SAN DIEGO, CALIFORNIA

THURSDAY, DECEMBER 9, 2004 2:19 P.M.

CHAIRMAN WESTLY: I'd like to call this
meeting of the State Lands Commission to order. My
apologies to the public for being a little bit late this
afternoon. I'm State Controller Steve Westly and I'm
joined today on my right by Lieutenant Governor Cruz
Bustamante and Dave Harper representing the Department
of Finance.

For the benefit of those in the audience, the
States Land Commission administers properties owned by
the state as well as its mineral interests. Today, we
will here proposals concerning the leasing and
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?

MEMBER BUSTAMANTE: So moved.

MEMBER HARPER: Second.

CHAIRMAN WESTLY: Great. All in favor, say
aye.

MEMBER BUSTAMANTE: Aye.

CHAIRMAN WESTLY: The minutes are approved.

MEMBER HARPER: For the record, Mr. Chairman,
representative from the Attorney General's Office there
to help explain the public trust document. And folks
who were at the meeting were very appreciative that your
staff had gone down there and spoke to people locally
about issues of concern.

The second set of meetings I wanted to
highlight were the EIR workshops last week. These were
in Southern California at various locations proximate to
the proposed BHP LNG terminal, for which an
environmental impact report, a draft one, has now been
prepared. It's in the public comment period of time,
which, I think, closes December 20th.

But we had gone down to Southern California --
the staff had gone down to Southern California and
conducted workshops jointly with the Coast Guard. There
were over 650 people in attendance at the different
meetings down there and public comments came from
over -- well over 100 of them.

We are presently looking for a Commission
meeting on the first LNG terminal in the beginning of
March but we haven't heard all the comments yet, of
course, and we haven't seen yet what we will need to do
to make sure the EIR is in good shape for that.

The final comment I wanted to make is that our
next Commission meeting will be in February. We're
since I wasn't at the last meeting, I'm going to abstain without privilege to the last minutes.

CHAIRMAN WESTLY: Okay. That's absolutely fine.

The next order I'd ask that the record reflect that the next order of business is the Executive Officer's report.

Mr. Thayer.

MR. THAYER: Good afternoon, Mr. Chair.

Just a couple brief items here to note a few meetings we've been involved with. As the Commission will recall at our last commission meeting in October, I mentioned that we had conducted a public trust workshop as a means of outreach for the commission in San Francisco. This was at the request of some of the public interest groups in San Francisco that wanted to hear more about the public trust doctrine and more about how the Commission functioned.

As I indicated at that time, we were going to take that workshop to other parts of the state to share that information, and I'm pleased to report that on October 26 we had a similar public trust workshop in San Diego and then followed up November 30th in Long Beach. We had fairly good attendance at each of these, 50 or 55 people. It took three hours. There was a
still working with your staff to come up with a date
that is mutually agreeable to all the offices and
mutually available. And we'll let you know as soon as
we've done that. And we will also -- we're also working
on trying to come up with a schedule that would allow
the public to know all of our dates for next year, as we
did for this year, and hopefully that will be
promulgated fairly soon.

And that's all I have.

CHAIRMAN WESTLY: Thank you, Mr. Thayer. I
actually have a question, but let me ask you, do any of
the other commissioners have any questions on that?

I know the other commissioners are aware that
several weeks ago there was a gas and oil leak at the
platform off the Ventura County coast. And while these
leaks are never trivial, this one was of particular
concern because of the hydrogen sulfides, obviously
something that's a poisonous gas.

Most of the platform workers were evacuated
because of the hydrogen sulfide spill. The name of the
platform, Gail, is in federal waters, and I'm greatly
concerned that whatever caused that leak could
potentially cause similar leaks to state platforms under
the jurisdiction of the Lands Commission. Notably, the
operator, Veneco, also operates platforms in state
waters and we need to be assured that a leak like this will not occur on that or any other platform.

Of further concern is Pemico's ownership of nearby Platform Grace, the platform that is proposed for use as an LNG terminal. And I understand that Veneco and the proposed terminal operator disagrees as to whether oil operations could occur. If Platform Grace was to be used as an LNG terminal and a gas leak occurs, it suggests that joint operations could raise special concerns that would need additional environmental review.

And I would just love it if the staff would contact Veneco, ask them to send a representative to our next meeting to respond to some of these questions about safety. I'd also like to have the staff review both the leak implications and LNG oil operations on the platforms and report back at the next Commission meeting.

If you could also include in that report suggested steps that we can proactively take to ensure that last month's leak will not happen in state waters, that would be terrific.

MR. THAYER: We'll certainly do that. Since it is in state waters -- excuse me, federal waters is where that last leak occurred, the Mineral Management
Service, the federal agency with jurisdiction over off-shore oil development in federal waters, is conducting an investigation, and our staff has been in contact with them. And we'll make sure that the concerns that you've expressed are addressed in that investigation, or if they're not, our own staff will look into those issues.

I think we will be glad to bring this back to the next meeting. The one caveat I would want to have is the results of that investigation available so that the Commission could understand why the leak occurred and therefore what remedies might be appropriate. You can't get to that second step until we know what the cause is. I've been told that that report may be done in January, and if so, that will give us time to do it at the next meeting. But if for some reason it's delayed, we'll come back with good information for you.

CHAIRMAN WESTLY: I understand these things are complex and take time. It's also winter storm season and I'd hate to say, "Oh, gosh, we're all so busy here," if there is a problem, but if you could move as expeditiously as you can.

MR. THAYER: We will.

CHAIRMAN WESTLY: The next order of business is the introduction of the consent calendar, and I've
asked Mr. Thayer to highlight a few of the items on the
consent calendar.

One looks like it will be a victory for our
state's teachers, and each of the other highlighted
items benefits the environment. I would like to call on
Mr. Thayer to provide a quick overview of these items
and then indicate which of these other items we can
remove from the consent calendar. There are a number of
them or we can take them all at once, unless the other
commissioners have concerns.

Mr. Thayer, go ahead.

MR. THAYER: Starting with your last point
first, item 31 is the only one we're removing from the
calendar.

The ones that I wanted to highlight included
the items 28 through 33. These are more -- acceptance
by the Commission of additional offers to dedicate
easements for public access in the Malibu area. The
State Lands Commission has worked closely with the
Coastal Commission to broaden public access
opportunities. Each of these OTDs were dedicated as a
requirement for compliance with the Coastal Commission
permit, but each of these was on the verge of expiring,
and the State Lands Commission in most circumstances
steps up and accepts them so that these public access
opportunities won't be lost.

These will bring us close to around 190 that we've accepted, which is more than any other entity in the state, so it's something for the Commission to be proud of that we're able to pursue public access opportunities like that.

The second one I was going to point out was the one that you mentioned. It's calendar item 34. This has to do with the sale of about 13 acres of lands that are part of -- school lands that the Commission administers out of 33 acres in Barstow. That particular parcel is 33 acres in size.

The school lands program started when the federal government gave these lands to the state to help pay for educational programs. By law, any revenue from these lands today goes to retired teachers to -- as part of their cost of living increases for their pensions.

The plan here is to sell these acres to the highest bidder. We have one in mind who has expressed an interest, and that bidder, in addition to paying money for the land, will also provide the infrastructure that's necessary to develop the remainder of it. The Commission has done several market studies to indicate the -- to maximize the return to the state for the remainder of those 33 acres if we can have that
infrastructure in place. And what I mean by that is roads, sewer, electrical and water supplies. So another good thing that should result in more revenue to the state and teachers.

Item 36 involves removing tires that were dumped in the San Joaquin River. There is a fund available in Waste Management Board for this and they will be undertaking that problem.

Calendar item 47 involves the expenditure of the $200,000 that the Commission received from Carnival Cruise Lines as payment for violation of the Commission's Ballast Water Program. This was about a year ago, I think. The program would ask the Commission to authorize funding and involves a program that would enable us to know whether or not ships that come to California ports have done a mid-ocean exchange, which the law requires; otherwise, there's very little evidence of it. We think that with the study we're doing here, we should be able to come up with some techniques that will enable us to ensure compliance and protect California's environment.

The final one I wanted to highlight is item 55. As the Commission is aware, we have a variety of offshore oil and gas leases and development off of our coast. These are one by one -- these leases are playing
out and developed, and this is another one of these leases to be quitclaimed back to the state. Once it's quitclaimed back, it will go into the sanctuary program and will be preserved.

And those are the items that I wanted to highlight.

CHAIRMAN WESTLY: Sure. Thank you, Mr. Thayer.

Mr. Bustamante, would you want to add one?

MEMBER BUSTAMANTE: I'd like to ask Paul if he can give me some background on the seawall item?

MR. THAYER: This is the one at Pelican Point in Santa Cruz?

MEMBER BUSTAMANTE: 46.

MR. THAYER: 46. This was an item that the Commission had approved, I think, about close to two years ago now.

MEMBER BUSTAMANTE: I remember.

MR. THAYER: The condominium development in question is right at the juxtaposition of the Pajaro River and the Pacific Ocean. The river -- there was a protective wall along the river which had degenerated, and reconstruction required use of two or three feet of state lands. The Commission granted a lease subject to the payment of fair market rent to the state.
Since that time, we've worked to see if there might be some other approach to this which would be a benefit to public trust values in that area, and there are some local environmental groups that are very interested in restoring the sloughs around lots. And one of them is immediately adjacent to the property that's being protected by the seawalls.

The homeowners now have agreed to give up acreage, which is greater than the seawalls occupy, in exchange for lifting the public trust from the area of the seawalls. We won't receive the rent any more, but the benefit will be that areas of this wetland will now be available for restoration, and that is supported by some of the local environmental agencies.

MEMBER BUSTAMANTE: How much was the lease rent?

MR. THAYER: I think it was about $57,000 a year.

MEMBER BUSTAMANTE: And the amount of acreage that we're receiving?

MR. THAYER: Curtis, how many acres? Let me see if I can -- 46.

MR. FOSSUM: I said item 46.

MEMBER BUSTAMANTE: Item 46?

MR. THAYER: About eight-tenths of an acre
will be removed from public trust.

MEMBER BUSTAMANTE: One-tenths of an acre?

MR. THAYER: Eight-tenths.

MR. FOSSUM: The termination of the state's claims are eight-tenth of an acre. I believe it was in the neighborhood of four acres, but I don't --

MEMBER BUSTAMANTE: We were charging $57,000 a year for eight-tenths of an acre?

MR. FOSSUM: No. If you'd look at item 46, the exhibit to it --

MEMBER BUSTAMANTE: Yes.

MR. FOSSUM: -- Exhibit A.

MEMBER BUSTAMANTE: Yes.

MR. FOSSUM: The area being terminated of the trust is identified as the major area where the condominiums are.

MR. THAYER: That exhibit at the back -- that exhibit in the back shows in the heavy cross-hatch the location first on the left of the seawall, which protects the condominium development from the Pacific Ocean, and then along the south side, the location of the river wall parcel. Those two areas will be where the public trust was lifted and the land will be transferred to the condominium association.

The lined area, the more lightly shaded area
along the Watsonville Slough in the upper right-hand corner of that exhibit, shows the area that will pass from private ownership into public ownership and where the public trust will attach. As you can see, the large -- the area that's coming into the public trust is much larger, probably a multiple of three or four, than the areas which -- from which the trust is being lifted.

And more importantly than just size, it's right along the Watsonville Slough, and there have been some areas here that have had various species, pampas grass, ice plant, that kind of thing which inhibit the habitat value of Watsonville Slough. So by putting this in public ownership, there are also private groups that are interested in going down there and picking out those species so that the seawall --

MEMBER BUSTAMANTE: And the previous seawall had been opposed by environmental groups?

MR. THAYER: Yes.

MEMBER BUSTAMANTE: How are they with this exchange? Have you had a chance to communicate?

MR. THAYER: We've gotten letters from some of the local groups there in support, particularly one called, I think --

MR. FOSSUM: I can provide you with copies of the letters in support.
MEMBER BUSTAMANTE: Because I think I recall it was the Sierra Club and Surf Rider that were --

MR. THAYER: They have not expressed any opposition to this. And actually, at the end of the day on the last project, they had some concerns but they were satisfied with the ultimate Commission decision and the amount of rent that was charged, so by the time the Commission heard it, they were not in opposition any more. They had these concerns.

