

MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

FERRY BUILDING MARKETPLACE
ONE FERRY BUILDING
PORT COMMISSION HEARING ROOM, 2ND FLOOR
SAN FRANCISCO, CALIFORNIA

MONDAY, FEBRUARY 2, 2004

2:00 P.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
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ORIGINAL

APPEARANCES

BOARD MEMBERS

Mr. Steve Westly, Chairperson
Mr. Cruz Bustamante
Ms. Donna Arduin, represented by
Mr. Fred Klass

STAFF

Mr. Paul Thayer, Executive Officer
Mr. Jack Rump, Chief Counsel
Mr. Curtis Fossum, Senior Staff Counsel

ALSO PRESENT

Mr. Alec Bash
Ms. AnneMarie Conroy, Treasure Island Development Agency
Mr. Peter Douglas, Executive Director, Coastal Commission
Mr. Steve Goschke, Morro Bay Powerplant
Ms. Ruth Grayanis, Public Trust Group, Treasure Island
Wetlands Project
Mr. Alan Hager, Assistant Attorney General
Mr. Burr Heneman, Commonweal
Ms. Kimia Mizany, Save The Bay
Mr. Byron Rhett, Port of San Francisco
Ms. Nan Roth

APPEARANCES CONTINUED

ALSO PRESENT

Ms. Linda Sheehan, Ocean Conservancy

Mr. Paul Siri, Commonweal

Ms. Sandra Threlfall, Public Trust Group

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1 ACTING COMMISSIONER KLASS: Second.

2 CHAIRPERSON WESTLY: Great. The motion has been
3 moved and seconded.

4 All in favor.

5 (Ayes.)

6 CHAIRPERSON WESTLY: The minutes are unanimously
7 adopted.

8 Next order of business is the Executive Officer's
9 report. Mr. Thayer promises me this will be controversial
10 and noteworthy -- no.

11 (Laughter.)

12 CHAIRPERSON WESTLY: Exciting, riveting? What
13 were the adjectives you used?

14 EXECUTIVE OFFICER THAYER: All of those.

15 CHAIRPERSON WESTLY: All of those. Okay.

16 Mr. Thayer, may we have your report.

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

19 My report is very brief today. I just wanted to
20 bring the Commission up to date on progress we've made in
21 responding to some citizens who'd come and visited with us
22 at the last meeting during the public comment period from
23 San Francisco.

24 There were several individuals that asked that we
25 undertake some additional efforts to improve

1 communications with members of the public that had an
2 interest in the matters coming before us. And we've been
3 in communication with the speakers and others from the Bay
4 Area. We're looking at establishing -- or conducting a
5 couple of workshops to explain public trust doctrine and
6 to hear more about what people think of some of the public
7 trust issues that are occurring in San Francisco. And of
8 course once we do the work developing that, we expect to
9 take that on the road and we'll do that in southern
10 California as well.

11 We're not quite done with all the planning that's
12 necessary for this. But I wanted to make sure the
13 Commission understood that we've responded to the people
14 who spoke and we think we're heading in a great direction.

15 The only other item I wanted to bring up, which
16 is a little bit off the schedule, is there is a
17 representative today here from the Port of San Francisco
18 who wanted to welcome you to this facility. We're at
19 their board meeting room. And if Byron -- with the
20 permission of the Chair, if Byron Rhett could come up to
21 the podium.

22 CHAIRPERSON WESTLY: Absolutely.

23 You know, as you're coming up let me just
24 reiterate how important it is, I believe it is, to work
25 closely with members of the public. You may be aware a

1 Republican legislator had a poor interaction with the
2 State Lands Commission staff, and his response was to
3 submit legislation calling for the removal of the
4 Controller as a Board member.

5 Now, I'm not sure that will pass the logic test.
6 But as you might imagine, that wasn't the best thing I
7 could hear. So if you could continue to do what I think
8 has generally been an excellent job of reaching out to the
9 community and working in a collegial way, I'd appreciate
10 that.

11 We're delighted to have you here.

12 MR RHETT: Those are my words.

13 Just wanted to say that we're delighted to have
14 you here in San Francisco. We're really pleased that
15 you've come here to enjoy this building and our facility.
16 We appreciate you coming to the port. I wanted to say
17 that on behalf of the Port Commission.

18 As you know, this building was built in 1898.
19 It's been through a number of changes, not all for the
20 better. We're really pleased with the present state of
21 the building, this present restoration, and this great
22 space that you are enjoying today.

23 And we wanted to thank you and your staff for the
24 role you played in allowing this rehabilitation and the
25 other improvements that we've made along the waterfront.

1 Our offices are now in Pier 1. You're staff obviously was
2 part of those approvals that was a trigger for this
3 building. We moved out, moved into Pier 1, and then were
4 able to rehabilitate this building and we think open it up
5 to the public and for these kinds of meetings. So we
6 welcome you here.

7 We know you all have busy schedules. You may not
8 have a chance to really tour the building or move through
9 the building. What I have -- would like to do is to leave
10 a copy of the Ferry Building historic book that we
11 developed as part of the rehabilitation that Nancy
12 Olmstead wrote. Maybe you'll have a chance to review that
13 if you don't have a chance to go through the building. So
14 I'll leave a copy for each of you with your staff.

15 And thank you again.

16 CHAIRPERSON WESTLY: Let me just say again, we're
17 delighted to be here. Thank you for taking time to come
18 out. And I think, you know, as I've often said, sensible
19 environmental protection is a terrific economic
20 development resource for every city. Clearly, you
21 understand that here with the Port of San Francisco, and
22 we're delighted to be here.

23 MR RHETT: Thank you.

24 CHAIRPERSON WESTLY: Mr. Thayer, anything else in
25 your report?

1 EXECUTIVE OFFICER THAYER: No, that concludes the
2 Executive Officer's report.

3 CHAIRPERSON WESTLY: Great.

4 The next order of business will be the adoption
5 of the consent calendar. And I call on our Executive
6 Officer, Mr. Thayer, to indicate which items have been
7 removed from the consent calendar.

8 Mr. Thayer.

9 EXECUTIVE OFFICER THAYER: Mr. Chair, Items 7 and
10 43 will be removed and heard at a subsequent meeting.

11 CHAIRPERSON WESTLY: And might I ask the other
12 Board members if they would like to remove any additional
13 items.

14 COMMISSIONER BUSTAMANTE: I'd like to remove C 26
15 and put it on the regular calendar.

16 CHAIRPERSON WESTLY: And that's the Duke Energy
17 issue?

18 COMMISSIONER BUSTAMANTE: Correct.

19 CHAIRPERSON WESTLY: Great.

20 Do I have a motion to remove these 3 items, 7, 26
21 and 43, from consent calendar?

22 COMMISSIONER BUSTAMANTE: And adopt the consent
23 calendar after that.

24 So moved.

25 CHAIRPERSON WESTLY: Great.

1 Second?

2 ACTING COMMISSIONER KLASS: Second.

3 CHAIRPERSON WESTLY: All in favor.

4 (Ayes.)

5 CHAIRPERSON WESTLY: Great. That passes.

6 Next, Items 50 and 51 are the consideration of
7 offers to dedicate access easements at Malibu.

8 I understand that legal action was filed in
9 connection with these items just last Friday. And I'd
10 like to have the -- ask for the staff presentation, as
11 well as information on the lawsuit from Mr. Hager from the
12 Attorney General's Office.

13 EXECUTIVE OFFICER THAYER: Mr. Chair, Curtis
14 Fossum, who's an attorney with our staff, will give the
15 initial presentation before Mr. Hager briefs you on the
16 lawsuit.

17 CHAIRPERSON WESTLY: Great. Thank you, Mr.
18 Thayer.

19 SENIOR STAFF COUNSEL FOSSUM: Good afternoon,
20 Commissioners. My name is Curtis Fossum. I'm a Senior
21 Staff Counsel for the Commission.

22 Items 50 and 51 were initially on your agenda for
23 last October, and were removed at the request of one of
24 the representatives of the property owners.

25 Since the adoption of the California constitution

1 in 1879, 125 years ago this year, access to California's
2 public trust waterways has been a mandated responsibility
3 of state government. The vast majority of the hundreds of
4 title settlements this Commission has been involved in
5 since its inception in 1938 have included provision of
6 public access to the waterways involved.

7 Since 1976, the Coastal Commission has obtained
8 more than 1,200 offers to dedicate public access
9 easements, which I will hereafter refer to as OTDs. These
10 OTDs are formally made and recorded by property owners as
11 a condition of approval to develop within the coastal
12 zone.

13 The OTDs are required to ensure protection of
14 existing public rights of use or to mitigate or compensate
15 for potential impacts to public access caused by
16 development.

17 In most cases, the locations of the boundary
18 between the privately-owned uplands and publicly-owned
19 tidelands is unsettled.

