking about the plant. But part of that is we're not exactly sure what we would talk about until we know what sort of plant would be appropriate, what technology, what size, where it would be located. And much of that is: What is the need for incremental generation in San Diego and where would it be located? And, you know, we are trying to find somebody to buy -- to sign a power purchase agreement. And if we know that there is a home for the power, then we can get
started on the stakeholder process to talk about what that should look like. Now, if you want to start that earlier, we're happy to participate.

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

MR. HICKOCK: Okay.

Thank you.

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

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

MR. HICKOCK: Okay.

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

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

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

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

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

(Laughter.)

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

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

MS. JIMENEZ: Good afternoon. Commissioner Bustamante and other Commissioners.
I am Lupita Jimenez. I am Co-chair of the San Diego County Green Party. And I wish to speak in favor of decommissioning the South Bay Power Plant and removing the plant from the Chula Vista bay front as soon as possible.

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

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

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

The port is now planning the development of lands under their authority. We demand of the two areas that this planning include the decommissioning of the South Bay Power Plant. With coherent joint planning we envision...
development which will include a landmark park for the
citizens of Chula Vista; a destination hotel, which will
fill many needs for us; and sustainable mixed use
development, with some imaginative low-rise residential.

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

Thank you.

ACTING COMMISSIONER MATEO: Thank you very much.
Let me see if I can say this name correctly. Is
this Nephi?

MR. HANCOCK: Nephi.

ACTING COMMISSIONER MATEO: Nephi. There we go.

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

I got involved with some of this because my local
asked me to come to the port hearings sometime last year,
and it was on the South Bay project. And since that time,
because I live in Chula Vista and my children, grand
children live there, that I am concerned about the
pollution, how we're going to deal with this. And I would
definitely like to see that we have community input into
what's going on. And we've tried -- these people have got
up and spoke previously to me. I've been with them at
committees, meetings and sat and listened. And it seems
that a lot of the presentations are put on, but then
they're out of time, and the people don't have a chance to
respond. There's just not enough time. It's time to go
home. We're all done. They don't get a chance to
respond. The people need a chance to respond to all of
these things that have been brought up previously to me
speaking.

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

ACTING COMMISSIONER MATEO: Thank you.

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

Thank you.

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

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

EXECUTIVE OFFICER THAYER: He has not.

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

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

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

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

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

Thank you.

ACTING COMMISSIONER GONZALEZ: Okay, great.

Thank you.

ACTING COMMISSIONER MATEO: Okay. Was that an
informational item overall? Is there any action required?

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

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

EXECUTIVE OFFICER THAYER: Yes.

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

Now, if I have missed what some of the groups wanted beyond that, please remind me, things that actually -- besides obviously decommissioning the plant -- things that we missed. I know there was a separate call for the environmental justice policy. The Lieutenant Governor was also -- let me take the two separate because I think the two are two separate ideas.
1 But first I'd like to make a motion for those
issues.

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

3 EXECUTIVE OFFICER THAYER: If I could --

4 ACTING COMMISSIONER GONZALEZ: The motion --

5 okay. Go ahead, Paul.

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

7 ACTING COMMISSIONER GONZALEZ: Just follow up
with the port.

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

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

10 EXECUTIVE OFFICER THAYER: Yes. I understand
that two letters and a request of the Attorney General's
office. So the original recommendation was for a letter
to Duke regarding meeting these two timelines, these two
time goals. A direction to staff to report back to the
Commission on the results of that. A request that the
Attorney General's office investigate the -- I guess the contract provision that called for it to be forfeited or affected if there was violations of state law and whether any of the allegations that were mentioned today could affect -- could bring about that result. And then finally a letter or a communication to the port urging them to establish the working group that has been requested.

Does that --

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

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

EXECUTIVE OFFICER THAYER: And of course --

ACTING COMMISSIONER MATEO: I second that.

All in favor?

(Ayes.)

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

ACTING COMMISSIONER GONZALEZ: Now, I think the second part of that, there was a request made concerning Cal EPA's environmental justice guidelines and a request that we review those and see if we could actually strengthen ours. I understand that that might take
legislation. I was wondering if we could get for the next meeting maybe an item on sponsoring legislation that would do that. So it could still need a vote. But at least an item to come before you vote that would ask the Commission to sponsor such a legislation.