As you know, they have an overall policy, they want to make sure that we're not allowing public lands to be used for protecting private development without a fair repayment to the local environment.

MEMBER BUSTAMANTE: So this three and a half, four acres, whatever, that we exchange for the point eight --

MR. THAYER: Yes.

MEMBER BUSTAMANTE: -- of an acre?

MR. THAYER: Yes.

MEMBER BUSTAMANTE: Those three to four acres, are they in some process or are they part of a program to have that still go into some type of habitat area? Is there some program for it? Is there a proposal for it, or is it just something that we've freed up for the possibility of some day maybe somebody doing something
with it?

MR. THAYER: In this particular area, the Coastal Conservatory has been very active and has worked with these local environment groups. In fact, they produced a wetlands restoration plan which calls for restoration in this area, so this isn't sort of a stand-alone exchange, but will help contribute to this larger plan that's in place.

MEMBER BUSTAMANTE: All right. As long as it was going to actually be used for something.

MR. THAYER: Yes.

MR. FOSSUM: Commissioner Bustamante, it's 1.55 acres, 67,667 square feet along the slough.

MEMBER BUSTAMANTE: An acre and a half.

MR. FOSSUM: An acre and a half, that's correct. And there has been some activity already in removing non-native vegetation and planting native vegetation along there by these groups that you're getting copies of letters in support from now: The Friends of the Dunes and the Wetland -- Watsonville Wetlands Watch Group.

MEMBER BUSTAMANTE: Seeing that the Chair has left for just a moment, he is being represented by his staff personnel, I'll assume the chair and take on the next -- this next item of business.
Is there anyone in the audience who would like to speak on the consent calendar?

Seeing none, I'll entertain a motion on the consent calendar.

MS. ARONBERG: So moved.

MEMBER BUSTAMANTE: Is there a second?

MEMBER HARPER: Second. That's as reflected with the deletion in 31?

MR. THAYER: Yes.

MEMBER BUSTAMANTE: It's been moved and seconded, and let the record show that the motion is unanimous.

The next item of business is item 57.

MR. THAYER: 57, I believe this is the item regarding marina leases and approving provisions. The Chair had asked --

MEMBER BUSTAMANTE: That is purely informational; is that correct?

MR. THAYER: It is an informational item of which the Commission could choose to direct staff to forward implementation of the measures.

MEMBER BUSTAMANTE: They will be entered into. You're going to be talking instead of the Chairman?

MS. ARONBERG: Yeah.
MEMBER BUSTAMANTE: Okay. Very good. Why don't you go ahead and proceed?

MR. THAYER: The presentation will be made by Dave Plummer from the Commission staff who worked on this project. Dave?

MR. PLUMMER: Good afternoon, Commissioners. My name is Dave Plummer. I'm regional manager of the Land Management Division, and I'm here today to give the Commission a status report of our review of the marina lease.

At the request of Chairman Westly, staff undertook a comprehensive review of our marina leases to ensure that the leases and their provisions were as comprehensive as possible to ensure greatest protection for the state's waterways.

As the Commission is aware, boating in California and across the nation is more popular than ever. In California, there's currently approximately one million registered vessels. And every year there is an additional 20 to 30,000 vessels being registered. Across the nation, there are approximately 17 million registered vessels. With increasing boating activities in the state's waterways, we face increased risk of water quality degradation and pollution.

And in response to the increased boating
demands, there's been an effort both by the federal government, individual states and also private organizations to promote a greater awareness of the potential pollution sources and wastes to minimize those potentials. And commonly what's being looked at and referred to across the nation by states and by the federal government is a promotion of clean marinas and clean boating programs. Many of the states actually operate clean marina programs through their equivalent of our boating and waterways.

In California, efforts have been underway for several years to promote clean boating. This effort is being conducted both on the government level and by association representing marina owners and operators, and Commission staff and members of the California Clean Boating Network and an interagency formed by the Coastal Commission coordinating the non-point source pollution from marinas and recreational boating.

In reviewing our marina leases, staff contacted our sister agencies across the nation to look at what their requirements were, including their leases and their marina operating agreements. And as not -- and to be expected, the coastal states, Gulf states, Great Lake states were actually at the forefront of most of the states. And the states of Washington, Texas,
Florida, Massachusetts, Delaware, North Carolina and Michigan, as well as the Canadian government, were all very good sources of information. I contacted our sister agencies in all of those states, got copies of their leases and also their best management practices that they have imposed.

In reviewing our staff leases and their leases and comparing them, in terms of actual lease provisions that we currently have in our leases, ours were as stringent as anybody's. As an example, since 1989 our Commission leases have had lease terms regarding plastics and polystyrene foam. Those provisions were adopted due to the concern of the Commission at the time that non-biodegradable materials were finding their way into state waters. Our leases also have prohibitions against bottom paint application removal on the lease premises, and we have provisions on the handling of petroleum products.

Our review did reveal an area where our leases are lacking and they need improvement, and that is the inclusion of best management practices as a part of our leases. Marina leases that have been approved by us in the last year, we have adapted California boating and waterways clean boating habits have required them to be part of our leases, but in looking at what's happening
on a national level and in the other states, clearly we can do more.

Creating comprehensive best management practices that address potential sources of pollution from marina operations and the boating public have been on the forefront of all the states. Here in California, there is an ongoing effort by state and local agencies, as well as industry representatives, to design measures to reduce non-point source pollution. Commission staff has been and will continue to be a participant in this process.

In addition to the government working on these issues, marina operators and yacht clubs have worked hard to draft their own best management practices. In fact, right here in the San Diego region, there's a partnership of marina operators and yacht clubs that have developed the Clean Marina Program to encourage marinas and yacht clubs to practice best management practices to prevent or reduce pollution to the waterways.

Industry organizations that take a proactive lead should be recognized for their efforts. Whatever the source of development of best management practice, the state's federal government or industry, the results across the nation have been similar. Best management
practices that have been developed looked at both marine
operations and general boating activities and potential
sources of pollution that can benefit from adhering to
best management practices.

Staff has done work that's being conducted in
California and from the states that I previously
mentioned, from Canada, and from the marina industry
itself and the work that they have done on the basis for
developing best management practices that is attached as
Exhibit A and B to the staff report.

Staff has categorized the best management
practices into two groups: Measures that marina
operators can take and measures that the boating public
should strive to achieve. And the list that's included
is not meant to be a final product. Staff is still
evaluating some other additional best management
practices, but we're also looking at the potential
economic and regulatory implications. And this is
especially true in the area of hazardous waste.

It should be noted that many management
practices have little or no costs associated with them
and can be implemented quickly. Other measures may
require capital outlays that a marina operator may have
to budget for.

Inclusion of best management practice into our
leases is just part of the process. Staff will continue to work with our lessees to monitor the effectiveness of the measures. Staff proposes to require lessees' submittal of compliance reports initially one year after the lease approval, and triannually thereafter. And staff will be meeting with marina and boating organizations to discuss the inclusion of best management practice in the Commission leases to ensure that they are comprehensive, practical and can be achieved on a cost-effective basis. Staff does not expect that any significant changes will result in the proposed best management practices as we haven't had discussion with marina lessees.

If there are significant changes to be proposed, staff will come back to the Commission for further hearing. If there are no significant changes, staff will include all the best management practices into all of our leases, and we currently have approximately 100 leases within our jurisdiction.

As a final note, and I've worked with marina lessees for many, many years for the Commission, inclusion of best management practice into our leases is not to suggest that our lessees are not currently doing many of these things. In fact, the marina lessees we have met with have been very receptive with the
inclusion of best management practices into our leases. It's just very sound business practices that we do.

And with that, any questions?

CHAIRMAN WESTLY: Thank you. We have three members of the public who would like to speak, so unless any of the other board members would like to jump in, I'd like to ask members of the public to move forward.

Terrific. First, we have from Port of San Diego, Ross Campbell. And I'd like, Mr. Campbell, if you could just identify yourself again for the record.

MR. CAMPBELL: Sure.

CHAIRMAN WESTLY: And again, we have a number of people who would wish to speak and a number of issues, so if you could keep this to three minutes or less, we'd appreciate it.

MR. CAMPBELL: Good afternoon. I'm Ross Campbell. I'm with Coast Law Group. I'm an attorney representing the Surf Rider Association.

It's Surf Rider's position that the inclusion of BMPs in marina business is definitely a step in the right direction; however, a review of the BMPs proposed today indicates failure to look at a significant problem throughout the state, and that is the high levels of dissolved copper in our water column and harbors.

Dissolved copper constitutes pesticides that are toxic
to aquatic life and can result in long-term contamination of our sediment.

Mainly, the vast majority of copper enters the water column through copper-based antifouling paints that are found on the bottom of ship hulls. Now, from the ship hulls, it enters the water two ways: One is basically by manual ship cleaning on the bottom of the hull by divers. There are BMPs, I believe, in Exhibit B designed to effectuate change there; however, even if best management practices are incorporated for that problem, ship hull cleaning only constitutes five percent of the emissions from antifouling paints. 95 percent comes from day-to-day passive leaching. And the studies have shown that the best way to accommodate that problem is a switch from copper-based antifouling paints to non-toxic hull coatings and strategies. Therefore, Surf Rider proposes additional BMPs designed at effectuating change in this regard over the next five years.

Now, there are a number of things that can be done in this regard. First, education of the public is extremely important. The UC Sea Grant Program has developed a number of valuable documents that can be distributed or required to be distributed to individual boat owners. In addition, there can be some sort of fee
schedule whereby non-toxic -- owners of non-toxic boats can have a reduced fee. Furthermore, you can also require new boat owners to comply with non-toxic requirements. And lastly, current boat owners can be required to switch to non-toxic strategies as soon as their next regular repaint is scheduled.

Thank you very much for your time. I appreciate it.

CHAIRMAN WESTLY: Thank you, Mr. Campbell.

Next, we have Sandy Purden, Port of San Diego. Commissioners?


I am a commissioner with the Department of Marine Waterways but I am also a marina operator and owner. I also am past president of the San Diego Port Tenants Association. I'm not on the staff of the port. But we have a great relationship with our port here, and I wanted to come here and tell you a little bit about what was alluded to in your staff report, which was the alliance that we have with marinas, yacht clubs, municipal marinas and non-profit clubs and the military.

We have a program that's about an 80-page program which your staff has downloaded and copied from
our web site, and we define our program, basically, as an ongoing endeavor by the marina industry alliance, the folks that I just talked about, to provide environmentally clean facilities through compliance of best management practices determined to protect San Diego's regional coastal waters from pollution.

So, as I said, we're made up of a lot of different entities. And about a year and a half ago, the regional Water Quality Control Board was considering requiring marinas and yacht clubs to have an MPS, so obviously that got our attention because that was going to be a considerably costly event for us that we would probably pass on to our customers.

So we undertook getting all these 45 marina owners and operators together, and we developed this eight-page document which you can download, as I mentioned. And it's been quite successful. We've rolled it out to the Water Quality Control Board. They were very positively receptive to it. We currently have eight marinas and yacht clubs certified. We have a passing grade of 65 percent, which are the optional items that are in the thing that they have to do all on. They have to meet 100 percent of the required items which are currently regulatory items. They pay a minor fee of $250, which basically pays for the cost of the
berthing (sic) and the certificate, which they can use for their own marketing purposes.

Now, our program is unique because we are the only association addressing this issue in the United States that we can find that is private industry and an alliance of all these different entities of municipal marinas, military marinas and the non-profit yacht clubs. So we're delighted that we also have support from the Marina Operators Association of America, California Department of Boating and Waterways, and the University of California Sea Grant Extension Program. The San Diego Bay Council gave us an endorsement in a sense. They liked our program. Obviously, they were more concerned that we did not come under regulation, but that's the whole purpose of our effort is to not have regulation. That would cost a lot of money.

But Baykeepers, Sierra Club, Surf Rider Foundation, the Audubon Society and the Environmental Health Coalition acknowledged that we were heading in the right direction. The San Diego Association Yacht Club, the Tenants Association, Dock Masters Group and the San Diego Ocean Foundation. So those are the letters so far acknowledging the support that we have, and we're excited about our program.