20 Also, the public may have acquired rights of use
21 through the Doctrine of Implied Dedication and have public
22 recreational use in areas subject to the public easement
23 in navigatable waters. Therefore, these OTDs may include
24 areas already having public rights of use or public
25 ownership interests.

1 The State Lands Commission and staff for over 12
2 years have been reviewing and approving acceptances of
3 these OTDs for public access of sandy beach areas lying
4 adjacent to public tidelands managed by the Commission.
5 These areas are not only appurtenant to the State Lands
6 Commission existing area of ownership and jurisdiction,
7 but are also for practical public use purposes very
8 important to it.

9 The Lands Commission has already authorized the
10 acceptance of 188 easements along the coast of California
11 since 1991, the majority of which are located in the
12 Malibu area.

13 At the Lands Commission October 2003 meeting Mr.
14 John Bowman representing the Frank Trust and the
15 Nathansons appeared and requested the Commission to
16 further hearing, as I previously mentioned. He stated
17 that he had not had a chance to review the formation
18 related to the offers.

19 Commission staff had sent copies of all the OTDs
20 on Broad Beach to Mr. Bowman over a month before the
21 October Lands Commission meeting. We also sent copies of
22 all previous acceptances of the OTDs by the State Lands
23 Commission.

24 Throughout the fall, your staff attempted to
25 obtain any pertinent information or concerns regarding the

1 two items from Mr. Bowman. In November, your staff sent a
2 letter formally requesting information in writing on any
3 concerns regarding the two items. And staff has not
4 received any information or comments from the
5 representative of the Frank Trust and the Nathansons until
6 Friday when we received the fax of the lawsuit.

7 A variety of letters we received from a Mr.
8 Marshall Grossman, a neighbor of the Nathansons and Frank
9 Trust Properties on Broad Beach, requesting that the
10 Commission -- State Lands Commission not accept the access
11 offers recorded by the Frank Trust and Nathansons in 2002.

12 In January, the Coastal Commission staff
13 responded, setting forth their position on the legally
14 binding effect of the recorded offers.

15 A copy of both of those letters, from the Coastal
16 Commission staff and Mr. Grossman, are attached as
17 exhibits to your calendar items.

18 Staff has reviewed the subject correspondence,
19 consulted with the Attorney General's Office, and
20 concluded that the two subject OTDs are valid and
21 compatible, complementary and cumulatively important to
22 the easements previously accepted by the Commission
23 involving 42 lots that cover nearly 40 percent of Broad
24 Beach, as depicted on the exhibits that you have as well
25 as the exhibit here that everybody can see.

1 In the purple are the easements that have already
2 been accepted by the Commission. The two that are before
3 you today are in the magenta, one here and one here.

4 In 1945 the county accepted easements to the
5 beach as part of a subdivision that was approved. And so
6 there has been public access out to the beach since the
7 1945 subdivision.

8 As previously stated, we received on Friday from
9 Mr. Bowman's law firm on behalf of the Frank Trust, the
10 Nathansons, and a number of other neighbors, a lawsuit
11 filed against the Coastal Commission and the State Lands
12 Commission as well as staff members of the respective
13 agencies. This complaint alleges a violation of a number
14 of federal and state laws and sought injunctive and
15 declaratory relief.

16 Your staff and counsel from the Attorney
17 General's Office have reviewed the information submitted
18 by all interested parties related to the property shown on
19 Exhibit B of Items 50 and 51, and we recommend your
20 acceptance of these OTDs.

21 A representative from the Coastal Commission, Mr.
22 Peter Douglas, the Executive Director, is going to make a
23 short statement, I believe, and Mr. Hager from the
24 Attorney General's Office. And your staff is prepared to
25 answer any questions you may have.

1 CHAIRPERSON WESTLY: Great.

2 I'd love to ask Mr. Hager from the AG's Office to
3 come forward. And then we'll certainly ask if other
4 speakers would like to be heard on this issue.

5 Mr. Hager.

6 ASSISTANT ATTORNEY GENERAL HAGER: Good
7 afternoon.

8 I've looked over the complaint. One little sort
9 of technical comment, the copy we got wasn't verified. So
10 I don't -- it just sort of ended before anybody signed it
11 or the plaintiffs verified it.

12 Secondly, I think it's a little strange that, you
13 know, the State Lands Commission got sued before it did
14 anything. But this was filed on the 30th in Los Angeles
15 Superior Court.

16 It seems to me -- and just to make a few comments
17 about what I think it is. It seems to be intimidation.
18 And in our view, that if you're of a mind to go ahead and
19 accept these OTDs, I don't think the lawsuit should stop
20 you at all.

21 They really are trying to address an issue that
22 they should have addressed back when they were given their
23 coastal permit. Under the Coastal Act, they have 60 days
24 to file a petition for writ of mandate to challenge a
25 permit action. They didn't do that. So under the statute

1 of limitations they have lost their right to do it.

2 They have also -- Peter would know the details of
3 this better than I, but I understand that they have either
4 completed or in the process of constructing the
5 developments for which they obtained the coastal permits.
6 So essentially they're trying to eat their cake and have
7 it too. They have obtained from the Coastal Commission
8 what the Coastal Commission's given, which is their
9 permit. But they do not want to comply with the
10 condition.

11 I think really what it boils down to is they're
12 there, which is -- Nolan says -- doesn't say you can't
13 have lateral access easements. Nolan says in order to
14 have one, you have to show a nexus between the development
15 and the condition.

16 And, again, they're saying, well, they didn't
17 have any -- that they were presented with, I think their
18 words were, a "Hobson's choice." No, they could have
19 taken the condition and sued. And that's what they didn't
20 do.

21 And, you know, defending these things, we might
22 say, is Coastal Commission Defense 101. It's -- you know,
23 they didn't -- they have -- the statute of limitations has
24 run and it's waived and I think it's pretty clear.

25 CHAIRPERSON WESTLY: Okay. Thank you, Mr. Hager.

1 What I'd like to do now is ask if there other
2 speakers who would like to be heard on this issue. And
3 then invite comments from the other Commissioners.

4 And Mr. Douglas.

5 MR. DOUGLAS: Yes.

6 Mr. Chair, Lieutenant Governor, Fred. Good to
7 see you again. Thank you for having me.

8 Mr. Chair, I'm here also to welcome you to our
9 Commission. I understand you're going to start sitting on
10 the Coastal Commission once we start again next month --
11 or this month, I guess. Welcome to the Coastal
12 Commission.

13 CHAIRPERSON WESTLY: Thank you. It's a case of
14 be careful of what you wish for.

15 (Laughter.)

16 MR. DOUGLAS: It's a two-way street.

17 (Laughter.)

18 MR. DOUGLAS: We'll try to do our best to impress
19 you with our good staff work, just as you have yours here.

20 And I want to begin by thanking you, because I
21 don't have this opportunity very often to thank the Lands
22 Commission and staff, for years of really excellent
23 working relationship. We interact on so many issues along
24 the coast, that it's been just a delight to work with your
25 staff and the Commission over the years.

1 The fact that you have accepted so many of these
2 offers to dedicate easements along the coast is really a
3 tribute to our partnership and carrying out California's
4 coastal management program. These last two OTDs that you
5 have before you are very important because they will
6 complete, those that are outstanding, lateral access
7 easements that have been offered on Broad Beach. And they
8 are adjacent to existing easements, so they will provide
9 for a larger area for the public to be able to use the
10 beach.

11 They're important because they provide -- they
12 are a public asset. They are a public interest that needs
13 to be ripened, and the public needs to know that they have
14 a right to be on there. And that can't happen until you
15 accept them.

16 I agree with Alan Hager about the lawsuit. I
17 took a look at that this morning. It's clear to me that
18 they're trying to raise issues and attack a process by the
19 Commission that they should have done when the
20 Commission -- when the permit was before the Commission.
21 There have been literally almost over a dozen cases
22 attacking easement offers long after the statute of
23 limitations has run. We have prevailed in every one of
24 those cases. This is just another one of those cases
25 where they're coming in after the fact when they should

1 have objected earlier.

2 I also agree that this should in no way interfere
3 with your ability to go ahead and accept these offers of
4 easements. And when you do, then the public will be able
5 to -- this summer be able to enjoy a larger area of the
6 beach than what they can now enjoy. So I strongly urge
7 you to accept these offers.

8 And I'm prepared to answer any questions you may
9 have.

10 CHAIRPERSON WESTLY: Any questions from the
11 Commissioners before we ask for the next?

12 Okay. Are there other members of the public who
13 would like to come forward?

14 Okay. We had Paul Siri. Is that on this issue
15 or perhaps on another one?

16 EXECUTIVE OFFICER THAYER: I think he's on a
17 different issue, Mr. Chair.

18 CHAIRPERSON WESTLY: In that case, I'd love to
19 ask the other Commissioners.

20 Mr. Bustamante.

21 COMMISSIONER BUSTAMANTE: Maybe you can give me
22 some clarification, Paul or Peter, about the process.
23 This access was negotiated with the property owners; is
24 that correct?

