APPEARANCES

BOARD MEMBERS

Mr. John Chiang, State Controller, Chairperson, also represented by Ms. Cindy Aronberg

Mr. John Garamendi, Lieutenant Governor, also represented Mr. Brian Bugsch

Mr. Michael Genest, Director of Finance, represented by Mr. Tom Sheehy

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Curtis Fossum, Chief Counsel

Mr. Mario De Bernardo, Legislative Liaison

Ms. Jennifer Lucchesi, Staff Counsel

Ms. Kimberly Lunetta, Executive Assistant

Mr. Jim Trout, Retired Annuitant

ATTORNEY GENERAL'S OFFICE

Mr. Joe Rusconi, Deputy Attorney General

ALSO PRESENT

Mr. Stephen Cushman, Vice Chair, San Diego Port Commissioner

Mr. Frank Gallagher, San Diego Community Solutions

Ms. Aimee Graham, General Dynamics NASSCO

Councilmember Janice Hahn, Los Angeles City Council

Ms. Bella Heule, San Diego World Trade Center

Mr. Mike Jacob, Pacific Merchant Shipping Association

Dr. Geraldine Knatz, Port of Los Angeles

Ms. Melissa LinPerrella, Natural Resources Defense Council

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
ALSO PRESENT

Mr. Jesse Marquez, Coalition for a Safe Environment

Dr. John Miller, Port of Los Angeles Community Advisory Committee

Mr. Michael Montoya, Longshoreman

Mr. Ed Plant, San Diego Port Tenants Association

Mr. Tim Schott, California Association of Port Authorities

Ms. Melissa Stephens, American Lung Association

Ms. Diane Takvorian, Environmental Health Coalition

Mr. Eric Townsend, Environmental Legal Clinic, University of San Diego Law School

Ms. Dorota Valli, Animal Protection Rescue League

Mr. Brian Whatley, Local 29, International Longshoremen & Warehouse Union

Mr. Dan Wilkens, Port of San Diego, Assistant Port Director

Ms. Kathleen Woodfield, San Pedro Peninsula Homeowners Coalition
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PROCEEDINGS

CHAIRPERSON CHIANG: Good morning, everybody.

I'll call this meeting of the State Lands Commission to order. All the representatives for the Commission are present. I am John Chiang, the State Controller. I'm joined this morning by Lieutenant Governor John Garamendi and Tom Sheehy -- welcome, Tom -- who represents the Department of Finance.

For the benefit of those in the audience, the State Lands Commission administers properties owned by the State, as well as its mineral interests. Today we will hear proposals concerning the leasing and management of these public properties. The first item of business will be the adoption of the minutes from the Commission's last meeting.

May I have a motion to approve the minutes?

ACTING COMMISSIONER SHEEHY: I would move the minutes.

COMMISSIONER GARAMENDI: Second.

CHAIRPERSON CHIANG: Motion by Tom second by John. Without objection, the motion passes.

The next order of business is the Executive Officer's report. Paul, may we have that report, please.

EXECUTIVE OFFICER THAYER: Thank you. Good morning, Mr. Chair and members of the Commission. I have
3 items I want to cover. The first will be the usual report on the status of violations that we're pursuing.

The second -- 

COMMISSIONER GARAMENDI: Paul, can I interrupt for a moment. Who's this guy at the end down here?

(Laughter.)

EXECUTIVE OFFICER THAYER: I'm sorry.

(Laughter.)

COMMISSIONER GARAMENDI: Maybe we ought to introduce him.

EXECUTIVE OFFICER THAYER: I think that's an excellent idea.

COMMISSIONER GARAMENDI: We need to break him in, don't we?

(Laughter.)

EXECUTIVE OFFICER THAYER: The first part of this has to be to express our regrets that Anne Sheehan is no longer representing the Department of Finance. We've enjoyed her representation on the State Lands Commission for several years. But we're pleased that her replacement, Tom Sheehy, is someone who's worked in a variety of public roles and with the Department of Finance for several years. He and I met, first, I think when he was working for Assembly Member Brulte in the legislature and I was working for Assembly Member Sher. So I know he
has a long history in Sacramento and he'll do a great job on the Commission.

You should know that he's arranged for a background meeting. I think we spent 3 and a half hours going over the issues. So he's obviously very interested in what the work of the Commission is and he's very interested in doing a great job.

So Tom Sheehy from the Department of Finance.

COMMISSIONER GARAMENDI: Welcome, Tom.
ACTING COMMISSIONER SHEEHY: Thank you.
COMMISSIONER GARAMENDI: I look forward to working with you.
ACTING COMMISSIONER SHEEHY: Thank you, Lieutenant Governor. It's a pleasure to serve with you on the State Lands Commission.
CHAIRPERSON CHIANG: Yeah. I just wanted to point out, Tom, you have big shoes to fill. Anne did a first-rate job while she was here. She is a consummate public servant. We stole her for one of the other 75 boards that I serve on. Obviously, she has investment capacity at CalSTRS now. And we need to maximize risk-adjusted returns. But we are very pleased to have you join us.
ACTING COMMISSIONER SHEEHY: Thank you very much.
CHAIRPERSON CHIANG: Paul, can you continue your
Executive Officer's Report.

EXECUTIVE OFFICER THAYER: Thank you. And thanks to the Lieutenant Governor for reminding me that we needed to introduce Mr. Sheehy.

On that straw, I also have to mention and proudly announce that Curtis Fossum, who was our former Assistant Chief Counsel, has been selected -- I've selected him to replace Jack Rump, who retired. Curtis has worked for the Lands Commission for over 30 years. I don't think there's a better expert on the Public Trust Law anywhere in California. So we're fortunate, not only to have him working all these years for the State Lands Commission, but we think he'll do an excellent job as Chief Counsel. I know he's familiar to all of you from briefings and that kind of thing, but I wanted to publicly acknowledge his new role.

So with that, turning back to the Executive Officer's Report. Again, I'll talk a little bit about the status of the enforcement actions. And then I want to give an update to the Commission on the enforcement action or the remediation actions regarding shipyard sediments here in San Diego, something the Commission has looked at for the last couple years, having been down here. And finally we'll talk a little bit about the Dana Point Boaters Association concerns that were expressed at the
Commission's last meeting. I'll give you an update on
that.

So turning to the violations. These are the same
violations we've talked about in the past. The South Bay
Yacht Club, which has until December to remediate some of
the poor conditions on the docks down there, the excess
growth and vegetation and the abandoned vessels that are
in the vicinity. Basically, they've been steadily working
on all those issues. We believe all the boats that were
stranded in the sediment there in the State lands, as well
as in the adjacent water district lands, have been
removed, with the exception of 2 where these boats are
going to be taken apart. They're too big to have been
just taken out whole.

There has been delay in some of the removal of
some of this debris, because the contractor is doing work
with the adjacent water district as well. But progress is
being made on that.

BCDC has still not issued its final permit for
repairing the docks, but that's progress that's -- that
work is in progress.

And the yacht club has also submitted its
application to the Department of Fish and Game for removal
of the vegetation in the area, which needs to be done in
order to get in there and repair the docks.
The yacht club has submitted a letter -- I think it was directed to the Lieutenant Governor -- which requested additional time, past the December deadline, and requested that it be able to use the Environmental Impact Report that's being prepared by the District for similar adjacent activities, rather than having to do one itself.

I think our approach so far has been to tell the District, you know, you should be doing everything you can to comply with the December deadline that the Commission outlined. And if you're unable to comply with that, let's talk once you've reached that deadline and see what more needs to be done after that. But I think first and foremost they should be working as hard as they can to comply with that deadline.

There may be some merit to what they're suggesting in terms of using that environmental review. And that may be the fastest way to get this job done. But for now, let's let them keep working.

Moving onto the next item. This is Jeanne Bird Taylor. She's the owner of a dock and an adjacent cabin that overhung into State lands, or over State lands, and the house boat. This is down in the Delta. The Commission directed staff to work to have that house boat removed. It was a residential use on State lands, which isn't permitted under the Public Trust Doctrine.
She, without getting a lease amendment from us, which we had said was the right way to go, shortened her dock, sold her house boat, and chopped off a bunch of the overhanging cabin. So she's done a lot of what we wanted her to do, albeit not quite procedurally correctly, but progress has been made.

(Laughter.)

EXECUTIVE OFFICER THAYER: We've notified her that she really needs to come in and get a lease amendment and file an application, that what she's chopped off of the cabin doesn't quite take care of it. It's still a little bit over the line over into State property. And in selling the house boat, as I mentioned at our last meeting, she sort of transferred the problem to another waterway. It's now anchored in, I think, Elk Slough or Georgiana Slough nearby.

We contacted the new owner and he says that he understands that it's not allowed, that he can't have residential use. And he says he's going to convert that house boat to some other use, and he'll file an application. We've encouraged him to do that. We're going to continue our discussions, and not letting this go. But clearly, no one can live on it.

With respect to the Courtland docks, this is an old marina in the town of Courtland, again in the Delta,
just south of Sacramento. These docks had fallen into
disrepair. A new couple bought the docks and were
assigned a lease, but they had delayed repairing the
docks. An adjacent house, once again, was overhanging
into Public Trust Lands.

At this point, they have repaired all the docks.
They've cut back the house, so it's not overhanging State
lands anymore. The one missing thing is that they still
haven't completed getting their bond, which we want. We
want an assurety bond to make sure they don't do this sort
of thing again. We've got money to remediate it if they
do. And it will cover any remediation. It's not the sort
of bond we require in a marina.

They say they still are unable to get that, in
part because some of the neighbors -- if you recall that a
lot of attention was brought to this in front of the
Commission was because neighbors objected to some of the
things that these 2 were doing. They still have
litigation and so they're unable to get the bond. We're
working with them on an alternate way to do this sort
of -- potentially going to set aside money every month.
Instead of getting a bond, they'll end up with a fund that
will cover this sort of thing.

So great progress made. We're going to keep
working on this until they comply with each aspect of the
violations.

Turning to Hulbert. This is the gentleman who overbuilt the dock. We've given -- the Commission had given a lease for a dock with a covered house boat on it. He built it, I can't remember, 9 feet higher than the Commission had given permission for and somewhat larger. We offered a compromise. He didn't accept it. He sued us. We thought okay this will give us the opportunity to pursue our interests in this. He's basically let his lawsuit languish.

So the Attorney General's office yesterday filed a cross-complaint so that rather than letting this languish, we can pursue it on our own in the courts, and we'll be doing that.

The Spirit of Sacramento. This is still an ongoing project. We've worked with the Attorney General's office. This is, I think, a former ferry that has been tied up just south of downtown Sacramento, I think, on the Yolo county side, where there's no lease for the pilings to which it's tied. And we've notified the -- at the Commission's direction, have notified the owner that this thing is going to have to be removed. We haven't really gotten any satisfaction from the owner. And we're working with the Attorney General's office to file in court, which we're obviously going to have to do to move that out.

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Then there's 2 other vessels, large vessels, about 300 feet long each. The Faithful and the San Diego, again located in the Delta. There's a theme here. There's violations in the Delta.

And these are very large vessels that are in Horseshoe Bend, near the city of Rio Vista. We brought this to the Commission earlier this year. The fundamental problem is that the people who own these vessels probably don't have the means to get rid of them, but we've been trying to work with them to find salvors who would want to take them for the value of the vessels.

There's a man in San Diego that's expressed interest. There have been a couple foreign ones. We're continuing to push that. Because, again, if they don't have the means to store them, they've got to find some other place to get rid of them. And so we're trying to be innovative and think outside the box. It's not just a violation -- it wouldn't do any good to take these guys to court, if they can't get rid of the ships. So, again, a work in progress. We're not done there. And we don't have as much progress on those 2 as we'd like, but we're trying to figure out ways to move these on.

Just as an ancillary to that, we are looking at potential legislation to increase our authority over boats like this and to try and get us some money. We had a
meeting a couple weeks ago with the Department of Boating and Waterways. They have a program where they put some money into local governments to remove abandoned vessels. They weren't very receptive to the idea of having another State agency get involved with this. But we said, look, there's these vessel out here and you need to -- it's on our property. We think we've got a mission equal to the Boating and Waterways in dealing with these issues.

So once again another work in progress, but we're working towards that. And I suspect we'll come back to the Commission in December when these ideas are fully fleshed out and see if the Commission wants to sponsor.

COMMISSIONER GARAMENDI: Paul, if I might interrupt for a moment. I think that legislation is really necessary. With the way that the Department of Boating and Waterways presently allocates money -- and they do have money available, and apparently the Department of Finance didn't find it, so they didn't sweep that particular closet out.

(Laughter.)

COMMISSIONER GARAMENDI: But there is money available. But it relies upon an application by a county agency to apply for the money and then use it to remove these abandoned vessels and other objects that would be harmful to navigation. Sacramento County doesn't. Some
other -- a couple of other counties in the Bay Area do. But we do have the responsibility. It is State land and it would be beneficial for the State Lands Commission to take the initiative, if we had the money. And the money is there. We just need to figure out how to get our hands on it so that we can cleanup these waterways, remove these derelict vessels and the hazards to navigation.

EXECUTIVE OFFICER THAYER: And staff agrees with the Lieutenant Governor on this. When we talked to Boating and Waterways, they agreed that they did not have the independent authority themselves to go out and cause removal. They just had this grant program to give money to local governments when local governments are concerned about a particular vessel. But there's no opportunity there -- I mean, if the vessel is off in some other location that the locals don't care about it, but it's still on our land and it creates a navigational hazard or there's oil on board that sort of thing. We do have some authority to remove those. We don't have any money to do it.

And, again, no fault in Finance. We regularly put in requests for additional funding. Generally, of course, it has to be from the General Fund and there's not much of that around these days.

But Boating and Waterways has authority under
statute to use up to $1,000,000 a year from their revolving fund for this. So far they've only gotten half a million a year. And, you know, why not that other half million, is that something that we could tap into to help remove the vessels. I'd be happy to talk with Commissioner Sheehy a little bit further to get Finance's perspective on what we're doing.

