APPEARANCES

COMMISSION MEMBERS

Mr. Steve Westly, State Controller, Chairperson, also represented by Cindy Aronberg

Mr. Cruz M. Bustamante, Lieutenant Governor

Mr. Michael C. Genest, Director of Finance, represented by Ms. Anne Sheehan

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Curtis Fossum, Assistant Chief Counsel

Mr. Alan Hager, Assistant Attorney General

Mr. Jack Rump, Chief Counsel

Ms. Kimberly Lunetta, Executive Assistant

Ms. Mary Howe, Public Land Manager

Ms. Jennifer Lucchesi, Staff Counsel

Mr. Donn Oetzel

ALSO PRESENT

Mr. Mike Gin, Redondo Beach

Ms. Donna Andrews, Woodfin Suite Hotel

Mr. David Biggs, Redondo Beach

Mr. Jerry Butkiewicz, San Diego Imperial Counties Labor Council

Ms. Victoria Cypherd

Mr. Perry Dealy, Manchester Financial Group
APPEARANCES CONTINUED

Mr. Kenneth Elliott, Unite Here Local 30
Mr. Graham Forbes, Unite Here
Mr. Sam Hardage, Woodfin Suite Hotel
Ms. Laura Hunter, Environmental Health Coalition
Mr. Steven Kaufmann, Woodfin Suite Hotel
Ms. Colleen Manzer
Mr. John McNab
Mr. Jess Money
Mr. Gary Ohst
Mr. George Palermo, Spinnaker Hotel
Mr. John Parsons, Redondo Beach
Ms. Gerri Retman
Mr. Bruce Reznik, San Diego Coastkeeper
Ms. Molly Rhodes, Unite Here
Ms. Katheryn Rhodes
Ms. Sandra Smelik
Mr. Wayne Smith
Ms. Gabriel Solmer, San Diego Coastkeeper, San Diego Bay Council
Mr. Ian Trowbridge
Mr. "Dukie" Valderrama, Port of San Diego
Ms. Tracy Weiss
Mr. Dan Wilkens, Port of San Diego
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CHAIRPERSON WESTLY: I would like to call this meeting of the State Lands Commission to order. All of the representatives of the Commission are present. And I'm Steve Westly. I'm the State Controller. And I'm joined today by Lieutenant Governor Cruz Bustamante; and 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 those public properties.

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

And may I have a motion to approve the minutes?

ACTING COMMISSIONER SHEEHAN: So moved.

CHAIRPERSON WESTLY: Second?

COMMISSIONER BUSTAMANTE: Second.

CHAIRPERSON WESTLY: All in favor?

(Ayes.)

CHAIRPERSON WESTLY: And it's unanimously adopted.

The next order of business is the Executive Officer's Report. And Mr. Thayer, I would love to get your report.

I would just like to apologize to the members of
the public for the late start of this meeting. And please
direct any complaints to Southwest Airlines.

(Laughter.)

CHAIRPERSON WESTLY: We were a little late getting
in. My apologies.

Mr. Thayer?

EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

Good afternoon.

I want to start off by saying my understanding is
that a radio station will be taping this program, so fair
warning to everybody. So my understanding is this program
will be taped for use on a radio broadcast. And I think
the Board staff, because of the large number of people
here, turned the TV on, out in the lobby, with the sound.

CHAIRPERSON WESTLY: By the way, that's an
important announcement. I would ask, if people have cell
phones, please turn them off. And if you are getting up
or wanting to chat about issues, please step outside.

Again for the, radio, if you have complaints, it's


(Laughter.)

CHAIRPERSON WESTLY: Right, Mr. Thayer?

EXECUTIVE OFFICER THAYER: Yes, perfect.

Other than those housekeeping items, I wanted to
talk about two items this morning. And one is to provide
on update to the staff response to the Commission -- the Chair's proposals to look at global warming, climate change, and sea level rise in terms of the impact to the State Lands Commission and the areas that we have jurisdiction over.

This is something that we're -- is an ongoing effort. We started talking to the AG's office and with the Coastal Commission about this. But I wanted to talk a little bit about some of the highlights that we'll be honing in on. And this is obviously something that's going to be involving us, indefinitely, for the future. It's not going to result in one staff report; it's going to be a continuing issue.

Of course, it's pretty obvious that there will be impacts to waterways that we have jurisdiction over. All the predictions are that if the warming occurs, that there will be run off both because precipitation that now falls as snow will fall as rain. And there's also some concern that we may have stronger storms. So we can anticipate additional flows through the fresh water system, and probably the need to do additional levee strengthening. As much as it is occurring right now in the delta, which the Commission has approved in the last few meetings.

Along the coast, I think the issues are likely to be more severe and raise more policy issues for the Lands
The higher sea levels and more powerful storms will adversely affect all aspects of shoreline. In the natural state, things like beaches and bluffs and marshes would recede as the water rose, through erosion and through flooding. But of course, in the urban -- and new habitats we create will replace the old ones. Perhaps we would end up with a situation that wouldn't be that different.

But the problem will be in urban areas, where existing development will want to be protected from that inland surge of sea. And so you're likely to see, in a lot of proposals, for further armoring of the coast, if you haven't already. But they will be more extreme and more continuous. Public Trust resources will squeeze between the rising sea and this armoring of the coast. And so it's very possible that marshes right now, that we're spending gobs of money on and trying to save, will be threatened, and that they won't have the opportunity to spread inland.

Similarly, recreational beaches, which are symbolic of California, really, to a lot of people, are under threat. You look at all the beaches along Los Angeles or Orange County or San Diego. They are pretty much in urban areas. And so the development, which is
immediately adjacent to them will want to be protected from the impacts. So it's a very severe problem.

How to address these legally, it's difficult.

Obviously, if things were left to their own, or without the protective devices, the Public Trust Lands would migrate inland. And so the question will arise, whether or not, in an unnatural state, whether some of the property behind these seawalls should be considered Public Trust lands. Certainly, in other situations, we reject artificial changes to the shoreline in terms of determining whether Public Trust doctrine, as the way we usually do it, is a consequence of fill and things like this.

So this would be a different challenge to talk about, whether or not future changes, which never occur because of the seawalls, should be deemed legally to be an expansion of Public Trust lands.

And obviously, this is going to have enormous legal and political issues associated with this question. It's going to be a clash between trying to preserve the Public's resources, the Public Trust lands, and the ability of private owners to -- to protect their lands. And so this is one of those classic things that's not going to have an easy answer. And it's going to take a lot of thought, and I imagine there will be a lot of
starts and stops. But I think it's time to start looking at that and trying to figure out a policy or a direction that makes sense.

It's also clear that impacts of global warming and climate change and sea level rise will affect a number of different agencies. And the different state agencies will need to work cooperatively together.

We have our piece of it; other agencies have they piece. But they are all related, so we're going to need to work cooperatively.

And after the last year, when the Chair's been sitting on the Ocean Protection Council, I'd like to point out that one of the charges of that Council is to coordinate on issues like this, between different state agencies. So this might be an item that is appropriately addressed or at least given some study and thought by that council. They seem like the perfect higher level council that has within it, or has the expertise of a number of different agencies.

So again, we don't have any final conclusion on this, but we're thinking about it. And we'll continue to work on it.

And unless there's any questions....

CHAIRPERSON WESTLY: Thank you, Mr. Thayer.

Let me just compliment you and staff on always...
being proactive. These issues are coming down upon us faster than people realize. We thank you for beginning to do the research necessary to keep us on the front of them.

I just want to observe that I think there are two extraordinary environmental issues, all of us need to deal with. And one of them is the simple fact that our oceans are dying. That has an extraordinary impact on a state like California, where our coastal economy generates over $47 billion a year. I want to give Ms. Sheehan and the Governor's Office credit for setting aside larger wildlife preserves in our ocean areas to observe aquatic life that drives much of our state's economy, and helps preserves the oceans.

The other issue that's coming down very quickly upon us -- and Mr. Thayer, you've been a leader on it, but I want to urge the staff to continue the staff front -- is the sheer amount of runoff, much of which is toxic, that runs off from our coastal areas, directly in the oceans. I'm hoping that the State Lands Commission can continue to be a leader, you and your staff. Much of the time we're on point there.

But I just want to commend you again. We took not just national, but world leadership on things like once-through cooling, ballast water dumping. Many of the things we've set the national standard to become
legislation, because we move forward with the leadership of your staff, with a little bit of support from this group. We've lead the nation. I hope we'll continue to do that.

That's not an action item, but I know the next one is.

EXECUTIVE OFFICER THAYER: Well, I have one other item, if I may, under the Executive Officer's Report.

Today is the -- I would like to note that today is the final day -- the final meeting for two of the members -- the present members of the Commission.

And we thought it appropriate, here, at staff, to honor that. And so we wanted to talk a little bit about the achievements of the Commission and these two commissioners -- the controller and the lieutenant governor. We still have Commissioner Sheehan with us. So we'll save that for another time.

But it's been four years for the chair and eight years for Lieutenant Governor, on the Commission -- serving on the Commission and serving the public.

There are a lot of similarities to the service of both of you. Both are retiring commissioners and focused on the environment very strongly. Both of you have been dedicated to stopping new offshore oil development. Both of you have critically refuted any proposal to the
Commission for its impacts on the environment.

There have been very significant accomplishments over the last eight years: Scores of offers dedicated for public access have been accepted by the Commission. This has made realty available to people in Malibu and elsewhere, that wasn't available before. Eight offshore leases were extinguished. Haven't entered any new ones. I generally describe our offshore oil industry as a sunset industry.

Bolsa Chica was restored; one of the largest coastal wetlands in the west coast, our restoration projects. And again, the Commission played a lead role in that with the owner of the wetlands, and has coordinated that resolution.

Finally, I wanted to note that the State's ballast water program has evolved into one of the toughest in the nation. It's a new thing for California; it's a new thing for the country. And I think a lot of what we're doing here is being watched by other states and on a federal level, in terms of how to deal with this issue.

I would also note, especially because of the size of the audience we have today, that you have been very involved -- involved with the public and the Commission's processes. We hadn't previously gone out from Sacramento that much. But now we regularly come here once a year, to
San Diego, or once a year in the Bay Area, once a year in Los Angeles. So we've taken the show on the road and given people an opportunity to participate.

And this is -- and you've -- you've not only encouraged the participation; you've considered it. So for example, when activists from San Francisco came up in Sacramento and asked for assistance in understanding the Public Trust Doctrine, you directed staff to conduct workshops in the Bay Area, Long Beach, and San Diego. These were very well attended. It was a great way to explain the Public Trust Doctrine, what the Commission is about.

Here, in San Diego, because of it being here, we've had people in the audience here, now, bring us concerns about the South Bay Power Plant, the once-through cooling issue, copper-based paints, and the resolution on contaminated sediments that was raised by the public.

I would like to highlight some individual initiatives by both the -- I'm sorry for taking so much time. But this doesn't happen this often. But I want to presage the comments about individual initiatives with the observations that the entire Commission, including, of course, Commissioner Sheehan, her predecessors of Finance, have worked on and supported these initiatives as well.

And these initiatives not only respond to the
issues of the day, but permanently advance the work of the
Commission. New policies adopted by the Commission mean
that we will act in a different way, after you have left,
in the future. And I think this is -- we look at the
day-to-day efforts. But I think that's that the real
legacy of the people on this Commission, is to change the
way we do our work.

And finally, before making a couple of
presentations here, I want to voice my appreciation for
the opportunity to work with the two of you about the
issues that matter to all of us.

And I think primarily, this Commission has been
dedicated to protecting, for the public, the resource
values of Public Trust lands, and that you've -- you've
looked at that goal -- you've looked to that goal in all
of your actions. So I want to thank you, on behalf of the
staff, for all your good work.

So I have a couple of -- of presentations to make.
And I would like to come up, if I may.

This is for the chair. This is a plaque.

In recognition of your service on the Commission,
to the People of California, and your stewardship of the
State's Public Trust resources, presented by the
Commission's staff.

So congratulations. I want to acknowledge all of
your work on resolutions and offshore oil development resolutions, to once-through cooling. And I know that you and your office pushed to have best manners and practices established at marinas throughout the state. These are all great achievements. And I hope, when you look at this in the future, you will remember these things on the Commission.

(Applause.)

EXECUTIVE OFFICER THAYER: Lieutenant Governor, this is also in recognition of your service on the Commission, to the People of California, and your stewardship of the State's Public Trust resources, presented by the Commission's staff.

And while handing this over -- again, I want to acknowledge some of the things that the lieutenant governor has accomplished. We've adopted new policies on shoreline erosion; policies on environmental justice; the adoption of a formal Public Trust Policy; and finally -- well, those were the most significant. Those were the policy ones.

But I have to say that I remember your first six months here when we ran into the problems with Holly [phonetic] and that was shut down with your initiative. So I just want to say that I enjoyed very much working with you. And again, I hope, as with the
controller, you have an opportunity to work with us in the future, and remember your work with the Commission.

(Applause.)

COMMISSIONER BUSTAMANTE: Mr. Chairman, if I might?

CHAIRPERSON WESTLY: Mr. Bustamante?

COMMISSIONER BUSTAMANTE: First of all, thank you, Paul, for the recognition. I greatly appreciate it. But I think all the kudos have to really go to all the staff, and especially the person who was my environmental advisor, Lorena Gonzalez for having constantly working on all these various issues, as well as working with Cindy and all the rest of the commissioners, on making these kinds of things take place. It's nowhere near one person who does it. The staff here, I think, has done a great job, has made advancements on behalf of State Lands, keeps us at the forefront and cutting edge on many, many things. And I think the work here in general, although it's not well known in the body of public policy work around the state, I think it's well known in environmental circles. And I think that the kind of work that's been done has been absolutely fabulous, to use the governor's word.

And I think it's extremely important work that's being done. And so I would hope, I would hope that the
kind of work that's been taking place over the last decade will take place forevermore.

(Applause.)

CHAIRPERSON WESTLY: Mr. Thayer, anything further in your Executive Report?

EXECUTIVE OFFICER THAYER: I think that's enough. This concludes the Executive Officer's Report.

CHAIRPERSON WESTLY: Thank you. I -- the next order of business will be the adoption of the consent calendar.

I would like to call on our executive officer, Mr. Thayer, to indicate which items have been removed from the consent calendar.

EXECUTIVE OFFICER THAYER: There are two items that staff is pulling: One of them is Item 43, which will be heard at a future meeting. And then Item 36, the Trans Bay Cable item, we would like to hear at this meeting, on the regular calendar.

I understand the chair has two items that he's concerned about as well.

CHAIRPERSON WESTLY: Great.

EXECUTIVE OFFICER THAYER: 35 and 39.

CHAIRPERSON WESTLY: So Items 35 and 39 deal with once-through cooling.

And so these items are going to be pulled and
discussed at the next meeting. I would like to offer members of the public, since they have made the effort to come here, if they would like to speak briefly on those issues, we would love to hear them. But the items we're about to pass on the consent calendar, now, we would like to continue those items; they would be re-agendized for the next meeting.

If any of these people would like to speak on the items: Ron Rowe, Tim Hemig, or Rick Wilson, we would love to have you. But we will address these items at the following meeting, because they have been removed.

Okay.

With that, I would like to ask for a vote that we go ahead and approve the items on consent calendar.

COMMISSIONER BUSTAMANTE: I would like to ask a couple of questions of staff on a couple of items.

CHAIRPERSON WESTLY: Absolutely.

COMMISSIONER BUSTAMANTE: Item Number 29; could you go over that -- give me just a little briefing on what exactly they are trying to do here.

EXECUTIVE OFFICER THAYER: This is an existing gas gathering pipeline in the San Joaquin -- in San Joaquin County.

COMMISSIONER BUSTAMANTE: Can you define that clearly: "gas gathering."
EXECUTIVE OFFICER THAYER: If I run out of space, I'm going to have an expert to come up.

But my understanding is that it's a pipeline that's not used, necessarily, for transmission of gas, say from the Bay Area, up to Sacramento. But it's a line that's used, as part of the system, to gather the gas from a variety of different wells.

COMMISSIONER BUSTAMANTE: Okay.

EXECUTIVE OFFICER THAYER: And so this presently exists in -- it's an existing facility in the San Joaquin county owned by Pacific Gas and Electric. And the proposal is to transfer ownership of that to Vintage Production California, a pipeline company.

COMMISSIONER BUSTAMANTE: Okay. So it's just a straight sale. We've done our due diligence on Vintage. The operations are going to be appropriate. We don't have to worry about their capitalization or --

EXECUTIVE OFFICER THAYER: We believe that they are a responsible company. Our staff engineers have also reviewed the maintenance performed on this pipeline. We believe it's in good shape. It's not subject to as much oversight as other agencies, as the transmission lines are. Gathering lines are exempted from some of the state review but again, our review of the maintenance records indicate that the pipeline is being kept up.
COMMISSIONER BUSTAMANTE: Anybody on site who's actually seen, rather than just reviewing paper?

EXECUTIVE OFFICER THAYER: No. We've looked at their maintenance records, though.

COMMISSIONER BUSTAMANTE: Okay. Well, you know, I have -- I trust the staff has done their due diligence. But I would like, just as I'm departing here, a note of caution and perhaps some review in the near future, just to go on site and spot check just to make sure.

EXECUTIVE OFFICER THAYER: Certainly.

COMMISSIONER BUSTAMANTE: The only other item was, that I had -- I'd like to have some clarity on C 33, Chevron.

