APPEARANCES

BOARD MEMBERS
Mr. Steve Westly, Chairperson
Mr. Cruz M. Bustamante
Ms. Donna Arduin, represented by
Mr. Bob Campbell

STAFF
Mr. Paul Thayer, Executive Officer
Mr. Jack Rump, Chief Counsel
Mr. Gary Gregory, Division Chief
Ms. Kimberly Korhonen, Executive Assistant
Mr. Dave Plummer, Regional Manager

ALSO PRESENT
Mr. Tom Billings, Protect our Forests
Mr. Alan Hager, Deputy Attorney General
Ms. Julie Masters, Natural Resources Defense Council
Ms. Barbara Schussman, Port of Stockton
Mr. Patrick Tully
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CHAIRPERSON WESTLY: Welcome everybody. What I'd like to do is call the meeting of the State Lands Commission to order. All of the representatives of the Commission are present. I am State Controller Steve Westly. And I'm joined today by Lieutenant Governor Cruz Bustamante on my right, and Bob Campbell representing the Department of Finance.

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

The first item of business is adoption of the minutes of the Commission of the last meeting.

May I have a motion?

COMMISSIONER BUSTAMANTE: So moved.

ACTING COMMISSIONER CAMPBELL: Second.

CHAIRPERSON WESTLY: All in favor say aye?

(Ayes.)

CHAIRPERSON WESTLY: The minutes are approved.

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

Mr. Thayer, may we have that report.

EXECUTIVE OFFICER THAYER: Good afternoon,
members of the Commission and Chairman Westly. The Executive Officer's Report will be very brief. And in keeping with this morning's ceremony, I'd really like to acknowledge some of the principal players on the Commission staff who have been working on Bolsa Chica for some time.

And, of course, you've heard their names from other speakers this morning. But of course I want to acknowledge, first, Jim Trout, who has been part of the organizing committee, not only for this event, but for the restoration of Bolsa Chica. Jim retired several years ago from the State Lands Commission, but you couldn't keep him away from his job. He's been working for us as a retired annuitant specifically on Bolsa Chica. It's so complex none of us wanted to tackle it and we're really glad he stuck around to see it through. So Jim Trout is the first name I wanted to mention.

CHAIRPERSON WESTLY: Great. Are you suggesting most of the staff would in fact come back and continue to work for free if we wanted.

(Laughter.)

EXECUTIVE OFFICER THAYER: I'm not sure it's for free, but we're glad to have him nonetheless.

I don't know if he's still in the audience, but Rick Ludlow is the attorney that for years worked on these
matters. He retired just in the last year. He also 
worked hard on our oil matters for us. But he also did 
Bolsa Chica stuff. And he is here on his own time. He 
isn't being paid for his visit and he couldn't stay away. 

Lance Kiley is another one who's retired and did 
a lot of work. He's still doing retired annuitant work 
for us. He's down here today mostly because he had to see 
this thing through.

Pam Griggs is still on our staff. In fact, she 
is a relatively new attorney. And she is taking up where 
Lance has left -- where Lance and Rick have left off.

And finally, of course, as we mentioned earlier, 
our old Executive Officer, Bob Hight, who was really 
responsible for a lot of the legal maneuvering and 
arrangements and agreements that enabled the funding to 
occur at Bolsa Chica.

And that's really all I have for my staff report. 
I want to make sure that these people are recognized. 
There are other staff members that I am not mentioning, 
not because they haven't done a good job, but I'm just 
pointing out that these 5 people really were on top of 
things, but others that have been as well.

CHAIRPERSON WESTLY: Great. Paul, I just want to 
personally thank you and the staff again. I've said this 
before, but I serve on over 50 Boards and Commissions.
This, more than any other board, when we get to the actual meetings, it works like a symphony, because you have spent the time with all of the stakeholders and the community as often as humanly possible to work things out in advance. More often than not, when we come to the meetings it's like the civil war redux. And I know this is not easy. Your staff does a particularly good job of this and really serves the public interest well.

What I'd like to do, at this point, is ask for the adoption of the consent calendar. And I'd like to call on our Executive Officer, again, Mr. Thayer to indicate which items have been removed from the consent calendar.

EXECUTIVE OFFICER THAYER: There are three items that will be removed, Items 39 and 51 will be removed and heard at a subsequent meeting. Item 7 was on consent, because at the time of the preparation of the summary, the agenda for the meeting, there was no opposition. Since then opposition letters have been received. And so with the Commission's permission, you'd hear that at the end of the regular calendar of the day.

CHAIRPERSON WESTLY: Terrific. We also have speaker cards for 37, 52 and 54.

EXECUTIVE OFFICER THAYER: We understand that with respect to 37 and 52 that those people are here as
representatives of the applicant, and would not need to speak as long as the item remained on consent. They would speak if it came off and there were questions.

Fifty-four I'm not -- and 54 is a regular calendar item.

CHAIRPERSON WESTLY: Okay. Is there anyone in the audience who wishes to speak on 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 what I'd like to do now is proceed with the vote.

May I have a motion, please.

COMMISSIONER BUSTAMANTE: The motion is to move the consent calendar with numbers 39 and 51 to be put off to a subsequent meeting. And that Item number 7 be placed on the regular calendar.

ACTING COMMISSIONER CAMPBELL: Second the motion.

CHAIRPERSON WESTLY: All in favor say aye?

(Ayes.)

CHAIRPERSON WESTLY: Thank you.

Let's jump right then to Number 53, is that where you'd prefer to start?