25 MR. DOUGLAS: What happened was they applied for

1 a permit to build. And we indicated a number of things
2 that had to be submitted before the permit could be
3 considered complete. And one of them is a study of the
4 shoreline processes, the impact that potential sea level
5 rise may have on not only public access but where the
6 public lands are, might be.

7 They offered, in lieu of that study, to provide a
8 public access easement because their representative has
9 worked with the Coastal Commission and he knows how
10 important that is. And so they made an offer to provide
11 easement for public use.

12 If they had objected to the requirements that we
13 had for filing the permit, there's a process we have in
14 our regulations that allows them to challenge that before
15 the Commission. They didn't do that. And we then
16 incorporated into our permit these offers to dedicate
17 access easements. They were reported and became vested.
18 They took advantage of the permit. And the structures are
19 either complete or substantially completed now. So they
20 got the benefits of the permit. And this is the other
21 side of the public.

22 COMMISSIONER BUSTAMANTE: So this wasn't
23 something that in the permit process where there is six
24 point -- a font language that's inserted somewhere in the
25 back of a contract that is all of a sudden found out at

1 some date by the property owner who is now surprised that
2 the information is even in there?

3 MR. DOUGLAS: No, this was clearly openly agreed
4 to. The Commission recognized it, applauded the applicant
5 for incorporating this into their project. And so there
6 was nothing unknown or somehow nefarious or --

7 COMMISSIONER BUSTAMANTE: Was it done by
8 applicant directly or was it -- did they have a
9 representative or an attorney or --

10 MR. DOUGLAS: They had a representative there
11 who's worked with the Coastal Commission. I know one of
12 the parties did. I haven't looked at the other one. But
13 this was done openly. And there was no argument over it.

14 COMMISSIONER BUSTAMANTE: There was some kind of
15 a sign-off by the --

16 MR. DOUGLAS: They -- it was included as a
17 condition because we then incorporated their proposal into
18 our permit. And before the permit was issued, the
19 applicant had to sign it, accepting all of the provisions
20 that were in the permit.

21 COMMISSIONER BUSTAMANTE: And in the signature,
22 did that also include the information with regard to the
23 60-day statute of limitations?

24 MR. DOUGLAS: I don't know the answer to that.
25 But the representative certainly knows that there is a

1 60-day statute of limitations if you object. But I think
2 they would have also have had to tell us at the hearing
3 that they objected to it. But there was no objection to
4 it.

5 COMMISSIONER BUSTAMANTE: None was ever stated.

6 MR. DOUGLAS: None was stated, that's correct.

7 COMMISSIONER BUSTAMANTE: And have they started
8 their expansion?

9 MR. DOUGLAS: The structures are either completed
10 or substantially completed.

11 COMMISSIONER BUSTAMANTE: And what was it in Mr.
12 Nathanson's situation? What was that expansion, do you
13 recall?

14 MR. DOUGLAS: I don't recall. I've seen pictures
15 of the Frank side, and it was a vacant lot. And whether
16 they demolished a preexisting structure and then built a
17 new one, I don't know.

18 COMMISSIONER BUSTAMANTE: Okay.

19 MR. DOUGLAS: But it was new development under
20 the Coastal Act. And I believe it was the construction of
21 a single family residence in both cases.

22 COMMISSIONER BUSTAMANTE: Okay.

23 CHAIRPERSON WESTLY: Any additional questions?
24 Comments?

25 At this point then, I would love to ask for a

1 motion.

2 ACTING COMMISSIONER KLASS: I'll move the staff
3 recommendation.

4 COMMISSIONER BUSTAMANTE: Second.

5 CHAIRPERSON WESTLY: All in favor.

6 (Ayes.)

7 CHAIRPERSON WESTLY: Great. The motion carries
8 by a 3-0 vote.

9 That moves us to item 52 on the agenda, is that
10 right, Mr. Thayer?

11 EXECUTIVE OFFICER THAYER: Yes, Mr. Chair.

12 CHAIRPERSON WESTLY: And this was something I've
13 asked my staff to look into after my friend Leon Panetta,
14 who, as many of you know, chairs the PEW Oceans
15 Commission, brought an issue to our attention. In simple
16 terms, once in place this new technology with -- comprised
17 of a radar offshore, data-collecting buoys, and other new
18 technology, would really be one of the best tools ever
19 developed to assist scientists in developing a much
20 greater understanding of the oceans. I think this will in
21 turn enable policymakers to better protect the oceans'
22 fragile ecosystems. And it's, frankly, just a huge step
23 forward in a classic case where technology can help all of
24 us to have a more environmentally sound world.

25 With that, Mr. Thayer, would you please introduce

1 the presentation by our guests, Linda Sheehan and Burr
2 Heneman, on the ocean observing systems.

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

4 There are two individuals here to make the
5 presentation. I think Linda Sheehan couldn't make it
6 today. But we -- oh, she's here. I'm sorry.

7 Linda Sheehan from the Ocean Conservancy. And we
8 have two consultants to the State Coastal Conservancy,
9 Paul Siri and Burr Heneman, who will also make part of the
10 presentation.

11 MS. SHEEHAN: Thank you. I'm Linda Sheehan. I'm
12 the Director of the Pacific Regional Office for the Ocean
13 Conservancy here in San Francisco. And I also sit as a
14 public member on the National Steering Committee for the
15 Development of a National Ocean Observing System.

16 Ocean observing is something that we have not
17 done very much of as a country. And this has become much
18 more evident in the last year with the release of the PEW
19 Oceans Commission report, highlighting a number of the
20 problems that the oceans face, a number of issues that are
21 very relevant to the State Lands Commission's mission.
22 That report will be closely followed by the report of the
23 Commission on Ocean Policy, a national commission
24 developed under the Oceans Act several years ago.

25 What that report will rely heavily on are

1 recommendations for the development of a national system
2 for ocean observing, with both a backbone of national
3 observations on current and temperature that will be
4 available to everybody and encouragement through
5 significant federal dollars to states and regions for the
6 development of ocean observing systems most relevant to
7 their areas. The Gulf of Mexico may have very different
8 interests and concerns, for example, than the coast of
9 California.

10 Ocean observing and ocean-observing systems are
11 often thought of as buoys and physical measurements of
12 currents and temperature. And that is going to be the
13 first phase of the national effort because that is
14 relatively easy to do and the information is relevant to a
15 lot of different issues. For example, currents can be
16 very relevant to marine transportation. They can also
17 help track pollution. They can also help track where
18 phytoplankton may be so that you're making sure that
19 you're doing salmon restoration efforts at the right time.
20 So those types of physical parameters are very relevant to
21 a number of different activities of the Commission as well
22 as other agencies.

23 But, in addition, this effort over time will
24 certainly encompass chemical issues, such as other types
25 of pollution releases and oil spills; and biological

1 parameters, such as tracking bacteria or harmful algal
2 blooms or other issues that are very important, trying to
3 integrate them together into a whole.

4 I think that California sits right now at a real
5 fork in the road with respect to ocean-observing systems.
6 We have a couple of things that are serendipitously
7 happening at the same time.

8 At the federal level we have, as I said, the
9 release of the draft Ocean Commission report. That's
10 going to be coming out within the next month or two. And
11 the governors of each state will have -- only will have an
12 opportunity to comment on this report. That will be a
13 very important opportunity for State Lands Commission to
14 make sure that its interests and the interests of the
15 public whose land the State Lands Commission represents
16 are represented well in terms of ocean-observing
17 requirements and ocean-observing needs in this report.
18 Because it will be such a big factor in this report -- and
19 a table of contents is included in your folder that I've
20 put before you -- I think that is something that the State
21 Lands Commission should consider weighing in on.

22 There's another effort at the federal level
23 availed by Senator Snowe of Maine, S1400, that could be a
24 vehicle for moving forward this recommendation. And it
25 cleared the Senate very easily and is now in the House;

1 and, again, authorizing the appropriation of hundreds of
2 millions of dollars in new monies every year. And if
3 California is set up properly in a way that federal
4 agencies are looking for in terms of ocean-observing
5 systems, we could be in very good position to collect
6 federal monies for our new program.

7 And, fortunately for us, in this case, what the
8 federal agencies are looking for in terms of California's
9 program is good for California. And as a member of the
10 Steering Committee, I can tell you all the other Steering
11 Committee members are scientists at universities, for the
12 most part. A couple management agencies. But they're all
13 scientists. I was brought on board to represent the
14 public.

15 And they are extremely interested in making sure
16 that the public and the management agencies, particularly
17 at the State level, have access to this data and can use
18 this data, that it's not just tied up in research in a way
19 that the public can't access it.

