MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

EL SEGUNDO CITY HALL
COUNCIL CHAMBERS
350 MAIN STREET
EL SEGUNDO, CALIFORNIA

THURSDAY, AUGUST 24, 2006
10:00 A.M.

Michael Mac Iver
Shorthand Reporter
APPEARANCES

Steve Westly, State Controller, Chairman
Cruz Bustamante, Lieutenant Governor
Director of Finance, represented by Anne Sheehan

STAFF
Paul Thayer, Executive Officer
Jack Rump, Chief Counsel

ALSO PRESENT
Alan Hager, Deputy Attorney General
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CHAIRMAN WESTLY: I'd like to call this meeting of the State Lands Commission to order, as all the representatives of the Commission I see are present.

I am Steve Westly, State Controller, and I'm joined today by Lieutenant Governor Cruz Bustamante, Anne Sheehan representing the Department of Finance.

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

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

May I have a motion to approve the minutes.

COMMISSIONER BUSTAMANTE: So moved.

ACTING COMMISSIONER SHEEHAN: Second.

CHAIRMAN WESTLY: All in favor say aye.

(Ayes.)

CHAIRMAN WESTLY: The minutes are unanimously adopted.

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

Mr. Thayer, may we have your report.

EXECUTIVE OFFICER THAYER: Good morning Members of
the Commission.

I guess first I would like to acknowledge again the hospitality of the City of El Segundo in allowing us to come back and meet here. It's, as you can see, a wonderful city and the meeting room is quite pleasant, and it's very convenient for all of us that are coming in by airplane. So again I wanted to thank them and we'll of course thank them by letter as well.

The second item that I would like to talk about is Bolsa Chica. There was a momentous occasion this morning wherein the final impediment to ocean circulation into the wetlands was removed. The construction project has been ongoing for over a year, but today the final connection between the wetlands and the ocean was made at 5:52 in the morning. There were a number of our staff who were down there who have been actively working on this project, and people from other agencies were there as well, the people who have done all the work. There was no ceremony, it was just a bunch of heavy equipment doing it.

We have a couple of pictures here that we will run through that were taken this morning.

Jim Trout on the left there with Commission staff has worked on this.

Thanks very much.

Again, those were taken this morning and shot in
the early hours.

CHAIRMAN WESTLY: Were you there, Mr. Thayer?

EXECUTIVE OFFICER THAYER: I was not there. I was getting ready for this. I know the Controller has been down there.

And so now we're looking forward to the effect of this water and the flooding to occur, to new vegetation and the return of a lot of the bird and sea life. It's an important nursery area for ocean species as well. And there's some discussion about having a more formal ceremony a little bit later when some of these effects are more visible and so it's more apparent to the public of all the benefits of this.

CHAIRMAN WESTLY: It's really a statement that has affected the staff. As some of you know, restoring the Bolsa Chica Wetlands as one of the largest wetlands west of the Rockies in the United States, staff has worked on this for well over a decade and it is a huge step forward in the environmental movement in this state. So I think every one of us takes some pride in it, and I especially wanted to recognize you, Mr. Thayer, Mr. Rump, and all of the staff for helping us make that a possibility.

EXECUTIVE OFFICER THAYER: I will certainly pass along those congratulations to people like Jim Trout who was down there. Ann's here today who was down there as well.
And you're right, it's been a very long effort, very rewarding. Ann who was down there said that there were some citizens driving over the new bridge that is part of this and honking their horns. They knew what it was.

And that concludes the Executive Officer's report.

CHAIRMAN WESTLY: Okay. The next order of business is the adoption of the consent calendar, and I'd like to call the Executive Officer Paul Thayer to indicate which items have been removed from the consent calendar.

EXECUTIVE OFFICER THAYER: There are two items, Item 47 will be heard at a future Commission meeting, and at the request of the Chair's office, Item 48 regarding a pipeline managed by DCOR, which at the request of the Chair's office will be taken off and heard today.

CHAIRMAN WESTLY: Great. We have a number of people who have asked to speak on that issue and we will come to those in a minute.

Is there anyone else in the audience who wishes to speak on an item still on the consent calendar?

Okay. No speaker cards on any of the consent items.

COMMISSIONER BUSTAMANTE: I had a couple of questions, Mr. Chairman.

CHAIRMAN WESTLY: Mr. Bustamante.

COMMISSIONER BUSTAMANTE: On Number 18, can you
tell me a little bit about the program because to my
understanding this is something where we had the briefing
that you indicated that this was going to be an issue of
someone taking over and managing the property. Could you
give us just a little bit about what this is going to be?

EXECUTIVE OFFICER THAYER: Certainly. While the
State Lands Commission has taken a lead role in the
restoration, because the State Lands Commission owns this
land and it was purchased because of mitigation requirements
on the Port of Los Angeles and Long Beach, there are seven
other agencies that are part of the coordinating committee
and ultimately we were, and all the agencies were looking
for one to take on the ongoing management responsibilities.
As you know, State Lands does not have any biologists on our
staff and we don't have the managerial either experience or
staff available to on the ground management of specific
properties such as this one.

We were looking primarily at two different
agencies to undertake this role. One was the Fish and
Wildlife Service and one was Fish and Game, the equivalent
agencies on the federal and state level. The Fish and
Wildlife has written us a letter declining to be the
manager. Fish and Game is already the manager of an
adjacent wetland, part of the Bolsa Chica complex, and has
managed that successfully as well for probably 20 years.
COMMISSIONER BUSTAMANTE: So this will be an extension of that?

EXECUTIVE OFFICER THAYER: This will just be in effect crossing over the dike to the other side of the wetlands. So this seemed to be the appropriate agency.

COMMISSIONER BUSTAMANTE: How long is the arrangement for?

EXECUTIVE OFFICER THAYER: The length of the management arrangement is 33 years, however there is a provision in there which would allow the State Lands Commission for nonperformance to end that arrangement. But the other issue that we're going to have to continue to look at is sufficient funds to pay for management. Wetlands sometimes can be cheap to manage, but this one keeping that ocean entrance open will require occasional dredging which is an expensive proposition.

COMMISSIONER BUSTAMANTE: And we have money for how many years right now?

EXECUTIVE OFFICER THAYER: I think we've got money for probably close to ten years right now, perhaps longer. We were able to sell some additional credits for that wetland.

COMMISSIONER BUSTAMANTE: Great. And C-48 has been pulled from the regular calendar, is that correct?

CHAIRMAN WESTLY: Yes, correct.
COMMISSIONER BUSTAMANTE: Okay. C-53, we are not approving the desal plant on this, correct?

EXECUTIVE OFFICER THAYER: Good point. No, this is the preliminary engineering work and core sampling to see what sort of engineering needs to be done should a discharge pipe be put in there. But the purpose the pipe is contemplated would be the discharge pipeline from a desal facility. This matter would have to come back to the Commission with a formal application for a lease before they could build that and at that time the Commission would have the opportunity to review all the impacts and benefits from that.

