APPEARANCES

Steve Westly, Chairman

Donna Arduin, Director of Finance, represented by Dave Harper

Cruz Bustamante, Lieutenant Governor

STAFF

Paul Thayer, Executive Officer

Jack Rump, Chief Counsel

ALSO PRESENT

Alan Hager, Deputy Attorney General
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CHAIRPERSON WESTLY: I'd like to call this meeting of the State Lands Commission to order. We have a quorum of the Commission present.

I am the State Controller, Steve Westly, and I am joined today by Dave Harper, representing the Department of Finance. And we understand that the Lieutenant Governor, Mr. Bustamante, will be with us shortly.

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

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

May I have a motion to approve the minutes?

ACTING-COMMISSIONER HARPER: I would move the minutes to be approved.

CHAIRPERSON WESTLY: And I will second. And we have a unanimous vote there.

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

Mr. Thayer, may we have your report.

EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair, and good afternoon, Mr. Chair and Commissioner Harper.
The one item I have to report on is a follow-up to some comments that the Commission received, some input several months ago at one of its meetings. There were several public interest groups that came from San Francisco to address the Commission, and they wanted to have some better liaison with respect to the public trust information. They were aware that we had a lot of good information on our website, but they requested that we do other things such as conduct a public trust workshop in the San Francisco area so that public interest groups, officials, and others could better understand the doctrine that governs our decisions.

And I'm pleased to report that we've worked with those individuals and established an agenda and are going to conduct a workshop next week on the 24th in San Francisco that will run from I believe it's 4:00 to 7:00, in hopes of providing opportunities for people to come who should come after work. And depending upon how that works, we're looking forward to perhaps running the same sort of workshop in Southern California to provide that kind of information down there.

And unless there are any questions, that concludes my report.

CHAIRPERSON WESTLY: Terrific. Any questions from the other members?

If not, the next order of business is the adoption
of the consent calendar.

Mr. Thayer, would you indicate which items have been removed from the consent calendar.

EXECUTIVE OFFICER THAYER: There are three items which we would like to remove. The first is C-21. That particular item we'll hear at another meeting, our next meeting, we hope. Items 46 and 62 also need to come off because there's some opposition to those, and we would like to try and hear them today. And our usual custom has been at the Commission to just hear those at the end of our other regular calendar items, and I would suggest that we do that, recommend that we do that.

CHAIRMAN WESTLY: Okay. Is there anyone in the audience who wishes to speak to an item still on the consent calendar?

If not, the remaining group of consent items will be taken up as a group for a single vote.

And now I would like to proceed with that vote.

Is there a motion.

COMMISSIONER BUSTAMANTE: Move.

ACTING-COMMISSIONER HARPER: Second.

CHAIRPERSON WESTLY: All in favor?

(Ayes.)

CHAIRPERSON WESTLY: Thank you. We have a unanimous vote.
In that case, let us move right to the regular calendar.

Mr. Thayer, I would just discuss the order of items on the agenda, and you have some ideas how to proceed most efficiently with the meeting?

EXECUTIVE OFFICER THAYER: Yes, Mr. Chair. I think as we discussed, I think that the bulk of the testimony that we might hear today would be on Item 68, which has to do with the recommendation from the California Performance Review to abolish the Commission. And so it may be appropriate to go ahead and hear that first to accommodate those members of the audience who are here for that.

CHAIRMAN WESTLY: That certainly makes sense to me. I know we have a number of people from the public who would like to speak on this. Unless there are any objections from the other Commissioners, I think we should proceed to Item 68, a discussion of the California Performance Review recommendation as they concern the State Lands Commission.

And I understand we have a representative from the California Performance Review here. Why don't we hear from that person first.

EXECUTIVE OFFICER THAYER: Yes, sir. I understand Chris Reynolds is in the audience from the California
Performance Review. Thank you.

Mr. Reynolds was kind enough to on short notice to come and talk to the Commission about the recommendations and the basis for them, and we're very appreciative.

MR. REYNOLDS: Good afternoon.

CHAIRPERSON WESTLY: Good afternoon, Chris. Thank you for being here to talk --

MR. REYNOLDS: Thank you for inviting me.

CHAIRPERSON WESTLY: -- about our abolishment.

(Laughter.)

MR. REYNOLDS: For the record, my name is Chris Reynolds, and I am the team leader for the Resource Conservation and Protection Team for the California Performance Review.

I wanted to provide the Commission with the basis for our analysis and our recommendation to eliminate the State Lands Commission and then respond to any questions.

The title of the reorganization report in which you will find this particular recommendation is the best characterization of that analysis, Form Follows Function.

We endeavored to identify the functions that are performed by government agencies and then consolidate those functions to achieve several goals: making government more intuitive to citizens, consolidate like functions to achieve synergy and achieve efficiencies, to improve customer
service to Californians, and to make the Executive Branch
flatter and therefore more accountable to the voters through
the Chief Executive, the Governor.

In the State Lands Commission, we saw the need for
its function. There is not a recommendation to forego the
State responsibilities.

The functions that we looked at did fall into
three broad categories. Category A, resource conservation
functions: mining, grazing, dredging, timber harvesting.
Planning functions: preparing and reviewing environmental
impact reports. And land management functions for sovereign
lands, with the intent of preserving State land in a natural
state.

Category B could be considered energy resource
management functions and infrastructure management functions
together. Evaluating leasing and oversight of tidelands,
oil and natural gas exploration and development in
geothermal projects. And maritime infrastructure management
functions, including marinas, responsibility for marinas,
industrial wharves, tanker anchorages, removal of man-made
structures, and monitoring the use of granted lands and the
management of unsold school lands.

And the final category would be environmental
protection functions: inspection of marine terminals and
involvement in oil spill cleanup efforts.
We viewed the functions identified under Category A as falling within the purview of the Natural Resources Department where the Coastal Commission, the Bay Conservation and Development Commission, the Department of Fish and Game, and the Department of Conservation currently reside.

For infrastructure functions, we viewed the functions under that category as a responsibility closely aligned with the State's infrastructure duties, where the Energy Commission and the Department of Boating and Waterways would reside under the recommended reorganizational plan.

And then finally, the environmental protection functions. We viewed the oil spill prevention and cleanup efforts as functions that should be aligned with toxic waste oversight and cleanup efforts for both land and ground and surface water that currently reside within the California Environmental Protection Agency.

The Commission's jurisdiction is largely governed by location from our perspective, much like a city, a county, or a regional entity has jurisdictions over its boundaries. The Commission's duties did not appear to us to be governed by function.

Our charge was not only to take a look back, but to look forward to a governmental organizational structure
built around the principles I mentioned previously.

In closing, I would like to address two critical issues that are raised both in the staff's analysis and in the resolution recommending opposition to the CPR recommendation.

First, the staff raises the issue of limited opportunities for public participation. This is of great concern, of course, and it's a viable criticism that needs to be addressed. The question is whether the mechanisms that exist under current law, including opportunities for public workshops, open bidding processes, and the Administrative Procedures Act provide enough opportunity for sunshine and public participation.

And finally, I would note there is nothing that precludes the department secretaries from hosting formal or ad hoc citizens advisory panels on issues that follow the existing or expanded public notice and public hearing rules.

Second, the staff raises the concern that expertise, particularly on the Public Trust Doctrine will be lost. CPR does not recommend that there be a fundamental change in staffing or programmatic functions of the State Lands Commission. We believe that consolidated functions will achieve synergy and improve the overall performance of programs as personnel come together to deliver services to California.
Thank you. I'm available for questions.

CHAIRMAN WESTLY: Mr. Thayer, do you wish to speak on this from a staff standpoint?

EXECUTIVE OFFICER THAYER: Yes, I do. I have a number of comments that are intended to describe the basis for the resolution which is before the Commission for its consideration, some of which have also been laid out in the staff report.

I think that the California Performance Review, which only started in February of this year on its work and had to evaluate the California state government, probably the most complex government in the United States, that it was a very difficult task for them to undertake, and given the size and complexity of that task, it's not surprising to us that we think in this particular instance with respect to the Lands Commission that the proposal doesn't meet the goals of the Commission. The Commission's goal is to restructure, reorganize, and reform State government to make it more responsible to the needs of its citizens and business community.

I think Mr. Reynolds has appropriately and adequately described what the proposed reorganization of the Lands Commission would do. It would abolish the Commission and divide up its functions among three different new agencies.
We think this is a bad idea for several different reasons. And again, it should be understood that staff is not analyzing the whole reorganization program and the costs and benefits of that, we're looking purely at this particular Commission.

There are three or four particular concerns to staff that flows from its analysis. We think that the proposal will decrease public access and accountability to the public from government. We think that the proposal is less efficient than the existing situation and that it returns to a form of management of public trust lands that had been practiced by the State in the past, but had been deliberately left behind because of problems it engendered.

With respect to public access and accountability. As presently is the case, as we see here today, the Commission decisions are at public hearings where costs and benefits of a project can be openly debated. Development of recommendations and final decisions are separate functions where the staff makes recommendations, but it's up to the Commission to make the decisions.

The statewide elected officials on the Board are directly accountable for their decisions on the Commission to the public and are accessible to applicants and the public when there are disagreements from those people with staff.
The second concern that staff has is with respect to the efficiency of the proposal. As I said earlier, we believe that the CPR proposal is less efficient than the existing situation. For example, as Mr. Reynolds described, the oil spill prevention program currently in the State Lands Commission is an engineering and port-based function that fits well with our other responsibilities. The State Lands Commission already has petroleum engineers who administer the leases. These same engineers can enhance our oil spill prevention program, because again, that program is largely based on things like the size of pipes, the appropriate safety valves, staff training and that kind of thing.

The CPR plan would sever the organizational connection with oil and gas lease expertise here at the Commission, instead send the program over to in essence the Department of Fish and Game. Fish and Game presently is the home of the oil spill response program, and the difference is that the response program is biology-based, once the oil is in the water, the primary concern is to make sure the environment is not affected. But that doesn't relate well from a function perspective to oil spill prevention.

With regard to reduced efficiency, a more fundamental problem that we see is the division of our different public trust responsibilities among different
entities. The Public Trust Doctrine is enormously complex, as we've all found as we worked on it. It still surprises me occasionally after I've been here eight years. But it's very complex and to divide these different functions, the oil and gas leases, for example, going to one entity and the rest of the leases going to a different entity would require that public trust expertise be duplicated and present in each of those different agencies, whereas in the present situation, we can focus that function here at the State Lands Commission and not divide it up.

Further, these two kinds of leases have more in common than not, oil and gas versus the other kinds of leases that we have. They both require surveyors to determine the boundaries of the lease. They require attorneys with leasing expertise to make sure we've got the terms right in there and that we're going to properly collect the revenue. And they both require revenue accounting.

So again, there are common functions here to these two kinds of leases that suggest that it's best to retain them in one place, rather than dividing them between different agencies.

I'd also like to note that with respect to efficiency that our existing organization has already gotten lean and mean in a big way. Starting in 1990, we've had a
variety of cuts so that what 249 positions did in 1990, we now have to accomplish with 102. So this agency is already efficient.

Finally, unlike some of the Commissions that have been discussed in the media, the officials on this commission do not make any additional money from the State, there's no additional State costs for members on the Commission because they're already paid by the State, they're already State officials. So with respect to that, our commissioners do not cost anything more for the State.

Coming to a close here or getting closer to the end here. The third major drawback of the CPR proposal is that it returns to this old administrative method of managing public trust lands. The public trust lands were administratively handled by a predecessor to the Department of Finance, but allegations of corruption in oil and gas leases led to a special session being called of the legislature, and in 1938 it created the State Lands Commission, and the goal was to provide for independent public review by accountable statewide officials. And for the last 66 years since the State Lands Commission has been formed, the Commission has responsibly managed public trust lands and leases while generating over $7 billion in revenue. The CPR reorganization plan returns administration of these lands back to the old system which had been left
behind in 1938.

I would like to note that the California Performance Review proposal is not limited to reorganization, there's also a section that deals with the enhancements of organizational management. The Commission itself, of course, has always been interested in that in terms of including our website, that kind of thing. But there are suggestions that are made in the CPR report that we think the Commission would be well-advised to look at more closely, and we're proposing that the staff do that. Things like website improvements, having online applications that people can file their leases electronically with, recognition of customer service requirements in our strategic planning, vehicle needs assessments to make sure we don't have more vehicles than we need. All of these we think should be reviewed by staff, these recommendations and others, and implementation of a lot of them would probably benefit both the public and the Commission's operation. And so we recommend that the staff do that.

We think that the existing State Lands Commission has produced many benefits for the public. The Commissioners here have experienced a lot of them. We're in the middle of the restoration of Bolsa Chica, the groundbreaking coming in another two months.