20 The Gulf of Maine has a fairly new program where
21 fishermen click on buoys, individual buoys, on line and
22 they see what the current's like, what the situation is
23 out there. And it's significant in terms of preventing
24 accidents off shore. There are ways to make this
25 information really accessible to the public. The feds

1 want it. And California is in a position to do it. Last
2 year allocations from the various bond measures in a total
3 of \$21 million were put together through the State Coastal
4 Conservancy to go out to develop this new state program.

5 There's a little bit of a void though in terms of
6 how these monies are managed, because to date the public
7 and the management agencies have not had a significant
8 voice in how this program is developed. And there's a
9 real chance for some leadership on the part of the
10 Commission and/or other agencies to develop an integrated
11 effort, a coordinated effort at the state level that will
12 maximize the use of these funds to make sure that your
13 needs are addressed and that, importantly, the public
14 needs are addressed.

15 Because I'm worried about that. And I want to
16 make sure that we're involved in this process and that our
17 bond monies are used most effectively, not only for now,
18 but also for future bond funds, which I'm happy to
19 support, and also for the federal funds that are certainly
20 going to come down the line. This is a very significant
21 part of the new report that's going to be coming out.

22 So I would urge you -- I've got all kinds of
23 things that I'd love to talk with you and your staff about
24 off line. If you have additional questions, that would be
25 wonderful.

1 I would like to introduce Burr Heneman and Paul
2 Siri with Commonweal, who can tell you more about the
3 specifics of the different programs that are starting to
4 move forward in California and show a video of some of the
5 applications of these types of systems.

6 Thank you.

7 CHAIRPERSON WESTLY: Great.

8 Let me just remind the public and the other
9 Commissioners, this is not a voting item. It's purely
10 informational. But while you're here, before you step
11 down, let me ask either of the other Commissioners if they
12 have a question.

13 Can I ask just quickly. You mentioned we, in the
14 U.S., don't know nearly as much about oceans or our
15 coastlines as we should. Are there other countries that
16 are substantially ahead of us or viewed as world leaders?
17 Has Japan or Scandinavian countries set a --

18 MS. SHEEHAN: Not to my knowledge. Because it's
19 the ocean, it tends to be looked at last. You know, you
20 tend to look in your own backyard literally first, without
21 realizing the significance of the oceans on what you do.

22 There have been some international efforts that
23 have been moving forward. The TRITON Array, which
24 predicted the last El Nino, is something that's moving
25 forward on an international basis. But, you know, there

1 is a lot of room for improvement here in the U.S.

2 CHAIRPERSON WESTLY: Great. Thank you very much
3 for being with us.

4 MS. SHEEHAN: Thank you.

5 CHAIRPERSON WESTLY: And, Mr. Thayer, do you want
6 to introduce the other speakers.

7 EXECUTIVE OFFICER THAYER: The other two speakers
8 are Burr Heneman and Paul Siri, both of whom are acting as
9 consultants to the State Coastal Conservancy, which is the
10 agency that I believe will provide a lot of the funding
11 for this eventual program.

12 Burr.

13 MR. HENEMAN: Thanks, Paul.

14 My name's Burr Heneman. Thank you, Mr. Chairman,
15 Commissioners.

16 My colleague, Paul Siri, and I, as Paul Thayer
17 mentioned, are consultants to the Coastal Conservancy.
18 That's the lead agency on the project that's front and
19 center for California.

20 And this is really a fortuitous coming together
21 of events, what the State has done in investing -- it's
22 beginning to invest in this program, and what -- at a time
23 when the federal government also appears to be about to do
24 the same thing.

25 Two major concerns for Paul and me in helping the

1 Coastal Conservancy, and front and center for the
2 Conservancy, is that the program that the State invests in
3 with this Prop 40 and Prop 50 funding is something that
4 really benefits end-users. And that's the agencies, the
5 management agencies who are managing coastal and ocean
6 resources; and the industries that would -- could benefit
7 from this, the maritime industry, ports, fisheries and so
8 on.

9 As Linda mentioned, the first initiative at the
10 federal level is quite coincidentally the first one at the
11 state level, both the same, surface currents monitoring.

12 So the second major priority for the Conservancy
13 and that Paul and I are working with them on is to make
14 sure the system that California develops not only is
15 benefiting users in California, the agencies and
16 industries and whatnot, but also is positioning California
17 well to take it -- to be in line for federal support on
18 this, which seems likely to be forthcoming. The
19 administration is interested in this. The President's
20 Commission on Ocean Policy is hitting this quite strongly
21 in the report that they have coming out.

22 Where things are at this point, very briefly, is
23 that the Conservancy put out a request for proposals last
24 year, two consortia formed and have been selected that
25 we're working with now to develop detailed proposals. The

1 two consortia, one northern and one southern California,
2 include virtually all the major marine science
3 institutions in the state: Five UC campuses, several
4 California State University campuses, jet propulsion lab,
5 Monterey Bay Aquarium Research Institute, Naval
6 Post-Graduate School and so on.

7 The first program that I mentioned was going to
8 be surface currents monitoring. One of the technologies
9 and one of the main ones that can help us with that is
10 something called high-frequency radar. We're not going to
11 go into a lot of detail about that. But Paul Siri is
12 going to show you a brief demonstration of one example of
13 how this technology can be useful for management interests
14 and ocean management interests in California in regard
15 particularly in this example to oil spill.

16 CHAIRPERSON WESTLY: Great.

17 MR. SIRI: Mr. Chair and other Commission
18 members, my name is Paul Siri and I represent Commonweal
19 Ocean Policy Program.

20 And as Burr and Linda introduced, what we're
21 talking about here is a rather sweeping initiative that is
22 both regional, statewide, international to develop new
23 tools and implement them for a new understanding of
24 coastal oceans and the pelagic oceans.

25 And without any hyperbole whatsoever, let me just

1 say this is probably the most sweeping change, the
2 society's ability to understand and manage the coastal
3 ocean, in the history of civilization, without any
4 hyperbole.

5 Can we start with this?

6 (Thereupon an overhead presentation was
7 Presented as follows.)

8 MR. SIRI: What I'm going to show you is a
9 two-dimensional moving map of Monterey Bay, July 4th,
10 1999. There's a lot of arrows that appear. These are
11 vectors showing the direction of the surface currents.

12 So what you're looking at is a simulation of
13 data. This can be oil. It can be plankton. It can be
14 whatever you like. If you take a look at the bottom two
15 graphs down here, you're taking a look at the fate and
16 destination of these particles. And you can see that it
17 is not a simple matter.

18 I remember when the Puerto Rican oil spill
19 happened outside the Golden Gate. The current wisdom was
20 that everything was going to go south. It ended up up in
21 Sonoma County. And that is basically our understanding of
22 water movement.

23 This technology that we're talking about would
24 encompass the entire coastline of the United States.
25 California is in the lead, as Burr and Linda mentioned.

1 And it is truly an important step forward for California
2 to manage its coastal oceans and its estuaries to reduce
3 conflict in every issue with regards to living marine
4 resources, pollution management, and a whole inventory of
5 other issues, from homeland security, search and rescue,
6 and the like.

7 Can I answer any questions?

8 CHAIRPERSON WESTLY: This has been terrific so
9 far.

10 COMMISSIONER BUSTAMANTE: I'm just fascinated
11 with the graphics so far. It's amazing.

12 MR. SIRI: What you're looking at is three
13 different -- the information coming from three different
14 pair of antennae, one here in Santa Cruz, one over here
15 near Elk Horn Slough, and one here at Point Pinos. And
16 what they are are a pair of transmission and receiving
17 antennae of low frequency signals, more akin to AM radio
18 at 55 watts than radar, without any possible risk to human
19 or marine wildlife whatsoever.

20 This technology has been tried all over the
21 world. There are four X stand systems in California.
22 We're talking about expanding those nodes, linking them
23 together, and moving some of these in different
24 resolutions into estuaries for specific end-user
25 requirements.

1 And I know we've taken a bit of your time. But I
2 can't emphasize how important this is and what a sweeping
3 consensus with regards to industry NGO's and government
4 that this represents.

5 CHAIRPERSON WESTLY: Great.

6 Questions, please.

7 ACTING COMMISSIONER KLASS: Was this a simulated
8 oil spill?

9 MR. SIRI: Yes. What you're looking at is actual
10 surface data from a few days in July 1999, putting in a
11 simulated release of particles here. And the actual
12 number of particles is described down here. So this is
13 real data, with simulation of where this blob material
14 would be.

15 ACTING COMMISSIONER KLASS: My question is: Have
16 you had actual situations where you were able to compare
17 the simulation to what really happened in any --

18 MR. SIRI: There's been a number of studies
19 actually comparing the actual data with other kinds of
20 information where simulations were validated by other
21 kinds of measurements. And this kind of technology is
22 absolutely precise.

23 CHAIRPERSON WESTLY: Great.

24 Others questions from the Commissioners?

25 Let me just say: First, I'm tremendously

1 impressed with what you're doing.

