

MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

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

MONDAY, OCTOBER 20, 2003
2:00 P.M.

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

ORIGINAL

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 Homeowers 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

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1 properties.

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

4 May I have a motion to approve the minutes?

5 COMMISSIONER WESTLY: So moved.

6 ACTING COMMISSIONER MATEO: Second.

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

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

11 Mr. Thayer, can we have your report.

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

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

20 I think there are three main issues that came up.
21 One had to do with the South Bay Power Plant. There were
22 a number of concerns about when that plant would be
23 replaced, how long it would stay on the waterfront. Some
24 of the Commissioners of course had similar questions about
25 that issue. We prepared a staff report and worked closely

1 with Duke and the port in terms of determining the length
2 of time that it would take to build a new power plant and
3 also to determine the relationship between Duke and the
4 port and finally the jurisdiction of the Commission in
5 this matter. And I think our response is contained within
6 the staff report. It's a public document for this
7 Commission meeting and will be discussed later.

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

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

23 We should point out that ultimately of course
24 that what we're talking about here are not state tidelands
25 anymore but granted lands to the port, and that any

1 proposal for a swap would have to come from them, but we
2 would then have the authority to approve or disapprove.
3 But, again, the citizens groups were interested in finding
4 out what the parameters of that swap would be and so we've
5 been -- trying to be helpful to them in the matter.

6 CHAIRPERSON BUSTAMANTE: Well, is this the --
7 parts of the L.A. Port?

8 No, this is down here in San Diego where there's
9 some proposals for development of Chula Vista, and the
10 port has --

11 CHAIRPERSON BUSTAMANTE: Okay. Thank you.

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

21 So we think that that process is still working
22 its way forward through the Regional Water Quality Control
23 Board and their review and ultimately will come before the
24 Commission as a separate matter as well. And we'll
25 continue to work with the groups.

1 Any questions on this item?

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

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

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

25 CHAIRPERSON BUSTAMANTE: Yeah, you've already

1 been informed by the Commission of the strong position
2 they have on offshore oil drilling. So keeping us
3 constantly informed on this issue so that we don't get any
4 surprises would be --

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

7 CHAIRPERSON BUSTAMANTE: Thank you.

8 EXECUTIVE OFFICER THAYER: That concludes --

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

14 EXECUTIVE OFFICER THAYER: I will do that.
15 And that concludes the Executive Officer's
16 report.

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

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

22 EXECUTIVE OFFICER THAYER: There are several
23 items that the staff will be removing.

24 C 11 is one that we haven't finished work on.

25 C 50 involves some artifacts that have been

1 recovered on state lands in the Owens Lake. And staff
2 would like to take additional time to ensure that the
3 native American groups that might be concerned would be
4 consulted. So we'd like to take that one off.

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

6 EXECUTIVE OFFICER THAYER: Yes.

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

11 CHAIRPERSON BUSTAMANTE: Okay.

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

22 CHAIRPERSON BUSTAMANTE: And those numbers are?

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

25 CHAIRPERSON BUSTAMANTE: Nineteen and --

1 EXECUTIVE OFFICER THAYER: -- 28.

2 CHAIRPERSON BUSTAMANTE: -- 28.

3 COMMISSIONER WESTLY: Right.

4 EXECUTIVE OFFICER THAYER: And then one other
5 item would be RTO, which is on regular calendar, Item 63,
6 we've put that in the regular calendar because at the time
7 we were forming the agenda we had some opposition on the
8 record. We've since learned that those folks who had
9 opposed that item have dropped their opposition. And so
10 if there's no objections from the Commission, we would
11 move that to the consent calendar.

12 CHAIRPERSON BUSTAMANTE: Sixty-three from to
13 consent -- sixty-three from regular so consent?

14 EXECUTIVE OFFICER THAYER: Regular to consent.
15 And then --

16 CHAIRPERSON BUSTAMANTE: Any objection from --

17 COMMISSIONER WESTLY: No.

18 CHAIRPERSON BUSTAMANTE: Any objections on any of
19 the consent items to be removed from anyone?

20 I also wanted to talk about Item 34, paul. Is
21 there any problem with moving C 34 to the next meeting?
22 Will it create any problems?

23 EXECUTIVE OFFICER THAYER: Let me just ask --

24 CHAIRPERSON BUSTAMANTE: It just seems a little
25 odd that we're in San Diego and making a decision about

1 something that's taking place in San Francisco, that I'm
2 sure people there would like to be able to talk about.

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

7 CHAIRPERSON BUSTAMANTE: Is there a
8 representative --

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

11 CHAIRPERSON BUSTAMANTE: State your name.

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

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

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

23 EXECUTIVE OFFICER THAYER: We're presently
24 schedules to have one December 9th. And we were looking
25 to potentially do that in San Francisco.

1 CHAIRPERSON BUSTAMANTE: It seems to make sense
2 to move it to San Francisco in December.

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

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

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

12 CHAIRPERSON BUSTAMANTE: How would it
13 significantly delay?

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

20 CHAIRPERSON BUSTAMANTE: This is the half acre?

21 EXECUTIVE OFFICER THAYER: Yes.

22 Another possibility of course is where there have
23 been business exigencies that require us to act sooner
24 than our next regular scheduled meeting, we would
25 occasionally schedule meetings in the interim as well.

1 MR. HERTZFELD: Supervisors of the City of San
2 Francisco. They passed legislation approving this with
3 the knowledge that it would be on their calendar today.

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

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

10 MR. HERTZFELD: Thank you.

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

13 MR. HERTZFELD: Thank you.

14 CHAIRPERSON BUSTAMANTE: Anything else?

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

18 CHAIRPERSON BUSTAMANTE: Even those that have
19 been pulled?

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

24 CHAIRPERSON BUSTAMANTE: How about if we ask him
25 when they come up?

1 EXECUTIVE OFFICER THAYER: These are consent.

2 CHAIRPERSON BUSTAMANTE: Well, do you want to
3 just speak generally on all of the consent items?

4 MR. BOWMAN: If I may.

5 CHAIRPERSON BUSTAMANTE: Yeah, go ahead.

6 MR. BOWMAN: I'll be very brief.

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

10 I'm speaking today on behalf of our clients, Mr.
11 Blair Frank, who is the owner of the property identified
12 in Agenda Item C 19, and also Mr. and Mrs. Greg Nathansen,
13 who are the owners of property identified in Agenda Item C
14 28.

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

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

25 MR. BOWMAN: Oh, the meeting's in December.

1 Okay. So it's 60 days continue -- I'm sorry.

2 Okay. Thank you.

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

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

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

24 CHAIRPERSON BUSTAMANTE: Doesn't look like you
25 have any votes here, sir. So we'll go ahead and move

1 those two items in abeyance until the next meeting. And
2 the others will remain on consent.

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

8 MR. HOYE: No, I'm fine.

9 CHAIRPERSON BUSTAMANTE: No?

10 Okay.

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

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

16 EXECUTIVE OFFICER THAYER: Yes, sir.

17 CHAIRPERSON BUSTAMANTE: Is there a motion?

18 COMMISSIONER WESTLY: So move.

19 ACTING COMMISSIONER MATEO: Second.

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

22 The first item of business.

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

1 C 4.

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

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

9

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

14 Please, No. 61.

15 Mr. Thayer.

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

22 I would note that this item has engendered a lot
23 of interest because about ten days ago we'd gotten a
24 request here at the Commission from the airport to review
25 the possibility of transferring some parcels from the port

1 to the airport. And there has been some suggestion that
2 this item may be close enough in subject matter to that
3 request, that it all has to do with finances, that someone
4 suggested it's being put over.

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

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

10 EXECUTIVE OFFICER THAYER: Yes.

11 CHAIRPERSON BUSTAMANTE: So --

12 EXECUTIVE OFFICER THAYER: The --

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

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

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

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

24 COMMISSIONER WESTLY: I'm strongly supportive of
25 that. This is a very complex issue and something we

1 certainly need some discussion on.

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

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

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

15 Could you both come up just for a moment.

16 Could you guys like figure it out.

17 (Laughter.)

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

22 Is there a way that you guys can sit down and
23 figure out a consensus? Because what you're going to get
24 from us is a political answer. And if you want a
25 practical one, you ought to come here with --

1 MR. HOLLINGSWORTH: Lieutenant Governor, I'm
2 Bruce Hollingsworth. I'm the President and CEO of the
3 port.

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

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

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

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

18 (Laughter.)

19 MR. LOBNER: Most definitely.

20 CHAIRPERSON BUSTAMANTE: Excellent.

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

23 EXECUTIVE OFFICER THAYER: December or whenever
24 we have enough information. If they're making progress,
25 for example, we'll hear it when we need to hear it.

1 CHAIRPERSON BUSTAMANTE: Okay. So then you will
2 communicate with Mr. Thayer and the staff, and we'll
3 figure out if that's enough time. We really would like to
4 resolve this thing as quickly as possible. So if you
5 could have it done by the December meeting --

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

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

10 MR. LOBNER: Thank you.

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

13 EXECUTIVE OFFICER THAYER: Thank you.

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

16 MS. BURKS: Good afternoon, Commissioners.

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

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

25 The proposed project involves construction and

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

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

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

16 The proposed new 20-inch pipeline will cross
17 state-owned land at Walnut, Grayson, and Pacheco creeks
18 and Cordelia Slough and Contra Costa and Solano counties.

19 Approximately 5,500 feet of the existing 14-inch
20 pipeline would continue to be used for the crossing of the
21 Carquinez Strait until such time that replacement with a
22 new 20-inch pipe using a single horizontal directional
23 drill is feasible.

24 In addition to the proposed new 20-inch pipeline,
25 a new 12-inch diameter pipeline branch, which is

1 approximately 8/10 of a mile long, to service Wickland Oil
2 Company will be constructed to supply fuel to the
3 Sacramento International Airport. This pipeline would
4 connect to Wickland's existing 12-inch pipeline via its
5 metering station at a location north of West Capital
6 Avenue in West Sacramento.

7 After construction of the new 20-inch pipeline is
8 complete, with the exception of the portion across the
9 Carquinez Strait, the existing 14-inch pipeline will be
10 taken out of service. This procedure is estimated to be
11 complete within 60 days after construction of the new
12 20-inch pipeline.