EXECUTIVE OFFICER THAYER: Yes. This is an informational item. No action is necessary by the Commission. It's a report from our Division Chief of the Marine Facilities Division about the Oil Spill Prevention
Conference, the Commission held, as it does every 2 years, in September. Gary Gregory is going to cover different aspects of that conference, which is a very successful conference and represents the Commission quite well.

(Thereupon an overhead presentation was Presented as follows.)

DIVISION CHIEF GREGORY: Good afternoon, Mr. Chairman and Commissioners. I'll just take a few minutes here to describe the Prevention First 2004. As you see on the screen here, this is our logo for Prevention First. You'll see it on the bags that are on the table in front of you and on the program.

This is the logo that we've used throughout.

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DIVISION CHIEF GREGORY: Okay. Prevention First 2004 is an onshore and offshore pollution prevention symposium technology conference was held in early September at the Long Beach Westin Hotel.

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DIVISION CHIEF GREGORY: We held Prevention First -- yes, sir.

COMMISSIONER BUSTAMANTE: Excuse me. I'm going to need for staff to let my staff know what the approximate value of this, so that I can make sure and put it on my economic interest statement.
EXECUTIVE OFFICER THAYER: We will make sure that you get that information.

COMMISSIONER BUSTAMANTE: Thank you.

DIVISION CHIEF GREGORY: Six dollars, sir.

COMMISSIONER BUSTAMANTE: Thank you.

DIVISION CHIEF GREGORY: Prevention First 2004 was part of a continuing outreach program that the Marine Facilities Division works on. And we have held biennial conferences since 1994. So it's 10 years and this is our 5th conference.

The conference is to promote pollution prevention and accident prevention. And it provides a forum for meaningful discussion and ideas and information, and actually for us too for the government. We have a large number of government entities that show up here. And it's to help them to glean information from the industry.

DIVISION CHIEF GREGORY: The outreach model that we use at the Marine Facilities Division is shown in this illustration. We have standards, which are required by the Lembert-Keene-Seastrand Oil Spill Prevention and
Response Act.

The Act -- those standards are put in place in marine oil terminals through their operations' manuals. We monitor and inspect those facilities. And we analyze the data that we find from those monitoring and inspections. And through our outreach program in working with the industry, this circle continues, and we work to define and refine our standards and our program as we move along. It's a very important part of what we do.

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DIVISION CHIEF GREGORY: The program had several items of special interest: Seaport security, which is a significant item today; and liquefied natural gas. These were outside of the normal sphere of what we do at Prevention First. We always look for a couple of different special interest items to bring forward.

We had 4 tracks of breakout sessions over a day and a half. Two of the tracks were the domain of the Marine Facilities Division, and our Division of Environmental Program Management. Mineral Resources Management Division has one track, in which they do their items. And we partnered with the Department of Fish and Game, Office of Spill Prevention and Response, and they carried one track through the whole program also.

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DIVISION CHIEF GREGORY: The program has a number of standing issues: Human and organizational factors; marine oil terminal engineering, as you can see are off-shore facilities; environmental issues that are brought forward; ballast water management being added; and global perspectives and shipping, which has been something that's sort of brewing in the background.

All of the papers and presentations that we've received by our presenters will be placed on our web site and we hope to have that up by this Friday, so that they'll be available to all persons. We originally had a notebook that we gave to people, followed that up last with a CD. Now it's on the web for everybody to use the information.

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DIVISION CHIEF GREGORY: I need to tell you about our sponsors for just a moment. We had 60 some-odd sponsors. We had Platinum Sponsor, ConocoPhillips. They came in big time and helped us out.

Eleven gold sponsors that you can see listed there.

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DIVISION CHIEF GREGORY: Fourteen silver sponsors.

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DIVISION CHIEF GREGORY: And 30 donors and exhibitors.

In total, we had $139,900 in donations from these organizations. And this is how we make these sorts of programs run. Without those donations, without that sponsorship of the program, we just would not be able to run the program at all.

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DIVISION CHIEF GREGORY: One more page here.

Participants, this was the biggest show we've had. We typically cap the show at 400 people. We had such a response that we worked at the hotel and were able to increase the number of attendees to 450. We had 317 people that were just attendees. Sixty exhibitor attendees. Those were people that had 44 exhibitors were there, along with some of the other sponsors. And we had 73 participants. That is speakers and moderators who were there as part of the panels and were actually part of the show itself.

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DIVISION CHIEF GREGORY: We do an evaluation at Prevention First. This time around we received 54 evaluations out of about 400 that were passed out. As you can see, that we had 95 percent rating, basically as everything as being good to very good. So we feel
pretty -- well, feel that we did pretty well with the show this time around. We had one gentlemen who said they must have pretty tough chickens down there in southern California, because my piece of chicken was pretty tough.

I looked him up and told him so was mine. So, you know, we commiserated on that. But we have 5 or 6 pages of written comments of how the conference went for folks of these evaluations. And we use this, in what we call in military terms, a "Hot Washup", to go over what we've learned, what we're hearing in evaluations and how we can move forward in the future to make sure that everything works out even better than before.

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DIVISION CHIEF GREGORY: We need to say a special thanks to the Center for International Trade and Transportation, which is part of the Cal State Long Beach organization. They were our business partners in the show and really made our jobs very, very easy.

Pacific Maritime Magazine also was our official media partner. And for being called the official media partner, we got lots of coverage in their West Coast Magazine, and it was very, very helpful. And the Westin Long Beach Hotel where the event took place has over time worked with the program and has increased their capabilities, and it was the best that we've had so far.
DIVISION CHIEF GREGORY: And special thanks to 2 people. Unfortunately, they're not here today, but Don Hermanson our field operations supervisor and his assistant Dennis Vogel. These guys were the brains behind this. These guys worked long, long, long hours and moved this forward in quite an excellent manner.