2 Second, if you ever need help fine tuning the
3 high-frequency systems, please let the Lieutenant Governor
4 or me know. We'd be happy to --

5 (Laughter.)

6 CHAIRPERSON WESTLY: You know, on a serious
7 note --

8 MR. SIRI: You two could be responsible for
9 inventing this technology.

10 CHAIRPERSON WESTLY: I think at a global level
11 most of us get that the world population is going up
12 dramatically. Much of the world's food comes from the
13 oceans. What part doesn't is dramatically affected by the
14 weather that the oceans impact. I'd love to hear a little
15 bit more about how this information will be transferred to
16 organizations that it would help, the U.S. Congress, other
17 groups that I think need to hear more about what's going
18 on.

19 MR. SIRI: You want to hear that now?

20 CHAIRPERSON WESTLY: Could you give me the very
21 short --

22 MR. SIRI: Absolutely.

23 You brought up a very good point, Mr. Westly.
24 And, that is, this information will be provided to a large
25 number of clients. And with regards to issues of food

1 security, it's not just isolated with regards to living
2 marine resources. I think one of most compelling issues
3 for California is global climate change and the management
4 of our limited water resources.

5 Some of the other data that this system will
6 provide is into the National Weather Service, where we can
7 fine tune the kinds of information the National Weather
8 Service uses that our water agencies are dependent upon
9 for understanding the management of the -- say, the
10 snowpack in the Sierra or the coastal water resources. So
11 this kind of information will assist us not only in
12 managing our living marine resources, but assisting us in
13 all aspects of agriculture and water management.

14 And global climate change is telling us that the
15 snowpack in the Sierra will become more fragile, it
16 will -- the snowpack will be lessened, it will melt
17 sooner. So our ability, as a growing population in terms
18 of managing our water resources, is going to be depending
19 on better information being fed in from the National
20 Weather Service.

21 And the biggest data gap we have in California,
22 with regards to weather prediction, is the fact that most
23 of our weather is driven, is forced by the eastern
24 Pacific, and we have the least amount of data coming into
25 the National Weather Service from that part of the world.

1 This system is going to assist in providing that
2 precision.

3 CHAIRPERSON WESTLY: Great. Well, thank you very
4 much.

5 MR. SIRI: Thank you.

6 CHAIRPERSON WESTLY: Any other comments from the
7 other Commissioners?

8 Is there anyone else from the public who would
9 like to speak on this issue?

10 Okay. Again, this is purely an informational
11 issue. There's no vote required.

12 What I'd like to do then is, per the Lieutenant
13 Governor's request, move to item 26. It was removed from
14 the consent calendar. This is Duke Energy.

15 And, Mr. Thayer, would you or the staff be
16 prepared to say a word or two by way of background?

17 EXECUTIVE OFFICER THAYER: Certainly. I think
18 I'd like to give just a quick overview on the subject
19 matter. And then perhaps the Lieutenant Governor will
20 indicate his concern on this.

21 The project -- or the facility which is the
22 subject of the lease proposed here is an offshore marine
23 terminal. It was constructed in the early fifties to
24 serve a new powerplant in Morro Bay which was oil-fired at
25 that time. And what would happen is that -- that facility

1 consisted of a pipeline and a mooring buoy. Tankers would
2 come to Morro Bay, tie up to the buoy, and then transfer
3 the oil ashore using that pipeline.

4 In the mid-nineties -- but the powerplant was
5 converted to a gas-fired powerplant and didn't need the
6 marine terminal anymore, the pipeline to bring in the oil.
7 At that time, it was put into a caretaker status. The
8 pipeline was flushed out with water so it's clean. And
9 during this time staff -- our Marine Facilities Division
10 would inspect the pipeline annually to make sure it wasn't
11 going to create any problems.

12 The lease for that pipeline is now expired -- or
13 has expired as of this last year. And rather than remove
14 it, the Duke Energy would like to obtain a new permit --
15 excuse me -- a new lease from the Commission for a
16 five-year period during which it would look for
17 alternative uses. And the one that I hear about most is
18 potentially to use it as a conduit to bring ashore new
19 fiber optic cables.

20 The rent on it is about \$14,000 a year. And
21 staff is recommending approval.

22 CHAIRPERSON WESTLY: Great.

23 Other Commissioners?

24 Mr. Bustamante, would you like to comment on
25 this?

1 COMMISSIONER BUSTAMANTE: Sure.

2 Much like what we heard earlier with respect to
3 the permitting process, there was a negotiation that took
4 place. In that negotiation it indicated that once the use
5 of the facilities were terminated, at that point, you
6 return the condition of the public lands back to its
7 original state. It is something that we do on virtually
8 every project.

9 In the process of that, we have learned that
10 sometimes a removal, sometimes you're unable to do that
11 because of the damage that might ensue. And so one of the
12 concerns that I have here is: In fact, returning it back
13 to its original state, can we do that?

14 They're asking for a five-year extension on this
15 lease. And yet we're not sure what's going to take place.
16 Even though they're looking for options, they're looking
17 for an opportunity to be able to use this pipeline, I'm
18 concerned that, first of all, we should be moving in the
19 direction of trying to restore the ocean and the coastal
20 areas and the public lands back to its original state.
21 This lease, they're suggesting, may have some other kind
22 of utility. Since we're not familiar at this point of
23 what it would take to remove it, we can't move forward in
24 one way or the other except to say take it out or extend
25 it.

1 I think that there's something that's in between
2 that. I think that they're suggesting -- and there may
3 be -- some value in having it remain in its current place.
4 Don't know for sure. But I'd like to lessen the lease
5 term from the five years to two years.

6 In addition to doing that, requiring them to
7 begin the process of evaluating whether or not it does
8 have any kind of commercial value; or, second, what would
9 be the conditions under which we would be able to review
10 all of the environmental concerns? So that in a two-year
11 period it would come back before this group in order to be
12 able to determine, at that point, whether we should move
13 forward with additional time for commercial use, for a
14 longer lease period, or to begin the process of taking out
15 the facility, as they originally agreed to do.

16 So I would make a motion that we amend the staff
17 report to include a lease term of two years instead of
18 five, and also ask staff to engage in beginning the
19 environmental review of this process while they're
20 making -- while Duke is making assessment as to commercial
21 viability.

22 CHAIRPERSON WESTLY: Just a quick point of
23 information before we go ahead and vote on the Lieutenant
24 Governor's motion.

25 Mr. Thayer, is this something you're comfortable

1 with? Do you have anything you'd like to add before we
2 consider a vote on this?

3 EXECUTIVE OFFICER THAYER: No, I think this can
4 work. I think on the natural, it's not clear at this
5 point what CEQA would require in the way of environmental
6 review. But from talking with our staff, it would either
7 be a mitigated negative declaration or an EIR.

8 The timeline to prepare an EIR in time so that it
9 would be available to the Commission at the expiration of
10 the two-year lease would be such that they would have to
11 start work on that probably about six months from now to
12 do the initial study. And then that would cause the
13 document to be completed in a timely fashion for the
14 Commission to consider it.

15 CHAIRPERSON WESTLY: And, Lieutenant Governor,
16 are you comfortable with that?

17 COMMISSIONER BUSTAMANTE: Yes. I mean they're
18 looking not to take the facilities out. I'm interested in
19 restoring it. The concern that I have is that are we
20 able -- since they want to maintain it, they want to use
21 it for commercial value, they feel that there is some
22 commercial value possibly, maybe available, what does the
23 public lands receive in return, what do the public trust
24 receive in return?

25 And so what we're trying to do is that we're

1 trying to make an assessment here. Either we return it
2 back to its original state since the lease is now up. Or
3 does the public trust benefit more by allowing the
4 facility to remain and use it for some commercial value?

5 CHAIRPERSON WESTLY: And I'm supportive of the
6 motion. I just want to make sure we're all clear on the
7 wording of this.

8 Mr. Thayer, are you clear on that?

9 EXECUTIVE OFFICER THAYER: Yes. Although, I
10 would ask one other question just for informational
11 purposes, that -- when I was in contact with the
12 Lieutenant Governor's Office about that, there was a third
13 condition at least that they were considering at the time,
14 it had to do with the market rate for charging fiber optic
15 cables that might use that facility, to ensure that if
16 that happened, the State would be adequately reimbursed
17 for use of its lands.

18 COMMISSIONER BUSTAMANTE: Yes. And absolutely
19 we'd like to have that as part of the motion. And maybe
20 you can explain in a little bit better detail what that
21 means to the members of the Commission that we had that --
22 that conversation.

23 CHAIRPERSON WESTLY: Mr. Thayer, just for the
24 record, maybe you can restate the motion, being sure to
25 delineate all three of these points. And then we'll go

1 ahead and take the vote.