ACTING COMMISSIONER SHEEHY: Yeah. If there's anything the Department of Finance can do to assist the State Lands Commission staff on developing a proposal or taking a second look at a proposal, we're happy to do that.

EXECUTIVE OFFICER THAYER: Great.

So that completes our report on the violations, unless there's any questions.

Then moving on to the second issue, which is the update on the shipyard sediments here. As the Commission may recall, in 2006 -- we meet down in San Diego once a year. And at our meeting in 2006 at the urging of some of the environmental groups here -- I think Bruce Reznik is here. He was one of them that was involved. We adopted a resolution urging the Water Board to expedite an abatement order over the contaminated sediments in San Diego Bay. And a year later that order still hasn't been released. And Bruce and others were here asking the Commission to
take further action.

In this case, the last year the Commission sent a letter to the Port of San Diego saying, well, when the thing is finally issued -- the order is issued, please -- or I think we actually directed the Port to do everything it could to expedite the implementation of that order, so that the sediment would finally get cleaned up.

It's sort of like the violations, there's some progress that can be reported a year later, but the order still is an issue. The thing that was holding up the whole process was this electronic indexing and committing to an electronic data form all of the information. And I don't remember how many pages were involved, but it was a lot. I think it was about a third of a million pages of documents. There were a lot of delays in getting that done. That has been accomplished. And so they can get on to the substance of it.

A hearing officer has been appointed. I think all sides agree to enter into mediation. And that mediation process is ongoing. Two 90-day stays of the work of the Hearing Officer were issued. The most recent one was, I think, was just in the last month. Let's see, there was one issued September 5th, which delays for another 90 days further proceedings in an effort to get the mediation -- to give the mediation time to work. So
that's where it stands right now. Ongoing remediation is not occurring yet. And this is still, you know, under the Board to decide what kind of order to issue or whether this can be resolved through mediation.

Then finally, at our last meeting, a representative of the Dana Point Boaters Association spoke before the Commission questioning whether some of the new harbor improvements at Dana Point were consistent with the Public Trust Doctrine. The concern was -- well, there were several different concerns. They also questioned whether the annual fiscal statement, which all grantees are required to submit to us, was up to snuff.

Since that time, we've talked about this both with the Boaters Association and with the Harbor. We believe that this financial statement is sufficient to meet the statutory requirements. However, we worked with the Harbor and the Association to get additional information provided to the Association, information they wanted to have, so that that need has been met.

Just 2 days ago, we got an additional letter, which I think copies are on your desk, from the Dana Point Boaters Association further questioning this development and questioning whether it was consistent with the terms of the grant. We've researched the grant and we think it's pretty clear that in addition to harbor uses,
legislative grant allows for other kinds of businesses to be there. They have to be public-trust consistent, but I think the boaters believe that the only thing that could occur on this grant was a harbor. And the new redevelopment plan calls for things like restaurants and other public-trust consistent uses, but which aren't just strictly harbor related.

The letter again that you just received requests that the State Lands Commission oppose at the Coastal Commission approval of the plan for the redevelopment. Staff doesn't think this is warranted, because again our investigation so far to date says that what's being proposed here is consistent. There is still uncertainty about this, of course, because there are going to be some commercial uses under this plan. And exactly what those uses are hasn't been detailed yet.

And so just as has been the case here in Lane Field -- I know the Controller has been concerned about that -- we think that as part of the Commission's oversight responsibility, we, as staff, will be looking at and tracking what uses that are actually going into these new buildings when they go in to make sure they're consistent with the Public Trust Doctrine. We'll be working to make sure that these leases are set up right.

But at this point, there's nothing on the face of
what's being proposed by the Harbor District which is inconsistent with the Public Trust Doctrine. So we think it's inappropriate for us to oppose before the Coastal Commission.

This agency doesn't have any direct jurisdiction in terms of yea or nay on any of this. We just have our oversight responsibility. This is on granted lands. This matter won't go before the Coastal Commission until January or February. We'll be meeting again in December, and so we'll look into this further and report back to you in December. We just, as I say, got this letter 2 days ago. Our inclination, at this point, is not to get involved.

And I believe that concludes the Executive Officer's Report.

CHAIRPERSON CHIANG: Thank you, Paul. The next item of business is the Consent Calendar. Paul, have any items been pulled?

EXECUTIVE OFFICER THAYER: Yes. There are 3 items pulled. They'll be heard at a future Commission meeting. They are Items C17, 32, and 47. And upon advice of Curtis, counsel, I wanted to publicly mention an item which I think I mentioned to all of you in the briefings, which is that I have a potential conflict of interest on Item 18, which has to do with some restoration for
1 Steelhead habitat in the American River. And I've
directed Curtis to manage this item. I wasn't involved
with it at all. And I wanted to make sure that you and
the public were aware of that.

5 CHAIRPERSON CHIANG: Thank you.

6 Okay, Items C17, 32 and 47 have been pulled.

7 Item 18, please note nonparticipation by Paul Thayer.

8 Is there anyone in the audience who would like to
make any comment on any of the consent items?

10 Hearing none, is there a motion on the consent
agenda?

12 COMMISSIONER GARAMENDI: So moved.

13 ACTING COMMISSIONER SHEEHY: Second.

14 CHAIRPERSON CHIANG: Motion by the Lieutenant
Governor, second by Tom.

16 Without objection, the motion passes.

17 Next item, please.

18 EXECUTIVE OFFICER THAYER: The next item starting
the regular calendar here is Item 56. This is a
resolution that the Commissioners requested staff to bring
back for its consideration opposing the initiative here in
San Diego, Proposition B, which would amend the Port of
San Diego's master plan as it relates to the 10th Avenue
Marine Terminal.

25 Jennifer Lucchesi will make this presentation.
STAFF COUNSEL LUCCHESI: Good morning, Chair Chiang and Commissioners. My name is Jennifer Lucchesi, and I'm staff counsel for the Commission. Proposition B, a local initiative. This initiative involves the 10th Avenue Marine Terminal located on State-owned tide and submerged lands held and managed in trust by the San Diego Unified Port District on behalf of the citizens of California. The 10th Avenue Marine Terminal consists of approximately 100 acres and is an important port facility in San Diego Bay. Despite the misleading title of the initiative, this initiative is not sponsored by the Port District. In fact, the Board of Port Commissioners unanimously opposes this initiative. In addition, a wide array of environmental, labor, maritime, industry, governmental, military and chamber of commerce groups have expressed their opposition to this initiative. These groups include the San Diego Imperial County Labor Council, the Environmental Health Coalition, the San Diego Port Tenants Association, the Pacific Merchant Shipping Association and the California Trade Coalition among many others. Additionally, 5 members of Congress, representative Susan Davis, Darrell Issa, Duncan Hunter, Brian Bilbray and Bob Filner have expressed their
opposition to this initiative. And even the Secretary of
the Navy, Mr. Donald Winter, has expressed his opposition.
The State Legislature, pursuant to the Port Act,
designated the Board of Port Commissioners as a
policy-making body with exclusive and sole responsibility
for managing these lands on behalf of all California
citizens. This includes the authority to determine what
land uses are appropriate for the 10th Avenue Marine
Terminal, as well as the remainder of State-owned granted
lands in the San Diego Bay.
The land-use decisions that the Board makes
concerning these Public-Trust lands is a statewide affair
and cannot be affected by the local initiative process.
Proposition B attempts to subvert the Port's Harbor
Commissioner's authority as trustee of the State by
amending the Port District master plan to allow for
non-maritime uses at the 10th Avenue Marine Terminal.
Commission staff believes that this initiative
presents a clear case of an attempt to interfere with
matters of statewide, if not, national and international
concern. As such, staff recommends that the Commission
adopt the resolution before you opposing Proposition B.
CHAIRPERSON CHIANG: Thank you.
EXECUTIVE OFFICER THAYER: That concludes staff
presentation. I believe there's some who want to speak.
I believe that one of the proponents from the initiative is here, Mr. Gallagher. And I know that there's a Port Commissioner Steve Cushman who's here.

CHAIRPERSON CHIANG: Very good. We'll have Mr. Cushman speak first followed by Mr. Gallagher.

SAN DIEGO PORT COMMISSION VICE CHAIRPERSON CUSHMAN: Good morning, Lieutenant Governor Garamendi, Secretary Chiang and Mr. Sheehy. I'm Stephen Cushman, Vice Chairman of the Board of Port Commissioners for the San Diego Unified Port District. It is a pleasure to have the esteemed Commission here at the Port. And I thank you for your consideration hearing this item earlier. Welcome to your house in San Diego.

(Laughter.)

SAN DIEGO PORT COMMISSION VICE CHAIRPERSON CUSHMAN: On behalf of myself and 2 fellow Port Commissioners that are here today, Dukie Valderrama and Laurie Black, we welcome you.

I am here to ask the Commission to adopt a resolution in opposition to Proposition B, the election ballot measure that would amend the Port of San Diego master plan regarding development of the 10th Avenue Marine Terminal.

First, let me thank you publicly for filing the amicus brief in August on the Port's behalf, as we sought
to quash this initiative via the court. The judge ruled
only that the electorate must have its say. He did not
rule on the merits of the case, and that's important to
note.

State Attorney General Jerry Brown, on behalf of
the State Lands Commission, laid out the State's case,
which I believe a court will eventually uphold if the
proposition passes. Let me briefly give you a bit of
history.

In mid-04, we've been down this road before. A
similar situation, then like now, the marine terminal was
targeted as a possible site for a new football stadium.
And then like now, our allies rally. Former Lieutenant
Governor, Cruz Bustamante appeared before our Commission
in this room. The Port Commission voted to preserve the
terminal's maritime use on a 6-to-1 vote.

Now, developers have taken different tactics.
They avoided coming before the Port Commission with their
proposal. They circumvented public discourse before
circulating the initiative. The difference between 2004
and today is the hidden agenda. We don't know what the
ultimate goal is. Perhaps, as one section of the
initiative suggests, incompatible uses could be built at
grade, setting the groundwork for maritime's demise. This
is one of the reasons we believe this initiative is
dishonest and misleading.

Another is its name, which suggests we back it. We do not back it in any way, shape or form.

Prop B also claims it will cost the taxpayers nothing. Upon closer examination, it appears that any tax collected, above and beyond those collected now from the property, would go into the development. Could that mean sales tax, property tax, transient occupancy tax? The initiative is vague quite frankly in this area.

The initiative promises better jobs, but it doesn't say what kind. In today's economy, we need to know what they're talking about. We already have 19,000 jobs tied to maritime cargo operations. The average pay for these jobs is $62,000 a year. Do we want to replace family-sustaining jobs with minimum wage service industry jobs?

Key to the State's interest is the legality of the initiative. It would change the land-use designations outlined in the Port's master plan in violation of the legislative action that created the Port in the early 1960s.

We, the Port Commissioners, are trustees of tidelands for the State pure and simple. We understand that. That trust is for all California citizens. It is not to be piecemealed by local jurisdictions. In many
respects, government's role is to balance public benefit.

Regional economic balance and national regional security. Regional economic balance is important.

Maritime operations provide that in San Diego. In fiscal 2007, maritime operations brought in $39 million in revenue, up 12 percent from the previous year.

We had a 62 percent gain in break bulk cargo, which includes steel for ship building, steel coils for home building and windmill parts for alternative energy. Those commodities come through the 10th Avenue Marine Terminal, which has increased its growth by 74 percent in the last 5 years.

In total, our maritime operations and the business associated with the working waterfront contributes 7.6 billion in economic impact to our region.

We work cooperatively with the military as well. The Port of San Diego provided over 50 percent of the west coast lift for the war effort. The Secretary of the Navy was in San Diego yesterday and expressed and reiterated his opposition to this plan. The country cannot afford to lose a deepwater terminal. The nation's system of ports brings the goods necessary for our families and their businesses.

I urge you to adopt the resolution in opposition to Prop B. Thank you. If you have any questions, I'd be
happy to answer them.

CHAIRPERSON CHIANG: Mr. Cushman, thank you for your comments this morning.

If we could have Mr. Gallagher, please.

COMMISSIONER GARAMENDI: Before Mr. Gallagher comes up, I understand that the Secretary of the Navy submitted a letter yesterday. If we can get that letter and put it in our file as part of this testimony.

EXECUTIVE OFFICER THAYER: We'll do that.

CHAIRPERSON CHIANG: Please join us.

MR. GALLAGHER: Good morning.

CHAIRPERSON CHIANG: Morning.

MR. GALLAGHER: Thank you for allowing me the opportunity to speak.

I would like to first address so many statements that started in the parking lot and that have been reemphasized here today. When we hear --

CHAIRPERSON CHIANG: If you would give us your full name and title, please.

MR. GALLAGHER: Oh, I'm sorry. I'm Frank Gallagher. And I'm the managing member of San Diego Community Solutions. We are the proponent that put the initiative on the ballot.

CHAIRPERSON CHIANG: Very good. Thank you.

MR. GALLAGHER: There were at least a half a
dozen comments made about 19,000 jobs. And just for a point of clarification, I'd like to make sure that everyone here understands that the Port of San Diego combines 2 terminals, the terminal in National City and the terminal in San Diego as if they were one operating entity, which means they've got one financial statement. They've got one expense statement. They've got one revenue statement from 2 terminals in 2 different cities. So when we hear 19,000 jobs, we're talking about impacts that are downstream, that are the byproduct of product that's brought into National City that has nothing to do with this initiative.

So as an example, the automobiles that come in from the Pacific Rim are unloaded at 24th Street by a ship that does not stop at 10th Avenue. So those cars that then are transported out to the western United States are part of the economic impact. Now, this has nothing to do, once again, with the terminal in San Diego. So the jobs -- part of the 19,000 jobs, there's actually 822 jobs at the 10th Avenue Marine Terminal. This is on the Port's own website.