You've got to have somebody lead and these were the guys who are leading forward with Prevention First. Interestingly too, maritime organizations in southern California right now are preparing to do conferences in early spring. And they've asked me if I can loan them these 2 people for the time being. And I, of course, told them no, I couldn't. But we're working with them to help to make sure their conferences are successful also.

That's my briefing on Prevention First 2004. If you had any questions, I'd be happy to try and answer them.

CHAIRPERSON WESTLY: Terrific. Thank you.
Any questions from the other board members?
All right.
Anything else on that, Mr. Thayer?
EXECUTIVE OFFICER THAYER: No, sir.
CHAIRPERSON WESTLY: That brings us then, because that was an informational report, to Item 54, which is a
recreational pier permit proposed on the Sacramento River.

May we have the presentation.

REGIONAL MANAGER PLUMMER: Good afternoon,
Chairman Westly and Commissioners. My name is Dave
Plummer. I'm a regional manager with the Land Management
Commission. The item before you today involves a new
construction of a recreational pier along the Sacramento
River. And this item was originally scheduled to be heard
on August 17th.

On the morning of August 17th the applicant's
next door neighbor wrote a letter requesting that this
item be removed because they had concerns about the
placement of the dock. And his statement in his letter
was that, "It wouldn't work".

So we pulled that item, scheduled it for today.
And the following day on the 18th, we called and suggested
we get together and have a meeting, and get to know what
his concerns were. And he didn't want to meet with us
until such time as the existing floating dock that's in
front of the applicant's property was removed.

On September 7th, Commission staff went out and
we did a survey of the property. And I believe you have a
reduced copy of this.

In front of you this is the applicant's property.
Their 100-foot wide lots along the river. They're often
consistent sizes, except for this one. We took a
measurement of how far out the dock is going to extend and
the distance between docks. And generally speaking, you
have about -- this one has -- upstream, you have 65 feet
between this dock. You have between Mr. Tully's proposed
dock and the next door neighbor Mr. Huth's dock you have
56 feet. So they're all fairly centered, fairly
consistent. They extend out in the river fairly
consistently.

On September 23rd we once again called Mr. Huth,
advised him that this was going to be heard at today's
Commission meeting. We requested that he send us a letter
and tell us what your concerns are. We offered to meet
with him either in our offices or at his house on site, so
we could understand what his concerns are. And he still
has not complied with our requests.

In the meantime in processing the application,
staff has talked to the other agencies issuing permits,
the Corps of Engineers, U.S. Fish and Wildlife Service,
NOAA Fisheries. All the staff that are processing those
permits have indicated that there are no problems from
their perspective. We specifically asked the Corps of
Engineers who also looks at navigational issues whether
they saw any issues, and they did not.

So that brings us here today. And as part of
this approval of the project, the Corps of Engineers will impose construction windows. And the construction windows are fairly tight on the Sacramento River. By the time you look at all the different agencies and the different species you're trying to protect, you have a very short window of August 1st through October 31st to actually do in-water work.

So an approval today would allow the applicant to get forward and actually get this dock built this year. Otherwise, he would not be able to construct the dock till August of the following year of 2005.

So with that, it's my recommendation that this Commission approve this application as presented.

I'll be happy to answer any questions. And the applicant, Mr. Tully, is also here available.

CHAIRPERSON WESTLY: Terrific. We do have members of the public to speak. Is Mr. Tully here?

MR. TULLY: Yes, thank you. I'm Patrick Tully, the applicant, 3067 Garden Highway.

I just wanted to speak briefly to say of course I'm in support of my own project. This is a process that we started 2 years ago. And I'm quite embarrassed to actually have to be up here, because this really comes down to a neighbor who has not been behaving too well.

I also do have a letter for your staff from other
neighbors in support of this. So, you know, it's pretty much an isolated incident.

I do want to say, though, that I've been very impressed, as you mentioned earlier, with Lands Commission staff. They have been great. Dave Plummer's staff, Tim Limpscomb have been very good to work with. The amount of people that have come out to my property to look at this project has been quite overwhelming.

I run my own business in downtown Sacramento. I have property, have other leases with the State -- well not with the State but with the railroad. And you guys have been really good to work with. So if you have any questions, I'd be able to answer those.

CHAIRPERSON WESTLY: Thank you very much for coming. Thanks for the kind words for the staff.

What I'd like to do is ask if either of the other Commission members have any questions for the staff or Mr. Tully since he's been kind enough to come all the way down here from Sacramento.

Mr. Bustamante.

COMMISSIONER BUSTAMANTE: It's to staff, isn't this normally some formula driven kind of activity that is worked out at staff level? I mean, there are -- this consent calendar and every consent calendar is replete with many of these things. And it's been pretty much a
forgone conclusion that once they meet standards, the
staff comes with a recommendation.

I mean, not that we shouldn't check your work
every once in awhile, but it seems like this is a fairly
routine matter that is normally dealt with on the consent
calendar. Why does this one raise such a problem?

EXECUTIVE OFFICER THAYER: From staff's
perspective, this is a routine application. And it's a
routine project, which is similar to probably over 100
that are north of Sacramento on the Sacramento River. And
in the 7 years that I've worked at the Commission, I don't
think we've had anything like this brought to the
Commission before. We're somewhat embarrassed to bring
this, but it's been a case of where we've spent the last 2
months trying to iron out differences between 2 neighbors
and haven't been successful.

And so because the upstream neighbor, Mr. Huth,
continues to oppose this lease, we were obligated to put
it on the regular calendar. We didn't feel it was fair to
Mr. Tully to keep it off of the Commission's agenda in
hopes of working something out with the neighbor, because
he was going to be held up in completing the project. And
we haven't been able to really obtain information from Mr.
Huth to better explain his concerns.