We have wonderful oil spill prevention statistics
that show that the operation of that program under the
Commission has been very effective. There's been an 80
percent reduction in the volume of oil spilled into marine
waters from oil terminals since our programs started in the
early '90s.

We've also ensured, for example, when the fiber
optic cables, those leases were coming before the
Commission, that impacts to fishermen were recognized and
addressed.

Our ballast water program is considered to be one
of the best in the country. And we've been very strict
about that, and as the Commission knows, where there have
been problems with enforcement or where we've had some
problems with that, we've been willing to take strong action
to ensure that all industry was being dealt with equally.

We've had a very active public access program.
The Commission regularly accepts easement along the coast
that improves public access. We've also been involved in
litigation to improve access at the Mad River, at Lake
Tahoe, and also at the Mokolumne River, all of which
benefitted the public.

There's a long list here, I'm going to stop here
for a time, but I just think that the Commission can be
proud of the public service it's provided under the existing
situation and a lot of that comes from interaction between
the Commissioners who hear from constituents and the staff, and that's a mechanism that's served best by a commission.

So the staff is recommending adoption of the resolution before it. We think that when these facts become better known that it's quite possible that the Governor or the CPR Commission may recognize the strength of the existing operation and that this might be the best thing to stick with. And we think the first step to bringing about that recognition is the Commission speaking strongly with this resolution.

I note that this resolution was only finalized last Thursday, but I think the Commissioners already have five letters of support and I think there are a couple of people from the audience who would like to speak as well.

CHAIRMAN WESTLY: Mr. Thayer, thank you.

Before we entertain the resolution, I would like to give Mr. Reynolds a chance to respond, and I know the Attorney General has a staff person here.

I do want to thank you for drawing attention to the dire concern that none of us receives any additional salary.

(Laughter.)

CHAIRMAN WESTLY: And pointing that out.

Mr. Reynolds, I'd love to give you a chance to respond and then we'll go to the Attorney General's
representative and then give the Commissioners a chance to
ask questions.

MR. REYNOLDS: Absolutely. And I'll be very
brief, because I'm going to run over familiar territory, if
you heard my testimony previously.

One of the valuable criticisms in the staff issue
background and in the resolution relate to public access and
accountability. We believe that with the flattening of the
organization that you are enhancing accountability.
However, this Board is unique in many respects in that it
has two directly elected representatives and an appointee of
the Governor or their representative present. And so in
that respect, it is a balance, it is a call about public
access, but there are existing mechanisms. Again, I went
over some of them, the Administrative Procedures Act, the
open bidding requirements, and the opportunity for public
workshops, and then the opportunity for department
secretaries to host open public forums to gather public
input. We don't believe that public access would be
denied.

With respect to the efficiency of the
organization. Again, we are not in any way suggesting that
the programs and even the success of delivering those
programs should be undermined in any way. What we're
suggesting is that we have looked at organization of
government from a functional perspective, and when you look
at it from a functional perspective, we have those
categories that I mentioned that relate to infrastructure
that we believe are appropriately assigned to a department
of infrastructure. We have resource conservation that is an
ongoing effort. In a number of other places, oil spill for
instance, is handled largely by the Department of Fish and
Game. In the reorganization proposal, we recommend that oil
spills is actually closely aligned with toxic spills
generally and should be shifted over to a sight cleanup
responsibility within the California Environmental
Protection Agency.

Again, we're trying to bring together functions to
achieve synergy, to increase efficiency, and so that it's
more intuitive to the public who is responsible for what.
Again, along these functional lines, we saw the need or the
opportunity to bring those functions together with functions
that are very similar and in many ways identical to what the
Commission is delivering in the form of services to
California, but they're being performed at other departments
or boards or structures that are more within the Executive
Branch than this Commission.

And we acknowledged the situation in 1938 that
brought about the existence of the Commission. But, again,
our responsibility was not just to look backward, but to
look forward and see what kind of government organizational structure would best serve the needs of California and that's why we looked at things in terms of form follows function.

If you have any questions about that analysis, I'm available now.

CHAIRMAN WESTLY: Thank you, Mr. Reynolds.

What I'd actually love to do is give the other Commissioners a chance to ask you or Mr. Thayer any questions, then we'll ask the Attorney General's representative and other members of the public to come forward.

COMMISSIONER BUSTAMANTE: First of all, I don't think there's anybody who's going to oppose the idea of making something, as you called it, flatter, more efficient in terms of the way things ought to operate. Recognition by the public is also a very good thing to build into the system. I think that's a noble and wonderful attribute to be able to have people see something, they'll recognize what it is, and they can immediately go to it. In terms of form and function, I think you're right, those are things that we should in fact try to accomplish.

But you know the only people that I've heard that are supportive of this particular proposal are people who want to continue to drill oil off our coast, they want to
operate in an uncapitalized way. I mean to think, for example, it's a bit naive to think that an oil spill is an oil spill is an oil spill. To think that the kind of oil spill or toxic contamination that deals with an underground water aquifer or deals with soil or deals with an ocean are all the same, it doesn't make any sense for those people who are in the business, for those people who attempt to monitor those kinds of functions. And I think it's very naive to think that somehow those activities are somehow supposed to be the same.

I find it also a little disconcerting that the process took place in a way that didn't include any kind of comment by any of the members or by staff or by a group of experts. I don't know what your background is, I'm assuming you're a very capable person, I wish I knew more about you, but my guess is that there wasn't much contact with people who are expert in what we do. And so you have to understand that there's going to be a natural inclination for people who are used to doing something, who are doing it pretty well, who have an understanding of what they're supposed to be doing, seeing people from outside who have no experience, who have not done the job, who have no experience in doing the job, to try to explain to them how they're supposed to do their job. You know the old saying about going to court as yourself as an attorney.
I also don't perform brain surgery on myself and I probably would never want to have myself represent myself in a court of law and there's a lot of other things.

And so it becomes a little disconcerting that nonexperts are telling experts what they're supposed to be doing and how they're doing it, in sort of this context that is a fairly broad context that doesn't really talk specifically about this, but creates a bunch of different departments. It throws things into what appears to be connections. But the focus of this Commission is to protect the public trust. If you want to focus attention on a particular area, you create an identity for something and you go after that and you focus your resources, so, in fact, you deal with something that's particular.

In this particular commission, it's about the public trust. If you're to separate all the pieces and put it throughout departments, you no longer have a focus on the public trust. And I think that that contained with the lack of contact, contained with an experience that's already been done in California, at least it makes me pause about what the real intentions of what we're trying to do here.

I hope that in gathering the data, I hope that in reviewing comments, and I'd love to be able to provide a written response on as many of the issues that you raised as possible so that you can have comments, so that you can have
dialogue, so that you can have testimony. And hopefully after you go through that process, you'll find that this Commission, unlike many others, was created for a very specific purpose and has shown itself to be fairly efficient. And hopefully you'll see that there is symmetry within the organization as to its effectiveness and hopefully you'll find a way of being able to find that the -- if you want to make some recommendations, as Paul mentioned earlier, that could help the Commission in becoming more efficient. That will never be tossed to the side, I think that will always be accepted. We would accept any criticism I think very, very well. But when you say to destroy a focus that has been very important to the state of California, the focus of the public trust, I think that that probably goes a little beyond, I hope, what you were intending.

CHAIRMAN WESTLY: And I know Mr. Harper had some questions as well.

ACTING-COMMISSIONER HARPER: Yes, thank you, Mr. Chairman.

Mr. Reynolds, I'd like to talk a little bit about the process that brought you here today. You mentioned earlier that you are the team leader of the resources area. Can you kind of talk about how that came to be?

MR. REYNOLDS: And I did want to comment on the
Lieutenant Governor's comments just to let him know what,
among other things, what the process was that we used.

We did have 275 State employee volunteers who
formed the CPR effort. We interviewed 1,800 people in our
research, you can find all the end notes to the issue papers
there. And in truth, we had contact with more than 10,000
in the form of e-mails and letters and phone calls and
follow-up interviews that we did.

COMMISSIONER BUSTAMANTE: But did you ask any of
the members of the State Lands Commission?

MR. REYNOLDS: I was not in direct contact with
any member of the State --

COMMISSIONER BUSTAMANTE: Was the team in contact?

MR. REYNOLDS: You know, to tell you the truth,
the team has -- many of them have returned and we did a
board-by-board, commission-by-commission analysis. But I
can't swear to you, so I'm not going to say we spoke
directly.

COMMISSIONER BUSTAMANTE: Did anybody in CPR, any
member of the Review Committee, ever contact anybody from
State Lands or its Commissioners or its staff or consultants
or the person that takes the minutes?

MR. REYNOLDS: I don't know. I can only tell you,
sir, that the Boards and Commissions that I analyzed, I did
have direct contact with.
COMMISSIONER BUSTAMANTE: Okay.

MR. REYNOLDS: And those included the Air Resources Board, including State Water Resources Control Board.

COMMISSIONER BUSTAMANTE: Well, what about stakeholders, were any of the stakeholders contacted?

MR. REYNOLDS: We contacted any number of --

COMMISSIONER BUSTAMANTE: Ports?

MR. REYNOLDS: I beg your pardon?

COMMISSIONER BUSTAMANTE: Were the ports contacted?

MR. REYNOLDS: I can't tell you that we contacted specifically the ports.

COMMISSIONER BUSTAMANTE: Were environmental groups contacted?

MR. REYNOLDS: Yes. We spoke with more than a dozen environmental groups.

COMMISSIONER BUSTAMANTE: Specifically about the State Lands Commission?

MR. REYNOLDS: I was at some of those meetings, and during that time the State Lands Commission did not come up.

COMMISSIONER BUSTAMANTE: Okay.

CHAIRMAN WESTLY: Mr. Harper.

COMMISSIONER BUSTAMANTE: Thank you for your
comments on my comments.

MR. REYNOLDS: Yes. The other question you raised is whether these are comparable activities, whether the analysis of using functional equivalency and what is being done, the way the contaminant in situ, whether it's in dirt or whether it's in water and so on and so forth. I would contend that the expertise that resides at places like Fish and Game and the Department of Toxic Substances Control and other places is equivalent in terms of environmental cleanup and in terms of the functions that are performed by the State Lands Commission, otherwise we wouldn't have made the recommendation.

COMMISSIONER BUSTAMANTE: And that's why you should not be on this committee or on the staff or in EPA, because you don't understand that there is a difference.

MR. REYNOLDS: I understand that --

COMMISSIONER BUSTAMANTE: There is a huge difference.

MR. REYNOLDS: -- you perceive there to be a difference between an oil spill that is in ocean waters and an oil spill that is in inland waters, but -- those types of things, those functional things that we took a look at to try to determine whether there is an actual difference. And for those areas where there is commonality, I think there could be synergy that would be brought to the function that
gets performed. We actually think that the functions that are performed by the State Lands Commission and its staff can be more effective if it's brought within --

COMMISSIONER BUSTAMANTE: The paperwork may be similar, but the function is very different. You know what, I suggest that you might, before you make your final recommendation or you talk with the Governor, I suggest you go and you talk to somebody. I really hope that you'll talk to somebody who's done a cleanup of a toxic in some kind of a water scenario, any water scenario, whether it's leaking down into a water aquifer or into a river or a creek or into the ocean. I hope that you will take the time to just talk to somebody, because you're very misinformed.

MR. REYNOLDS: We have had those kinds of conversations, I can speak to it directly, sir. But when you asked me did I meet personally with the State Lands Commission staff, I'm being honest with you, I did not. But what I'm saying is that when we compared the functions, when we talked to the people who performed the work, and talked to them about what it is they do, not just the paperwork but the actual technical work that gets done, the cleanup effort, the land management functions, the development of marinas and wharves, I mean these kinds of functions are being performed by other State entities that we believe could accept and combine these functions.
Now, as for the Public Trust Doctrine, although I'm not an expert on the Public Trust Doctrine, I do not believe it's exclusive to the State Lands Commission and I believe that all State entities, if they are not using it now, are certainly remiss. I mean within the mission of the Department of Toxic Substances Control, within the Resources Agency, within these other entities that we've talked about, there is a need to do things that are in the public interest. And so I don't know that the Public Trust Doctrine, as it exists within the State Lands Commission, may be somewhat dissimilar to the specifics that get used for doing things in the public interest, but people can learn from the State Lands Commission.

COMMISSIONER BUSTAMANTE: Perhaps Mr. Hager can explain to you at some point, whether it's here or later on, what the difference is between the public interest and the public trust.

CHAIRMAN WESTLY: We have a number of members of the public who are here --

MR. REYNOLDS: I look forward to being educated about that, sir, thank you.