And what we are contending is that there is an opportunity to combine elements of trade that are for the benefit of the community. We knew full well when we wrote this initiative that we would be in front of you at the
point in time when there was a project. The reality is, is that there is no project. The initiative calls for this collaboration to occur after the vote by the stakeholders, which is the Port of San Diego, the City of San Diego, Working Waterfront, Port Tenants Association, Environmental Health Coalition. All of the stakeholders that would have a stake in this terminal in this approximately 100 acres would be part of the process.

This would need to be a collaboration. This isn't something that we have proposed. We're proposing that dialogue start. We're proposing that it become an opportunity for communities to get involved with their stakeholders to find out if there's a way to generate the 4 components of the Public Trust Doctrine that we believe that the initiative complies with, which is maritime -- and as you read the initiative, you find that the maritime industry is a mandatory byproduct of the passage.

This means that nothing can happen at that terminal unless the maritime is preserved and enhanced and protected. So any other use has to be supportive of the maritime. But we're also very well aware of the environmental requirements, the economic requirements and also the public access requirements that we find in the Public Trust Doctrine.

So the intent behind this program is to have a
collaboration, which obviously includes the Port of San Diego. So we would ask that everyone understand that we are not presenting a project, because the project won't be defined until after the initiative. I understand what counsel said about their belief that the Port Act is not subject to the initiative. That's one discussion. As far as the project, that's a different discussion, because the project hasn't been defined yet.

So I would just like everyone to understand that we are talking about a process that would occur after the election for the benefit of the community, the benefit of the City and the benefit of the Port of San Diego.

CHAIRPERSON CHIANG: Thank you very much.

Okay, the remaining speakers we will allot 2 minutes. And I will call you 3 at a time. The first is Aimee Graham, the second, Diane Takvorian -- I apologize if I articulated a name incorrectly -- and Brian Whatley.

MS. GRAHAM: Good morning. My name is Aimee Graham. I'm here representing General Dynamics NASSCO. We're one of the leading shipyards in the United States, and the only remaining full shipyard left on the U.S. west coast. We've been designing, building and repairing ships for the U.S. Navy and commercial customers in San Diego for over 50 years.

We are not only a port tenant, but we're also a
heavy user of the 10th Avenue Marine Terminal. NASSCO employs 4,700 people directly and an additional 1,500 long-term subcontractors on our facility. Along with the port jobs, we feel NASSCO jobs would be jeopardized by this initiative.

Redevelopment of industrial land will eliminate one of the few remaining career paths for skilled technical workers to become financially independent in San Diego.

NASSCO has identified the 10th Avenue Marine Terminal as a critical supply chain link to domestic and international supplies of raw materials, finished goods and equipment utilized in the shipyard in direct support of our operations.

We anticipate growth in ship construction and repair activities that will result in an increase in material deliveries through 10th Avenue Marine Terminal to the shipyard. In the last year, NASSCO moved 30,000 tons of goods and cargo through 10th Avenue Marine Terminal. That cargo was handled and stored on acreage that the proponents of this initiative have described as under-utilized or unused.

That 30,000 tons included steel plate and bulk flats for use in the construction of Naval vessels, 4 engines for each of the U.S. Navy's T-a-k-e auxiliary
Inconsistent use of waterfront lands will seriously undercut the Port's ability to execute one of its cornerstone missions to preserve the waterfront commercial maritime use.

I appreciate your time and urge you to oppose Proposition B.

Thank you.

CHAIRPERSON CHIANG: Thank you.

MS. TAKVORIAN: Good morning, Commission members. My name is Diane Takvorian and I'm the director of the Environmental Health Coalition. We're a 28 year old Environmental Justice organization here in San Diego. We have 5,000 members in the San Diego region and many of them reside in the adjacent communities to the port terminals.

Many of our members hold good jobs at the 10th Avenue Marine Terminal, and they do reside in the adjacent communities. The largely Latino community right adjacent to the 10th Avenue terminal is Barrio Logan. As you might imagine, there are often pollution issues associated with having a port terminal right next door to a residential
Not all of them are solved, but I wanted to let you know that the Port of San Diego is working closely with the community of Barrio Logan and with Environmental Health Coalition and many others on their clean air plan. And we have a lot to do. But they have already stepped up and are retrofitting many trucks that service the terminal. They have on their own gone forward and had a truck rerouting plan that’s been put into place, so the trucks are no longer coming through the community. And they’ve just announced a new ship cold ironing program that will take effect soon.

Conversely, we have seen in the proponent’s proposed initiative, they have specifically deleted reference to collaboration with the Barrio Logan community. It is struck out. So I would just ask you to take into consideration that we don't think that the proponent's claims that they want to work with stakeholders is truly authentic, because we believe that they would have come to the various places where they could have talked with stakeholders, and the community before they put this measure on the ballot. And we'd prefer to continue to see the 10th Avenue terminal continue to thrive and we'll all look forward to a clean and safe port together.
Thank you for your time.

CHAIRPERSON CHIANG: Thank you.

We have Brian followed by Ed Plant.

MR. WHATLEY: Good morning. I'm Brian Whatley, president of Local 29, International Longshoreman and Warehouse Union. And as president of Local 29, I speak on behalf of all the longshoremen that oppose Proposition B.

We know this initiative will do nothing to preserve maritime operations. And, in fact, it will eliminate our good-paying jobs. There's a lot of work that comes in and out of 10th Avenue Marine Terminal. I work there every day as a steady mechanic. And over the past 6 years, I've just seen an increase in cargo coming through there. And we're here on behalf of the ILWU to ask you guys to support us in opposing Proposition B.

Thank you.

CHAIRPERSON CHIANG: Thank you, Brian.

MR. PLANT: Good morning. Thank you for being in San Diego.

CHAIRPERSON CHIANG: Ed, if you'd share with us your full name and title for the record.

MR. PLANT: Oh, I'll get there. My name is Ed Plant. I happen to be Chairman for the San Diego Port Tenants Association at this time, and was one of the original founders of the working waterfront here in San

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Diego.

But I think more importantly, I'm a tenant on the
10th Avenue Marine Terminal. We handle fruit and
perishables that come in from South America and Central
America and Australia. One of the things that we're
involved with is that we bring in 43 percent of all the
bananas that come to the west coast of the United States.
So I don't know if people understand that, but that's
about 600,000 tons plus that come in. We have a ship
every week that comes into the port at San Diego.

But the biggest thing that I'd like to talk
about is encroachment. I feel that, you know, we've been
on the terminal for more than 10 years and we have 20 more
years to go on our lease down there. And you know
it's -- we steadily get challenges on maintaining our
terminal. It is one of 2 deepwater ports here in San
Diego. They're tough to replace, as you probably are
aware of.

So I'm pretty passionate about this situation.
And the Port of San Diego has a very balanced port, we
believe. We have the commercial side, between the
maritime, but we also have the hotel/recreation side. And
it's, you know -- we have, I think, 77,000 employees on
the Port of San Diego total. It's a big economic boost
for this area. And I think this proposition as stated is
a threat to the Port of San Diego itself.

And therefore, I urge you to adopt the resolution that's in front of you.

Thank you very much.

CHAIRPERSON CHIANG: Thank you.

Next speaker, please.

MR. SCHOTT: Good morning, Commissioners. Tim Schott on behalf of the California Association of Port Authorities, which is comprised of the State's 11 commercial publicly-owned ports. We just want to express our opposition to Prop B today and for all the reasons stated previously, including our firm belief that the proposition contradicts the Public Trust Doctrine and urge your opposition to the measure.

Thank you.

MS. HEULE: Good morning. My name is Bella Heule. I'm President and CEO of the San Diego World Trade Center.

Imagine entertaining visitors from Amsterdam, enjoying lunch on the beautiful San Diego Bay, when all of a sudden a shipping crane swings by your window to load railroad cars below with steel coils and energy-producing windmills. It simply does not make sense that these 2 types of activities could coexist.

Why then would anyone propose a ballot initiative
to create such a thing at the 10th Avenue Marine Terminal? Perhaps to eventually remove the crate terminal and the economic development it generates.

The fundamental element of the San Diego World Trade Center's mission is economic development through international trade and commerce. We want to see our region continue to thrive, maintaining and enhancing the diversity of business activities. Our robust maritime trade port is part of the equation.

The World Trade Center agrees with the points made by those who preceded me. I wish to emphasize that the most important issue here is to educate the voting public on the key points of what the ballot initiative is not.

It's not an initiative proposed by the Port. It's not a way to create high-paying trade jobs. We ask does our region want a robust diverse economy that can better withstand major economic changes, such as we're going through now, or do we want to have a narrow service-based economy that is more vulnerable to those economic changes that are inevitable?

Cargo operations at the 10th Avenue Marine Terminal add to the diversity of our waterfront businesses and sustain a core of well paying jobs that support our regional economy. This is why keeping this key element of
maritime industry in San Diego is so crucial to a prosperous future for us all. Careful planning and resource allocation by the Port Districts helps these businesses operate in a competitively sustainable environment.

I urge you to oppose Prop B.

Thank you.

CHAIRPERSON CHIANG: Thank you, Bella.

Mike Jacob.

MR. JACOB: Good morning, Commissioners. Mike Jacob of the Pacific Merchant Shipping Association in San Francisco, California.

Just briefly to join the other voices in opposition to the measure in support of your resolution. I did want to commend the staff of the Commission on their very well plead brief as amicus, in the Port versus Seiler, and also let you know that we joined as amicus in that action as well.

I will confine our comments just to the issues of Public Trust. We think that those issues have been well laid out before the Court. As you heard from Port Commissioner Cushman, the issues have not been addressed with prejudice. The previous action was simply to decide whether or not the initiative actually met the procedural aspects of being added to the ballot for this November.
With that being said, we anticipate that if this does go forward, all of us that were previously involved in litigation would continue to be involved in litigation. We will be working with you, your staff and with the Port of San Diego and the other interested parties who filed to make sure that we're upholding all the Public Trust Doctrine. We believe that the initiative itself contradicts the plain letter of the law. And the Port Grant is very specific with regard to who gets to amend the Port Master Plan. It's the Port itself acting as trustees.

So we appreciate your vote on the resolution.

Thank you.

CHAIRPERSON CHIANG: Thank you.

Those are all the individuals who have signed up to speak this morning. Is there anybody else who wishes to speak?

Okay. Are there questions, comments?

COMMISSIONER GARAMENDI: You've got one more.

CHAIRPERSON CHIANG: Please join us and introduce yourself.

MR. MONTOYA: Good morning. I'm Michael Montoya a Longshoreman in San Diego.

CHAIRPERSON CHIANG: Welcome, Michael.

MR. MONTOYA: I'm also in the construction
industry at National Steel and Ship Building, straight out
of the Marine Corps and got hired over there. Got to a
point of being a rigger and running cranes and then
becoming a foreman. Then I went out into the outside work
of construction on cranes. And I was working both that
and a longshoreman.

It's amazing, because it's been almost 14 years
and I've seen the membership grow literally 3 times, not
counting all the casual workers that we have and the
amount of work. You can go down there one day and see it
empty as can be and the next day, just like this last
week, we got all these windmill towers into the yard
inside the warehouses. We've got all these steel coils.

We get so much work down there, it's unreal. But
the thing is that while looking at this initiative, I
mean, I challenge the guy at the court outside in the
courtroom. I says, why don't you just take Seaport
Village. You want something so bad, just pull the trees
up and take it. It's a boring place anyway.

(Laughter.)

MR. MONTOYA: Go there one time, you don't want
to go no more.

(Laughter.)

MR. MONTOYA: Ripley's Believe It or Not wanted
to put something down there, an aquarium. Everybody wants
to do something. The only thing I would approve is
Disneyland and Magic Mountain out there in that big old
crash lot. Give me that and I'd be happy. Save me the
trip to L.A.

(Laughter.)

MR. MONTOYA: On the other hand, San Diego is a
beautiful place to be in. I would encourage you guys to
bring me the Iowa, put it next to Midway. I'd enjoy that.
You'd have a line of people. People come off a cruise
ship, hey let's go see a Battleship. Something they never
got to see unless they go to New Jersey or Hawaii.
The thing is that we are a Navy type down. We've
got plenty of hotels. And then the biggest thing is I
like your neighborhood. You know, you got a nice --
nobody wants to move. Let me build one above you. That's
what this dummy is trying to tell us. And it's pathetic.
You know, so please I encourage you guys to take
this up and say leave.

Thank you.

CHAIRPERSON CHIANG: Thank you very kindly.

Okay.

Comments by the Commissioners.

COMMISSIONER GARAMENDI: I would propose that we
move this resolution opposing Proposition B. We've heard
the testimony here.
Proposition B is a direct threat to the commercial maritime activities at the 10th Avenue Marine Terminal. And therefore, it should be defeated on the ballot. If it's not, then I suspect we would vote to proceed with our lawsuits, but that's a next issue.

Just defeat this at the ballot and then be done with it and keep this terminal in place. The jobs are important. The commercial activity, the marine commercial activity is extremely important to the region, to this State and to the nation.

Therefore, I move the resolution.

CHAIRPERSON CHIANG: Okay. We have a motion by the Lieutenant Governor. I will second it.

Tom, do you want to make any comments?

ACTING COMMISSIONER SHEEHY: I just want to say that I appreciate all the testimony this morning. I'm going to withhold any vote on this matter. Our view is that if this were to pass, then we would deal with it accordingly. We just think it's premature, at this point, for us to take an action at this point. So my lack of voting shouldn't be reflected as support or opposition in any way to what's before the local voters here in this port district.

CHAIRPERSON CHIANG: Okay. Per Tom's request, please take roll.
EXECUTIVE ASSISTANT LUNETTA: Lieutenant Governor?

COMMISSIONER GARAMENDI: Aye on the resolution.

EXECUTIVE ASSISTANT LUNETTA: Controller Chiang?

CHAIRPERSON CHIANG: Aye.

EXECUTIVE ASSISTANT LUNETTA: And Tom Sheehy?