COMMISSIONER BUSTAMANTE: So essentially we're approving this survey.

EXECUTIVE OFFICER THAYER: That's correct.

COMMISSIONER BUSTAMANTE: C-54 and the Shell Exploration and Production Company application. This is a part of a maintenance activity that they have to or we have asked them to do? How did this come about?

EXECUTIVE OFFICE THAYER: This is on the seafloor off of the Gaviota area in Santa Barbara County, and it's an area where there have been some old existing wells. These had been abandoned in 1983 and 1961. The standards then were not as strong as they are now. As it has turned out, there was some debris left behind. There's a five-foot high
vertical pipe that's 48 inches in diameter and several other pieces of debris like that. To some extent, this is material that was there before but wasn't removed because it wasn't required under the standards when they were abandoned 40 years ago. Some of this debris is also --

COMMISSIONER BUSTAMANTE: Is it our request or did they --

EXECUTIVE OFFICER THAYER: Oh, at our instigation --

COMMISSIONER BUSTAMANTE: Okay.

EXECUTIVE OFFICER THAYER: -- these companies are going back. Sometimes it takes a while to find a responsible party, but in this case it was Shell, and they have agreed to go back and remove this material. And as we've talked about, there are other places up and down the coast where there is debris where we can find a responsible party who is, A, responsible because they were the ones who were involved in putting it there, and, B, they have got the money to remedy the situation, we're active about trying to get that situation remedied. There is also a lot of orphan debris, debris that is left over from operations as long ago as --

COMMISSIONER BUSTAMANTE: Piers and pilings, right?

EXECUTIVE OFFICER THAYER: Things like that. And
in those cases, generally, we can't find any responsible
party, they've gone out of business or can't be identified
anymore, and as we've discussed, the Commission staff has
regularly asked for appropriations to deal with debris like
that and other kinds of debris, not just oil debris. We've
had some success in getting money and removing some things
along the beaches that are hazardous to the public enjoyment
of the beaches. But we did a survey back in the '80s that
identified $12 million worth of work that needed to be done,
and we've only received a portion of that, and of course
there is more work that is necessary now.

COMMISSIONER BUSTAMANTE: I would recommend that
in the future as these bonds come up, staff work with the
legislative staff to insert language so that one of the
activities that it is taken care of when these bonds pass.
Because there is oftentimes a variety of opportunities in
these bonds for this kind of activity. So I would recommend
that you put it on there, you know, something that they
should deal with and make sure that we get this $12 million
worth of debris off our beaches.

EXECUTIVE OFFICER THAYER: Good point.

COMMISSIONER BUSTAMANTE: Okay. The last one is
C-56. The drilling that is taking place here is geothermal;
is that correct?

EXECUTIVE OFFICER THAYER: Yes.
COMMISSIONER BUSTAMANTE: All right. I just wanted to make sure.

EXECUTIVE OFFICER THAYER: This is a -- and by geothermal, of course, we mean it's up at the geysers that exist and the steam deposits underground. These have already been developed in areas adjacent to where these are proposed. That steam is used to generate clean electricity, it has no global warming impacts, and so it's a good thing. And it also under the statutes earning money that goes to the retired teachers for their pensions.

COMMISSIONER BUSTAMANTE: And there's no need for mitigation of any other environmental --

EXECUTIVE OFFICER THAYER: There are always environmental issues, and so when you drill there's going to be requirements in turn to making sure that the roads are built and don't have erosive runoff and that kind of thing. And there has to be care taken of the discharge of the condensed steam to make sure there is no adverse impacts.

COMMISSIONER BUSTAMANTE: All right. Mr. Chairman, I will move the consent calendar.

CHAIRMAN WESTLY: Great.

ACTING-COMMISSIONER SHEEHAN: I will second.

CHAIRMAN WESTLY: All in favor please say aye.

(Ayes.)

CHAIRMAN WESTLY: The consent calendar is passed
unanimously.

I have asked for staff to take a look at the length of the lease for Item C-48, the oil pipeline. The applicant DCOR is a newer operator of California offshore oil platforms and is seeking a lease extension for this pipeline.

Mr. Thayer, can you provide some background on this item?

EXECUTIVE OFFICER THAYER: Certainly. I've asked Susan Young of our staff who wrote the staff report to give us just a couple of minutes of who, what, where, and when on this lease.

COMMISSIONER BUSTAMANTE: Could you start with the staff recommendation, please?

PUBLIC LANDS MANAGEMENT SPECIALIST YOUNG: Good morning, Commissioners. My name is Susan Young, I'm a Public Lands Management Specialist with the Land Management Division, I'm providing background information regarding Calendar Item 48.

Staff is recommending that the Commission approve the amendment to extend the term of lease for a 20-year period, to approve a revision of annual rent, to approve the increase in liability insurance coverage, and to discontinue the use of the gross national product implicit price deflator as a means of adjusting annual rent, as that it is
In 1981, the Commission originally approved the issuance of a 25-year industrial lease to Union Oil Company. The Commission has subsequently approved a number of assignments of this lease, and the state's current lessee is DCOR, LLC., and they have applied for an amendment to extend the term of the existing offshore industrial pipeline lease which expired March 31st, 2006.

The facility covered by the proposed lease consists of two bundled pipeline systems, which is to include crude oil, natural gas, water, and electrical lines which extend from offshore federal oil and gas leases and platforms Gina and Gilda, and that's within the outer continental shelf or OCS. And these lines extend onshore to the Mandalay processing facility in the city of Oxnard in Ventura County.

As noted in the calendar item before you, the Commission approved the assignment of this lease to Plains Exploration and Production Company in 2004. In the calendar item we use the acronym PXP, which is Plains Exploration and Production, and you should know that they are a large oil company.

In 2005, the Commission approved the assignment of this lease from Plains or PXP to the current lessee, DCOR, LLC. This assignment was in conjunction with the assignment
of three other state pipeline right of way leases, also
serving offshore federal facilities. DCOR currently holds
three state oil and gas leases and their associated three
state pipeline right of way leases. This is in addition to
four state pipeline right of way leases serving federal OCS
platforms.

That concludes my remarks.

CHAIRMAN WESTLY: Mr. Bustamante.

COMMISSIONER BUSTAMANTE: What are all the
properties that we have that DCOR has on state lands?

PUBLIC LANDS MANAGEMENT SPECIALIST YOUNG: It
would be the three oil and gas leases and their associated
right of way leases set up. We have six leases here. They
have four right of way leases that serve federal OCS
facilities.

COMMISSIONER BUSTAMANTE: Six state and four
federal?