I'll leave this document with your staff,
although I understand they've already downloaded it, and
I'd be happy to work with them. I've already talked to
some of your staff, and I think the beginning of the
year we're going to share some ideas and some thoughts
on where your program is and where our program is. So
thank you very much.

CHAIRMAN WESTLY: Thank you. And Bruce
Resnick, the Executive Director of Baykeepers.

MR. RESNICK: Good afternoon. Thank you,
Mr. Chair and members of the Commission for giving me
this opportunity to speak. I'm going to be very brief.

I just want to thank your staff for putting
together these recommendations. I think that anybody
who spends any time at marinas realizes that marinas can
be a significant contributor of pollution to our bays
and our coastal waters as a collection source of
plastics and other types of pollutants, sewage, oil
spills, and of course, as Ross Campbell alluded to,
toxic discharges.

I think it's an important issue to be
addressed, as was already alluded to. It's something
our regional water board actually was going to take up
with a discharge permit under some pressure from the
marina owners. That effort, unfortunately, from our
perspective never happened, and it's good to see that
this effort moving forward as another way to get at many
of these recommendations.

  I think it is important to have actual lease
requirements and I would also agree or put forth having
actual regulated permits, again PTS permits. While we
do support voluntary measures, we like to see those
teeth, and we look forward to working with your staff on
putting some more meat on the bones to some of these
recommendations, particularly with regards to non-toxic
hull paints. I think using this type of measure is a
way to really help develop that market through, you
know, whether it's mandates on marinas or extended
programs. That would be a good way to go.

  So we look forward to working with you. I've
already had some brief discussions with staff, so thank
you very much.

  CHAIRMAN WESTLY: Thank you, Mr. Resnick.

Commissioner Bustamante?

  MEMBER BUSTAMANTE: Either Bruce, the
Baykeepers or Ross, either one, are there strategies now
that are available for non-toxic hull paints, but other
strategies that the kind of paints that are used or the
different materials that are used allow for maintenance
of the ship's hull and still has to deal with the whole
issue of either a native species or other kinds of
species that either attach themselves to the hull? Are there different strategies for that that currently work or that are being thought of?

MR. CAMPBELL: Well, there are -- as far as cleaning the hulls of boats, there are a number of strategies that can help as far as -- I believe one is using harder paint, also using less abrasive measures for scrubbing off the growth that does accumulate. That could prevent the amount of copper that goes into the water and prolong the life of the paint as well. And then there are continuing benefits of non-toxic paints.

Now, it's my understanding that every one to three years a ship is repainted, so apparently at that time it would be easiest to implement non-toxic --

MEMBER BUSTAMANTE: Is there a list somewhere of these non-toxic paints?

MR. CAMPBELL: I'm sure there is but I'm not aware of it. I'm sure I could find it.

MEMBER BUSTAMANTE: It would be helpful if we could find a source, either a manufacturer or --

MR. CAMPBELL: Okay.

MEMBER BUSTAMANTE: Because what happens is if we ask the staff to develop a procedure or -- you know, it sounds like a very good thing for us to pursue, but how does a boat owner, then, get access to the kinds of
materials that we're talking about? And if there's any sources that could be provided, it gives us a chance to be able to, in some cases, provide a carrot and sometimes, if necessary, a stick in trying to make sure that these changes take place.

MR. CAMPBELL: Sure.

MEMBER BUSTAMANTE: And also if there are any cost comparisons with the paints, et cetera, anything that would help us try to figure out how to, obviously, make this a much better, much cleaner marina.

MR. RESNICK: Sea Grant has done extensive work. We can follow up with them on getting those materials. There's been statewide working groups and environmental groups like as EHZ, who sat on --

The one thing I would say is that we are sort of a chicken and an egg. They are not readily, you know, out there for everybody to engage in right now, but, you know, potentially we can help use regulations to build these markets. So one of the things that we were pushing through with, like, the MPBS, and Surf Rider was involved. And when that measure was going forward, there was subject to requirements that would phase in or would require a number of slip spaces for companies or for boats using non-toxics. If we can start to build that from the ground up, we may help
drive this, so that's one of the goals as well. But we can find out that information and give it to your staff.

MEMBER BUSTAMANTE: Yeah, and whatever harder paint means -- I'm not familiar with these terms. And so as a lay person giving some kind of definition and giving the availability, these kind of products would really be helpful.

MR. RESNICK: We'll get these.

CHAIRMAN WESTLY: What I would like to do here is I'll go ahead -- I'll make the motion here but to direct the staff to go ahead and review the leases and make sure they are utilized and state of the art and environmentally-sound technologies. And I just would like to get a sense that you understand the things they've raised and you do think this is reasonable and workable, and direct staff to work with the membership of the public.

Is that a reasonable request, Mr. Thayer, or are there some other issues that we need to delve into?

MR. THAYER: No, I think that's very reasonable. Of course, we'd like to do a little more research into this issue of the availability and feasibility of these alternative paints to make sure we've got a workable solution, but I'm eager to talk to Ross Campbell about that. They've got some information...
that might be helpful.

CHAIRMAN WESTLY: If you could do that with the other members of the public that spoke here today, I would be grateful. What I'm trying to do is expedite a movement to that solution, which doesn't necessarily involve trying to get things set with hard paints but if you have --

MS. PURDEN: Just 30 seconds. There's a whole issue of total max related to the bottom paint issue, and Segret has some -- a lot of research that's been done on that. But the big problem is that the paint companies have legally -- have copper in their point. So until you figure out a way to make copper illegal, we're going to have a big problem. So I think what we have to do is maybe phase in the illegality of copper in paint over the years -- like they did with the auto emission issue -- and find out how to arrive at a solution over many years of what you were suggesting, easy insert strategies.

MR. THAYER: I can, perhaps, be more responsive to your question. I think -- I'm hearing that none of the witnesses believe that what we propose so far -- that there's anything wrong in any of the measures that are listed. But there is a proposal to enhance them -- the measures with respect to
copper-based paint.

And so I would request that the Commission go ahead and direct staff to implement the measures that have been developed. In our report, we identified several other measures that we think ultimately may be feasible as well, but we're not prepared at this point to recommend, so --

CHAIRMAN WESTLY: Exactly what I wanted to hear. Let me simply this: I'm going to ask my legislative team and legislative director to see if we can go the next step: to change the state law to tackle some of the very issues that you've outlined here today.

Under the context of the current law, I'd like to ask staff to go as far as you can to increasing to the highest levels within the laws that we can. This is an issue I'm passionate about. I asked the staff to work on this several months ago. We all understand many of the state's leases are important. They're important to the state to provide necessary revenues, but many of the leases put into place five, 10, especially 15 to 20 years ago would have had environmental standards at a much lower level. We want to raise the bar wherever we can, and I'd like to ask for a second on line motion to direct the staff to do precisely that.

MEMBER BUSTAMANTE: Second.
CHAIRMAN WESTLY: All in favor, please say aye.

MEMBER HARPER: Aye.

MEMBER BUSTAMANTE: Is this on the entire item or is this just on that part of the issue?

CHAIRMAN WESTLY: The entire item.

MEMBER BUSTAMANTE: I have another question that I'd like to ask staff.

CHAIRMAN WESTLY: Commissioner Bustamante.

MEMBER BUSTAMANTE: In this process, did we design -- I notices that in the report it talks about different controlling your management, it talks about different ways of handling fuel, its leaks, protocols, et cetera. Was there anything in particular that was discussed with regard to the fuel itself or the engines themselves?

MR. PLUMMER: Well, we have a requirement in our leases right now that all engines have to be up to code, and they have to have all the best technology they can have. It has to do with air pollution. We addressed that already, I think, in our leases. I understand what you're saying and I -- there hasn't been a lot -- probably there's hasn't been enough work done on that. We'll have to do that.

MR. THAYER: You're thinking about two versus
MEMBER BUSTAMANTE: Well, I'm looking for different possibilities. I mean I see what it says on here, but I don't know that we have reviewed all the different possibilities. We're undertaking, as a society, this process of changing automobiles into alternative fuels and we're moving in a variety of different directions with electric cars and with all different kinds of directions that we're talking about because of the air pollution that takes place, and yet there is no discussion with respect to water pollution, so I've just -- it seems like we should figure out how, at some point, to start that dialogue.

MR. THAYER: I think that's a good point and I believe that, at least presently, boat motors don't meet the same requirements as car motors. If you have a speedboat with the exact same engine as is used in a Ford or a Chevy, it doesn't have those requirements. I believe the ARP is ramping up those requirements but --

MEMBER BUSTAMANTE: In what way?

MR. THAYER: Well, they don't have Catalytic converters, for example, or some of the other emission controls that an automobile has, yet it's the same motor.

MEMBER BUSTAMANTE: I know a '66 GTO, a muscle
car, that doesn't have a Catalytic converter and it's
street legal and licensed.

MR. THAYER: Sure, because it's an older
vehicle. I think the ARB is moving to ramp up those
through marina associations.

MEMBER BUSTAMANTE: But like that?

MR. THAYER: Yes.

MEMBER BUSTAMANTE: That's exactly the right
thing and what we're talking about, but how do be -- not
to do it just because we think it's a great idea, but
can we figure out how to start this whole dialogue as to
how to better protect, you know, a fairly finite source
that we have both inland and along our coast? To
have --

It's a little bit different -- if you dump
something on soil, you can normally pick that up. In
most cases, you can pick it up and figure out how to
deal with it, even if you have to store it some place.
But in the water, it goes in and how do you deal with
that and the accumulation of that?

And we talked substantially about the kind of
problems that MTBE was having in waterwells as a result
of using that in our cars. Well, here we are using MTBE
on waterways. And what's -- you know, what's been --
what have we done about that in terms of what's taken
place, is there any accumulation there, is there anything taking place both in our rivers and lakes and along our coast.

So we have not discussed, other than in this document, what is a good start. I think we should think about how we might look at this in a grander way, and look at it with a bigger picture in terms of how we deal with the entire process of the vessels that are used. And what kind of equipment they're required to use, and how we might be able to have best thinking for our future, not just best practices for now.

MR. THAYER: I understand. We'll definitely look into that.

MEMBER BUSTAMANTE: Thank you.

CHAIRMAN WESTLY: Thank you.

MEMBER BUSTAMANTE: With that, I'll be more than happy to --

CHAIRMAN WESTLY: The motion has been seconded. All in favor say aye.

MEMBER BUSTAMANTE: Aye.

MEMBER HARPER: Aye.

CHAIRMAN WESTLY: I think that brings us to --

I thank the members of the public here for contributing to this important issue.

That brings us to Number 58, the Port of
Stockton, which we had heard at the last meeting, and
I'd like to have a presentation. I want to apologize to members of the public. This issue may go on for a bit, and, unfortunately, my plane requires that I have to leave in a bit, but I would like to move this ahead as quickly as I can because it is important to me. Staff presentation, if we may?

MR. THAYER: The presentation on this, also, will be made by Dave Plumber.

MR. PLUMMER: And I'll cut my remarks a little bit short to get done as quickly as possible.

As you know, this item was heard at our last meeting in October in Huntington Beach. It involved two things: The assignment of a lease from the Navy to the Port of Stockton; and, more controversially, the construction of a new bridge to serve the Port's expansion, which is called the West Complex, and that's the Daggett Road Bridge.

The Commission had received written information and we heard testimony at that meeting. We heard testimony from the Port. We also heard testimony from the Natural Resources Defense Council. We've received additional information -- more information from NRDC and Shute, Mihaly, Weinberger, a law firm that represents plaintiffs challenging the environmental
The main thrust of the arguments that were presented at that meeting by NRDC was that the Commission, acting as a responsible agency, could impose a wide range of mitigations as part of its approval of the bridge project even though the lead agent has chosen not to impose those mitigations. The Commission was also asked at that time by NRDC and Shute Mihaly if we could put the meeting over so that they had more time to talk to us and also present us more information, and also to give more time to the staff to review their comments that they provided, and that was of course put over for this meeting.