EXECUTIVE OFFICER THAYER: This is a project involving remediation of some contamination underneath Castro Cove, in San Pablo Bay.

My understanding is that there are some petroleum products, and, I believe, mercury that have run off from the shoreline here, and have been the subject of an investigation by the Regional Water Quality Control Board, who has issued an order, for cleanup, to Chevron. And so Chevron is proposing to dredge, I think, a hundred thousand cubic yards, to eliminate the sediment contamination in the cove.

COMMISSIONER BUSTAMANTE: And the contamination,
did it come from Chevron or did it come to Chevron?

EXECUTIVE OFFICER THAYER: I believe it was some
of each, I think. I would ask staff from Chevron.

UNIDENTIFIED MALE: From Chevron.

COMMISSIONER BUSTAMANTE: From Chevron?

CHAIRPERSON WESTLY: Yes.

COMMISSIONER BUSTAMANTE: And was there an issue,
in addition to the remediation, any other actions that
were taken?

EXECUTIVE OFFICER THAYER: No. It's purely for
the dredging of a hundred thousand cubic yards.

COMMISSIONER BUSTAMANTE: I understand "dredging."
I'm asking if there were any other actions for creating
the problem.

EXECUTIVE OFFICER THAYER: You're wondering
whether Regional Board has imposed any penalties or other
actions like that?

COMMISSIONER BUSTAMANTE: I don't know. I mean,
did they go back to check and make sure they weren't going
to do it again?

The contamination, I'm assuming -- I'm assuming
that there were protocols established in order to ensure
that that contamination doesn't happen again.

MR. OETZEL: My name is Donn Oetzel.
And as far as I know, this particular action does
not address a future project. It only addresses the
dredging of 100,000 cubic yards of contaminated material.

COMMISSIONER BUSTAMANTE: I understand --

MR. OETZEL: I'm not familiar with any other
actions on that matter.

COMMISSIONER BUSTAMANTE: Okay. My concern is
that there's still a leak someplace. My concern is that
whatever protocols were in place, that caused the
contamination, have not been remediated, just like the
activity, just like the contamination is about to be
remediated.

So have we done our due diligence to ensure that
five years from now, ten years from now, we're not going
to be looking at the exact same thing, as no one has done
due diligence on the process or production or whatever is
taking place.

CHAIRPERSON WESTLY: I think Mr. Bustamante has
raised an excellent question here. And for the sake of
time, because we have many issues and a number of people
from the public have come, is there an appropriate way,
Mr. Thayer, we could direct staff to pursue appropriate
follow-up on that issue, to address Mr. Bustamante's
concerns?

EXECUTIVE OFFICER THAYER: Mary might have a quick
answer.
PUBLIC LAND MANAGER HOWE: Mary Howe from State Lands Commission.

This action is due from a remediation plan, a clean-up order by the Regional Water Quality Control Board. And they have taken all steps to make sure that doesn't happen again.

COMMISSIONER BUSTAMANTE: All I wanted to hear was somebody from staff saying, "We checked" --

PUBLIC LAND MANAGER HOWE: Yes, we have.

COMMISSIONER BUSTAMANTE: -- "and that we know there is a proper remediation plan in place."

PUBLIC LAND MANAGER HOWE: Oh, yes.

COMMISSIONER BUSTAMANTE: "And I'm putting my name on the record to say that, in fact, I have checked and that we believe that it's appropriate, and that as far as we know, this will not happen again"; and that somehow the remediation is not going to worsen the contamination.

PUBLIC LAND MANAGER HOWE: No. No. That was all looked into. And we will put our name on it.

COMMISSIONER BUSTAMANTE: That's all I needed to know.

CHAIRPERSON WESTLY: We have a motion pending here. But what I would like to ask the staff is, did you simply follow all the steps?

PUBLIC LAND MANAGER HOWE: Yes.
CHAIRPERSON WESTLY: I would just love if you could just notice the board members and send a letter out, saying what the steps are, here they are, here's what we have done, so we will know, based on that, the Board's prepared to move ahead.

And I would like to ask for a motion, if I may.

COMMISSIONER BUSTAMANTE: Absolutely. If a motion was made, I will second it.

CHAIRPERSON WESTLY: This is a motion to approve the consent calendar.

It's excluding Items 35 and 37 which will be addressed -- I'm sorry, 35 and 39, which will be addressed at the next meeting.

Do I have a second?

ACTING COMMISSIONER SHEEHAN: Yes, I will second it.

EXECUTIVE OFFICER THAYER: And 43 and 36; 36 of which will be addressed at this meeting.

CHAIRPERSON WESTLY: So Items 35 --

EXECUTIVE OFFICER THAYER: 35, 39, 36, and 43.

CHAIRPERSON WESTLY: Four items. Thank you for correcting that.

We have a motion. We have a second.

All in favor say "aye."

(Ayes.)
CHAIRPERSON WESTLY: Thank you.

Again, I'm going to move things along quickly, because we have so many members of the public who take the time to come.

That brings us to Item 47. And this is a report of the issues regarding the grant to Redondo Beach. This was quite a colorful report in the past. I'm personally quite interested to follow up.

May we have the staff report?

EXECUTIVE OFFICER THAYER: Certainly, Mr. Chair.

Jennifer Lucchesi from -- one of the attorneys at the Commission will present the report.

MS. LUCHESSI: Good afternoon. Chairman Westly and Commissioners, in response to complaints alleging the number of illegal activities by the City of Redondo Beach, Commission staff conducted a financial audit of the City's granted trust lands and trust assets. At the Commission's June meeting, staff presented its financial audit report.

Following testimony from assistant manager David Biggs and Redondo Beach citizen Jess Money, additional questions and issues were raised. The Commission deferred action on the staff report, asking staff to look into the various issues raised by Mr. Money's testimony.

Staff has complied with the Commission's direction. A complete outline of the specific issues
raised at the June meeting, and responses to those issues, are included in the staff report as Exhibit C.

In summary, the issues raised by Mr. Money did not substantially change the analysis and conclusions reached in staff's original audit report.

While the original complaint included a variety of allegations relating to the City operations, staff focused only on those allegations related to the Tidelands Trust funds.

In summary, staff believes that the evidence uncovered does not warrant further action by the Commission regarding the allegations of criminal conduct involving the Tidelands Trust made in the original complaint. The allegations did, however, lead staff to uncover several separate areas within the financial management of the City's trust lands, which were in need of explanation and remediation.

These areas involved two particular transactions: the Harbor Center Project, and the Kincaid's Restaurant lease.

Before addressing these transactions, I will first discuss the specific allegations outlined in the original complaint. The specific allegations suggested illegal transfers of trust funds to the City's general fund, and to the Redevelopment Agency, and a perceived depletion of
the trust retained earnings.

As described in the staff report, the audit did not substantiate any of these allegations. However, as stated previously, staff did find certain instances where the City's contractual arrangements involving granted tidelands raised questions.

I will now address these specific instances beginning with the Harbor Center Project. As background in the early 1980s, the Harbor Center Project was a proposal by the City's Redevelopment Agency for a hotel, retail, and parking complex project. The project as submitted to the Commission shows the project is divided between public and private portions. The public portion was to be a public parking structure and an open landscape area.

The private portion was to be a 353-room hotel, retail space, and a portion of the parking structure.

In 1983, pursuant to the express provisions of the Tidelands Trust grant, the Commission approved an expenditure of $3.5 million in trust funds for the acquisition of the land for the public portion of the Harbor Center Project.

Subsequently, the Commission approved two 18-month extensions for the City to comply with the time authorized for the acquisition of land and the conveyance to the
Staff analysis of the Harbor Center Project focused on three primary aspects including the specific procedural requirements with the Commission's approvals, the rate of return received for the lease of the public portion of the project, and the occupation of a portion of the parking structure by a non-Trust use.

Staff found that the City failed to comply with certain procedural requirements of the Commission's 1983 approval and subsequent amendments. Staff also concluded that a grant received from the parking structure lease is not reflective of commercial market rates and is less than adequate as a percentage of return on investment. Finally, staff found that the second story of the parking structure is currently being occupied by Gold's Gym, a non-trust use.

I will now discuss Kincaid's Restaurant. Kincaid's restaurant is located on the City's portion of the Redondo Beach Pier, on Trust Lands. Kincaid's has been successful, financially, for the Trust, generating approximately $150,000 per year.

In 1997 the City and RUI ONE Corporation entered into an agreement for the construction of Kincaid's, in which RUI would initially finance the entire project with an agreement that the City would reimburse RUI for
50 percent of the construction costs. The City's financing was arranged through Redondo Beach Public Financing Authority, a joint powers authority between the City and the Redevelopment Agency.

The PFA obtained a 20-year loan of 1.75 million, and pledged future rents from Kincaid's as collateral, from which the PFA paid RUI 50 percent of the project construction costs.

The borrowing of money for capital improvement and the collateralization of future rents from an asset within the Tidelands Trust is a capital expenditure. Pursuant to the City's granting statutes, any capital expenditure of Tidelands Funds in excess of $250,000 requires Commission approval.

While the City did not believe that the granting statutes required Commission review of this transaction, this transaction should have received Commission's review and approval, as trust assets would have been ultimately liable for the loan.

Finally, I would like to conclude by saying there are some needed modifications to the City's financial management of trust lands and assets.

However, the City has invested a substantial amount of its resources in enhancing its grant and Trust lands, thereby creating a valuable visitor-serving
waterfront destination in its King Harbor. While the City may disagree with certain staff interpretations of the City's trust management, Commission staff and City staff have resolved these outstanding issues while addressing the City's concerns and protecting public trust assets.

As such, staff recommends that the Commission authorize staff to enter into a Memorandum of Agreement reflecting the elements as outlined in the staff report findings. Please note that the land exchange element will come back to the Commission at a future date for its review and approval pursuant to Public Resource Code 6307. I'm available to answer my questions you may have.

Thank you.

CHAIRPERSON WESTLY: Thank you very much. We have a number of members from the public who would like to speak on this.

Please remember, we're asking everybody to speak for no more than three minutes because we want to give everyone a chance to speak today. We'll begin with two people who will speak in opposition to this item. And then I think we have three people who would like to speak in favor.

I'd like to begin by asking Jess Money to come forward. And if I could have Gary Ohst to be on deck.

Mr. Money, would you like to begin? And please
identify yourself for the record.

MR. MONEY: First of all, I would like to thank the Commission for allowing me to speak. And I would like to ask that you strike my written comments beginning, that I turned in, regarding the location to Kincaid's. Looking over, I see that "Enrondo's" municipal task force is here.

My immediate reaction to this staff report is that the staff asked the City some questions; they gave them an answer; they take their word for it; and that's it. Some of the questions are confusing and even nonsensical. For instance, the report states that the tidelands' 3.5 million only purchased the area occupied by 76 parking spaces in the parking structure. I'm no math whiz, but my Canon calculator says that's $46,000 per space. At an average of about 150 to 160 square feet per space, that's $300 a square foot.

Now, according to Gold Gym's own brochure, their facility is 59,000 feet. If that sits above what is supposed to be the tidelands -- the area purchased by the tidelands area, then dividing that by 76 parking spaces, each parking space would be about 776 square feet or the size of a small house.

Item 9, on Page 3 of Exhibit C, states that police patrols on the pier and harbor marina area are not funded by the Tidelands Fund but are funded from the City's
Uplands Fund. Why does the Upland Fund pay for policing of public safety in an area that's predominantly within the tidelands? Could it be that the City doesn't want Tidelands Commission nosing around in the finances?

Item 13 quotes, the City is having unrestricted funds in the tidelands of 10,738 -- 10,738,000 on June, 2005. But for the cash balance, they report 7,008 -- 7,895,000 as of June 30th, 2004.

Why are we using figures from two different years? There's also a difference there of about 2.8 million.

The staff report doesn't even address the allegations that the City recently negotiated a lawsuit settlement with the owner of the Guthry Leasehold, in which the City has forfeited its right to audit that leasehold in the future.

The proposed land swap remedy is a joke. What land? Where? Is it ready to use, or are we going to have to wait for a long process to get it developed?

I urge the Commission to send this back and let a real investigation take place. And I could go on for another couple minutes. This report's got more holes in it than good swiss cheese.

CHAIRPERSON WESTLY: Mr. Money, thank you for your comments.

Two points, here. If there's more data that you
would like to submit to the Board members -- and I know
you have more written notes, there, please feel free to
submit that, if you would us to take a look at it.

Secondly, for those watching from the public, I do
note that we'll be hearing from both the mayor and the
mayor pro tem of this city. So we'll hopefully move
forward and get to the bottom of this.

The next speaker is Mr. Ohst.

Could you please identify yourself for the record.

You have three minutes.

MR. OHST: Yes, thank you, Steve. My name is Gary
Ohst, resident of Redondo Beach.

Jeff covered again, but I'm really focused on a
couple areas. And what I want to focus on is leasing and
the regulations that go along with structuring a pier
lease on both sides. The State Lands Commission has
regulations that it follows when it conducts a lease
directly. And in some cases, it has cities which are
acting in trust for the State Lands Commission, that you
basically delegated your rights to them to negotiate
leases.

And that instance, there are no regulations;
cities can do what they want. And Redondo Beach has
adopted some leasing guidelines, but in 1995, late 1995,
they extended a lease for, it was then, Edison, prior to
sale to AAS, for 50 years, with a one-time payment, no potential increase to that rent at all, over a 50-year period.

Now, you, under your regulations have a clause; all leases have to be reviewed every five years and adjusted to market. So this is why the Crowne Plaza lease, that we just heard about, is a 30-year lease at $1,000 a month, with no opportunity to raise the parking and rent. Again, a really long-term lease that wouldn't even qualify under your own regulations. So I want to clarify -- I'm up here in opposition, but I actually support what staff has done. I really appreciate what staff has done. Because they have put a recommendation that any future leases that Redondo does, goes to the Commission for review. And that really opens up, like, an appeal process for the citizens launching these things. If we have any questions, I guarantee you're going to hear about it. As you can see, Redondo is a bit of a lively town. So I want to thank staff for that.

I would have a minor suggestion that, rather than have it submitted to you ten days prior to council action, I would ask for 30. Ten is really kind of short for even us to review it and ask questions. So that would be a minor recommendation I would like.

And then the other thing, as you can see, there's
a lot of back and forth on what happened where. In the City's Consolidated Annual Financial Report, the CAFR, there is little to no disclosure about any of these loans back and forth between the Tidelands, the City, and the Redevelopment Agency, the City. And I'm talking about basics, like principal borrowed, when it was borrowed, interest, what payments have been made to date; it's not there. There's little footnotes that say, oh, yeah, there's this loan out there.

So I would also like to add to staff's recommendation that the City fully disclose these transactions in their own annual CAFR report. And I think had there been full disclosure of these and reasonable leasing regulations had be followed, none of us would be here today. So those are my comments. Thank you.

CHAIRPERSON WESTLY: Thank you Mr. Ohst.

What I would like to do now is to call Mike Gin the mayor of Redondo Beach, to come forward. And ask that David Biggs, the assistant city manager, and Mr. John Parsons, the mayor pro tem, to be on deck.

Mr. Gin.

MR. GIN: Thank you very much honorable Commissioners and staff. It's an honor for me to be here today.

I'm Mike Gin and I have the honor of serving as
mayor for Redondo Beach. As you mentioned, our mayor pro tem, John Parsons is here, as well as David Biggs will be available for any questions you might have.

But first of all, we're very fortunate to be a Tidelands trustee. I want to let you know that we're very fortunate to have stewardship of that, under your guidelines of your Commission and for the state, as a whole.

First of all, we would like to say that we're very pleased with the staff's recommendation. We think the time and energy spent on this has been very fruitful. And we believe that they have come up with some excellent recommendations that will allow us to move forward in a very positive light. And we feel very fortunate, very pleased as well, that any allegations of wrongdoing, in a criminal sense, have been put to bed.

Again, we urge the adoption of the staff recommendation as a whole. And with this, we think it can help bring us some closure as well as a more open working relationship with the Commission.

I wanted to let you know, there are some -- a couple of really great initiatives that are under way, in our harbor and the tidelands and pier area in particular, that not only will protect it from an economic standpoint but also from an environmental standpoint. We have a
Water Quality Task Force that has come up with a number of recommendations to ensure that we address a lot of concerns regarding ocean water quality, and so forth, in our harbor. So we're very, very pleased to be able to do that and also to be able to protect the tidelands.

Just wanted to let you know and to give you a little bit of background; we have been a Tidelands trustee since 1915. And we have always taken that Trust seriously, as evidenced by the number of improvements that staff has talked about, in terms of the history of the way we've managed the tidelands.

We also have a clear track record of managing a number of these investments in a very, very public way; and including investing funds in the area from non-tidelands sources. Most recently, as you may be aware, we had a very serious fire and the destruction of the pier, back in the late '80s. And it was all but destroyed. But we committed, and the community came together to commit, to rebuild that asset in the tidelands.

And again, we wanted to just thank you for the time that we have here today to present this. I think, even though there were a number of different issues that were brought up, I think that it provides an opportunity for our staff and our community to work more closely with
all of you, in the future.

And again, thank you, Mr. Controller and Mr. Lieutenant Governor for the service that you folks have done on behalf of the Commission and protecting our Public Trust lands. We look forward to answering, to the best we can, any questions you might have about the report.

Thanks very much.

CHAIRPERSON WESTLY: Thank you, Mayor Gin.

MR. GIN: Thank you.

CHAIRPERSON WESTLY: I would like to ask David Biggs, the assistant city manager to come forward, if he is here.