ACTING COMMISSIONER SHEEHY: Not voting.

CHAIRPERSON CHIANG: Motion passes.

Next item.

EXECUTIVE OFFICER THAYER: The next item would be normally Item 57. However, in consultation with the Chair's office, there's a recognition that for Item 60 we've established a panel on an item that the Lieutenant Governor asked us to put on the agenda. And we wanted to provide more time certainty to when the panelists would have to appear. And so we've, again in consultation with your office, established a process where we would take up that matter as the first matter after 11 o'clock. And 11 o'clock having passed, the next item therefore under that process would be Item 60. Once Item 60 is concluded, we'll come back and take up the other items.

So the staff -- we will have a panel discussion on this matter. And the panelists will be sitting up here. But first before that starts, again Jennifer Lucchesi, staff counsel with the State Lands Commission,
will give a presentation on this item.

STAFF COUNSEL LUCCHESI: Good morning again. At the request of Lieutenant Governor Garamendi, staff prepared this informational report discussing the relationship between the Public Trust Doctrine and mitigating port impacts.

As California ports are faced with an ongoing need to accommodate growth, port operations can have adverse impacts on the environment and local communities surrounding these operations. The question that arises is, can there be proper and effective non-CEQA required mitigation that complies with a trustee's fiduciary obligations under the Public Trust Doctrine and the California Constitution?

Can a port conduct itself as a good neighbor to its surrounding communities while also serving as trustee of State assets on behalf of the citizens of the State of California?

Commission staff believe the answer to these questions is a clear yes. However, there are limits to what constitutes lawful expenditures of Public Trust revenues.

I will explain these limitations during my presentation by providing background on the legal status of public trust lands and assets, discussing CEQA and its
requirements for mitigation, and conclude by looking at
the Port of Los Angeles as an example of how mitigation
and the Public Trust Doctrine interface with each other in
the real world.

Following my presentation, there will be a panel
discussion which will include perspectives from a range of
stakeholders, including local community groups, 2 ports,
the maritime industry and the Attorney General's office.

Beginning in 1911, the California Legislature
entrusted to local jurisdictions the State's Public Trust
lands for the primary purpose of developing ports. The 5
major ports of California can all trace origins back to
these grants. These ports hold and manage the State's
Public Trust lands as a trustee of the State on behalf of
all the citizens of California.

So what constitutes a proper use of public trust
lands or revenues?

Guided by various California Supreme Court and
Appellate Court decisions, it is clear that in order to
constitute proper trust uses of Public Trust Lands and
proper expenditures of trust revenues, the use or
expenditure must, 1, either, directly benefit the port and
stimulate commerce and navigation through the port or be
necessarily incidental to these purposes;

Or, 2, the use must promote the statewide as
opposed to purely local public's enjoyment of these Public
Trust lands.

Since it's enactment in 1970, the California Environmental Quality Act has required that California ports mitigate the adverse impacts of their proposed projects on the environment. It is essential to distinguish between, 1, CEQA-required mitigation; 2, discretionary mitigation that is not CEQA mandated, but sufficiently justified in mitigating port impacts; and, 3, proposals that a port is asked to pay for that are not CEQA-required mitigation as they are not associated with any one particular port project or impact and for which no CEQA-like analysis has drawn a nexus.

A mitigation measure that has been developed in response to a port project specific impact and has been sufficiently justified and documented pursuant to CEQA, will be consistent with the Public Trust Doctrine as it is mandated by law and is necessary in facilitating a Public Trust project.

Beyond project-specific mitigation, discretionary mitigation, not mandated by CEQA in projects that are proposed to offset impacts from general operations of the port, must comply with the Public Trust and the California Constitution. This can be done by establishing a nexus between port operational impacts and the proposed project.
using a CEQA-like analysis.

Some have suggested that an appropriate off-site project can never have the required nexus to port operations. This is not true. Neither does it mean that the port may not acquire lands or improve property to mitigate impacts of port operations. Such an off-site project will be consistent with the Public Trust if it establishes a nexus that can be justified, documented and that is proportional to the Port's operational impacts.

Further, some have suggested that ports are responsible for activities by third parties that take place off port property. An example is a container storage facility on private property in the vicinity of a port, which may cause blight and negative esthetic impacts to the community. These types of impacts are not necessarily the responsibility of the Port. The Port doesn't necessarily have control over these activities. It is the City who has jurisdiction with zoning and permitting authority over such activities.

COMMISSIONER GARAMENDI: Excuse me. That's not to say there's not a nexus.

STAFF COUNSEL LUCCHESI: That's true. But the Port does not have control necessarily over the land uses on those properties that are not under its jurisdiction.
COMMISSIONER GARAMENDI: So is the key issue here the control of the Port or is it the nexus of the economic or commercial activity?

STAFF COUNSEL LUCCHESI: I think it's both. There has to be a nexus between the impacts and port operations. But at the same time, the Port also has to, if they're going to expend money on property outside of their jurisdiction, there may be a situation where they have to obtain some sort of property interest in that in order to lawfully expend those revenues.

COMMISSIONER GARAMENDI: So there's 2 factors. You're arguing 2 factors. One is a nexus that is somehow tied to the marine activity, and secondly, a legal, either ownership, lease or some other. So the 2 factors you're arguing have to be in play.

STAFF COUNSEL LUCCHESI: That's correct, if the Port is going to improve property outside of their jurisdiction.

EXECUTIVE OFFICER THAYER: I think though to interject another thought on this, is that -- I'm sure the Commissioners are aware that there's kind of a cascade of impacts from any activities in society. And it's difficult to decide who has what role -- I mean, this is really the fundamental issue here -- who has what role to mitigate those impacts?
And I think staff, in analyzing this,
understanding that at some point a truck carrying a
container from the Port of LA to Des Moines is going to be
an example of something that could be an impact
attributable to the Port, but which most people would
decide that's outside of the ambit of the Port to deal
with it.

And I think staff, in looking at the range of
impacts and the ability to address those impacts, believes
that secondary sorts of operations, which are subject to
permitting and regulation by other entities, have the
opportunity -- are raising -- are creating impacts that
are typically dealt with within that other jurisdiction's
roles and responsibilities.

So, for example, for these off-site secondary
activities, such as truck repair facilities around the
Port, there's a whole realm -- if you went out with your
staff and drove around Wilmington, you could see examples
of this. There's no doubt that the location there is at
least, in part, due to the Port, that these serve the
Port.

But who's responsible for addressing those
impacts? And some of the pictures, for example, provided
by Mr. O'Brien showed a stack of tires that was on the
street. Well, those tires are probably used in -- may
1 have been used on trucks servicing the Port. But is that
2 a zoning violation that should be corrected by the City of
3 Los Angeles, and is what we're seeing as a failure of the
4 City potentially to enforce existing zoning requirements,
5 that kind of thing?

6 And so that's really one of the central policy
7 issues of what we're debating here today. And I think
8 this is something the Commission has to, as the policy
9 setter for this agency, will need to consider.

COMMISSIONER GARAMENDI: Yeah. I was just
10 wanting to note that staff has considered 2 requirements
11 or 2 hurdles. One being the nexus to the marine activity
12 and a second being jurisdiction, if you will.

EXECUTIVE OFFICER THAYER: Right. And I would
15 say that, you know, these are not black and white
16 boundaries, none of this is.

COMMISSIONER GARAMENDI: Indeed, that's correct.
18 (Laughter.)

EXECUTIVE OFFICER THAYER: And so there are
20 sometimes activities that are undertaken by the Port that
21 may be under jurisdiction of another agency. I mean, it's
22 a big world and there are a variety of examples out there
23 and there's not a hard and fast rule, but it comes down to
24 allocating responsibility.

COMMISSIONER GARAMENDI: Did the Ports have any
EXECUTIVE OFFICER THAYER: Yes. They supplied a lot of money for that. Not all of it, but a portion of it.

COMMISSIONER GARAMENDI: Was there some point in the geography of the Alameda corridor at which the Port's interest stopped?

EXECUTIVE OFFICER THAYER: I think they just decided that the Port would pay, I think it was, 40 percent. Dr. Knatz, I'm sure, can give the percentage.

COMMISSIONER GARAMENDI: So it was -- the geography wasn't 1,000 yards or 10,000 meters, it was the project.

EXECUTIVE OFFICER THAYER: In that case, it was the project, because that project marked --

COMMISSIONER GARAMENDI: But it didn't go as far as Des Moines.

(Laughter.)

EXECUTIVE OFFICER THAYER: No, it did not go as far as Des Moines. Although, there are discussions about whether the Port should be paying as far as San Bernardino. So this is a very real issue that is being worked through every day.

COMMISSIONER GARAMENDI: Thank you.

Please.
STAFF COUNSEL LUCCHESI: I was going to now focus on the Port of Los Angeles to highlight, kind of, a spectrum of mitigation that the Ports may fund, that is both Public Trust Doctrine and the California Constitution.

The significant expansion of the Port over the last 200 years has resulted in the Port to date facilitating the transportation of the highest number of container cargo shipments in the United States. In the past, the Port focused solely on expanding its operations with some would say minimal mitigation. However, with the recent amendment to its granting statutes to include the full panoply of Public Trust uses, it has embarked on a variety of programs aimed at improving the environment surrounding its operations both in terms of air and water quality, but also with increased public access and water-related visitors serving recreational opportunities.

Examples of these types of programs include the Clean Air Action Plan, which also includes the clean truck program, which is estimated to cost about $1.6 billion by 2012. Two other waterfront development projects are the Wilmington Waterfront Development Project and the San Pedro Waterfront Development Project, which can be shown here.

The San Pedro Waterfront Development Project
encompasses 400 acres. And it's estimated to cost $1 billion by the end of its construction. And it includes 400 acres and provides a number of open space, recreational, waterfront-related types of visitor-serving uses, that are generally consistent with the Public Trust and the California Constitution.

Second, the Wilmington Waterfront, which includes about 58 acres of waterfront redevelopment project that actually also acts as a buffer between heavy port operations here and the community here. It's 58 acres. And it's estimated to cost at completion $225 million.

These programs are all generally consistent with the Public Trust Doctrine, the California Constitution and the Port's granting statutes. But they also provide direct and incidental benefits to the local communities of San Pedro and Wilmington.

There are only a few select projects that have been proposed to mitigate --

COMMISSIONER GARAMENDI: Excuse me, before you leave those projects, the jurisdictional issue. Does the Port own the land or otherwise have jurisdictional control over those specific areas?

STAFF COUNSEL LUCCHESI: Yes, it does. In fact, in the past it has spent a lot of money and a lot of time acquiring these properties back here, originally for
expansion of its port operations. But with the amendment
to their granting statutes and also working with the
communities and environmental groups down there, they have
changed their plans to develop this Wilmington Waterfront
Development Project.

COMMISSIONER GARAMENDI: Thank you.

STAFF COUNSEL LUCCHESI: There are only a few
select projects that have been proposed to mitigate port
impacts outside of CEQA-required mitigation that the State
Lands Commission staff believes are not necessarily
consistent with the Public Trust.

These select projects arose under the China
Shipping settlement, 1 of 2 types of mechanisms designed
to have the Port fund projects beyond and outside the CEQA
process. The China Shipping settlement and the TraPac
MOU, the second mechanism, have raised issues regarding
consistency with the Public Trust and the California
Constitution.

The China shipping settlement was a result of
litigation between the Port and various community groups,
including the NRDC. The settlement provided, among other
things, for a general mitigation payment allocation, which
included 10 million to the Gateway Cities program, which
involved port-related diesel powered trucks; 20 million to
air quality mitigation, which was aimed at reducing air
quality impacts from port operations; and 20 million to community-esthetic mitigation, which was aimed at reducing the esthetic impacts from port facilities and operations. Commission staff has not questioned any of the projects approved for funding under the Gateway Cities program or the air quality mitigation program. However, through the procedure for funding the community-esthetic mitigation, Commission staff is able to comment as to whether any particular project is consistent with the Public Trust.

Commission staff generally believes that this mechanism has worked within the context of the China shipping settlement of litigation. And it could be appropriate in other contexts as well.

Commission staff has approved over a third of the projects as being consistent with the Public Trust amounting to over $24 million. The disagreement on the standard by which staff holds these projects to, this standard has been guided by ports. And this standard -- the disagreement in the standard that staff uses can really be highlighted by 2 projects.

The San Pedro Welcome Park and the Wilmington Green Belt. These 2 projects were determined by Commission staff as being inconsistent with the Public Trust because both were located a significant distance...
from port property, were long-planned community projects, and there was no documentation put forward that established a nexus between specific impacts of port operations and these parks as mitigation for those impacts.

Because of this lack of nexus, the use of Public Trust funds for these projects would have constituted the use of the Trust monies for purely municipal purposes, found impermissible by the California Supreme Court and the California Constitution.

The TraPac MOU, the second mechanism, resulted --

COMMISSIONER GARAMENDI: Excuse me, before you move to that. The inconsistency with the Constitution has to do with what activity or what part of the proposal?

There was no nexus?

STAFF COUNSEL LUCCHESI: The California Constitution, Article 6 prohibits the gift of public funds. The Port's revenues are statewide assets. They're supposed to be used for the statewide public. In putting forth of port revenues to develop a park that is solely for a local, a municipal purpose as opposed to having any kind of statewide benefit, that constitutes a violation of the Constitution.

COMMISSIONER GARAMENDI: Under the gift of public funds?
STAFF COUNSEL LUCCHESI: Yes.

COMMISSIONER GARAMENDI: Okay. And the jurisdictional issue?

STAFF COUNSEL LUCCHESI: In that particular situation, the Port -- the proposal was for the Port to actually purchase the property and then develop the park. And so the Port would have -- would own the property. So there wasn't -- it's more the Port expending the funds to purchase that property for --

COMMISSIONER GARAMENDI: A small segment of California.

STAFF COUNSEL LUCCHESI: Exactly.