Since that time, staff has received additional written submittals from NRDC and Shute Mihaly that argues that the Commission has broad discretion as a responsible agency under CEQA. The staff has consulted the Attorney General and has considered the argument raised at the meeting as well what they presented to us, reviewed statutory and regularity and case law. And the staff in the Attorney General's Office has discussed this issue with NRDC and Shute Mihaly of issues that they had raised at the meeting and their additional correspondence.

Staff believes that the Commission's role in
acting as a responsible agency, as it is doing so on this project, is more limited than advocated by NRDC and Shute Mihaly. CEQA provides a responsible agency must presume that an environmental impact report approved by the lead agency is adequate, absent a court ruling to the contrary.

Since the time of the October meeting, staff has been working with the Port of Stockton specifically to define measures adopted by the Port that address transportation impacts, and it better defined the coordination between the Commissions Ballast Water Program and the Port regarding increased vessel calls at the West Complex.

The Port had adopted mitigation that specified the preparation of a truck travel control plan that was to be implemented upon completion of the first project at the West Complex. After negotiation between staff and the Port, the Port has agreed to expedite the creation of that plan -- that portion of the plan that has to do with access to and from the West Complex via Daggett Road.

The Port has agreed that the plan will address making Daggett Road and the Daggett Road Bridge the primary gateway to the West Complex. Prior to opening the Daggett Road access, the Port has agreed to prepare
signs to be installed at all tenant facilities to the
West Complex to encourage truck traffic to use Daggett Road when entering or exiting the West Complex.

The Port has agreed to hire a licensed traffic expert every two years to monitor traffic travelling to and from the West Complex. The traffic expert will be instructed by the Port to determine if future steps or further steps are necessary to ensure traffic travelling to and from the West Complex minimize trips through residential areas adjacent to the Port.

The Port had also adopted a mitigation measure to address potential release of non-native organisms from ships calling at the Port. That measure required continued implementation of the Port's Ballast Water Program, management plan, and, to an extent, feasible coordination with State Lands and other agencies who have regulatory authority.

The Port has agreed to implement, after our negotiations, a pilot program for an initial period of a year to provide for the collection and transmittal of ballast water information from vessel operators to staff of the Commission's marina-based species program.

While currently the Port has elected not to pursue shoreside treatment of ballast water at this time, the Port has agreed that it will plan for its
infrastructure facilities in a manner that would not
preclude shoreside treatment of ballast water.

The part has also agreed to investigate the
feasibility of shoreside treatment of ballast water and
to incorporate into its infrastructure facilities
planning for the West Complex the infrastructure that
would likely be needed to support shoreside treatment.

And based on our analysis of our role under
CEQA, it's staff recommendation that this item be
approved as presented.

CHAIRMAN WESTLY: Thank you. I'd like to ask
members of the public to come forward. Melissa Perrella
representing the NRDC.

MS. PERRELLA: Good afternoon, Commissioners
and staff. My name is Melissa Lin Perrella, and on
behalf of the Natural Resources Defense Council and its
members, I strongly urge that if you grant this lease
today, that you require the Port to adopt measures to
significantly reduce the harmful impacts to Boggs Tract
and other Stockton residents.

Preliminarily, I'd like to thank the
Commission for your attention to this item and for
directing staff to consider our comments and to consider
the Port's EIR. Additionally, I thank staff for their
efforts on this agenda item.
As you may know, over the past two months, NRDC and Shute Mihaly have responded in writing to the Commission's legal questions, provided a list of mitigation measures we believe the Commission should adopt under CEQA, and had a call with staff last week to discuss these issues.

Unfortunately, we and staff disagree on the Commission's authority under CEQA to adopt our suggested mitigation measures. We think it is clear that CEQA places important obligations on responsible agencies that are separate from those imposed on lead agencies to ensure that the impact of their actions are mitigated.

CEQA provides that a responsible agency must mitigate the direct and indirect environmental effects of those parts of the project which it carries out or approves. Further, a responsible agency may not approve a project if feasible mitigation measures within its powers are available.

There is no question in our mind that the traffic and pollution generated from the two million trucks that will use the Daggett Road Bridge is a direct environmental effect of the construction of that bridge. We think it is equally clear that the operations at the West Complex are an indirect effect of the construction of that bridge. California law supports this
interpretation.

In October, we provided to staff a list of approximately 25 measures the Commission could adopt to mitigate these direct and indirect environmental impacts. In working with staff and in the interest of compromise, we narrowed our list to six measures that would mitigate the impacts most directly caused by the operation of the bridge.

And in the interest of further compromise, I come to you today with only four of those 25 measures, which include the following of which I tried to distribute and I hope you all have a copy of.

The first measure includes before constructing the Daggett Road Bridge, the Port should comply with the recommendations adopted pursuant to the Boggs Tract specific plan process. As you may recall, Boggs Tract is a low-income, Latino and African-American community near the Port.

For at least four years the city of Stockton, the San Joaquin County, the Port and Boggs Tract have been working together to formulate an access route to the West Complex that would create the least amount of harm to Boggs Tract. This is the correct process to decide this issue.

At first, we understood that the Port wanted
to relocate Boggs Tract residents. Now, the Port is attempting to circumvent the process in place by rushing ahead to construct the bridge without fully considering how best to alleviate these harms -- the harm that thousands of trucks will have on this community. If the Port is allowed to build the bridge before this process is complete, trucks will likely drive through Boggs Tract because the Port's favored route is already at gridlock conditions. CalTrans, the Department of Public Works and the County Community Development Department have all commented that it's unsafe for trucks to travel through the Boggs Tract community.

Second, the Port should participate in a truck replacement program modeled after the Gateway Cities Program operating at the Ports of LA and Long Beach. Ports usually attract the oldest and dirtiest trucks on the road, so a measure of this type could help alleviate pollution and health impacts, like asthma and cancer risks in Boggs Tract. The percentage of revenues we've asked for is considerably smaller than the percentage the Port of LA is contributing towards the Gateway Cities Program to mitigate emissions at the China Shipping Terminal.

Third, the Port should implement idling restrictions at the West Complex. The Ports of LA, Long
Beach and Oakland all impose idling restriction, which is an extremely inexpensive way to reduce dozens of tons of pollution every year. These restrictions will also reduce fuel consumption, which is good for trucking companies as well.

Fourth, we advocate that the Port should require at least 70 percent of all ships to cold iron or use electric power at berth. Ships are the largest source of pollution at port, and here residents are just a few hundred feet away from the channel from where the ships will be docked, yet the Port has not adopted measures to reduce pollution from ships from this project.

At the Port of LA, 70 percent of the ships that use the China Shipping Terminal will cold iron. Further, the Port of Long Beach -- I'm sorry.

CHAIRMAN WESTLY: Wind up.

MS. PERRELLA: Okay. Sure. The Port of Long Beach has found that cold ironing is an extremely cost-effective and feasible measure.

Further, in the EIR, the Port argued that it could not implement cold ironing because it doesn't have good candidates, vessels for cold ironing, or that it could not require ships to implement cold ironing; however, it can require ships to implement cold ironing
through contractual relationships. And we have looked at the Port's vessel call logs and have actually seen ships come into the Port time and time again that would be good candidates for this mitigation measure.

Basically, in conclusion, what I'd like to say is even if the Commission finds that it does not have the obligation to mitigate certain environmental impacts under CEQA, I think we can all agree that the Commission has the clear discretionary authority as a public agency to adopt measures as conditions of the lease. If the Port has the power to deny the lease, it also has the power to grant it with conditions, especially conditions that are consistent with your EJ policy. Thank you.

CHAIRMAN WESTLY: Thank you, Ms. Perrella. I just want to say that we appreciate representatives of the NRDC being here today. It is a complex issue but we do believe in my office that there are some appropriate mitigations wherein we can suggest some, in just a few minutes, in the name of fair and reasonable compromise, but your thought in outlying this was helpful.

Having said that, I'd like to ask members of the public to stay within three minutes. I'd like to ask --

MS. PERRELLA: Thank you for your time.

CHAIRMAN WESTLY: Thank you, Ms. Perrella.
I'd like to ask Ms. Schussman of the Port of Oakland to come forward. I'm going to hand the gavel over to Commissioner Bustamante, but I will be represented by Ms. Aronberg for the remainder of the meeting.

MR. SCHUSSMAN: Thank you. My name is Barbara Schussman. I'm here on behalf of the Port of Stockton. I am the Port's outside counsel but I also have been representing the Port throughout the process of approving its West Complex development plan.

I spoke at the last meeting and I explained the Port's understanding of the law of the California Environmental Quality Act that a responsible agency can adopt mitigation measures only for the part of the project it is approving, not the project as a whole.

I agree with the Attorney General and the Council for State Lands' interpretation of the law. I can certainly answer any questions that you may have. We do publish the California -- one of the leading California treatises on the California Environmental Quality Act, and we feel very confident that you have received the correct legal advice from your staff.

I also would like to point out that the Port of Stockton was never provided the mitigation measures recited here today. We never heard them, we were never given a copy of them, I still have not been given a copy
of them. I'm not sure how anyone would expect the Port of Stockton to be able to respond to mitigation measures only just now presented at this hearing. The Port of Stockton is a public agency. It is not a private applicant. It can only take -- thank you.

I've just been handed the mitigation measures. It can only take action if its commission approves that action. I cannot take action on behalf of the Port of Stockton. Mr. McKay, who is here on behalf of the Port of Stockton, also cannot take action. If anyone had wanted us to consider additional mitigation measures for this meeting, they needed to have been provided to us in advance of the meeting, not at the meeting, and so I do object to the process.

I also went to point out that this has been the procedure that's been followed throughout by the entity and by the litigants opposing the project. They have repeatedly come in with last minute requests, last minute letters providing no notice and then ask for a continuance. It is not a correct legal process.

I can respond to each of the measures that were provided because I am very familiar with the Port's environmental impact report. But, as I said, I cannot accept any measures because the Port of Stockton is a public agency with a designated body that has to take
action on any proposals.

The measures that were presented -- first of all, this idea of the study being done in the Boggs Tract area, that's an ongoing study. There's nothing about the Daggett Road Bridge Project that would preclude any solution under that study. I do have a diagram I could show.

Thanks. It shows very clearly that traffic does not go from the Daggett Road Bridge area to the residential community. This is the Port's West Complex. This is the part that would be developed under the project that the Port approved. This is the Daggett Road Bridge that is before State Lands. This is the waterway and the marine terminals.

Trucks would come across this bridge down to State Route 4 and then over to Highway 5 -- actually over Charter Way, I'm sorry. I was by the railroad track. All the way down to State Highway 4 and over to Highway 5. The residential community of Boggs Tract is down here. It's nowhere near that traffic flow.

The traffic currently goes along either Washington Street or Navy Drive to get to the Port via the Navy Drive Bridge. All this project does is remove traffic from that area. There's no reason, therefore, to wait until the study is done. The study is a good
The Port is sponsoring the study and participating in the study, but there's absolutely no reason to wait to solve a problem based upon this other study.

The truck replacement program, the Port adopted a mitigation measure actually saying that as it approves any project that would substantially increase trucks on the West Complex, it will at that time consider the feasibility of a truck replacement program. No project has been approved to date that would substantially increase truck traffic over there, so there is nothing to examine in terms of feasibility.

Idling restrictions, one of the mitigation measures that is part of the project also is to make sure that the roadways are -- will reduce idling at the West Complex.

And then as far as cold ironing goes, that is not feasible at the Port of Stockton. That is only feasible, according to that Long Beach study, for a very few types of ships. None of those types of ships call at the Port of Stockton as a whole, certainly not at the West Complex. The only ships that are repeat ships are ammonia (sic) ships. They come right down to the complex. That has nothing to do with the project that is before the Port or before the Commission.
MEMBER BUSTAMANTE: Is that it?

MR. SCHUSSMAN: Yes.

MEMBER BUSTAMANTE: Okay. Is there any other -- are there questions from the Commissioners? Seeing none, I have a few.

Let's go back to what I think is sort of the beginning. It's been stated back and forth that we either do or we don't have jurisdiction on anything more or equal to the bridge project. It's been indicated that the Attorney General has -- by staff that the Attorney General has indicated that we do not have jurisdiction on anything other than the bridge. Is that correct? Alan, can you give us --

MR. HAGER: Yes, essentially that's it.