And then I would love it if you were able to respond to any of the questions that Mr. Money has raised.

MR. BIGGS: Certainly, Mr. Chair. And I will be happy to do that. I'm David Biggs. I'm the assistant city manager.

I have been tasked in helping our staff respond to the questions raised by the Commission and members of your staff. In my tenure with the City, you might recall I appeared before you in June, heard the allegations, additional allegations that were raised, and also in June, we did provide a letter dated June 21st that outlined our responses to that original staff report.

Since then, I have coordinated with the City
staff, gathering the data and information, and provided it to your staff, so they could do an independent analysis to look at the questions that were raised.

And since then we also, subsequent to providing that data -- I have been working with them to address specific ways that we could -- we would correct the areas identified, those opportunities for improvement that were suggested in your staff report. And as Mayor Gin indicated, we're very supportive of the recommendations. We think it provides a clean slate on a going-forward basis. And we fully intend that we will be communicating with your staff on a regular basis, as we have many exciting projects planned for reinvestment of Redondo Beach and the harbor, pier, and the tidelands areas.

There are still some areas that we disagree with your staff and some of the perspectives on some of the issues that have occurred.

We outlined those in the letter to your executive officer, that was dated December 12th, which I understand you have a copy of, on not big areas; mostly nuances of about how redevelopment financing works and some of the characterizations of that.

But again, as we structure transactions at Redondo Beach, we structure them to benefit the Tidelands Trust. And for example, our redevelopment agency has invested a
substantial amount of money in the Tidelands Trust area, as opposed to what you have seen in some other coastal communities where, in fact, the tidelands has sort of helped promote redevelopment of downtown. So we don't have a downtown adjacent to our Tidelands Trust, so our focus -- our main economic account is our Tideland Trust area. We're committed to implementing the recommended actions that your staff has put before you, in a very timely manner. We've been exploring, for example, the idea of an existing parcel swap. We're talking about an existing parcel, fully improved, generating income. So we're not talking about changing an improved parcel for an unimproved parcel.

Unfortunately, in our area, we have water areas that are actually in the uplands, not in the tidelands. Gets a little bit confusing. But we do have a lot of property that is -- looks like it should be in the tidelands because it's adjacent to or on the water.

I would like to acknowledge the professionalism and solution-oriented approach of your staff, where we have had some levels of disagreement. We've always been able to work through those. In green areas, we have a different philosophical perspective. But I think as we try to look more in the future and not try to look back 15, 20, 25 years of transactions that none of us were
involved in, firsthand, we'll have very -- a better record
on which to judge our activities in the future.

So I feel very fortunate. I'm fairly new with the
City. With your approval for the recommended action
today, we'll be able to go forward with a clean slate.
And you would have answered some of the questions in our
community. With that again, we would be happy to answer
any questions that you might have.

Oh, I'm sorry. Mr. Westly, if you would like, I
could actually respond to a couple of the questions.

CHAIRPERSON WESTLY: Because of time situation and
the number of people in the public, here, I would like to
move forward and ask Mr. Parsons to come forward.

MR. PARSONS: Thank you Mr. Chair and members of
the Commission. And congratulations on your service to
the Commission and to the State of California for all
these years. We have been well served.

I want to thank you for the time to address you,
and we have had, as was stated earlier, over 90 years of
service as the trustee of the State of California, on the
tidelands, and we very proud of that service.

As you said earlier, you know, this is a colorful
issue. It's also very frustrating, all the years that our
two staffs have spent, trying to resolve some of these
things.
Where we originally started out led to other places. I think that as has been pointed out by the mayor and the assistant city manager, our two staffs did work very closely together. We appreciate the conclusions that have been come to, although I feel an awful lot of time has been spent on this. And to come down to two things, one that started over a quarter century ago, another one that was a decade ago, I think does show that we have a pretty good track record, especially where we have some disagreements on interpretations.

The solution, as proposed by staff, I think we support for a couple of reasons. One, if it will make the Commission feel better about the way we're operating things, that's fine. Two, we operate this as if it was our own property, and we're doing the best for our local citizens. And we certainly appreciate our duty to do it for the citizens of the State of California.

And if we can find it, I'm sure we can identify adequate property to swap. Then, you know, we can move ahead and get everything behind us.

I would like to point out, though, that the three and a half million that went into the Harbor Center Project is being paid back. And on top of that, there's a $12,000 annual payment. That's a pretty good return.

Now, I know that that payback is considered a
gift, but still, it's happening. And on top of that, as was mentioned earlier, the -- we have a pretty good record of investing money in the tidelands. Three and a half million dollars that went towards rebuilding the pier came as -- as a pot of money from our redevelopment agency. It wasn't done as loan, which we could have done. So we invested in the harbor as if it was our own, and we're very proud of all the effort that we have put on there.

I spent eight years or seven years on the Harbor Commission, going back to 1990, and almost finishing up eight years now on the city council. And a lot of my attention has been spent on the harbor. I'm very proud of all that we've accomplished. So we really do look forward to solutions that have been identified.

And just very quickly, to respond to a couple of comments that were made earlier, why are police paid for out of the Uplands? That's directed by the Commission. We're not allowed to take any funds out of the Tidelands. And we're fine with that.

And then as far as how things are reported on the financial report, you asked the Authority to be very specific. We followed the guidelines, and we get awards every year.

So thank you very much.

CHAIRPERSON WESTLY: Great. Thank you.
What I'd like to do at this point, unless there are other speakers, is ask for comments from the commissioners.

Ms. Sheehan or Mr. Bustamante?

Ms. Sheehan, do you have any comments on this?

ACTING COMMISSIONER SHEEHAN: I applaud the staff in terms of the work they have done in responding to the questions.

I guess, as Mr. Thayer knows, just sort of on the bigger issues, in terms of, as we have with some of these other cities and local governments that we have these grants with, you know, for us, in the future, to either audit or to go in and make sure that they are complying with the agreements that we had originally entered into. I recognize -- we have talked about this before in terms of, you know, resource availability and all. But I feel strongly that we, as commissioners, have an obligation to make sure, if we have handed it over to local city or county, to carry out our obligation, we need to make sure they are carrying it out the way we would, as if we were doing it ourselves.

So that really is a bigger issue that I have regarding to moving forward and going into discussions next year with the Commission members.

EXECUTIVE OFFICER THAYER: Okay.
COMMISSIONER BUSTAMANTE: And Paul, you know, what I would suggest is that you might want to think about submitting a supplemental budget request in order to be able to -- because you guys are tunnelling ground all the time and you are leaving behind all these at this time that can't be continuously monitored.

There should be an inventory of every single lease that we have and every single lease that we're allowing other people to do. And there should be some kind of a chart that has these "ticklers" that talk about every five years to go back and review every single one of these things and at least check to make sure that somebody is following up on these things. And since most of the revenue that you receive as a result of the work that you do, goes into the black hole of the state budget. Perhaps it would be appropriate to ask for a very specific budget augmentation for -- you know, the adequate staffing for this very specific purpose. Because I think it's financially -- I think it would do the state and, in fact, the fiduciary responsibility that we have on behalf of the taxpayers.

And I think it would be a great investment by the state to provide that type of supplemental staffing. But I was going to ask you, is there an inventory of every single lease? And somebody who's doing this kind of
backup work? I'm assuming not. But that's why I launched into my supplemental budget allocation.

EXECUTIVE OFFICER THAYER: We have, of course, an inventory of our own leases, but once the Commission has granted it, we don't have the inventory of all of the leases that are entered into by granted lands.

We did put in a budget change proposal, probably six or seven years ago, for our compliance staff. And that was granted, out of the same concerns that I think you and Commissioner Sheehan spoke of. But the State entered its financial --

COMMISSIONER BUSTAMANTE: I think that you don't want to -- especially those that are going to be yielding resources, you think that that would be -- would be foolish not to -- and it wouldn't meet any fiduciary requirements to not have people that are required to do those kinds of things, to make sure that we are getting the appropriate and proper revenues through the process that we're going through.

We give so much stuff away, as a state. And those few things that we're supposed to be charging for, we should be providing that.

EXECUTIVE OFFICER THAYER: And it is statutorily required that, at least for our leases and, in fact, constitutionally for the leases that are grantees are
entered into, that we have to get market rate.

COMMISSIONER BUSTAMANTE: And I think that the
other issue that Commissioner also brought up was the
issue of reviewing those leases, to see if there is
compliance that's being done. It's a little
disconcerting, that as we're getting involved with a
particular issue, and we find that, in fact, the
compliance has not taken place, whether it's minor or
major is not the issue. It's that compliance did not take
place.

And now we have -- we're facing that, this
Commission, the new Commission will face. The issue of a
new precedent being set with respect to a gymnasium being
in the Public Trust and how you resolve that issue,
whether it's through the lands swap or whatever process
you go through, it's going to be something that is going
to have to be resolved. Because I don't believe there's
any statutory authority in the Public Trust Doctrine for
this kind of activity. And so we have allowed an activity
outside our jurisdiction, outside of the parameters that
we're obligated to stay within. And we have an issue to
deal with.

EXECUTIVE OFFICER THAYER: I agree, it's a
problem. Of course, the position of the Commission has
not been to accept that. And now that we found out about
it, to correct that. But it is really a question of resources. I don't like to go that way and make excuses, but there are 77 cities and counties with granted lands. And we have, I think, two and a half people to survey all of those. And it's just very difficult.

To some extent, even though I know Mr. Money is not satisfied with all of the staff report, it's people like him that help us out a lot. And we probably wouldn't have found out about these issues.

COMMISSIONER BUSTAMANTE: We need to make sure we follow up properly with it. And let me just ask, in the -- in the lease, this fair lease, what was the increase? Is there a proposed increase.

EXECUTIVE OFFICER THAYER: For what? I'm sorry.

COMMISSIONER BUSTAMANTE: The issue was raised that the lease has not been renegotiated as required, every five years.

Is there a new lease that's being proposed?

EXECUTIVE OFFICER THAYER: Well, with respect --

COMMISSIONER BUSTAMANTE: Our portion of the parking and the -- and our portion of the -- however you resolve the Gold's Gym issues.

EXECUTIVE OFFICER THAYER: Right. Our belief is that the best way -- what's discussed in the staff report, the best way to handle the Gold's Gym situation is to swap
that property out. And then it will be between the City
and the lessee as to the appropriate rent for the City's
properties, but that will not be Public Trust Land. That
will end both those issues.

COMMISSIONER BUSTAMANTE: So I can get a proper
visual, how far from the water is the -- is this facility,
this Gold's Gym?

EXECUTIVE OFFICER THAYER: We have a map up here,
which is impossible to -- let me bring it up.

This is -- Kincaid's Restaurant is right out here,
in the water, within the harbor.

Gold's Gym is this area here, with three dark dots
on top of it, right there. So it's across the parking
lot, this parking lot here. And there's development along
here, which blocks the views from Gold's Gym to the water.

So this property was not original Trust lands, but
was purchased. So for this to be swapped out, it wouldn't
be any different from what it had been before. So if
there's some piece of property and the concerns that
Mr. Money raised about what was the exchange going to be,
this is going to have to come back to the Commission. The
question that you had, we will all be discussing.

COMMISSIONER BUSTAMANTE: Okay.

And the actual lease, the revenue from a new lease
with respect to the parking?
EXECUTIVE OFFICER THAYER: Well, if that's not within the Public Trust arena anymore, that's --

COMMISSIONER BUSTAMANTE: I thought that a portion of the parking spaces were in the Public Trust.

EXECUTIVE OFFICER THAYER: But that would be the parcel that would be swapped out. The Gold's Gym --

COMMISSIONER BUSTAMANTE: The entire parcel would be swapped?

EXECUTIVE OFFICER THAYER: Yes.

COMMISSIONER BUSTAMANTE: Okay. Are there any other -- last question: Are there any other agencies currently that are doing any investigations? There were allegations made of criminal actions, etc., etc. As far as we know, have we checked to see if there's any allegations that are being followed up on, through investigations of law enforcement or anyone else?

EXECUTIVE OFFICER THAYER: I wanted to respond to that, because that was something the City had raised. We're not in a position to clear the City of criminal charges.

COMMISSIONER BUSTAMANTE: I'm not asking that question.

EXECUTIVE OFFICER THAYER: But he indicated that we had. And I want it to be clear that we don't have the ability to do that.
Mr. Money referred many of these issues to, I think, three different law enforcement agencies. We contacted all three. The FBI said they wouldn't discuss their investigation with us. They hadn't taken any action, but they weren't discussing it. The other two said that they weren't contemplating taking any action.

COMMISSIONER BUSTAMANTE: Okay.

CHAIRPERSON WESTLY: Thank you, Mr. Bustamante.

First, I would like to thank Mr. Money for coming down here and raising these issues. This is an important duty the public plays, and we're all grateful to you.

I would like to thank all three members of the City of Redondo Beach for coming down here. I appreciate you made the effort to be here. That says a lot for the City. And thank you for your public service.

I think it's clear, here, there are many issues here. New ones were raised even today. The staff's recommendation does not close this matter. We will continue to follow up on a number of items that Mr. Bustamante has raised. And we'll continue -- I would like to ask members of the public, including you, Mr. Money, to continue to be in touch with the staff to raise additional issues, provide additional documentation, so on.

Having said that, it is time to take a motion on
this.

And I would like to ask a motion.

ACTING COMMISSIONER SHEEHAN: I will move the
staff recommendation.

COMMISSIONER BUSTAMANTE: Second.

CHAIRPERSON WESTLY: Second? Great.

All in favor, say "aye."

(Ayes.)

COMMISSIONER BUSTAMANTE: Terrific. That takes us
to Item 48, which is a request from the San Diego
Coastkeeper, for the Commission to consider the timeshare
component of the Woodfin Hotel Project in San Diego.

I would like to ask for the staff presentation, if
I could, please.

EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

The staff presentation will be made by Curtis
Fossum, the attorney from the Commission staff who has
worked on this.

MR. MONEY: Mr. Westly, I just wanted to say thank
you for your courtesy, this time and in Oakland, and for
your service to the state.

CHAIRPERSON WESTLY: Thank you, Mr. Money.

I might add, you make these meetings an awful lot
more interesting.

(Laughter.)
CHAIRPERSON WESTLY: All right. Staff report, please.

ASSISTANT CHIEF COUNSEL FOSSUM: Chairman Westly, Commissioner Bustamante, and Commissioner Sheehan, good afternoon.

Commission and its staff have enjoyed a cooperative and productive working relationship with the San Diego Unified Port District Board and staff for many years, and look forward to many more.

The Port, in recent years, has come under increasing pressure from developers of hotels to allow leasing of timeshares as part of their projects.

On July 11th of this year, the Port Board approved a Port Master Plan Amendment that would permit 40 of the proposed 140 units of Woodfin Hotel Suites project to be leased to individuals, for up to 66 years, as timeshares. The leases would be in one-week intervals, and two weeks could be sold by Woodfin to buyers. We understand that those weeks can subsequently be sold or traded by the owners, and additionally, owners of timeshare weeks at other locations would be allowed to trade in their weeks for stays in Woodfin Suites.

Commission staff, earlier this year, testified and twice submitted written statements to the Board, expressing staff's opposition to the project because of
our long-held view that timeshares are inconsistent with
the Public Trust Doctrine and therefore should not be
allowed on Public Trust lands.

The Port attorney and Board Chairman Admiral
Spear -- Spain, excuse me, supported your staff's
position. However, Woodfin and others noted that the
attorney general in 1996 had concluded in an opinion that
timeshares might not be, per se, inconsistent with the
Public Trust Doctrine if they provided certain amenities
to the public.

Noting that the State Lands Commission had never
formally taken a position on timeshares on Public Trust
lands, and there are no judicial decisions or legislation
deciding the matter, the Port Board approved the Port
Master Plan for the Woodfin Suites Project, suggesting
that this could be a test case to determine the law on the
subject.

Because of the potential precedent-setting impact
of the Board's decision, and receipt of a letter from the
coastkeepers requesting a hearing, staff brought the
matter to the Commission for your review and direction.

The Commission's decision on this project will
help guide applicants, local government, trustees of
tidelands, and the public on whether tidelands [sic]
should be located on Trust property.
This timeshare proposal raises some very serious issues for the Commission and for the Public Trust Doctrine throughout California. The advice given by the Attorney General's Office to the Commission in 1982 was that timeshares provide a distinct and limited class of people with exclusive end use of Public Trust lands, not available to the general public, and are a use inconsistent with the Public Trust.

Your staff believes this is still true. However, 14 years later, then-Attorney General Dan Lundgren offered a different opinion, suggesting hypothetically that under certain limited circumstances, timeshare use might be considered a use consistent with the Public Trust Doctrine. We find significant shortfalls in the fundamental analysis and conclusions in his opinion.

Since timeshares emerged in the 1960s to the present, no timeshare project on Public Trust lands in California has been approved.

Timeshares are clearly a growing phenomena and exist in many vacation and resort areas such as Palm Springs; Las Vegas; Vail, Colorado; and Florida. We're not suggesting that timeshares are inherently bad, but rather, that Public Trust lands, including fill Public Trust lands, as is the case with Harbor Island, are an extremely limited public resource and protected by laws in
a distinct trust that will evolve over the centuries.

California courts have been particularly protective of these lands and the public needs and uses associated with them.

Notably, California courts and federal courts, in recent years, have stepped in to protect Public Trust Resources at Mono Lake, the Owens Lake and River, and the San Joaquin River.

Public Trust lands are like our state and national parks; they have been set aside to be protected for the enjoyment of the common public and not to be usurped or occupied by the few.