PUBLIC LANDS MANAGEMENT SPECIALIST YOUNG: So they
have ten in total.

EXECUTIVE OFFICER THAYER: There are also leases,
Paul, for how many platforms?

AUDIENCE MEMBER: Two.

EXECUTIVE OFFICER THAYER: Two leases then for
platforms in state waters.

COMMISSIONER BUSTAMANTE: I'm sorry?
EXECUTIVE OFFICER THAYER: In addition to those pipeline leases, there are two leases for platforms, oil production platforms in state waters.

PUBLIC LAND MANAGEMENT SPECIALIST YOUNG: The ten includes those two platforms.

EXECUTIVE OFFICER THAYER: Oh, thank you.

CHAIRMAN WESTLY: Great. Any other questions?

ACTING COMMISSIONER SHEEHAN: How long are those other leases?

PUBLIC LANDS MANAGEMENT SPECIALIST YOUNG: Generally, those are 25-year leases, and this one just came up expired in March of this year and DCOR did apply in January 2004 for an extension.

ACTING COMMISSIONER SHEEHAN: Just for the one?

PUBLIC LANDS MANAGEMENT SPECIALIST YOUNG: Right.

ACTING COMMISSIONER SHEEHAN: And I guess my question is to the length of the term on these other ones?

PUBLIC LANDS MANAGEMENT SPECIALIST YOUNG: I believe them to also be 25 years.

EXECUTIVE OFFICER THAYER: Right. They just haven't expired.

ACTING COMMISSIONER SHEEHAN: And I'm assuming those are in various stages in those 25 years?

EXECUTIVE OFFICER THAYER: Right.

ACTING COMMISSIONER SHEEHAN: All right. Do we
know what the longest of those is? Does anyone?

PUBLIC LANDS MANAGEMENT SPECIALIST YOUNG: There is one at 20 and the other at 2018.


CHAIRMAN WESTLY: That's 12 years.

ACTING COMMISSIONER SHEEHAN: Okay.

EXECUTIVE OFFICER THAYER: And the leases for the federal platforms of course are for the life of the lease, there is not a term on that.

CHAIRMAN WESTLY: So at this point I would like to ask the Attorney General's office whether we have any discretion to deny the lease application?

MR. HAGER: No.

CHAIRMAN WESTLY: Okay. At this point we require the question is what's the appropriate term of the lease. Because we're legally obligated to grant the pipeline lease according to the Attorney General, I would like to propose we grant the lease, but that we do a five-year review of it at the five-year point. This is a newer company. I'm certain DCOR will do an excellent job, but because of our strong standards, to ensure that every operator in the state has the finest track record of environmental safety, I think it would be prudent to approve the term of the lease but to do a review after five years.

I'm sure the other commissioners will have some
questions and comments on this, so I would like to make a
motion for the discussion and then we will take questions
from the audience and the public. But I would like to amend
the staff's recommendation of a 20-year lease term for this
item and propose the 20-year lease be instead a five-year
lease with the right for an additional 15-year lease
thereafter depending on whether the Commission finds that
the applicant has a record of clean and safe operations of
its pipeline. We will leave that language to the staff.

At this point I would like to ask members of the
public to comment, unless, Mr. Thayer, you have any
questions?

EXECUTIVE OFFICER THAYER: No. I think I
understand the Chair's motion. I see there are two slips in
front of you.

CHAIRMAN WESTLY: Great. What I would like to do
is ask Mr. Jeffrey Warren, the Vice-President of DCOR to
come forward. And then if Mr. W. N. Templeton could be on
deck. If you could come to the microphone and identify
yourself.

COMMISSIONER BUSTAMANTE: Mr. Chairman, just a
point of clarification. Your motion is to approve a 20-year
lease with a five-year review?

CHAIRMAN WESTLY: Correct.

COMMISSIONER BUSTAMANTE: So we're approving a 20-
year lease, but in five years we're going to review it, and
at that time review the 15-year extension; is that correct?

ACTING COMMISSIONER SHEEHAN: I didn't understand
the motion that way.

EXECUTIVE OFFICER THAYER: Initially I heard the
Chair describe it as the Lieutenant Governor repeated it,
but it seemed like what you read later talked about having
an initial five-year lease with extensions of that lease
possible if they meet this criteria for the safe and clean
operation, so that the actual term of the lease, as I
understood it, the proposed amendment was for five years,
with these five year extensions, and possibly up to --

COMMISSIONER BUSTAMANTE: My only concern, Mr.
Chairman, my only concern would be that if we're going to
provide a five-year lease, it could create problems in long-
term investment, whether it's for safety issues or a variety
of other things when they are trying to get financing. So
if we give them a 20-year lease with a five year renewal, it
might -- I think because they are a new company, it would
give us an opportunity to have some sense of making sure, to
answer your concerns, to make sure that they are progressing
properly. They have one year so far of experience, correct?

EXECUTIVE OFFICER THAYER: On this pipeline.

COMMISSIONER BUSTAMANTE: Have we had any problems
at all with DCOR in that one year?
EXECUTIVE OFFICER THAYER: No.

COMMISSIONER BUSTAMANTE: On any of the facilities?

EXECUTIVE OFFICER THAYER: No. They've met all -- as you know, both staff and the Commission had a great concern because this company is new and we attached a number of conditions to the assignment, and so far they are meeting those requirements.

CHAIRMAN WESTLY: Okay. My primary goal is to ensure because this is a relatively newer company and that there be a review process. I am completely open on whether we start with an initial 20-year term if that is more appropriate and represents the views of the Lieutenant Governor and the staff, I'm happy to make that change.

At this point, what I would like to do is ask Mr. Warren from DCOR if he would be willing to identify himself and speak on behalf.

MR. WARREN: Good morning, Commissioners. My name is Jeffrey Warren, I'm the Vice-President of Land and Legal for DCOR.

And a couple things that I wanted to point out and this Commission can recall a year ago in this room you approved an amendment to this lease and three other leases involving pipelines that serve our federal platforms. And within that amendment, and I understand your concerns, and I
think my comments here are such that I think that we have already addressed those concerns. Because we amended these particular pipeline agreements and other agreements whereby if the bonding is not considered appropriate by the Commission that at any point in time during the term of the lease agreement that bonding amount can be increased. There are also provisions in the amendments that were approved by the Commission last August whereby if technology and the industry changes, that we are subject to those new requirements, new regulations. So if that is the concern in this instance, what I'm suggesting is is that we may already have addressed that through our amendment.

Secondly, is that if we're in violation of any of the provisions of these leases, be it even rental payment or failure to satisfy the regulations involving pipeline maintenance or things of that nature, we can be immediately put in default at any point in time. It can happen tomorrow, it can happen ten years from now, and if we do not satisfy or cure that breach, we lose the lease. And that's still a right that is retained by the Commission.