MEMBER BUSTAMANTE: Don't say -- lay it all out.

MR. HAGER: Okay. Our jurisdiction -- the Commission's jurisdiction deals with impacts from the bridge itself. And for one thing, we don't see a bridge as a catalyst or anything like that. The bridge is just part of a project. The bridge is something built, like you build any structure, and then you subsequently develop a project. They have developed a project right now. The bridge is just one part of the project.

MEMBER BUSTAMANTE: Can everybody hear?
MR. HAGER: Put that in front of me and then -- and, you know, the types of things that, you know, are impacted directly from the bridge and that affect the Commission's duties to protect its land and protect the public trust.

To give an example: If they wanted to build the bridge low so that ships couldn't pass through it, we could say, "No, you can't do that kind of thing." If it in any way impedes the use of the waterway for navigation. And if the bridge were in an area where we didn't think it was good if the bridge worked -- one in a place where it would funnel the traffic right into Boggs Tract, for example, no, we don't want that. We don't want to let our land be used for that purpose. We can move the bridge.

We're not a -- the Commission isn't a regulator of air emissions. It's not a regulator of water quality. It is concerned with water quality for its own lands, but it isn't -- there are regulatory agencies that do that, and to say just because the Commission issues a lease for a part of a project that it would be able to address mitigation measures that are appropriately and properly within the purview of the lead agency, that we don't agree with. And the litigation measures that NRDC is asking for here are
mitigation measures that are within the province of the lead agency that if the lead agency isn't addressing them, the NRDC and Shute Mihaly have a remedy. They're using that remedy right now, and that remedy is the lawsuit challenging the EIR.

MEMBER BUSTAMANTE: But we have no authority to interject in that process?

MR. HAGER: We are supposed to use the EIR, assume that it is valid, go ahead and, you know, approve or disapprove the project based on our authority. CEQA doesn't give us any more authority. The authority we have to issue a lease, and then the Port can go ahead with the project or not. If it goes ahead, it does so at its own risk; there is no injunction stopping the Port from going --

MEMBER BUSTAMANTE: You have to admit it's an interesting conundrum. We have a situation in which we have no jurisdiction, although our own staff is telling us that the EIR for this particular project, they think, is adequate; you have the EIR -- the entire EIR is wholly inadequate. In fact, it was to put -- much stronger language was used in describing what they thought was lacking in the EIR.

So we are here. We have access to information indicating that the EIR is inadequate, and yet we're
allowing the potential -- we have a question before us
to either approve or not approve a particular project
that is going to add to this process.

I find it kind of a difficult thing to kind of
work your way out of. It's this maze of public policy
and conflict of information that puts -- it's not clear
in terms of how we should proceed. So you're saying
it's very clear?

MR. HAGER: I'm saying that the EIR is
what's -- what the staff is saying is the EIR is
adequate for the purposes of the Commission's issuance
of the lease. As I say, I'm not making any comment. I
haven't read the EIR. I don't know whether it's
adequate or --

MEMBER BUSTAMANTE: I understand.

MR. HAGER: A lot of people don't read.
Adequate or inadequate, that's what is moving forward in
the case being brought in by NRDC, Shute Mihaly to
decide. It may be adequate. I don't know. But again,
what CEQA tells us is that as a responsible agency,
we're to assume the adequacy of it, we're to go ahead as
if it's all right, do our thing and let the litigation
resolve the dispute that they have with the lead agency
regarding the adequacy of the EIR. Again, it's the lead
agency EIR, not ours.
MEMBER BUSTAMANTE: So do our thing, is that the newest legal term?

MR. HAGER: Exactly.

MEMBER BUSTAMANTE: Let me then go to staff. Is the EIR wholly adequate for this particular lease?

MR. THAYER: We believe that it's adequate for this lease. We don't have the expertise to know -- to second-guess what the court is going to have to decide in April -- or at least have a hearing on in April in terms of deciding whether the EIR as a whole is adequate. All of the remedies that NRDC has asked for are susceptible to CEQA reviews or litigation or review by other responsible agencies. Each of them has their own role.

So the Commission's action today does not preclude a court from deciding or the Port from deciding to carry on with responsibilities regarding it as CEQA and to go forward. So whether the Commission grants the lease today or not, all of these issues are going to be thrashed out before the court. And if it decides that there needs to be additional environmental review, there will be additional review.

MEMBER BUSTAMANTE: Let me ask one more question and then I'll go on. If we had received an EIR, like the one that was done, the entire EIR, and we
had jurisdiction over the entire breadth of this EIR, would you have accepted all of the responses -- would you have accepted the EIR as it was presented to you?

MR. THAYER: I can't really say. If we had been the lead agency for this, we would have been working with a consultant right along. We would have been putting out work product --

MEMBER BUSTAMANTE: It's not the question I'm asking. As it exists now, if it had been handed to you the way it is written now.

MR. THAYER: I can't say. I don't know. If we were a lead agency, we'd know more.

MS. ARONBERG: It seems to me that we have our -- this Commission has its own obligation to consider this lease and the impacts of this lease, and while there may or may not be a lawsuit pending, and that may or may not be the remedy in connection with the lead agency, this is a separate process and a separate public process with NRDC has a right to raise these issues without them even referencing the law thought generally. We're not piggy-backing on what happened. It's in a public process. And this Commission should make a decision based upon its authority to -- I believe to mitigate the direct or indirect impacts of the environmental impacts that we're considering taking
today.

MR. THAYER: Well, I think -- the first thing is the commissioners have independent authority here. They can choose to act on this lease however they want. If their action would be sustained in court, that's a different question, but, Commissioners, staff is here to provide our best advice as to what the law requires and the impacts from this bridge. But ultimately, clearly it's your decision as policy-makers.

But having said that, though, there is a difference in this type of project. I think Alan was trying to get into it a little bit. We had quite a discourse with our attorneys and the attorneys representing NRDC and the homeowners association. They brought forward a number of different lawsuits or legal cases. They agreed that there was nothing exactly on point, but to try and say, for example, an interchange with a project in Antioch (sic). Some others provided precedences where this kind of infrastructure project can only be considered if you look at the initial impacts that would have occurred from the development that the infrastructure facilitates.

The distinction, though, between those cases and this one is that in the other cases the infrastructure alone was being considered, so the data
from then was being considered, not sort of a general plan why the impact. In this case -- and this is why Alan used the word catalyst -- the Port saw that infrastructure project as a catalyst for other development, and you should look at the impacts from the other development.

But in this case, it's the reverse. The development was being considered first, the Rough and Ready Island transformation from a Navy facility to a port facility to an industrial facility. All these were subject under the EIR, and also the bridge. So, really the Port project is the catalyst for this one. It's reversed.

So you're absolutely right, it's a separate project but it's part of the whole. And in this case, unlike all the other precedents, all of the development that's facilitated by -- quote, unquote, facilitated by this project has already been reviewed for its environmental impacts, and that's the overall project that the Port is engaged in.

MS. ARONBERG: I'd actually -- if Ms. Lin is available, I think she has, at least, a different perspective and can address a lot of the point that you raised. And maybe if she could just come a little closer because I'd be interested in knowing what she has
to say. And I don't know what other people feel, but it
seems that the mitigation measures that they've listed
are quite related to the impacts of a bridge and some
other less related things. That's our perspective.

MEMBER BUSTAMANTE: Does this lease comport
itself to the environmental justice provisions that we
created for ourselves?

MR. THAYER: Yes.

MEMBER BUSTAMANTE: It does?

MR. THAYER: Yes. There's been a lot of
discussion on Boggs Tract. And I don't want to put
words in NRDC's mouth, but I think their concern is that
the truck traffic generated by the overall project --
because this project will generate a lot of truck
traffic. And their concern is that ultimately there
will be congestion caused by that overall traffic,
particularly at the intersection of Highway 4 and 5 --
but in other places as well -- that will cause these
trucks to go through Boggs Tract, a lower income area.

But it might impact this particular element of
the project as a way to Boggs Tract. It doesn't run
through Boggs Tract, it directs traffic down towards
Highway 4 and back towards Highway 5.

There is ultimately in this -- it's
contemplated in the EIR, the long-range plan for the
Port -- a reconstruction of the bridge that does lead towards Boggs Tract, the Navy Bridge. And when that happens, they're probably going to need -- at least from us then as well -- and that traffic, unless dealt with appropriately, could go to Boggs Tract as well. But to raise that argument about this particular bridge isn't possible unless you're, in effect, saying that this bridge -- through this bridge you should mitigate the overall impacts of the project to truck traffic which doesn't even go across this bridge.

MEMBER BUSTAMANTE: But just because it's not next to the pulling of the trigger means that you're not responsible for the bullet?

MR. THAYER: But that depends on how you describe the bullets. All the traffic that goes across this bridge is, in some respect, being directed away from the Boggs -- the Boggs Tract and heading down toward Highway 4.

MEMBER BUSTAMANTE: The rest of the way? Maybe I think I could probably accept that argument in part, but if the traffic is going to be increased and it will have impact on a community, I don't see how it doesn't impact the environmental justice issues that we've talked about in our provisions.

MR. THAYER: The overall project may affect
MEMBER BUSTAMANTE: You said that truck traffic.

MR. THAYER: I'm sorry?

MEMBER BUSTAMANTE: As a result of this lease.

MR. THAYER: No. The truck traffic, as a result of this lease, is directed away from the lower income area. But the argument could be made that the larger project, which is Rough and Ready Island redevelopment, will create enough trucks that they will spill over into Boggs Tract, and not just from Highway 4, but from the Old Navy Bridge, which presently provides access there. So I think the argument is -- yeah, you know better.

MS. PERRELLA: Just a quick comment. I think it's important not to just look at the map in a vacuum. It's true that the Port would like to direct traffic south --

MEMBER BUSTAMANTE: The Port people should come up as well.

MS. PERRELLA: -- along Charter Way and direct them to I-5. What the problem is -- and what you can't tell just from looking at a map -- is that the area I've highlighted in pink is already at level of service of E and F. So you shouldn't assume that this road is
completely free and trucks are going to utilize this road. What's actually going to happen is that they're going to go back up through Boggs Tract because there is a more accessible freeway and there will, as you mentioned, be spill over.

MEMBER BUSTAMANTE: I know you just -- as you said, you just saw some of these measures. Let me ask the staff first. If these are -- if some of these are items that we require of other ports, why is it that we're requiring them of Stockton as well?

MR. THAYER: We generally don't have jurisdiction over ports, so we haven't required them of other ports. When you say we, the Commission hasn't required them.

MS. ARONBERG: You can assume we, the state in general because I know many of these are required at other ports.

MEMBER BUSTAMANTE: Well, for example, the idling provisions as well as the percentage of profits for truck placement.

MR. THAYER: The law -- my understanding of it is that the law -- the Lowenthal Bill established 30-minute restrictions for LA and Long Beach. It was written in a way that didn't apply to Stockton, so the legislature made that cut.
MR. SCHUSSMAN: It applies to Oakland, Long Beach and Los Angeles. And as far as the truck replacement program, that was a program put in place by each port, not the state imposing it on the Ports. And again, Stockton has also --

MEMBER BUSTAMANTE: That was all?

MR. SCHUSSMAN: I can only speak to Oakland, and I can tell you in Oakland it was mitigation for terminal development, just as Stockton put it in its EIR at a programmatic level as mitigation for this project, for the bigger project. And then if any actual concrete project that would increase trucks going forward, they would then look at the feasibility and what the percentage should be for truck replacement at that time. That's what their mitigation says.

MEMBER BUSTAMANTE: So why aren't you engaged in this activity now? Why isn't the Port of Stockton looking at these engagement measures?

MR. SCHUSSMAN: The Port is looking at all of these mitigation measures. They were all addressed in the EIR. And like I said, it adopted the one on truck replacement saying that it would look at it when it approves a project that increases trucks. Now --

MEMBER BUSTAMANTE: When does that take place, at what point in the progress?
MR. SCHUSSMAN: Well, hopefully they'll get a tenant that wants to come to the West Complex. Right now they're reusing the Navy facilities out there. They don't have people knocking at their door saying, "We want to come to Stockton right now." They're trying to bring jobs and economic development to the area.