Staff inquired into whether California's Department of Parks and Recreation and the United States National Park Service allows timeshares, and found that while hotels, like the Ahwahnee in Yosemite, may be permitted in some parks, timeshares are not allowed.

Why are hotels and restaurants allowed? They can provide necessary and incidental accommodations for visitors to public lands. But a market system of selling timeshare leases, tying up rooms for a limited number of owners, for a week or two or more, in advance, for up to 66 years, is not consistent with the public access character of these lands.

The 1996 opinion suggested that if a project
provided a number of hypothetical enhancements, then maybe it would be okay. The opinions suggest a test, which is based on a misinterpretation of California case law and the legal precedences the cases stand for.

California courts have authorized certain non-water dependent visitor-serving uses they found consistent with the Trust, if those are necessary and incidental to accommodate the public when they access Public Trust lands, or if they are necessary and incidental to promote Public Trust uses or accommodate water-dependent Public Trust needs, such as maritime trade.

Hotels, restaurants, parking lots, even restrooms and warehouses all fall under these categories. However, we do not believe that timeshares qualify as necessary to accommodate public access, since hotels already provide for overnight and vacation stays.

Regardless, the subject project fails to even meet the misguided test in the '96 opinion. The public enhancements described as being offered by this project are nominal and would be equally available if the facility involved 100 percent hotel rooms and no timeshare units. In fact, on several occasions, proponents have indicated that the project will be built with or without the in conclusion of timeshares.
On behalf of Woodfin, their attorney, Mr. Kaufmann, whom I have known for over 20 years, and I must acknowledge is a friend of mine and one of the top attorneys in this area, submitted a lawyer -- submitted a letter to the Commission. The letter asserts that the staff report does not accurately characterize the Woodfin proposal and the Port Board's decision. In fact, the staff report carefully describes the Woodfin proposal by quoting from their letters regarding proposed timeshare use limitations. Those statements include discussions of stays not more than 29 consecutive days or 90 total days per calendar year. The letters are attached as Exhibit F to this agenda item.

Likewise, the staff report carefully describes the proposal Port Master Plan Amendment as limiting sales, not use, of unit intervals, to two one-week periods per year. This critical distinction between sale limitations and length-of-use restrictions is lost in the Woodfin letter. The letter repeatedly refers to one-week periods of time and fails to acknowledge the Port Master Plan to allow sales of two one-week intervals with no specific period of restriction on length of stays. The exception is that there's a rather vague statement that says, quote, no party shall dominate usage of any timeshare.

Therefore, the Port Master Plan, as adopted by the
Port, could allow Woodfin's earlier proposal, the 29 consecutive days or 90 days per year of use; or even more, by allowing individuals to trade in their weeks for timeshare ownerships elsewhere.

Let me be clear about this: Even if the maximum annual use were limited to one week per household and less than 66 years in length, it's the exclusivity of use that is in conflict with the Public Trust Doctrine. The general public does not have access to timeshares; only by purchasing a unit interval and joining a timeshare owners group can members of the public access these rooms.

Industry data indicates that less than 1.3 percent of Californians have done this. The rest of the public is given the chance to rent vacant units, but nationwide, only 4.4 percent of the rooms are used this way. Thus, timeshares do not provide a significant overnight opportunity for those who don't own one.

The exclusion of the general public in favor of the benefit of the few is also a reason why residences are not permitted on Public Trust lands.

Proponents of timeshare developments often speak to the economic factors involving timeshares. The sale of timeshares make their projects more viable. They provide up-front cash flow. They also allow members of the public to prepay their vacations. For those individuals who wish
to invest and plan out their future vacations for the next 66 years, this sales pitch may make investment sense.

However, the timeshare approach fails to deal with reality that much of the general public can either not afford the cost of purchasing and maintaining a lease of 66 years or has opted not to enter into such a long-term commitment. And even if they desire to, the units may be previously sold out and not available to be purchased or rented.

Creation of timeshares creates a distinct group of people with a right of occupancy for a piece of a property for decades. The California Costal Commission has not allowed this type of private development and limited -- has only allowed it in limited circumstances and never on Public Trust lands. To allow this proposal to be developed would be a fundamental misstep toward privatization of public property.

Like the California Constitution's Public Access Protections, the Coastal Act Priorities for protecting waterfront public access and our state and national parks that prohibit creating a distinct class of private owners with up to 66 year right of use, the Public Trust Doctrine exists to protect the rights of the public and Trust Lands so that the lands remain open and available to the general public.
Staff and the Commission respectfully request the Commission adopt the staff report's recommendations.

Thank you. I would be happy to answer any questions.

CHAIRPERSON WESTLY: Great. Thank you very much. What we're going to do here is very quickly. And the simple reason is we have more members of the public wishing to speak on this item than I have seen in my four years on this Commission.

So what I would like the ask the public's cooperation on, to be fair to everybody, and we would like to give everybody a chance to speak, is number one, you do not have to speak for the full three minutes. What we often find, when this many people want to speak, many people want to make the same points. So I'm going to move things along fairly quickly. I'm going to ask people to be on deck, come right up, give their name and say who you're with, if there's an identification.

Second, we've had a request from people speaking on the opposition, to the staff recommendation. We're going to take the opposition presenters first, and then the people speaking in support of the staff recommendation. We've had a request from the opposition side that they are -- I don't know if a premier or lead speaker would like to be able to aggregate some of the
time from the other people who wish to speak. I am more
than happy to allow Mr. Kaufmann ten minutes, instead of
the customary three, if I could get some of the other
people who have signed up to speak to raise their hands.
(Hands raised.)
And state your names.
MS. WERNETTE: Stephanie Wernette.
CHAIRPERSON WESTLY: Okay. Stephanie, I'll remove
your card here.
MS. BLEMKER: Anne Blemker.
CHAIRPERSON WESTLY: Anne?
MS. BLEMKER: Blemker.
CHAIRPERSON WESTLY: Okay. We'll remove yours.
And who else?
MR. ROUSSEAU: Mark Rousseau.
CHAIRPERSON WESTLY: Mark Rousseau. Terrific, thank you.
MS. FABION: Judy Fabion.
CHAIRPERSON WESTLY: Judy, thank you. Terrific.
That is appropriate [sic].
Mr. Kaufmann, your colleagues have placed great
faith in you. Have at it.
MR. KAUFMANN: Too much faith.
(Laughter.)
MR. KAUFMANN: Good afternoon, Mr. Chairman and
Honorable Commissioners. My name is Steven Kaufmann. I represent the Woodfin Suite Hotels. I really appreciate the ten minutes. Thank you.

Today's hearing -- we have actually a PowerPoint presentation. Today's hearing is obviously focused on the Public Trust. And I want to give you just a quick overview of the project. I think it helps.

(Thereupon an overhead presentation was presented as follows.)

MR. KAUFMANN: The project's located in the middle of Harbor Island -- and you see Marina Cortez; that's where it is -- on the land side of Marina Cortez, flanked by two existing hotels -- the Hilton and the Sheraton -- and it's across from the San Diego airport. This site, Commissioners, is deteriorating, and it needs to be redeveloped and made more publicly accessible. Woodfin --

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MR. KAUFMANN: Woodfin proposes a 140-room all-suite hotel, which 40 rooms are less than 30 percent of the total, will operate as timeshare. We haven't negotiated the length of the lease. It's not going to be 66 years. We're told by the Port that they are looking at between 50 and 55 years. But the timeshares are going to be distributed throughout the main building, and you won't
be able to tell whether a room is a hotel unit or a timeshare.

We're going to provide new amenities available and open to the public; and a new seawall; a public promenade; a restaurant and bar; meeting and banquet rooms; retail space for visitors-serving uses; hospitality center; a spa; we're going to provide a new marina services building.

You know what an exemplary job the Port of San Diego does in discharging its Public Trust responsibilities, and the commissioners that did that are here. In approving the Port Master Plan Amendment, the Port Board conducted multiple hearings on the timeshare component and it did receive input from your staff and guidance from an attorney general's opinion. And then it imposed numerous restrictions on the project to ensure that the Public Trust is protected.

I think you can skip ahead.

--o0o--

MR. KAUFMANN: One more slide.

--o0o--

MR. KAUFMANN: There you go.

Consider that we started with simple language permitting 140-unit hotel with timeshare units, this really was where we began when we met with your staff in
March of this year. And then, after all the input, including the input from your staff, the adopted Port Master Plan language was revised to fully protect the Public Trust. And this is language which is in the Port Master Plan Amendment that I attached as Exhibit 1 of my letter to you.

Go to the next slide.

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MR. KAUFMANN: Before I actually discuss the language of the amendment, I wanted to be sure that there's no nomenclature confusion here. So we've prepared this chart for you.

The Coastkeeper letter, that's Exhibit E to your staff report, and appears to have been the reason for this hearing, expressed concern about condominium hotels. And that's because this year, the Coastal Commission approved four of them, and they were controversial.

This project emphatically is not a condominium hotel. And I think even the staff report kind of lumps them together. This chart shows some of the salient differences between timeshares, fractionals, and condominium-hotels. And the timeshare that we are discussing is really simply nothing more than a prepaid one-week vacation in a hotel. There's no right to a specific unit; there's no right to a specific week;
there's no ownership interest in the unit; and the cost is
significantly less than a fractional or a condo-hotel.

And you can compare this, what's referred to as the modern
vacation timeshare with fractionals or condos, where the
buyer owns a unit or a fraction of it, and stay for long
periods of time, up to 90 days a year. And then the cost
can be in the hundreds of thousands of dollars. There's
an L.A. Times article that dealt with the condo-hotels
that said 2 million to 3 million. A very different kind
of animal.

Mr. Fossum, whom I love and worked with for many
years, I'm not sure we're reading the same document.

The Port Master Plan Amendment says, "Timeshare
intervals shall be limited to sale in increments of one
week, on a floating week and floating unit basis and may
include intervals of lesser duration including split-week
intervals. Use restrictions shall limit ownership to a
maximum of two weeks per year."

When we met with your staff, we originally talked
about 29 days and 90 days total, because that's what the
Coastal Commission was doing. When we walked out of that
room, we changed this and cut this to the bone. And
that's what the Port did.

Next slide, please.

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MR. KAUFMANN: There's also some confusion about how the attorney general has looked at timeshares.

The 1982 Informal Advice was a memo written by a deputy -- I was a deputy; I worked with Mr. Hager, whom I also love -- in my then-section of the Attorney General's Office to our boss. And then it was apparently transmitted to the State Lands Commission. And it analyzes specific projects and proposed the Wrather project in Long Beach. Now, you have to look at this project. This is an old-style timeshare. It really is more of a fractional. You get a 30-day interval. There's no real public amenities. There's a low vacancy factor. There's a limited use of exchange rights. And Wrather really wanted this to be a residential project.

It walked like a residential project and talked like a residential project. And so it's really no surprise the deputy attorney general concluded properly, that that constituted a long-term private residential use and made it consistent with the Public Trust.

And so then compare that to the '96 opinion, detailing with a totally different product of what we have today: A one-week maximum interval, significant public access, rental of unused units, substantial use of exchange privileges, significantly -- this was a hundred percent timeshare. The AG still considered it a
commercial use.

In any event, the timeshare component -- if you can do the next slide --

--o0o--

MR. KAUFMANN: -- approved in the Court Master Plan is even closer to a traditional hotel. Woodfin is a hybrid. It's not a hundred percent timeshare. It's heavily weighted as a hotel, because what's what Woodfin does; it builds and operates hotels. 71 percent of the units, Commissioners, are hotel units; 29 percent are timeshare units; and the unused intervals are right back into the rental pool.

Next slide, please.

--o0o--

MR. KAUFMANN: In the 1996 opinion, the AG laid out three criteria. I'm going to run through them very quickly: The state can't, as trustee, can't give up its right of control over the Trust property. We satisfied that.

Second, the use can't substantially impair the Public's interest in the remaining lands and waters. We satisfy that. The Port required us to make substantial public access improvements. They are not, by any stretch of the imagination, nominal.

Third, the project must produce a public benefit
that furthers and promotes trust purposes, and we satisfy
that.

This type of hotel and timeshare unit compliment
each other. They do the same thing. They provide
transient public accommodations to the tidelands. They
do -- they are supposed to function in appearance and
location like a hotel. When the timeshare unit is not
occupied, it has to go back to the inventory of hotel
rooms. Management is through the hotels. Timeshare
reservations is booked through the hotel. Everything is
done through the hotel.

So we come to the central question: Is this a
residential use? And the answer is no.

We have a one-week maximum intervals and a
floating unit or a floating week.

Timeshares and hotel units are treated the same,
and when you think about, it's exactly like a prepaid
one-week vacation in an unspecified hotel room. In fact,
you know, you can prepay a vacation in a hotel for a week,
two weeks, or more, if you really like it, you can pay a
lot more. But that doesn't violate the Public Trust.

I'm giving you -- If you can go to the next
slide --

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MR. KAUFMANN: -- here's a quote from an
unpublished case that dealt with the same type of
timeshare where the court said "It's not designed or
operated to serve a residential population by any stretch
of the imagination."

In other words, it's not a closed case. I don't
know what's on the next slide, but if you can go to it.

--o0o--

MR. KAUFMANN: Staff report repeatedly says it's
an instrument for the wealthy. That's wrong.

It's accessible and affordable to the working
class, for families who want to enjoy a vacation at the
coast.

Just a couple of real quick statistics:

18 percent of timeshares are bought by families with
incomes less than $50,000 per year. 50 percent are bought
by families with incomes between 50 and a hundred
thousand. So that's almost 70 percent. Very significant.
The cost of timeshares is between 15 and 30.

Let me close with this: We share and embrace this
Commission's responsibility to maximize public access to
the coast and the tidelands. This project advances that
goal. It's a good project.

The Port commissioners were responsible in
exercising the charge as local grantee. The Woodfin
Project, as approved, is consistent with the 1996 opinion,
and we think exceeds it. The Port Master Plan Amendment, as approved, is consistent with the Public Trust Doctrine. And we ask you to trust your Port's decision and support it, because we believe it sets the goal standard for this type of project.

Mr. Chairman, this began as an information item request from Coastkeeper. Obviously, it's important to us. We hope that we've provided you with sufficient information. We want the Commission to be fully informed, and we ask you to take what time you need to be fully informed and to make the right decision.

Thank you very much. I appreciate the additional time.

CHAIRPERSON WESTLY: Mr. Kaufmann, thank you very much. Again, I'm going to try to move things along as best as I can, to accommodate and be respectful to everybody. I would like to ask Mr. Wayne Smith to come forward; and Ms. Donna Andrews to be on deck.

Mr. Smith?

MR. SMITH: Thank you. I'm Wayne Smith. I was the former chief of staff to Attorney General Dan Lundgren during the time period in which the 1996 opinion was drafted.

I would like to just speak very briefly about the distinction between the 1982 Legal Advise Memorandum and...
the 1996 Formal Opinion.

The 1982 Advice Memorandum is actually a -- much akin to a lawyer advising a client about what that particular individual's opinion is on a particular matter.

The 1996 opinion is actually of the constitutional office, in this case, Office of the Attorney General, opining about what a particular matter -- what the matter would be that was asked by a legislative officer.

And the difference is that the Formal Opinion is actually a published opinion that the courts can cite and that bodies, such as yours, could utilize as guidance when you sort of enact your policy. And so I want to make it very clear that those two are completely different animals. And the 1996 opinion is a Formal Opinion that's published and it's offered, really, basically as legal advice to the grantees, to a body such as yours, to use in making your policy decisions.

CHAIRPERSON WESTLY: Great. Thank you. Thanks, Mr. Smith. We appreciate you being here.

Ms. Andrews.

MS. ANDREWS: Good afternoon. My name is Donna Andrews. I want to make two very quick points: Number one, timeshare is a financial tool to make the coast affordable for individuals whom otherwise would not be able to enjoy the coast. It is not a mechanism to enrich
the developer. It's a mechanism for individual families to prepay their vacations and to take their families to the coast and enjoy it, like other individuals.

What's interesting about this situation is that if we were before you, building a Woodfin Suite with 30 percent exclusive presidential suites that will cost $2,500 a night, we would not be before you. That's the thing that's really interesting here. Timeshare is really a representation of the spirit of the Public Trust Doctrine, to allow it to evolve and to address the changing needs of the public -- not the wealthy people -- for the people who have to plan ahead.

I respectfully request that you take the time to really receive the information and become the expert, if you will, on what this issue is all about, before you make your decision.

We're not asking for your approval today. This came to you as an information item. And we would really request that you take the time to receive the necessary information so you can make a decision that is representative of what the spirit of the Public Trust Doctrine is intended to do. It's not a residential use. It's a commercial use. I can understand the concern about the slippery slope and future regulations. But look at what the Port did; they were very responsible.
This is an opportunity for the Commission to allow
the Public Trust Doctrine to breathe; to allow it to do
what it was intended to do; and what the California State
Superior Court said, and that is, not to burden without
motive classifications of this use, but to allow it to
respond to the changing needs. And building a hotel today
is decidedly more expensive than it was 10, 15, 20 years
ago.

Thank you very much. If you have any questions,
we will be here to answer them.

CHAIRPERSON WESTLY: Thank you, Ms. Andrews.

We have Mr. Sam Hardage.

MR. HARDAGE: Thank you very much, Mr. Chairman,
commissioners.

My name is Sam Hardage. I'm chairman of Woodfin
Suite Hotels. We're the applicant here.