Lastly, and I think Commissioner Bustamante made a very good point, we are currently in the process of investing a considerable amount of money on some development projects and existing wells in our offshore Platform Gilda and it does, if we do have a pipeline or any kind of a
contingency or item of uncertainty, it does affect our decisions as to where we invest this money. Secondly, it does have an impact on our financing and things of that nature. So there is a direct effect if we shorten or reduce the term of this particular lease to five years. We're hoping that you would consider something longer than that. So those are my comments. I will answer your questions.

COMMISSIONER BUSTAMANTE: Just a comment, Mr. Chairman.

CHAIRMAN WESTLY: Commissioner Bustamante.

COMMISSIONER BUSTAMANTE: First, you're not going to find a lot of sympathy for offshore oil drilling on this Commission.

MR. WARREN: I understand.

COMMISSIONER BUSTAMANTE: Or in this state. And the fact that we are obligated to provide this lease is an event that is not the will of the majority of this Commission. If there was a way of taking away the lease, we would.

MR. WARREN: We understand.

COMMISSIONER BUSTAMANTE: So what we're trying to do is we're trying to balance our responsibilities. If we are required to provide a lease, what makes sense. And since you're a new company, we've had situations in the past
where a relatively new entity off a particular platform was
supposed to have been properly capitalized but found that
once something took place, there was a release and a spill
that took place, going in they had not provided all the
necessary requirements to maintain a safe and appropriate
production on that particular platform. We want to make
sure.

The five years at this point I think allows us to
have just a little bit of pressure to make sure that in this
first five years you're going to make sure that everything
is up to snuff. You've done it for a year. It gives us an
opportunity to feel a little bit better about making sure
that you're going to be attentive. Yes, we can shut you
down, and we shut down that other platform. We can shut you
down any time if you are in violation of your contract.

But this also in terms of the next five years,
hopefully it will guide management for making sure that
everything is being done to make sure that as you head
toward that five-year renewal it will be appropriately done,
there will be attention to it. And so I think a 20-year
lease is probably appropriate. The five-year review I think
as presented by the Chairman I think is also appropriate.
So I would support the motion, Mr. Chairman.

CHAIRMAN WESTLY: Mr. Warren, I would like to give
you time to make any other comments. I know you may not
have had a chance to finish.

MR. WARREN: Well, no, the comments I intended to make are complete. But I will say that in management, with management at DCOR, everything that you just stated, Commissioner, goes within our modus operandi. It's very important to us that we're in compliance, but also environmentally safe, and we go through repeated safety and environmental inspections, both on the state level and the federal level, and we have done quite well in that regard. And it's very important to us.

COMMISSIONER BUSTAMANTE: That's not a cause for celebration.

MR. WARREN: No, it isn't.

COMMISSIONER BUSTAMANTE: It's standard. That is what we expect to have happen. And so what we're trying to do is just provide just a little bit of comfort, you're being a new company. And we're hoping that your record with us will be as good as the last year and your record in other states. We look forward to a good relationship.

CHAIRMAN WESTLY: Thank you, Mr. Warren.

Commissioner Sheehan, do you have any questions for Mr. Warren?

ACTING-COMMISSIONER SHEEHAN: No.

CHAIRMAN WESTLY: Thank you.

And, Mr. Templeton, would you be willing to come
to the microphone and identify yourself.

MR. TEMPLETON: My name is Bill Templeton and I am the owner of DCOR. I'm not exactly sure what my title is, but I think I can speak for the company.

When we first came here we had a slightly different understanding and interpretation of what the Commission's proposal was going to be, and after having heard a clarification, I think DCOR would be in agreement with the proposal. I'm not actually sure what review means because I can assure you that Mr. Mount and Mr. Scott in Long Beach review our operations on a daily, if not hourly, basis. And Mr. Nobles and Mr. Thayer in the Sacramento office do the same thing. So we're not worried about a review process. We have a similar review process with the federal government --

COMMISSIONER BUSTAMANTE: We're all in agreement.

MR. TEMPLETON: -- on a daily basis. So I think we're in agreement with the proposal. We could hopefully work out with the staff exactly what the terms of that review are. That's a fairly easy request.

CHAIRMAN WESTLY: Thank you, Mr. Templeton. And I want to commend your company on its track record over the last year and we hope the next 20 years will reflect that same level of due diligence and care.

MR. TEMPLETON: We'll see to it, sir. Thank you.
CHAIRMAN WESTLY: Mr. Thayer.

EXECUTIVE OFFICER THAYER: I guess I would like to clarify the terms the Commission passed and have some discussion about where it wants to go with this. It is true that we sought additional staff and established a program really following the problem that the Lieutenant Governor identified with Platform Holly, wherein we're conducting regular five-year audits of offshore facilities. It's very extensive, it involves not just inspectors. Inspectors certainly do a great job day to day, but we're also bringing in engineers and making sure the equipment is designed appropriately and improvements work well with old pieces of equipment, that sort of thing, much more in depth.

And we could again, trying to figure out the best way to implement what the Chair is thinking of here, one possibility is that as far as a five-year review, we would ensure that the staff audit of pipeline would occur in the year preceding the five-year anniversary of this and then report back to the Commission at that five-year anniversary. And then I'm not quite sure, maybe I'm struggling here to get some legal advice, on what the scope of the review and the discussion of the Commission you would want to receive in that report.

And again this is predicated on the notion which I think I'm hearing, and I'm not sure of that, but perhaps the
lease term would be 20 years, but it would have this five-year review built in for safe and clean operation.

CHAIRMAN WESTLY: That's exactly correct. Again, we simply want a chance to review this and make sure there has been no spills or no other causes for concern, again, affecting our coast, is of paramount concern for all three of us here and a five-year review seems prudent for a new firm.

Mr. Rump, do you feel like offering any further thoughts?

CHIEF COUNSEL RUMP: Well, I think what we're defining is basically what the Commission's desire is, what sort of action do you want. You specified a 20-year term with a five year checkpoint. Is that a review similar to our safety audits that we have been doing or is that going to be a term which then is going to authorize an additional 15. Is it a stop and go or is it a review?

EXECUTIVE OFFICER THAYER: And, of course, another way to deal with it, again, we're just thinking out loud here, is if the 20 years is established, maybe it's assumed to be a go, but the Commission has the opportunity to say stop again with that five years. And so if the review shows lack of compliance with the lease, then, of course, the lease will require safe and clean operations, then based on that review, the Commission could order staff to seek
termination of the lease.

CHAIRMAN WESTLY: This is exactly where I'm going. In other words, the reason we need to break it into two leases, for example a five and 15 year, is the presumption is they're going to operate the same way they have in the last year, there is in my view no need to start from scratch in the review process with a new lease. However, if there has been problems, spills, anything else that would cause us environmental concerns, I believe I, and I think some of the other Commissioners have voiced it today, would certainly like the opportunity to stop it if there are any problems.