CHAIRMAN WESTLY: -- with questions. I want to give --

ACTING-COMMISSIONER HARPER: Let's go back to the recommendations that your unit made or the entirety of the
recommendations that were made in this report. And that report went to the Governor's office and the Governor assigned it to a commission, to your commission?

MR. REYNOLDS: Actually, yes. I did want to touch upon, the Lieutenant Governor had made reference to an interest in having a venue for further comment. And I do want to say that there is a 21-member commission that are hosting hearings throughout the state right now. They have scheduled six, but they are planning more. The one that will touch upon this particular area, resource conservation and protection, will be hosted in Fresno on September 17th. And so I would hope that the Lieutenant Governor, the Controller, others would if they have comments on this particular item or any others, provide those to the Commission or to send a representative to that hearing.

COMMISSIONER BUSTAMANTE: A strict three-to-five minute presentation wouldn't be enough time for us to present a full analysis of what we think about the comments that have been made or about your report. And so in order to be able to give you serious comment, and not just showmanship, I think probably written communication would be better, as well as I hope that you will go out and do a little greater review. I know you were under a time situation.

MR. REYNOLDS: That's right.
COMMISSIONER BUSTAMANTE: I hope you have a chance since submitting the report to go out and to get another round of information seeking.

MR. REYNOLDS: I will make a commitment to you right now, Lieutenant Governor, that I will follow up with the staff and try to gain a better understanding of items like the Public Trust Doctrine, where there's a differentiation between the functions that are being performed here at the State Lands Commission.

COMMISSIONER BUSTAMANTE: A call to the staff could probably take care of that.

MR. REYNOLDS: Will do.

ACTING-COMMISSIONER HARPER: Aren't those, in fact, though going to be functions of this Performance Review Committee as they take public testimony, testimony that will evaluate the entirety of your proposals and as they relate to each other, not just a specific proposal?

MR. REYNOLDS: Yes. And if that is true and written testimony can take whatever form in terms of volume that it needs to.

But I do want to make the commitment to the Lieutenant Governor, we'll follow up with the staff here at the State Lands Commission and talk to them further about this. It's an interim process, you know, our work is not done now. The Commission is meeting and accepting public
comment, and if there is anything that I can do by way of
providing the Commission with additional information about
an item that might appear on their agenda, I think it's
incumbent upon me and staff to try to do that.

ACTING-COMMISSIONER HARPER: Our notes indicate
that the Commission will meet up to September 24th, take
testimony up to September 24th?

MR. REYNOLDS: That's correct.

ACTING-COMMISSIONER HARPER: Do you have any idea
when they plan to make recommendations to the Governor?

MR. REYNOLDS: Unfortunately, I do not. The
California Performance Review is not responsible for that
effort, the justification being that the comments that are
being gathered from the public, it might appear as though
CPR were grading its own work if we were in charge of
setting up the hearings and so on and so forth. So the
responsibility for that resides with the Office of Planning
and Research.

So I will communicate to Mr. Thayer or whomever he
decides who the contact is at the Office of Planning and
Research to be in touch with about providing written
testimony, to making an appearance, and I will also --
there's two hearings, I guess I should have mentioned. One
is on September 17th, which will deal with resource
conservation and protection, but the one on the 24th, as Mr.
Harper points out, is going to be on reorganization, which may be more germane to the topic we're discussing today.

ACTING-COMMISSIONER HARPER: Mr. Thayer, are you authorized to go before this committee on behalf of the State Lands Commission?

EXECUTIVE OFFICER THAYER: The Commission hasn't taken any action to do that.

ACTING-COMMISSIONER HARPER: It needs a formal action by the Committee for you to appear?

EXECUTIVE OFFICER THAYER: I think the resolution in fact will give me the opportunity. The Commission will establish its position by its action on the resolution, and I think that would give me the authority to represent the Commission in functions like this.

MR. REYNOLDS: Just to be clear and for the record, it's our intent here today to try to provide you with the information about our analysis, but we think that the recommendation is a good one and we do support it. I'm not meaning to intend with my efforts to try to be educated further that I'm suggesting that what we have produced thus far is not good staff work or policy work, with all due respect.

COMMISSIONER BUSTAMANTE: You object to the resolution?

MR. REYNOLDS: I would think that -- yes, I guess
you would say in a sense I do object to the resolution. I
don't support it.

COMMISSIONER BUSTAMANTE: It's either yes or no.

MR. REYNOLDS: I'm trying to find the right words
to convey. I am here as a representative of the California
Performance Review. I am not the Governor's representative.

COMMISSIONER BUSTAMANTE: I guess I have to be
equally blunt with you. I object to your report, especially
the way it was done.

Move the resolution.

CHAIRMAN WESTLY: There are two members of the
public I'd like to give a chance to speak.

MR. REYNOLDS: Thank you.

CHAIRMAN WESTLY: Although I am delighted you have
chosen Mr. Bustamante's home town for the hearings.

We have Mr. Allayaud here, the State Director of
the Sierra Club.

Thank you very, very much for coming up here to be
with us today, Mr. Allayaud.

MR. ALLAYAUD: Thank you. My name is Bill
Allayaud and I represent Sierra Club California here in the
Capitol.

First on the CPR overall, there is not really
anything bad in this report by any means, but there's a lot
of reaction to it as a terrible report trying to make the
Governor king and all that. We're not looking at it that way at all. There's nothing inherently bad in saving taxpayers' money or industry money in terms of streamlining and efficiency, in fact, you might protect the environment better. And there are some good recommendations in there.

As far as our input in the report, we were asked back in April and had a two-hour meeting with the CPR people on the resources and the environment. A couple of our recommendations made it into the report then, but they didn't ask us a whole lot about other things that ended up in the report, obviously as they were to formulate them later.

But that was the extent of it. And the forestry recommendations are a good example, but we were not asked to comment on those, and industry is cited in there as the source for some of these ideas and information. And Mr. Reynolds said in the San Francisco Chronicle yesterday, "We didn't need to talk to the environmentalist, because we know what they think." And we don't think that's a good attitude.

But having said that, we're going to roll up our sleeves and read every bit of this report and make recommendations on the reorder, as well as specific recommendations in CPR, as well as the Boards and Commissions, and that's where I go to now.
I got the pleasure of working with the State Lands Commission staff since 1974 as a student assistant, way back when. So I worked with the leasing people, the legal staff, all the way up till today, and they're very professional, do a great job.

But having said that, I don't think decisions should just be put into their hands no matter how good they are. There's a public process that's here and it's very important that people need to know that decisions will be made in the public, that you will make findings and adopt recommendations, and make voted actions that are good things publicly. And that's true for many of these Boards and Commissions. Why do you think the Air Resources Board is more important than the State Lands Commission, that's neither here nor there today. But it says that there is a public process involved in these Boards and Commissions, we think it's critical that the people of the state save their money and be efficient, but make sure you let the public still in.

We met with the Governor, 30 environmental groups last week for the first time sat down with Governor Schwarzenegger, and CPR came up as one item. And we as a group told them, we highlighted four agencies actually, one was the Air Resources Board, Energy, and one was the State Lands Commission. We felt that the public trust aspects of
this Commission need to stay just that in the public realm, and therefore we're going to recommend against their recommendation of abolishing this commission.

Thank you.

CHAIRMAN WESTLY: Thank you, Mr. Allayaud.

We also have Mr. Collins from the East Bay Regional Park District here.

Thank you, Mr. Collins.

MR. COLLINS: Thank you, Members of the Commission.

I am Dave Collins, I'm the Acting-General Manager of the East Bay Regional Park District. We manage close to a hundred thousand acres of public lands in the East Bay, in Contra Costa County, including shorelines, trails, open space and the like.

We have some concerns with the proposal. We have a 30-year history of successfully working with the State Lands Commission over 30 years. We currently operate over 2,000 acres of property through cooperative agreements with State Lands. It's been a competent staff, a competent commission.

In terms of function, functionality from a stakeholder's perspective, I have one stop to come and deal with resource issues, lease issues, historical issues, fuel pipelines and toxic contamination. All of it is under one
roof and under one contact, it's been a very helpful process for us.

So we're here to just be on the record of we have a successful history and we would like to see it continue.

CHAIRMAN WESTLY: Terrific. Thank you, Mr. Collins.

What I would love to do is give each of the Commissioners a chance to comment briefly, and then I think we're going to go ahead and ask for a motion on the resolution.

Mr. Harper.

ACTING-COMMISSIONER HARPER: Thank you, Mr. Chairman.

Again, I just want to make it clear that this is a recommendation of a working group to the Performance Review Commission. The Commission is anticipating to either accept, modify, or reject a whole host of recommendations, over a thousand, as I understand it, and present some findings to the Governor's office. The Governor will then have the ability to review those recommendations and ultimately will propose something to the legislature if he sees fit. This is the first step.

To those of you that are concerned about public input and public comment and expert testimony, the avenues are being made available up and down the state to provide
that testimony to provide that input. We would encourage you to do so and don't feel that you're shut out of the process. If you're concerned that there is a limited time to speak before the Commission members, submit written testimony. It will all be taken under advisement. And what we're looking for here is an open dialogue between all the stakeholders, not interested segments and their niche and how they fit into a bigger puzzle.

I would ask the Chairman to entertain some modifications to the resolution, in that the Commission just direct the Executive Officer to transmit copies to the co-Chairs of the California Performance Review Commission, since that is currently where the issue is before. The issue is not in the legislature, there's no reason to submit testimony or to submit a resolution to members of the legislature on an issue that may never make it to the legislature, and as long as the Performance Review Commissioners know the position of a majority of the Board, that should be sufficient.

CHAIRMAN WESTLY: Would you like to go ahead and move that?

ACTING-COMMISSIONER HARPER: I would move that as amended in.

CHAIRMAN WESTLY: Okay. Is there second?

COMMISSIONER BUSTAMANTE: No.
CHAIRMAN WESTLY: Okay. Seeing none, the motion fails.

Other comments from Commissioners. I would love to just say a brief word about this. First, I think the CPR is a great concept, long overdue in state government and something we should look at very carefully. I very much agree with Mr. Allayaud's comments on this. We all ought to be in favor of streamlining government, looking for ways to remove redundancies, looking for ways to remove Boards and Commissions that aren't necessary or certainly for the members that are drawing salaries that are inappropriate.

That having been said, while there are many parts and components of the California Performance Review I think are excellent, this is one of the ones that I strongly disagree with.

Let me just make the following two points. First, as State Controller, I serve on over 50 Boards and Commissions, and I will just tell you, I think this is one of the best run, if not the best run, that I serve on. It's a model for openness, it's a model for efficiency. The staff is first rate and the ability to work closely with a variety of public interest groups to come out with meaningful compromises to serve the public interest, frankly is the gold standard in the over 50 Boards and Commissions I serve on.
Second, when it comes to the issue of efficiency, I would simply note this is a Commission that has taken on substantial additional duties over the last decade and has done so with fewer employees. This too is a model for state government, not something to be abolished or consolidated, something to be emulated across the board.

I also just want to say that the State Lands Commission functions used to be part of the Governor's office over 60 years ago. Many of you are familiar that there were abuses, scandals that occurred and so on. And while I don't want to suggest that would happen again, I do want to suggest there are some very strong reasons to have reasonable checks and balances of a separate commission led by publicly elected officials. I do want to suggest that there is a purpose to having the additional level of openness that we provide that might not be provided in the same way if this were to be subsumed under the Executive Office.

So for those reasons, I am strongly in support of the resolution and with that I would like to ask if there is a motion for the resolution?

COMMISSIONER BUSTAMANTE: Move the resolution as written.

CHAIRMAN WESTLY: Second.

All in favor, please say aye.
(Ayes.)

CHAIRMAN WESTLY: All opposed.

ACTING-COMMISSIONER HARPER: No.

CHAIRMAN WESTLY: And the vote carries two to one.

Thank you very much.

With that, Mr. Thayer, I think we come to you on Item 67, if that's correct, a report about the facilities on nonproducing offshore leases. May we have the staff presentation.

EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

I believe Jeff --

CHAIRMAN WESTLY: By the way, let me just thank the members of the public for being here, Mr. Allayaud and the other representative, we very much appreciate your time and your considered testimony. And Mr. Reynolds as well, forgive me.

Mr. Thayer.

EXECUTIVE OFFICER THAYER: Thank you. The next item is Item 67. This has to do with a report back from the Commission actually on a matter that was raised at the last Commission meeting where the Santa Barbara official was concerned about whether debris was being removed from nonproducing oil leases in a timely enough fashion, and the Commission asked that staff go back and survey our leases to determine where that situation existed and what we were
doing about it.

I believe Jeff Plank from our Mineral Resources Management Division will make that presentation.

MR. PLANK: Thank you, Mr. Thayer, Commissioners.