COMMISSIONER BUSTAMANTE: So you see no validity
in any of his concerns?

EXECUTIVE OFFICER THAYER: No, sir, we do not.

COMMISSIONER BUSTAMANTE: And the one who is complaining, this Huth -- the property owner that's next door, he also has a dock.

EXECUTIVE OFFICER THAYER: Yes, he does.

COMMISSIONER BUSTAMANTE: And he's complaining because his neighbor's going to get a dock?

EXECUTIVE OFFICER THAYER: Yes.

COMMISSIONER BUSTAMANTE: On one side, but not on the other side, who also has a dock?

EXECUTIVE OFFICER THAYER: That's correct.

COMMISSIONER BUSTAMANTE: I see. Is there a reason why -- because when you look at the properties and you look at the docks most of them are dead center on the property. Is there a reason why there's an offset toward the complaining neighbor, is that part of the reason that there is this problem?

EXECUTIVE OFFICER THAYER: The complaining neighbor, at one point --

COMMISSIONER BUSTAMANTE: Does he have a big boat and this is going to shave off a few feet of his entry into -- I mean, I don't know.

EXECUTIVE OFFICER THAYER: The complaining neighbor has jet skis. I'm not sure if he has other
boats.

REGIONAL MANAGER PLUMMER: Yes, my understanding is he has a jet ski. He currently does not have a boat today that we know of.

EXECUTIVE OFFICER THAYER: And Mr. Huth did express concerns, at one point, about whether or not the new dock would interfere with the use of his dock. But as you can see, that distances is 56 feet and still gives him some maneuverable room.

As to centering them, we do not have a Commission policy that requires them to be centered. My understanding, and I think Mr. Tully can say precisely, the reason that this dock is 7 feet up from the center is because of the existing deck that would be interfered with by the dock gangplank. But Mr. Tully might be able to explain that better.

MR. TULLY: Yeah, that is correct. There's an existing deck on land. The dock is actually not too far off center. The gangplank is actually what -- if you just -- if you're out there with the gangplank, it comes over off the center where some of the docks have their gangplank in the center, some have them upfront.

There's a general rule of thumb, if you were to put your boat in reverse, you need about a boat length and a half. So he should be able to navigate within 30 feet
easily for a boat the size of that dock. And actually the
extra feet he has, he has plenty of room.

CHAIRPERSON WESTLY: Thank you, Mr. Tully.

COMMISSIONER BUSTAMANTE: Move the item.

CHAIRPERSON WESTLY: You've made a very forceful
case. May I have a motion and approval?

ACTING COMMISSIONER CAMPBELL: Second.

CHAIRPERSON WESTLY: All in favor say aye?

(Ayes.)

CHAIRPERSON WESTLY: Mr. Tully, thank you for
coming all the way down. Thank you to staff for moving
this forward.

With that, I'd like to move on to the
controversial part of today's program.

Are you prepared to speak to item C7?

REGIONAL MANAGER PLUMMER: Yes, I will.

The item before you today is an application by
the Port of Stockton for the construction of a bridge
called the Daggett Road Bridge. And it's a new
construction of a bridge, although there is an existing
Daggett Road Bridge.

And just by way of background, the Port has
prepared a development plan for a complex which they call
the West Complex. And the Port Redevelopment Plan
includes revitalization of former navy marine terminals
and warehousing facilities, and development of approximately 500 acres of commercial and light industrial park.

And this West Complex was formally known as the Rough and Ready Island. It started out as a Navy supply center. And sometime in the sixties became a Navy communications center. And about 2002, as part of base closures, the Navy conveyed this property to the Port under a public benefit conveyance.

This is an island. It's surrounded on all 4 sides by water. And currently the only access to the island is on the eastern end. It's served by a bridge called Navy Drive Bridge. It's a bridge that was built, I believe, some time in the thirties. It's really substandard to today's standards, but it is the access that's currently used today.

The existing Daggett Road Bridge, and there is one, was built in the 1920s. And it was a swing bridge. A little type that used to turn and go to the center and let vessels go by. And in the 1970s the Navy turned that bridge open, and was left open ever since, and never had been used as an access after about the mid-1970s.

The Port of Stockton, as I said, proposes to replace the existing Daggett Road Bridge with a new bridge. And the new bridge would be constructed adjacent
at about 200 feet from the existing bridge.

And the new bridge would be constructed with all modern standards, CalTrans' standards, trucking standards. And the bridge ultimately will provide 4 lanes of traffic, and will allow -- shallow draft vessels will be able to pass underneath.

The new bridge would provide improved truck access from the marine terminals at the refurbishing on the island, to provide truck access to Highway 4 and ultimately to Highway 5. And as part of their -- once the new bridge is built, the old bridge will ultimately be taken down. That will require separate environmental analysis to remove the old bridge.

Under CEQA the Port of Stockton was the lead agency and prepared an Environmental Impact Report and mitigation monitoring program. An EIR was designed to function as a programmatic EIR for the overall development plan, and also as a specific EIR when it got down to the Daggett Road Bridge and also for a dredging project that was taking place in the Stockton deep-water ship channel.

The EIR was certified by the Port on June 23rd, 2004. And staff's aware that there has been a lawsuit filed by the Natural Resources Defense Council and Delta Keeper and 3 community interest groups. They filed a petition for a Writ of Mandate against the Port, to get a
stay, and to get a restraining order for the Port to move forward on this project.

And from my information, I think that that has not been granted and that the Port is free to move forward with this project at this time.