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

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

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

My understanding is that there was a report put together by one of their action committees or groups that...
was recently approved by one of the other groups at Cal EPA, but that perhaps the process isn't even done yet.

But, no matter, we'll continue to look at that process and see if there's items in there from the Cal EPA process that would allow us to improve our product.

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

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

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

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

ACTING COMMISSIONER GONZALEZ: Okay. And do we need a motion then to ask you to do that? Or that
just comes back, we need to do that?

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

ACTING COMMISSIONER GONZALEZ: Okay.

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

Item 63 was moved to the consent item calendar.

I believe we're on Item 64.

EXECUTIVE OFFICER THAYER: Yes, Madam Chair.

Item 64 has to do with title settlement and boundary line agreement with the Bel Air Bay Club in Los Angeles.

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

SENIOR STAFF COUNSEL FOSSUM: Good afternoon, Commissioners.

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

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

SENIOR STAFF COUNSEL FOSSUM: Sure.

ACTING COMMISSIONER MATEO: Could the audience
just stay sort of quietly, so that we can hear you, we can
think.

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

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

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

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

Lease 8466 is for a club recreational use of a
small triangle of beach, less than 3/10 of an acre; at the
rate of $50,596 the first three years, followed by $56,921
for the next two years; and thereafter rent will be
adjusted by the Commission. That area is shown, in this
triangle, on the right-hand side of the photograph.
The third lease, 8467, is for construction of temporary sand berms by the club, in exchange for the club providing beach cleaning, lifeguard services, and construction of a stairwell or similar device that will allow public access across the city-maintained groin at the upper end of the club.

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

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

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

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

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

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

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

So since 1938 there's been -- excuse me -- '37 there's been a recorded agreement establishing that yellow
line as the boundary.

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

Five days after the Commission came into existence the State Personnel Board began an investigation of Sturzenacker and of Alexander, the individuals who had arbitrated the boundary and were involved in the oil controversy. A complaint was filed with the State Personnel Board, and they were suspended by the Commission. Following months of investigation the State Personnel Board dismissed them both. However, in that dismissal no discussion of the Bel Air -- excuse me -- the Bel Air Bay Club boundary line was set forth in the findings by the Personnel Board.
On May 3rd, the following the year, the State Lands Commission denied a club application to modify the groins; and, in addition, repudiated the line of the ordinary high water mark entered into by Sturzenacker.

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

(Laughter.)

SENIOR STAFF COUNSEL FOSSUM: Better late than never.

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

The crux of this dispute and rationale for the settlement is that while the facts the Commission have developed indicate the accretions to this beach were the result of the groins, state officials entered into an agreement in 1937 that purported to fix the boundary. We have for the last 18 months researched facts and laws and subsequently argued and negotiated with club
representatives based on the strengths and weaknesses of
our respective claims.

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

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

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

The eleven easements accepted today total 640
linear feet of beach. The parcel to be deeded by the Bel Air Bay Club to the state covers 780 linear feet.

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

I'll be happy to answer any questions.

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

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

ASSISTANT ATTORNEY GENERAL HAGER: Yes, we do.

ACTING COMMISSIONER GONZALEZ: Thank you.

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

And I'd like the staff to keep track of the time.
The first one here is Mr. Martin Murphy.

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

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

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

Secondly, the original agreement under which the -- the original boundary line agreement entered in by Sturzenacker and Alexander was entered into in violation of the Constitution. These people were removed from office. As part of their removal from office it was charged that persons dealing with the state were required to pay money to an associate of theirs before their applications would be considered. In addition, Sturzenacker required a percentage of business from
certain people. And when we was questioned of his
activities by the Director of Finance, he lied. So
clearly any activity that Sturzenacker and Alexander
engaged in while they were state employees was not
authorized by the State. They had no authority to enter
into these contracts. So the original boundary line
agreement is void.