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

23 To conclude, there are three actions that staff
24 is asking the Commission to take today. First is the
25 certification the Environmental Impact Report that has

1 been prepared for the pipeline project.

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

6 And the third action is to authorize issuance to
7 SFPP of a new lease for proposed construction of a new
8 20-inch petroleum pipeline.

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

15 Thank you.

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

18 And very briefly because I know this afternoon is
19 full. But I wanted to apprise you that the environmental
20 process started in February of last year with a public
21 scoping meeting; then in June of this year, notification
22 of the draft Environmental Impact Report. And proposed
23 comment meeting was mailed to 1393 entities, which
24 included landowners along the proposed pipeline route,
25 within 300 feet of that pipeline route. With a long

1 linear project we have a goodly number of landowners and
2 entities involved.

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

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

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

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

18 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF
19 SANDERS: We received two letters following the issuance
20 of the final Environmental Impact Report, one from Clark
21 Trucking Company located in West Sacramento that voiced
22 some concern with the proposed right-of-way near their
23 facility. We have been working with representatives of
24 that firm in trying to get the parties -- the applicant,
25 SFPP, and representatives of the trucking company --

1 together to discuss their mutual concerns and interests in
2 this regard.

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

8 The second letter was from the Costa Contra
9 County Sanitation District voicing concerns with the
10 routing of the pipeline through their property. The line
11 was proposed in an existing utility corridor with
12 approximately five pipelines currently in place. Again,
13 we have tried to work with the applicant and the Contra
14 Costa Sanitation District to get the parties together and
15 see if there is some resolution to be had. The latest
16 information that we have -- and perhaps the applicant
17 could speak to it further -- but an offer to the Contra
18 Costa District has been afforded from SFPP to relocate the
19 pipeline in the event that the property is needed in 10 to
20 15 years for uses of the district.

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

23 CHAIRPERSON BUSTAMANTE: What about with regard
24 to Clark?

25 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

1 SANDERS: There does not appear to be a resolution at this
2 point.

3 CHAIRPERSON BUSTAMANTE: What were their
4 concerns?

5 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

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

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

14 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

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

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

23 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

24 SANDERS: As a replacement pipeline, yes.

25 CHAIRPERSON BUSTAMANTE: No, I'm talking about

1 Clark Trucking.

2 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

3 SANDERS: It's an existing facility, sir.

4 CHAIRPERSON BUSTAMANTE: So they were
5 grandfathered in?

6 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

7 SANDERS: Yes.

8 CHAIRPERSON BUSTAMANTE: So they are appropriate.

9 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

10 SANDERS: Well, yes, what's termed a nonconforming --

11 CHAIRPERSON BUSTAMANTE: They're within --

12 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

13 SANDERS: They're within -- with the existing -- they're
14 entitled to be there until the plan really gets in place.

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

18 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

19 SANDERS: No, sir.

20 CHAIRPERSON BUSTAMANTE: -- operating out of --

21 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

22 SANDERS: No, they're perfectly legal, have every right to
23 be there. And of course the SFPP -- the pipeline feels
24 they have the same rights.

25 CHAIRPERSON BUSTAMANTE: That way the Clark

1 Trucking representatives don't have to come up and defend
2 themselves.

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

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

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

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

12 CHAIRPERSON BUSTAMANTE: To what extent? I mean
13 what do you mean by safety for the employees?

14 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF
15 SANDERS: In the construction of line there will be
16 disruption of the roadway in which the pipeline is
17 planned. So for a period of one to two weeks there would
18 have to be flaggers and, you know, diversion of traffic.
19 And there may be some inconvenience to the trucking
20 company as far as ingress and egress during construction.
21 After that, it's been -- concerns been voiced as to having
22 a 20-inch line carrying gasoline and diesel fuel or jet
23 fuel adjacent to his firm. And at present the existing
24 14-inch line is on the west side of the trucking company.
25 The new pipeline right-of-way would be on the east side of

1 the trucking company.

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

4 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF
5 SANDERS: Mr. Cunha?

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

8 Any else?

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

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

14 Okay.

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

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

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

25 CHAIRPERSON BUSTAMANTE: Who would be the person

1 that would resolve questions with regard to the piping
2 over, say -- that would endanger the water or underground
3 aquifers or river or any other kind of -- who would be the
4 person who would have dealt with that?

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

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

12 CHAIRPERSON BUSTAMANTE: And those folks were
13 checked?

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

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

23 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF
24 SANDERS: No, sir. There is substantial mitigation
25 specified within the environmental document to not only

1 prevent spills, but to respond to them. And that
2 documentation was provided to all of the pertinent
3 agencies that have jurisdiction.

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

6 We'll go to public testimony then.

7 Mr. Cunha.

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

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

15 We haul up and down the valley from that
16 location.

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

21 I further checked with other people along the
22 route, families that own land fronting on South River
23 Road, the proposed new route. Four families that owned
24 over 50 percent if you exclude the city land indicated
25 that they never received notice. I am not faulting and

1 saying it wasn't mailed. I'm saying it wasn't delivered.

2 So we come late in the game. We have not been
3 contacted concerning this. So I brought my concerns via
4 letter the day after I got the information from Ms. Brown
5 in Sacramento, which she was very helpful providing to me
6 everything that I have.

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

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

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

23 Instead of that the proposal is to run up almost
24 another mile a 20-inch line up and around our property and
25 in front of at least four to six other landowners and, in

1 addition, the City of West Sacramento. And it makes no
2 sense to me as to why that has to be done when you have an
3 existing right-of-way in existence.

4 Now, granted --

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

7 (Laughter.)

8 MR. CUNHA: Well, it seems like you're spending
9 more, because you'd be going a longer distance.

10 Now, I can see replacing a 14-inch line with a
11 half a mile of 14-inch line when you're already using
12 6,000 feet of it in another place. Doesn't seem to
13 diminish the supply.

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

22 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF
23 SANDERS: Yes, Mr. Chairman. It's the proposed project in
24 the location of West Sacramento, which we can put up a
25 board that shows that information, if you'd like,

1 geographically. But it is the proposed project in this
2 particular location, its terminus. CHAIRPERSON

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

5 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

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

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

11 CHAIRPERSON BUSTAMANTE: And where did they both
12 end up?

13 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

14 SANDERS: Up to here.

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

18 MR. CUNHA: No. Mr. Chairman, that's the whole
19 point. They're coming in across here. This is a
20 right-of-way coming right down into their facility now.
21 The whole point of my being here is they're coming across
22 Jefferson Boulevard, which is now under construction.
23 They want to go up and around and down, when presently
24 they're doing -- they're going across Jefferson moving
25 northbound into their facility into the existing line.

1 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

2 SANDERS: Perhaps the applicant can address the reason
3 that this route was currently in --

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

6 MR. CUNHA: Would you like to keep this up here?

7 Yes, I think we would.

8 Up here.

9 Yeah, just leave it right there.

10 Thank you.

11 MR. CUNHA: You want me to --

12 CHAIRPERSON BUSTAMANTE: Go ahead and finish your
13 presentation.

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

1 property, the property next door, et cetera, on down the
2 street to Raley Field, which is already in existence.

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

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

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

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

11 MR. CUNHA: It's all been --

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

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

20 So we're talking about residential, recreational.
21 And introducing this when there seems to be no good reason
22 to introduce it at that location when there's presently --
23 and according to Mr. Cornman in his testimony in Fairfield
24 back in July, they're trying to use the existing railroad
25 rights-of-way. Well, there's one right there that they're

1 using. Why not continue to use it?

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

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

12 CHAIRPERSON BUSTAMANTE: Oh, I see.

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

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

22 CHAIRPERSON BUSTAMANTE: All right, sir.

23 Anything else?

24 MR. CUNHA: What I'm suggesting -- I'm not
25 suggesting this project not be implemented. All I'm

1 suggesting is take another look at this last half mile.
2 It just makes common sense not to do what is proposed on
3 this last piece once Jefferson Boulevard is crossed.

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

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

19 CHAIRPERSON BUSTAMANTE: All right, sir.

20 MR. CUNHA: Thank you very much.

21 CHAIRPERSON BUSTAMANTE: Thank you.

22 So the senior project manager, I guess, or the --
23 David, you and Mary, which one of you guys -- I suppose
24 you're both interested in speaking. From the senior
25 project manager or the director of the project permitting,

1 which of you would like to go first?

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

3 CHAIRPERSON BUSTAMANTE: I have Santa Fe.

4 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF

5 SANDERS: That's Kinder Morgan, Mr. Chairman.

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

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

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

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

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

24 The range of alternatives that were evaluated in
25 the EIR were evaluated for their potential significant

1 impacts. Along South River Road where the Clark Trucking
2 Company is at I don't believe there were any significant
3 impacts that needed to be evaluated with respect to the
4 range of alternatives.

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

24 An so it's really almost legally infeasible for
25 us to be proposing, and we would not on this project under

1 any circumstance propose, to put our new pipeline, our
2 replacement pipeline in a railroad right-of-way. In fact,
3 there are conflicts between our engineering standards that
4 we have to live by, which is regulated by the U.S.
5 Department of Transportation, and what our called arena
6 standards with the railroad. The railroad prefers to have
7 pipelines down about 11 feet deep. You know, DOT requires
8 a minimum of three feet of cover so you can properly
9 inspect your pipelines. We have to be able to properly
10 inspect these high-pressure gasoline pipelines to make
11 sure that things are safe.

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

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

1 properties either side of the street. We'll be in the
2 street.

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

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

18 He made mention that our 12-inch -- our valve was
19 going to be -- Valve No. 12 was going to be located in a
20 location. I must add that the valve location now is going
21 to be down right at the station on South River Road. So
22 that valve location in the final design that we're working
23 on right now is not properly reflected on the drawings
24 that you see in the EIR. It will be actually right at the
25 station.

1 And with respect to safety, I'll just say that if
2 you've ever been out on South River Road, you know that
3 there are major tank farms out there, tank farms that take
4 the gasoline, the diesel and jet fuel from our pipeline
5 and store it. Now, if the gentleman is concerned about
6 safety with respect to pipelines, he ought to have equal
7 or greater concerns with respect to major tank farms on
8 that same road. In other words we are not the only
9 potential risk, if you will, out on that road.