Yesterday, staff received a considerable amount of information from both the NRDC and Shute, MiHaly and Weinberger, the law firm representing Delta Keeper and the community groups. And it really looked at a number of things, including the overall adequacy of the EIR for the overall project, not specifically for the Daggett Road Bridge.

Approval of this item today by the Commission, the Commission would be acting as a responsible agency. And if you approve this item today, it would be for the issuance of a new Daggett Road Bridge as well as an assignment from the old bridge, which was held by the Navy. The Navy had a lease from us for the old Daggett Road Bridge. And this would approve an assignment to the Port for the old bridge so that they would have the responsibility and the liability for that bridge until such time as it's removed.

And I believe there's members here from both Natural Resources Defense Council and from the Port of Stockton here today.
CHAIRPERSON WESTLY: Yeah. What I'd like to do is ask Ms. Barbara Schussman the attorney for the Port of Stockton to come forward who's here.

MS. SCHUSSMAN: Here or over there?

CHAIRPERSON WESTLY: Why don't you come over here to the full podium.

MS. SCHUSSMAN: I'm Barbara Schussman. I'm from the law firm of Bingham McCutchen. And I represent the Port of Stockton. The Port of Stockton is ready to construct the Daggett Road Bridge, which, as you've just heard, is a component of the Port's West Complex development plan.

The bridge would provide secondary access to Rough and Ready Island, not primary access. The Navy Drive Bridge that is the current access point would be replaced and it would continue to serve as the primary access to the island.

The Daggett Road Bridge functions, as I said, as the secondary access, but also takes the role of taking traffic away from the Boggs Tract neighborhood. The project opponents who submitted letters to you apparently are not familiar with the geography surrounding the Port of Stockton.

And vehicles that currently drive through a low-income neighborhood adjacent to the Port's East
Complex drive through there to get to the east complex. And if you go over to the Navy Drive Bridge to the West Complex, those same vehicles would drive then through the East Complex over that bridge to the West Complex.

The Daggett Road Bridge, it's the only part of the project before this Commission, is not next to the low-income neighborhood. And vehicles would not drive through that neighborhood to access the Daggett Road Bridge.

Detailed traffic analysis has been done and is in the EIR for this project. And that analysis does not show traffic going through that neighborhood to access the Daggett Road Bridge. So that's just a point of clarification.

Under the California Environmental Quality Act, when this Commission acts as responsible agency, CEQA actually instructs that the Commission must presume that the Environmental Impact Report approved by the Port of Stockton as the lead agency is adequate under the California Environmental Quality Act. There are 2 provisions in CEQA that directly say that and I quoted them in my letter to you. And I've also cited to a case that interprets that, and holds that assertions that a lead agency's environmental documentation is inadequate do not enable a responsible agency, like this Commission, to
stand in the shoes of the lead agency.

   So all of the complaints that you've seen about the adequacy of the EIR will be at issue in the litigation against the Port of Stockton, but are not to be an issue before this Commission under CEQA.

   CEQA instructs that when a lawsuit has been filed, like the present one, and no injunction has been issued -- and no injunction has been issued here -- this Commission must presume that the EIR is adequate and rely upon it.

   The only other question then is does this Commission have its own mitigation obligation over this component of the project. We know you have to rely on the EIR, but do you have a mitigation obligation?

   And again I've quoted in my letter that the provisions under CEQA for that, a lead agency looks at the project as a whole. A responsible agency, like this Commission, CEQA instructs has more limited authority than a lead agency. A responsible agency only can require changes in a project to lessen or avoid effects that pertain to the part of the project that is before you.

   That is not the entire West Complex Development Plan. This is the Daggett Road Bridge. Now, CEQA does talk about indirect and direct effects, but that does not swallow the entire rule that this Commission only looks at
the part before it.

CEQA also says that a lead agency has broader authority to disapprove a project than does a responsible agency. And a responsible agency can only disapprove a project based upon the effects of the part of the project that it has before it for its authority to carry out.

In this case, the EIR for the West Complex Development plan had an entirely separate chapter that dealt with the Daggett Road Bridge project. And that chapter quantified the environmental effects having to do with that project only.

And there are no significant and unavoidable effects having to do with that project. That project does not result in traffic effects or noise effects in a residential area that would be within this Commission's obligation to mitigate.

The only traffic effect was a temporary effect at the intersection of Daggett Road and State Route 4 during construction. And the Port's adopted mitigation to deal with that effect.

So there are no significant effects that have not already been mitigated to a less than significant level by the Port's mitigation. So this Commission under CEQA bears no further mitigation obligation.

It's important that the Commission understand the
facts here, that this is not an environmental justice issue. That the project opponents do not represent the neighborhood in Boggs Tract. This is a case that's been brought by wealthier residents across the shipping channel that own riverfront property, and a couple of other organizations whose issues really have to do with things like ballast water and emissions from ship operations.

The Daggett Road Bridge project would benefit the community near the Port by taking traffic out of that community. This Commission is entitled to rely on that EIR, and CEQA instructs actually must rely on that EIR. And so your staff has done its homework. And I'm asking that the Commission adopt the recommendation of the staff and act on this project today, and not grant a continuance.

We had the same thing happen in Stockton, where literally reams of paper were submitted the day before the hearing, and then a continuance was sought. In that case, we did carry it over, address every single one of these comments, and then certify that EIR. But that tactic can't continue. We need to move forward with this project. We need to get this out to bid during the winter before costs escalate and not waste public funds. And this is properly before the Commission for approval.

CHAIRPERSON WESTLY: Thank you. What I would
like to do is give our other speaker a chance to say a few words, and then allow the members to ask questions of you. So if you could sort of stay up in the front row here, we'd appreciate that.