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

And such a boundary line agreement is void on its
face. And you can not now correct that boundary line
agreement by entering into another boundary line agreement
because the requirements for a boundary line agreement is
that there's a genuine dispute as to where the boundary
line is. The genuine dispute was only between where the
1923 and '15 boundary lines. There is no genuine dispute
for the 1937 boundary line. It was an accretion.
Two more points. In addition to the --

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

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

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

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

And with respect to the burden of proof which I think has led to the staff's conclusion, I think the -- you know, the arguments of the club have been heard not in public but in private. I think that the burden of proof in this matter is misplaced. The burden of proof is on the club to show that it's entitled to this land. This is a large piece of land in the most valuable portion of the Will Rogers State Beach that is most heavily used by the public in Los Angeles. And you're giving away millions of
dollars worth of state land in return for nothing.

So I would strongly urge that this matter be reconsidered.

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

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

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

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

Thirdly, with regard to this presumption that we should have the burden of proof, there's -- in the Public Resources Code Section 6341 there's a statute of limitations with regard to boundary -- challenging boundary line agreements. And that has long since ceased.
And my last point is with regard to where the last natural condition of the line is. That's a very difficult question. It goes -- it could go beyond the area that's been talked about. And these hearings could go back to 1891 when the great wharf was built not too far away from this site.

Thank you.

ACTING COMMISSIONER MATEO: Thank you.

Do members have any questions of those who testified?

ACTING COMMISSIONER MATEO: Does staff have any comments?

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

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

ACTING COMMISSIONER ARONBERG: I know that has been a long, difficult one. For those involved in it, has
been hard work. And I want to sort of echo the speaker, limited question, which is: Is this the best that can be done on behalf of the State? And can you go ahead and make a little opinion about that one more time, in light of the speaker who raised some legal issues?

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

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

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

Now, that doesn't get the legal issue. But I wanted to say that there's more than just the property per se. That we're getting public access, which is a major
accomplish we believe in the face of an agreement that's been on the books since 1937 -- a recorded agreement.

I've been at the Commission now for 26 years.

And one of the mantras that I was really taught was that we will never challenge a State Lands Commission boundary line agreement. And I was admonished early on this one. And I ultimately was successful I think by telling them that this was not a State Lands Commission boundary line agreement. It was a predecessor to the Commission that existed at the time. And so we are not challenging one of our agreements, but of the predecessor's. And we're challenging it, but that doesn't mean that we'd be successful in court. We don't know what would happen. It's the old adage of half a loaf or a bird in hand.

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

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

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

Do I have a motion?
ACTING COMMISSIONER ARONBERG: Move adoption.

ACTING COMMISSIONER MATEO: Second.

All in favor?

(Ayes.)

ACTING COMMISSIONER MATEO: That motion passes.

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

EXECUTIVE OFFICER THAYER: Yes, it does.

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

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

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

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

(Thereupon an overhead presentation was presented as follows.)

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

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

Okay. We wanted to let the Commission see what's happening in the Port of Los Angeles rather than give a narrative. And we isolated the presentation with regards
to blight through visual intrusion, a phenomena that hasn't been addressed in the past, and also related to project-specific mitigation.

--00o--

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

--00o--

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

--00o--

MR. MARDERICH: Here's another intersection, still four blocks away. And there's a forest of cranes. This is a predominantly Hispanic low-income residential area.
Real estate sells very cheap there, by the way, now.

--00o--

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

--00o--

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

--00o--

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

--00o--

MR. MARDERICH: This is another shot a little further to the east of the horizon from Rancho Palos Verdes, which is one of the tenth most wealthy areas in the United States. And these people as well as the people in Wilmington have a right to a scenic horizon.
MR. MARDERICH: Going up the hill even further away, still the blight from Wilmington is inescapable.

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

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

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

MR. MARDERICH: This -- yeah, thanks. So this is what you would see if you sat in your living room and looked out, these cranes. They were never mentioned in EIR.

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

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

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

--o0o--

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

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

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

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

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

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

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

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

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

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

Unfortunately, I don't think a right to a skyline view is one that we're given in California, at least that's what the Coastal Commission has told me when I asked for my rights to a scenic view. But we are -- we share your concerns. But we also have gotten concerns at least in our office from the attorney, not only in State Lands but also the Attorney General's office.
So in accordance to what I told Julie when she came from NRDC to speak with me, we want to see this happen, but we need NRDC or the -- is it the Homeowners Association there in San Pedro? -- to work with the Attorney General's deputy, the State Lands attorney, and for everybody to come together and form a consensus so we can allow it to happen in a way that's legal and that's constitutional. We don't want to be making exceptions even for environmental groups or even for good projects that we'd be -- later be forced to make for developers. I mean that's the problem that we run into.