2 EXECUTIVE OFFICER THAYER: Sure. As I understand
3 it, the Lieutenant Governor's amendments to the staff
4 recommendation would shorten the proposed lease from five
5 years to two years, require that the environmental review
6 necessary for removal -- or determination by the
7 Commission as to what to do with the physical improvements
8 would be completed -- begun and completed in time so that
9 it would be available at the end of the two-year lease.
10 And that should any reuse of the pipeline be proposed by
11 Duke, such as for a fiber optic cable, that the Commission
12 charge market-rate rent for use of those facilities,
13 charge Duke that much.

14 COMMISSIONER BUSTAMANTE: Which would be similar
15 to what we do in other situations, right?

16 EXECUTIVE OFFICER THAYER: Yes.

17 So that's my understanding of his proposal.

18 I could explain that latter point as he
19 requested.

20 CHAIRPERSON WESTLY: Great.

21 Forgive me, Commissioner Bustamante. It's come
22 to my attention there's actually one member of the public
23 that would like to comment on this. So if you would
24 accept that, we have Mr. Steve Goschke who'd like to say a
25 word or two on this issue. I think that's only fair to

1 hear before we proceed with the vote.

2 And, Mr. Goschke, you are with the Morro Bay
3 Powerplant?

4 MR. GOSCHKE: That's correct.

5 CHAIRPERSON WESTLY: Great.

6 MR. GOSCHKE: Good afternoon, Commissioners. My
7 name is Steve Goschke. I'm the plant manager of the Morro
8 Bay Powerplant; been plant manager since 1997. And I've
9 had the opportunity to caretake that pipeline over the
10 years that I've worked at that facility.

11 I guess the only -- you know, we have discussed
12 in the past perhaps commercializing that pipeline through
13 fiber optics. But, you know, every time we talk about it,
14 there's really nobody that wants to do that. And it's
15 really not our business. We're in the business of making
16 electricity.

17 And so the other aspect I'd like to say -- I
18 don't mind that being a condition. That's a very fair
19 condition. The other one has to do with shortening the
20 time period from five years to two years.

21 Our motivation for taking -- for asking for five
22 years in our application had to do with the fact that
23 we're also in a CEC process to modernize our whole
24 facility. We were hoping that, you know, the ultimate --
25 whatever we decided to do with this pipeline could kind of

1 be done in conjunction with whatever we end up doing with
2 modernizing the powerplant and trying to minimize the
3 impact to the community by optimizing those two projects.

4 So I might request that something longer than two
5 years might make that easier to happen. But that was just
6 what we were thinking as we were putting the application
7 together.

8 I'll be glad to answer any other questions that I
9 might be able to answer for you.

10 COMMISSIONER BUSTAMANTE: Mr. Chairman?

11 CHAIRPERSON WESTLY: Please.

12 COMMISSIONER BUSTAMANTE: My only concern is that
13 since we have a long history on this Board of being able
14 to look at this particular facility and the process, that
15 we would have an opportunity to be able to make sure
16 within the next two years. Because I think two years,
17 frankly, to make some kind of determination is sufficient.

18 Secondly, in -- as you've said, you don't really
19 have anybody in any industry. You floated it several
20 times. There's been no takers. So we really don't know
21 if this has any commercial value at all or not. And the
22 way I see it is having a five-year contract or a
23 three-year lease just extends it that much longer before
24 we actually start doing the work that would be necessary
25 to do.

1 And so I'm okay with extending the lease for a
2 couple of years, I'm okay with your being able to make
3 those kinds of commercial assessments if they're available
4 to you. But I don't want to lose 2, 3, 4, 5 years before
5 starting to resolve this issue environmentally if that's
6 where we're going.

7 So that's the reason for the two-year lease
8 and --

9 MR. GOSCHKE: Okay.

10 COMMISSIONER BUSTAMANTE: I would not be
11 supportive of going any further than two years.

12 MR. GOSCHKE: Okay. I just wanted to get up and
13 give you my -- some background on the motivation of why we
14 asked for five years.

15 Thank you very much.

16 COMMISSIONER BUSTAMANTE: Sure.

17 CHAIRPERSON WESTLY: Great. Thank you very much,
18 Mr. Goschke.

19 We now have a motion on the table from the
20 Lieutenant Governor.

21 May I ask for a second.

22 ACTING COMMISSIONER KLASS: I'll second the
23 motion.

24 CHAIRPERSON WESTLY: Great.

25 All in favor please say aye.

1 (Ayes.)

2 CHAIRPERSON WESTLY: Okay. The vote passes by a
3 3-0 margin.

4 With that, I'd like to say that concludes the
5 regular calendar.

6 There are some speakers here, who I think wish
7 to -- would like to address the Commission during the
8 public comment period. And I'd love to start out with
9 Sandra Threlfall from the San Francisco Ferry Building.

10 And just so you won't be surprised, Kimia Mizany
11 also from the Ferry Building next. And Ruth Gravanis
12 would be behind that.

13 Ms. Threlfall, forgive me for not pronouncing
14 your name correctly.

15 MS. THRELFALL: You're doing very well. Thank
16 you.

17 My name is Sandra Threlfall. And I'm not with
18 the Ferry Building. But I'm very pleased to be here. And
19 I'm with Waterfront Action --

20 CHAIRPERSON WESTLY: Got it. Forgive me.

21 MS. THRELFALL: -- which is a nonprofit
22 organization that advocates for public access and
23 community involvement with the shoreline.

24 And I'm speaking today to say, from our meeting
25 which was probably two months ago now where we brought up

1 some issues that were occurring in Oakland, we have really
2 been very well assisted by your staff once again. And so
3 I guess this is my opportunity to say thank you very much
4 for the support that you give, an incredible staff that
5 really should be twice the size.

6 The public trust is this fragile thing that very
7 few people know about. And the fact we're able to move
8 forward with the concept of workshops and public education
9 about possible trades. In the Bay Area when you're
10 talking about nine military bases closing, you're talking
11 about a lot of land that falls under to the most part the
12 public trust. So when those trades take place, we want to
13 make sure that the public has the opportunity to be aware.

14 Thank you again.

15 CHAIRPERSON WESTLY: Great. Thank you very much.
16 And regarding the staff size, please show those concerns
17 with your friends in the Legislature.

18 Any questions there?

19 If not, Kimia Mizany of Save The Bay.

20 MS. MIZANY: Good afternoon, Mr. Chairman,
21 Commissioners. Thank you very much. My name Kimia
22 Mizany. I am with Save The Bay. Thank you very much for
23 allowing me to speak today.

24 Save The Bay has worked for more than 40 years to
25 protect the Bay Area's quality of life and economy by

1 fighting for a healthy and vibrant bay, which the whole
2 community can enjoy. We work to prevent sprawl and
3 pollution, so that everyone can celebrate a healthy and
4 vibrant San Francisco Bay.

5 And so the Bay has been very involved and
6 invested in major efforts over the years to shape both the
7 general plans and particular projects in the City of San
8 Francisco and throughout the Bay and to reconnect the
9 public with the Bay and ensure that there is maximum
10 feasible public access.

11 In that regard, I hope that Lieutenant Governor
12 Bustamante has shared with you his enthusiasm for a
13 wonderful project taking shape at Fisherman's Wharf, which
14 is the Bay Center, at Pier 45. Save The Bay is working
15 with a broad coalition of fishermen, local merchants,
16 educators, and several other environmental organizations
17 and the State Coastal Conservancy to ensure that at one of
18 the most popular -- actually the most popular tourist
19 attraction in San Francisco folks going there can enjoy,
20 learn about the Bay, and have fun while they're doing it.

21 We also appreciate the consideration which the
22 State Lands Commission has reviewed plans to develop Piers
23 27-31, the Port of San Francisco. And we consider that to
24 be a work in progress. We are big fans of the State Lands
25 Commission and have tried to work very closely with both

1 you and your staff to protect the public trust lands and
2 in your jurisdiction here.

3 Paul Thayer and his staff have been extremely
4 courteous to us and open to our views and have really
5 shown a strong commitment to enforcing the laws of the
6 State of California.

7 We want to congratulate you, Mr. Chairman, your
8 new responsibilities, and look forward to working with you
9 in the same capacity and productiveness as we had with the
10 former chairman, Mr. Bustamante.

11 Thank you very much.

12 COMMISSIONER BUSTAMANTE: Thank you.

13 CHAIRPERSON WESTLY: Great. Thank you.

14 Well, Mr. Thayer, score another one for the
15 staff. Well done.

16 (Laughter.)

17 CHAIRPERSON WESTLY: I'd like to ask Ruth
18 Gravanis to come up. And could you please say who you're
19 with as well.

20 MS. GRAVANIS: Yes. I'm Ruth Gravanis. And I'm
21 with too many organizations to name, but for the moment
22 I'll be with the Public Trust Group. And good afternoon,
23 and it's a real pleasure that you're here in San
24 Francisco. It's a little tricky for us to get to Eureka
25 or San Diego. And very, very much appreciate your holding

1 the meeting here today.