As Mr. Thayer pointed out, this report is as a result of some public comments on what's called Bird Island from the last Commission meeting regarding removal of comparable facilities on inactive oil and gas leases. The Commission directed the staff to report on the oil field facilities and/or remnants that have yet to be removed.

I think to put it in a framework, I just need to briefly go over what we have done over the last few years, because there really isn't much left.

The Commission has always impressed on staff that the removal of oil and gas facilities from state offshore leases was a priority. Since 1988, we have removed ten full facilities, six platforms, all in the Santa Barbara Channel. Belmont Island down in Orange, LA County, and the Ferguson Pier Complex, which were three piers that served as a drilling and production operation in Ventura.

In 1998, the Commission coordinated six oil companies to abandon a total of 21 sub-sea wells and 55 attendant flow lines in the Santa Barbara Channel. The project also cleaned up a number of oil field debris items that I will talk about in a minute.
After the SWARS project, we, working with the same companies, coordinated another effort just to remove some debris targets that were identified by the Local Marine Fisheries Impact Program, a study done in 1989, mainly for California's commercial fishing industry, mainly the troll netters, whose nets had been hanging up on various targets out in the ocean.

We cleaned up 41 of the 44 remaining targets that weren't cleaned up with SWARS and three of those are the subject of this presentation also.

There's only a few sites left. The Unocal Cojo Marine Terminal loading line, which is up at Point Conception. It was the site of Unocal's Point Conception Marine Terminal. The only thing left there is the offshore loading line which I understand is being removed this month. The underlying oil and gas lease was accepted as a quitclaim by the Commissioners earlier this year.

In the Moleno area, which is a little further east from Cojo, there are two core holes. One was drilled by Pauley and one by Shell Oil Company, in conjunction with Chevron. What core holes were were wells that were drilled by oil companies before we had the oil and gas lease up for bid. What they would do with the core holes is they would drill, they would get geological information and potential for hydrocarbon, and then they would immediately abandon and
leave the wellsite.

What we believe at each of these sites are what are called landing pads, which are pretty much just big slabs of concrete which appear to have been upended over time, we have to assume by some of the commercial fishing operations catching them and bringing them up.

There is one other in the same area. We believe it's the Shell 2920 Number 6 well, although we're not sure, but it seems to be. There may be what's called the casing stub. When you abandon the well, you cut off the casing, usually below the seafloor. There were a lot of problems with this well, and we need to go down with a vehicle and just see if in fact the casing is now sticking up above the seafloor, and if it is, we need to remedy the situation.

A little further down in Goleta is Bird Island, which the Commissioners are well aware of and which is the impetus for this report. In the Carpeteria area, the Commissioners are also well versed on the Shell Mounds, which are the mounds which resulted from the unauthorized discharge of drilling muds and cuttings and periodic cleaning of the legs of the platforms of crustaceans that had built up, which is required for the safety of the rig.

Currently, staff is evaluating the comments received on a draft problematic environmental impact report, and we're working with the California Coastal Commission and
Chevron to develop a project for the Commissioners in the near future on what we're going to do with the Shell Mounds, if anything.

In Ventura, where we removed those three piers, during the removal process, it wasn't possible to remove all of the pier and well caissons due to just some of the information that we didn't have as to how they were put in. Some of the caisson cement was left onsite and we couldn't use any further dynamite or we didn't have any other way of getting it out.

Subsequent biological surveys of the site in 1999 and 2002 revealed that both kelp and other marine life had already colonized the concrete caisson remnants providing equivalent habitat to the natural hard bottom habitats in that general area. The Department of Fish and Game has recommended that the area not be disturbed by further removal activities. Staff is working on an amended mitigated negative declaration to address the remnant concrete caissons there and we'll have a recommendation for the Commission as soon as the CEQA process is completed.

The last thing that's known to staff is in Huntington Beach, where I live. The Golden West Marine Terminal, which was the site of the American Traders spill in 1990, which actually led to the enactment of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, still
has two pipelines, loading lines, out in the water. In March 1997, the marine terminal facility was removed and it was put in caretaker status and these two pipelines are still there. There had been some suggestions on how to use them by various companies, but right now they're just sitting there and staff is currently working with the owners of the pipeline in an effort to secure an application to terminate that and to get the lines out.

And that's all we know as far as what's left that's associated with the oilfield.

EXECUTIVE OFFICER THAYER: I think if I could wrap up. So what we're left with is a comparatively few number of leases where the situation exists which was of concern to the person who testified before the Commission during the Bird Island hearings, and that it's staff's position that this should be taken care of and should be taken out. Each one of these situations is a little bit different, both in terms of the kinds of facilities that are there and the process that's necessary.

Shell Mounds, for example, has been going on for years and we're working closely with the Coastal Commission to try and come up with a solution to that. Others, particularly the Ferguson Pier, where there's a lot of impetus to get this stuff out of there, but on the other hand it's providing habitat that's recognized as being
useful, where there's not going to be easy decisions. But nonetheless, we're in the middle of working on all of these, none of them are in stasis, and we hope to over the next few years resolve all of them.

CHAIRMAN WESTLY: Terrific. If there are any members of the public who would like to speak on this, please come forward.

Otherwise, I'd love to ask if any of the Commissioners would like to ask a question.

Mr. Bustamante.

COMMISSIONER BUSTAMANTE: Paul, can you tell me, I just want to confirm, in a situation where you have a cap that's been put on a wellhead and it's placed below the ocean floor, the sand shifts and then exposes the well head and you have to then go down below the new floor. Who's responsible for that process?

EXECUTIVE OFFICER THAYER: I'm going to allow Alan to clean up after me, because I'll probably make a mess of this. But I believe that as long as there's a responsible party identified, that we can still go back and obtain the relief of having that reabandoned or done properly, either shortened or if there's a leak. But to be honest, there are also some wells that are out there that are of great concern to us where the abandonment was not done very well, it was done years ago, and by operators that have long since
disappeared. And that remains a responsibility of the state, in some circumstances, and it's something that we're still concerned about.

In the past, we have received appropriations to go take care of some of those. There have been cases where literally telephone poles have been rammed down holes and that's all that was done to abandon the wells and some of those are leaking. We're also concerned that in some areas, the area of Lease 421, which hasn't been in operation for a while that it's repressurizing. And some of these poorly abandoned wells may create problems.

That's a longer answer than you wanted, but the short answer is as long as there's a responsible party still around, we would go back and seek money from them.

Alan, is that --

MR. HAGER: I think that's fair. It is a lot more to say too. There is a fund that is administered by the Division of Oil and Gas and Geothermal Resources, albeit it has a limited amount in it, and it's for when there's no longer any well operator around. It's funded by assessments against the industry. And that's available.

But as long as there's a responsible operator around, I think it's the position of the staff that we would make every effort to get them to pay the cost. And I mean sometimes you can even have disputes over whether or not
they're responsible, but oftentimes we can just settle the
dispute by getting an existing responsible operator to do
that.

COMMISSIONER BUSTAMANTE: And in cases where there
are old closures or old capping processes that wouldn't meet
today's standards, before you repressurize those lines, you
obviously check them and assure they're okay?

EXECUTIVE OFFICER THAYER: Certainly. But I think
the problem that we're running into --

COMMISSIONER BUSTAMANTE: You don't want to blow
out one of those telephone poles.

EXECUTIVE OFFICER THAYER: Exactly. The problem
is that some of it in the area of this 421 Lease is that
there is natural repressurization going on. And so although
some of these wells don't leak right now, there may be
problems in the future from that. And it's not us or
anybody doing anything to repressurize them, it's a natural
phenomena. Originally, the oil field would have been under
pressure and that's what causes the sorts of blowouts you
hear about occasionally. The oil wells here have pumped
down the pressure and it relieved that pressure, but now
that they're not operating anymore, there is evidence of
repressurization going on and we're concerned that that may
cause some problems.

CHAIRMAN WESTLY: Terrific. And I understand this
is an informational item, it does not require any vote. So
if there are no other questions, I would like to thank you
for being here and certainly acknowledge this is an
important thing to get right and we appreciate the
Commission and the Commission staff's continuing vigilance
and proactive work in working with the companies that are
involved.

What I would like to do is move to Item 69 where
we'll look at federal legislation that would implement some
recommendations of the U.S. Commission on Ocean Policy and
the Pew Oceans Commission.

What I would like to ask for is a presentation, if
I could, Mr. Thayer.

EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.
I would ask Bill Morrison to make the
presentation, he is very active, but we don't see him so
much but here at the Commission meetings. But he does all
our relationships with the legislature and with Washington,
and he also does our public affairs as well and has worked
for the Commission for quite some time, and he will make a
presentation on this.

MR. MORRISON: Thank you, Chairman.
Chairman and Members, my name is Bill Morrison, as
you know.

At your meeting of June 7th, you passed a
resolution supporting the significant work of the Pew Oceans Commission and the U.S. Commission on Ocean Policy. The resolution stated your interest in supporting recommendations of the reports that significantly improve stewardship of our coast and oceans.

In that regard, staff is here today to suggest your support for two measures that have been introduced in the U.S. Congress. The first is H.R. 4900, sponsored by Congressman Jim Greenwood of Pennsylvania, co-sponsored by Sam Farr of Carmel, California, along with the two other co-Chairs of the House Oceans Caucus.

H.R. 4900 would establish a National Oceans Council and eight regional councils to develop and implement ecosystem-based management of our oceans. The bill would establish a national policy for our oceans of protecting, maintaining, and restoring the health of marine ecosystems. In addition, the bill would address ocean science, exploration, research, and education.

The second bill is H.R. 4706, sponsored by Congressman Nick Rahall of West Virginia. He is the ranking minority member of the House Committee on Resources. That bill is co-sponsored by ten congressmen and women from California, with principal co-sponsorship by Sam Farr of Carmel.

H.R. 4706 would broaden representation on the
regional fishery management councils by California, Oregon,
and Washington, and Alaska being the Pacific region, to
include individuals who are knowledgeable regarding the
conservation and management of the fishery resources. The
bill would separate scientific decisions regarding how many
fish can be caught from who gets to catch those fish.

Other members of Congress are working in their own
measures. Senator Barbara Boxer anticipates introducing
national ocean protection legislation in September of this
year, once the U.S. Commission on Ocean Policy has released
its final report, which is due in September, and the Senate
has returned from its summer recess, also in September.

According to the Senator's office, the bill will
be comprehensive and will address issues related to ocean
health and our nation's approach to ocean and ecosystems,
including ocean governance, fisheries management, marine
habitat, restoration, and ocean pollution.

Staff will continue to review and monitor all
efforts to implement the two ocean reports. This will be a
process that will continue to evolve into and through the
109th Congress.

Today staff is recommending that the Commission
support both H.R. 4900 and H.R. 4706, that the Executive
Officer be directed to send letters of support to the
appropriate members and committees in the U.S. Congress, and
that the Executive Officer be directed to support other
oceans bills that may be introduced in the 108th Congress
that support the Commission's position on ocean policy.

The reason for this last recommendation is that
Congress will return on September 7, their target
adjournment is October 1st, and the next Commission meeting
is not scheduled until October 6th, and there may be
measures that are introduced in the 108th Congress that you
would like to support.

Most likely, none of the oceans legislation will
be acted upon in the 108th Congress. I think most sponsors
and authors are looking at fine tuning whatever they
introduce in the 108 and coming out with something that is
even better in the 109th.

Thank you.

CHAIRMAN WESTLY: Terrific. Thank you, Mr.
Morrison.

Unless there is other speakers, what I would love
to do is ask if there are comments or questions from the
other Commissioners.

ACTING-COMMISSIONER HARPER: Just a brief comment,
and it relates to this third recommendation that you have.
And I have pause in giving approval on a piece of
legislation that I haven't had an opportunity to review yet,
so I would like that removed.
COMMISSIONER BUSTAMANTE: I agree.

CHAIRMAN WESTLY: We're all I think comfortable with that.

Mr. Bustamante.

COMMISSIONER BUSTAMANTE: No, I was going to say the same thing, basically. I would like to amend the recommended action to remove number 3 and move the staff recommendation with numbers 1 and 2.

CHAIRMAN WESTLY: I second that.

All in favor, please say aye.

(Ayes.)

CHAIRMAN WESTLY: Great. Would you like to proceed with the main motion now.

COMMISSIONER BUSTAMANTE: So moved.

CHAIRMAN WESTLY: Second.

All in favor.

(Ayes.)

CHAIRMAN WESTLY: Terrific. Thank you.

Again that was moved as amended.

Item 70 is off calendar.

So what I would like to do is return to Items 46 and 62, the matters that were removed from the consent calendar.

Mr. Thayer, a staff presentation, please.