Is Julie Masters the attorney from the Natural Resources Defense Council here?

Terrific.

MS. MASTERS: Yes, thank you. Good afternoon, I'll try to be as concise as I can be. But I might go a little bit over the 3 minutes if that's okay.

First of all, I just want to start out by saying that NRDC in fact represents ourselves, our members and also the environmental justice communities of Boggs Tract and the other communities that surround the Port. Wealthy communities are represented by another party.

I'm here today to request that you continue this item until the next Commission hearing. Unfortunately, neither we nor the resident groups that are most affected by this project learned of it until just a few days ago. So we haven't had the time to fully brief you on all the issues to provide the comments that we'd like to and we'd like an opportunity to do that.

Also, we think it's very, very important that you have an opportunity to consider our comments fully and also those other comments of other interested parties
before you approve of a lease that will have significant
consequences for thousands of people.

The Daggett Road Bridge may, at first glance,
appear to be a relatively small action. But, in fact,
this bridge will facilitate as many as 2.2 million diesel
truck trips every single year in and out of Rough and
Ready Island and the surrounding communities.

The community of Boggs Tract, which is adjacent
to the Port, will be particularly affected by this action,
not only by the traffic congestion, which will be severe,
but also by the toxic impacts of the diesel trucks. And
this is true whether the trucks drive directly through
that neighborhood or they take the Chart -- the nearby
Charter Way Route to the I-5 which is planned in the EIR.

Diesel exhaust is a potent carcinogen. In fact,
the Air Resources Board has recently concluded that diesel
exhaust accounts for over 70 percent of the cancer risk
from air pollution. Diesel also causes other serious
problems, such as asthma, which is on the rise
particularly among children.

On top of that, Boggs Tract, as you know, is a
low-income community of color. Almost half the residents
are Latino. And the mean income level is well below that
of the U.S. generally. So adoption of this project is an
EJ concern, and has serious environmental justice
implications. And we think without the proper mitigation measures, would be contrary to the Commission's important EJ policy.

The fact is that there are many mitigation measures that are feasible and that have been adopted by other Ports that can be adopted to offset the pollution and other impacts from the trips -- sorry the trucks and other traffic. The Port could ship more cargo by rail and thereby limiting the number of trucks that are on the road. And it could do a number of other things.

Nevertheless, the Port has adopted this project including the Daggett Road portion without any meaningful mitigation measures.

We are very familiar, by the way, with the geography of the surrounding area of the Port. I want to point out that while it is true that the Daggett Road Bridge may eventually divert many of these 2 million trucks away from the Boggs Tract area, the EIR points out, in the traffic portion, that the I-5 ramp at Charter Way, which is the route that the trucks would take from the Daggett Road Bridge, is currently rated at a level service of E, which has severe congestion. And when the project is in operation, it is anticipated to have a level of F, which is closed to gridlock conditions.

And so while in the EIR there are suggested road
improvements to alleviate this traffic congestion, the
Port has classified those improvements as long term with
no set timeframe for the execution, while the bridge is
going to be approved as one of the first things.

So in the meantime trucks that are faced with
severe congestion will very likely be looking for another
route to the freeway. And they may very well find
themselves in Boggs Tract, which is currently the way that
trucks travel in and out of the East Complex towards the
I-5 freeway.

But just to be clear, even if every truck takes
the expected route down Charter Way, the residents of
Boggs Tract still will be directly and significantly
affected by the diesel pollution due to their proximity.

In addition to these truck impacts, construction
of this bridge is also going to enable the Port to develop
the larger West Complex Development Plan Project, which is
a massive expansion project that will triple the current
size of the Port.

In fact, the EIR acknowledges, and you heard
today, that the existing Navy bridge, which is the only
existing pathway in and out of Rough and Ready Island, is
obsolete, and incapable of handling the magnitude of
traffic that would be created by this project.

So as the EIR also acknowledges, Daggett Road
Bridge is a necessary component that will cause and facilitate the development of the larger project. As such, it's going to be a but-for cause of those greater impacts and all of the development that will happen there. The West, that larger project, will add 130 diesel vessel calls each year, 51,000 truck and vehicle trips every day and a significant use of diesel tugboats, yard equipment and trains. It will therefore have very serious implications on water, water quality, air quality, public health, noise and traffic.

Unfortunately, as our CEQA petition outlines, the Port's EIR, we believe, violates CEQA in numerous respects. Most importantly, we think, as with the trucks, the Port has failed to consider and adopt feasible mitigation measures to offset those and the other impacts of this project.

The good news we believe is that while the Port may have decided to proceed with the Daggett Road Bridge Project immediately without first putting mitigation in place, that does not mean that the Commission has to do so as well.

Under the CEQA guidelines, we believe that this Commission absolutely can make its own conclusions on whether and how to approve this project. And it must make an independent review of the Port's EIR and can come to
its own conclusions.

And aside from your ability to conduct your own environmental review, this Commission also has the ability, and we believe the responsibility, to require mitigation measures that offset the direct and the indirect impacts of this project. And as I just stated this road -- this bridge is going to, at least indirectly, but we believe directly, cause all of the greater impacts of the West Complex Development Plan Program.

In closing, I just want to make one more point really clear. And that is we are not opposed to the development of Rough and Ready Island, especially development that would create permanent living wage jobs for Stockton area residents.

But that expansion has to be done in a way that alleviates, to the greatest extent possible, the harms that will be inflicted on the communities of Boggs Tract and the other communities that are right across the channel. Some of them are only 600 feet away.

Jobs and the protection of the public health are not mutually exclusive, and both should be of paramount concern to the Port and to this Commission.

Thank you very much.