MEMBER BUSTAMANTE: So you're saying in your protocols or in your business plan that as soon as a facility is brought online in which trucks are using that facility, then at that point you will create the truck replacement program?

MR. SCHUSSMAN: They would assess at that point whether the truck replacement program is --

MEMBER BUSTAMANTE: That's not what I asked.

That's different.

MR. SCHUSSMAN: Well, I can answer the question why.

MEMBER BUSTAMANTE: No, you're not answering the question.

MR. SCHUSSMAN: Okay. The EIR is --

MEMBER BUSTAMANTE: So you're not doing --

MR. SCHUSSMAN: I'm sorry, Commissioner, I'm actually -- I'm a little bit personally invested in this because I actually helped Oakland design their program and I feel very strongly that this is a good program,
truck replacement. And so I don't like Stockton to get the impression that they're trying to avoid it.

What's happening here is truck replacement works right now with old diesel trucks in the fleet. You take the old diesel trucks out of the fleet today and it works --

MEMBER BUSTAMANTE: I understand the program.

MR. SCHUSSMAN: If Stockton --

MEMBER BUSTAMANTE: Can you answer the question?

MR. SCHUSSMAN: If Stockton's development happens way out in the future, if it doesn't happen soon, those older trucks may already be out of the fleet, and at that point you can do better air quality mitigation with a different type of program. That's why they have to assess the feasibility of the program at the time when they know what development is coming, when it's coming, what the emissions associated with that project specific development would be and --

MEMBER BUSTAMANTE: So you're not --

MR. SCHUSSMAN: -- we're committed to do that.

MEMBER BUSTAMANTE: So the Port of Stockton has not yet committed to the program?

MR. SCHUSSMAN: It's committed to evaluate the feasibility of the program if and when it ever does a
MEMBER BUSTAMANTE: That's what you said in the beginning and you said that now four times. I understand that you are not committed to the project. You're committed to thinking about it.

And with respect to the other item on the truck idle, can you tell me --

MR. SCHUSSMAN: There are no substantial number of trucks on Rough and Ready Island right now.

MEMBER BUSTAMANTE: How about the rest of the Port?

MR. SCHUSSMAN: There has been no truck idling problem.

MEMBER BUSTAMANTE: How about the rest of the Port itself?

MR. SCHUSSMAN: The EIR doesn't show that there would be a truck idling problem to actually impose the mitigation on and resolve.

MEMBER BUSTAMANTE: I understand that, and I guess you guys will probably figure that out in the legal process. But other ports are, in fact, doing that as a part of their best practices. Is there a reason why the Port of Stockton doesn't believe that's a best practice as well?

MR. SCHUSSMAN: The other ports, Long Beach,
Los Angeles and Oakland, have tremendous truck queueing going on at the berth, and that was why there was a need to reduce truck idling. Stockton hasn't had that problem. There is not queueing going on at Stockton at the berth.

MEMBER BUSTAMANTE: I'm sorry. I'm not familiar with what queueing is.

MR. SCHUSSMAN: Oh, I'm sorry. The waiting in line. The trucks are all waiting in line to get into the terminal facility. That's where the idling goes on, and so that's why the Lowenthal Bill imposed, you know, time periods that you needed to make appointments to reduce idling.

MEMBER BUSTAMANTE: Is there some --

MR. SCHUSSMAN: That's problem doesn't exist at Stockton.

MEMBER BUSTAMANTE: Is there some kind of a trigger mechanism that is established either in the Lowenthal Bill or in your own best practices that would indicate that at some point, should it reach this level, that you would trigger this kind of activity?

MR. SCHUSSMAN: Well, the way that the CEQA process will work at the West Complex is right now they've done this programmatic document to try to look way out in the future at everything as best they can.
Truck idling was not deemed by the experts who prepared the report to be a problem at Stockton.

As they go forward with individual projects, they'll have to update that analysis. If truck idling were to become a problem, that would go into an updated analysis as projects come forward, and it would be addressed at that time. Truck idling is not a problem at Stockton. It's not a port like Los Angeles or Long Beach or Oakland. It's a very small port.

MEMBER BUSTAMANTE: I appreciate your -- is there anything, Mr. McKay, that you'd like to offer? You've come a long way.

MR. MCKAY: I've come all the way from Stockton.

MEMBER BUSTAMANTE: It's the place to come to, beautiful sunshine.

MR. MCKAY: I'd just like to emphasize the fact that the whole plan for truck circulation on Rough and Ready Island was designed as a mitigation measure before the EIR was even dreamt of. It was a plan to direct traffic away from the neighborhood onto Highway 4 -- a substantial amount of our traffic, as is shown in the EIR does come from -- originally from the west. That traffic would not have to go back through the area. Also traffic going onto Route 4 wouldn't have to go
through all the turns and very inadequate roadways that they are forced to go through now. It would also avoid the intersections at Fresno and Navy Drive, which are the problem now. Once the trucks are on 4, they would have a straight shot. It's not perfect but it's a lot better than the situation that there is now.

We also envision a lot of trucks that they attribute to the Port in the industrial park next to the Port East Complex will be using the Port of Stockton's West Complex Road as a shortcut and avoid the route that they're using now.

So I think the overall will be a reduction in trucks, as they allege, and the air benefits, of course, by trucks moving at full operational speed are improved. So it's an overall benefit, not a deficit.

MEMBER BUSTAMANTE: I'm going to ask you an unfair question. What would be the economic issues involved if we were to postpone this lease until after the litigation was fully resolved?

MR. MCKAY: Well, right now we've had several nationally-known tenants inquiring about individual development of facilities for -- even cargo movements through the Port.

MEMBER BUSTAMANTE: But no contracts at this time?
MR. McKay: No. Basically one of the problems with infrastructure development and government agencies, the private sector has a tendency to doubt our veracity when we say, "If you come, we'll build it." They say, "You build it and we'll come."

Member Bustamante: Right.

MR. McKay: So what we're trying to do is establish the backbone of a good network of roads that will allow trucks to flow freely through the Port and also access the state highway system without impacting the neighborhoods.

Member Bustamante: And what we're trying to do -- at least what I'm trying to do -- is try to find the best possible way of doing both good public policy and giving you full opportunity to do economic development. As the chairman of the Economic Development Commission, I want you to expand. I want you to grow. I want you to have the ability of being able to maximize the most efficient use of your facility. As you're maximizing the use of your facility, more people are working, more economic development comes to our state, and so there is no reason why we wouldn't want you to move forward.

But at the same time I believe we have a need to provide some form of best practices in all we're
doing here. And I would hope -- I would hope that you
would try to meet us, you know, with the same spirit
that we're trying to meet you. I, frankly, would see
this having two possibilities: Either postponing this
thing until after the legal items are resolved, or
passing it, you know, requiring certain provisions that
I think would be important, that I think are important
to have -- not just to think about, but to have as part
of your best practices.

So I would move to the Commission that we, in
supporting this particular lease, require that a truck
replacement program be included in the lease provision.
I believe there is nexus to this particular lease, and I
believe that the Port of Stockton will work with staff
to be able to provide for a truck replacement program
that makes sense to both the Port of Stockton and it
would comport with best practices of any port.

MR. McKay: I believe we can work together on
that and try to come up with an agreement that is
economically sound and reasonable. Perhaps also maybe
working with the airport to see what programs they may
be able to help us with, with carrots, not necessarily
sticks. And understanding that most of the vehicle
traffic is on those roads, there's only so much we can
do with our own stuff. As far as agreeing to or not
agreeing to a specific mitigation now, as counsel pointed out, I am not a commissioner, I'm a staff member but I --

MEMBER BUSTAMANTE: I wouldn't even try to negotiate that part of it, Mr. McKay, because I'm not competent to do so.

MR. MCKAY: I would struggle --

MEMBER BUSTAMANTE: I'll leave that in the hands of the court and you all.

MR. MCKAY: Okay. Thank you.

MEMBER BUSTAMANTE: That's a motion, Mr. Thayer?

MR. THAYER: I'm sorry. I was consulting with chief counsel when this was discussed. Could you describe --

MEMBER BUSTAMANTE: The motion is to propose, with staff recommendation, with a requirement that the Port of Stockton establish a truck replacement program, that they would work with the staff to make a program that would make sense for them. They are not Long Beach, they are not Oakland, and they have a particular traffic pattern as well as a particular way of doing business with the kind of products that they have and so forth.

Creating an appropriate truck replacement
program for the Port, I think, is important, and we
should stop thinking about it and start doing it. If
they are not in a position to create something which
equals the other ports, there should be some kind of a
program that is established, I think, that you should
bring back into the Commission for approval. I would
hope that it would come back as a consent item, but the
motion is to move forward with the lease requirement
that they work with staff in establishing a truck
replacement program.

MR. THAYER: So should a condition be written
that they generate that program in consultation with
staff for approval by the Commission?

MEMBER BUSTAMANTE: Correct.

MEMBER HARPER: Can I ask for a point of
clarification on the motion?

MEMBER BUSTAMANTE: Yes, please.

MEMBER HARPER: Will it apply to existing --
to expansion of the west end or the current facility?

MEMBER BUSTAMANTE: I think it would be
important for them to establish a truck replacement
program for the whole.

MEMBER HARPER: Without respect to the
expansion?

MEMBER BUSTAMANTE: The entire project.
MEMBER HARPER: The entire. And I guess a question for the staff: If the Port chooses not to meet that condition and this lease is not ultimately approved, is the existing infrastructure sufficient if you expand the west end?

MR. THAYER: Without the bridge?

MEMBER HARPER: Without the bridge?

MR. THAYER: I don't think so. I think there's only two ways of access into Rough and Ready, and one is this new bridge, which is replacing one that doesn't operate. It's on one side of the river. And the Old Navy Bridge, which provides access but ultimately can't carry the traffic that is contemplated to come from over all the development of Rough and Ready.

And in fact, as I mentioned earlier, I think their plan contemplates that they will come back to us some time out four or five years out, even if this is approved, to get approval to replace this second bridge, so I guess in short, there's another bridge but it doesn't meet standards right now and probably couldn't handle traffic for too --

MEMBER BUSTAMANTE: It has completely different issues involved --

MR. THAYER: Sure.
MEMBER BUSTAMANTE: -- which could include the communities?

MR. THAYER: Yes.

MEMBER HARPER: And I guess the final question is --

MEMBER BUSTAMANTE: Mr. McKay indicated he believes they could work out some kind of policy with staff on this issue.

MEMBER HARPER: The final question would be as I understood this truck replacement program, it was going to be funded by the tenants -- I guess tenants that are leasing space on the expansion. Assuming your proposal exists to the Port facilities, would the Port be responsible for supplying the funds for this program?

MEMBER BUSTAMANTE: I believe there's already an established program.

MEMBER HARPER: At the Port?

MEMBER BUSTAMANTE: No, in the state. I think they should use that as a model. There's a small percentage of profits that goes into the fund to supplement the replacement of trucks. Do you happen to know offhand what that amount is?

MR. THAYER: I don't. In LA -- and I think the NRDC attorney may know better, but in LA a lot of the money was going in as a result of trying to China
Shipping settlement, which was a fixed amount of money, I think. The overall settlement was 30 million dollars and a portion of that was money for truck replacement, though it's not a percentage of the Port revenues that was dedicated.

MR. SCHUSSMAN: Could I make one point of clarification?

MEMBER BUSTAMANTE: Please.

MR. SCHUSSMAN: Thank you. First of all, the approval of the Commission relates to the West Complex development plan. The environmental reports were for the West Complex development plan. Nothing before this Commission relates to the existing East Complex, so there really is no authority for the Commission to do anything really to the Port as a whole.

Second, I just wanted to make sure the Commission understands that last year the Port of Stockton's net profits were $200,000. We're not talking about 40 million, like the Port of Los Angeles. We're talking about $200,000. That's all they netted out. That's the money they want to use to build a road. That's all they're building right now, is a road.