EXECUTIVE OFFICER THAYER: Certainly. Item 46, we
just learned of the opposition this morning. Jane Smith of
our staff has been working on this lease, which is for the
restoration of the San Dieguito Lagoon, it's been long
worked on, and Ms. Smith has a staff presentation.

MS. SMITH: Good afternoon, Mr. Chairman and
Members of the Commission. My name is Jane Smith, a Public
Land Management Specialist with the Land Management
Division.

Before I begin, as a member of the Commission
staff for 26 years, I would like to personally thank the
Chairman and the Lieutenant Governor for their support of
this Commission and its staff.

Calendar Item 46 concerns an application submitted
by the San Dieguito River Valley Regional Open Space Park
Joint Powers Authority and Southern California Edison
Company requesting the Commission's issuance of a lease for
construction, operation, and maintenance of the San Dieguito
Wetland Restoration Project. A joint environmental impact
report environmental impact statement was prepared and
certified for this project by the San Dieguito River Park
Joint Powers Authority and the United States Fish and
Wildlife Service.

The JPA is a public agency consisting of the
County of San Diego and the cities of Del Mar, Escondido,
Poway, San Diego, and Solana Beach. The Board is
represented by elected officials from the county and those
cities, as well as a public member from the Citizens
Advisory Committee and an ex-officio member from the 22nd
District Ag Association.

The JPA is the agency responsible for creating a
natural open space park in the San Dieguito River Valley.
The proposed park boundary will extend from the Pacific
Ocean at Del Mar to Volcan Mountain near Anza Borrego State
Park, an approximately 55-mile corridor.

San Dieguito Lagoon, sometimes known as the San
Dieguito River, was once the largest of the six San Diego
coastal lagoons and has the largest watershed. The marsh
area alone is believed to have been over 600 acres, while
the entire lagoon probably covered 1,000 acres. Over the
years, the lagoon was subjected to major filling activities
and lost over half of its marshes. The State sold the
lagoon as swamp and overflowed lands in the 1800s, but
analysis of historical evidence indicates the lagoon
contained tide and submerged lands as well. Those are the
lands over which the Commission retains jurisdiction.

The fill activities and loss of natural river
flows have caused constriction of the lagoon and severe
reduction to the tidal prism resulting in closure of the
lagoon mouth for long periods.

The lagoon mouth is today only opened naturally
during large winter floods or by artificial means when excavated.

 Restoration of the lagoon as a functioning coastal wetland has been a stated goal of the cities of Del Mar and San Diego, and the organizers of the San Diegueto River Park for almost two decades. The Commission and its staff have also supported efforts at restoring and maintaining the lagoon's health as a viable coastal estuary.

 Southern California Edison is implementing the wetland restoration project as mitigation for environmental impacts caused by San Onofre Nuclear Generating Station or SONGS, Units 2 and 3.

 The California Coastal Commission required Edison to create or substantially restore 150 acres of tidal wetlands. In consultation with staff of the California Coastal Commission, San Dieguito Lagoon was selected as the site to satisfy the permit condition. Edison then developed a coastal wetland restoration plan for the San Dieguito Lagoon that is intended to satisfy this condition.

 The San Dieguito Wetland Restoration Project, which will restore and create up to 247 acres of coastal wetlands, will have numerous public trust related benefits to the state of California in general, and to lands under the Commission's jurisdiction.

 The project will improve overall water quality and
biological habitat as a result of restoring tidal exchange and circulation within the lagoon. It will increase diversity of estuarine and tidal marsh species by the creation of tidal habitats, including open water, inner tidal flats and salt marsh.

It will improve, restore, and preserve wetland habitat for fish, birds, benthic invertebrates and plants, including threatened and endangered species. The California Least Tern and Snowy Plover.

It will provide public access and interpretive opportunities related to the restoration components of the project. It will provide significant scenic, visual, and aesthetic benefits to area residents and visitors.

It will reduce the potential for flooding by improving the hydrologic efficiency and tidal circulation in the lagoon.

The project is supported by the United States Fish and Wildlife Service, the Department of Fish and Game, the San Diego Association of Governments, the cities of Del Mar and Solana Beach, and the San Diego Bay Council, a coalition of environmental organizations composed of the Surfrider Foundations, the Sierra Club, the San Diego Audubon Society, San Diego Baykeeper, and the Environmental Health Coalition.

Construction is expected to begin in the summer 2005 and take approximately three years to complete.
Southern California Edison is responsible for funding the project and for long-term maintenance for the life of SONGS, estimated to be 40-plus years.

The JPA will then assume control over the area, pursuant to an endowment fund that Edison will establish. It is estimated that the total cost to Southern California Edison will be approximately $80 million.

Commission staff analysis concludes that the San Dieguito Wetland Restoration Project is consistent with and in furtherance of public trust needs of San Dieguito Lagoon and its connection with the Pacific Ocean, and recommends that the Commission authorize the issuance of a 49-year lease beginning September 1st of 2004, to the San Dieguito River Valley Regional Open Space Park Joint Powers Authority and Southern California Edison Company for construction, operation and maintenance of the San Dieguito Wetland Restoration Project.

I would like to thank Wayne Brechtel of the JPA and David Kay of Southern California Edison for their help and support in bringing this item to the Commission today.

Commission staff, as well as Mr. Brechtel and Mr. Kay are here to answer any questions.

Thank you.

CHAIRMAN WESTLY: Thank you very much. I'd love to ask Mr. Kay, the Manager of Environmental Projects for
Southern California Edison to come forward, please.

COMMISSIONER BUSTAMANTE: May I ask a question?

CHAIRMAN WESTLY: Mr. Bustamante.

COMMISSIONER BUSTAMANTE: Staff, in any of the information that has just recently provided in opposition, does that in any way change any of your recommendations?

MS. SMITH: No, sir.

COMMISSIONER BUSTAMANTE: I've read this, the calendar item, I don't see anything wrong with it. But if there was something that was submitted that we should review, then I would be more than happy to review it. But I don't see anything here so far that changed my mind, I just wanted to make sure I didn't miss something.

MS. SMITH: Mr. Bustamante, the inquiry that I received this morning was actually by phone call indicating that the gentleman was going to speak in opposition to the item. I did not receive anything in writing from them. I understand there is another member of the public here today to speak in opposition to the item, and I received her comments and presentation right before the meeting.

COMMISSIONER BUSTAMANTE: Okay.

CHAIRMAN WESTLY: Terrific. I would like to ask Mr. Kay to say a few words, then we'll hear from members of the public.

MR. KAY: Good afternoon, Commissioners. I'm
David Kay. I'm the Manager of Environmental Projects at Southern California Edison.

The San Dieguito Wetland Restoration Project is one of a number of projects that I oversee. And I would like to say at the outset I love the State Lands Commission and Jane Smith you're the greatest.

(Laughter.)

MR. KAY: We've been working in this project since about 1991. Preliminary plans were approved by the Coastal Commission in '97, the EIR was adopted in 2000. We had a few years of litigation as big projects always do, and the California Court of Appeals resoundingly upheld the environmental impact report and denied the petition, and we are now in the final steps of final design and engineering.

Yesterday we submitted the first of many permit applications, this one to the California Coastal Commission for a coastal development permit. We hope to obtain that permit in October and, as Jane said, begin construction sometime next year over a three year period, and then probably an additional three years to watch vegetation develop. And many, many years of post-construction monitoring and maintenance, as Jane said, first through Edison and then a long-term endowment that we've established with the JPA.

I would just like to reserve any other time to
answer any other questions that may come up after other
speakers or after discussion.

Thanks very much for your support.

CHAIRMAN WESTLY: Terrific, Mr. Kay.

ACTING-COMMISSIONER HARPER: I have one question.

CHAIRMAN WESTLY: Absolutely.

ACTING-COMMISSIONER HARPER: Thank you, Mr. Chairman.

In your testimony, you indicated that there was a
pending approval from the Coastal Commission?

MR. KAY: We just filed an application for a
coastal development permit, as you must do for any
development within the coastal zone.

ACTING-COMMISSIONER HARPER: Would there be any
conditions on that approval that would necessitate a change
to approval here? Is there anything that you foresee
happening?

MR. KAY: Well, I don't know if it would
necessitate a change to the lease, I don't believe so, we
are asking for the Coastal Commission to impose certain
conditions on our permit. I expect they will probably come
up with a few additional conditions of their own, most of
them related to long-term monitoring and assurance of the
project elements.

CHAIRMAN WESTLY: Terrific. Thank you, Mr. Kay.
I'd like to ask Ms. Hamilton from the public who is here to come forward.

I unfortunately have to go to another meeting, but I will be represented by Deputy Controller Aronberg, and I will be passing the gavel to Lieutenant Governor for the remainder of the meeting.

Ms. Hamilton, thank you for being here.

MS. HAMILTON: Good afternoon, Commissioners. My name is Julie Hamilton and I represent a nonprofit organization dedicated to the preservation of the beaches in the Del Mar area called Save the Beach.

And we are in agreement, this is a worthy project. It's been a long time, the legal challenge that was brought forward was a challenge to the adequacy of the EIR. This is a different issue.

The issue that we are raising is that in weighing the public's interest, and the staff did a fabulous job of that, what happened was there was no consideration given to the competing concern of a loss of sand on the beaches in the Del Mar area. And I think that one of the things we need to keep in mind on this project is that Southern California Edison is not necessarily doing this out of the goodness of their heart. They are doing this because of impacts that are caused on the coast by the San Onofre Nuclear Generating Station. This is something they have to
do to mitigate other significant impacts. It doesn't dimin

ish the value of this project, but it's important to kn

ow where people are coming from.

The crux of our concern is whether or not there will be significant impacts on the beach. Whether or not the opening of the river mouth permanently will cause a significant loss of sand on the beaches in Del Mar.

We have a very different opinion on this issue. The river valley, based on modeling done by the man who designed this project, is of the opinion that there will be no significant impacts to the beach. If my client could believe that, they would happily walk away. They would more than happily like to see this wetland restored, as long as there are no impacts on the beach.

Unfortunately, we have evidence to the counter. We have evidence that the project will result in significant impacts to the beach, and this is the part of the equation that was left out. There are many public interests here. There is the interest of environmental preservation and restoration and preservation of the beach. Therefore, Save the Beach is requesting that conditions be added on this lease, that the lease be modified in a way that protects and ensures the ongoing presence of a beach in Del Mar.

The conditions are outlined in the letter that I submitted to you on page 2, and I do want to apologize for
the lateness of this information. We were not aware that it was on the agenda until last week. When I tried to contact staff, I had a little difficulty getting through, and then the only date that I had available to finish up was the only day that Ms. Smith was available. Not an excuse, but we don't make it a practice to late hit, we do try to resolve these things. And many members of Save the Beach have been getting this same input since 1993, and I have been trying to work with the agencies repeatedly with the JPA and Edison. So this is not news to the JPA or Edison that we have these concerns.

Let me go back to the conditions that we would like to see. And again, the conditions are designed to preserve the beach and to ensure that this project will not cause a lack of sand on the beach.

Initially, we would be asking for monitoring. Monitoring of the sand on the beach and the impacts on the beach itself. There is a monitoring program proposed, however, this monitoring program is really on the effectiveness of the restoration, the environmental success of the restoration project. It's not necessarily monitoring of the beach and the sand levels.

This monitoring is imperative. It allows us to see whether or not there is an impact. It also allows us to relate the loss of sand in Del Mar to the loss of sand in
other areas, which gives us an idea as to whether or not the loss of sand is project related or natural causes similar to circumstances being observed in other locations.

The second condition that we would be looking for is an intermittent opening if there is a loss of sand being experienced on the beach. And these conditions are really somewhat gradated. If there is not a significant loss of sand, then a consideration for an intermittent opening which would allow the beach to recover periodically and then allow a breach to provide for the biological productivity of the wetland.

This river mouth has historically been opened to allow the lagoon to flush and to allow some of the biological productivity to be retained, and it is also opened by the fairgrounds in order to prevent flooding. So you add a third prong to the analysis of whether or not it should be opened, that is, can the beach handle it, or are we going to cause a loss of sand that shouldn't occur.

The third condition is to establish and maintain a sand replenishment fund. We need to get the project proponents on the hook to replenish sand if sand is lost. There needs to be some assurances if sand is lost that it will be replaced. If sand is not lost, then there's no harm, no foul. And this can be set up in a variety of ways and it may cause a slight delay here at the State Lands
Commission to completely work out the language of such a condition and how it would be handled. But there needs to be assurances for sand replenishment.