CHAIRPERSON WESTLY: Thank you. This has obviously turned out to be a more complex issue than
perhaps we had anticipated. But since we have
authoritative voices on both sides, why don't you hold on
here for a minute. I am certain that my colleagues will
have questions of one or both of you.

ACTING COMMISSIONER CAMPBELL: I'd like to
address my first question to the Port representative. The
EIR is currently being challenged in court. When is that
matter likely to be heard?

MS. SCHUSSMAN: We have a hearing date set of
April 19th. No injunction or stay has been issued by the
court. Nobody's gone ahead and tried to get one. So all
project components are proceeding while the litigation is
pending, just as it is allowed to do under CEQA.

I'd also like to mention briefly, if you'd
indulge me, the EIR does include a comprehensive health
risk assessment of the carcinogen effects of diesel
exhaust, and found that the project would not result in
any significant health risks relating to diesel exhaust.

ACTING COMMISSIONER CAMPBELL: So the Port's
intention -- if this matter was approved today, the Port's
intention would be to immediately proceed with the
project?

MS. SCHUSSMAN: Yes, the Port needs to proceed
immediately, needs to get this out to bid. So it's on a
critical path timeframe.
ACTING COMMISSIONER CAMPBELL: Do you have any idea of the impact on the project that would result if this matter was put over to the next hearing?

MS. SCHUSSMAN: If this matter were put over, the Port would not be able to go out to bid on the project immediately, because there would be too much risk. Their risk would increase the bid price, which would result in a waste of public funds.

If the Port has to wait to go out to bid on the project, the Port believes that the bid prices would also go up. That this is a particularly good time to go out to bid when contractors have time available. They believe that if they go out to bid right now, they would be able to get the best price. And since they have done all of their homework, they've complied fully with the California Environmental Quality Act. There's really no reason to hold this over.

ACTING COMMISSIONER CAMPBELL: That's it.

CHAIRPERSON WESTLY: Great.

Lieutenant Governor.

COMMISSIONER BUSTAMANTE: First of all, I greatly appreciate 2 attorneys coming to this body and telling us what our job is.

(Laughter.)

COMMISSIONER BUSTAMANTE: But what I'd like to do
is I'd like to -- since there seems to be a conflict, I'd like to ask the Attorney General to give us his opinion of with regard to who is correct in this particular instance. It seems to be diametrically opposed, which you would expect from opposing counsel. So we need the guy in the middle.

ASSISTANT ATTORNEY GENERAL HAGER: I will try and do what I can. It's been just a very short view we've had. I don't pretend to be an expert. But I'm thinking that the guy in the middle I'm finding things that I agree and disagree with both.

First, the EIR, even though it is being challenged, is to be presumed to be correct. You can go on with your permitting activities, even though the EIR is being challenged. And we're not here to challenge or question the EIR.

But the Commission has the responsibility, has under the guidelines, and this is 15096(g)(2), the ability to find and require a quote here, "...any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect that the project would have on the environment."

That is, I think, where your authority lies. And I think the Board's --
COMMISSIONER BUSTAMANTE: Can you say that in English?

(Laughter.)

ASSISTANT ATTORNEY GENERAL HAGER: The important -- you can require certain mitigations. The mitigations though are not to address anything in the project. It's to address matters that are within your powers. You're leasing for a bridge. You have powers over where the bridge is placed, for example, the size of the bridge. Anything, you know, connected with the power. You have -- you can order mitigation.

And what I am going back to where I started, saying that I have limited time to look at this. And, you know, what is the scope within your powers, it's a project, there's a bridge, it's going to bring traffic.

COMMISSIONER BUSTAMANTE: Would it be helpful for you to have some additional time to review this matter?

ASSISTANT ATTORNEY GENERAL HAGER: Yes.

COMMISSIONER BUSTAMANTE: Also, has staff made any kind of a cursory review of the EIR? Do you find in the review, meaning we have expertise on staff. And regardless of what is being contended here, if we know that we are -- even a portion of a project that has a faulty EIR, I want to know what that is. I want to know -- I want to be able to say to the Port that you have
problems here that we've been able to discern that perhaps
you didn't realize. I don't want this project to move
forward if what we see in this 6-page letter appears to be
correct.

So I mean, have we done such a review even in a
cursory way?

EXECUTIVE OFFICER THAYER: We have looked. It's
a large document. We've looked at it extensively. What
we haven't had as much time to look at has been kind of
the sharper arguments that have come out in the last
couple days, where we've received these letters from the
representatives of the various plaintiffs.

The problem looking at the EIR is that a lot of
the areas we don't have expertise in. We don't know air
quality. We don't know water quality, that sort of thing.
We don't have staff hired to do that, because that's not
generally within our scope of work and there are -- the
air quality district and the regional water quality
control boards generally address those issues.

But it is also true that for any particular
impact there are a variety of mitigation measures that can
be used. And some of the ones that the plaintiffs have
raised, cold ironing ships, requiring that all port
handling equipment use propane are ones that frequently
require feasibility tests to determine whether or not it's
practicable to do. CEQA says you have to mitigate unless it's infeasible.

COMMISSIONER BUSTAMANTE: You mean there's a standard operating procedure that are at all the Ports?

EXECUTIVE OFFICER THAYER: Some of these are becoming standard operating procedures in some ports, but that's only occurred in the last year or so. The first cold ironing facility, for example, was in L A.

Now could that be done in Stockton? Potentially, yes, but we're not sure.

COMMISSIONER BUSTAMANTE: Let me ask you my last question. And that is that without having to go through a formal review process, is there any way between now and the next meeting to get just a cursory review of this? Calling upon a few folks to give us their thoughts so that we might be able to have a better sense as to where the allegations really should fall? Is there a way of being able to do that?