And when I was reading the staff report, I was
amazed at the -- what I thought was the
mischaracterization of this project: the industry, the
users, the pricing. And I would hope that this could be
the beginning of a dialogue to look at all of the facts.
This is a very important industry. And as a matter of
fact, it's probably the only way, that I know, to assure
the average Californian to be able to enjoy a vacation on
the California waterfront.
Pricing for construction costs, of all sorts, have escalated dramatically over the last four or five years. I think everybody knows that. And the cost to build a hotel on the California coastline is roughly double what it was ten years ago.

So in order to build a product that can be used on the California waterfront, by the average Californian, we need to be able to use all the facilities and all the tools at our hand. And the reality is that the costs of the timeshare, in this project, would be about the same price as a Ford F-150 pickup truck, and it would allow the family, the average family in California, to be able to enjoy a vacation on the waterfront, instead of having to pay 500 or 600 or more dollars a night, for a hotel and to be priced out of the marketplace.

So I would hope that the Commission and the staff would take the time to understand this very important industry. This is a very important issue. And I think it's very important for the average Californian that wants to enjoy this beautiful California waterfront and the California coasts that we have.

So I would encourage -- and I'm glad that we're here today. I hope this is the beginning dialogue of a discovery which finally comes to a policy that will help serve all the Californians. Thank you very much.
CHAIRPERSON WESTLY: Thank you, Mr. Hardage.

Next, Perry Dealy, President of Manchester Financial Group.

MR. DEALY: Mr. Chair, Members of the Commission,

first I want to also congratulate both yourself and

Lieutenant Governor Bustamante on your phenomenal service
to the State of California and how much time and sacrifice
you had to give to benefit the coastal waters and to make
it accessible to all of those that want to enjoy the
cost.

We are a large-scale waterfront hotel developers.
And I've done a lot of work in California over the years.
And I think it's -- you know, urban San Diego, urban areas
have evolved into a very complicated development cycle in
the last four or five years.

I think, as has been presented, the cost to do
coastal development is extremely expensive. The
inflationary factors of construction materials, the costs
that are unique to building on the water with piles.
You've got all the seismic characteristics with look of
action.

And to do it right, it's very expensive. And to
have a policy that if it was set up properly, would allow
projects to be designed and create public amenities with
the funds necessary to do it, with these kinds of
amenities that would -- that would allow public to come
to these areas and enjoy it.

For example, parks, plazas, public art, exhibits,
things -- things that I think Coastal Commission and State
Lands have been very successful over the years in
integrating into projects that have been developed on the
waterfront.

And I think the projects like the Hardage proposal
that have been very sensitive and have taken the time,
working with the community, working with the San Diego
Unified Port District, in coming up with a plan that is
balanced, is the kind of project that we have to work hard
at finding a way to finance those projects.

And I think the key that you're trying to come to
grips with is one that the Coastal Commission -- the
commissioners have had the same issue with. And I think
that if we could create an environment that you set up
some -- some criteria that would allow these kinds of
decisions to be made so that you have a review process
that establishes the -- the opportunity to create the
public benefit, allow affordability for those that could
come in and take advantage of a one-week-a-year vacation.
Even if it was a timeshare, I could book any hotel in
Southern California a year in advance, for a week. You
can do that all day long. But it's not as affordable.
And if you have a timeshare element, I think it gives more access to more -- more of those that want to come back to the coast on a regular basis.

The remainder of the time, that these units are not in that exclusive use, they are open to the public, and they operate as hotel rooms. So I would hope that this leads to more dialogue and opportunity to have the Committee and be able to create an opportunity to allow this kind of -- of financing and public amenity venue to be integrated into the total mix.

Thank you.

CHAIRPERSON WESTLY: Thank you very much. Again, trying to move things along.

Commissioner Dukie Valderrama.

Again, you are not compelled to speak for the full three minutes. I know we're hearing a lot of the same arguments.

MR. VALDERRAMA: Thank you very much. Dukie Valderrama, Port Commissioners, representing all of my fellow Port Commissioners for San Diego.

First of all, I want to welcome you to San Diego. Basically, we -- the Port Commission spent three months reviewing this particular issue. I mean, we did our due diligence. As Port commissioners, we take our fiduciary responsibility very seriously. And that's why we spent
three months looking at this particular issue. Where we're at, at this given time, is, you know, I come from a very big family, and I represent the City of Nash City [phonetic], which is one of the poorest cities in the San Diego County.

And we had a family, and as I indicated, I come from a very big family. I have 13 aunts and five uncles. So you can see, I come from a big family. We had a family meeting. When we had my family meeting, I asked everybody there --

COMMISSIONER BUSTAMANTE: Is that how you got elected?

(Laughter.)

MR. VALDERRAMA: That would always help.

And I asked my family, "How many of you have been to Port Tideland Properties, in any of the hotels?" None of them have ever been to the Port tidelands, because they can't afford it. But I asked every one of them, at that family meeting, "How many of you out there have timeshares?" And some of them have raised their hands, because they can afford timeshares and they were able to go to nice facilities that they would never have been able to do.

So timeshare, contrary to what your staff's position is, is that -- it's only for the elite. No, it
allowed my family to be able to go to nice properties that they would never been able to do before.

So as a result of that, I encourage you. Our Commission, it is fully -- it supports this thing, and I ask that you also consider this.

Thank you.

CHAIRPERSON WESTLY: Thank you, Mr. Valderrama.

Mr. Wilkens, Port of San Diego.

MR. WILKENS: Port staff is here to answer your questions.

CHAIRPERSON WESTLY: Great, thank you. We still have about 20 more speakers. So I'm going to move this along.

Mr. George Palermo. And Gerri Retman, if he or she could be on deck.

MR. PALERMO: Chair Westly and Commissioners, my name is George Palermo. I represent 5th Avenue Landing Developer at the Spinnaker Hotel, here in San Diego.

And I would like to make a few points: One, I can tell you that our hotel is not financeable without having some component of an equity share concept, and it's somewhere between 20 and 30 percent.

And if we can get that, then we could build our hotel. Otherwise, I'm afraid it won't be built. Another point I would like to make is -- and I -- it's a question
and I know you don't have to answer it if you can't: I don't understand how we can ignore with the Coastal Commission does. You know, they're an agency much like you. The last thing they would do is deny access to the public, so how is it they can approve equity share-type projects when your staff can't even consider recommending them.

I really don't think you said that. So some day I would like to get an answer from staff as to why the Coastal Commission allows it and you won't.

COMMISSIONER BUSTAMANTE: You will get one today.

MR. PALERMO: Okay. Good.

Another question I have is, I took the opportunity to read some of the information -- I mean, all the information was available to me and I was able to read some of it. And as I read it, I didn't think the information was complete. And when I heard your attorney, Mr. Fossum, speak, I realized it wasn't.

I heard Commissioner Valderrama speak, and I know what this port went through in order to make the decision to support this. They weighed the strengths and weaknesses of this concept. They looked at the pluses and minuses. And I think that's what is deficient in your staff report.

I didn't see any strengths pointed out to you. I
didn't see any pluses. All I saw was weaknesses and negative comments.

And I think in order for you guys to make the best decision, you need to have all the information. You know, certainly, I go into court and they swear you in and they tell you to tell the truth, sure you will, but the whole truth and all the truth. So I think you got the truth, but I don't think you have the whole truth. And I think you need more information in order to make an informed decision.

So I would hope you would consider deferring this and get the information, obtain it from interested parties, much like your staff has an interest in where they want to see this go; and also obtain information from disinterested parties so you can look at all three sources, look at the strengths and weaknesses, and then make a decision.

Lieutenant Governor Bustamante made a comment complimenting the staff at being at the forefront and the cutting edge of many issues. And I think this is an issue. You have an opportunity, here, to be at the forefront and the cutting edge of setting a policy that will allow this state to continue with hundreds of millions of dollars of development, tens of million dollars of revenue to the related ports. And I don't
think it's an opportunity you should pass up.

Thank you very much.

CHAIRPERSON WESTLY: Thank you, Mr. Palermo.

Let me just point out, we received volumes of
information here and we've looked at a good deal of it.

So please note how much time and effort has
already been expended on this.

I want to acknowledge Mr. Dick Ragatz, who's
kindly given his time to his president of Ragatz
Associates. And he's willing to answer any questions, if
necessary.

Thank you.

Gerri Retman, San Diego Port.

MS. RETMAN: Is that -- is that -- I'm speaking on
the opposite.

CHAIRPERSON WESTLY: Okay. We're going to hold
off and call you back in a moment.

Thank you. Next is Papa Doug Manchester, chair of
the Manchester Financial Group.

UNIDENTIFIED MALE: I think he had to leave.

CHAIRPERSON WESTLY: Okay. Colleen -- I was
curious to see. Colleen Manzer and then John McNab, and
we'll move on to all of the people on -- wishing to speak
in favor of the item.

MS. MANZER: Good afternoon. I wanted to read two
letters that came from me: One from my sister who wanted to be here, but she's busy having a baby; and the other from actually a very good friend who's a nurse and working.

The first is from Julie Redner [phonetic], and she said she wanted to talk about how timeshares had a positive impact on her ability to go, as a family, on vacation. And she says, "We have been able to go on formal vacations with our family because of a timeshare program. My parents-in-law own a timeshare and have shared it with their entire family."

Trying to make this quick. "What makes the timeshare concept so great was that the family with young children were able to travel to wonderful destinations. Also, by cooking meals in a timeshare together, it enhances the camaraderie between the adults and eases the stress of not having to take small children to a restaurant, as well as saves us money.

"The money we save by eating in allowed us to have and see more area attractions, making the vacation much more memorable. And all in all, my family has been positively impacted by a timeshare experience, and I hope that we continue to have that ability in San Diego."

The second, from Marilyn Gilberteen [phonetic], who's a nurse, says, "I have been a timeshare owner for
close to 20 years. I have had the chance to travel at
reasonable expense to these places, without the worry of
expensive hotels, for example, at the height of ski
season, which is my favorite.

"On many ski vacations, my family and guests and I
have been able to further curtail our vacation expenses by
cooking multiple meals in the kitchen at the timeshare.
What a wonderful feature to have included in a timeshare
vacation. The opportunity to travel and see the world and
know that options to continue to do so, at a reasonable
cost, have made me a believer in the benefits of timeshare
ownership. And I recommend it to my friends for years."

Thank you for my chance to speak.

CHAIRPERSON WESTLY: Thank you, very, very much.

John McNab.

MR. McNAB: John McNab. My apologies. I marked
the wrong box. I was opposed to the project and fully in
support of the staff's position.

CHAIRPERSON WESTLY: Can I come to you, back in
minute? Just want to get everybody in the same -- if we
can hold on -- we've asked to do this in a certain order.

I would like to ask -- Gerri -- we'll come back to
you -- John, rather. Forgive me.

Jerry Butkiewicz, secretary treasurer of the San
Diego Imperial County Labor Council.
Mr. Butkiewicz. I would like to note,
Mr. Butkiewicz, is a nationally recognized labor leader.

MR. BUTKIEWICZ: Thank you, Mr. Westly. And I
also want to thank you and other commissioners for your
service to the working class people in the state of
California.

I would like to speak in favor of the staff's
recommendation. Labor in San Diego has been working with
the environmental community on Public Trust issues. We
agree with the environmental community and your staff that
the timeshares are inconsistent with the Public Trust
Doctrine.

The working class people in this community are
counting on you to not let this domino start here, the
taking away of the public right access to our public
tidelands. Timeshares lead to condo-hotels, then straight
condos, until we limit working class people's public
access to our coast and our beaches.

At least if it's a hotel, we can buy one night and
enjoy the view of our coast. I must admit, for this
project to be the test case, is a slap in the face to
working class families in California.

I am proud to say that the labor movement in San
Diego County has a history of working with employers and
developers to grow our economic development in San Diego
County. But for this particular company, Woodfin Suites, to ask the public to capitulate to an employer-developer who has no respect for working class families, in fact, refuses to follow the laws like livable wages, and to ask working class families to give up our public access to our beaches and our coasts, is an insult.

I would like to tell you that me and my wife were recently in a timeshare presentation within the last month. And I couldn't help but sit there and look at what I would have to assume would be lower income families being pressured in a room to buy a timeshare. If any of you have been in that situation -- it's a pretty sad situation, especially when they slid the paper in front of my wife and I and were hoping we were so stupid, that we didn't understand what 12 percent interest rates meant.

They do tell you, today, how many timeshares are bought by working class people, but they fail to tell you how many foreclosed timeshares there are on working class people.

I would suggest you go home and click on ebay and click on the timeshares and see how many foreclosed timeshares there are.

I would suggest that they aren't people who make over $50,000 a year, that were foreclosed on. I would suggest that they were those people, working class people,
who got pressured in that room to buy that timeshare.  
Please, I urge you to support your staff's 
recommendation. Don't let this domino start here. It's 
the people of San Diego and the people of California who 
elect you, that represent everybody. I don't very often 
disagree with our Port commissioners and our Port staff 
here. But you need to remember that they are politically 
apPOINTed to that Port staff. And there is pressure on 
them that isn't on you, Steve, because you're elected by 
the People of California. So stand up for the People of 
California, protect our coastline, and protect our 
beaches. Thank you.

(Applause.)

CHAIRPERSON WESTLY: Thank you, Mr. Butkiewicz for 
that presentation.

I would like to ask Ms. Laura Hunter, campaign 
director, to come forward.

MS. HUNTER: Good afternoon. My name is Laura 
Hunter, and I represent the Environmental Health 
Coalition. And I too strongly urge your opposition to the 
Woodfin-type kinds of projects. I understand, and I hear, 
that Woodfin would have you believe this is just one 
little part of one little project and don't look very 
hard, you would hardly notice it. But it's really not 
true. It's really going to be a Pandora's box. It's
going to open a whole flood of this kind of development, that's going to just really cause serious problems with public access and development on our coast.

Your staff has a broader view of what that means. They have a longer-term view of our precious public lands, and we really strongly urge you to turn this back at this point. This is precedent, and this is a very negative precedent. I'm sorry, if hotels are expensive to build, than let's use some more public campgrounds. I mean, if you want to have affordable visitor-serving experiences, those are inexpensive to build, and almost anyone can go visit those. But this is really going to start a flood of development that will be very, very hard to turn back.

We're also very concerned with this kind of action, what it would do to threaten the progress that we've had made to the Chula Vista Bay Front Master Plan that will be here, in front of you. In terms -- I think what you are seeing is kind of a division between the haves and the have nots. You talk about, whoa, this is great, because if you make $50,000 a year, this is affordable to you. Our members are living on 10 and 15 and 20,000 thousand dollars a year. This is not going to be the kind of development that they are going to be able to benefit from, but in fact, it's going to accelerate and exacerbate development that's going to increasingly cut
out their opportunities to be there.

We ask you to indeed make a decision today, set a
very strong direction that you are not going to support
this kind of activity on the state tidelands. I get that
it's happening on private lands, within the coastal zone,
but these are our precious public lands.

Please leave this can of worms solidly closed.

Thank you.

CHAIRPERSON WESTLY: Thank you, Ms. Hunter.

Mr. McNab, it is now your turn. Thank you for
waiting patiently. And if Molly Rhodes could please be on
deck. And again, we still have another 15 or so to go.
So if we can move this along, I would appreciate it.

MR. McNAB: John McNab, San Diego.

We've had nothing put problems with the Public
Trusts in San Diego. The training center, over half of
the tidelands were illegally extinguished. We have a
problem with Navy Broadway right now, where it's all going
into office buildings, without any ability for the public
to comment on it. This, again, is a trend by the same
people, same lawyers, continuing to bring these same
projects in San Diego. It's almost like we have become
the center around the state as far as public planning
policy. This is where it needs to start changing.

The public has most certainly voiced what their
priorities are with the passage of Prop 40 and the recent park bond initiative. They want investment, public investment in their infrastructure, and in their lands. This is our prime land. You can't go out and buy this. This is the best we have. And it shouldn't be made to be more profitable for these people.

I was up in -- in San Pedro for the Coastal Commission hearing, and all that -- that Board was seven developers and only one public advocate advising the Coastal Commission. And what they said is if we don't get these through, we won't be able to get a 20 to 30 percent net profit margin. They said, "We can't make obscene profits." And they said, "We can't continue to pack the coastal five star resorts unless we do this." Five stars are not affordable to the average Californian.

We need to take a look at what is our priority. And let's start moving towards low cost hotel rooms that serve the average Joe in California.

And the other issue that we have is that constantly -- all these policies that come down here. Every time you say something, it gets bait and switched. The policy that you set, it wink, wink, wink changes. And pretty soon, you got something worse than what you have approved. So we appreciate this one line in the sand.
And I personally spent over $10,000 on lawsuits on Public Trust cases. Keep it there, so at least we have a fighting chance to keep them.

Thank you.

CHAIRPERSON WESTLY: Thank you, Mr. McNab.
Molly Rhodes, if you could come forward. And Graham Forbes, if you could be on deck.

MS. RHODES: Hi. I'm Molly Rhodes with Unite Here.

And just -- I can be quick. I pulled some census data for you all about the state of our middle class in California. I noticed, the applicant's attorney said that 18 percent of buyers of timeshares earn less than $50,000. They said 50 percent make between 50 and a hundred thousand. They didn't mention the remaining 32, which has got to be over a hundred thousand.

And the sheet that I'm passing around begins with a quote that I saw in a recent business news journal saying that timeshare owners are affluent; the medium income is $74,000 for recent buyers, and $81,000 for all owners. And that was out of a national survey.