Save the Beach would like to see the project phased in a manner that would allow a gradual restoration project working west to east, rather than east to west. This would allow as each phase is being opened up, it would allow us to monitor what happens to the beach. The current phasing plan basically opens up all of the basins at once. So if you're going to have a problem, you're going to have it all at once. If you work west to east and you do your phasing west to east in small increments, then you can see a more gradual monitoring and a more gradual impact, you don't have any of the devastating effects that may be encountered when you open up the entire restoration project.

The fifth condition is a commitment from Southern California Edison to quickly and completely repair any damage to the beach caused by this project. Get your dozers out, throw some sand, get it fixed. I have been told by our coastal expert, Dr. Greg Stone, who is the Director of the Coastal Studies Institute at Louisiana State University that if there is a problem, it's going to happen and it's going to happen fast, and we need to have that corrected. We can look for all the assurances possible, but once again, we can't control mother nature. We have been shown that we
can't predict mother nature. We saw that in Florida this week. Despite the best available modern science, we cannot predict mother nature. And if we have a situation where the restoration project opens up the river mouth and we have an instant and sudden loss of beach, then we need to have assurances that it will be fixed immediately.

Those assurances would include closing the inlet immediately. If we have the devastating loss of sand that can be anticipated in this situation, we would look for the inlet to be closed immediately.

And I want to say that many of these things we are requesting, Southern California Edison has agreed to verbally in public meetings, but we don't have it on paper yet. We don't think it's appropriate to wait for the last approval to come down to the conditions that this project must meet. It's appropriate to get the conditions resolved at the outset to get them resolved now. They haven't been resolved because there is a difference of opinion as to whether or not this project will impact the beach. I don't think we can take the risk.

There is a difference of opinion on almost every subject that comes before any commission. But we can't take the risk, we can't risk the beaches of Del Mar, we need assurances that the beaches of Del Mar will be protected when this project is built. So we're asking that these
conditions be added to the lease. We admit that the
language may need to be drafted, it's not completely refined
yet, and that we may need a slight delay.

There was no way around it, we did not have the
information prior to last week and we have been repeatedly
requesting that Edison and the JPA agree to these and we
haven't come to it yet. So it's not that we haven't tried,
we don't have refined language for the conditions for you
today.

ACTING-CHAIRMAN BUSTAMANTE: We need you to wrap
this up.

MS. HAMILTON: Yes. Thank you very much for the
time.

That is in summary, we are looking for assurances
to protect the beach in Del Mar if this project is allowed
to go forward with this lease.

And I remain available for any questions.

ACTING-CHAIRMAN BUSTAMANTE: Perhaps staff could
respond to the provided files. Are they or are they not
somehow included in the agreements, specifically the
monitoring, the sand replenishment fund, or not necessarily
a fund, but access to funds to deal with sand replenishment
issues, as well as the commitment to repair any kind of
damage as a result of the project?

MS. SMITH: Mr. Bustamante, the lease as it's
presently drafted does not specifically include language to address the five issues that Ms. Hamilton has raised here today.

EXECUTIVE DIRECTOR THAYER: If I may, Mr. Chair, there is also a representative from the Joint Powers Authority that's worked on this project extensively and probably has additional knowledge that we're not aware of and it may be appropriate to ask some of these questions of him as well. I believe that Mr. Wayne Brechtel is here.

ACTING-CHAIRMAN BUSTAMANTE: He was up next, so why don't we have him come up.

MR. BRECHTEL: Good afternoon, Members of the Commission. It's my pleasure to be here on behalf of the San Diegueto River Valley JPA. I'm its general counsel and more familiar with this project and fluvial river analysis than I ever thought I might be.

As you know, the JPA, it's an organization and it's sole purpose is to form and operate and manage this open space park. It's the City of San Diego, County of San Diego, the cities of Del Mar and Solana Beach --

ACTING-CHAIRMAN BUSTAMANTE: The sand replenishment issue, sir.

MR. BRECHTEL: On the sand replenishment issue, I guess I need to give a little background, because I don't want to --
ACTING-CHAIRMAN BUSTAMANTE: Very little.

MR. BRECHTEL: This project, we understood the issue of sand replenishment from the very onset, and the number one criteria was to not alter existing conditions. Mr. Bustamante, existing conditions in this area are not simple, and very briefly, San Diego has a sand deficit. We basically are running out of sand. And most of it comes from north of Del Mar and travels south.

The San Dieguito River normally doesn't provide any sand. It doesn't flow fast enough to actually push any sand out into the ocean. Only during major storm conditions does it actually provide sand, when there's a flood it will push a bunch of sand out and that sand will accumulate in the city of Del Mar.

ACTING-CHAIRMAN BUSTAMANTE: The concern is that is there going to be sand replenishment in the event that there is a loss of sand based on this project. You're saying that there is not going to be any harm?

MR. BRECHTEL: That's correct.

ACTING-CHAIRMAN BUSTAMANTE: As a result of sand, because the river doesn't provide any sand to that particular beach.

MR. BRECHTEL: Well, I don't want you to think that I'm just pulling out a figure, Mr. Bustamante, we did our homework. We didn't come here today just with that as
an opinion, we hired experts in the field from the area to --

ACTING-CHAIRMAN BUSTAMANTE: Was that checked by staff?

EXECUTIVE OFFICER THAYER: I would ask Ms. Smith if she's --

MS. SMITH: Well, I believe, Mr. Bustamante, we reviewed it as part of our review of the environmental impact report environmental impact statement.

ACTING-CHAIRMAN BUSTAMANTE: Is it your position that this river does not provide sand to this beach?

MR. BRECHTEL: But that wasn't what I stated, sir.

ACTING-CHAIRMAN BUSTAMANTE: That's what I got.

EXECUTIVE OFFICER THAYER: I think what he was trying to say is that normally there is very little input from the river because it doesn't flow anymore, the river dams upstream and that rivers are classically sources of sand for the beach. And that finally real changes to a beach only occur during high water tides when the river is flowing so fast that this project would have no impact whatsoever on what's going to be happening at the mouth.

ACTING-CHAIRMAN BUSTAMANTE: So it's not going to have a negative. The staff's position is it's not going to have a negative impact on the beach?

EXECUTIVE OFFICER THAYER: Well, that's what I
asked.

MR. BRECHTEL: And just to respond to that, I would say you do not need to take my word for it, but I can --

ACTING-CHAIRMAN BUSTAMANTE: I won't.

MR. BRECHTEL: -- tell you the issue of sand loss was the issue in litigation. It was the foremost issue and there's a 74-page opinion, a Court of Appeal opinion that looked at our experts and looked at the issue and --

ACTING-CHAIRMAN BUSTAMANTE: It sounds like you're very thoroughly familiar. I just want a few questions answered.

So staff's position is that there will be no negative impact as a result of this project to the Del Mar Beach?

EXECUTIVE OFFICER THAYER: With respect to the sand that's there?

ACTING-CHAIRMAN BUSTAMANTE: Yes.

EXECUTIVE OFFICER THAYER: Yes.

ACTING-CHAIRMAN BUSTAMANTE: The second issue that I had that was a real concern in the issues that she raised was a commitment to repair any damage to the Del Mar beach as the result of any negative impacts as a result of this project. Are you saying that there will be no negative impact by this project as a whole on the beach, not just in
terms of sand, but in terms of any damage to this particular beach.

EXECUTIVE OFFICER THAYER: It's my understanding that there will not be damage to the beach.

ACTING-CHAIRMAN BUSTAMANTE: If something were to occur, a breach were to occur of some kind, if in the restoration process there was something that was not anticipated and some damage did occur to the beach, are there sufficient provisions to be able to ensure that the beach would be cleaned up or will be repaired as a result of the work that was being done on this particular project?

EXECUTIVE OFFICER THAYER: I don't know of any particular provisions that are in there to address that issue, because I think again the evaluation was that there wouldn't be damage, but perhaps Ms. Smith or Curtis Fossum, who was our attorney who worked on this, may know more.

MR. FOSSUM: I think, Mr. Chairman, that when we're dealing with a regime like this, a sandy beach and a lagoon, the attempt that the project is proposing to make is to try and restore some of this natural condition. It's been significantly modified by man over the last hundred and forty years and what this attempt will be is to try and restore for the habitat values primarily, but for other values as well, a prior sense of what the lagoon was.

Briefly, one of the slides that was shown earlier,
showed the lagoon in the 1880s, a marsh. There was very little beach at the time in Del Mar. Most of the San Diego beaches, in fact, early reports of U.S. surveyors who went up and down the beaches found cobble rather than sand. Some of the sand that's there today is not natural, it's certainly an amenity to the people who live on the beach and they like it very much and the people who visit the beach do, but it's not necessarily something --

ACTING-CHAIRMAN BUSTAMANTE: I understand.

MR. FOSSUM: -- that occurs naturally. So I guess maybe regardless of whether this project is approved, sand will be lost on that beach periodically from storms.

ACTING-CHAIRMAN BUSTAMANTE: That's not the question I'm asking.

MR. BRECHTEL: If I could address that, I think there's --

ACTING-CHAIRMAN BUSTAMANTE: No. Let me address the attorney who said a lot and didn't answer my question.

As a result of this project, if there is any damage to the beach, is there any provision that would provide so that it is taken care of?

MR. FOSSUM: I suppose it depends, Mr. Chairman, on the type of damage that occurs.

ACTING-CHAIRMAN BUSTAMANTE: If you have a levee that was breached and a whole lot of water runs off into the
beach area, I don't know. Is there a provision that would allow --

MR. FOSSUM: There's the protection for the state, liability protection by the lessee to the state if there's damage to third parties. If there is damage to state property that would cover insurance and expenses to repair those things.

ACTING-CHAIRMAN BUSTAMANTE: Well, this is our property, right?

MR. FOSSUM: They are. But they are a natural property that comes and goes, and as I was saying, I don't know of any particular situation in California where the fact that nature may cause, and if we're looking at the lagoon right here in this picture, you can see a very narrow beach in front of the homes on the point. Sometimes that beach is twice as wide as that.

So I think the concerns that we have are that this wetlands be restored, that there will be impacts to the beach, there will be positive impacts and there will be negative impacts periodically, and if a periodic negative impact occurs to the beach, I don't think that means that Southern California is necessarily going to run out if some kelp or something are washed out on to the beach and it ends up on the beach, some people may believe that's going to be a negative impact, but it's a very natural impact as well.
ACTING-CHAIRMAN BUSTAMANTE: That's not a negative impact.

MR. FOSSUM: Well, it has been alleged by some of the parties that when the lagoon was open, in fact, the initial litigation against the State Lands Commission was by the property owners in the area who felt that opening the lagoon and returning water quality to the lagoon would, in fact, damage their beach area because of the material that would be washed out from the lagoon. And it probably did for a very short period of time, a few days.

ACTING-CHAIRMAN BUSTAMANTE: Wayne, do you want to finish your thoughts?

MR. BRECHTEL: If I could, you bet.

Again, I just want to make the point, we did our home work to design a project that wouldn't harm the beaches. That being said, this beach will suffer periodic harm, it has historically. There are devastating storms, and El Nino, it's completely washed out and flooded. I have no doubt that will happen in the future, I have no doubt that there will be some who will say it's our project, I mean that's probably going to be happening.

Two things that are in place to help protect the public. One is we're a landowner and we're a public agency. If our project harms adjoining property, if our project causes damage, there is a legal recourse to recover from
that.

ACTING-CHAIRMAN BUSTAMANTE: Thank you.

MR. BRECHTEL: Inverse condemnation.

ACTING-CHAIRMAN BUSTAMANTE: It's hard to get an
answer from the man.

MR. BRECHTEL: The second thing is we have as part
of our submittal to the Coastal Commission, we have proposed
a condition, we imposed it as part of the coastal
development permit, of monitoring the beach, I think for a
minimum of five years, just to confirm what we are confident
will be the case which is this will not have a negative
impact on the beach. And that the Coastal Commission will
then receive those reports, and if there were, in fact, some
indication of a problem, that the conditions would be
monitored or altered or focused. So we've done our homework
and we're going to be there and we're going to be
responsible for what we do and doing it in a responsible
manner.

And so we don't disagree with the monitoring
condition. The other conditions we do disagree with, and
the point I was trying to make when I first spoke is we
analyze this, literally there's thousands of pages of
engineering analysis, hundreds of pages of legal briefs, and
an opinion by the Court of Appeals says, look, we understand
these two opinions here, but are the opinions supported by
competent qualified experts with substantial evidence. And we're prepared to proceed forward, and we'll also be subject to coastal development permit conditions which will be incorporated into the lease. The lease is subject to those conditions and we're asking that the Coastal Commission impose monitoring.

ACTING-CHAIRMAN BUSTAMANTE: Thank you. We have Mark Teh.