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

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

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

24 CHAIRPERSON BUSTAMANTE: It seems to me that the
25 concerns about putting another pipeline near existing

1 residential are a concern I have. I'm sorry, but I'm not
2 going to give weight to your current legal concerns with
3 your parent company. But -- or what was once your parent
4 company. But we are talking about putting a pipeline near
5 existing residential property.

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

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

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

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

24 MR. CORNMAN: In fact it's infeasible. I would
25 use the word "infeasible" because there's a moratorium on

1 cutting in Jefferson right now, which would be the only
2 other alternative short of going through residential
3 neighborhoods. Going up Jefferson right now is that
4 there's a moratorium on new construction and for cutting
5 that street for two years.

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

10 (Laughter.)

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

16 MR. CORNMAN: Seventy, sir.

17 COMMISSIONER WESTLY: Seventy people.

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

20 ENVIRONMENTAL PLANNING MANAGEMENT DIVISION CHIEF
21 SANDERS: The first mailing was 1322. The second mailing
22 was of like number. And we do have at least record that
23 Clark Trucking is one of the addresses that we have on our
24 mailing list and which we used. I verified the address
25 with Mr. Cunha this morning.

1 COMMISSIONER WESTLY: So of the thousand plus
2 people we mailed to twice, has anybody other than Clark
3 Trucking come back with a concern?

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

11 COMMISSIONER WESTLY:

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

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

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

19 CHAIRPERSON BUSTAMANTE: Sure.

20 MR. CUNHA: My response is --

21 CHAIRPERSON BUSTAMANTE: Come up to the podium.

22 MR. CUNHA: The response to the notice issue, Mr.
23 Westly, is the people that were just mentioned, the Ramos
24 families that own the big parcels, and T-Con Pacific are
25 precisely the people I talked to Friday, Saturday, and

1 this morning and have no indication that they got any
2 mailing, were totally unaware of what was going on until I
3 explained it to them. I asked if I could make
4 representation today that that in fact was the case to
5 this Board. And they said, yes.

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

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

14 Thank you.

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

20 MR. HERNANDEZ: Mr. Chair, members, my name is
21 Ricardo Hernandez. I represent Central Contra Costa
22 County Sanitary District. We're a waste water treatment
23 facility in Martinez, California. We have an elected
24 board of directors. And we're a special district. And we
25 treat -- we're a major waste water treatment facility in

1 that area, serving 440,000 residents in the area.

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

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

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

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

25 We have discussed with Paragon Partners, which I

1 believe is the right-of-way consultant for SFPP, a number
2 of mitigations for that. And what we would -- I guess
3 what we would propose as a practical solution, I guess,
4 would be to -- if they were willing to agree to relocate
5 their pipeline along with their existing pipeline if we
6 ever need to expand our capacity for the plant or if we
7 ever need to develop our adjoining property.

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

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

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

23 CHAIRPERSON BUSTAMANTE: Okay. Any questions?

24 Thank you.

25 Mary Brown.

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

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

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

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

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

23 Our concerns which focused on the originally
24 proposed project route involved sensitive environmental
25 resources, including critical wetland habitat, as well as

1 impacts of long-term restoration activities that we've
2 committed to undertake.

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

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

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

19 We especially appreciate the energy and effort
20 that staff, SFPP, and others committed to the interested
21 party meetings that followed the initial comment period.
22 These meetings brought together a tremendous amount of
23 collective knowledge concerning the affected area, and
24 allowed meaningful consideration of how to avoid and to
25 reduce impacts to the Peyton Slough area.

1 We do have written comments on the final EIR
2 which are being submitted for the purpose of preserving a
3 record of our concerns regarding the project as originally
4 proposed. With that said, we look forward to continued
5 communication and cooperation with the SFPP team as our
6 projects go forward.

7 Thank you for the opportunity to address the
8 Commission.

9 CHAIRPERSON BUSTAMANTE: Thank you.

10 Mr. Controller.

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

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

16 COMMISSIONER WESTLY: Yes.

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

23 MR. CORNMAN: Thank you.

24 With respect to the sanitation district, let me
25 just say that we have made an offer to the sanitation

1 district that for the new pipeline that we were proposing
2 to build through their property, that we will at our own
3 costs -- this is not normal -- would at our own costs we
4 will relocate that pipeline in the future if the need
5 requires with respect to their future uses of their land.
6 So we have made that offer in writing to the sanitation
7 district and that offer stands.

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

17 It was subsequent to that that -- in fact future
18 discussions in August of 2003 with a Mr. Russell Levitt
19 that we had E-mail conversations back and forth about
20 those same -- some other alternatives through the route --
21 through that property that we talked about the
22 infeasibility of two alternatives. One is going along a
23 very small service road in the property that would
24 literally cut off -- because of the narrowness of that
25 road, very narrow road, basically a one-lane road, cut off

1 all the people who are using that road -- and there's more
2 than one business in there -- for two weeks or more for us
3 to construct in that road.

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

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

13 MR. HERNANDEZ: No, not at all.

14 COMMISSIONER WESTLY: No. Okay.

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

17 ACTING COMMISSIONER MATEO: Just a point of
18 clarification.

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

23 MR. HERNANDEZ: Our last meeting -- or our
24 conversation last Friday they proposed that they would be
25 willing to in the future, if we needed them to, relocate

1 the proposed line and their existing pipelines.

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

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

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

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

16 CHAIRPERSON BUSTAMANTE: Go ahead.

17 MR. CORNMAN: We strongly request that the
18 Commission not be swayed by one property owner out of the
19 100 or more property owners that we have along this
20 alignment to delay this proceeding. The reasons are many,
21 but two of them -- the most important are that we have
22 a -- a pipeline project has a full-time right-of-way group
23 that goes out and buys easements from all the landowners.
24 Inevitably along a long pipeline project like this you
25 have one or two or three or five property owners that

1 don't want it in their backyard. Inevitably this happens.
2 And we negotiate with those folks in good faith to give
3 them fair market value for those easements. Where as a
4 public utility we have the powers of condemnation. We
5 don't like to use those, but we do have those.

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

20 That's all.

21 COMMISSIONER WESTLY: Let me just respond to
22 that.

23 As you know, I am typically very supportive of
24 the staff, having been a staff member of the State of
25 California myself in past lives. But unless I've missed

1 something here, I heard, "Please don't let this be delayed
2 because of one property owner."

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

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

13 COMMISSIONER WESTLY: Fair clarification.

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

19 But I'd like to defer to the other members.

20 MR. CORNMAN: I just have one clarification.

21 Our project management staff just has made a
22 further negotiated offer that we'd be willing to move both
23 of our pipelines, our proposed pipeline and our existing
24 pipeline. That as part of the Friday offer we are now
25 offering that as well.

1 COMMISSIONER WESTLY: The point of this -- and I
2 commend your flexibility and rapid movement. But the
3 staff understands that ideally we like to see these things
4 sorted out more than, say, 30 seconds before the vote is
5 supposed to occur.

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

9 (Laughter.)

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

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

17 EXECUTIVE OFFICER THAYER: Right.

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

24 EXECUTIVE OFFICER THAYER: Certainly.

25 CHAIRPERSON BUSTAMANTE: -- just right yet. And

1 you guys pride yourselves on having a win-win-win
2 situation. And so right now it doesn't quite look like
3 it's there.

4 EXECUTIVE OFFICER THAYER: We do pride ourselves
5 on that.

6 CHAIRPERSON BUSTAMANTE: Yes, you do.

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

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

15 EXECUTIVE OFFICER THAYER: Certainly.

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

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

24 EXECUTIVE OFFICER THAYER: We also advertise in
25 five newspapers.

1 CHAIRPERSON BUSTAMANTE: I understand. I
2 understand.

3 And I think the Commission would like for it to
4 go for a little longer, take one last shot at this.

5 They don't have to step outside.

6 (Laughter.)

7 EXECUTIVE OFFICER THAYER: Sir --

8 CHAIRPERSON BUSTAMANTE: So we would like to
9 bring this back.

10 EXECUTIVE OFFICER THAYER: We'll do that.

11 CHAIRPERSON BUSTAMANTE: You want to do it in two
12 or three weeks?

13 COMMISSIONER WESTLY: We're not going to do it by
14 phone. But I think -- we do hear the concern that time is
15 against us. We have seasonal issues here. So --

16 CHAIRPERSON BUSTAMANTE: Yeah, and it sounds like
17 what we're talking about really is a construction schedule
18 that meets with the property owners' trying to deal with
19 their businesses. That's what -- I think that's probably
20 the major concern on that side.

21 EXECUTIVE OFFICER THAYER: Indeed.

22 CHAIRPERSON BUSTAMANTE: That doesn't sound like
23 it should be something overwhelming to deal with.

24 EXECUTIVE OFFICER THAYER: The biggest problem I
25 think potentially is going to be the City of West

1 Sacramento. They have ripped up Jefferson before. So the
2 reason they have this two-year moratorium on ripping it up
3 again is based on that. And so that's what we're not --
4 it won't be just the people in this room here. It will be
5 dealing with the city for that alternative.

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

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

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

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

24 CHAIRPERSON BUSTAMANTE: Okay. Then we'll expect
25 you to call us back in a couple weeks.

1 EXECUTIVE OFFICER THAYER: You bet.

2 CHAIRPERSON BUSTAMANTE: Okay.

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

10 EXECUTIVE OFFICER THAYER: Sure.

11 CHAIRPERSON BUSTAMANTE: Okay. Item 62.

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

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

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

1 giving the presentation.

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

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

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

13 I will address the following main points:

14 Whether there has been any violation of the lease
15 or cooperation agreement;

16 The specific timelines associated with the
17 development of a replacement plant;

18 And the Commission's jurisdiction should there be
19 a violation of these various agreements.

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

23 The lease is a binding agreement. It provides
24 for Duke to operate the South Bay Power Plant and within a
25 reasonable time after the expiration of the lease term

1 decommission, dismantle, and remove the power plant.

2 The lease term ends at the earliest February 1st,
3 2010, three months after the requirement date of the bond
4 payments. However, unless the ISO terminates the must-run
5 obligation, the lease term could go on indefinitely.