COMMISSIONER GARAMENDI: Okay. But if it's a large segment of the California public, it would have been okay?

STAFF COUNSEL LUCCHESI: If it had -- if its purpose was to provide a benefit to the statewide public in order for that public to enjoy the Public Trust lands the Port has jurisdiction over, yes.

EXECUTIVE OFFICER THAYER: If I could --

COMMISSIONER GARAMENDI: I'm trying to get a sense of magnitude here or the population magnitude.

EXECUTIVE OFFICER THAYER: And it's as much purpose as anything else. In other words, you can't say oh, well we're going to just serve the whole LA County and
that would be sufficient. It's supposed to be for more
the statewide purposes.

So, for example, when money is spent on
improvements that improved the utility of the Public Trust
lands for their purposes. So, for example, putting in a
terminal in the Port of Los Angeles is of statewide
benefit, because all of the citizens benefit from what
comes through there.

The buffer zone, when we showed the picture up
here, is of statewide benefit, because it mitigates for
the impacts for that port activity, which is of statewide
benefit. The concern over the Wilmington Park and the
Welcome Park in San Pedro is that first there wasn't a
nexus to show that it was mitigation. And so if it's not
mitigation, then it's merely constructing what is really a
community park. It's not a buffer. It doesn't -- it's
not mitigating for a project that couldn't otherwise go
forward. It is just a community park.

If the Port had taken out some park, then it
should replace that park. And that would be an example of
putting in a replacement park that would work where parks
could be mitigation. Or if, as we showed, there is a
buffer, then there's a park that really is being a park
that benefits the community, but it's also benefiting
statewide, in San Pedro.
You see the same thing at Marina Green in San Francisco, where you have an activity -- a place there where people can picnic. There’s no doubt it's a benefit to the community as well, but still it provides an opportunity for the people throughout the state to come and enjoy the San Francisco waterfront. And that sort of connection wasn't there -- either of those 2 connections. There wasn't the statewide benefit and the benefit for the Public Trust property, which is the Public Trust Doctrine, and there wasn’t mitigation demonstrated. And those are the 2 general reasons that the Port can spend money on projects that might benefit the community.

COMMISSIONER GARAMENDI: Thank you. I'll try not to interrupt so much.

STAFF COUNSEL LUCCHESI: No. No. I'm glad you're asking the questions.

The TraPac MOU, the second mechanism, resulted from the TraPac Appellants' appeal to the Los Angeles City Council after the approval of the TraPac Final EIR by the Port.

It is important to note that Commission staff does not generally oppose the projects specifically identified in the MOU for funding. However, staff has concerns about how the MOU will be implemented legally. Staff's concerns revolve around the MOU allowing for a
permanent dedication for a Wilmington buffer. The staff's concerns also revolve around the funding rationale for the establishment of a community mitigation fund and the creation of a third party, outside of the Port, to manage this fund.

These 3 concerns raise legal issues under the California Constitution, the Public Trust and the Port's fiduciary duty as a trustee for the State.

In conclusion, as trustees of State Public Trust lands, ports have the duty to be good stewards of these unique and scarce lands. Towards that end, ports clearly have the obligation to mitigate impacts on the surrounding communities stemming from port projects.

Further, ports also have a responsibility to act as good neighbors to their surrounding communities. However, ports also have a fiduciary duty as trustees of the people of the State to manage their Trust lands and revenues in a manner consistent with the Public Trust Doctrine and the California Constitution.

Projects that buffer local communities from port operations by creating open space and parks that provide public access to the waterfront are notable amenities for the surrounding communities and are generally consistent with the Public Trust.

Further, projects that are mitigating port
impacts that can be sufficiently justified and documented
and are proportional to the impacts caused by port
operations are also generally consistent with the Public
Trust.

However, projects which are removed from the Port
and function solely as community or local amenities and do
not relate to the Port or its documented impacts, may not
be supportive of Public Trust revenues.

COMMISSIONER GARAMENDI: Perhaps, you'd better
hear from others before I go on here, but I would like you
to be available for some questions.

STAFF COUNSEL LUCCHESI: Of course. So that
concludes my presentation and I'd like to introduce the
panel at this point. Panel members.

Just to introduce our panel members. First,
thank you all for agreeing to participate in this.

First up to make a presentation will be Melissa
LinPerrella. She's an attorney with the Natural Resources
Defense Council. She represents the TraPac appellants.
Following Ms. LinPerrella will be Joe Rusconi from the
Attorney General's office. Following Joe will be Dr.
Geraldine Knatz, the Executive Director of the Port of Los
Angeles. And after that will be Mike Jacob from the
Pacific Merchant Shipping Association. And finally will
be Dan Wilkens, the Assistant Port Director from the Port
COMMISSIONER GARAMENDI: Thank you.

MS. LINPERRELLA: I guess I'm first.

Good morning. My Name is Melissa LinPerrella.

I'm with the Natural Resources Defense Council. As you know, NRDC has been involved in trying to reduce impacts from port operations for some time now, most specifically in the context of trying to reduce port air pollution.

As mentioned, NRDC was also one of the parties to the TraPac MOU. I want to thank the Commission for the invitation to discuss off-port impacts and to highlight an opportunity that we have before us today, and that's an opportunity that is embraced by the communities of San Pedro and Wilmington, the Port and City of Los Angeles, in addition to labor and environmental groups, and that is the opportunity of implementing the TraPac MOU.

I also want to thank staff for the extensive work they put into their staff report and coordinating this panel so quickly. And I also thank staff for their statements that they are willing to work with the parties of the TraPac MOU within the framework of that agreement, even despite some of the concerns that they have over its implementation. And my hope is that we can resolve those concerns and fashion an outcome that will allow for the addressing of off-port impacts in a manner that is
consistent with the Public Trust Doctrine.

So I'd like to really split my presentation into 2 parts. The first is to generally discuss the TraPac MOU and respond to some of the issues that staff has raised. And second, I'd like to generally discuss what are off-port impacts and how addressing those impacts will further the Commission's Environmental Justice policy.

The TraPac MOU. As you may know, it was negotiated by environmental, labor and community groups with the Port and City of Los Angeles. The purpose of the MOU was to enable the TraPac Terminal Expansion Project to move forward without litigation while creating a mechanism for addressing near-port impacts.

Specifically, the MOU creates a monetary fund for addressing near-port impacts. The amount of the fund will increase if port operations increase. The rationale is that as port operations grow so will their impacts and so will the need for mitigation. However, if no growth occurs, additional monies will not be placed into the fund.

The fund will be spent on projects that will reduce near-port impacts and be administered by a nonprofit entity. Prior to the establishment of the nonprofit entity, an interim entity will research the structure of the nonprofit to ensure that it administers
the funds in a manner consistent with the Public Trust Doctrine.

Now, I know staff has raised concerns over whether a nonprofit entity can administer the funds. Specifically, staff has urged that the Port cannot abdicate their role as a trustee. No one has suggested here that the Port would be abdicating its role as the trustee. Right now, the Port outsources its mitigation programs all the time. An example was cited earlier, where the Port of LA has given over $10 million to the Gateway Cities COG to help the Port retrofit and replace dirty old trucks. It's my understanding that one or both of the San Pedro ports are currently outsourcing portions of its clean trucks program.

I site the examples to illustrate that ports give monies to third parties all the time. And so there must be some middle ground between the Port abdicating its role as the trustee and the Port having to do every single mitigation program in-house.

And it's this middle ground that the interim entity will research and which will inform the structure of the nonprofit entity. We only ask that the Commission and the staff not prejudge that research or the structure of the nonprofit.

Also, the MOU provides for 2 independent studies.
that will provide a CEQA-like analysis to support near-port mitigation. Staff's memorandum or report supports moving forward with these studies and suggesting that to comply with the Public Trust Doctrine, mitigation must either arise within the CEQA context or have a nexus. The studies will provide the evidence-based or nexus needed for any mitigation funded through the nonprofit.

Like staff, we also acknowledge that the Port has already taken some very -- undertaken some very ambitious mitigation programs. However, I think it's important to keep in perspective that while the Port has initiated a lot of mitigation, there is still a lot of work to be done.

To provide some perspective on the enormity of port operations and their impacts, at full build out the TraPac expansion project -- this is one port terminal expansion project -- will process the same number of TEUs as the entire Port of Oakland currently processes today. And, as you know, Oakland is the 3rd busiest port in California, the 4th busiest port in the nation.

A memorandum that was attached to this staff report includes background on what we see are some of the near-port impacts. Those are impacts on public health, public safety, land use, noise and others that are created by port operations that do not necessarily stop at the
Port's fence line.

For example, in terms of public health, we have become increasingly aware that port air pollution disproportionately affects port-adjacent communities. Rates of childhood asthma and communities adjacent to the Ports are approximately 22 percent compared to 15 percent for the Los Angeles region overall and 14 percent nationally.

These impacts require mitigation both on and off port lands and could include the installation of air filtration systems in Wilmington and San Pedro schools that are in close proximity to the Port.

In addition to public health impacts, there are other impacts like impacts to land use, noise, and esthetics. Some of these impacts are caused by port operations that occur off of port lands. For example, container storage yards and truck service facilities facilitate commerce, maritime and other traditional port operations, but are located not on port land but in communities near homes, schools, daycare centers and playgrounds.

And I want to address the issue of jurisdiction in a second, but I want to show a couple photos. So if you could pull up my PowerPoint.

(Thereupon an overhead presentation was

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Presented as follows.)

MS. LINPERRELLA: Now, this is a photo that shows the proximity of port operations to port communities here. This is part of the community of San Pedro.

Next slide.

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MS. LINPERRELLA: This is a Wilmington container storage yard. This facility is not only an eye sore, but creates tremendous noise on the weekends as containers are restacked and reshuffled.

COMMISSIONER GARAMENDI: Who owns the facility?

MS. LINPERRELLA: Excuse me?

COMMISSIONER GARAMENDI: Who owns the facility?

MS. LINPERRELLA: It's my understanding that it's privately owned.

This is a picture of the same facility.

Next slide.

--o0o--

MS. LINPERRELLA: But on the other side you can see that it is close to a church and other residences.

Next slide.

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MS. LINPERRELLA: This is one of the many privately owned truck staging areas in Wilmington that is used for storage, repair and sales.
MS. LINPERRELLA: So on the issue of jurisdiction, one area where staff and NRDC likely disagree is whether the Port is responsible for mitigating impacts, for example, from a container storage yard. Staff has indicated that it believes that the Port does not have responsibility for activities that occur at that yard.

But in all practical sense, the Port operations are a but-for cause of the activities at that container storage yard. And the argument that the Port has no control over those activities would seem to overlook the fact that the Port has the discretion to approve highly industrial projects over less industrial ones that could lessen the impacts from, for example, that container storage yard.

In addition, specifically to the issue of jurisdiction, staff has mentioned that in order to mitigate, you have to have ownership over the property, for example, causing the eye sore. At first blush, that would seem to make sense, the notion that you have to control the property in order to reduce the harm coming from that property.

But, for example, under CEQA, the definition of mitigation includes providing substitute resources. So,
for example, to mitigate an eye sore, you could very well provide open space, a beautification project. You don't have to necessarily reduce that harm specifically coming from that facility.

All of these impacts create an Environmental Justice problem in the communities of San Pedro and Wilmington. This is a map that provides a glimpse of the income levels in the harbor area. As you can see, many areas adjacent to the Port -- that square that's white -- Wilmington is more in the top -- if I'm saying it right, the upper right-hand side. San Pedro, the lower left-hand side. As you can see, many areas that are in white appear on that map, and those are areas that have low household incomes.

Next slide.

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MS. LINPERRELLA: This map provides a glimpse of the Latino populations in the harbor area. As you can see, significant portions of Wilmington and San Pedro are comprised of Latino populations. The TraPac EIR even acknowledges the project would result in quote "...disproportionate effects on minority and low-income populations."

Next slide.

---o0o---
MS. LINPERRELLA: This map comes from the TraPac EIR. It shows a high percentage of minority residents living near the TraPac project. The yellow outline is the project area. The areas that constitute very high percentages of minority populations are in dark maroon. The dark maroon areas specifically are areas where the minority population is greater than 90 percent.

Next slide.

--o0o--

MS. LINPERRELLA: This map provides the Port of Los Angeles' analysis of low-income residents near the TraPac project. Again, the yellow outlined is the project area. The darker blue areas indicate places with very high percentages of low-income residents.

Next slide.

--o0o--

MS. LINPERRELLA: As you know, in 2002, the State Lands Commission adopted an Environmental Justice policy. And as part of that policy the Commission pledged to infuse Environmental Justice considerations into its decision making, and concluded that in so doing, it would be consistent with the Public Trust Doctrine principles that the management of the Trust lands is for the benefit of all the people.

Within its EJ policy the Commission committed to
work with other government agencies and to foster research
to better define cumulative sources of pollution,
exposures, risks and other impacts. We believe that the
MOU furthers these policy objectives.

To that end, we requested the Commission support
our efforts to perfect a mechanism for addressing
near-port impacts. Specifically, we asked that the
Commission find that port operations are creating
environmental impacts in Wilmington and San Pedro and that
these impacts are creating an Environmental Justice
problem.

Also, we would like the Commission to direct
staff to provide updates to the Commission at a public
meeting on its efforts to ensure near-port impacts are
being mitigated, including updates on the implementation
of the TraPac MOU.

Now, if there are barriers to implementation of
the MOU, we would ask that staff describe those barriers
and hopefully propose solutions that could ensure the
swift implementation of that agreement. And when those
updates are provided, we ask that a member of the TraPac
appellate group, as well as other interested parties, also
be given an opportunity to comment on the implementation
of the MOU.

And that concludes my comments.
Thank you.

DEPUTY ATTORNEY GENERAL RUSCONI: Commissioners,

my name is Joe Rusconi. I'm one of your counsel and I've been asked this morning to discuss, in a general way, the duties of public trustees and their interactions with the Commission, and the propriety of spending Public Trust funds for various purposes.