And then you will notice that the median income for all Californians is $51,000. And then, I was also at the Coastal Commission Workshop, and there was a lot of talk about how do we get low cost visitors services for
people in the non-coastal cities, so coastal cities tend to have -- we can go to the beach, we can get our car and go.

So there was a discussion about the non-coastal cities. And so I pulled the census out on those, and those cities are all under $50,000.

The highest is Santa Ana, which I suppose they can drive to the coast. But working class people, like, they stay in their neighborhoods; they don't -- they don't go to affluent neighborhoods where they are not comfortable.

And then Bakersfield is 45; Chico is 32. So, you know, these are not -- it's a bunch of rhetoric that these are for working people, basically.

So thank you.

CHAIRPERSON WESTLY: Thank you very, very much.

Mr. Forbes, can you please identify yourself.

MS. RHODES: Hi. My name is Graham Forbes, and I'm also with Unite Here. And I appreciate your time.

This timeshare project is about which segments of our society will have access to our coastal areas and to what extent the State will allow developers, and not the public, to shape our coastal cities.

Not only do timeshare units on State tidelands restrict access to the minority, who can't afford to pay the thousands of dollars required for the initial purchase
and ongoing maintenance fees, but they also drain resources from the communities where they are developed.

We are currently experiencing a state and local budget crisis. Resources for our parks, community centers, schools, and other public services are drying up. Transient occupancy tax is a crucial revenue source for cities throughout California. And timeshare owners are not automatically subject to pay their fair share.

Imposing TOT takes place at the local level, and there's no guarantee that private interests will succeed in shedding this financial obligation, leaving the burden to local residents.

The timeshare industry is organized and actively working against local efforts to assure that timeshare owners contribute to the communities they are enjoying.

The American Resort Developer Association self-entitled the Vacation Ownership Industry Interest, boasted its steady and strategic owner advocacy and has generated an impressive list of legislative and regulatory triumphs.

This includes strong opposition to tax the visitor, not the voter, campaigns that work towards sustainable development and fiscal responsibility.

Concerning timeshares on Trust lands, your staff has written that the potential benefits of such an
arrangement floated to developers and sellers of the units and not to the public.

Given our City's financial condition and the industry's determination to resist just contribution, now is the time -- now is not the time to dole out public land to assure greater profits for developers at public's expense. We urge you that you support the staff recommendation and reject the Woodfin timeshare proposal.

Thank you.

CHAIRPERSON WESTLY: Thank you very much, Mr. Forbes.

Mr. Ian Trowbridge, also from Port of San Diego. And I would like Victoria Cypherd to be on deck.

MR. TROWBRIDGE: Mr. Chairman, Commissioners, I can be very brief.

First, I want to say what a -- what a wonderfully well, reasonably-sized report was made by staff on this issue. I wish some of the people down in San Diego City could have come and seen it.

Two things: One is, this is precedent setting. And what Perry Dealy didn't tell you while he is here, is that he is the manager for Papa Doug Manchester's Navy Broadway complex, which depending on which day of the week it is, he wants five condo hotels on that property. And so there's a little bit of self-interest there.
I'm simply a retired scientist. I have no financial interest in this matter at all. And so that's important.

The second point I want to make is this issue of the Coastal Commission stuff, Coastal Commission stuff is going to really look at the Navy Broadway development, because it's basically -- it's based on an EIR that was produced in 1990. And we actually have an appeal in front of the city council, because we don't think a 16-year-old EIR is valid anymore.

But the point is, the Coastal Commission rejects the idea of condo hotels and stuff. So I don't think it's true to say that they are in favor of it all the time.

And then I will leave it at that and let other people speak. Thank you.

CHAIRPERSON WESTLY: Thank you very much, Mr. Trowbridge.

Victoria Cypherd.
Again, we still have quite a long list. So if people could be brief, I would be appreciative.

MS. CYPHERD: Victoria Cypherd, Solana Beach.

CHAIRPERSON WESTLY: Tracy Weiss, if you could please be on deck.

MS. CYPHERD: If the State Lands Commission votes to approve this project, it will be setting dangerous
precedent that will have enormous cumulative negative
impacts statewide. You will be giving ownership rights
away forever, to benefit a private developer, by allowing
Public Trust lands to be converted to private residential
use.

You will be opening up our entire coastline for
similar exclusive "condotel" and timeshare projects.
These developments are lucrative for developers but will
generate no additional review for the Port and citizens of
California.

And I would like to add that I also attended the
meeting in the Coastal Commission meeting in Monterey,
regarding the KSL project condotel. And I also went to
the hearing, or the workshop. And I was -- someone
mentioned earlier, you know, the Coastal Commission
approved this; why don't you?

Well, the Coastal Commission staff was unanimous
in their objection to this, and they had really wonderful
arguments, valid arguments, similar to what your staff has
prepared.

And that particular developer, KSL -- I just
thought about this, listening to the developer speak. The
same developer spoke about how he couldn't afford to build
his hotel on the last remaining Oakland bluff in
Encinitas. This gentleman also owned the Hotel Dell
[phonetic] and the La Costa Resorts, where you are seeing condotels.

I believe that's it. I just had to say, I was really shocked because the Coastal Commission staff had such good arguments that the Coastal Commissioners, themselves, voted against it. And there was a strong -- within the workshop. I concur with the previous speaker there was a strong -- what's the word I'm looking for? It was primarily developers, very few people speaking for the environment.

Thank you very much.

CHAIRPERSON WESTLY: Thank you.

Ms. Weiss, would you please come forward? And if Mr. Charles Yip could be on deck.

MS. WEISS: Tracy Weiss. I live in Solano Beach. I'm just here; I have no financial profit motive whatsoever.

I would just like to repeat what everybody else said, but I won't. I will just say it's -- doing condotels or timeshares, it's basically a money mechanism for the developer, does not help the people, does not help the state, they don't get anything. They can go ahead and build their hotel anywhere. So it's basically a funding mechanism to presell the units.

CHAIRPERSON WESTLY: Thank you very much.
Mr. Charles Yip, could you please come forward.

MR. YIP: My name is Charles Yip from San Diego.

I would like to give my time to Ken.

CHAIRPERSON WESTLY: Absolutely.

MR. ELLIOTT: Good afternoon.

CHAIRPERSON WESTLY: Good afternoon.

MR. ELLIOTT: My name is Kenneth Elliot, and I have been employed in the hospitality industry for about the past four years. I'm here today with my union coworkers to speak in support of your staff recommendation.

Many of the hotels are on public land. We testified at the city council, when a Hyatt Hotel was purchased last year. We understand -- we understand about the lease transfer and how important it is to have hotels to bring the public to the coast. But we don't like the idea of selling our state public land in timeshares.

We work hard but we can't afford to buy one of these ourselves. We also do not like giving the hotels an opportunity nor the developer has had. The Woodfin response to the Emeryville's living wage law shows disrespect for the workers and for the law. If they disrespect one law, why should we expect them to obey others.

Please vote in favor of the staff recommendation.
to prevent the sale of our lands.

Thank you very much for your time.

CHAIRPERSON WESTLY: I thank all of you for being here. Thank you very, very much. Thank you, Ken.

MR. ELLIOTT: Thank you.

CHAIRPERSON WESTLY: Mr. -- Ms. Sandra Smelik, if you could come forward. And then our -- then Gerri Retman, if you could be on deck.

MS. SMELIK: My name is Sandra Smelik, and I have been a timeshare owner for, like, 25 years. We have nine children. All of those kids have been able to use the timeshare. My parents have come from the Midwest and had not -- had we not had the timeshare when they had time to spend there also, they probably wouldn't come out as often. So it has been not just us that bought the timeshare venue, but a complete family. And the family goes on. They all have children now.

They are using those timeshares. It wasn't just for an individual.

And it's in this county. I'm not living at the beach. To rent any type of housing on the beach today is prohibitive. It -- it costs to such. This allows so many people to enjoy one small space and enjoy the beach.

So the 25 years of ownership has been wonderful. So I beg you to reconsider this. It is a benefit to all
families.

Thank you.

CHAIRPERSON WESTLY: Great. Just want to point out, Ms. Smelik is speaking in opposition to the staff report.

Gerri Retman and then Mr. Reznik, you will be a final speaker. And then we can move forward on this issue.

So I would like to keep the momentum going.

MS. RETMAN: I will try to be brief. Gerry Retman. Thank you for this opportunity.

I think the staff did an excellent job outlining the reasons as to why timeshares are inconsistent with the Public Doctrine.

I would just like to say that I also attended those Coastal Commission hearings and workshops, and I listened closely to the Woodfin developers go to great lengths to explain the difference between timeshares and condotels, which someone referred to as a slippery slope, and I do agree.

When I attended those hearings, I recognize much of the same lingo. They are claiming that, you know, condotels and timeshares, we can't build them unless we have this upfront money, and this is why we have to do this. So I do kind of think that condotels and timeshares
do have a similar component there. And that is that they make exclusive what is meant to be very public.

And so I would also like to comment that the reason I'm here is because there are -- these projects are so lucrative to the developers that we are starting to see such an increase in the number of applications at the Coastal Commission for conversions of regular hotels to condotels. And this is going to be a huge problem. It's going to prioritize the entire coastline, eventually.

So I think this is a good start here, for you to just deny this. Don't let this start. Please don't allow this Woodfin project. They only have a small component that they are asking for timeshares. And if they can build that as all hotel, then let them do that.

So thank you very much for your time.

CHAIRPERSON WESTLY: Thank you very much.

Mr. Reznik?

MR. REZNIK: Thank you for this opportunity to speak. My name is Bruce Reznik, the director of San Diego Coastkeeper. I guess we started some of these problems.

I'm here obviously to support the staff recommendation. I think they have done a tremendous job, both with the report and presentation today. And I don't mean to delve into the details of that, but we really appreciate the work that they've done. I would also urge
that this does not get further delay. It's been delayed once. It's been on the road for a year. There's a tremendously detailed report. You have heard tremendous testimony from the public on both sides of the issue.

We cannot allow these wars of attrition to continue when this happens over and over again. And, you know, clearly, I think the delaying tactic that we know this is the last meetings of a couple commissioners, I think it's pretty easy to get what the intent of that is.

I would like to talk about our coast. We lose our coast; we are losing our coast and access to our coasts every day in California, through overdevelopment, through loss of beaches, because of the armoring of our coast. Even pollution denies us access.

This is a place where, as Mr. McNab said, we need to draw a line in the sand on our Public Trust lands and public tidelands. We cannot let this further erode public access to our coast.

This is, as has been pointed out, a slippery slope of where we go from timeshares to condotels to condos. And the other thing that was telling to me, and I was actually trying to bite my tongue and not put in a speak slip, but I wonder what San Diego people are living on. Because the San Diego I heard on this side of the room is very different from the San Diego I heard on that side of
We talked about, this is the same as a Ford, you know, F-150. The people in San Diego need that the Ford F-150 to get to work and have a job. And most San Diegans are like me, praying to God that the housing bubble that's bursting here in San Diego doesn't turn our mortgage upside down so we're left out in the cold. We're hoping that our apartments aren't converted to condos, which is happening at an alarming rate, and our rents don't shoot through the roof.

I think it's an amazing amount of disconnect, and we're talking about the amount of profits for Mr. Manchester and the folks. And I hate to show the division, but this side of the room versus the real concerns of working class people are just desperately trying to maintain our access to the coast.

So thank you. Let this end here, and we appreciate all the work you and your staff has done.

Thank you very much.

CHAIRPERSON WESTLY: Thank you, Mr. Reznik.

At this point, I'd like to ask either of the other commissioners if they would care to ask questions.

Mr. Bustamante?

COMMISSIONER BUSTAMANTE: We have a -- we have a 1982 document, and we have a 1996 document. So for the
tiebreaker, the gentleman said he loved you.

(Laughter.)

COMMISSIONER BUSTAMANTE: So can you give us what
the current attorney general is thinking.

ASSISTANT ATTORNEY GENERAL HAGER: The current
Attorney General's Office has an opinion in 1996. The
opinion in 1996 says that timeshare resorts are not, per
se, incompatible with the Public Trust. But if -- if the
project will provide for significant use by members of the
general public and further Trust uses by increasing
opportunities for public access to the shoreline and
water-oriented recreation -- and that's a determination
for you to make in your discretion.

COMMISSIONER BUSTAMANTE: So does the current
attorney general accept that opinion as his own?

ASSISTANT ATTORNEY GENERAL HAGER: Yes.

COMMISSIONER BUSTAMANTE: Okay. Timeshares versus
hotels. I saw the chart. And I have had a briefing.

You know, there was a -- there was a person who
made a comment about $2500-a-night rooms versus other
kinds of rooms, and that we wouldn't be here, talking
about it, if they were expensive per night rooms.

Do we have a policy that -- that restricts
affordable -- affordable rooms, affordable facilities
along our coasts, either by default or by design, and
allow for the more expenses -- expensive facilities to be able to take place?

EXECUTIVE OFFICER THAYER: No. There's -- the Public Trust Doctrine doesn't go to that issue at all.

COMMISSIONER BUSTAMANTE: But if we have a policy in place that, by default, allows for more affordable, is it -- does it make a difference at that moment or at this time, whether it's stated or not, but because of the unintended consequences of a policy, we are only allowing more expensive facilities? Isn't that a problem?

EXECUTIVE OFFICER THAYER: It could potentially be. And of course, the Commission would need to evaluate whether or not, in the whole of the context, you're asking about timeshare versus hotels --

COMMISSIONER BUSTAMANTE: At this point, I'm just talking about -- I'm not talking about the issue of the timeshare or a condo.

I'm talking about the unintended consequences of policy that we have. Because I was a speaker of the Assembly. I wrote a lot of unintended consequences in the bills.

(Laughter.)

COMMISSIONER BUSTAMANTE: The unintended consequences that were actually unintended sometimes have very dramatic consequences in terms of how it affects
people.

EXECUTIVE OFFICER THAYER: Absolutely.

COMMISSIONER BUSTAMANTE: Do we have a system, right now, in place, that does not incentivize -- that does not incentivize affordable mechanisms by which public have access to our beaches? I mean, the idea of having public access and finding places where people can actually gain access to what was previously sort of domiciled, made unavailable for access, to our beaches, is something that we've been fighting over. And we have been extremely aggressive at making sure that we have -- so that the folks from east L.A. and South Central can access the beaches of Malibu. And there's no clearer policy that we have made in this -- it's about having access. And so do we have a policy currently that, by default, is not allowing affordable facilities?

EXECUTIVE OFFICER THAYER: I don't believe so. And --

COMMISSIONER BUSTAMANTE: Make a brief case.

EXECUTIVE OFFICER THAYER: My briefcase would be -- it's under the table.

(Laughter.)

EXECUTIVE OFFICER THAYER: But my brief case is that the State reacts or has a variety of planning mechanisms for development along the coast. And the State
has responded to the very issue you're talking about, in
the provision to the Coastal Act, which encourages and
requires affordable housing to occur. That's not
inconsistent with the Public Trust Doctrine. And it's not
something that's created a problem for us. And we think
it's the State's approach to dealing with that issue.

ACTING COMMISSIONER SHEEHAN: Under the City's
General Plan, is that what you're talking about?

EXECUTIVE OFFICER THAYER: No. Under the Coastal
Act. The Coastal Act itself encourages low cost,
affordable accommodations and cities that adopted the
local coastal programs, which our general plan -- were
required to include that within their own planning.

So although we, at the Lands Commission, look at
as many issues as we can -- in fact, as a State, this
issue has been addressed.

COMMISSIONER BUSTAMANTE: You know, because I
think that having access to our beaches is a major
concern. Whether it's by default or by design, elitist
access to our beaches is not acceptable. It's just not.

I don't -- this is not -- this is not San Diego's
cost. It's not Santa Barbara's coast. It's not
Monterey's. It's California's coast. In fact, one could
say it is the world's coast.

And so having access to it is something that is
extremely important to me, but it's also extremely
important to all the inlanders and all the Californians
and some, even, Californians who live near the beach but
can't afford to actually go there. It's extremely
important.

And so having mechanisms and policies in place to
try to accentuate that and to try to enhance and nurture
that, I think, is extremely important. And so, you know,
taking a proposal out of hand and saying something is not
acceptable, I think, is something that we should open
ourselves up to for possibilities of these kinds of
activities.

But -- and I think also that beach communities
ought to be held responsible and ought to be required to
ensure that they have affordable and accessible facilities
that are built into their plans as a master plan for a
city. They have a responsibility, as far as I'm
concerned, to the rest of the city -- not just to
themselves, but to the rest of the state, to make sure
that we are going to be having access -- affordable
access.

I don't think that this proposal has made that
case. But I do think that the issue needs to be aired out
fully. I think that the case has to be made on behalf of
those people who are not here to talk about it. I think
whether you're a surfer or you're just a poor working guy from Fresno, you ought to be able to have access to California's beaches. In some cases, you wouldn't want to have access, the way we're polluting our coasts. And with the huge amount of pollution that we're draining into it, you probably ought to be very careful what days you go there.

But the fact is, that having access, affordable access, is extremely important. And we ought not allow ourselves to fall into a state of slumber on a public policy that, by default, does not allow that access.

So I would support the staff recommendation. But I think the debate has to be continued.

CHAIRPERSON WESTLY: Great. Thank you, lieutenant governor.

I would like to make a quick comment, because I have to go to the airport to attend another event. And I'm going to ask my deputy controller, Ms. Aronberg, to vote for me.