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

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

18 Based upon staff's analysis of the information we
19 have obtained, the Port District and Duke have not
20 violated the terms of these agreements. So far Duke has
21 met all of the development milestones. Duke commenced the
22 site-selection process by June 30th, 2002. While the
23 cooperation agreement provided for Duke filing a Notice of
24 Intent by June 30th of this year, such a filing was not
25 required by the Energy Commission.

1 The next milestone includes a formal filing of an
2 application for certification by June 30th, 2006.

3 In addition, Duke has provided the Port District
4 with progress reports every six months. These progress
5 reports evidence Duke's obligation to use commercially
6 reasonable efforts to develop a replacement plant.

7 According to these reports, Duke is focusing its efforts
8 on one offsite alternative for the replacement plant.

9 However, because of growing local support for further
10 investigation by Duke of an onsite replacement plant
11 option, Duke is also looking into such an alternative.

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

18 Staff obtained information from the Energy
19 Commission about typical timelines for power plant
20 development, planning, permitting, and construction.
21 According to staff analysis of these timelines, if Duke is
22 going to have the replacement plant constructed by
23 February of 2010, Duke may need to file an application for
24 certification with the Energy Commission by February of
25 2006. This is nearly five months earlier than provided by

1 the development milestone schedule.

2 The Port District has the primary jurisdiction
3 over the land occupied by the power plant, while the
4 Commission has oversight jurisdiction. The Commission's
5 review and approval in January of 1999 consisted of the
6 acquisition of the South Bay Power Plant property.

7 There's no independent remedy provided by the Commission's
8 approval of the acquisition for violation of the
9 cooperation agreement or the lease. The Commission's
10 approval was not conditioned upon any specific aspect of
11 the cooperation agreement, the lease, or any of the
12 ancillary agreements.

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

25 CHAIRPERSON BUSTAMANTE: You'd indicated that in

1 order for them to be in compliance that they should have
2 an application to the FERC by February of 2006; is that
3 correct?

4 MS. LUCCHESI: Yes.

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

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

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

11 MS. LUCCHESI: Yeah.

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

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

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

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

25 CHAIRPERSON BUSTAMANTE: So that would mean

1 before February of 2006?

2 MS. LUCCHESI: Yes.

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

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

8 CHAIRPERSON BUSTAMANTE: July 2004.

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

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

1 replacement plant.

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

5 MS. LUCCHESI: Yes.

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

8 MS. LUCCHESI: Yes.

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

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

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

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

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

22 MS. LUCCHESI: In general a good reference
23 document to obtain for any interested person in obtaining
24 the timelines and the steps needed to develop a plant
25 could be assessed on the Energy Commission's website. And

1 there are various reports on that going through the
2 different steps needed to be taken in order to develop
3 such a plan.

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

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

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

10 There were meetings --

11 MS. LUCCHESI: Negotiations for the site
12 selection?

13 CHAIRPERSON BUSTAMANTE: Yes.

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

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

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

20 CHAIRPERSON BUSTAMANTE: Staff didn't ask?

21 MS. LUCCHESI: No.

22 EXECUTIVE OFFICER THAYER: Staff was aware that
23 there was an interest in finding out how many -- or what
24 stakeholders Duke had met with. And I think we do have a
25 list of four or five -- and by stakeholders, I mean people

1 in the community who had an interest at stake in these
2 decisions. And I think we did end up getting a list of
3 three or four or five.

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

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

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

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

18 CHAIRPERSON BUSTAMANTE: We'll ask Duke.

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

21 CHAIRPERSON BUSTAMANTE: Any other questions by
22 the Commissioners?

23 I think that the idea of having this activity for
24 the history both of the Commission as well as for many
25 members in the audience is that if there is going to be a

1 facility built, then there ought to be some kind of
2 action, some kind of activity that shows in fact that
3 that's what's going to take place. If there is a contract
4 that basically says that at the end of a particular time a
5 decision is going to be made, you need to figure out how
6 you're going to make that decision in the event that it is
7 in fact a possibility of compliance. If you're not going
8 to be in compliance, then you should just sort of say so
9 now, and we can move on and find a way remedying that.

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

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

22 (Applause.)

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

25 So if there is in fact a way to move this

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

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

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

12 Yes, ma'am.

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

16 CHAIRPERSON BUSTAMANTE: Please.

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

20 CHAIRPERSON BUSTAMANTE: Thank you.

21 MS. ANDERSON: Thank you.

22 (Thereupon an overhead presentation was
23 Presented as follows.)

24 MS. ANDERSON: Just to start off with an
25 overview, we are engaged in a 300-acre master planning

1 process in Chula Vista which encompasses the power plant
2 site.

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

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

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

20 We also see ourselves in the area of community
21 service and public services. We have 150 acres of
22 parkland, 16 parks, 7 beaches, and 10 playgrounds, 20
23 marinas, 3 sport fishing facilities. And we employ 130
24 police officers as well as contract with the various
25 cities along the harbor for police protection services.

1 So we're not just looking at one area. We're
2 looking at a balance, a balance of opportunities, both
3 with environmental opportunities as well as economic
4 opportunities on the bay.

5 --o0o--

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

19 --o0o--

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

1 in mind.

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

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

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

19 MS. ANDERSON: Well, a lot friendlier than the
20 existing plant. We have not put a definition --

21 CHAIRPERSON BUSTAMANTE: Just about anything
22 would be friendlier than that plant.

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

25 CHAIRPERSON BUSTAMANTE: Is there anything within

1 your plans that is focused on any particular technology or
2 certain system, i.e., do you focus that closely at --

3 MS. ANDERSON: No, we have not.

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

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

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

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

25 But our commitment is to work through the

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

6 --o0o--

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

10 --o0o--

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

22 Again there will be public outreach as part of
23 the Coastal Commission review. We'll have to do a master
24 plan amendment to incorporate the new land uses into our
25 master plan. So that planning process should be completed

1 in '05, and that does include the power plant site.

2 --o0o--

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

15 --o0o--

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

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

25 The power block is the plant itself. And the

1 south tank form, Duke has already started demolishing some
2 of those tanks. And the LNG sites, the old natural gas
3 site, the tanks have been removed. And that site could be
4 a site for a replacement plant, but that site has not been
5 specifically identified.

6 --o0o--

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

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

17 --o0o--

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

21 --o0o--

22 MS. ANDERSON: So what was the intent of the
23 original transaction? Again, it was our intent to acquire
24 tidelands at no cost and minimal risk to the port and to
25 the state, to be able to redevelop the property, to

1 decommission the existing plant at the end of the lease
2 term, and to have any underlying ground and water
3 environmental issues resolved at the site.

4 --o0o--

5 MS. ANDERSON: There are two key documents:

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

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

13 --o0o--

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

19 --o0o--

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

23 --o0o--

24 MS. ANDERSON: In the cooperation agreement, if
25 Exhibit L does provide the schedule which Jennifer

1 discussed, which the next step is to file the application
2 for certification to the CEC by no later than June 30,
3 2006. That could occur earlier, but this is the outside
4 date by which that could occur. Development has to be
5 determined to be commercially reasonable, or the
6 replacement generation plant would not have to be
7 constructed.

8 --o0o--

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

20 --o0o--

21 MS. ANDERSON: In addition to that -- and this
22 was all we could fit on this screen -- there were numerous
23 other oversight agencies that will have control over
24 replacement generation. The port does not have that
25 control. Our sole control would be if we entered into a

1 land-use agreement for a site on tidelands.

2 --o0o--

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

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

17 MR. HICKOCK: Good afternoon. My name is Randy
18 Hickock, and I'm the Senior Director for Duke Energy's
19 operations here in California, meaning that I have
20 operational responsibilities for the four facilities that
21 Duke has within the State. I've brought with me today
22 Kelly O'Brien, who is in charge of development for Duke
23 Energy North America. And she's available to help answer
24 questions to the extent that you have them regarding what
25 our activities have been to date and the like.

1 I will share with you all -- we have a letter
2 addressed to the State Lands Commission, and I'll
3 summarize it very briefly. This -- essentially Duke would
4 like the State Lands Commission to know that we are in
5 full compliance with our contract and our lease at South
6 Bay. We have been diligently pursuing the development of
7 a replacement generator plant. The nature of that process
8 in the early stages, it's not one that makes it publicly
9 obvious.

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

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

21 CHAIRPERSON BUSTAMANTE: Yes. In the process of
22 making sure that a site is selected, I'd asked if there
23 were different processes that would be pursued in order to
24 be able to do your due diligence. And I don't know if any
25 of that has been attempted or has been written out or if

1 there's been a memo that's indicated that you are pursuing
2 any of those activities.

3 MR. HICKOCK: We have been pursuing those
4 activities.

5 CHAIRPERSON BUSTAMANTE: In what way?

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

11 So we have been looking at a number of sites in
12 San Diego County where you could put a replacement
13 facility, looking at anything from a single two-on-one
14 combined cycle configuration to a larger four-on-two
15 combined cycle configuration, could be 500 megawatts up to
16 1,000 megawatts. I believe we --

17 CHAIRPERSON BUSTAMANTE: Anything promising at
18 this point?

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

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

24 CHAIRPERSON BUSTAMANTE: You're not giving up any
25 trade secrets by letting us know what that is?

1 MR. HICKOCK: We'd prefer until we have site
2 control over the parcel not to reveal the specific
3 location.

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

19 Kelly, you want to jump in? Anything else?

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

22 Commissioners, we appreciate your interest in
23 this matter. And as Randy said, that to date a lot of the
24 work has really been done behind the scenes because it's
25 been high level fatal flawed, due diligence kind of

1 studies that wouldn't be necessarily made available to the
2 public.

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

15 But we looked at primarily sites that could
16 support a 620 megawatt two-by-one combined cycle plant.
17 And as we've gone through the process, and the market has
18 changed in the power industry and in the economy in
19 general, a lot of this project, whether or not it's
20 commercially feasible to go forward will depend on having
21 a long-term power purchase agreement in order to support
22 financing a facility. And as we've had discussions with
23 potential counter-parties for a power purchase agreement,
24 it appears that there may be some difference of opinion in
25 what people may be looking for as far as size of a new

1 plant, the type of technology that could be used, which
2 could somewhat throw out some of the feasibility studies
3 we've done to date as we focus in on what people are
4 actually going to be willing to sign up for long-term
5 carts for. We may be able to go back and look at other
6 sites that we initially threw out. And it will help us
7 hone in on what exactly we need in terms of infrastructure
8 to support the project as we continue to process to try to
9 get a long-term power purchase agreement.