COMMISSIONER BUSTAMANTE: Perhaps, Mr. Chairman, if it would be appropriate, staff might be able to draft some language for this specific revision and go to the members later so that it's clarified. I think that the intent of the Commission is clear and I think the staff is having some difficulty with creating the language for it. So why don't we go ahead and go with our intent and they can draft some language and get it to you and we can review it. But my guess is is that this would be a new provision that we put into the lease that would say it's a 20-year term, but that at five years there would be a review that would take place, a public review. You would bring your audit, the public would have a chance to speak on it, and the Commission would publicly review the item in five years.
CHAIRMAN WESTLY: That's acceptable, with, if you will, the option to discontinue it if there's no problem. But I think we'd like to leave that to you. I would invite you to work with the members of the public who have spoken today so they are aware of this and then we will bring it back.

Commissioner Sheehan.

ACTING COMMISSIONER SHEEHAN: And I would be supportive of demotion and the five-year review. The only thing that I would want to make sure staff that everyone understands what is it we're reviewing. Because I think in fairness to the public, as well as to the company, we know the guidelines and the standards by which they will be reviewed. I think the audit process is probably one that works, but as I say, I think in fairness to all parties, we know what that review, what the standards of the review are going to be. That's what I'm, and possibly that's what staff is also struggling with.

COMMISSIONER BUSTAMANTE: My understanding is that the audit is a fairly extensive audit and it also includes their financial situation; is that correct?

EXECUTIVE OFFICER THAYER: Correct. And I think what we would do is to bring back to the Commission the full report, and we've reported back on some of these audits before, which is likely to show some discrepancies. I mean
I don't think you can go to any operation without finding something spelled wrong or something like this. So we will not seek to leave anything out, we will put everything in there, and that way the Commission will have a full report and not staff's distillation of what it considers important or not, but everything that we find.

CHAIRMAN WESTLY: Great. So we look forward to seeing an audit back from staff in five years. We will understand this is a 20-year lease with an option to discontinue if there are any extraordinary problems as identified in the audit.

EXECUTIVE OFFICER THAYER: And let me just make sure we're clear on one other point, and I think Commissioner Sheehan might have been going there, is the audit will be of this particular facility, the pipeline. We would also of course include information about how it has done in other leases, but the audit would be of this facility.

COMMISSIONER BUSTAMANTE: And just to make sure it's clear for the audience, we're talking about a pipeline and not a platform?

EXECUTIVE OFFICER THAYER: That's correct.

ACTING COMMISSIONER SHEEHAN: I guess what I'm trying to say, and I think this is a good way to do it especially for a new one, but I want to make sure we're not
holding them to a different standard than we are to our other leases. And the audit would go through that with them, the financials and all of that, that's what I'm --

COMMISSIONER BUSTAMANTE: Including the five-year provision, we're not holding them to a different standard.

ACTING COMMISSIONER SHEEHAN: Oh, absolutely.

COMMISSIONER BUSTAMANTE: That is the different standard.

ACTING COMMISSIONER SHEEHAN: Well, but that will come back to us.

COMMISSIONER BUSTAMANTE: Yes. Otherwise it would not.

ACTING COMMISSIONER SHEEHAN: But something in the -- you know, we're not talking some criterium --

EXECUTIVE OFFICER THAYER: I guess the way I would phrase it, and let me say this to make sure I've got the intent of the Commission clear here, is that the process that we're proposing here is different, in other words, we're bringing it back for review. But the standard is probably the same, we want to make sure all operations are safe. The Commission is concerned here with this is a new operator.

COMMISSIONER BUSTAMANTE: That's right.

CHAIRMAN WESTLY: I would also add that the standards that we're holding all operators to are increasing
over time. The standards are higher than they were ten years ago, that's a good thing. Our standards in terms of how frequently we may want to check back in may vary depending on the maturity and the track record. I think what we're doing here is appropriate and we're all in the same place on this point.

What I would like to do is ask for a second to --

COMMISSIONER BUSTAMANTE: Second.

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

(Ayes.)

CHAIRMAN WESTLY: The motion carries unanimously.

COMMISSIONER BUSTAMANTE: I think you might want to think also, Mr. Chairman, about having staff create a new part or a policy for all leases in the future that would include such a provision.

CHAIRMAN WESTLY: Mr. Thayer, would you be able to articulate that at the next meeting and bring something back from the staff.

EXECUTIVE OFFICER THAYER: Yes.

CHAIRMAN WESTLY: It's an issue of great concern to the public and Commissioner Bustamante is absolutely right.

That brings us to Item 57, an informational report on the activities of our Marine Facilities Division
regarding the tank ship Probo Elk, and may we have the staff presentation.

EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.
The Division Chief of the Marine Facilities Division Gary Gregory will make that presentation.

DIVISION CHIEF GREGORY: Good morning, Mr. Chairman, Commissioners. I am Gary Gregory, the Chief of the Marine Facilities Division.

We will talk about the motor vessel Probo Elk and the oil spill that occurred. We had a very good write up in fact in the informational and the calendar. I want to highlight a few areas and give you sort of a picture view of what happened and a running commentary.

The Probo Elk docked at the Kinder Morgan terminal in Los Angeles at the Port of Los Angeles. That's not the Probo Elk but that is the terminal. The terminal was built in 1923, it was rebuilt in 1959. It's a thousand foot long timber structure, it is one of the old facilities that remains in the Port of Los Angeles and Long Beach. Again, this is in the Port of Los Angeles. And as you can see at the top there is some containers, it is sandwiched right between two container terminals, very active terminals, with people and containers and trucks moving all the time.

This is the vessel Probo Elk, and interestingly the day the casualty occurred there were probably 15 or 20
pictures of her on the internet, yesterday and earlier this week there was one, this one. I should have saved those pictures previously.

The Probo Elk is a different kind of vessel. She is not a tank ship, she is what's called an OBO, and ore-bulk-oil carrier. She is designed to carry a cargo in big wide open holds, and that gives her big wide open hatch covers that on this ship are --

COMMISSIONER BUSTAMANTE: Single or double hulled?
DIVISION CHIEF GREGORY: These ships are double hulled, by nature of their construction.

The tank tops are 40 feet by 75 feet. On a normal tank ship a tank top would be the size of a desk, it's something considerably smaller than that. It makes it difficult to maintain the air tight integrity of the tanks on these vessels. And, frankly, most oil companies will not use OBOs to carry oil. This vessel was picked up I believe on a spot market carrying alkaloid and gasoline into the greater Los Angeles area. Again she's about 600 feet long, about 104 feet wide, a draft of about 43 feet, 48,000 dead weight ton, sort of a medium-sized ship bringing in product.