I would like to thank all of the members of the public, on both sides, that have come out. This is a very complex issue, and I appreciate your strong arguments on both sides.

First, there have been calls by the opponents to the staff report to postpone this issue, to read more, to
learn more. I just want to say, while you have spoken very articulately, I have read voluminously about this and I'm very clear on the issues here, again, complex issues. But I believe, strongly, we should vote on this issue today.

Second, on balance, I believe timeshares, you know, can be positive institutions. Many people enjoy them. I appreciate the testimony today.

I believe that they are, by their nature, exclusive and do not meet the nature of the Public Trust Doctrine.

Two points here: First, I want to be clear in saying I fully understand, these are not the vehicles of the super rich, but neither are they accessible to everybody. It's quite clear, and by your own data, 18 percent of the people who are using them earn less than $50,000. 82 percent are earning over the state's average income.

A comment was also made by Mr. Butkiewicz. I just have to comment on this, personally, that many people go to what are very high pressured meetings for timeshares. Unfortunately, I have to confess, I have been to two of these meetings. I was on the faculty at Stanford's Graduate School of Business at the time, with my wife. In both cases, I raised two questions: What are the interest
rates here? The consumer needs to know this. This is an important question. The interest rates, frankly, were exorbitant. I raised that question.

I asked, "What are the foreclosure rates?"; basic fundamental things that consumers should know.

In both cases, I was asked to leave.

(Laughter.)

CHAIRPERSON WESTLY: But that is not the fundamental reason for my position. My position is that, on a legal basis, I do not believe this meets the Public Trust Doctrine.

As a result, I would like to make a motion that we pass the staff report. I know, before we do that, Ms. Sheehan has some very thoughtful questions for you.

I wanted to, again, thank all of the members of the public, on both sides, for being here.

I apologize. I have a commitment, and I have to be at the airport. But I wanted to emphatically say what a good job I thought the staff did with a complex issue, how strongly I support staff's report. With that, I'm going to hand the gavel over to my able deputy controller.

Before I do that, I would like to ask Ms. Sheehan to raise the questions that you have.

ACTING COMMISSIONER SHEEHAN: I've got a couple of --
COMMISSIONER BUSTAMANTE: Second the motion.

ACTING COMMISSIONER SHEEHAN: A couple of questions, and I would like for the opponents of the project to maybe to -- I don't know, to come forward and clarify; and then also possibly some of the people who were concerned.

You know, I came in very sympathetic to where the staff is, understanding many of the issues. But I guess the problem I have is I'm not, unlike where the lieutenant governor is, in terms of -- it was like we don't want the timeshare that the hotels potentially that come in could be much more expensive. I mean, if we look at those two hotels that are next to that project now, I'm not sure what they are at night, but I know they are not cheap in terms of that.

So I would agree with the lieutenant governor that we could potentially be creating a -- you know, an even more exclusivity by doing this.

I also have some questions on -- which is why I would encourage a better discussion. This is probably the best discussion I have been party to in terms of this entire issue. Really understanding the concerns. I would love to continue this, as I've discussed with the staff, and having an entire hearing on condotels, timeshares, for me to understand what these issues are. I need to know
the process the Port went through in terms of some of the
changes that were made. I heard a lot about these two
weeks, 29 days, 30 days, you know, what really is the
bottom line in terms of this.

The transient occupancy tax was raised. I don't
know whether they pay it in these hotels, whether they
don't; how that's handled. I would have a lot of
questions on that.

The economics of how these projects were versus
the economics of just a hotel project. I know a couple of
speakers said, you know, some people would say, this is
the way they are financing it, understanding, you know,
from -- whether it be from some of the bankers or whomever
do these types of things, how those financial deals are
put together.

You know, it sounded like nobody will build
another hotel unless they do timeshares. I don't know
whether that's true, but that's what I heard or at least
that's -- that seemed to be communicated.

I must also -- I heard a lot about the cutting off
public access and that you're privatizing. I would ask
the counsel, are we -- are we handing over public land to
private ownership? I mean, is that the structure of this
deal?

Are we -- because I heard that from a number of
speakers from this side, that you are privatizing, so do they have title to that land? Because it's my understanding, that is not -- even if we wanted to do that, we couldn't do it easily.

As I say, I have a lot of questions. So I don't know, you know, who would like to address them. But I am concerned. I would like to understand the structure of this before I vote on this.

If the other commissioners want to vote today, I will abstain until I get the answers to some of mine, because I want to understand, really, this whole thing. I'm concerned about the Coastal Commission. I heard they were opposed, yet then I heard they voted for these projects. I understand they are not on Public Trust lands. But did they -- they have approved projects; is that correct?

EXECUTIVE OFFICER THAYER: Yes.

ASSISTANT CHIEF COUNSEL FOSSUM: On private property.

ACTING COMMISSIONER SHEEHAN: Right. Not on Public Trust lands, okay.

And then I also would like to understand, maybe from the opponents, the timing of this. You know, if the commissioners want to act today, that -- what happens there? If we don't, you know, I would want to commit that
no other stuff would be taken until we come back and get the answers to those. So Curtis or whomever.

EXECUTIVE OFFICER THAYER: If I could first ask, I think we can probably respond to most of those questions today.

ACTING COMMISSIONER SHEEHAN: Okay.

EXECUTIVE OFFICER THAYER: You might have additional questions, and at some point we might have to say we have to get some additional information to you on that.

But I just wanted to say, generally, that the staff has been working on this issue, on one way or the other, since the '96 opinion came out. It was shortly after I came to the Commission. That was one of the first things I looked at, was that decision. There's a lot of discussion of that.

And since then, we've, you know, talked with the proponents here. We met with them last spring. We've talked with the Port. We talked with all sides. I went to that Coastal Commission workshop. The staff report for the earlier scheduled meeting, in October, was available to the commissioners. And we felt prepared then, but we've done additional work since then.

So we think the work has gone into it, but I'm not sure if you wanted to do that today or not.
ACTING COMMISSIONER SHEEHAN: If you can address
some of them, it would be helpful, you know.

ASSISTANT CHIEF COUNSEL FOSSUM: I would like to
address one of the --

COMMISSIONER BUSTAMANTE: There was a question,
also, who I said was going to get an answer today.

EXECUTIVE OFFICER THAYER: Right. That had to do
with the difference between the Coastal Commission and our
approach.

COMMISSIONER BUSTAMANTE: Can you make sure we get
an answer today?

EXECUTIVE OFFICER THAYER: Then let's start with
that. And that is that the Coastal Commission has
approved some of these projects on private land. They
have not had the opportunity to review one on tidelands,
yet, in the same way that none has been approved yet on
tidelands, yet, anywhere in the state, so they haven't
taken that step.

And I would say, the distinctions between the two
entities and why our staff recommendation is different
from what the Coastal Commission itself did on the other
projects, are twofold. One is that public/private
distinction. There are special rules that attach to the
use of Public Trust lands, which are very more limiting
than what they are for -- for the private land.
And in fact, that's the very nature of the Public Trust Doctrine and the Public Trust lands is that, just historically, it was recognized, in a lot of societies, that these are special lands that are supposed to be reserved for particular uses.

And the second distinction is, in fact, associated with that as well, which is that the Coastal Commission acts pursuant to the Coastal Act, which doesn't affect our -- you know, isn't the same sort of legal framework that we evaluate things on. And so they look at the Coastal Act. They make their decisions based on that; whereas we look at, usually, CEQA or the Public Trust Doctrine. And I think that's is the difference.

With respect to the rooms -- excuse me, to the intervals involved with this project, the staff report and the developer are in agreement on what the court -- the Port's action was, which is that the Port approved the sale of up to two intervals a year to any one individual, each interval being one week long -- as long as one week.

I think that what the staff noted in its report is that there's at least the theoretical option that people -- as they do, they trade timeshare -- trade timeshares. Someone could buy a timeshare on another project and trade into this project, and so that they would be able to stay here for a longer period of time.
But staff's view is that these numbers, of whether it should be 14 days or 29 days, or what's the right amount of time, is not central to the discussion -- or to the issue that staff sees it with respect to the Public Trust Doctrine. And that's an exclusivity that goes to the privatization issues that you raised, which is that for no matter for how long, the point is that people have purchased -- now they are -- are they an owner or not? They don't really own the land, but they have purchased a lease, and that gives them an exclusive rights to a room.

Now, the developer has made much of the fact that this room is floating. They are not guaranteed any one room. But the point is, nonetheless, once you have purchased that, you have a right to that room once a year; and nobody else in the public has that. And you have the right to exclude the public from that.

So that's the distinction that we see as most important here, is that -- we're not saying -- again, the developer's representatives have said that this isn't a residential use. We agree with that. I don't know why that's such a big issue.

But the issues of residences and the issues of timeshares are similar in terms of how the Public Trust Doctrine affects them. And that's the exclusive use, that when you look at legal cases, the briefs, the writings
that have been done on residences, all it talks about is
exclusivity of use, that this is public land, and that
ultimately, private use of it in a residence is the
ultimate conversion of private uses.

We are not saying these are residences, but it's
residential blight to the extent that, in timeshares,
people buy the right or lease the right, whichever -- you
know, they are paying a certain amount of money for it, so
that they have exclusive use of a room, whether it's a
single -- the specific room or some other room, and that
excludes other people.

So that answered some of your questions. I'm
happy to go through others or give Mr. Kaufmann a chance.

ACTING CHAIRPERSON ARONBERG: I'm going to chime
in.

As lieutenant governor has pointed out, there is a
motion and the second on the floor. So response to your
question, we're going to definitely vote today.

And perhaps we can hold a quorum for hearing on
this subject. Let me ask staff, how do you feel about
that? And then I also -- we've got to wrap this item up.

The lieutenant governor needs to --

COMMISSIONER BUSTAMANTE: I'm gone in ten minutes.

So whatever we can do to help resolve the issues and
answer the questions.
ACTING CHAIRPERSON ARONBERG: We have people who want to speak on other items.

ACTING COMMISSIONER SHEEHAN: I do have some other questions.

You know, I will abstain today, because I've got questions. I would like to have, you know, a further discussion because it -- as you raise them and I know we've been briefed. I moved by briefing three or four times. It's been a little hectic around the Department of Finance, as you know. So I apologize for that.

As I said, I'm sympathetic to some of the issues. And the issue that Mr. Bustamante raised, I -- I am concerned that we are -- we could be backing into an exclusivity -- not this kind of exclusivity but a different kind of exclusivity. You know, okay, so we're going -- if not this, we're going to have a Four Seasons or a Ritz. I mean, it's like then we really are not going to have people who are accessible. You know, most of us sitting in the room couldn't afford the rates of those hotels.

So that is -- I -- you know, go ahead and take it. I will abstain, not because I'm against or for or whatever. But so many issues were raised today that, you know, I guess it's one member moving forward to encourage further discussion.
I think the type of workshop that the Coastal commission had, it sounds like it was very helpful in terms of understanding some of these issues.

MR. KAUFMANN: I'm happy to answer the questions, quickly, that you raised.

COMMISSIONER BUSTAMANTE: Go ahead.

MR. KAUFMANN: Steven Kaufmann.

Quickly, if you don't take action today, we will put off the Coastal Commission and make sure that you get the chance to take action.

If you do take action today, one of the things that we've been talking with support staff about is an in-lieu fee. Paying an in-lieu fee towards a campground on tidelands and the port, something new, something that we hoped would be developed in this process.

The Port Board has authorized staff to work with us in that regard, and the Coastal Commission recently required that of a condo hotel that it approved.

You've raised the question about what happens. What happens is a couple of different possibilities: One is, they haven't had boutique hotels in the Port. That's a problem. You're not going to get boutique hotels unless something happens, either you raise your prices so it becomes more exclusive, or you value engineer it and you lose some of the public amenities, or the Port comes along.
and takes money that it could use for true Public Trust kinds of uses, because it wants a hotel -- that's what it wants -- with all those amenities.

The 29 days, this Port Master Plan Amendment requires use restrictions. You can't get more than two weeks. TOT, we pay it on the hotel; we pay it on the timeshare.

Cutting off public access? No, we're not cutting off public access. We're going to take something where it doesn't exist, and we're going to make it happen the best it possibly can.

Title to the land is not given away; it's done through sublease. There's no fee title. And as to exclusivity, you can call expedia.com today. If you want to get a better rate on a room, book it in advance, and you get a better rate. And you can get that one week.

I will tell you, I've -- I have one -- when I was married, I had one favorite place that I liked to go to every year. And I paid -- prepaid, March for December, and I never -- I had good time. But I never thought for the week or ten days that I owned a piece of the rock when I left. I just wanted to come back and make sure that I got there.

Again, so I think the problem I have with this is, I understand where this goes, way out there. Clearly, the
Port drew lines on this. It drew some clear lines. And at some point, as a lawyer, I can't say that this isn't consistent with the Public Trust, because it is really in sum and substance. It's the same thing as what you get with a hotel. And the trick is making it happen, making sure the restrictions are there, and making sure that all those public access amenities that you require are a part of it.

So I -- I ask you to give us a chance to work with your staff, and we'll do that, and to work with this Commission.

Thank you for the additional time.

ACTING CHAIRPERSON ARONBERG: Very briefly because we've got to wrap up.

MR. HARDAGE: Yes. Sam Hardage, chair of the Woodfin Suite Hotel.

I think it's very apparent that there is a great deal of information and a great deal of misinformation. And this is a very, very important issue that deserves to be fully explored. And so I would just like to ask that the chairman of the company that's making the application, I would like to reiterate that we absolutely would put off pursuing this with Coastal Commission until an exploratory or workshop is developed to explore these issues as soon as possible, if the Commission is supportive of that.
ACTING CHAIRPERSON ARONBERG: Thank you, Mr. Hardage.
And perhaps, a hearing or a workshop of some kind is in order. But there's a motion and a second on the floor.
So all in favor?
(Ayes.)
ACTING CHAIRPERSON ARONBERG: Opposed?
Abstentions?
ACTING COMMISSIONER SHEEHAN: I will abstain. But I will be going to the workshop.
(Applause.)
ACTING CHAIRPERSON ARONBERG: The court reporter needs a quick break.
So we're going to take a very, very quick, true five-minute break.
(Thereupon a break was taken in proceedings.)
(Commissioner Bustamante did not return for the remainder of the meeting.)
ACTING CHAIRPERSON ARONBERG: Okay. If we could call the meeting back to order. It won't be too much longer. Just a few more items.
Mr. Thayer, we have an item that was taken off the consent calendar, and we're going to hear from you about
it now.

EXECUTIVE OFFICER THAYER: Yes. With the permission of the Commission, one item that was taken off was Item 36, which has to do with the Trans Bay Cable. This is a cable that runs from -- is proposed to be constructed from the Pittsburg area, in the Delta, in northern California, to San Francisco.

This item was placed on the consent calendar because we knew of no opposition.

As the commissioners are aware, about a week ago, we did receive a letter from one individual expressing some concerns. I've been over that letter. The one that seemed -- the concern that seemed relevant to the Commission's jurisdiction had to do with whether or not this project -- first, I should say, I'm not sure this individual is here. It might be worthwhile to determine if there's any opponents to Item 36, in the audience.

ACTING CHAIRPERSON ARONBERG: Is there anyone here on Item 36? I don't have any cards for anyone on 36.

EXECUTIVE OFFICER THAYER: In which case --

ACTING CHAIRPERSON ARONBERG: Seeing nobody.

EXECUTIVE OFFICER THAYER: -- let me proceed, then, to try and summarize what he said rather than -- say it if he were here.

But he had some general concerns about power
planting in California, which didn't seem relevant to the Commission's jurisdiction. However, there was one issue which had to do with whether or not the facility -- onshore facilities at the San Francisco Cable would prevent access for wetland restoration in the Pier 70 areas in San Francisco.

We reviewed this project further and found that he had made comments along these lines earlier in the process, and that the project had been modified, so that a building at the shoreline, there, had been moved back, and so that it was no longer right on the shoreline. I would guess, from looking at the picture, perhaps 75 feet.

UNIDENTIFIED MALE: 200 feet.
EXECUTIVE OFFICER THAYER: 200 feet.

So I think that particular issue has been resolved. We did speak with the individual yesterday. He indicated that he still had some concerns about whether access would occur. We have also spoken with the Port of San Francisco who indicate that they are actually working on a trail in this area, and hope to go forward with that.

So I wanted to make sure the Commission was aware of that. I want to say, we can put things on consent, whether there's opposition. And so this is off the consent calendar, and nonetheless, the staff's recommendation is for approval.
ACTING COMMISSIONER SHEEHAN: If there are no further comments, I will move approval for the staff recommendation.

ACTING CHAIRPERSON ARONBERG: I will second. All in favor?

(Ayes.)

ACTING CHAIRPERSON ARONBERG: The motion carries. Okay.

The next item -- Mr. Thayer, is that right? We have Item 49?

EXECUTIVE OFFICER THAYER: Yes.

ACTING CHAIRPERSON ARONBERG: I know there are speakers here. So I'm going to take it out of order so that these speakers' time will be respected.

Is that okay with you, Ms. Sheehan?

ACTING COMMISSIONER SHEEHAN: Yeah.

ACTING CHAIRPERSON ARONBERG: Item 50 is a resolution supporting the remediation of contaminated sediment in the San Diego Bay.

Will staff please begin with the presentation.

EXECUTIVE OFFICER THAYER: The contaminated sediments issue is one of those that was brought to us by some of the environmentalists in the room, here -- the Environmental Health Coalition and other people.