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

15 CHAIRPERSON BUSTAMANTE: Mr. Controller.

16 COMMISSIONER WESTLY: There's three points.

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

25 What worries me here -- and I am also a

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

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

25 MS. O'BRIEN: Of course -- I'll only clarify one

1 thing. First, it's one offsite is what we narrowed it
2 down to. There's always the option, I would assume, at
3 some point looking at onsite, because all the
4 infrastructure is there and it would have -- as far as
5 building new additional infrastructure it would have the
6 lowest impact from that standpoint.

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

10 However --

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

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

20 With regards to a power purchase agreement, to be
21 honest with you, I don't have an answer on that right now,
22 when we could expect to close a deal like that. There are
23 just too many uncertainties going forward. And, as you
24 know, some -- there's recently been an RFP that still
25 needs to be -- continue to be fleshed out with one of

1 obviously the largest potential counter-parties in the
2 area. And I could not tell you -- those discussions will
3 be ongoing. But to give you an idea of when any
4 discussions may close on that, I just can't do it right
5 now unfortunately.

6 COMMISSIONER WESTLY: Could this drag out five 5
7 or ten years?

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

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

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

22 And certainly if you have any ideas on
23 counter-parties or a way to get a long-term PPA, we'd
24 certainly love to hear it. I mean what's happening in the
25 Legislature in support of potentially tearing down the

1 older, less efficient plants certainly helps our cause as
2 we go forward.

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

5 MS. O'BRIEN: Not these days.

6 CHAIRPERSON BUSTAMANTE: I know, I know.

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

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

17 The most material developments I think on that
18 front, there will be some transmission upgrades on SDG&E's
19 system that I believe are completed next year. And then
20 we're waiting to see what the fallout from SDG&E's RFP is.
21 We know that they've proposed buying power from Otay Mesa,
22 they've proposed buying power from a new plant at Palomar.
23 And the ISO I think will have to run some transmission
24 studies with those scenarios and see what they think the
25 must-run needs for South Bay are, you know, into the

1 future.

2 My expectation is that there will always be some
3 level of must-run need for South Bay at least for the next
4 several years. Beyond that I think the California ISO is
5 probably the best entity to give you an objective opinion.

6 CHAIRPERSON BUSTAMANTE: What if it was revoked?

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

11 So --

12 CHAIRPERSON BUSTAMANTE: Especially for an
13 inefficient one?

14 MR. HICKOCK: Particularly for an inefficient
15 one. Yeah, it's -- we've got units that are -- they're
16 largely 10,000 heat rates, which aren't bad by the
17 standard of their day, but relative to a new combined
18 cycle are inefficient. And we've got one unit that's
19 12,000 megawatts. It's a Peaker. So, you know, it's --
20 much of South Bay's existence is a function of its need
21 for local reliability purposes.

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

1 MR. HICKOCK: Yes.

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

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

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

10 MR. HICKOCK: Yes.

11 CHAIRPERSON BUSTAMANTE: I see.

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

14 COMMISSIONER WESTLY: Thank you.

15 CHAIRPERSON BUSTAMANTE: Duke, can you keep
16 yourself available?

17 MR. HICKOCK: Sure.

18 CHAIRPERSON BUSTAMANTE: Environmental Health
19 Coalition.

20 Albert.

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

25 After I speak Al Shur from the International

1 Brotherhood of Electrical Workers Local 569 is going to
2 speak, Bruce Reznik and Allison Rolle from San Diego Bay
3 Keeper, and Jim Peugh from the San Diego Audubon Society.

4 First we'd like to thank the Commission for
5 holding these meetings in the power plant down in San
6 Diego, because the public will have an opportunity to
7 engage with you and speak with you. And as you know, the
8 power plant is an issue of high concern public interest.
9 So we appreciate when you guys hold meetings down in San
10 Diego, just to let you know.

11 First I'd like to bring a couple things to the
12 attention of the State Lands Commission that are relevant
13 to the South Bay Power Plant.

14 First, as you may know, recently California
15 Environmental Protection Agency adopted pretty
16 groundbreaking environmental justice guidelines in the
17 State of California. And in your handout, this booklet
18 that you have, I see Steve looking through already, is a
19 book that kind of sums up the recommendations that have
20 been adopted by Cal EPA, and it was created by EHC and
21 other allied lied groups throughout the state.

22 The guidelines which apply to all departments of
23 California EPA put California as a leader in the country
24 in implementing a policy to protect the public health and
25 impacted communities.

1 And just to quickly go through some of the things
2 that would relate to South Bay Power Plant is the adoption
3 of the precautionary principle. And that basically says
4 if there's a reason for concern, like a public health risk
5 or environmental risk, you take action immediately.

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

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

23 Finally, on the implementation guidelines it's
24 called for ensuring a meaningful public participation.
25 And I'm going to speak more about that later on. And that

1 really is talking about having more of the public role in
2 the public process. So you actually impact the public
3 process as opposed to just participating in it.

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

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

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

25 As you have in your handout there's a Chula Vista

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

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

1 these community concerns. And, again, I've only seen Duke
2 kind of interfere with that process and delay it.

3 As you can see, I -- there's another handout you
4 have here that has upcoming major events. As you can see,
5 I mean the air permit is coming up for renewal in March of
6 2004, the water permit is coming up for renewal in --
7 sorry -- for reinsurance in June of 2004. You heard about
8 the CEC process. The Chula Vista master plan, the first
9 draft is due to be completed January of 2004. There's
10 lots of events coming up. And the community hasn't had
11 really an opportunity to really to address our concerns in
12 regards to those issues. And we feel that creation of a
13 work group will be the first step in kind of getting the
14 community up to speed, exchanging information, having
15 these discussions about alternatives, the concerns being
16 aired. And we can move forward on all of these, including
17 the planning process and the permits.

18 The key example again is the Chula Vista Bay
19 Front Master Plan. You have a handout there again that
20 shows you the properties. You can see the power plant is
21 clearly a crucial part in this redevelopment process. And
22 as far as we know, redevelopment process can only go
23 forward and really have a good planned-out redevelopment
24 plan if we have the power plant included in that. And we
25 believe this underscores a need for the creation of a work

1 group and to immediately address these concerns, and as
2 the power plant and the planning process has moved forward
3 on its own for the past couple months already.

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

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

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

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

24 Again, we thank you for this opportunity to
25 address you.

1 And next will be Al Shur from IBEW Local 569.

2 MR. SHUR: Chairman Bustamante, Commissioners.

3 My name's Allen Shur. I represent -- I'm with IBEW Local
4 569 here in San Diego. And I represent almost 3,000
5 workers in the electrical industry and their families.

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

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

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

20 Thank you.

21 CHAIRPERSON BUSTAMANTE: Thank you.

22 Bruce.

23 MR. REZNIK: Honorable Chairman, Commissioners,
24 thank you for this opportunity to speak. I am Bruce
25 Reznik, the Executive Director of San Diego Bay Keeper.

1 I'm also testifying as a representative member of Surf
2 Rider Foundation and other members of the San Diego Bay
3 Council Alliance.

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

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

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

25 I would have been hoping for more at this point,

1 to be honest, in the process. I disagree with one thing.
2 I think -- did a great job. The permit for the waste --
3 or the discharge permit for water isn't coming up in June
4 '04. It actually was up in December '01. Unfortunately
5 that process has been delayed for two and a half years as
6 Duke continues to need more studies and more time and more
7 studies and more time. It's a process that I think the
8 Commissioners are very familiar with and I think are
9 getting frustrated with, as are the environmental
10 communities.

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

22 Now, I do support the working group proposal that
23 is out there. I support it somewhat reluctantly as a
24 member of many, many working groups that often go nowhere
25 for the environment, is often not represented, where we

1 are not listened to and we're up there as tokens. I will
2 support the working group, but only if we can ensure that
3 it is balanced, it is fair, and it is meaningful. And by
4 balanced, I mean environmentalists are represented. Fair:
5 We got to figure out a way to get them on there because we
6 are always at a resource disadvantage when it comes to the
7 other side. And meaningful: We need to actually be
8 listened to, and we need strict deadlines, and we need to
9 get this thing done.

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

19 Thank you very much.

20 CHAIRPERSON BUSTAMANTE:

21 Allison.

22 MS. ROLFE: Honorable Chairman, members of the
23 Commission, thank you for the opportunity to speak to you
24 today. My name is Allison Rolfe and I'm the Policy
25 Director at San Diego Bay Keeper. And I'm also a member

1 of the Port Chula Vista CAC for Bay Front Planning.

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

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

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

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

24 I was one of the people that met with Duke. We
25 met once. And we certainly didn't have any input on site

1 selection. But we did talk about the need for a technical
2 advisory committee and community involvement. The CHC
3 should be invited to recommend representatives with
4 appropriate expertise to sit on the technical advisory
5 committee. And due to the urban location of the power
6 plant, people will be watching. And some people will be
7 skeptical about the authenticity and composition of the
8 group. So it needs to be balanced and we need to ensure
9 that.

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

17 Thank you very much.

18 CHAIRPERSON BUSTAMANTE: Thank you.

19 Jim Peugh.

20 MR. PEUGH: I am Jim Peugh and I'm the Chairman
21 of the Conservation Bay of San Diego Audubon Society?
22 Well, much of what needs to be said has been said. You
23 all know that this power plant grinds up fish eggs, it
24 grinds up juvenile fish, and then grinds up the adult fish
25 that should be reproducing instead of getting squashed.

1 It poisoned the water with -- and copper. And he took the
2 bay to a tremendous extent disturbing some tire ecology.
3 These are things we shouldn't be doing. We particularly
4 shouldn't be doing them with public resources. This is --
5 the power plant is on public land. We shouldn't be using
6 public land to degrade the bay that belongs to the public.