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

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

ACTING COMMISSIONER MATEO: It would help me to
understand what the "it" was all the way through here. I don't know -- I really don't know what your issue was.

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

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

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

And I apologize for doing this backwards. And
we'll get to the "it" of the two projects.

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

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

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

That money -- the number one use of that money is
for park land. And so the question is there are now nine
proposals for how to use money to those proposals, and
only two are for park lands, one in Wilmington, one in San Pedro. While clearly there's a local interest in having those parks, we at NRDC believe that the principal purpose is for the state. The state needs parks. The state needs parks near coastal property. The port would benefit from the park land because it would improve business at Catalina terminal and the cruise terminals.

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

So to wrap up, we think that these two projects are a proper use of the funds. But we are eager to work with Commission staff, with the Commissioners, with the Attorney General's office and figure out a solution to deal with these. But our hope in the end is that these two parks really aren't -- shouldn't be approved for the local interest. They should be approved for the statewide interest. And that's why we are asking for it.

So we appreciate the time you've spent with us, the time staff spent with us. And we hope that we can reach a fix. And the fix may be in December to have on your agenda a policy item to figure out what is the scope of when these public trusts money is appropriate for park land and when it's not. Because some parks it's not
appropriate. There are a lot of projects that are not appropriate. We think these two are.

ACTING COMMISSIONER GONZALEZ: I just want to reiterate, if you'd please work with Mr. Lockyear's office and trying to present us something that would allow the Commission to go forward with confidence that it's going to uphold the law. We absolutely are in support and would like to see that happen. But I think we need to get some positive direction from the Attorney General's office.

MS. FEUER: We will do that, and we will call Mr. Hager tomorrow to start the process.

So thank you very much.

ACTING COMMISSIONER MATEO: And we just want to echo here from the Department of Finance perspective that the appropriate use of funds would be extremely critical to us, and we have questions here.

Thank you very much.

And I think the next person up would be Janet Gunter.

MS. GUNTER: Good afternoon, ladies.

Good afternoon, Ms. Aronberg. I spoke to you before when you worked in the -- a few times. Thank you. You were always very helpful.

MS. GUNTER: I think that the point was very clearly made by the two previous speakers. And I just
want to reiterate that I think that when people get creative, they can do lots of great things. And I mean the bay we have here, and that was the urgency of Pier 400, Energy Island, and the predication of public safety as an alternative use for that property urged the port and State Lands to work together to find a relocation for the wetlands that they had to accommodate. And if you remember, part of the impetus for that was -- I have an article that I'd like to pass over to you to look at just real quickly.

In the eighties -- no, excuse me, 1972 there were a couple of explosions in a harbor which encouraged the port to relocate all the hazardous chemicals away from the local residents, because the residents are just within blocks of these facilities. And based on that they decided they would build a 195 or 190 acre parcel of land in the middle of the blue water out from the residences so that they would allow that safety factor to exist. And instead of that, once this group created legislation to find a home for the lease turn in the wetlands area, that became a 580 acre land mass that is totally used for parvo containing. And all of the hazardous chemicals still remain in the original locations that they were at the time.

And, by the way, this is also a view from my
house prior to Pier 400. And this is what it looks like today.

And in there EIR draft report, which I also have here, you will see that there is no recognition of any visual impact whatsoever. There's no disruption of a rock outcropping or anything else.

So the mitigation has not existed. The lies that have been circulated through the port and the analysis have missed oversight, and that's a real tragedy.

One element that was not mentioned is the word "blight." And blight, I believe that the State of California has a very strong -- in their Public Safety Code there is a three-page definition -- California Health and Safety Code -- regarding the obligation of the state to work with cities to eliminate blight. And this blight -- this blight is due to the industrialization of the port. So 30 years of industrialization and 400 percent in growth over the past 15 years that's produced this blight. Which apparently some people -- staff people in State Lands have said we're not necessarily the culprit here, that it could be a number of factors. There is no other industry that has had that kind of growth in that period of time, yet it's completely overlooked.