2 I was one of the Public Trust Group members who
3 spoke at your last meeting in Sacramento. And at the risk
4 of being somewhat redundant, I, too, want to express my
5 appreciation for the prompt follow-up from staff to the
6 idea of holding public workshops to help educate the
7 public about what the public trust is, and hopefully also
8 to get feedback about what some of the local public trust
9 issues are that need to be addressed. So the Public Trust
10 Group members are very eager to work in cooperation with
11 staff to help those workshops be as useful as possible.
12 And we look forward to coming back and reporting to you at
13 a future meeting on how those things went.

14 I can't pass up the opportunity, given where
15 you're sitting at this moment with this fantastic view of
16 Treasure and Yerba Buena Islands, to call to your
17 attention an item that isn't going to be before you
18 officially as a commission for quite a long time yet.

19 But there is right now, we understand,
20 legislation in the works to create -- to enable a public
21 trust exchange that would lift maybe 70 or 80 acres of the
22 public trust from Treasure Island, which, as you can see,
23 is all fill and therefore all subject to the Tidelands
24 Trust Act, and to impress it on Yerba Buena Island.

25 Our organization has no objection to having such

1 an exchange take place, and we support the idea of
2 creating new housing, which is what that trust exchange
3 would allow. But we do have some concerns about the
4 process.

5 The enabling legislation would be based on a
6 draft land-use plan that has not undergone due public
7 process here in San Francisco. And we hope that you will
8 find ways to make it known when that exchange does come
9 before you a year or so from now, that you will be wanting
10 to know that the citizens of San Francisco had an
11 opportunity to comment on the proposed land-use plan upon
12 which that enabling legislation will be based.

13 One thing that is so easy to point out from
14 here -- it's really great not to have to bring a
15 PowerPoint presentation, because you can just look out the
16 window. One of the things that we are concerned about
17 with regard to that draft land-use plan is that it calls
18 for the ferries that will be leaving the Ferry Building
19 here to go all the way around the northern end of Treasure
20 Island and then down the eastern side to a ferry terminal
21 location on the southeast corner of the island. And what
22 would seem to be much more logical to us is if the ferries
23 could go straight across to a ferry dock of some kind on
24 the western side.

25 There's a study in the works of the pros and cons

1 of those two locations. It has not been peer reviewed.
2 It has really received very, very little discussion, and
3 we hate to see a public trust exchange go forward based on
4 a land-use plan based on a ferry terminal location that
5 has really not been adequately reviewed.

6 Thank you.

7 CHAIRPERSON WESTLY: Great. Thank you.

8 Mr. Thayer, do you want to comment just briefly
9 on that?

10 EXECUTIVE OFFICER THAYER: Certainly.

11 As Ms. Gravanis indicates, this is a work in
12 progress. And staff has been in communication both with
13 the citizens groups as well as TIDA, the Treasure Island
14 Development Agency, which is the governmental agency
15 involved with redevelopment in Treasure Island, and then
16 as well with the developer. And the developer and TIDA
17 have asked for our input in terms of how this project
18 needs to be shaped up so that it will respect the Public
19 Trust Doctrine, which governs what we all do.

20 There is actually -- I think the head of TIDA is
21 here, if you want to hear more from her.

22 But the next few steps on this is there are going
23 to be a series of additional public hearings, there's
24 likely to be legislation. In most cases in San Francisco
25 Bay, exchanges that are this large end up being the

1 subject of legislation, which we advise the author of the
2 legislation on to ensure two things: And one is that
3 whatever's being proposed is consistent with the Public
4 Trust Doctrine; and the second thing is that ultimately
5 the exchange come back to the Commission so that the
6 Commission can decide whether it's appropriate or not.

7 And so with that goal in mind, we expect the
8 planning of the process to continue. As Ms. Gravanis
9 indicates, there are several aspects of this project that
10 haven't yet been fully developed and are likely to undergo
11 additional change. There is likely to be legislation, and
12 then ultimately it will be back before the Commission at a
13 public hearing where you'll have the opportunity to hear
14 from Ms. Gravanis as well as other interested parties
15 before making a final decision.

16 CHAIRPERSON WESTLY: Thank you, Mr. Thayer.

17 I think we have two other members of the public
18 who would like to speak. I'd like to ask Alec Bash,
19 representing himself, to come forward. And Nan Roth, if
20 you could be prepared to come after that.

21 Mr. Bash.

22 MR. BASH: Thank you very much, Mr. Chair and
23 members of the Commission. I'm Alec Bash. I've been a
24 planner in San Francisco many years. I've been active
25 nationally. I am presently serving on the Port's

1 Northeast Waterfront Advisory Group, although I'm not here
2 on behalf of that group. I am here speaking for myself.

3 Like others, I want to thank you very much for
4 the opportunity to be here before you in San Francisco and
5 to praise the staff with whom I also have had many
6 excellent dealings in the past when I have worked as a
7 member of the public sector here in San Francisco. I am
8 presently retired.

9 We appreciate all the work that the State Lands
10 Commission and sister agencies with the state, the State
11 Attorney General's Office, the Bay Conservation
12 Development Commission have done in working with the City
13 and the Port to create a healthy and vibrant waterfront,
14 one that is getting more so every day.

15 It still has a ways to go. I'm sure you'll all
16 recognize that as we look at Fisherman's Wharf, this
17 building we're in now, Ferry Building, Pacific Bell Park,
18 the public open spaces and plazas and public access along
19 the waterfront, it has come a long way since those years
20 when it was blocked off by the Embarcadero Freeway.

21 We are the beneficiaries here of several adopted
22 plans created through much citizen input: BCDC's special
23 area plan for the northeast waterfront, the City and
24 County of San Francisco's waterfront land-use plan --
25 sorry -- northern waterfront plan, the Port's waterfront

1 land-use plan. Sometimes it's hard to keep all of the
2 different plans and their respective agencies straight.

3 But in addition to that, we have a historic
4 district pending on the waterfront. We have a best
5 collection of historic piers in this country that evoke
6 back to a period of when this was how maritime worked.
7 And nowhere else in the country can see it in quite the
8 original form that we have here in San Francisco.

9 The traditional non-maritime uses that we see in
10 the northeastern waterfront now have all -- inasmuch as
11 maritime has moved to the south in San Francisco for the
12 most part, albeit for a few traditional maritime
13 activities still underway, harbor pilots and so forth. We
14 have restaurants, hotels, retail, public access, plazas,
15 which are wonderful for people who are eating, sleeping,
16 browsing, walking along the waterfront, enjoying the bay.

17 I know you've been increasingly giving
18 consideration along with your staff to active recreational
19 uses on the waterfront as well. And it is to those active
20 recreational uses that I want to speak now. We believe
21 it's very important to have as broad a range of public
22 trust consistent activities on the waterfront as possible,
23 and believe that just as eating and sleeping and browsing
24 are a part of people's experience, that people also come
25 to the waterfront to recreate themselves, to enjoy

1 recreation, some people more actively than others.

2 I'm not as much of an active recreation advocate
3 as I was. I played basketball and volleyball and all
4 those other things. But there are still many people who,
5 when they come to the waterfront, will enjoy the
6 opportunity to browse in a variety of different types of
7 athletic activities as well as the passive viewing of the
8 bay.

9 Now, these should be activities that are enhanced
10 by their location on the waterfront, but they still at
11 times may go beyond what one has traditionally thought of.
12 And I just wanted to urge you in considering what may be
13 best for San Francisco to look at it from the perspective
14 of what visitors to the City might be expecting if they
15 were to have no experience of San Francisco. Purchase
16 guide books. They would find out about Fisherman's Wharf,
17 the Ferry Building, and Pac Bell Park. We would like them
18 to think about recreation on the waterfront, perhaps at
19 Pier 27-31, perhaps at other locations, but a variety of
20 things that will work to make this a place that all
21 visitors to the City will want to enjoy and will keep
22 coming back to.

23 Thank you for your time and the opportunity to be
24 here.

25 CHAIRPERSON WESTLY: Thank you, Mr. Bash.

1 Ms. Roth.

2 MS. ROTH: My name is Nan Roth. I've been a
3 long-time, 40-year resident of Telegraph Hill. And during
4 that period of time, since about the mid-eighties, have
5 served on a number of different waterfront committees,
6 beginning with the special committee formed back in the
7 mid-eighties to do a special area plan for Fisherman's
8 Wharf, which was never completed, but hopefully is going
9 to be brought back to the table in the next few months.

10 I served on the group that put together the
11 waterfront plan for the Port of San Francisco. I'm
12 currently serving on the Northeast Waterfront Advisory
13 Group, which Alec mentioned, as well as the Fisherman's
14 Wharf Advisory Group.