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

17 Thank you.

18 CHAIRPERSON BUSTAMANTE: Thank you.

19 Mike Aguirre.

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

24 First off, there is a little bit of a misnomer,
25 because the power plant is not out of date. The power

1 plant has been upgraded many, many, many times. It is a
2 relatively efficient plant. Three -- two mechanics and
3 one engineer that work there, I've discussed it
4 extensively with them. And they -- one of the things that
5 they asked that it be pointed out is that the plant for
6 purposes of generation of electricity has been on a
7 continuous basis during the time that it was owned by
8 SDG&E as well the time that it's been owned by Duke has
9 been upgraded.

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

20 Number 3, I was disappointed to see that Duke
21 slid into the record after your staff had made the report
22 a letter dated October the 20th, which raised I assume
23 under the commercial feasibility provision of the contract
24 the condition that Duke be able to secure a third party
25 power purchase agreement. That is a very significant

1 condition because what that tells us is that Duke is
2 talking about obligating the plant to a third party and
3 having a third party sign such a condition after it knows
4 that the major retail consumer has declined to do that
5 with Duke. So that's a significant condition that needs
6 to be looked at.

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

24 Whether those payments constituted a bribe in
25 connection with the agreement -- the lease agreement and

1 the cooperation agreement is an open question. That issue
2 has not been investigated by our district attorney. It
3 has not been investigated by our state attorney general.
4 It has not been investigated by FERC. And it has not been
5 investigated by the Port District.

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

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

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

1 wholly failed to investigate these issues.

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

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

19 Thank you.

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

1 to be true, is there then a recourse?

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

4 CHAIRPERSON BUSTAMANTE: Would you?

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

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

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

22 CHAIRPERSON BUSTAMANTE: You will check on it?

23 ASSISTANT ATTORNEY GENERAL HAGER: Yes.

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

25 CHAIRPERSON BUSTAMANTE: Please.

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

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

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

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

19 ASSISTANT ATTORNEY GENERAL HAGER: Yes.

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

23 MR. AGUIRRE: Right. The third party purchasing
24 agreement basically would provide an insurance policy to
25 Duke that there is a retail or a wholesale purchaser that

1 has committed itself to purchase a substantial portion of
2 the output.

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

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

11 CHAIRPERSON BUSTAMANTE: That was in the original
12 agreement?

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

21 CHAIRPERSON BUSTAMANTE: I see.

22 MR. AGUIRRE: Thank you.

23 EXECUTIVE OFFICER THAYER: If I could respond to
24 that.

25 CHAIRPERSON BUSTAMANTE: Please.

1 EXECUTIVE OFFICER THAYER: I think you're making
2 reference to this letter that they passed out today?

3 MR. AGUIRRE: Correct.

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

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

18 MR. AGUIRRE: Right.

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

25 CHAIRPERSON BUSTAMANTE: I see.

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

14 CHAIRPERSON BUSTAMANTE: Thank you.

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

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

22 But the issue with regards to commercial
23 reasonableness and having a power purchase agreement to
24 help support that concept of commercial feasibility of the
25 plant, ultimately for the plant to be commercially

1 feasible going forward we have to be able to get
2 financing. That's the reality of today's market as it is
3 right now. Not to say it will be in 12 months or 24
4 months. I don't know. But today's market we have to have
5 financing to build a plant.

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

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

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

1 absolutely never happened.

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

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

14 Regarding the stakeholder process, I mean we
15 fully support a stakeholder process. You know, I'm
16 hearing some frustration that Duke hasn't been sitting at
17 a roundtable with some stakeholders and talking about the
18 plant. But part of that is we're not exactly sure what we
19 would talk about until we know what sort of plant would be
20 appropriate, what technology, what size, where it would be
21 located. And much of that is: What is the need for
22 incremental generation in San Diego and where would it be
23 located? And, you know, we are trying to find somebody to
24 buy -- to sign a power purchase agreement. And if we know
25 that there is a home for the power, then we can get

1 started on the stakeholder process to talk about what that
2 should look like. Now, if you want to start that earlier,
3 we're happy to participate.

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

10 MR. HICKOCK: Okay.

11 Thank you.

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

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

17 MR. HICKOCK: Okay.

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

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

1 the CAC process. So we will be involved in that.

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

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

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

14 (Laughter.)

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

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

24 MS. JIMENEZ: Good afternoon. Commissioner
25 Bustamante and other Commissioners.

1 I am Lupita Jimenez. I am Co-chair of the San
2 Diego County Green Party. And I wish to speak in favor of
3 decommissioning the South Bay Power Plant and removing the
4 plant from the Chula Vista bay front as soon as possible.

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

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

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

22 The port is now planning the development of lands
23 under their authority. We demand of the two areas that
24 this planning include the decommissioning of the South Bay
25 Power Plant. With coherent joint planning we envision

1 development which will include a landmark park for the
2 citizens of Chula Vista; a destination hotel, which will
3 fill many needs for us; and sustainable mixed use
4 development, with some imaginative low-rise residential.

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

12 Thank you.

13 ACTING COMMISSIONER MATEO: Thank you very much.

14 Let me see if I can say this name correctly. Is
15 this Nephi?

16 MR. HANCOCK: Nephi.

17 ACTING COMMISSIONER MATEO: Nephi. There we go.

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

21 I got involved with some of this because my local
22 asked me to come to the port hearings sometime last year,
23 and it was on the South Bay project. And since that time,
24 because I live in Chula Vista and my children, grand
25 children live there, that I am concerned about the

1 pollution, how we're going to deal with this. And I would
2 definitely like to see that we have community input into
3 what's going on. And we've tried -- these people have got
4 up and spoke previously to me. I've been with them at
5 committees, meetings and sat and listened. And it seems
6 that a lot of the presentations are put on, but then
7 they're out of time, and the people don't have a chance to
8 respond. There's just not enough time. It's time to go
9 home. We're all done. They don't get a chance to
10 respond. The people need a chance to respond to all of
11 these things that have been brought up previously to me
12 speaking.

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

15 ACTING COMMISSIONER MATEO: Thank you.

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

19 Thank you.

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

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

1 working group?

2 EXECUTIVE OFFICER THAYER: He has not.

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

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

10 MS. ANDERSON: Yes. I think as we said in our
11 presentation, the working group is being formed. There's
12 a meeting of the Citizens Advisory Committee on November
13 3rd, at which the details will be discussed as to how it's
14 formed, who will sit on it, what its mission will be. So,
15 yes, it will be formed in the next meeting of the CAC.
16 That's November 3rd. That should be culminated.

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

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

22 Thank you.

23 ACTING COMMISSIONER GONZALEZ: Okay, great.
24 Thank you.

25 ACTING COMMISSIONER MATEO: Okay. Was that an

1 informational item overall? Is there any action required?

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

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

13 EXECUTIVE OFFICER THAYER: Yes.

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

19 Now, if I have missed what some of the groups
20 wanted beyond that, please remind me, things that
21 actually -- besides obviously decommissioning the plant --
22 things that we missed. I know there was a separate call
23 for the environmental justice policy. The Lieutenant
24 Governor was also -- let me take the two separate because
25 I think the two are two separate ideas.

1 But first I'd like to make a motion for those
2 issues.

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

5 EXECUTIVE OFFICER THAYER: If I could --

6 ACTING COMMISSIONER GONZALEZ: The motion --
7 okay. Go ahead, Paul.

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

12 ACTING COMMISSIONER GONZALEZ: Just follow up
13 with the port.

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

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

20 EXECUTIVE OFFICER THAYER: Yes. I understand
21 that two letters and a request of the Attorney General's
22 office. So the original recommendation was for a letter
23 to Duke regarding meeting these two timelines, these two
24 time goals. A direction to staff to report back to the
25 Commission on the results of that. A request that the

1 Attorney General's office investigate the -- I guess the
2 contract provision that called for it to be forfeited or
3 affected if there was violations of state law and whether
4 any of the allegations that were mentioned today could
5 affect -- could bring about that result. And then finally
6 a letter or a communication to the port urging them to
7 establish the working group that has been requested.

8 Does that --

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

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

13 EXECUTIVE OFFICER THAYER: And of course --

14 ACTING COMMISSIONER MATEO: I second that.

15 All in favor?

16 (Ayes.)

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

21 ACTING COMMISSIONER GONZALEZ: Now, I think the
22 second part of that, there was a request made concerning
23 Cal EPA's environmental justice guidelines and a request
24 that we review those and see if we could actually
25 strengthen ours. I understand that that might take

1 legislation. I was wondering if we could get for the next
2 meeting maybe an item on sponsoring legislation that would
3 do that. So it could still need a vote. But at least an
4 item to come before you vote that would ask the Commission
5 to sponsor such a legislation.

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

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

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

24 My understanding is that there was a report put
25 together by one of their action committees or groups that

1 was recently approved by one of the other groups at Cal
2 EPA, but that perhaps the process isn't even done yet.
3 But, no matter, we'll continue to look at that process and
4 see if there's items in there from the Cal EPA process
5 that would allow us to improve our product.

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

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

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

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

24 ACTING COMMISSIONER GONZALEZ: Okay. And do we
25 need a motion then to ask you to do that? Or that

1 just comes back, we need to do that?

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

5 ACTING COMMISSIONER GONZALEZ: Okay.

6 All right. I think that resolves then Item No.
7 62.

8 Item 63 was moved to the consent item calendar.
9 I believe we're on Item 64.

10 EXECUTIVE OFFICER THAYER: Yes, Madam Chair.
11 Item 64 has to do with title settlement and boundary line
12 agreement with the Bel Air Bay Club in Los Angeles.

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

15 SENIOR STAFF COUNSEL FOSSUM: Good afternoon,
16 Commissioners.

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

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

24 SENIOR STAFF COUNSEL FOSSUM: Sure.

25 ACTING COMMISSIONER MATEO: Could the audience

1 just stay sort of quietly, so that we can hear you, we can
2 think.

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

7 The goals of the proposed settlement are, first,
8 for the state to obtain clear title to a 780 foot stretch
9 of sandy beach lying in front of the Bel Air Bay Club.
10 It's an area from which the public has been excluded for
11 75 years.