EXECUTIVE OFFICER THAYER: We can certainly look at -- and come up with some reasoned analysis of some of these disagreements, and give some advice and recommendations to the Commission.

This will still of course be within the umbrella that the Attorney General is talking about, in that the first -- the 2 legal points here. Do we have to use the
existing EIR? And the law is clear on that one of the 2. And the second one is what are the direct and indirect impacts from that project -- part of the project that we're looking at?

Do you accept the argument of the plaintiffs who say, you know, virtually have said every part of the rest of the Rough and Ready Island project is dependent upon this bridge and therefore we should address all those impacts?

Or do you accept the Port's perspective, which is this is just a bridge. It's infrastructure and the lead agency is generally required under CEQA to look at the overall impacts of the project and not the responsible agency.

Our scope here of our review is actually less as a responsible agency for this bridge than it would be if the only part of the project were this bridge and we were the lead agency, we'd have more responsibilities.

So that's a long way of saying we can do the analysis, but when we bring it back in December, we'll still need to grapple with these legal issues.

COMMISSIONER BUSTAMANTE: I understand. I'd like for you to include anything that you would discern to be feasible mitigating impacts.

And as far as I'm concerned, I'm an elected
official. I have a higher responsibility to the people who elected me. If I believe that there's a possibility that there's a flawed EIR or there is a flaw in a particular project, and my actions are going to allow it to move forward with that knowledge, I think I have a responsibility to do my due diligence and to check.

I think this will give the Attorney General time to be able to -- the office to really give us their decision, as well as your being able to review it.

And with that, Mr. Chairman, I would move postponement till the next meeting.

CHAIRPERSON WESTLY: What I'd like to do is ask a point of information here. I'm very much, I think, in the same boat as the Lieutenant Governor. I think both sides gave very good arguments today. I think this would be a wonderful project. I would like in many ways to get the show on the road.

Having said that, some new information has come forward that is quite powerful and has raised some serious concerns. And I think we need to take a look at those.

The point of information is, because I don't want to delay this, or I think we'll need 2 months till the next meeting, in December unless we need that full amount of time, do you -- if you had three or four weeks, could we do a special meeting, perhaps by phone where you could
come back and have time to address some of these issues with the parties and perhaps be able to recommend a reasonable resolution at that point, and have gone through some of the data, which clearly has come forward today for the first time.

EXECUTIVE OFFICER THAYER: We could do our best. And I think what I would need to do is take some time with staff over the next couple days to get a better idea of the scope of that work and report back to you. I think there's nothing procedurally that prevents us from following the course that you laid out. I'm not quite sure about --

CHAIRPERSON WESTLY: What I would like to do, and I plan to support the Lieutenant Governor's motion here is to simply see if I can make a friendly amendment, that if the staff decides over the next week they can come back to us sooner rather than later, that you make every effort to do that. If the case turns out to be more complex than anticipated, I'm fully comfortable with it being heard in December. But I think I'm in the same place that we need just a little bit more time.

COMMISSIONER BUSTAMANTE: I think that's wholly acceptable. I mean I'm from the central valley. I know the need to expand. And if they have an opportunity to really expand in terms of economic development, no one
wants to hold that up.

But the issues that are here are major issues, and I feel we have to do our due diligence, so I would accept that amendment.

CHAIRPERSON WESTLY: Is staff clear on the motion? And if you are, I will call for a vote and I see some nodding faces there.

Clear on the motion?

EXECUTIVE OFFICER THAYER: Yes.

CHAIRPERSON WESTLY: Great. I would like to second the motion.

All in favor please say aye?

(Ayes.)

CHAIRPERSON WESTLY: It carries unanimously. I'd like to thank both speakers. This is a complex issue. We need to know and understand both of your perspectives. We'll try to move forward as quickly as we can.

Thank you.

With that, that concludes the regular calendar. This is the time where speakers who wish to address the Commission during the public comment period can come forward. We do have Tom Billings from Protect Our Parks.

If there's anybody who would like to speak after Mr. Billings, I would like for you to fill out one of
these cards and proceed to the front row.

    Mr. Billings.

MR. BILLINGS: Here?

CHAIRPERSON WESTLY: Whichever you prefer, this is your moment in the spot light.

MR. BILLINGS: Thank you very much. Mr. Chairman, Members of the Commission, my name is Tom Billings and I represent Protect our Forests in the City of Newport Beach just up the road here. There's currently a proposal to create 12 timeshares or fractional units on State tidelands, on the harbor front of Newport Beach. These fractionals would be sold in increments of 3 to 4 months each, and would use one-third of the bay front of the 8.1 acre parcel, which is public park land, known as Marina Park.

We feel that the timeshares and fractionals are primarily residential in character, and such use is contrary to the public trust. We also are concerned that the sale of these proposed units could result in less than fair market rent to the tidelands trust.

We support strict interpretation of the public trust and denial of any request for timeshare units on bayfront beach tidelands.

    Thank you very much.

CHAIRPERSON WESTLY: Thank you. Mr. Billings,
this is fascinating. What I'd like to do, at this point, is ask the staff to look into this issue. I don't think any of us have much background on it, and report back as is appropriate.

Thank you for the heads up on that.

MR. BILLINGS: Thank you.

CHAIRPERSON WESTLY: If there are any other public comments, we'd love to hear them?

If not, that will conclude the open part of the meeting. And seeing no other business before us, we will go ahead and adjourn.

Thank you all very much for being here today.

(Thereupon the California State Lands Commission meeting adjourned at 3:00 p.m.)
CERTIFICATE OF REPORTER

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of October, 2004.

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