If these obligations are put on them, they're not going to build that road and this project is not going to happen. There's not going to be new jobs in
Stockton. There's not going to be any economic development. That is why you look at the feasibility of how much money you can put in place when you have a specific project in front of you that would bring money in. They don't have that specific project in front of them right now.

When they do, they've committed to look at the numbers at that time. How can they decide now how much money to put toward truck replacement when they have no profits coming in from the West Complex, all they have is money to build a road? That's it.

MEMBER BUSTAMANTE: Is there a percentage of profit that is on this particular program? I believe that in the current truck replacement program there is a certain percentage of profit that is put toward the program, so regardless of the amount of resources or profit that you make, there's a very small percentage -- I thought I remember, and I didn't want to say a number, but I thought it is a percent, like ten, that goes toward this truck replacement program.

MR. THAYER: That I know of, there's two programs, I think, from what I've heard in the state.

MEMBER BUSTAMANTE: Does anyone know? Does anyone know who is familiar with the program?

MR. THAYER: The program in LA, Long Beach
MS. PERRELLA: I can only speak to the program in LA and comment on how the program works in Oakland. There was a sum certain replacement program in LA, and that was ten million dollars. And the way that we came up with the five percent was to look at what percentage that ten million dollars was of the revenues generated at the terminal for which that mitigation measure was imposed, which was the China Shipping Terminal.

And what we did when we calculated our math was that actually came out to 7.4 percent of the revenues from the China Shipping Terminal, but to be conservative, we proposed five percent. But as you recommended, this is a percentage that staff can work out. And obviously working with a percentage as opposed to a sum certain provides flexibility so that in years when the Port is not profitable, it contributes less money, and in the years it is more profitable and putting more trucks on the road, then it contributes more money at that time.

MR. THAYER: Curtis informs me that he recalls that recently the Port of LA adopted a percentage. What was it a percentage -- one and a half?

MR. FOSSUM: I think so.

MR. THAYER: For generalized --
MEMBER BUSTAMANTE: How much?

MR. THAYER: One and a half percent.

MEMBER BUSTAMANTE: That's what I thought.

MR. THAYER: But it wasn't just for trucks, it also involved other forms of air quality improvements, so again, I don't know but it sounds like --

MEMBER BUSTAMANTE: What was it in Oakland?

MR. SCHUSSMAN: I don't know that percentage. In Oakland -- the way it worked in Oakland was the Port knew what revenues it expected to get from its terminal development. It, then, was able to figure out what amount of money feasibly to put towards air quality mitigation as a whole, not just trucks. It worked with the nearby community then to allocate a specific amount of money to truck replacement. It was not a percentage. And then it was able to figure out what would make sense, as far as cost benefit.

There were some types of air quality mitigation, frankly, that you could get a lot more pollution reduction from than truck replacement, and so more money went to that than to truck replacement. Truck replacement was pretty far down the list, but once they got to that, they allocated some money to truck replacement.

Here, when you're talking about a profit of
$200,000, their port has already committed to spend a lot of its money to mitigation for a variety of impacts, not just air quality. And truck replacement may be when truck traffic increases cost effective to also spend money on, but if truck traffic doesn't increase for 20 years from now, I can tell you it will not be cost effective to put money toward truck replacement. There will be a lot better air quality mitigation that will be in place at that time. So to even come up with a percentage right now doesn't make a whole lot of sense, because we don't know what the best air quality mitigation will be today for something 20 years from now.

We do know what things make sense today. If they were having a huge increase in truck traffic today, then taking those oldest diesel trucks off the road would make sense. If they don't have a huge increase in truck traffic until many years from now, those diesels -- the heaviest polluting diesel trucks will have already been worked out of the fleet. And with the new regulation that the state has been imposing, diesel trucks are not going to be the heart of your emissions.

MEMBER BUSTAMANTE: Well, I don't know. I mean I've come from the Central Valley -- in fact, if you had told me on the truck idle that just the weather
issue alone would have been -- you know, probably would have gotten me. But, you know, I've been in the Central Valley and there aren't a whole lot of truck fleets that are brand new.

MR. SCHUSSMAN: I agree, and that's always taken into account. The Port of Stockton hired air quality specialists and traffic specialists with Central Valley experience in particular. They worked -- they used actually a model for truck fleets developed out of Sacramento. They have been trying to assess all of that.

They also did do a thorough health risk assessment of all emissions from a build-out of the whole port, trucks, ships, everything, and thankfully found that emissions would not cause a significant health risk for any of the residents in the Port area, so this all has been investigated thoroughly.

MS. ARONBERG: Logically, it seems to me that since other ports do pay in through the council those percentages, figure out those percentages like Ms. Lin did, and apply that same percentage to this port, to the west end portion of it. That's fair. If the profits are very, very low, it will be a tiny amount contributed. If the profit is more, it's a large amount contributed. And it just seems like it's fair to have
ports paying a similar amount as far as the percentage of their profits, so that's where I go on that.

MEMBER HARPER: I guess I'm back to the clarification point. I just heard you say that applying this percentage to the west end portion of the project and I think the lieutenant governor was talking about a percentage of the entire operations of the Port, so there seems to be some conflict here in need of some clarity, if possible.

MEMBER BUSTAMANTE: I'd be more than happy to amend the motion to apply it to the new portion of the Port of which this is a part of and make that motion and look for a site.

MS. ARONBERG: I would like one small point of clarification. You had some very insightful comments earlier about the EIR, Mr. Lieutenant Governor, and the EIR, in my opinion, is inadequacy and in someone's else's opinion and maybe staff's opinion as well. Is there a way to address that in this motion?

MEMBER BUSTAMANTE: I don't know how.

MS. ARONBERG: Some sort of finding. Can we have a finding concerning the EIR?

MR. THAYER: I'd have to ask the attorneys for that because there are certain findings that are required of us and some --
MS. ARONBERG: These aren't required findings. It would be --

MR. THAYER: Sort of an observation.

MS. ARONBERG: Correct, an observation.

MR. HAGER: We're not judging the adequacy of the EIR and, as I say, I don't think either -- and staff can correct me if I'm wrong, I'll certainly speak for myself, I'm not in a position to make a recommendation one way or the other on the adequacy of the EIR in total and I don't know if staff is either.

MR. THAYER: But if the staff wanted to include in its action today something that would be critical of the EIR is what I'm hearing the Commissioners say, what's the legal consequence?

MR. HAGER: There's no legal consequence if it's not -- I think I was concerned about the word finding. Observation, all right.

MEMBER HARPER: Let me follow up a little bit with that then. Given that the two parties in the room are in litigation elsewhere, would a finding one way or another potentially jeopardize one of those parties directly or indirectly?

MR. HAGER: I think a finding --

MEMBER HARPER: Or even a statement of any kind?
MS. ARONBERG: Yeah, a statement of an observation. Forget finding. It seems to --

MR. HAGER: I'm sure that every party whose side benefitted from that observation would use it.

MS. ARONBERG: The EIR seems, to our office, to really fail to address so many environmental issues related to this bridge and in development in general, but I think the --

MEMBER BUSTAMANTE: We haven't reviewed the entire EIR. I feel that it would be kind of anecdotal information that came -- gave me tremendous pause, but I don't know that we could indicate that a review with the EIR has taken place of the entire EIR, so I'm a little bit concerned about us making some finding or --

MS. ARONBERG: Observation. Just observing that it seems like the environmental mitigations seem to me inadequate, just as an observation.

MEMBER BUSTAMANTE: I think you could make a statement for the record and I think that that could be sufficient to list your concerns regarding the EIR, but I don't know that I would be comfortable with some -- because I personally haven't reviewed them and I have not had any thorough review given to me by anybody on staff. The staff says they haven't thoroughly reviewed the EIR. All I've gotten is anecdotal information about
bits and pieces of it which, if they find out to be all true, sounds like the litigants -- those who are defending this EIR are going to have a difficult time.

MR. HAGER: May I add one thing? I really am concerned about the Commission making a comment in the sense even with an observation involving itself in the merits of the litigation to which it is not a party.

MS. ARONBERG: Okay. Just it struck me that the city of Stockton, the San Joaquin County, Boggs Tract community --

MEMBER BUSTAMANTE: I guess you can always direct it to staff to --

MS. ARONBERG: Maybe they should. They were even considering, apparently, moving the entire Boggs Tract community -- picking them up and moving them because of the potential environmental impacts. And then to almost do nothing to protect these folks seems -- it seems almost an impossibility.

MEMBER BUSTAMANTE: It's quite a conundrum and unless you really want to put Jack to work and have him really do -- I think in doing something with a requirement of a truck replacement probably is about as far as I can see us being able to go. And I wish we could do more on the Boggs Tract. I think that there's likely to be something -- I wish we were the lead
agency. I don't believe that with the anecdotal
information that we've received that we would have
accepted the EIR, but we have not thoroughly reviewed
the EIR, so it's what we can do, I think, at this point.

MS. ARONBERG: So I do second the motion.

MEMBER HARPER: Madame Chair, just one more
question for the Port representatives. As I understand
the motion, it would be to apply some type of truck
replacement program to the profits derived from the
expansion of the west end part of the Port. Do you have
any comment on that? I thought I heard in your
testimony you're already contemplating some type of
mitigation efforts when the west end is developed.

MR. SCHUSSMAN: Right. What is contemplated
and what the Port adopted was a mitigation measure
requiring itself that if and when any development comes
to the West Complex that would substantially increase
truck trips, it would at that time assess the
feasibility of a truck replacement program, essentially
modeled on Oakland's program. And the components of
feasibility at that time would include what benefit you
would derive from replacing older trucks based upon the
truck fee in place at that time, the truck traffic
increases, the cost of the program and then what other
profits the Port has before it. That -- at that time
you could do the equation and you could figure out the correct percentage.

As I understand, the motion is to pick a percentage now. Frankly, I don't know how the Port could pick what a percentage would be at this time because I don't know how we would know when the development would happen, how many older trucks would be in the fleet at that time, and whether it would be cost effective to replace trucks. Every environmental consultant I've talked to -- and I've talked to a lot of them -- tells me that several years from now truck replacement will no longer be cost effective air quality mitigation. It is cost effective today. It was cost effective ten years ago when Oakland adopted it. That doesn't mean it's cost effective later because once those older diesel trucks leave the fleet, you're not getting much benefit out of truck replacement.

So, you know, you're going to impose whatever condition and the Port will then have to decide whether it would accept this lease and whether any other remedies are available to it. But this is, I believe, outside of this agency's jurisdiction to impose this measure.

I also think that, frankly, it's an unreasonable measure given the problematic level that's
been approved by the board and given the fact that truck
replacement has nothing to do with building a bridge.

MEMBER BUSTAMANTE: I appreciate your comments
and thank you for coming. You know, I think that if
staff comes back with a more generic proposal, that it
becomes something that you talk about air pollution in
general giving different kinds of triggers that could be
used at any particular point in time to deal with air
pollution issues in the area, I think that the
Commission would be in favor of reviewing that kind of a
recommendation and look to you for coming back with
something that makes sense. But clearly this kind of a
program is at every major -- at every major port and I'm
trying to provide some type of standard like this at
every single port, I think, is important for us to do.

MR. THAYER: So if I could just summarize to
make sure the direction of the Commission is clear is
basically it's conditioning approval or -- the motion
would be on the condition to approve the lease with an
additional condition which would require a percentage of
profits to be worked -- that percentage would be worked
out between the Port and staff to go to truck
replacement with some possibility that, let's say, if
there's a demonstration that there be better air quality
benefit for using that money in a different way, that
there might be some flexibility?

MEMBER BUSTAMANTE: Yeah. I think her point is well taken, and I think we should incorporate that into this particular -- into this agreement that would take place.

MR. THAYER: And of course the enhancements to air quality mitigation would be over and above anything that's required by any other law, so it, for example, requires certain things be done. What we're talking about here is an enhancement over what else has been done.

MEMBER BUSTAMANTE: Or is being done currently.

MR. THAYER: Or might be done. In other words, we don't want a situation where the air board goes to them and says, "Oh, we would like you to do the following things," and then the Port comes to us and says, "We want to take the money that is being set aside pursuant to whatever the percentage is and use it for something that is already being required by the air quality" --

MEMBER BUSTAMANTE: It may be useful in order to resolve an air pollution problem.