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

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

20 Lease 8466 is for a club recreational use of a
21 small triangle of beach, less than 3/10 of an acre; at the
22 rate of \$50,596 the first three years, followed by \$56,921
23 for the next two years; and thereafter rent will be
24 adjusted by the Commission. That area is shown, in this
25 triangle, on the right-hand side of the photograph.

1 The third lease, 8467, is for construction of
2 temporary sand berms by the club, in exchange for the club
3 providing beach cleaning, lifeguard services, and
4 construction of a stairwell or similar device that will
5 allow public access across the city-maintained groin at
6 the upper end of the club.

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

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

18 In 1930 the Attorney General's office and the
19 District Attorney of Los Angeles filed an action to abate
20 those groins as a nuisance. The subsequent year the
21 Legislature authorized the newly created Division of State
22 Lands in the Department of Finance to permit such
23 structures. The club's predecessor applied for permits in
24 1932. And in the next few years considerable discussions
25 between the club's engineers and State Lands Division

1 staff took place.

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

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

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

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

24 So since 1938 there's been -- excuse me -- '37
25 there's been a recorded agreement establishing that yellow

1 line as the boundary.

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

15 Five days after the Commission came into
16 existence the State Personnel Board began an investigation
17 of Sturzenacker and of Alexander, the individuals who had
18 arbitrated the boundary and were involved in the oil
19 controversy. A complaint was filed with the State
20 Personnel Board, and they were suspended by the
21 Commission. Following months of investigation the State
22 Personnel Board dismissed them both. However, in that
23 dismissal no discussion of the Bel Air -- excuse me -- the
24 Bel Air Bay Club boundary line was set forth in the
25 findings by the Personnel Board.

1 On May 3rd, the following the year, the State
2 Lands Commission denied a club application to modify the
3 groins; and, in addition, repudiated the line of the
4 ordinary high water mark entered into by Sturzenacker.

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

9 (Laughter.)

10 SENIOR STAFF COUNSEL FOSSUM: Better late than
11 never.

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

19 The crux of this dispute and rationale for the
20 settlement is that while the facts the Commission have
21 developed indicate the accretions to this beach were the
22 result of the groins, state officials entered into an
23 agreement in 1937 that purported to fix the boundary. We
24 have for the last 18 months researched facts and laws and
25 subsequently argued and negotiated with club

1 representatives based on the strengths and weaknesses of
2 our respective claims.

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

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

17 In actions taken on Item 18 through 30 earlier
18 today, except 19 and 28, you authorized acceptance of 11
19 additional areas of public beach access and recreational
20 use in Malibu. The Commission has now accepted a total of
21 186 beach easements for the public at no taxpayers'
22 expense. Obtaining these areas for public use without the
23 expenditure of tens of millions of dollars is a remarkable
24 accomplishment of the Commission.

25 The eleven easements accepted today total 640

1 linear feet of beach. The parcel to be deeded by the Bel
2 Air Bay Club to the state covers 780 linear feet.

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

10 I'll be happy to answer any questions.

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

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

17 ASSISTANT ATTORNEY GENERAL HAGER: Yes, we do.

18 ACTING COMMISSIONER GONZALEZ: Thank you.

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

1 The first one here is Mr. Martin Murphy.

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

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

7 First, it's unconstitutional. Article 15,
8 renumbered as Article 10 of the Constitution, forbids the
9 state from divesting itself of tidelands. Article 4 of
10 the Constitution forbids the state from gifting tidelands
11 to any person. Article 3 of the Constitution, Section
12 31 -- Article 3 Section 3 requires the State to comply
13 with State law. And the California Coastal Act Section
14 30609.5 forbids the state from divesting itself of lands
15 between the nearest public highway and the sea, which is
16 Pacific Coast Highway.

17 Secondly, the original agreement under which
18 the -- the original boundary line agreement entered in by
19 Sturzenacker and Alexander was entered into in violation
20 of the Constitution. These people were removed from
21 office. As part of their removal from office it was
22 charged that persons dealing with the state were required
23 to pay money to an associate of theirs before their
24 applications would be considered. In addition,
25 Sturzenacker required a percentage of business from

1 certain people. And when we was questioned of his
2 activities by the Director of Finance, he lied. So
3 clearly any activity that Sturzenacker and Alexander
4 engaged in while they were state employees was not
5 authorized by the State. They had no authority to enter
6 into these contracts. So the original boundary line
7 agreement is void.

8 What was this original boundary line agreement?
9 To simplify it I've -- this map in red and blue. And if
10 you would look at that map, you will see that there was
11 this uncertainty in 1937 as to where the tideland. But
12 that uncertainty was only whether the tideland was 50 feet
13 or 100 feet from Pacific Coast Highway. What Sturzenacker
14 did, he granted the club a boundary line that was 275 feet
15 from Pacific Coast Highway along a stretch of land that's
16 1200 feet long. That's a lot more than a hundred thousand
17 square feet. It's a couple of acres.

18 And such a boundary line agreement is void on its
19 face. And you can not now correct that boundary line
20 agreement by entering into another boundary line agreement
21 because the requirements for a boundary line agreement is
22 that there's a genuine dispute as to where the boundary
23 line is. The genuine dispute was only between where the
24 1923 and '15 boundary lines. There is no genuine dispute
25 for the 1937 boundary line. It was an accretion.

1 Two more points. In addition to the --

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

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

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

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

17 And with respect to the burden of proof which I
18 think has led to the staff's conclusion, I think the --
19 you know, the arguments of the club have been heard not in
20 public but in private. I think that the burden of proof
21 in this matter is misplaced. The burden of proof is on
22 the club to show that it's entitled to this land. This is
23 a large piece of land in the most valuable portion of the
24 Will Rogers State Beach that is most heavily used by the
25 public in Los Angeles. And you're giving away millions of

1 dollars worth of state land in return for nothing.

2 So I would strongly urge that this matter be
3 reconsidered.

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

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

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

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

21 Thirdly, with regard to this presumption that we
22 should have the burden of proof, there's -- in the Public
23 Resources Code Section 6341 there's a statute of
24 limitations with regard to boundary -- challenging
25 boundary line agreements. And that has long since ceased.

1 And my last point is with regard to where the
2 last natural condition of the line is. That's a very
3 difficult question. It goes -- it could go beyond the
4 area that's been talked about. And these hearings could
5 go back to 1891 when the great wharf was built not too far
6 away from this site.

7 Thank you.

8 ACTING COMMISSIONER MATEO: Thank you.

9 Do members have any questions of those who
10 testified?

11 ACTING COMMISSIONER MATEO: Does staff have any
12 comments?

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

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

24 ACTING COMMISSIONER ARONBERG: I know that has
25 been a long, difficult one. For those involved in it, has

1 been hard work. And I want to sort of echo the speaker,
2 limited question, which is: Is this the best that can be
3 done on behalf of the State? And can you go ahead and
4 make a little opinion about that one more time, in light
5 of the speaker who raised some legal issues?

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

16 We're following the Commission's recent policy
17 addressed to the staff to charge rent for those kind of
18 structures. We're getting rent for those. We're getting
19 \$50,000 plus a year for a small triangle.

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

23 Now, that doesn't get the legal issue. But I
24 wanted to say that there's more than just the property per
25 se. That we're getting public access, which is a major

1 accomplish we believe in the face of an agreement that's
2 been on the books since 1937 -- a recorded agreement.

3 I've been at the Commission now for 26 years.
4 And one of the mantras that I was really taught was that
5 we will never challenge a State Lands Commission boundary
6 line agreement. And I was admonished early on this one.
7 And I ultimately was successful I think by telling them
8 that this was not a State Lands Commission boundary line
9 agreement. It was a predecessor to the Commission that
10 existed at the time. And so we are not challenging one of
11 our agreements, but of the predecessor's. And we're
12 challenging it, but that doesn't mean that we'd be
13 successful in court. We don't know what would happen.
14 It's the old adage of half a loaf or a bird in hand.

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

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

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

25 Do I have a motion?

1 ACTING COMMISSIONER ARONBERG: Move adoption.

2 ACTING COMMISSIONER MATEO: Second.

3 All in favor?

4 (Ayes.)

5 ACTING COMMISSIONER MATEO: That motion passes.

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

8 EXECUTIVE OFFICER THAYER: Yes, it does.

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

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

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

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

18 (Thereupon an overhead presentation was
19 Presented as follows.)

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

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

23 Okay. We wanted to let the Commission see what's
24 happening in the Port of Los Angeles rather than give a
25 narrative. And we isolated the presentation with regards

1 to blight through visual intrusion, a phenomena that
2 hasn't been addressed in the past, and also related to
3 project-specific mitigation.

4 --o0o--

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

13 --o0o--

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

21 --o0o--

22 MR. MARDERICH: Here's another intersection,
23 still four blocks away. And there's a forest of cranes.
24 This is a predominantly Hispanic low-income residential
25 area.

1 Real estate sells very cheap there, by the way,
2 now.

3 --o0o--

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

10 --o0o--

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

14 --o0o--

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

20 --o0o--

21 MR. MARDERICH: This is another shot a little
22 further to the east of the horizon from Rancho Palos
23 Verdes, which is one of the tenth most wealthy areas in
24 the United States. And these people as well as the people
25 in Wilmington have a right to a scenic horizon.

1 --o0o--

2 MR. MARDERICH: Going up the hill even further
3 away, still the blight from Wilmington is inescapable.

4 --o0o--

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

8 --o0o--

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

11 --o0o--

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

15 --o0o--

16 MR. MARDERICH: This -- yeah, thanks.

17 So this is what you would see if you sat in your
18 living room and looked out, these cranes.

19 They were never mentioned in EIR.

20 --o0o--

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

24 --o0o--

25 MR. MARDERICH: This is the ceiling fan coated

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

7 --o0o--

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

11 --o0o--

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

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

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

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

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

1 of it.

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

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

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

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

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

19 Unfortunately, I don't think a right to a skyline
20 view is one that we're given in California, at least
21 that's what the Coastal Commission has told me when I
22 asked for my rights to a scenic view. But we are -- we
23 share your concerns. But we also have gotten concerns at
24 least in our office from the attorney, not only in State
25 Lands but also the Attorney General's office.