One more thing and I will leave. You have copies of articles of a survey -- mentions a survey that I
conducted in 1999 to all the cruise passenger -- or cruise terminals. And it has to do with their input about the impression that the cruise terminal passengers have. They actually rated the Port of Los Angeles as the worst port in the nation. And they described it as dirty, concrete, industrial, ugly -- all of those things. The surrounding area reflects that as well. If we wanted to increase tourism, if we wanted to build that opportunity for the port, the port could do a lot, a lot to maximize that potential.

Thank you very much.

ACTING COMMISSIONER MATEO: Thank you.

Mr. Skip Baldwin.

MR. BALDWIN: Good afternoon, Commissioners. My name is Skip Baldwin I'd like to introduce myself as being a resident of Wilmington. And I'm also a member of the Los Angeles Community Advisory Board for the Port of Los Angeles. I'm Chairperson of the Land Use Committee of the Wilmington Neighborhood Council. And since you mentioned the community groups, I am the Chairperson of Wilmington's only homeowners association. It's called the Wilmington Citizens Committee.

I understood what you had to say today about working with the community, and you have your restrictions and so forth. I do -- since I'm here, come all this way,
I would like to read my public comments however.

I am here today to bring up the subject of mitigation funds designed to be spent in Wilmington by the stipulated superior court decision of the Los Angeles Superior Court, Case No. BS 070017.

The stipulations in this case state that the Port of Los Angeles must provide mitigation funds to Wilmington because of port-provided blight and other impacts on the community.

Spending the mitigation funds are carefully articulated in the stipulated judgment. In the judgment, projects of funds are to be spent for or prioritized as, first, open space and parks; second, landscaping implication; and, third, funding for educational arts and athletic facilities.

I asked our Los Angeles City Councilwoman Janice Hahn to request that mitigation funds stipulate we said we're willing to be spent in the East Wilmington Green Belt Park Projects.

Some of reasons are:

1) The Wilmington Green Belt Project doesn't just meet one of the prioritized stipulations. It exceeds all the prioritized stipulations.

2) The Wilmington green belt area is directly negatively impacted by many port actions. The direct
nexus between port activities and park area are too lengthy to enumerate here. But I can simply sum it up by saying, if there were no port, there would be no negative impacts.

3) The community bearing the negative port impacts may be described as low income, Spanish speaking, with an extremely low ratio of park space per person.

4) Spending court mitigation funds in a Wilmington green belt will trigger other grants to the park. Council Hahn has requested that funds be spent on the park. And the request has been denied on the basis that there was no nexus between the port and the park.

I have replied to the Lands Commission in writing, but received no reply from that. Therefore, my public comment today.

So I will be looking forward to appearing on any of your meetings in the future.

Thank you.

ACTING COMMISSIONER MATEO: Thank you.

Ms. Laura Hunter.

MS. HUNTER: Thank you. Good afternoon. And I will be very, very brief.

My name is Laura Hunter with the Environmental Health Coalition. And I just welcome the opportunity to quickly brief you on -- I know you've heard a lot about
the Chula Vista Bay Front Development today. But there's this one other little element that I just wanted to give you a quick update on -- clear your thinking on.

The Bay Front Development on Chula Vista you have both private property owned on the mid-bay front and then the port properties that you've heard a lot about today. What we have been working on is a joint plan of a comprehensive plan for the entire bay front. And I'm here -- and we believe that we have to plan the whole bay front together in order to get the best plan and actually to address some of the issues that you've heard about in other issues. You've got an underserved community in terms of park land. You have very sensitive resources.

The good news is we have a lot of land to work with, and so we're really pushing for a joint plan.

Part of what we think may be where we need to go is to look at some potential for some land trading between the port and the private property owner. I have good news on that score. So far we're very optimistic, that dialogue is happening and that we're moving forward. But there -- as you heard from earlier speakers, there are some questions about what's allowable under a land trade, what isn't.