MR. FOSSUM: Mr. Governor, I would like to just for a second. Commissioner Harper earlier asked the question if the Coastal Commission had a condition as part of the permit, and I don't know that we responded properly to that. I think our standard lease covenants provide that if additional covenants are put on a party by a permit that our lease is subject to those as well. So unless they were substantive changes that changed the project in a manner that required the Commission to review it, they would be part of our Commission's approval.

ACTING-COMMISSIONER HARPER: Are the points of the opposition here today subject, or is the Coastal Commission an appropriate place to review those issues?

MR. FOSSUM: Well, certainly the Coastal Commission would believe that if there was substantive arguments as to effects on the beach that should be addressed, I'm sure they would be looking at them as well.
One of the things is the information that was submitted to us today was, at least what I saw, was dated in June and we received it this afternoon just minutes before the Commission meeting. So there have been opportunities for anybody who believed this information was pertinent to bring it to our attention earlier. There was opportunities in the CEQA process to bring this kind of information. There was a challenge and the courts ultimately found that the CEQA document was adequate.

ACTING-COMMISSIONER HARPER: Move the staff recommendation.

ACTING-CHAIRMAN BUSTAMANTE: Is there a second?
ACTING-COMMISSIONER ARONBERG: Second.
ACTING-CHAIRMAN BUSTAMANTE: There's a motion, a second. But we still have one other person who would like to speak, Mark Teh.

MR. TEH: Good afternoon, Commissioners, my name is Mark Teh and I represent the Citizens United to Save the Beach. They are also an organization which was organized to protect the beach at Del Mar.

Basically, we would like to incorporate by reference the comments that were made by Ms. Hamilton. We would also like to highlight that we strongly believe that these conditions should be imposed for this lease. The conditions should include the commitment of funds by
Southern California Edison to cover monitoring and corrective action, should there be erosion of the Del Mar beach south of the lagoon.

And on that, I go ahead and submit these comments to the Commission.

Thank you.

ACTING-CHAIRMAN BUSTAMANTE: All right there's a motion and a second.

Call the question. All those in favor say aye.

(Ayes.)

ACTING-CHAIRMAN BUSTAMANTE: It looks unanimous with no no votes. We move the staff recommendation.

We're going to Item Number 62 from the consent calendar.

EXECUTIVE OFFICER THAYER: Mr. Chair, this is an item that deals with the Commission staff implementing the oil spill prevention program. The concern is whether or not the terminals, the oil terminals in the state are constructed in a manner that they will resist the impacts of a major earthquake which would be -- and the two major impacts would be environmental, the oil spills that we're charged with preventing, and number two, an economic impact that would be obviously if major terminals that were put out of business would have a dramatic impact on the energy supply in the state.
Martin Eskijian will make this presentation.

We have heard some of this before, but what's happened is we've learned that instead of submitting these as regulations to the Office of Administrative Law, we're being required to submit these building standards to the Building Standards Commission, and so we need Commission authority to do that.

And Mr. Eskijian I should say before he begins is an expert in this. He's with our Marine Facilities in Long Beach and he's traveled overseas following some major earthquakes and has seen the damage in Japan and also in Turkey, where oil terminals were damaged by earthquakes.

MR. ESKIJIAN: Thank you, Mr. Thayer. And thank you for this opportunity, Mr. Chairman, Members of the Commission, and Ladies and Gentlemen.

Like Mr. Thayer said, this afternoon is the day of reckoning for the Marine Oil Terminal Engineering Maintenance Standards, and pending your approval, this program will move into the Building Standards Commission for adoption and that's our hope today.

It's an interesting day today. Today is August 17th, 2004. Exactly five years ago today was the Turkey earthquake, and we were there one week after the earthquake and learned a lot about port damage.

Also since this project started, I was in Kobe in
1995 following that earthquake, about two weeks after that earthquake, and we saw the port damage there.

If you have any questions or anything you want to clarify, just speak out. Don't wait, just say it, whatever it is.

This effort is mandated, we believe, by the Lempert-Keene-Seastrand, Oil Spill Prevention Act.

There is currently 40 terminals in the state of California. One of the critical issues is what we call grandfathering, where vessels have been growing in size or what we call deadweight tonnage over the years, way beyond what they were designed for. Structural degradation is a continuing thing. You're in a marine environment and there's impact damage, there's earthquake damage, there's corrosion, there's all kind of damage that affects the structure.

Inadequate fire detection and suppression is an issue. There's a standard out that's an internationally recognized standard and many of these facilities do not come up to that standard.

The facilities were built over the last hundred years. The average age is 50 today. The seismic standards that were in place 50 years ago are not considered adequate by today's standards.

She also mentioned that if you look at textbooks
on marine structures, 50 years is the usual lifespan of a marine structure. Some examples, and I think I showed some of these last year, I was here last August in front of the Commissioners. This is the Port of Los Angeles and that's about a hundred thousand deadweight tonnage tank vessel and you can barely see the wharf, the timber wharf behind it in which he was going to be parked. That wharf was probably built somewhere in the 1920s or '30s, there's no way it was designed to berth that particular vessel.

This is a picture of me in Turkey one week after the earthquake of five years ago. John Bragman and I were privileged to go on a tsunami recon trip and we entered a small fishing village and there was about three to six inches of oil, crude oil, in the marina. No doubt this is as a result of the earthquake and there was a refinery, and whether it was a result on the terminal or in the tank farm, we're not clear. But it was a major oil spill and 3,000 barrels were spilled into the sea.

Could it happen here? This is a very recent photograph, this was taken in June of this year. And in a way, it's sort of almost comical, in a way it's pretty tragic. A vessel was moored here and due to the changing tides and the load as it was being unloaded, the lines were not tended properly and the cleats which were underdesigned for the vessel anyway, were pulled right out of the wharf.
And upon looking at this a little closer, you can't really see it from the photograph, but there's serious structural degradation, there's dry rot. There's no way this particular wharf is fit for the purpose in which it was intended to be used at this time.

The standards. I could probably speak two to five hours on each one of these topics, but I'm not going to.

ACTING-CHAIRMAN BUSTAMANTE: Thank you.

(Laughter.)

MR. ESKIJIAN: The document is a hundred pages long. And I'm going to give you an analogy because you're probably not engineers. And that is imagine you're a 50-year old man, the structure is 50 years old, and you want to live on for another 30 or 40 years, you've never had a physical, but now you went to the doctor and you've got to get a colonoscopy, and EKG, a general physical, and there's a whole bunch of blood tests, and he's going to tell you whether you're going to be okay for the next 30 to 50 years. And that's basically what this is doing for the marine oil terminals of California. This is a fitness-for-purpose evaluation to tell us whether they will be okay for the next 30 to 40 years. And implicit in this is that the operators that are operating today want to keep operating, and they do not want to stop tomorrow. And so we believe this is necessary, just like you go to your doctor, it's necessary
to keep this going.

The structural component. The seismic analysis, I want to make perfectly clear, the requalification in terms of seismic analysis is to bring the marine oil terminal up to the same standard as is used to rehabilitate and rehab the adjacent refinery. So we're saying that the hardness of the refinery and the hardness of the marine oil terminal should be about the same, and that's what this project intends to do.

We've had two major workshops and maybe 200 people attended. We've got port engineers, consulting engineers, members of the industry, academia. We've had peer review, we've tried to get the best structural analysis and design professionals in the state to help us with this project.

The Western States Petroleum Association, WSPA, has been on the Board and has participated in all of our activities and they are intimately familiar with the details of this project and have given us a lot of good recommendations, and many of these have been included in the text. And again, I briefed this last August in front of the Commission.

What does it cost to get the physical. At a big terminal, I estimate the cost to be about $185,000, that's probably an upper-bound estimate and a number that we're putting out for the larger facilities.
EXECUTIVE OFFICER THAYER: That's for the initial audit costs, but not the actual repairs.

MR. ESKIJIAN: That is here. To rehabilitate, we estimate the higher end would be around $5 million, which could be done over a period of years. And some of the arguments raised are, well, you need to get environmental approval, you need the BCDC to say yes, we can't get the money this year, we have to wait another year.

This is not something that has to be done this year or next year, it's on a scheduled, agreed-upon timeframe that the operator and the Marine Facilities Division both agree to as being reasonable. So if it takes you four years to do it, he's coming in and saying I need four years to do it to get the money and to get the approvals, fine it's four years. If you say it's 25 years, then we probably wouldn't want to believe that.

Some of the numbers I've gotten for cleanup, $20,000 per barrel come from the OSPR. And our criteria or screening to become a large major facility, to have this level of expense, if 200 barrels of oil spilled, that would be $24 million, giving us a cost-benefit ration of .2. That does not include such things that could go wrong as if you have a spill in the Port of LA or Long Beach and you shut down the port. As we learned from the recent strike there that it could be as much as a billion dollars a day if you
shut down a port. And nobody's going to want to run their
vessel through a big oil slick, so it can get very expensive
very quickly.

Three major engineering companies have said it's a
great idea. The Port of Long Beach has written an approval
and endorsed a letter. The State Fire Marshal and the
Office of Oil Spill Prevention and Response has also issued
a letter of approval and endorsement.

Has it been used? Yes, it has been used. The
Port of Oakland has used our seismic rehab criteria for
design analysis and to treat their aging wharfs and many of
these have been rehabbed already.

I just learned recently that a firm in Seattle,
Washington has used our seismic methodology analysis and
design for new pier projects and a paper documenting that
will be presented at our Prevention First 2004 symposium in
September of this year.

Chevron Long Wharf has completed their seismic
rehabilitation and are in conformity with the MOTEMS
standards.

Conoco Philips will go most of the way to complete
agreement with the MOTEMS and it's in process right now.

There are others in the world I'm sure that I
don't know about that have used MOTEMS as a criteria for
design analysis at their wharves and piers.
The seismic portion of our document is exactly repeated word for word in the seismic design guidelines for port structures. It was published in 2001 and is a very good textbook for seismic design.

I sit as a member of the New York Committee for what's called Nonbuilding like Structures, and for 2003 there is a complete reference to MOTEMS as a standard to be used. And it won an award last year in New York.

We're here today because we do need the approval of the State Lands Commission to move ahead with our program. We are planning to go to the Building Standards Commission, like I stated before. That would be in November of this year and we expect it to be published as part of the building standards code next year and be effective six months thereupon. Just to give you an idea of the timeframe, the initial audits for major facilities would be done 2.5 years after that date, so we're talking in 2008 before a major oil terminal would have to do its initial audit.

And that concludes my statements today to you.

ACTING-CHAIRMAN BUSTAMANTE: Okay, thank you.

Any questions?

Why don't we have the one person who would like to speak as a public, Dennis with WSPA.

Dennis Bolt with WSPA.
MR. BOLT: Thank you, Governor Bustamante.

ACTING-CHAIRMAN BUSTAMANTE: It says you're here to speak in a neutral?

MR. BOLT: Yes, yes. Our position is neutral on this regulation. We appreciate the opportunity to come forward. I was going to apologize for my late comments, but I was ahead of schedule, they came in yesterday.

WSPA, as you know, represents a majority of petroleum-related interests in the western United States, and many of our members operate marine oil terminals in the state under the jurisdiction of this regulation. There are a number of marine oil terminals under your jurisdiction that are not members of WSPA.

WSPA, to reiterate, has a neutral position on the regulation.

Could I borrow the map and I can flip through this, I guess. I don't know if that will add value to the audience.

We do believe the environmental and small business analysis to be incomplete. The recommendations we have for you today will fully address those issues in a comprehensive and meaningful way.

More important, we believe your body singularly has the jurisdiction or responsibility, the purview, to act on behalf of the state of California and any untoward
impacts that might exist from this regulation. While the
record might develop reasons for opposition in the future,
they are not present today.

The adverse impacts, if there are any from this
regulation, and it is unknown as we sit here today if there
are. There are not adverse consequences to us. These are
issues for public policy or on behalf of Californians that
should be addressed. We can afford to comply with MOTEMS.
It's a big body of law, it's a big pill to swallow, but we
can do it. We've proven that. But it's the societal cost
of disrupted fuel supplies and unmitigated environmental
risk that might lay as the untoward consequences of this
regulation that should be evaluated before the Commission
adopts it.

In your elected and appointed positions, you're
uniquely positioned to guard those interests with little or
no impact on the implementation of this regulation. Your
decision might be to adopt MOTEMS as it is, or it might be
to find a better path to implementation.

What's right about MOTEMS, you've heard it. Just
let me say high praise for the gentleman next to me and your
staff. He's not only a world-class expert, he's a world-
class regulator and collaborator and Mr. Eskijian ran an
excellent stakeholder process. We've been involved in this
regulation from the get-go, we just are not used to the
regulators being smarter than us.

There are issues out there. There are problems and the problems need to be addressed in a comprehensive and meaningful way.