The problem -- this is a problem in many urban
water areas. The causes are many: urban runoff, industrial discharge, vessel-bottom paints, or shipyard construction, which is the case here.

Many of these factors have now been controlled, but the legacy of the contamination remains.

The contaminated sediment work their way up the food chain, damaging not only aquatic species but ultimately presenting a human health risk. And in fact, here in San Diego, the fishing piers are posted about the dangers of eating the fish here, in San Diego. So it's a definite threat.

In the past couple of years, the Commission has approved several dredging leases in San Diego to help remediate some of the contamination.

In April of 2005, the San Diego Regional Water Quality Control Board issued a tentative cleanup and abatement order for additional contaminated areas in the areas of several shipyards. This is an important first step, but actual cleanup hasn't yet occurred, and the contamination remains.

The Regional Board staff indicate that implementation measures are being developed and that the order will be issued. The resolution before the Commission today urges that this occur expeditiously and to end the threat from contamination.
ACTING CHAIRPERSON ARONBERG: Thank you.
Ms. Sheehan, do you have anything?
ACTING COMMISSIONER SHEEHAN: No, but we can hear the speakers.
ACTING CHAIRPERSON ARONBERG: Okay. Great.
So why don't we start with Gabriel Solmer.
MS. SOLMER: Thank you so much, Chairman Aronberg.
And we do have a PowerPoint presentation, if we can turn that on. I have handouts if we need that.
EXECUTIVE OFFICER THAYER: Oh, great.
MS. SOLMER: Always prepared.
Let me start while we work that out.
(Thereupon an overhead presentation was presented as follows.)
MS. SOLMER: My name is Gabriel Solmer, staff attorney at San Diego Coastkeeper. And I'm also a member of the San Diego Bay Council, which is a coalition of environmental organizations. We're dedicated to the protection and restoration of San Diego coastal waters.
And members of the Bay Council include Environmental Health Coalition; San Diego Coastkeeper; the Surfrider Foundation, the San Diego chapter there; San Diego Audubon Society; and the San Diego chapter of the Sierra Club.
I just wanted to tell you a little bit more about the history. I thank staff for giving you that
introduction. What we have here is almost 50 years of primarily shipyard-induced bay contamination of the sediments which underline the bay. And in 1997, a NOAA report was issued that found San Diego Bay to be the second most toxic in the nation, just behind New Jersey. Not much has changed since 1997. Obviously, we have hot spots and we have environmental and economic impacts from that contamination.

And as staff mentioned, the Port has reposted those piers, fishing piers, with advisories. But really, we think that we need to move beyond warning, to action, at this point.

We push for the pier advisories, but we really need to move beyond there.

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MS. SOLMER: So where we are today, we were here three and a half years ago, before the State Lands Commission, with fishers and their families to ask you to provide your leadership on this issue. So in one way, we have some changes. We have some posted advisories. We have a tentative cleanup order, but there hasn't been much movement other than that.

And thanks to a survey done by the Environmental Health Coalition of the piers, the fishing piers, we know that the majority of the people eating the fish out of the
Bay are minority families, that they eat the fish that
they catch, that they feed it to their families.

We have a draft cleanup and abatement order, so we
are moving in the right direction. It would remove
885,000 cubic yards of sediment and set some protective
standards, but we're not there yet, mostly because that
action and that order has not been implemented.

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MS. SOLMER: So we are pursuing state legislation.
We're working actively with state legislation to make that
happen.

We're reaching out to the governor, to provide
appointments for the Board, the Regional Board, to make
that happen at the Board level. And we're working
cooperatively with the Port District and with agencies,
such as the State Lands Commission.

So what we are asking for today is policy
direction from the State Lands Commission that reinforces
this goal of protective levels of sediment remediation and
protecting the Public Trust.

ACTING CHAIRPERSON ARONBERG: Thank you.

Ms. Hunter?

MS. HUNTER: I'm just here in support of the
resolution.

ACTING CHAIRPERSON ARONBERG: Thank you.
ACTING COMMISSIONER SHEEHAN: Question. Who is the responsible party?

EXECUTIVE OFFICER THAYER: There are a number that are actually named. In the abatement order, a number of them are named. They include --

ACTING COMMISSIONER SHEEHAN: Are they shipping companies, or is this also going back to the Navy?

MS. SOLMER: There are a number -- there are eight named potentially responsible parties. Two of them are the major shipyards: NASSCO and the former Southwest Marine Shipyards. We always have the Navy; we have the City of San Diego; and we have a number of oil companies and refineries: Chevron, Arco, BP, those kinds of groups.

ACTING COMMISSIONER SHEEHAN: And the order -- the abatement order has already been issued. But is it just the enforcement of this? Where are we in this regulatory process?

MS. SOLMER: Well, that is the big question.

The tentative cleanup abatement order has been issued, but it's been stalled at the Regional Board level. We're now waiting for a technical report, which any time you follow the Regional Board, should be out by the end of the week and another two months. So that is our frustration, that the cleanup abatement order was issued over a year and a half ago.
And we're still waiting for that technical support to support those findings. So we think that any action that this Commission can give to let them know that -- that this isn't just an academic exercise; there are people, every day, fishing out of the bay.

So this means a lot. Thank you.

ACTING COMMISSIONER SHEEHAN: I'm happy to move approval of the resolution.

ACTING CHAIRPERSON ARONBERG: Thank you, Ms. Sheehan.

I'm going to quickly make the remarks the Controller would make.

The pollution in the San Diego is harmful across the spectrum. It's destroying the ecosystem. It's harmful to people. As a result, the coastal economy suffers, and that impacts all of San Diego and all of California.

We have a $42 billion ocean economy in this state, and it's value is directly tied to water quality. There's more than 50 years of harmful sediment piled on the bottom of the bay, and we can't wait any longer for action because the risks are too great. As Ms. Solmer mentioned, the Regional Water Quality Board's cleanup and abatement order claimed eight parties, identified 885,000 cubic yards of contaminated sediment to be removed. And it even
identified the cost. Now it's time for action.

This order needs to be final, and it needs to be expedited. And that's what this resolution is asking for. So I think I second the motion. But again, I will second it.

All in favor?

(Ayes.)

ACTING CHAIRPERSON ARONBERG: The motion carries.

Moving now back to Item 49, which is a resolution concerning protection of the Klamath River.

Staff presentation?

EXECUTIVE OFFICER THAYER: Certainly.

Historically, Klamath River has been one of the most important salmon streams on the West Coast. Scientists calculate that over a half million salmon come back to that annually -- historically, not nearly that today.

Other species, such as steelhead, which have over a million coming to that stream, and lamprey, were abundant. These fish sustained local Native American tribes and became an important part of their culture.

After statehood, a commercial fishing industry was established and was dependent on these fish. Over-harvesting by the industry probably initiated the decline of the fish populations, but other factors have become more important today. The most significant are the
construction of a series of hydroelectric dams and the
diversion of water for agricultural purposes.

The low populations of the large fish kill in 2002
and controversy over diversions in Oregon have focused
attention on restoring the river.

There are settlement discussions among the water
users and dam owners, other stakeholders, and government
entities. Licenses for several of the dams are expiring
and requiring removal by the Federal Energy Regulatory
Commission.

Many have suggested that removal of dams which do
not supply a large amount of electricity would be the most
effective measure to help us clear the river.

Dam removal would make upstream spawning grounds
available again, and would result in lower water
temperature. One study states that the dam removal would
be less expensive than the construction of fish ladders
and other alternative measures. The dam removal has been
supported by a variety of stakeholders. The Humboldt
County Board of Supervisors, State Senator Wesley Chesbro,
and others. The Pacific Corp. has indicated that it is
not opposed to dam removal if alternative energy supplies
were available, as property ownership was concerned two
weeks ago. Dam removal on the Klamath was discussed at a
meeting with the Ocean Protection Council.
As chair of the Commission, the Controller participated in this meeting just two weeks ago. Because fisheries are an important public trust resource, the Controller afterwards asked staff to draft a resolution regarding Klamath.

While the official comment period on the dam relicensing has ended, these other settlement discussions are still going forward. So staff believes that adoption of this resolution of this Commission will contribute to that discussion at that meeting.

The resolution urges consideration of dam removal and other measures necessary to restore the Klamath River.

This concludes the staff presentation.

ACTING CHAIRPERSON ARONBERG: Thank you.

Ms. Sheehan?

ACTING COMMISSIONER SHEEHAN: In -- at courtesy of the Controller, I will move the resolution.

ACTING CHAIRPERSON ARONBERG: The controller appreciates that motion.

I know what he would say, if he were here, again, is that the problems are well documented. And what's causing those problems is well documented too. It's time that these dams and the damage they are causing are addressed.

There's a good deal of agreement here from Trinity
County to the California Energy Commission, to the Department of the Interior, and as Mr. Thayer mentioned, even Pacific Corp. doesn't oppose dam removal if certain, the Controller thinks, probably very reasonable conditions are met. So let's get the job done.

All in favor?

(Ayes.)

ACTING CHAIRPERSON ARONBERG: And opposed?

Go ahead, Paul.

EXECUTIVE OFFICER THAYER: Well, I -- that's fine. But I just wanted to add that Commissioner Sheehan raised a legitimate concern over the public availability of this resolution. And with her guidance, we will do our best to avoid that in the future.

ACTING CHAIRPERSON ARONBERG: I probably think that this, you know, is partially my fault, my personal fault. And we will 100 percent make the most effort that we can to have everything available with as much advance notice as possible.

ACTING COMMISSIONER SHEEHAN: We have an obligation to be transparent to the public on anything that we're voting on. And I just think people need to have it in front of them.

EXECUTIVE OFFICER THAYER: I couldn't agree with you more.
ACTING CHAIRPERSON ARONBERG: Just one little note, though, which may allay your concerns a little bit. This issue has been out there for years. And as I mentioned, those other agencies have held hearings, and the issues have been discussed ad nauseam. So there's a great deal of agreement. Otherwise, I would be equally concerned about the public notice. So I think we --

Mr. Attorney General, was that vote good enough for you?

ASSISTANT ATTORNEY GENERAL HAGER: Yes.

ACTING CHAIRPERSON ARONBERG: Okay. Looks like that is the end of the regular calendar. We've got some public commenters here.

Bruce Reznik, who is no longer in the room, but maybe someone is here to speak on his behalf.

And then Katheryn Rhodes, is she in the room still?

And Laura Hunter is no longer in the room.

Great. Ms. Rhodes.


What I want to talk about was, there's Alquist-Priolo earthquake fault all along the San Diego Bay.

You know, there's the old police headquarters that they actually voted for coastal development, or the Port
did, when they knew in their Final EIR that they had to do
the whole investigation. They didn't do the fault
investigation. But during this meeting today, I heard
that they are going to actually do it. So someone came up
to me today and told me they are going to do it, so I'm
happy about that.

But on the Navy Broadway complex, that site is
right next to the old police headquarters. That's -- I
think there's faults going straight toward there. There
is the active Coronado fault, that just started being
active, or known to be active in 2001. The Alquist-Priolo
was redone in 2003. On Coronado, they just found the
active portion of it in 2006.

And Manchester, with Perry Dealy there, they are
not releasing fault investigation to the city, to CCDC, to
the Port, to no one. And what I'm asking you, as part of
the state agency, is to see if you could get -- they said
they did a fault investigation, and there's nothing there.
But if we could have that fault investigation because
we're having an appeal to the City of San Diego regarding
the EIR. And part of it, mine is, is that San Diego
wasn't considered a -- in 1993, San Diego, the Rose Canyon
fault zone, is now considered active.

This EIR was done in 1990. And because of that,
you know, the fault investigation is needed. They are
saying the EIR is fine even though the laws have changed. The state laws have changed. The federal laws have changed regarding ports and ships coming into here. So we have so much more parking and so many different issues with this. So anything that you could do to help us get the new EIR as part of the Navy Broadway complex would be great.

And anything you could do to see if you could get Manchester, who's a tenant of the port and has port property, here, in San Diego, if you could get them to release the fault investigation that they said they did, for the Navy Broadway complex, and also they could release -- release the lease that they signed with the Navy, a couple weeks ago, so we will actually know what's in that lease, that would be great. If you guys could do anything, that could be wonderful.

Myself, since we can't get any information, I'm going to actually pay, with my own money, to get a fault investigation done on Port property. And hopefully, the Port is going to allow me to do that. I still have to get a right-of-entry permit. And so I plan on doing that and doing an investigation in about two weeks.

But the Port of San Diego supposedly is not in the downtown special study zone, even though there are so many -- there's a fault going straight here to the
public -- Public Trust tidelands property, or whatever you call it. It's going straight to this area, and they are considering that they don't really need fault investigations.

So I want to see if somebody could turn it around, in the state level, that says, you guys have to do fault investigations in San Diego, between Laurel Street, that's two blocks down, all the way downtown, just to the downtown special study zone.

Thank you.

ACTING CHAIRPERSON ARONBERG: Thank you, Ms. Rhodes. Thanks so much for your patience, through our long meeting as well.

And I think Mr. Wilkens has something to say about this.

MR. WILKENS: Thank you, Madam Chair. I just wanted to clarify two things for you: I'm not taking issue with the speaker's comments, but, one, the Broadway complex is a development that is between the Navy -- United States Navy and the proposed developer, who happens to be the Manchester Group, which happens to be a Port tenant.

So the -- if you want to think of that, there's two separate Manchesters; okay? There's a Manchester who's the proposed developer of the Broadway Complex and
there's a Manchester who has developed the Marriott and
the Hyatt, on property. That's just fact one.

ACTING COMMISSIONER SHEEHAN: Is it the same
person?

MR. WILKENS: It's the same company, ma'am. Or
least the LLC portion of it.

So that's the first thing.

Second thing, the old police headquarters
property, which is part of a separate port development,
Mr. Manchester has nothing to do with that. It's across
the street from the Hyatt in one area and it's across the
street from the Broadway complex in another.

And the speaker's concern at our meeting -- I'm
not again taking issue here -- was that the developer of
the old police headquarters. It's a historical building
that is being adaptively reused, had not done, in her
judgment, a sufficient earthquake study. There are some
off-line conversations with technical people, including
the developers and geotechnical people. I'm not up to
speed on that. If she says that people are going to do
things, I believe her.

And then finally, with regard to the earthquake
fault under the Broadway complex again, that's the City of
San Diego's Redevelopment Agency's responsibility.

And there is, apparently, a difference of opinion
between their technical experts and perhaps the speaker. I don't know, and I don't speak for either party. But I just want to kind of parse this so you understand moving parts. From the Port's point of view, and I'm the executive vice president of the Port, we're coming her way in trying to work through it. But we also have a tenant who has adaptive reuse plans in play and is getting advice from the City of San Diego in terms of what these issues may entail or not entail. So it's a long explanation.

ACTING CHAIRPERSON ARONBERG: Mr. Thayer has a couple of words.

EXECUTIVE OFFICER THAYER: Just real briefly, I don't think we necessarily have any particular expertise in fault lines.

If some of these projects are on Port property, and it sounds from Mr. Wilkens like at least most of them are not, then we'll certainly look into this. Otherwise, if there's some other avenue that we can develop for the speaker to pursue, we'll try and provide that information.

ACTING CHAIRPERSON ARONBERG: Great. We have the speakers' information, and we'll be in contact with her about that.

EXECUTIVE OFFICER THAYER: We have her number here.

ACTING CHAIRPERSON ARONBERG: Unless Ms. Hunter
returns, our last public speaker is Bruce Reznik.

MR. REZNIK: Thanks. I will be brief.

My name, again, is Bruce Reznik. I'm from San Diego Coastkeeper.

I just wanted to take this opportunity -- and Paul stole a little bit of our thunder -- but to thank the entire Commission, but particularly the two commissioners who this is their last meeting. And unfortunately, they both had to go. I had a chance to speak, at least, briefly, before Mr. Bustamante left.

This agency, under the leadership of these two gentlemen, has been the most aggressive and protective that we've ever seen in State Lands. I don't think we can understake the importance of opening up the process, bringing meetings throughout the state.

I don't remember going to a State Lands Commission hearing before the leadership of these two gentlemen. The resolutions, there are so many that have already been made. But the ones that particularly the Bay Council Groups had a role in -- the Copper Bay paint, marinas, ballast water, once-through cooling resolution, obviously today, we had sediments and of course the Woodfin decision to further protect our Public Trust lands.

So you set a very high bar for State Lands Commission. Hopefully -- I hope actually our next
commissioners even go above and beyond.

But we just wanted to recognize, on behalf of the Bay Council, which is San Diego Coastkeeper, Environmental Health Coalition, Surfrider, Sierra club, Audubon Society. And the California Coastkeeper Alliance called me and they wanted their name on this too.

We just put a plaque together for the outgoing commissioners, so thank you very much for all your effort.

ACTING CHAIRPERSON ARONBERG: Thank you, Mr. Reznik. I know that the admiration, at least from Controller Westly is definitely mutual. And I'm sure that Mr. Bustamante would say the same thing.

Thank you very much.

So that is -- unless there are any other public speakers, that is the end of the regular calendar. We're going to have a very fast closed session.

If we could have the room cleared, please.

(The Commission recessed into closed session.)

(The State Lands Commission meeting adjourned at 5:00 p.m.)
CERTIFICATE OF REPORTER

I, KATHRYN S. KENYON, a Certified Shorthand Reporter of the State of California, do hereby certify:

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of December, 2006.

KATHRYN S. KENYON, CSR
Certified Shorthand Reporter
License No. 13061