So we just didn't leave it up to the four winds. We contracted with outside counsel in the form of
Schupolly & Weinberger in San Francisco, which is a law firm that has very extensive knowledge about these things, and asked them some questions that had been -- kept coming up for us locally. One is, is a land trade legal? Number 2, is it doable? What are the conditions? What are the whereases, and all that kind of stuff. And third, which is more of a coastal commission question: If you downzone an area, does that constitute a taking under the California Coastal Act?

And we're all looking for very creative solutions. But we think they gave us a very good analysis. They said clearly it's legal, it's doable. They gave us the conditions. And in fact you can downzone. LZPs does not constitute a taking. And so we're very encouraged that we're hoping we will move forward on this.

I wanted to provide you a letter with that. And we will continue to keep you updated on our collective progress.

Thank you.

ACTING COMMISSIONER MATEO: Thank you.

Mr. Stanley Zobel?

Mr. Zobel's not here?

Then we're to Jim -- and I can't pronounce your last name.
MR. PEUGH: Peugh.

ACTING COMMISSIONER MATEO: Peugh.

MR. PEUGH: Something I heard and I learned to do it as a small child.

The State Lands Commission is obviously set up to protect unique public lands. The habitat areas around the bay front that Laura was just talking about are really special. They're among the highest quality wetlands left in the San Diego Bay. Unfortunately the properties they sit next to aren't necessarily the properties that will allow them to be best protected.

Laura talked about land swaps among -- between private property and tidelands. That's absolutely essential for being able to provide appropriate land uses next to these wetlands. And so we also hope that you'll, you know, look -- try and help people to look for create solutions and help facilitate, you know, some sort of an arrangement so that these really sensitive habitat areas can be better protected in the long term. We know this area is going to develop. We just want it to develop in a way that allow people to have both commerce and residential areas and wildlife areas and avoid the conflicts between them.

Thank you.

ACTING COMMISSIONER GONZALEZ: And, Paul, my
understanding is you've talked with Ms. Hunter and we are working with them to provide as much expertise and -- that we have.

EXECUTIVE OFFICER THAYER: I've spoken personally with her after our last meeting. And I believe there's a workshop coming up next month that we're going down to participate in. And we want to be as helpful as we can.

Ultimately of course the port has to work with EHC and the other groups to -- and the developer to formulate a proposal that would bring -- that the Lands Commission would then have to approve for it to become effective.

And we saw the letter that I guess came in last week from, which I think penalized a -- penalized a hypothetical proposal. But in fact it used swap -- it proposed swapping or analyzed swapping some lands that were now in the trust, which were somewhat removed from the waterfront, in fact had been swapped into the public trust I think a few years ago or something. And that's the sort of proposal that has some traction in it.

And so we're happy to continue working with them.

If I may, I'd also like to respond just briefly to the San Pedro-Wilmington project. And that is to say that we have spent a lot of time meeting with the folks who spoke today and some of the others as well.
And we also understand that the Commission as well as its staff firmly believe that the ports are not exacting any California environmental law and that they must comply with CEQA as well as the air and water quality statutes that the state has. And kind of the Public Trust Doctrine is not a shield that the Commission -- that the ports can use to prevent compliance with those laws. But there are a variety of ways that they can comply. And we think that the appropriate ways are to harmonize public trust requirements with these other statutes.

And as presented to us now, we disagree with the assertions of the attorney and several others. We think that these two particular projects -- expending port revenues on those projects are not consistent with the Public Trust Doctrine. But as the Commissioners have said time and time again, as we considered today, that we're interested in opening the situation as well. And that I think I've discussed with Ms Feuer as well as some of the other -- some of the Commissioners, some ideas that we've generated in-house -- Curtis actually was the initiator of it -- that have to do with sort of a three-legged swap, where the net effect would be that non-trust -- or trust expenditures would be used to buy good -- or land for good trust uses. And with the concurrence of the city perhaps some of that money would be revolved into buying these two
properties. And we would be able to protect the public trust precedent, which is extremely important up and down the state, and still end up with a situation where these parts, which have been enormously important to the communities here, the communities have been working on them for many years, before this settlement was entered into with China Shipping, and hopefully soon the work will be done and we'll all be successful.