Upon admission to the union in 1850, California received title to its tidelands, submerged lands of its navigable lakes and rivers to be held in a unique way in a trust for all the people of the state. Traditionally that trust is described in terms of commerce, navigation and fisheries.

However, it has recently been found to be much broader and to include the rights to hunt, bathe, swim and the right to preserve the lands in their natural state. The courts have held that California's power to control and to regulate its Public Trust lands, when acting in the terms of the Trust, is absolute.

California, however, may grant its lands to municipalities as it has done throughout the state. Here the grant to the City of Los Angeles is for the establishment of the harbor, wharves, et cetera. And it was recently amended to expand the uses for open space, wildlife, habitat and other activities in furtherance of
the Public Trust.

Now, after California grants its lands to municipalities, it still remains the ultimate trustee. And it retains the power to require that monies generated from these lands be spent only for Public Trust purposes. And even to remote -- revoke, excuse me, alter or amend the granting statute.

This Commission has been delegated by the Legislature California's retained trustee and supervisorial powers to the lands that have been granted to the municipalities. The grantees are required to submit detailed accounts of their Trust revenues to the State Lands Commission each year. And the Commission oversees the operations of the Port to ensure that they're consistent with the Trust.

Now, grantees obligations.

Oh, excuse me, before I move on. The Commission takes this role very seriously, and has, in the past, sued grantees who it believes have misspent Trust revenues, both the City of Los Angeles and the County of Orange. Now, this office has, in the past, published Letters of Advice to grantees outlining their ability to spend Trust revenues. And, in general, the duty of the trustee, here the Port or the City, is to manage its granted lands in the furtherance of the Public Trust and
not for purposes that are inconsistent with that Trust and
with the granting statute.

The Port is a trustee in all of the legal and
technical sense of that word. It has been given the
property of another, and the revenues from the property of
another, the People of the State of California, to manage
according to the terms of a instrument, that granting
statute and the requirements of the Public Trust. And the
courts have held that these local government grantee
trustees are governed by the traditional Trust concepts.
Revenue generated from Public Trust property is
impressed with the Public Trust must be segregated and
accounted for in a separate fund; must only be used for
Public Trust purposes; and may not be used for purely
municipal purposes, such as parks and recreational
facilities on non-Trust properties.

However, we have advised that payment of Trust
funds to municipalities, for example, for necessary
services rendered, are proper. Trustees are entitled to
repayment of Trust funds for all expenses actually and
properly incurred in the performance of Trust duties.
Thus, trustees may use Trust funds to pay municipalities
for necessary services, such as fire and police
protection, provided that: One, the service provided by
the local government is a proper Trust expense; the
service must be performed on Trust property or must provide a direct benefit to the Trust property; the cost of the service is reasonable; there must be a system of billing/payment in place which can be audited; neither the Trust nor its concessionaire tenants is already paying fees for this service, such as through possessory interest taxes; and the fees-for-service contract must be entered into before the services is provided. Payment for past services as a reimbursement is not permissible.

Now, how do we apply those to the question here today, and that is to the payment of Trust funds for mitigation of adverse impacts for Port operations?

First, trustees should attempt to lessen impacts of its operations rather than to mitigate.

Second, trustees may use Trust funds to mitigate impacts that have a direct and quantifiable nexus to its operations. This mitigation may take place, and usually does, on trustee-owned property on adjacent property and, in rare circumstances, on property that's situated farther from Port operations. That's the nexus requirement.

The impacts must be direct and quantifiable.

Usually circumstances would be mitigation for impacts identified through the CEQA process. However, on a case-by-case basis, other direct and quantifiable impacts that are demonstrated by other reliable studies and

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sources may be considered for mitigation by the trustee.

The amount of money that would be spent must be
the actual and reasonable cost to perform the mitigation.

The impacts must not already be in the process of
mitigation by another entity or must not be the
responsibility of other State or local government
entities. And I think this was where the Lieutenant
Governor's question was. And the courts have drawn up a
distinction between purely municipal affairs, which while
they may benefit a large segment of the population, have
been traditionally handled by municipalities, versus
statewide commerce, navigation and fisheries matters,
which are handled by the State and its grantees.

And, obviously, it's not a hard and fast line,
but that's where the courts have drawn such a line.

COMMISSIONER GARAMENDI: If I might. The
analysis that you're providing is very, very helpful. I'm
curious as to the timeframe in which that analysis was
originated. Is it a current analysis or is it one that
dates back historically?

And the reason I ask the question is that the
Ports have grown enormously. And the impact of the Ports,
because of that growth, has spread beyond the traditional
area of the Port. At least that's my take of it. And I
think I just heard that argument from Melissa. And
therefore, the analysis that you have given may be out of
date. Could you comment on that.

DEPUTY ATTORNEY GENERAL RUSCONI: I think that
the legal principles are still alive and are still very
viable. Our latest advice letter to the Port of Los
Angeles was a little over 10 years ago and those impacts
were certainly noticeable at that time.

COMMISSIONER GARAMENDI: In the next to the last
portion of your statement, you seem to have substantial
wiggle room.

DEPUTY ATTORNEY GENERAL RUSCONI: Yes. Well, I
wouldn't describe it as wiggle room.

(Laughter.)

COMMISSIONER GARAMENDI: Discretion.

DEPUTY ATTORNEY GENERAL RUSCONI: The language
that was used by the courts in the Morse and Mallon cases,
the ones that established these principles, is absolutely
-- they talk about not spending revenues for municipal
purposes, period. And our office has advised the
Commission and the Port that, you know, there is room.
That properly -- if the nexus is proper, you can mitigate
impacts. You can pay for services that were provided by
municipalities.

COMMISSIONER GARAMENDI: Not withstanding the
jurisdictional issue which was raised earlier. So we
1 could presumably authorize the expenditure of Port funds
2 for projects that are not owned by the Port?
3
4 DEPUTY ATTORNEY GENERAL RUSCONI: I think that in
5 the past that has happened, yes.
6
7 COMMISSIONER GARAMENDI: All right. Again, a
8 nexus directly to the Port. I use the word "directly".
9 Perhaps, that's a qualifier that's not appropriate here.
10 A nexus to the Port.

11 DEPUTY ATTORNEY GENERAL RUSCONI: To the Port and
12 its operations. A direct quantifiable nexus.
13
14 COMMISSIONER GARAMENDI: Once again, you use the
15 word "direct" as I did.
16 (Laughter.)
17
18 COMMISSIONER GARAMENDI: Again, that might be
19 subject to discussion.

20 DEPUTY ATTORNEY GENERAL RUSCONI: Correct.
21
22 COMMISSIONER GARAMENDI: Thank you.
23
24 DEPUTY ATTORNEY GENERAL RUSCONI: I'm just not
25 quite finished getting there.
26 (Laughter.)
27
28 DR. KNATZ: I tried.
29
30 DEPUTY ATTORNEY GENERAL RUSCONI: All right.
31
32 Now, the payment of Trust funds for municipal services.
33 All the decisions to spend Trust funds and actual payments
34 of Trust funds must be made by the legislatively
authorized trustee. Trustees may not provide Trust funds
to a non-trustee entity for that entity's discretionary
spending. The Trustee may not delegate authority to a
non-trustee entity to determine how Trust funds will be
spent.

To do either of these will violate the Trust
under which the grant is held. The Legislature granted
the property and revenue from the property to the trustee.

It would violate traditional Trust fiduciary
principles that restrict the actions of trustees. It
would also interfere with the State Lands Commission's
audit and oversight function. It has statutory ability to
audit and oversee the trustee.

COMMISSIONER GARAMENDI: The point here is that a
deblegation can occur if it is consistent with the factors
that you've stated, that is the audit function, the
purpose -- the nexus function.

DEPUTY ATTORNEY GENERAL RUSCONI: No, I don't
think that's what I'm saying. I'm saying that to allow a
deblegation would be a violation of these various --

COMMISSIONER GARAMENDI: Under any circumstances?

Under any qualifying --

DEPUTY ATTORNEY GENERAL RUSCONI: The Port
certainly contracts for services, but they retain the
ability to decide who to contract for and how the payment
is made. In other words, they retain ultimate control.

COMMISSIONER GARAMENDI: I guess I'm not being very specific here, because there's a very specific case before us, the TraPac and the nonprofit. And I'm trying to understand the circumstances under which that can or cannot take place.

Is there any circumstance, is there any delegation possible to a nonprofit, period?

DEPUTY ATTORNEY GENERAL RUSCONI: I have not had a chance to discuss this with you, my client, nor have we discussed this -- I discussed it with my office -- with the Port. And I prefer that happened first. But I will say that Paul Thayer wrote a letter to the Port raising some serious problems with that concept and I think our office agrees with that letter.

COMMISSIONER GARAMENDI: We'll come around to this, I think, in a few moments.

EXECUTIVE OFFICER THAYER: Do you want to hear more or wait?

COMMISSIONER GARAMENDI: Let's just continue on if it's okay with the Chair. And then I'm sure this is going to come back. It's a key point.

DEPUTY ATTORNEY GENERAL RUSCONI: My last point is that the trustee may not permanently be alienated or otherwise encumber lands that are subject to the Trust, so
as to impair the ability of succeeding trustees to adapt
to changed circumstances. They may, however, lease or
otherwise encumber property for the statutory term which
is in their grant.

If there are any questions, I'd be happy to
answer them?

COMMISSIONER GARAMENDI: Again, that's a key
point to the TraPac.

DEPUTY ATTORNEY GENERAL RUSCONI: Correct.

COMMISSIONER GARAMENDI: One final question. Oil
revenues, are those Trust?

DEPUTY ATTORNEY GENERAL RUSCONI: Oil revenues
from the City of Long Beach were the genesis of most of
the law and how to spend Trust revenues.

COMMISSIONER GARAMENDI: So oil revenues that are
within the jurisdiction of Long Beach or LA, those are
available to the City?

DEPUTY ATTORNEY GENERAL RUSCONI: Those are not
available to the City. Those are impressed with the
Public Trust only be used for Public Trust purposes.

COMMISSIONER GARAMENDI: And oil revenues that
are outside of their jurisdiction?

DEPUTY ATTORNEY GENERAL RUSCONI: The State is
the ultimate trustee to make whatever use of its oil
revenues.
COMMISSIONER GARAMENDI: And those oil revenues -- are the use of the oil revenues restricted in any way?

DEPUTY ATTORNEY GENERAL RUSCONI: No, not that I'm familiar with. I'm not an oil and gas expert. Alan Hager is here and he can discuss that.

COMMISSIONER GARAMENDI: Unlike the revenues at the Port, those revenues from oil outside of the Port can be used for any purpose that the State chooses.

DEPUTY ATTORNEY GENERAL RUSCONI: I believe so, yes.

COMMISSIONER GARAMENDI: Thank you.

Please continue.

DR. KNATZ: Okay. Members of the Commission, thank you for giving me an opportunity to speak this morning. I'm Geraldine Knatz, Executive Director for the Port of Los Angeles. And I've been in that job for nearly 3 years. When I started at the Port of LA, the Port had not approved a major capital improvement project for 5 years. And the reason, because we had not found a way to address the impacts of port operations, specifically the health impacts, on the surrounding community.

So my boss, Mayor Villaraigosa, gave me the assignment to grow and green the Port. And you've already heard our Clean Air Action Plan mentioned by staff and
When the Board adopted that Clean Air Action Plan, we had positioned ourselves to then focus on a long backlog of Environmental Impact Reports. It took us nearly 2 years, but our board certified the first of those EIRs for the TraPac project in December '07. This was the first EIR and capital expansion project approved by either port in San Pedro Bay in 7 years. Despite doing a good EIR, one that showed we could grow the Port business and still reduce pollution below background levels, the document was appealed to the city council by the local community groups.

And here is why.

When you do an EIR, you define the baseline condition, which are the environmental conditions that exist on the day you issue your public notice that you're going to do an EIR. So can you hit carriage exchange for me.

(Thereupon an overhead presentation was Presented as follows.)

DR. KNATZ: In the California Environmental Quality Act you identify the baseline condition and that's that green line. The purpose of the EIR then is to disclose the impacts of the project.

And say we take air quality for example. In our
area, the South Coast air basin has identified a threshold of significance for the air pollutants. And if you hit carriage exchange, you'll see that's the threshold, that red line. And if your project goes over that red line, then you're required to say that you have a significant impact on the environment.

Now, for port projects, okay you can see, on the orange line there, typically we find our impacts are over the significant threshold. And so say for a TraPac project, the air quality impacts are well over the significant threshold. So we try really hard to reduce the levels of pollution below that threshold of significance. And if we get it down to there, we can say we don't have an adverse impact. Our goal, however, at Los Angeles, is to grow and green the Port, so we want to reduce the impacts below the baseline.

So can you hit carriage return again.

--o0o--

DR. KNATZ: So that's our goal. Let's get the impacts below the baseline. If we can do this, it means we're allowing the Port customer to grow and he's producing less pollution than we started with.

So we go through this process. We issue a report. We may have some areas where we have no significant impacts. And the community thinks that we're
crazy.

And why is that?

Hit the carriage return.

--o0o--

DR. KNATZ: Because every day they experience the residual impacts from port growth, the historical growth that has occurred over time; the air quality, the traffic, the health impacts, all that were part of the baseline condition. It's one thing to say you've mitigated back to your baseline or below your baseline, but it doesn't really do the job if your baseline level that you started from is unacceptable.

Working through the TraPac EIR process in the depth that we did was a real eye-opener. And personally, I felt that I walked away from that process with the realization that mitigating for EIR impacts only deals with part of the problem, and that mitigations we include in the EIR are only really part of the solution. Every day the people that live around the Port experience the impacts of port development, because there are those residual impacts of the past 100 years of port growth. These residual impacts do not really get addressed in the EIR process. Although, we try to do that in the cumulative impacts section.