15 But I appear before you today as a private
16 citizen, but somebody who has been long active on the
17 waterfront and is very concerned about it.

18 And in my period of time working on the
19 waterfront plan, one of the things that concerned me very
20 deeply was what appeared to me, as a citizen activist, an
21 overemphasis on commercial development of the waterfront.
22 And I look upon -- and I should say, I'm here to reinforce
23 what Alec said. Pier 27-31 is our one big opportunity to
24 have a truly public benefit, and that being recreation.

25 Like Alec, I look -- we're a city -- we probably

1 have more restaurants per capita -- I think we do,
2 indeed -- than any other city in the country. We as
3 people who live here have no use for hotels for the most
4 part, although our friends do when they come to visit.
5 The shopping, generally available on the waterfront, is
6 more tourist oriented than it is locally oriented. And so
7 it's very difficult for us to understand that in reviewing
8 the uses for Pier 27-31, that more retail and more office
9 space is viewed as a greater public benefit than rather a
10 broader interpretation of recreational uses.

11 I support the public trust. I've always been
12 very concerned that we continue to honor the public trust.
13 Yet I see there's a discrepancy -- I mean there's a
14 difference in the way that it's interpreted from state to
15 state. And California seems to be the most restrictive.

16 And if I may use as an example, a rather
17 exaggerated example, when they were first putting together
18 the RFP for this Pier 27-31 project, everybody had in mind
19 a big recreation project in New York called Chelsea Piers.
20 And it's hard for us to see how Chelsea Piers on trust
21 lands -- public trust lands in New York can be found to be
22 public trust compliant whereas the recreational uses
23 proposed for Pier 27-31 are not.

24 And I realize, I understand there's a state
25 constitution involved here and a lot of other things. But

1 what I'm asking you to do is to do what you can to help
2 us. And indeed if legislation is needed to change the
3 State Constitution in order to make it more recreation
4 friendly, that we attempt to do that. This is our one
5 opportunity on the waterfront of San Francisco to really
6 have a significant recreational facility. And as a city
7 we have very little recreational -- very few recreational
8 facilities per capita compared to other urban areas.

9 So you're telling me I'm through.

10 All right. Thank you very much for your
11 patience.

12 CHAIRPERSON WESTLY: No, thank you, Ms. Roth.

13 I'm going to ask Mr. Thayer and Mr. Hager to
14 speak to that briefly.

15 But I just want to remind people, we have a
16 tradition here to keep the comments and questions to three
17 minutes. And we have a number of other people who have
18 come up. So if you could try to honor the three-minute
19 guideline. And maybe if someone on the staff could just
20 let me know when we've reached the three-minute point.

21 Mr. Thayer, Mr. Hager, would you like to comment
22 on that?

23 EXECUTIVE OFFICER THAYER: Sure. Of course the
24 project that's being discussed is the one that the
25 Commission heard in June, the Mills or Piers 27 through 31

1 project. And large elements of that project did consist
2 of indoor recreation. It's staff's position, I believe
3 the position of the Attorney General as well, that our
4 outdoor recreation as a whole can be found consistent with
5 the public trust. But indoor where there isn't a
6 necessity of having a waterfront location for that, we
7 don't have the same view of that.

8 It could be inferred from the last speaker's
9 comments that we believe that office space is consistent
10 with the public trust. And we don't. And our view is
11 that office space generally doesn't belong on the
12 waterfront, but only in the very narrow circumstance where
13 it's being used to pay for restoration of an historic
14 structure or something of importance for the history of
15 the waterfront is that use allowed.

16 And, frankly, if the developer wanted to exchange
17 indoor recreation, as favored by I know a lot of the
18 people in the Telegraph Hill area, for some of the office
19 space, this would not raise any issues in our mind at all.
20 But the problem was that those elements in the project
21 that were indoor recreation were offered to the Commission
22 as public trust compliant, and we didn't agree that that
23 was possible.

24 So it's not our view that we're looking to put
25 more office space on the waterfront or that there have to

1 be restaurants and that kind of thing. There are a
2 variety of public trust uses that can go in there. But
3 that the problem is with considering indoor recreation as
4 public trust consistent.

5 CHAIRPERSON WESTLY: Right. Thank you, Mr.
6 Thayer.

7 Let me just say, Ms. Roth, I appreciate your
8 comments very much. I'm actually very familiar with the
9 Chelsea Pierce project. I think this is going to be far
10 superior to that. Let me hasten to say, not perfect. You
11 know, you rarely get perfect in this world. But I think
12 certainly an improvement. And I know staff will continue
13 to work with the developer to move things in that
14 direction.

15 I'd like to ask former Supervisor AnneMarie
16 Conroy, who is here representing the Treasure Island
17 Development Authority.

18 We're happy to see you here. I know you've dealt
19 with these issues from both sides.

20 MS. CONROY: Good afternoon, Commissioners.

21 As you can see, Treasure Island and Yerba Buena
22 Island are actually a beautiful shining example of
23 incredible properties. And Treasure Island, as Ruth had
24 mentioned earlier, is a tidelands trust property.

25 I wanted to thank today the staff of the State

1 Lands Commission. They have been absolutely wonderful to
2 work with. Paul Thayer's been to the island twice in the
3 last year, I think. Blake Stevenson, Dave Plummer, Grace
4 Kato, they've all been fabulous to work with. So it's
5 always great to get a good feedback as Commissioners about
6 the staff. And they have just been a delight to work
7 with.

8 I wanted to make a couple of clarifications.
9 There was some public comment about Treasure Island and
10 the public comment and the public input to the plan on
11 Treasure Island. We have been in a planning process for
12 the Treasure Island Properties. It's really former Naval
13 Station - Treasure Island. So the properties coming to
14 the City of San Francisco will actually be to look at the
15 bridge as the dividing line. The northern end of Yerba
16 Island and all of Treasure Island is considered former
17 Naval Station - Treasure Island.

18 I just wanted to make that clarification on
19 public comment and public input. We have had over 70
20 public meetings in the planning process for Treasure
21 Island. We have had an RFQ that has gone out. We have
22 had an RFP that was written by the public. And we have
23 written -- we've put that out to public bid.

24 The RFP itself, its responses, that has all been
25 vetted with the public. State Lands has had a tremendous

1 input both in the RFQ, the RFP, and the responses to the
2 RFP.

3 So I just really wanted to make sure that the
4 State Lands Commission understood the amount of
5 participation that has gone on with the public with the
6 Commission staff. And really the land-use plan has
7 changed somewhat dramatically over the course of time with
8 comments from the public, and most dramatically from the
9 comments from the State Lands Commission -- the staff of
10 the State Lands Commission -- pulling the buildings up off
11 the waterfront, pushing the buildings back so the northern
12 end of Treasure Island becomes something to rival Chrissy
13 Field and the Presidio.

14 The comments that have been made by the State
15 Lands Commission staff have just been very helpful to us
16 in working with the developer to collapse the different
17 properties and to try to make as little -- to try to
18 compact those areas so that there's more open space and
19 that we're really returning that property to the people of
20 San Francisco.

21 It's a -- Treasure Island is a magical place. It
22 has beautiful vistas. There's still people that attended
23 the world's fair. My parents went out there every
24 weekend. As a native San Franciscan, it's very important
25 to me that it's developed properly so that there are

1 tremendous open spaces and that the tideland -- properties
2 that belong in the trust stay in the trust. So you have
3 my commitment on that and the Development Authority's as
4 well, that -- we have our mandate, and our mandate is to
5 provide tremendous open space and opportunities for San
6 Franciscans for generations to come. We'll get one chance
7 at doing this and doing it right. So you have our
8 commitment that we will.

9 CHAIRPERSON WESTLY: Okay. Ms. Conroy, hold on
10 just one minute.

11 If there are any other members of the public that
12 would like to speak, please let me know or pass a card up,
13 because we're nearing the end of the public period.

14 Are there any questions from the other Board
15 members for Ms. Conroy?

16 Terrific.

17 Thank you so much.

18 MS. CONROY: Thank you.

19 CHAIRPERSON WESTLY: Is there anyone else from
20 the public who would like to speak?

21 If not, I'd like to thank everyone from the
22 public for attending. This is an important part of the
23 meeting.

24 I want to thank Mr. Thayer and his staff. Again,
25 the professionalism you've demonstrated I think has been

1 exemplary. As Controller, I sit on over 50 boards and
2 commissions. I only wish they all ran as well as this
3 one.

4 And with that, I'd like to go ahead and ask for a
5 move for adjournment.

6 ACTING COMMISSIONER KLASS: So moved.

7 COMMISSIONER BUSTAMANTE: Second.

8 CHAIRPERSON WESTLY: All in favor please say aye.

9 (Ayes.)

10 CHAIRPERSON WESTLY: Meeting's adjourned.

11 Thank you very much.

12 (Thereupon the California State Lands
13 Commission meeting adjourned at 3:20 p.m.)

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