So we're interested in having that, and we're working to that end. And in fact Ms. Feuer and others have sent us letters in the last couple weeks asking us not to respond with our view of what -- of the consistency of these projects with the Public Trust Doctrine, but instead you work longer on a win-win situation. And we're very happy to do that.

But having said that, I guess we're looking for -- there were several suggestions from the witnesses as to how the Commission might proceed.

ACTING COMMISSIONER MATEO: Well, we have one other person to testify.

Okay. I'm sorry.

ACTING COMMISSIONER MATEO: And so if you could --

EXECUTIVE OFFICER THAYER: -- hold that thought?

ACTING COMMISSIONER MATEO: -- wait to get that
Mr. Eichwald.

MR. MARDERICH: As I said, he asked me to speak for his behalf. But I think it very appropriate now to identify myself as the President of the San Pedro Homeowners United. And we are one of the litigations in China Shipping.

And we are not proposing any specific project. We don't believe in gifts, funds. We don't even subscribe to the report I mentioned about is communities abusing the trust. And we are concerned with a process. And we would like to sit down with State Lands and discuss a process where, if there's a negative impact in the community, that it be identified, quantified, and then a fair and reasonable effort made to mitigate it. It's simple as that. Follow the law in the process.

And I would like to enter into discussions with State Lands on just the process, not looking to make these fancy land swaps and these gifts that don't have a nexus to a project specific. And that was the kernel in my presentation, project-specific mitigation.

ACTING COMMISSIONER GONZALEZ: Can you hold on. I'm sorry.

The process that they're describing, is that one that would require us to change the law?
EXECUTIVE OFFICER THAYER: I'm not sure.

ACTING COMMISSIONER GONZALEZ: Can we look at that as a -- can we talk about a process and how we would go about adopting -- or looking at this process? I'm a little confused as well, because the process -- the end result of the process that he seems to be talking about would be in conflict with the public trust doctrine. Is that correct, Paul?

EXECUTIVE OFFICER THAYER: Well, I --

MR. MARDERICH: Let me help answer that, because there's one player that's missing here, and that's the Port of Los Angeles, who does the EIR, they're the lead agency, and approves it. And historically whenever they did an EIR, they were silent on this issue and it was never done. State Lands is not, how should I say, an active participant in that. But they've been doing it for -- a century now? And to now say, yes, there is a negative impact, to identify it, and say, this is how the community's been negatively impacted, it's a cultural change for the Port of Los Angeles.

And then you have throughout the state -- a perfect example is the City of Oakland, who's going into extremes. You have the rare and famous nexus lawsuit, which at one time our group was assigned to do an amicus brief on the side of the state because we thought that was
not proper use of state funds.

    So we understand thoroughly the issue. It's a
matter of active communication and just doing the process
under CEQA. That simple.

    ACTING COMMISSIONER GONZALEZ: So we can work
with the Port of Los Angeles to ask them to include this
process? The same way we've worked with the Port of San
Diego to deal with some issues we've had down here, can we
do the same with L.A., and then in the next Commission
meeting hear the results or status report on that?

    EXECUTIVE OFFICER THAYER: Well, I don't want to
put words in Mr. Marderich's mouth. But what I understand
him to say is that perhaps -- it would be his view that
L.A. was not properly following CEQA the before, and that
probably their lawsuit was a wake-up call and that they
would anticipate that the kinds of issues he's talking
about right now will be and should be dealt with by the
port in the CEQA process. And it's not a separate
process. I mean it's not something that can be done
between now and December, but it needs to be done in this
project.

    MR. MARDERICH: We are in no rush, on a deadline
for December. In other words, this process has been, how
should I say, absent for a century at the Port of Los
Angeles. So a month here, a month there. But I think
it's -- the Commission needs to give some guidance to the port, because you have people that have protected the city -- the state's interests to the degree where I can't do this because it's off of port land. And then when you have the issue where you overcharged the port for city services, that then was an overreaction. Now you can't do it. And so it's an educational type of thing, a cultural change. And I think the Commission and staff needs to do some training. But at the same time the community needs training on how not to abuse the system.