The residual impacts resulted over time. They're
not reduced by the baseline. There are baseline impacts that exist today that we didn't even know about 10 years ago, like health risks, so they weren't addressed in the previous EIRs. In the 7 years that I mentioned that our port was unable to approve an EIR or a port development project when we really weren't doing anything, that was from the year 2000 and 2007, container volumes in Los Angeles increased by 71 percent.

Ships happen.

(Laughter.)

DR. KNATZ: We need a way to mitigate for these residual environmental impacts. These kinds of things that the community experiences. And that was our reasoning in proposing the Community Benefits Fund and tying it to 2 things, the growth that occurs naturally that's not included in EIRs and the future projects.

With our Community Benefit Fund, we're trying to give the community a stake in the growth of the Port. So that as port businesses grow, the community will realize some benefits of that growth and have the resources to reduce these residual impacts. Our philosophy at the Port of LA is we need to mitigate for all the impacts in the EIR process and outside of it. And, you know, we have no hard and fast boundaries. And there's examples of mitigation projects that have occurred outside the Port.
boundaries.

This Commission was very involved in the establishment of the China Shipping Mitigation Program. This fund accumulated deposits of 30.1 million, and 16.9 million has been committed or spent. Community members with very little guidance submit project ideas that go through an extensive vetting by community committees and State Lands Commission staff.

Only after this process occurs does the Port have a role and then it is to only approve or disapprove the project. The China Shipping Mitigation Project funding process is fraught with problems that I really don't have time to go into detail today. But in proposing the Community Mitigation Trust Fund, we wanted to develop a fund and a process that would address many of the issues that plague the China Shipping Fund.

The most important element of the concept is that the Board delegates the authority for grant making to a new nonprofit organization. And granting mitigation funds to others to manage is not a new concept, even to a nonprofit.

I was involved in the creation of a very similar fund as a mitigation for impacts associated with the demolition of historic structures on the Long Beach Naval Station when I worked for the Port of Long Beach. We took
a pot of money. I believe it was 4 and a half million dollars. We spun off a nonprofit that had the responsibility of selecting the projects meeting certain criteria through an RFP process that is totally managed by the nonprofit and the fund manager.

The interest of the fund accrues to the account. And the beauty of it was after the Port of Long Beach created it, the Port was no longer involved. It's called the Long Beach Navy Memorial Fund. And it's managed by the California Community Foundation, and it works beautifully.

With the accrued interest, the Port of Long Beach established a lasting legacy that contributes to historic preservation projects all around the City of Long Beach on properties, I must say, that are not owned by the Port of Long Beach.

So I come over to the other side of the bay. We're now proposing to use the same concept here at the Port of Los Angeles just on a larger scale. Accrued interest in the fund can be used to provide consultant assistance to help the grantees develop their applications and manage the grant process. In this way, we can create a similar legacy that gives community members a stake in assuring that Port projects are able to move through the EIR process.
We've yet to develop the criteria for the grants, but the criteria will ensure that the funds are used for the types of things that address port impacts. Some of the examples are already given in the MOU, like the air filtration systems for schools that are impacted by port operations. I have no doubt that we'll be able to identify appropriate criteria that can be used to screen projects.

We don't see a whole lot of difference between this concept and the Navy Memorial Fund in Long Beach or the $10 million we gave to the Gateway Cities for a truck replacement program, where we delegated the authority for the grant-making process to another entity.

The Alameda Corridor Transportation Authority is in the process of finalizing an EIR/EIS for State Route 47. And they have identified an area where they will propose double-paned windows on homes as mitigation for the project. And the first question I got from them is could they pass the funds to our new organization to manage that project.

Commissioners, solving the problems necessary to allow the Port of Los Angeles to continue to grow means doing things in a different way. The Lieutenant Governor came to San Pedro a few weeks ago and made a speech about the need to be able to change and respond to a changing
environment. We're trying to mitigate for impacts that a few years back we never even identified.

I have a responsibility to grow the Port for the benefit of all the citizens in California. And I can't grow that port unless I really work on improving the quality of life for the surrounding communities. Investments that serve the local community have statewide benefit, if they allow me to grow the Port. I have a great staff, but I really prefer them to work on the traditional port projects, and that's what you would really want me to do, to ensure we're delivering on our Trust grant. And creating another entity to manage these community projects, dole out the grants under specific criteria and take the Port out of the day-to-day management is our solution for keeping this port's economic engine running to benefit.

Commissioners, I hope you see the value in what we're proposing to do. I hope you direct your staff to work with us to make it happen. We haven't really got to the point of working on the mechanics of the criteria, but we expect to start soon once we finalize the interim entity called for in the MOU.

I do want to make a few other comments in response to some comments made by staff. And I think I indicated already we don't feel that actual ownership of
the land is a necessity to carry out a mitigation project.

We've had landscaping projects that if we used that rigid criteria, we would leave a gap on landscape in a long thoroughfare. So some of these things are really common sense. And we've tried to apply common sense and do what really needs to be done.

I also want to make a comment about the buffer in Wilmington that staff has raised questions about designating that in perpetuity. And what we mean by that is, we're making an investment in the greenbelt. It serves as a buffer between the community and the Port. If that was developed as originally conceived as a container terminal, we would have people living right across the street from the container terminal. That's not a good land-use decision.

And so the community asked that the buffer be maintained in perpetuity. And we want to ensure that that happens. We want to ensure that future port managers don't decide they're going to rip up the buffer and extend the container terminal right across the street from the homes. And so we've agreed to do that through a change in the City's general plan and a deed restriction on the property. And we think the buffer is an appropriate designation.

Thank you.
COMMISSIONER GARAMENDI: A couple of questions, if I might. I've got a lot of questions. Let's go ahead and hear from the others. Thank you very much, Mr. Chairman, for letting me butt in here.

MR. JACOB: Thank you and good morning. And let me properly reintroduce myself. I'm Mike Jacob, Pacific Merchant Shipping Association. And our association represents marine terminal operators and ocean carriers doing business on the west coast, in the states of California and Washington. Our members operate at all 11 of California's public ports by the facilities. And our members are responsible for moving approximately 90 percent of the United States cargo through the west coast.

And I'd just like to make a point that while TraPac is a marine terminal operator member of PMSA -- and its parent company and MOL America is also a member -- we're not advocating specifically for TraPac in this hearing. We are representing the industry engaged in containerized trade.

Our message today really is that we're here because of our strong support for maintaining the integrity of the Trust and the proposition that integrity of the Trust is not mutually exclusive of the proposition that you can mitigate port impacts. I think that everyone at this table and staff from the Commission has said that.
I think it bears repeating that nobody believes that there's some sort of prohibition on mitigating port impacts. That's just simply not the case.

And, in fact, we embrace CEQA and sometimes NEPA, EIR/EIS processes as the best example of an organized practical bounded and a political basis for mitigation of port-development projects that are required under the Trust, for a couple of reasons.

And it's not simply to meet the letter of the State law. The Trust analysis and nexus that's undertaken through CEQA for new projects lays out for the Port, in specific detail, the improvements that will have to be made in mitigation achieved by the Port and its tenants over the term of the lease in question or whatever other project is EIR based.

But to us specifically, this is of utmost commercial importance, because we need the certainty that the EIR gives us. It allows a marine terminal operator a quantified reasonable certainty of the costs and then formulate a plan to amortize those costs over the term of the 20-, 25-, 30-year lease, what have you, that you're entering into.

When you get to the question of mitigation, in general, I think that the staff presentation, and Dr. Knatz's presentation, kind of hit the head -- hit the nail
on the head, because we're in a place where our project-based mitigation measures complemented by non-project based mitigation measures have produced the cleanest, greenest and most aggressive port environmental programs in the nation. It's something that I know that our ports are proud of. It's something that we participate in and everyone is better served by it.

By being able to improve the tidelands specifically for the community and in terms of projects that the Port of Los Angeles that are outside of the EIR process or through projects that are EIR-based, everyone benefits. And you've included the community in terms of what the improvement mitigation measures in their EIR look like through a very well understood public process that everyone's familiar with.

And indeed just to reiterate, I think, what the staff and the Commission said, I think we have the same position. We don't have a problem with some of the proposals that are listed in the draft MOU with TraPac. Our issues are really a lot more procedural and with some of the foundational issues. They're not with the mitigation projects themselves.

With regard to the process and methods being proposed for selecting, paying for, managing the TraPac MOU, we specifically have a problem with the notion that a
non-governmental third party can essentially be given
Trust funds to administer without having to comply with
the terms of the Trust.

The question that's come up is can a third party
be used to administer Port funds? And the short answer to
that is yes, but in a limited ministerial or contractual
capacity. The third party cannot be delegated the
authority to administer the Trust itself. It doesn't have
the authority to exercise judgment, discretion and how to
spend Trust revenues and in what amounts.

You know, part and parcel of this problem is the
notion that's built into the MOU's funding structure, that
the Port allocate a fixed revenue stream for future
mitigation program, without even knowing what those
programs may be.

The Trust, in this regard, is important, because
if we take a step back from the particulars of this MOU,
we believe that it's important to look at the larger
context of the request from the TraPac EIR appellants, and
not just the legal limits on the Trust, but the policy
reasons for the Trust, because the trust reflects the
notion that tidelands must serve the people of the entire
state. And obviously we've talked about the specific
purposes, navigation and maritime use, et cetera. But
while the Trust allows for some flexibility in the gray
area that we'll be talking about, the fundamental
principles must always be kept in line as the Trust is
administered. And it's the Port's responsibility as the
trusted not to simply hand over the check book to a group
of potential Trust beneficiaries, but to establish a set
of objective criteria and standards to use to establish
the nexus and basis for the mitigation measures proposed.
I think we all sympathize with the challenges
that come with being a trustee, the challenges that
accompany the Port's responsibilities of being, not only
in this case, the Port of LA, not only being a modern
thriving seaport, but being the largest seaport in the
United States. There's a lot of challenges that accompany
those responsibilities.
And there's a lot of challenges to the Trust.
And some of those challenges are often the very political
and commercial landscape that the Port operates in. But
the responsibilities and challenges are not new. Just
because the challenges are great doesn't mean that the
responsibility they hold to the State changes. And the
challenges have been around for centuries and they really
speak to the needs for the Trust itself. The policy has
not changed, even though, unfortunately the term "ancient"
and "obscure" gets tossed around in front of -- as an
adjective in front of the term "tidelands trust". The
challenges and the pressures are still there.

They occur because of the people who live closest
to the Trust lands, who enjoy the greatest benefits as
well as incur the greatest burdens, while often being the
most vocal on how the lands and revenue should be used.
And this is true with municipal grantees as well. I think
that that just makes common sense. Again, nobody at the
table is going to deny that there are additional burdens
placed on local communities next to ports.

But the trustee's responsibility is really to
enforce the Trust, and everybody in the State benefits
from it. So moving forward, I think what we're looking at
is acknowledging that there are always going to be
pressures to relax the Trust to benefit local uses. And,
in that regard, these arguments aren't new arguments.
They've just been refocused. And the best way to avoid
these outcomes is to require the Port to act under the
terms of its grant, just like every other Trust lands
grantee.

And I guess you ask yourself the question, is the
Port allowed to mitigate its own impacts on the
environment and the community? The answer is yes, of
course it is, but it must act within the terms of the
Trust. It must act within the terms of its grant. It
must establish a direct nexus to the Trust for any
mitigation using objective standards and criteria. And I think the real policy question before the Commission is, can ports keep the Trust and its assets in tact, operate under the terms of the Trust and still do proper environmental community mitigation? And I think the answer to this question is yes.

To do it, we all have to work together to make sure the Trust is preserved. Because if we don't preserve the Trust, eventually we'll be eroding our power to actually properly mitigate projects as we grow the economy.

And I just wanted to tell the Commission that we're committed to the preservation of the Trust clearly, but we're also at your disposal and further commit to work with you and your staff to ensure the Ports can be both good neighbors and good trustees.

And I would like to add a couple of things I think to some of the questions that have been raised earlier and some of the concepts and discussions that were raised by the panelists and the staff discussion.

Clearly, this question about mitigation and off-port and where the jurisdiction lies is a big rub. And we'd like to clarify that there are 2 different ideas here. One is whether or not you can do mitigation off port. And I don't think that there's any question that
you can do that as long as you have a clear nexus to the
project that you're trying to mitigate or the existing
operations of the Port that you're trying to mitigate.

But it's being confused with this question of can
you use Port and Trust assets to mitigate off-port
infrastructure for non-Trust-related properties? And
those are 2 different ideas.

You know, there is a lot of gray area with regard
to what you can spend the money on. But one thing is
really black and white, you're either a Trust property or
not Trust property. You're either generating a Trust
revenue or you're not generating a Trust revenue.

What you do with that, I think, is a different
question. And both of those things should be discussed in
our debate, but I don't think those 2 concepts should be
confused.

COMMISSIONER GARAMENDI: Well, I've got a whole
bunch of questions.

Please.

MR. WILKENS: Thank you, Mr. Lieutenant Governor
and Mr. Chairman. I'm Dan Wilkens with the Port of San
Diego.

A couple of comments here and we'll proceed
pretty promptly to your questions, because I can sense
you'd like to get to them.
First of all, my comments this morning should not be interpreted in any way, shape or form to either criticize or impeach the efforts of the Port of Los Angeles to move the projects that they need to move in order to meet the challenges that we need to meet.

Secondarily, I need to perhaps give you one piece of background about San Diego that's different. San Diego is, in effect, not a political subdivision of the City. When the Legislature granted the lands to the Port of San Diego, it created, in effect, a free-standing government agency, that is made up of appointees by the 5 cities around the bay of San Diego.

And if Geraldine says that the Mayor of Los Angeles is her boss, well my boss has 5 bosses, 5 mayors of the cities around the bay, 7 members of his board, and 24 members of the city councils around the bay.