She was a Priority One vessel. We have a risk-based algorithm for every ship arrival that we know is coming into California, they are required to give us pre-arrival information. Priority One means we will board her
or we will monitor their transfer activities because she's a newcomer, she's had some spills, had some problems, between -- and we also balance that against what we see at particular facilities. So this vessel was a Priority One, we did board her.

Ken Rogers who is here with us today in the back was the inspector who boarded her. He immediately noted as he got to the facility that there were some communications problems. The facility was having difficulty communicating with the chief engineer, the man on board the vessel who is -- I'm sorry, the chief mate, the man on board the vessel who is responsible for the transfer operation.

He also noticed a strong odor of chemicals, he noticed vapors coming out of the taller stack on the vessel, and there were alarms that were sounding in the cargo control room for both high high-level alarms and the inert gas system. Now, the inert gas system is a system that creates an oxygen deficient atmosphere, they are oxygen deficient gas, to put onto the top of the tank so that as cargo is moved out there is no possibility of oxygen and a possibility of fire and explosion within those tanks. The alarms were sounding for the inert gas system.

Ken continued to talk to the master and the chief mate about this and they continued to insist that everything was okay, they were just faulty alarms, and that things
would be okay. As they conducted the transfer operation, the ship was increasing pressure to help to move the cargo ashore. They could not get the booster pumps to work ashore and as the pressure was increased, apparently due to a line up on board the ship, they fed cargo from one tank into another tank instead of going ashore, filled that tank up giving it a high high-level alarm meaning the tank was more than 98 percent full, and finally this product alkaloid spilling out of the cargo tank onto the deck of the ship. Approximately 75 barrels of this alkaloid, some of it going through a scupper, which is a drain system in the deck which is supposed to be plugged and blocked and waterproof at that point. It was not plugged and waterproof. Some of it slipped through and went down into the water. It was actually a very small amount.

Nevertheless, we had a situation where we have an oil spill occurring and we have other alarms sounding that mean that there is trouble. Ken Rogers contacted his supervisor John Brown and immediately notified the Coast Guard of the spill and said we think we need some assistance out here, this vessel has some issues.

The Coast Guard sent some pollution response petty officers who took a look at what was going on and immediately recognized that they were in over their heads and they requested additional backup also from the Coast
Guard.

Ken was then backed up by our inspector Daryl DeCarr. Daryl is here also in the back. Daryl came on board the ship and saw that things were not well. He continued to work with the chief mate and the master and insisted that there were problems, insisted that they needed to look further. There was again continued insistence by the master of the vessel that things were fine and the alarms were just sounding because there were problems with the alarm system.

As the Coast Guard arrived, John Brown, our field office supervisor in LA, worked with our inspectors and worked with the Coast Guard to make sure that we could get a marine chemist down there, a professional who could and an independent third party who would sample the vapors in these tanks to see whether there was in fact a problem with the inert gas system. In fact we found that the inert gas system had failed in four tanks, two of them had essentially atmospheric air within them, and all of them had higher than standard eight percent oxygen, all four of the tanks did, potentially providing, more than potentially, but providing a possibility of fire and explosion. Let me say that while these fires and explosions are rare, they do happen. They are caused by failure of inert gas systems or vessels that don't have inert gas systems. All of them do now.
But just as an illustration, this was Los Angeles Harbor in 1976 at Berth 45, and the tank vessel Sansinena exploded at Berth because she had vapors in her tanks that were flammable.

As a side note, this was my first day in Southern California in the Coast Guard as a young lieutenant. I showed up at noontime and the tanker exploded at 6:00 that night. I wasn't welcome in the Coast Guard command center after that. I don't quite really understand that.

Following the review by the marine chemist that we in fact had an explosive atmosphere, the Coast Guard called for an evacuation of all nonessential personnel from the vessel. We maintained our personnel on board to ensure that this incident was followed up on and continued. And they called for a voluntary evacuation of the container facilities within 600 yards of the ship. Those voluntary evacuations were in fact undertaken, people left, it shut down large parts of those container facilities for the better part of the day due to the situation.

The Coast Guard then banned or banished the vessel from port and sent her out with a long list of repair items to take care of. She was moved offshore, about three miles offshore of Huntington Beach, and the crew and contractors made repairs to the vessel. The repairs were made and the vessel was inspected by the Coast Guard. She was given a
 certificate of compliance with federal regulations. The classification society signed off, the owner's representative signed off, everybody agreed that the vessel was safe at that point, and on the 18th of July she continued with her transferring, she came back to the facility and continued with her transfer operation.

Now, what's missing in this picture? This would be sort of the way things would typically go in an oil spill and we would sort of end our review at that point. But this was a very complicated situation. We certainly saw that there were human factors involved in this, human organizational errors occurring, and the day of this incident and discussing it with our folks we decided that we would put together a multidisciplined team that could take a look at this whole incident and get down to a real root cause analysis of this and do it properly.

We did put together that multidisciplined team. Assistant Division Chief Kevin Mercier -- try the slide one more time, one more time. Can we get the next slide up? Ah, technology.

Well, we put together a multidisciplined team headed up by our Assistant Division Chief Kevin Mercier. Let me just talk through this then. And with our operations supervisor, we gathered together a group of people we thought would be great at this, we got a multidisciplined...
team. The team itself was headed by Dr. Marc Chaderjian. Mark is a Research Program Specialist of Human Factors. We had our specialist Brendan Geraghty who is with us in the back. Specialist Ravindra Varma who is not with us today, he's on vacation in India. These people went on board the Probo Elk at anchor and did extensive interviews with everybody involved on that vessel, went back to the facility, interviewed folks on the facility, not to assess blame, not to figure out who was responsible, but rather to look at the root causes of this incident.

I think this is where we have been trying to get to, we have been trying to reach that spot at the Marine Facilities Division, and this provided us with a real opportunity and this multidisciplined team really came together. I'm very, very proud of the work that they did. They are not done yet, we have more things to do with this team.

The initial analysis showed that one of the real issues was the failure of the ship and the terminal to view their operations as part of a system. They look at themselves as we're the terminal, we're the vessel. They need to look at themselves as part of a system.

They carry out pretransfer communications. We have found out that, particularly in this case, and we're afraid that maybe in all cases, that this pretransfer
communications of perfunctory. Yes, yes, yes. We're attached, yes, yes, yes. In fact, there's very important information being passed and we're afraid that it's not being looked at carefully and properly and not given the appropriate weight. We know that personnel issues were heavy in this case. We had a chief mate who was hesitant, and a chief mate that was not very communicative, was not good in english, a very quiet man, when he needed somebody to be in charge.

Should we try this again.