EXECUTIVE OFFICER THAYER: And so I would say -- I mean it's sort of a continuum. And Mr. Marderich and us may not be that far apart in that. You know, we've been down there a year and a half or so ago to talk about what the Public Trust Doctrine meant to P-Cap. The Commission required that we put together a public trust policy to help try and explain and interpret. We're just not done yet. And I suspect that they'll be more discussions with the port and with the community.

So I'm not sure what we'd bring back because it would be more general principles along the lines of what we did in our public trust policy. I mean we'd be happy to take criticism --

ACTING COMMISSIONER GONZALEZ: Well, it sounds then -- correct me if I'm -- I may be completely off. I'm
now confused. I thought we were talking completely about these two parts. And it seems like there's two different things going on. There's the park issue and there's the -- you're not confident that the L.A. Port is going to continue in their process of looking out for these types of issues so we're not correcting them in the future, is that correct?

MR. MARDERICH: When it comes to the park issue, it was my preference that there should have been an EIR to find a negative impact and propose an appropriate nexus. It could be a park. It could be something else.

But what's happened is -- and even right now the port is asking for corrective measures before an evaluation is done. And the port unfortunately has a habit of never admitting or evaluating any negative impacts. So after the EIR process -- we're talking about real time now -- after their EIR process is over with, that there won't be any nexus of a record item. It was just six months ago when the staff stated that there was no record of negative impacts at the Port of Los Angeles. And they are absolutely correct because there is no negative impacts stated in any prior EIRs. They're right. I agree with them.

EXECUTIVE OFFICER THAYER: So I guess in response to your identification of this division of issues here --
you know, and that's what I was asking for direction more on, was what to do about the two parts. But what I hear Mr. Marderich talk about is the larger issue. And that's the one that I was responding to most recently and saying that this is not something that we could just bring back, but it's something we need to consider --

ACTING COMMISSIONER GONZALEZ: Something you can report on -- and let us know how the education process is going with the ports when it comes to issues pertaining to public trust and mitigation impacts.

EXECUTIVE OFFICER THAYER: And so then we turn.

MR. MARDERICH: Yes, that makes sense.

ACTING COMMISSIONER GONZALEZ: Then that makes you happy, part of a longer term.

MR. MARDERICH: As long as I have a two-way communication with that young gentleman here.

ACTING COMMISSIONER GONZALEZ: And if not, feel free to call us as well. But I know that they're very, very responsive.

And the second being the question of the parks. And that was the one where I asked on behalf of Lieutenant Governor that staff obviously continue to find creative solutions, to have NRDC or whoever's representing plaintiffs to talk to the Attorney General's office as well as our attorneys to make sure whatever is being
proposed or if anything comes forward, that it's something
that the Commission can support comfortably. I mean
obviously something that's legal. So that was what I had
asked on behalf of Lieutenant Governor.

EXECUTIVE OFFICER THAYER: And so for the next
meeting we should have some sort of report back obviously.
And I'm not quite sure -- well, we can discuss it with the
staff.

ACTING COMMISSIONER GONZALEZ: I don't think we'd
have an item to direct you to write a letter to -- it's
not legal. So I don't think that --

MR. MARDERICH: I'll help you with that one.

ACTING COMMISSIONER GONZALEZ: So it will be
worked --

EXECUTIVE OFFICER THAYER: We'll continue to
work, and we'll keep in contact with the Commission's
office about the results.

ACTING COMMISSIONER GONZALEZ: Thank you.

ACTING COMMISSIONER MATEO: Is there anybody else
from the audience who wishes to provide public comment?
Okay. That brings that section of the agenda to
a close.

Are we going to have a reason to go into closed
session?

EXECUTIVE OFFICER THAYER: Yes.
ACTING COMMISSIONER MATEO: Do you have anything that needs to be read into the record prior to that?
You just go into closed session?
This is a little different than some of the other boards and commissions I sit on. But we usually have a paragraph there.
Okay. At this time we are going to go into closed session. And I would ask the audience to leave the chambers please.
(Thereupon the California State Lands Commission recessed into closed session.)
(Thereupon the California State Lands Commission meeting adjourned at 5:45 p.m.)
CERTIFICATE OF REPORTER

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of October, 2003.

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