What's the problem we're trying to solve? It's the one that was demonstrated. Oil spills, the technologies are already out there to mitigate oil spills. The risk we're dealing with are structures breaking away from docks in the event of a wharf collapse and vessels being adrift, you know, without power. A fair statement. The likelihood of that scenario pending the review that we're suggesting in here is unlikely because the majority of the throughput risk, as is indicated in the staff report, has already been mitigated. In other words, the technologies are already there on the docks to shut down under the OSPR regulations and to prevent a major oil spill.

What are the potential adverse impacts of MOTEMS. And this is where the dots are not connected. The California Energy Commission is saying there's insufficient wharf space today to import sufficient gasoline supplies to meet the demands of California consumers. That's the Commission on the other side of the street. The Commission on this side of the street is saying we need to impose regulations, and then the unfortunate result of that is we're going to close marine oil terminals. What we're
suggesting is the resource agency connect the dots between those two public policy decisions in different agencies and do it in a very short period of time. Because if there are supply disruptions of petroleum products, the State should care. If they are coming down the path, we need to see them over the hill, we need to plan for them and to provide for them so that our citizens are not adversely impacted and our businesses are not adversely impacted.

The staff has not been directed to perform this review. They make the comment in the staff report, well, that's the California Energy Commission's job, and it is. No criticism, staff's done their job, they've met their mandate, they've delivered the mail today. But those dots need to be connected by somebody and we submit you are the ones to do it. And all we're suggesting is a 90-day delay in your decision on this regulation, pending a review which we're calling the CEC/SLC Collaborative, that until your October meeting. And what would happen in the meantime is we would determine the impacts on petroleum fuel supplies in California from this regulation and when those impacts might occur.

What would be those impacts on small business? That's where I believe the gap is in the staff report. If there are disruptions in fuel supplies, then there would be impacts on business that have not been addressed in the
staff report, and they should be uncovered and they should be addressed. It doesn't mean you don't adopt the regulation, it means you address the impacts.

The other issues is the environmental impacts. Well, certainly we're softening one environmental problem, but are we creating another one. In my written comments, I talked about the scenario of if you lost the north coast oil terminal, you're going to have to truck that product up 101 through those redwoods and across those rivers and those salmon streams. Well, you've got to look at that issue. I'm not saying you don't do that. You've got to look at that issue with the eyes open in advance of adoption.

We don't know, only the State Lands Commission and the California Energy Commission can collaborate on these issues, and so we seek the collaborative. Some real easy steps we think. A single meeting with our organization, the CEC and SLC to kind of scope out the project. Then your two agencies, the technical people, Martin knows these docks better than we do ourselves, and the people over at the CEC know the supply, they know the transportation issues, they know the consequences to the marketplace. When those two sets of technical experts sit down for half a day, they go through the list of the docks, they're going to know whether or not we're at risk. Respective staff would brief the bosses.
And then the two agencies have a two-hour executive meeting saying how are we going to report back on this. Two staff reports come back. In October it will come back before you and you can either adopt MOTEMS or some better process for mitigating these challenges would appear.

There's risk here that can be mitigated and can be avoided. If MOTEMS is adopted, there is no exemption, there is no variance, there isn't a waiver, it is a train out the barn and we should just call for pause for just 90 days and take a look to see if more should be done.

Again, I just want to underscore, underline, double in bold, this is no criticism of the staff's work. This is a world-class regulation, well developed, technically effective, and it's going to put some people out of business and that's just part of today's world. But what's the impact on the people of California.

I think if just looked at in that narrow scope, you'll turn right around and you'll know absolutely the right thing to do. And if you adopt this regulation, we'll implement it with due haste in a first-class way.

ACTING-CHAIRMAN BUSTAMANTE: Who is it going to put out of business?

MR. BOLT: Well, first of all, I don't know. But let me paint a scenario. Let's say for instance a marine terminal closed and supplies now have to be trucked into
some central coastal area. The independent suppliers may not be able to get those supplies, if there are impacts on supply.

There might be additional impacts that would cause the cost of business to go up and therefore businesses would no longer be viable. It's not our businesses we're talking about here. We're moving on and we're moving forward, but these are issues that policymakers should be concerned about. And the CEC knows when they have supply problems in a particular area of the state, they know what those impacts are. So when the Marine Division sits down and says this is a wharf that's in trouble, the CEC says no problem we can fix it or oh, gee, and those conversations. There just hasn't been a facility prior to today for that to take place.

**ACTING-CHAIRMAN BUSTAMANTE:** Commissioners, any comments?

**ACTING-COMMISSIONER HARPER:** No.

**ACTING-COMMISSIONER ARONBERG:** I have one.

**ACTING-CHAIRMAN BUSTAMANTE:** Go ahead.

**ACTING-COMMISSIONER ARONBERG:** I appreciate the representative from WSPA's comments, and I recognize the potential problems that you raise. But on balance, I feel like, you know, a seismic event can happen at any time and other unknown risks are out there. And so I feel that the
sooner we get this under way without delay the better. So on balance I would support moving forward with the staff's recommendation. But WSPA, I appreciate your comments.

ACTING-CHAIRMAN BUSTAMANTE: Staff, the gentleman talks about potential unintended consequences, environmental issues. I'm assuming that we've done the appropriate reviews on the environmental side.

Do we have any opposition from any of the environmental community?

EXECUTIVE OFFICER THAYER: I don't think we have any. And I think -- first let me say Gary Gregory is rushing up here, the Division Chief, and understands all this extremely well and has participated in the process along with Martin Eskijian. But I think, you know, at the core here is basically a request to say the state may be better served if we don't have seismically safe terminals, is basically what's being suggested, that it would be better if we maintain supply, even if the supply was being held in a way that would pose environmental risk. And that's the difficult question for staff.

ACTING-CHAIRMAN BUSTAMANTE: But he said it a little more artfully than that.

EXECUTIVE OFFICER THAYER: Yes, he certainly did. But ultimately, he's basically saying there may be a concern that's greater than the seismic safety that we're espousing
here. But I also think that the question you asked was very insightful, which is, okay, when we get down to brass tacks, where are those impacts that you're raising in a theoretical way, where might they occur. And I think when we looked at the north coast and other places, it turns out I don't think we're in that position. But I think Gary is in a much better position to answer those questions.

ACTING-CHAIRMAN BUSTAMANTE: So is there any, I just want to make sure I ask the question again.

EXECUTIVE OFFICER THAYER: Sure.

ACTING-CHAIRMAN BUSTAMANTE: Is there any concern, is there anything that's been raised that you believe at this point where we have unintended consequences that we're expecting on the environment as a result of these changes?

EXECUTIVE OFFICER THAYER: From my perspective, the answer is no, but I think Gary can give a better answer.

ACTING-CHAIRMAN BUSTAMANTE: Sure.

MR. GREGORY: The answer is no, sir. We've looked at the facilities. Mr. Bolt talks about a north coast facility. There is one in Northern California in Eureka. That facility is in good shape. We don't expect that there's going to be any significant problems there. All the rest of the facilities are essentially bunched in the Ports of Los Angeles and Long Beach or San Francisco Bay. And so no difference.
ACTING-CHAIRMAN BUSTAMANTE: I'd ask also the
gentleman that Mr. Bolt recognizes as the smartest guy here.

MR. ESKIJIAN: I will give you a little example,
expanding on what Gary just said. The Eureka facility is
the one that would cause you to truck tank trucks up to the
Eureka area to feed the extreme northern part of California.
And the structure is in pretty good shape, and to make it
comply with MOTEMS would make it a little better. And I
think it's in everybody's interest to have that structure
better than what it is right now. And I see that as an
advantage, not a -- it's not going to close down, that's not
going to happen. So I think it's an improvement to make it
hardened against an earthquake or any kind of incident that
could occur in that area.

ACTING-CHAIRMAN BUSTAMANTE: Mr. Bolt also talked
I thought very well about something that often takes place.
I don't know if that's taking place here, but I want to ask
the question about what he talked about connecting the dots
and the interconnections between the Energy Commission and
State Lands, and if there is in fact adequate pathway and as
he called it, connecting the dots, so that there is not just
a set of rules and a request for implementation, but there
is a clear pathway to make sure that it connects and that it
continues to work, and that we are in fact looking to find
out that there is those connections, that we're trying to
make sure that we understand the impacts on small businesses
and other unintended consequences that come from just about
anything that we do here. I mean is there anything that's
taking place right now between the Energy Commission and
State Lands to deal with that particular issue?

MR. GREGORY: Yes, sir. I provided testimony at a
recent hearing with the California Energy Commission
regarding MOTEMS and regarding oil throughput. While I
would say that it's a staff-to-staff, informal in nature, I
have ongoing conversations with members of the staff at the
California Energy Commission. This has not been done in a
vacuum, but it has not been done in a formal process through
the Energy Commission either.

ACTING-CHAIRMAN BUSTAMANTE: Will there become a
formal process?

MR. GREGORY: Not to my knowledge.

ACTING-CHAIRMAN BUSTAMANTE: Is there a reason why
it doesn't become one?

MR. GREGORY: My discussions with staff and the
information that I provided to the siting subcommittee has
not resulted in contact back to me regarding the need for a
formal document or a formal arrangement or relationship.

ACTING-CHAIRMAN BUSTAMANTE: A review?

EXECUTIVE OFFICER THAYER: I think what it comes
down to, as we do with other agencies more commonly like the
Coastal Commission or Fish and Game, they have their jurisdiction, we have ours. We do our best to coordinate on staff-to-staff levels so we don't have conflicting conditions that prevent projects from being developed. And I think what Gary is in essence saying is we're having that informal conversation, but that the Energy Commission doesn't really have jurisdiction over the same thing here, so it isn't something that requires their formal review.

ACTING-CHAIRMAN BUSTAMANTE: I think what Mr. Bolt was talking about is not identifying the regulations, but what takes place afterward, and that there is connection that's taking place when you give somebody else the con. I mean is there some kind of a pathway that makes sense and that they can then implement when something that's been developed. I think that that's what he's talking about.

EXECUTIVE OFFICER THAYER: And I think the answer to that is that this is just one step along the way. As was pointed out by staff, the next step is two and a half years or the audit to determine what sort of projects really need to be done. At the end of that process, if there's some terminal that's in deep, dark, desperate financial trouble, I'm not sure we want to help them out in that circumstance, because I'm not sure we want that kind of operator.

ACTING-CHAIRMAN BUSTAMANTE: Right.

EXECUTIVE OFFICER THAYER: But we'll know more.
And we're perfectly capable of coming back to you and saying, hey, we've got a new situation we didn't know about, we want to make some changes.

ACTING-CHAIRMAN BUSTAMANTE: Is the staff's position not to extend for 90 days, based on what you've heard from Mr. Bolt?

EXECUTIVE OFFICER THAYER: We see no reason to extend for that period of time. And the trouble that we're running into, and I've been in direct contact with Stan Murra from the Building Standards Commission about their process. And if we don't get approval from them in a timely way, they don't publish in the fall, and they only publish in the spring. They only publish once a year. So it would put off the implementation standards for a full year. And he's hopeful that we'll get on for his November meeting, but he's not sure. And he's not sure what impact further delay would have on publishing.

ACTING-CHAIRMAN BUSTAMANTE: Hearing that is there any? What's the pleasure of the Commission? Is there a motion?

ACTING-COMMISSIONER ARONBERG: Move approval of staff's recommendation.

ACTING-COMMISSIONER HARPER: I'll second that.

ACTING-CHAIRMAN BUSTAMANTE: Motion and second.

Any other comment? Seeing none, all those in
favor say aye.

(Ayes.)

ACTING-CHAIRMAN BUSTAMANTE: The vote is unanimous. Let the staff recommendation go forward. And I believe that finishes our regular agenda; is that correct?

EXECUTIVE OFFICER THAYER: That's right.

ACTING-CHAIRMAN BUSTAMANTE: Thank you, Gentlemen.

Thank you so much for your comments.

I think at this point, we normally have a period of time after we conduct our regular session where we have any members of the public who would like to come up and make any other particular comment to please come up and do so at this time.

Is there anyone here in the public that would like to make any presentation or provide any information to the Commission?

Seeing none, that will adjourn the meeting. I will give us this official gavel banging, and we'll move into a closed session.

(Thereupon the meeting of the State Lands Commission was concluded at 4:17 p.m. on August 17, 2004.)
CERTIFICATE OF SHORTHAND REPORTER

I, MICHAEL J. MAC IVER, a Shorthand Reporter, do hereby certify that I am a disinterested person herein; that I reported the foregoing State Lands Commission proceedings in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said State Lands Commission proceedings, or in any way interested in the outcome of said State Lands Commission proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of August 2004.

Michael J. Mac Iver
Shorthand Reporter