Okay, this is our initial analysis. We also know that the pressures of commerce are great and they create stress on the crew and create stress on the facility operators to get the job done. And we need to ensure that incorporated in that is the prevention aspects of what we're doing. But this was a case where it was clear that they were pushing, pushing, pushing, we had to get this done, we have to get out of port, we have to move on.

We also noted that the Coast Guard has a program called True Endurance Management Program that's involved with people and vessels and inland waters, and it has to do with how you manage your crew and sleep and things like that. This is a case where we believe that an international system of that type would be a great value to avoid having a chief mate that's greatly fatigued, who isn't very good at
communications, who suddenly just sort of slows down and shuts down as all these things were happening around him.

So where do we go from here? This is a good question. We need to turn this analysis into solutions, we need to assess our program requirements. Maybe some of our regulations are in fact contributing to this. We need to ensure that they are not and we need to look at that. We need to develop some partnerships with some of the terminal operators and the vessel operators and outreach them and try and find ways to perhaps solve these problems in a nonregulatory way.

That really concludes my presentation. I want to tell you how proud I am of the people that were involved in this program. This is some groundbreaking stuff. This was some heavy duty stuff and I'm very proud of them.

If you have any questions I would be happy to try to answer them.

CHAIRMAN WESTLY: Are there any questions by any of the Commissioners?

ACTING COMMISSIONER SHEEHAN: No. Other than to compliment you and staff on how you handled it. What about the communications issue? There was a language issue there, I understand?

DIVISION CHIEF GREGORY: Well, they are all required to speak english, that's a federal regulation for
these oil transfer operations. The chief mate spoke English haltingly and under pressure it got more and more halting.

ACTING COMMISSIONER SHEEHAN: Okay. Just in terms of as you're looking at that, I see that as a place to begin with. What more could be done or how --

DIVISION CHIEF GREGORY: Well, that's a very strong aspect of the communications issue, that's sort of right at the very top and there are many things that filter down.

ACTING COMMISSIONER SHEEHAN: And it sort of extends from that. So that's one issue in terms of the communication. And on some of the other communications, could you give me a little more understanding of some of the other issues? Was it reluctance to provide information?

DIVISION CHIEF GREGORY: Much of it was communications between -- the first thing we saw was communications between the terminal and the vessel. The people in the terminal were having some difficulty with their booster pump, they got on the radio and said chief mate, you need to slow down your pumping operations. No response. Chief mate, you need to slow down your pumping operations. No response. Our inspector was there, Ken Rogers noticed that that was happening, and Ken said I'm going on the ship to find out what is going on. He went up there and the chief mate said, well, I responded. Well, how
did you respond, he says, well, I went okay. So they never
heard him say okay. So it got all the way down to
mechanical communications, a sense of needing to communicate
and understand what each other is doing and how.

That gets back to the pretransfer communications
about understanding the sequence of events that's going to
be occurring. They all had it written down, they all knew
it, but they weren't really executing it very well, and
certainly weren't communicating about what they had
communicated. So it's a very, very complex issue. It's a
place where really you need leadership, and I think in this
particular instance, the chief mate wasn't providing the
sort of leadership that was needed and I think Ken Rogers
going on board actually sort of -- not took charge of the
transfer operation, but took charge of trying to solve some
of these problems.

I'm sorry for the long answer.

CHAIRMAN WESTLY: Commissioner Bustamante.

COMMISSIONER BUSTAMANTE: You said that there
wasn't a multidisciplined team in order to be able to assess
blame or who was responsible, but who was to blame and who
was responsible?

DIVISION CHIEF GREGORY: Well, that's a very
interesting question. The Department of Fish and Game, the
Office of Spill Prevention and Response and the Coast Guard
both do fault investigations, who was involved, who is going
to pay a fine. The vessel was fined, I believe it was
$5,000 for the oil spill and they have additional pending
penalties for their inert gas systems and all. We interface
with both of those organizations and provide them with
information, but we have worked hard to make sure that we're
an assessment team that the people in the maritime industry
understand that they can talk to us without them being
beaten up by us.

COMMISSIONER BUSTAMANTE: So who was to blame and
who was responsible?

DIVISION CHIEF GREGORY: I think that all in all,
and again we're still looking at this and the Coast Guard is
still looking at it, I would say the vessel is responsible
for the issues that were --

COMMISSIONER BUSTAMANTE: So will they remain
first priority?

DIVISION CHIEF GREGORY: This vessel will remain a
Priority One for us until we are absolutely satisfied that
she's a safe vessel. Frankly, I doubt that we will see her
again.

COMMISSIONER BUSTAMANTE: I just want to make sure
that if we have somebody on a first priority and we find out
that there was a problem, especially this extensive, that
they are never off the list.
DIVISION CHIEF GREGORY: No, sir, they will never be off the list.

CHAIRMAN WESTLY: Go ahead, Commissioner Sheehan, and I had a question as well.

ACTING COMMISSIONER SHEEHAN: As you said, primarily it was the ship and their -- I guess my question would be following up with the facility folks, the terminal folks, what is the protocol they have if they are not able to -- you know, if they are having these problems and they are not able to communicate, when do they say time out? You know that's the question I'm having.

DIVISION CHIEF GREGORY: And that is part of what we need to look forward with. And I believe again some of this gets down to leadership and some of the pressures of commerce here. All of these terminals operate with what's called an operations manual, and it shows a default, basically default actions, if this doesn't happen, here's what you're to do. Now, I do not know Kinder Morgan's operations manual line by line myself, but I suspect that someplace in there it says if you cannot maintain communications with a ship, you will shut down the transfer operation until that communications issue is solved.

ACTING COMMISSIONER SHEEHAN: Yes. See that would be mine, so that you have a catch, if you don't have it on this side, you have it on that side, and say, okay, two
times I've asked you, you haven't said anything, we're now
going to stop.

DIVISION CHIEF GREGORY: And this was my hesitancy
to answer Commissioner Bustamante's question. There is no
one single simple cause here, it was all of these different
issues adding up to a significant incident.

ACTING COMMISSIONER SHEEHAN: And then one final,
and that would be as we go through this process and you
continue to do the post-event assessment, then sharing that
or continuing to work with our other operators in the state,
to learn from this experience. Because it's good for us and
you and the company and all, but I think -- and I know I
have had this discussion with staff on other types of
issues, okay, it's good if we know in this instance, but if
were not able to share that experience with the other folks
that we have, I'm not saying it's not helpful, but then we
continue to sort of raise the level of awareness of the
safety concerns that the Commission has with regard to these
types of incidents?

DIVISION CHIEF GREGORY: Yes, ma'am, we have an
extensive outreach program. We hold quarterly meetings
within each of our field offices and invite the industry in.
In Northern California we get 100 to 125 people at these.
We review these sorts of incidents and talk about what
happened, and talk about how the future might look, what we
might do, and look for feedback there. We do prevention first, our biennial conference also on pollution prevention. And we have technical advisory groups that work together with our staff writing regulations looking at how we can move forward with things that will make a difference to stop these sorts of incidents in the future. So I think we're doing pretty good in terms of outreach and spreading the word. We're trying hard.