1 So in accordance to what I told Julie when she
2 came from NRDC to speak with me, we want to see this
3 happen, but we need NRDC or the -- is it the Homeowners
4 Association there in San Pedro? -- to work with the
5 Attorney General's deputy, the State Lands attorney, and
6 for everybody to come together and form a consensus so we
7 can allow it to happen in a way that's legal and that's
8 constitutional. We don't want to be making exceptions
9 even for environmental groups or even for good projects
10 that we'd be -- later be forced to make for developers. I
11 mean that's the problem that we run into.

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

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

25 ACTING COMMISSIONER MATEO: It would help me to

1 understand what the "it" was all the way through here. I
2 don't know -- I really don't know what your issue was.

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

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

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

25 And I apologize for doing this backwards. And

1 we'll get to the "it" of the two projects.

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

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

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

23 That money -- the number one use of that money is
24 for park land. And so the question is there are now nine
25 proposals for how to use money to those proposals, and

1 only two are for park lands, one in Wilmington, one in San
2 Pedro. While clearly there's a local interest in having
3 those parks, we at NRDC believe that the principal purpose
4 is for the state. The state needs parks. The state needs
5 parks near coastal property. The port would benefit from
6 the park land because it would improve business at
7 Catalina terminal and the cruise terminals.

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

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

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

1 appropriate. There are a lot of projects that are not
2 appropriate. We think these two are.

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

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

12 So thank you very much.

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

17 Thank you very much.

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

20 MS. GUNTER: Good afternoon, ladies.

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

24 MS. GUNTER: I think that the point was very
25 clearly made by the two previous speakers. And I just

1 want to reiterate that I think that when people get
2 creative, they can do lots of great things. And I mean
3 the bay we have here, and that was the urgency of Pier
4 400, Energy Island, and the predication of public safety
5 as an alternative use for that property urged the port and
6 State Lands to work together to find a relocation for the
7 wetlands that they had to accommodate. And if you
8 remember, part of the impetus for that was -- I have an
9 article that I'd like to pass over to you to look at just
10 real quickly.

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

25 And, by the way, this is also a view from my

1 house prior to Pier 400. And this is what it looks like
2 today.

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

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

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

24 One more thing and I will leave. You have copies
25 of articles of a survey -- mentions a survey that I

1 conducted in 1999 to all the cruise passenger -- or cruise
2 terminals. And it has to do with their input about the
3 impression that the cruise terminal passengers have. They
4 actually rated the Port of Los Angeles as the worst port
5 in the nation. And they described it as dirty, concrete,
6 industrial, ugly -- all of those things. The surrounding
7 area reflects that as well. If we wanted to increase
8 tourism, if we wanted to build that opportunity for the
9 port, the port could do a lot, a lot to maximize that
10 potential.

11 Thank you very much.

12 ACTING COMMISSIONER MATEO: Thank you.

13 Mr. Skip Baldwin.

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

23 I understood what you had to say today about
24 working with the community, and you have your restrictions
25 and so forth. I do -- since I'm here, come all this way,

1 I would like to read my public comments however.

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

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

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

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

20 Some of reasons are:

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

24 2) The Wilmington green belt area is directly
25 negatively impacted by many port actions. The direct

1 nexus between port activities and park area are too
2 lengthy to enumerate here. But I can simply sum it up by
3 saying, if there were no port, there would be no negative
4 impacts.

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

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

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

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

18 Thank you.

19 ACTING COMMISSIONER MATEO: Thank you.

20 Ms. Laura Hunter.

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

23 My name is Laura Hunter with the Environmental
24 Health Coalition. And I just welcome the opportunity to
25 quickly brief you on -- I know you've heard a lot about

1 the Chula Vista Bay Front Development today. But there's
2 this one other little element that I just wanted to give
3 you a quick update on -- clear your thinking on.

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

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

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

24 So we just didn't leave it up to the four winds.
25 We contracted with outside counsel in the form of

1 Schupolly & Weinberger in San Francisco, which is a law
2 firm that has very extensive knowledge about these things,
3 and asked them some questions that had been -- kept coming
4 up for us locally. One is, is a land trade legal? Number
5 2, is it doable? What are the conditions? What are the
6 whereases, and all that kind of stuff. And third, which
7 is more of a coastal commission question: If you downzone
8 an area, does that constitute a taking under the
9 California Coastal Act?

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

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

20 Thank you.

21 ACTING COMMISSIONER MATEO: Thank you.

22 Mr. Stanley Zobel?

23 Mr. Zobel's not here?

24 Then we're to Jim -- and I can't pronounce your
25 last name.

1 MR. PEUGH: Peugh.

2 ACTING COMMISSIONER MATEO: Peugh.

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

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

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

24 Thank you.

25 ACTING COMMISSIONER GONZALEZ: And, Paul, my

1 understanding is you've talked with Ms. Hunter and we are
2 working with them to provide as much be expertise and --
3 that we have.

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

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

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

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

22 If I may, I'd also like to respond just briefly
23 to the San Pedro-Wilmington project. And that is to say
24 that we have spent a lot of time meeting with the folks
25 who spoke today and some of the others as well.

1 And we also understand that the Commission as
2 well as its staff firmly believe that the ports are not
3 exacting any California environmental law and that they
4 must comply with CEQA as well as the air and water quality
5 statutes that the state has. And kind of the Public Trust
6 Doctrine is not a shield that the Commission -- that the
7 ports can use to prevent compliance with those laws. But
8 there are a variety of ways that they can comply. And we
9 think that the appropriate ways are to harmonize public
10 trust requirements with these other statutes.

11 And as presented to us now, we disagree with the
12 assertions of the attorney and several others. We think
13 that these two particular projects -- expending port
14 revenues on those projects are not consistent with the
15 Public Trust Doctrine. But as the Commissioners have said
16 time and time again, as we considered today, that we're
17 interested in opening the situation as well. And that I
18 think I've discussed with Ms Feuer as well as some of the
19 other -- some of the Commissioners, some ideas that we've
20 generated in-house -- Curtis actually was the initiator of
21 it -- that have to do with sort of a three-legged swap,
22 where the net effect would be that non-trust -- or trust
23 expenditures would be used to buy good -- or land for good
24 trust uses. And with the concurrence of the city perhaps
25 some of that money would be revolved into buying these two

1 properties. And we would be able to protect the public
2 trust precedent, which is extremely important up and down
3 the state, and still end up with a situation where these
4 parts, which have been enormously important to the
5 communities here, the communities have been working on
6 them for many years, before this settlement was entered
7 into with China Shipping, and hopefully soon the work will
8 be done and we'll all be successful.

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

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

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

21 Okay. I'm sorry.

22 ACTING COMMISSIONER MATEO: And so if you
23 could --

24 EXECUTIVE OFFICER THAYER: -- hold that thought?

25 ACTING COMMISSIONER MATEO: -- wait to get that

1 in -- yeah, hold that thought.

2 Mr. Eichwald.

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

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

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

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

24 The process that they're describing, is that one
25 that would require us to change the law?

1 EXECUTIVE OFFICER THAYER: I'm not sure.

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

9 EXECUTIVE OFFICER THAYER: Well, I --

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

21 And then you have throughout the state -- a
22 perfect example is the City of Oakland, who's going into
23 extremes. You have the rare and famous nexus lawsuit,
24 which at one time our group was assigned to do an amicus
25 brief on the side of the state because we thought that was

1 not proper use of state funds.

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

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

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

22 MR. MARDERICH: We are in no rush, on a deadline
23 for December. In other words, this process has been, how
24 should I say, absent for a century at the Port of Los
25 Angeles. So a month here, a month there. But I think

1 it's -- the Commission needs to give some guidance to the
2 port, because you have people that have protected the
3 city -- the state's interests to the degree where I can't
4 do this because it's off of port land. And then when you
5 have the issue where you overcharged the port for city
6 services, that then was an overreaction. Now you can't do
7 it. And so it's an educational type of thing, a cultural
8 change. And I think the Commission and staff needs to do
9 some training. But at the same time the community needs
10 training on how not to abuse the system.

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

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

24 ACTING COMMISSIONER GONZALEZ: Well, it sounds
25 then -- correct me if I'm -- I may be completely off. I'm

1 now confused. I thought we were talking completely about
2 these two parts. And it seems like there's two different
3 things going on. There's the park issue and there's
4 the -- you're not confident that the L.A. Port is going to
5 continue in their process of looking out for these types
6 of issues so we're not correcting them in the future, is
7 that correct?

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

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

24 EXECUTIVE OFFICER THAYER: So I guess in response
25 to your identification of this division of issues here --

1 you know, and that's what I was asking for direction more
2 on, was what to do about the two parts. But what I hear
3 Mr. Marderich talk about is the larger issue. And that's
4 the one that I was responding to most recently and saying
5 that this is not something that we could just bring back,
6 but it's something we need to consider --

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

11 EXECUTIVE OFFICER THAYER: And so then we turn.

12 MR. MARDERICH: Yes, that makes sense.

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

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

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

20 And the second being the question of the parks.
21 And that was the one where I asked on behalf of Lieutenant
22 Governor that staff obviously continue to find creative
23 solutions, to have NRDC or whoever's representing
24 plaintiffs to talk to the Attorney General's office as
25 well as our attorneys to make sure whatever is being

1 proposed or if anything comes forward, that it's something
2 that the Commission can support comfortably. I mean
3 obviously something that's legal. So that was what I had
4 asked on behalf of Lieutenant Governor.

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

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

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

13 ACTING COMMISSIONER GONZALEZ: So it will be
14 worked --

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

18 ACTING COMMISSIONER GONZALEZ: Thank you.

19 ACTING COMMISSIONER MATEO: Is there anybody else
20 from the audience who wishes to provide public comment?

21 Okay. That brings that section of the agenda to
22 a close.

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

25 EXECUTIVE OFFICER THAYER: Yes.

1 ACTING COMMISSIONER MATEO: Do you have anything
2 that needs to be read into the record prior to that?

3 You just go into closed session?

4 This is a little different than some of the other
5 boards and commissions I sit on. But we usually have a
6 paragraph there.

7 Okay. At this time we are going to go into
8 closed session. And I would ask the audience to leave the
9 chambers please.

10 (Thereupon the California State Lands
11 Commission recessed into closed session.)

12 (Thereupon the California State Lands
13 Commission meeting adjourned at 5:45 p.m.)

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