MR. THAYER: Okay. All right. Fine. And so we'll work that out and bring it back to the Commission
MEMBER BUSTAMANTE: Yes.

MR. THAYER: -- approval subject to that.

MS. ARONBERG: Does the maker of the motion agree that the amount of the percentage should be fair and generally equitable with the percentage paid by the other California ports?

MEMBER BUSTAMANTE: I think I'd like to hear back from the staff in consultation with the board what that percentage ought to be.

MR. THAYER: And the percentage would be against the profits.

MEMBER BUSTAMANTE: Correct.

MR. THAYER: Thank you.

MEMBER HARPER: He's going to come back to the Commission then to understand what the percentage is?

MEMBER BUSTAMANTE: Exactly.

MEMBER HARPER: At least the --

MEMBER BUSTAMANTE: The parameters of the program and agreement that would agree with -- if the Port even wants to sit down and talk about it.

MEMBER HARPER: So the lease is still conditioned on another action by the Commission?

MR. THAYER: Yes.

MEMBER BUSTAMANTE: Yes. There's a motion and
second. All those in favor of the motion, signify by saying aye.

MS. ARONBERG: Aye.

MEMBER BUSTAMANTE: Those opposed?

MEMBER HARPER: Opposed.

MEMBER BUSTAMANTE: Let the record show that the motion passed two to one.

And the next item of business on the regular calendar is item number 59.

MR. THAYER: Item 59. Item 59 is a presentation from staff regarding a port security item, particularly regarding marine oil facilities and preventing security problems.

Gary Gregory, who is chief of our Marine Facilities Division, will make a presentation.

MR. GREGORY: Good afternoon, Commissioners. I'm Gary Gregory. I'm the chief of the Marine Facilities Division here at the State Lands Commission. A lot of words here but we're here to discuss an invitation by the California Maritime and Intermodal Transportation System Advisory Council, or what we call that Cal MITSAC, to join in their California maritime transportation system homeland security exercise, evaluation and training support consortium. A mouthful of words. They have to figure some military things out
here and shorten these things up for us.

I've also been asked to give you a little briefing on facilities security and where we stand today in terms of that in California's ports.

Prior to September 11th, 2001, the Coast Guard had broad regulations and broad requirements dealing with security at facilities dealing with particularly hazardous materials. These regulations go back to the Espionage Act of 1921 and acts followed in the '50s and '60s dealing with some hazardous materials.

They also, in 1999, started an organization called the Marine Transportation System Initiative and created a national advisory council that would take information from local and regional advisory councils. In California, there was a Southern California Advisory Council and a Northern California Advisory Council.

Unfortunately, these councils nationwide were typically less active than more active, but we were very lucky that the Southern California organization was very, very active. And they created, as they were moving along, an organization, a subcommittee dealing with safety and security. We were part of that as the Marine Facilities Division and were involved in creating new security requirements that could be implemented or recommended for implementation in Southern California.
We were overtaken by events of the September 11, 2001 terrorist activities. At that point this MTS Safety and Security subcommittee became the focal point of MTS, and we worked very hard and had long, long meetings where we created a proposal of infrastructure and needs dealing with security at marine facilities that could be used throughout the West Coast of the United States and potentially nationwide.

At that point, the Coast Guard captain of the Port, who was the single federal authority with responsibility for port activities, the captain of the Ports of the Port of Los Angeles and Long Beach came to us and said, "We need to implement these requirements as quickly as possible. We cannot, however, as the Coast Guard do it in a rapid way because we have to go through the national regulatory policy system."

At that point under our authority under the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, we could, in fact, implement or promulgate regulations dealing with marine oil terminals in the state of California. And in March 2002, we did that on an emergency rule basis, and in February 2003, we had final regulations that came out that were imposed again on marine oil terminals.

These regulations were used as a model for
other organizations in the future and actually became part of the heart of the Coast Guard's national requirements later on. Also developed was the California Maritime and Intermodal Transportation System Advisory Council, which was taking information from the two regional councils, Southern California and Northern California, in attempting to present those to the federal government as a statewide list of problems, initiatives, recommendations.

We've been probably a little more successful than less successful with Cal MITSAC, but it is the first time we've tried to integrate statewide needs and it is the only body that I'm aware of that speaks to the federal government at all in terms of statewide needs on maritime issues.

After the events of September 11, the International Maritime Organization, or the IMO, started moving rapidly toward developing security requirements on an international basis. They came up with a body or a code called the International Ship and Port Facilities Security Code. We call it the ISPFSC code. Typically a very slow moving and long -- it takes a long time to get things developed through the IMO, and these were pushed through in a very short period of time. They are, however, a good set of requirements but they are general
in nature and performance-based.

The Maritime Transportation Security Act of 2002, the MTSA, the federal legislation, was meant to implement the ISPFSC code along with some other requirements. It did create new roles and responsibilities for the Coast Guard and created the Customs and Border Protection Agency, who works with the Coast Guard within maritime security issues.

Using a model developed by Steven Flynn, then a Coast Guard commander and now a scholar and consultant, they developed a tiered-level of protection. That is the tiered levels were to move away as far from our coast and our land as possible threats. It started out at the loading ports looking at the people that were, in fact, loading containers, where were they loaded, how was that done, how could they be secured, so they would be secured at the loading end.

The second tier would be in transit on vessels headed towards the United States. How could we ensure that those cargos were not tampered with, how could we ensure that the vessels were safe. That was done through anti-tampering seals and some radio frequency identification models that are being used for these containers.

And finally, the third tier was a look at U.S.
ports and that is what do we do when it gets here? We look now -- we have radiation centers. We have portals that are able to look through containers and look for unusual objects within the containers using gamma and x-ray radiation, and, of course, we have physical inspection of these containers.

Interestingly, the Rand Corporation came out with a study just published just a few days ago evaluating security of global containerization supply chain. They are not looking at things in a tiered way but, in fact, in levels. But the levels and the tiers are fairly similar. They are looking at the supply chain in terms of the suppliers and the people that need to move cargo. They're looking at the organizations that actually move the cargo, and then they're looking at organizations that supply oversight.

And as they talk through different layers and connect different layers, interestingly, we get back to a three-tiered situation with many of the same recommendations as the programs that we're following today. So it's just a different way of looking at it. I think a different logical way of looking at the problems that we're approaching.

In the implementation of the Coast Guard's programs under the MTSA, regulations under -- actually
Title 33 Code of Federal Regulation section 105 puts forward the Coast Guard requirements for security at marine facilities. And in section 105.220, it specifically requires drills and exercises at these marine facilities.

These requirements are performance-based primarily. Relatively generic in nature. People in the industry, in fact, are sort of shrugging their shoulders wondering, "How do we comply with this?" They're required to have a drill every three months. That drill can test -- should test a part of your facility security plan which is required under the regulations. We also require a security plan which is, in essence, the same court plan that the federal government requires and we require that with our first set of regulations.

The sorts of things that you could look at might be unauthorized entry into a facility, response to alarms, how do you notify law enforcement, so these drills are particularly small in nature. They're brief. They're looking at small bits and pieces of your facility's security plan. And interestingly, the regulation states specifically that the vessels that are at the facility cannot be required to participate in these drills.

Facilities are also required to have
exercises. They're required to have an exercise every 18 months, and it's meant to be a full test of the security program. These may be full scale live exercises or they may be tabletop simulations or even seminars. They may be combined with your exercises or another facility's exercises or with vessels that are also using the facility, but they must test communications and notification capability, and they should test coordination, resource availability and the facility's ability to respond.

This is where the consortium comes into play, in fact. A consortium will be a part of Cal MITSAC, and its primary mission will be to create a forum to ensure that California's maritime assets are given the proper opportunities and resources to conduct exercises that the consortium would like to be at a national standard.

The consortium wants to develop tools for the use of conducting the exercises, evaluation formats and templates in styles in a way of ensuring that these drills and exercises are providing something useful to the facility and to overall security at our marine facilities.

The consortium will be largely information sharing. It will be largely a promotional organization and will work to combine the resources that are out
there through the many agencies that have opportunities
here. Primary members of the consortium today, as put
together, would be core members of Cal MITSAC, the
California Governor's Office of Homeland Security, the
Military Department of the State of California, the
California Maritime Academy, Lawrence Livermore National
Laboratories, and a number of smaller federal
organizations and agencies that are involved with
security issues and have particular skills in dealing
with security issues. Again, Exhibit A lists all of the
membership of those facilities -- of those companies.

To be invited are the California State Lands
Commission, the Center for International Trade and
Transportation at the California State University Long
Beach, the University of Southern California Center for
Risk and Economic Analysis of Terrorist Events, the U.S.
Coast Guard and the California Highway Patrol. By
bringing those members into the consortium, Cal MITSAC
believes that it has the full gamut covered. It has the
regulatory agencies that are there. It has the people
with the resources and the skills, the financial
wherewithal to help to put these templates together, and
the experience certainly through academia to assess what
we're looking at afterwards, how successful have we
been.
Membership responsibilities. Primarily, Cal MITSAC wants to ensure that the members will be involved, that they'll be there, they'll be in the meetings, that they will use the best energies that they have and perhaps resources, if available, particularly in kind, but the agencies and organizations will share research and share information openly, and that they will have web-based interconnections to make sure that the information that they have is available to the public.

A staff recommendation largely is a request to authorize the executive officer to accept the invitation to become a core member of the consortium and to execute the membership agreement, and it would be to authorize staff to participate in the consortium in accordance with the membership agreement.

I'd be happy to answer any questions that you might have.

MEMBER HARPER: Thank you. You may have said this and I probably just missed it in the presentation. Has the California Governor's Office and Homeland Security and the Military Department already accepted an invitation to join?

MR. GREGORY: Yes. Yes. In fact, they were the original drafters of the membership agreement.
MS. ARONBERG: Does Ms. Gonzalez have anything?

MS. GONZALEZ: Nothing. Thanks.

MS. ARONBERG: We would just like to note that homeland security is one of California's most important activities, so it's great that you move forward on this and the motion that we very much support and hope that the Lands Commission can potentially pursue other areas of port security where it's possible for us to pursue, which we discussed with staff a little and hopefully we'll get into that.

MR. THAYER: I understand.

MEMBER HARPER: I'd be happy to move the staff recommendation.

MS. GONZALEZ: I can second it even if I'm not -- no, I'm, like, wait. Either one.

MS. ARONBERG: I'll second. And we have a unanimous vote given the rules of admission.

MR. THAYER: Meaning that the Chair, the standing chair was voting in this particular one.

MS. ARONBERG: Right.

MR. THAYER: Okay. Thank you.

MS. ARONBERG: That takes care of that matter. Item 60 is an informational report and we think it will be pretty quick.
MR. THAYER: I'll be very quick. The Commission has a small office in Huntington Beach. It holds four employees that do oil field inspections off of Orange County. There has been some pressure on the Commission to sell that with the proceeds to be used to help balance the state budget. There are other factors that need to be considered before we reach a decision. Would we really be saving the state money or would it cost us more to get it renovated? It doesn't make sense.

We've also heard from a local citizen who would prefer that this office be kept open and that it be devoted as an environmental center. We have worked with the Department of Finance and General Services to arrange for a feasibility study that will give us the answers to these questions. And we'll return to the Commission on a future date when we have all this information compiled.

MS. ARONBERG: Thank you. It looks like we have come to the public comment period of the meeting. Are there any speakers who wish -- I don't have any cards specifically for public comment, so please indicate so by raising your hand.

Seeing none, that concludes the open meeting, and with no other business before us, let's adjourn the
session and please let's have the room cleared.

(Whereupon, at 4:34 p.m., the proceedings were adjourned.)

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REPORTER'S CERTIFICATE

I, Mary Anne Young, a Certified Shorthand Reporter for the State of California, do hereby certify:

That the foregoing proceedings were reported by me stenographically and were transcribed through computerized transcription under my direction; and the foregoing is a true and correct record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my hand
This 21st day of December, 2004.

Mary Anne Young
MARY ANNE YOUNG, CSR NO. 12799