CHAIRMAN WESTLY: And, Gary, Kinder Morgan owns and manages the terminal. Who owns the vessel?

DIVISION CHIEF GREGORY: The vessel is owned by a Greek company, I have the name here, Prime Marine Management in Greece. The vessel actually has a fairly decent history. They are known as a fairly good player. The vessel is classed through DNB which is one of the prime, one of the very good classification societies.

CHAIRMAN WESTLY: All right.

DIVISION CHIEF GREGORY: Let me say these vessels are issues, OBOs, every OBO that comes into California we will review their transfer operations.

CHAIRMAN WESTLY: Well, I hope after your initial day that the last 30 years haven't been too monotonous.

(Laughter.)

DIVISION CHIEF GREGORY: No, sir.

COMMISSIONER BUSTAMANTE: And the staff that you
said were, all the inspectors, are they here?

DIVISION CHIEF GREGORY: Yes, sir, they are all here.

COMMISSIONER BUSTAMANTE: Could they stand so they could be recognized?

CHAIRMAN WESTLY: I think we're going to do that right now.

Okay, Mr. Thayer.

COMMISSIONER BUSTAMANTE: I didn't mean to cut into your ceremony.

EXECUTIVE OFFICER THAYER: The State Lands Commission has a peer recognition system and normally these are awards that are made at all staff meetings, but we thought given the significance of this particular incident, we invited them to come today. And so I think the Chair has some certificates to pass out, and I would ask the staff to come up. Ken Rogers, John Brown, Marc Chaderjian, Kevin Mercier, Don Hermanson, Brendan Geraghty, Rondal Litterell, Davindra Varma, I think he's not here today, and Daryl DeCarr.

(Thereupon the certificates were handed out.)

(Applause.)

CHAIRMAN WESTLY: Thank you. Congratulations to all of the staff. We appreciate that.

That concludes the regular calendar. Are there
any speakers who haven't completed speaker cards who wish to address the Commission during the public comment period? If so, please bring those cards up to Ms. Aronberg.

What I would like to do at this point, we do have two members of the public who have asked to speak. The first is Don May. If he could come to the microphone.

And then if Mr. David Biggs, the Assistant City Manager for Redondo Beach could come forward.

Mr. May, could you please identify yourself.

MR. MAY: Mr. Chairman, Commissioners, my name is Don May, California Earth Corps.

We're the plaintiff in some litigation over the Pike Project down in Long Beach, and I just wanted to take a couple minutes of your time this morning to remind you that it's coming back in front of you, that we're sorry it's taken so long. We had thought when the appellate court found that the Commission did not have legislative authority to be making land swaps and all of us, most of us, turned our attention at that point to the legislation, the emergency legislation to do that, and I certainly appreciate your staff for including us in the discussions of writing that. It didn't contain the things that we wanted, but it contained some very good things, like provisions for access to the coast we thought were pretty good.

But the underlying issues are still there. We'll
be coming back to you, we had hoped it would be on today's
agenda, and we look forward to -- we have a new mayor, we
have a new planning director of Long Beach, we have
virtually a new planning commission. The things that gave
us heartburn, there are some movie theaters that have
largely shown to be not good, they are failing financially,
and the ones which are good public trust doctrine uses are
prospering.

The city finds itself in a dilemma that we don't
quite understand, there is on the one hand approving and
proceeding and going ahead with a hotel that's on the side
of the Imax theater that was required by the Commission in
reliance on the MOU, on the other hand that hotel relies on
the recision of the land swap. On the other hand the city
also appears to be backing a Borders book store which is not
a public trust use. So these are issues.

Frankly, we had -- I should also say your staff
has not participated in a long series of motions that never
go anywhere and we appreciate that. So we're looking
forward to coming back in front of you and I appreciate your
indulgence this morning for a couple of minutes. This is a
heads up. We look forward to it, I think this is an issue
that people in good faith can sit around and come up with a
much better project and we're delighted for the opportunity.

Thank you.
COMMISSIONER BUSTAMANTE: If I might?

CHAIRMAN WESTLY: Commissioner Bustamante.

COMMISSIONER BUSTAMANTE: Paul, if this one part of the business failed and we were able to get some land swap and they are going to be doing yet another project, do you think you might be able to leverage it for some additional land, can we swap for some more?

EXECUTIVE OFFICER THAYER: I think what could happen is that if the replacement use that goes in is public trust consistent, then I believe that land returns to the trust, and the Commission is kind of obligated pursuant to the terms of the original agreement to return the land that had come into the trust, because we do end up with that. And just by a little way of background, I sent last week or earlier this week a long email to your staffs going over the present situation. But as Mr. May alluded to, there was litigation run at the lower level, lost in the appeals court level. We won additional legislation to reauthorize the Commission's authority to do exchanges like this, we think it helps us to be flexible with real world situations up and down the state.

After the appeals court decision, it was remanded to the lower court, the lower court issued an order for us to set aside our earlier approval of the exchange. And we were going to bring it to the meeting today, however, the
developer of the Pike Project appealed that decision, the
terms of the order, once again to the appeals court. And so
the order thus has been stayed, and so we don't have the
court order this morning to act. It's our intent to monitor
this appeal and the appeals, it's within the right of the
developer to do that, it's not an issue though that we're
involved in too much.

So at a future meeting we're likely -- I suspect
that the court will once again order us to overturn our
previous exchange approval and then the Commission would be
faced with whether or not to approve a new exchange and what
the terms of that exchange should be. So there is work yet
to be done.

I also wanted to note that we have worked with Don
May on a variety of issues and often he is goading us one
way or the other and it is always with a good heart, and
with the public involved. Sometimes we disagree as to what
the law would provide or this and that, but we're all on the
same side and I think that on a lot of things we are on the
same side. I would like to note that he is retiring and
moving to Hawaii, and I suspect he won't leave us alone,
that it will be a long distance relationship that will
continue, but I do want to note that although he sued us on
this one, that we're all looking at the same public issues
as part of the overall process.
MR. MAY: Aloha.

(Laughter.)

CHAIRMAN WESTLY: Thank you, Mr. May.

With that, Mr. Biggs, could you come forward.

He's not here, okay.

Is there anybody else from the public who would

like to comment this morning?

Great, that concludes the open meeting.

Seeing no other business before us, we will now

adjourn.

(Thereupon the meeting of the State

Lands Commission was concluded at 11:10

a.m. on August 24, 2006.)
CERTIFICATE OF SHORTHAND REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of September 2006.

Michael J. Mac Iver
Shorthand Reporter