The basis by which we approach this matter is pretty much consistent of a piece from what Geraldine is telling you and what Mike is telling you. I think the insight, if that's the right word, that I would offer for this is that at the end of the day we've got to move these projects. We have about 4,000 acres of property in San Diego, more or less, of which around 600, more or less, is devoted to peak water maritime activities. And then we've got the rest of it that are in various types of land-use.
As we go through this entitlement process in San Diego, frankly, what you have is people in the communities adjacent to our lands who, in our judgment, they have a disproportionately greater burden being next door to the Port than the benefits to which they received. It is not unlike living under a flight path of an airport. And in that context I may offer to you that model for you to think about.

Airport funds are sometimes considered to be federalized, if you will, and they have restrictions on how those funds can be used. But one of the things that the federal government has recognized through the FAA is the allowance of airports to spend their funds off of the property of the airport far and away outside of the ambit of a specific EIR, a point in time, as Geraldine indicated to you, in order to mitigate noise impacts and other things under the continuous nuisance clause or approach, if you will.

Having said all of that, we tend to take a pretty conservative view of what we can and cannot do. We have EIRs presently where the community groups, sophisticated that they are, are seeking leverage. In some respects, it's kind of a back-handed compliment to the Ports, if I may, kind of toot our horn, in that these community groups...
feel that there's certainty of outcome with the Ports. If they can get us to commit to doing things, they feel confident that those things will get done. Usually, because they recognize that we've been good stewards of our financial houses and that we have the means and, for no other reason, the political will to get these things to come to fruition.

I do not intend to imply that this is the case in Los Angeles, nor do I criticize the cities and San Diego that make up the Port District.

But we have been told over and over again that if we commit to something, such as rerouting of major truck thoroughfares, which is none of our concern, it is purely a municipal and State function, that if we, the Port, commit to that, it will get done and it did get done. We have been told that if we commit to working with the community groups in order to mitigate certain impacts on other projects, be those projects traffic related, be they air-quality related, be they environmental within the context of the ecosystems, that it will get done. And that is what has occurred in these other contexts.

So one thing you may wish to think about, to close, is the FAA model, giving us some idea of what's permissible and what isn't.

And secondly, perhaps even going a little bit
further, I would ask of you that you consider working with us to help our trustees, our policy makers who start off usually being representatives of the City and ultimately become, to some understanding, to a greater or lesser extent, depending on the individual, of their role as a trustee. And how that could be done would be additional discussions with your body or workshops. It could even be some sort of legislative approach were that to be something you may wish to consider.

And, again, I thank you on behalf of my boss, Bruce Hollingsworth for coming to visit us this morning. And you're always welcome. It's your home.

(Laughter.)

MR. WILKENS: We're happy to answer any questions you might have.

CHAIRPERSON CHIANG: Thank you.

Lieutenant Governor.

COMMISSIONER GARAMENDI: Thank you very much, Mr. Chairman.

This panel and these discussions have great importance to the Commission. I appreciate the opportunity to tour the Port. I'm not at all sure I appreciate the opportunity to have to be getting into all of this very complex issue, but it's important. The world is changing rapidly. The Ports have grown, particularly
the Los Angeles area ports, Long Beach, Oakland have grown substantially. We learned today that the Port of San Diego has similarly grown and the impacts are now broader, as a result of those growths. And therefore, it's important that we have this discussion as a Commission to set parameters for the use of Port money, the Trust money.

I don't think we're going to come to a conclusion today as to what the parameters are, but there are some things that I really want to try to pull out of this discussion.

First of all, the issue of the impacts that are not specific to a CEQA analysis. Geraldine, you made the point that those impacts are preexisting, they are real, and that they should be allowed to be mitigated by a specific project, if I understood your point correctly and the diagram you put up.

Is that allowable under the Trust Doctrine? Can we allow for mitigation that is not specific to an EIR?

Is there any question about that?

DEPUTY ATTORNEY GENERAL RUSCONI: Are you asking me?

COMMISSIONER GARAMENDI: I'm not speaking to the nexus and all the other stuff, which I'm coming to. Can we allow mitigation for non-CEQA impacts -- CEQA-related impacts?

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DEPUTY ATTORNEY GENERAL RUSCONI: I think the answer is yes, if all of the other --

COMMISSIONER GARAMENDI: Very good. I just want to make it clear that we can. Therefore, for impacts that exist prior to a new project, we can use the Port money for that purpose.

DEPUTY ATTORNEY GENERAL RUSCONI: Okay.

COMMISSIONER GARAMENDI: No disagreement on that. With regard to a third party, a nonprofit third party carrying out projects. I'm not getting into the nexus issue. I'm not getting into all of that. But can a nonprofit third party be used to carry out mitigation? Is that possible? Is there any restriction on that?

DEPUTY ATTORNEY GENERAL RUSCONI: The restriction is that the trustee must ultimately have the discretion over the funds that are spent, as long as the trustee retains the discretion then, as any business, as they say, if it acts through other parties.

COMMISSIONER GARAMENDI: So we could allow mitigation to be carried out by a third party, a nonprofit, for example, or a contractor, for example?

DEPUTY ATTORNEY GENERAL RUSCONI: Correct.

COMMISSIONER GARAMENDI: Okay. As long as?

DEPUTY ATTORNEY GENERAL RUSCONI: Correct.

COMMISSIONER GARAMENDI: I'm taking these bit by
bit here. So, for example, the Long Beach Memorial Fund
is a third-party nonprofit organization that's carrying
out a specific mitigation resulting from the demolition of
the Naval base. And it has discretion -- it has the
authority to spend money for mitigating purposes. In this
case, I guess, that's mostly for the historic museum and
other kinds of things.

DR. KNATZ: Right. And the Port is not part of
your decision making on what grants are given out to what
organizations.

COMMISSIONER GARAMENDI: I'm coming to that. I'm
going to make sure I understand this.

The non-profit third party either contractually
or through delegation is circumscribed in what it can do
by a delegation of authority and responsibility? Is that
what happened in the Memorial Fund?

DR. KNATZ: Yes. There was an agreement that the
City and Port negotiated that basically specified the
types of things, the mitigations that the money could be
used for.

COMMISSIONER GARAMENDI: Now, the question then
is, are those criteria appropriate and consistent with the
Public Trust; is that correct?

DEPUTY ATTORNEY GENERAL RUSCONI: I don't -- I
have no knowledge about what Ms. Knatz has done, so I
would be very hesitant to speak about it.

COMMISSIONER GARAMENDI: Let's just speak in general terms. And I understand we're talking here without the time to do the detailed legal analysis. But if there's a third party either contractually or delegated, as long as their tasks are consistent with the Public Trust, and therefore a set of criteria laid down under which they would then operate, do we have a problem with that?

DEPUTY ATTORNEY GENERAL RUSCONI: I think that we still have a problem with a delegation of authority by a trustee over Trust funds. The trustee must ultimately have the responsibility of how to decide how those funds are spent and cannot delegate that.

COMMISSIONER GARAMENDI: But apparently we have.

DEPUTY ATTORNEY GENERAL RUSCONI: I don't know about that.

DR. KNATZ: And the concept was instead of preserving a historic building down on the Port that people couldn't use, let's mitigate where people could experience the benefit of the mitigation in the city.

COMMISSIONER GARAMENDI: I'm not there yet. (Laughter.)

DR. KNATZ: Oh, okay.

COMMISSIONER GARAMENDI: There's a fundamental
threshold here that we've got to get to and that is can
the authority be delegated?

Paul, help us here.

EXECUTIVE OFFICER THAYER: I would say, once
again, as we were talking when we earlier conversed, that
this is not a black line going on here. And I would
suggest that the Long Beach situation, might be going over
into the gray area, would have raised some concerns to us
if we'd been reviewing at the time, which we did not.

But I would say to advance the possibility of a
rule here, is there's no reason at all why a grantee can't
delinate implementation of mitigation, but the discretion
over what kind of mitigation is done or whether it's
needed is not so delegable. And so the examples that Dr.
Knatz was talking about were really specific in terms of,
in the case of Long Beach, there was an historic impact
that was identified in a CEQA document, that the taking
down of this historic Navy structure and that this process
was set out specifically through a CEQA analysis that said
okay we don't have a particular way -- a particular
structure that we can say right now, but there will be
other structures down the road where, you know, if we put
money to them, we'll be saving the historic nature or the
historic component of Long Beach.

With respect to the Gateway Cities' project, that
she also mentioned as an example of delegation by the Port of expenditures of funds, a specific amount of money was delegated for a specific purpose. It's not just air quality. I think most of that money was spent on engine replacement. I agree with Dr. Knatz that the Port -- or the Port staff may not be well suited figuring out which engines will we replace exactly and what models shall we use. And that cries out for bringing in an outside entity to administer that kind of project.

The other possibility as well is sometimes these outside entities will be doing that work for a variety of entities. They can do it for the Port of Long Beach. They do it for LA. It makes more sense for one entity to do that. But again, here you're really delegating implementation of mitigation measures more than the discretion. It's not an absolute rule. And in that delegation there's some discretion that's inherent to it.

Our problem, to take just the last step into what you're really looking at here, with what's proposed in the TraPac agreement, has nothing to do with the fact that mitigation should and needs to be done. Or even whether it's, as the gentleman from PMSA stated, with individual projects that are, in fact, laid out as the first project that are supposed to be done under TraPac, it's the mechanism that's established for the future projects where
the Port does not have review and approval over that. And
that's kind of the fatal weakness. It could easily be
cured, you know, if you amend that agreement, so that the
Port retains its discretion over those kinds of projects.

ACTING COMMISSIONER SHEEHY: May I ask a
question?
On your concern about the future projects and the
control there, does that also relate to the control of how
much Public Trust funds would be spent? I mean, in other
words, they don't have control of the projects. What
about the nexus of what it's going to cost and how much of
the Public Trust money would be spent for those projects?

EXECUTIVE OFFICER THAYER: There is some concern
about that as well. Although, the way the agreement is
worded, there is certain limitations on the total amount
of money that has a mechanism that describes the money
that's going to be raised that's pretty precise. We did
have -- we have 3 concerns about that agreement. That's
the second major concern that before -- this agreement
contemplates going out and doing a study to measure
impacts and then developing mitigation to deal with those
impacts. But the funding mechanism is already established
that generates a certain amount of money. It doesn't
necessarily relate to what the mitigation needs are. It
could be too much. It could be too little.
And so it seems to us that the agreement should be set up in a way where the funding mechanism depends upon the amount of money that's needed to develop a proportional mitigation that will actually address these impacts.

So from that perspective -- so there's 2 answers to your question. The first is, we're not worried that there's a the-sky's-the-limit mechanism set up in the agreement. There's not. There's specific amounts of money from specific projects that yield, I think, 50 million in the first 5 years. The agreement can be extended. But for all, there'd have to be a lot of work done to extend that agreement.

But we are concerned that the amount of money that's defined isn't necessarily related to what you're doing.

ACTING COMMISSIONER SHEEHY: And just so I understand, Mr. Thayer, that Trust money that would be used for those projects, if it weren't being used for those projects, it would otherwise accrue to the State General Fund, would it not?

EXECUTIVE OFFICER THAYER: No, it would be used by the Port.

ACTING COMMISSIONER SHEEHY: So it wouldn't be tidelands revenue that would go to the General Fund?
EXECUTIVE OFFICER THAYER: No.

ACTING COMMISSIONER SHEEHY: None of that would.

EXECUTIVE OFFICER THAYER: No, it would all be

used locally for Public Trust purposes -- for the

operation of the Port.

It has been true in one case, the Mallon case,

which I think we discussed with all the Commissioners,

where when the legislation was overturned, it allowed Long

Beach to use money for their purposes. The State then

turned around and took that money back. And just as I

think Jennifer outlined, if the Legislature determines

that the money is being improperly spent -- if, for

example, a mitigation program eventually becomes

criticized for that purpose, the State has the ability to

take that money and use it for whatever purposes it wants.

Which gets to one of your earlier questions, which if

you'd like I could respond to it, but the State can take

the oil revenues and spend them for non-water-oriented

Public Trust purposes, because it's spending it for the

benefit of the entire State. And those are the trustors,

the population in general.

The difference is that when Long Beach takes that

money and spends it, if it were to spend it, as was

overturned in Mallon, for specific municipal purposes,

it's not spending it for the benefit of the whole state.
It gets back to that same public funds distinction.

COMMISSIONER GARAMENDI: So once the money flows to the General Fund, it's considered to be for the benefit of the whole state, even though it might be used for a swimming pool in Barstow.

(Laughter.)

EXECUTIVE OFFICER THAYER: Exactly.

(Laughter.)

ACTING COMMISSIONER SHEEHY: At the Department of Finance, we frown upon those types of expenditures.

(Laughter.)

COMMISSIONER GARAMENDI: Nonetheless, they are sometimes made.

CHAIRPERSON CHIANG: Let me ask a question to the representative from the AG's office. Are there any legal consequences to the trustee in the event of a breach of the Public Trust?

DEPUTY ATTORNEY GENERAL RUSCONI: Well, as I mentioned, the Commission has, in the past, sued and recovered funds from trustees who have improperly spent them. So, yes, there are consequences.

COMMISSIONER GARAMENDI: So back to this question of the nonprofit organization. First, it is possible to use a nonprofit, but it's area or realm of operations are circumscribed. And in the case of TraPac, a nonprofit
organization could be established, if it is -- if its role, the specific areas in which it could mitigate, are circumscribed and related back to the nexus of the Port.

Is that -- am I --

DEPUTY ATTORNEY GENERAL RUSCONI: I think Mr. Thayer outlined it. Yes, that assuming that the ultimate authority --

COMMISSIONER GARAMENDI: And the authority.

DEPUTY ATTORNEY GENERAL RUSCONI: -- remains with the trustees, yes, it could act.

COMMISSIONER GARAMENDI: So the delegation of authority is possible, but it's going to have to be circumscribed in some way and described in some way and then reviewable by the Port?

EXECUTIVE OFFICER THAYER: I think what I tried to say was that that ultimate discretion, not just as a reviewer and audit function, but the discretion -- the original decisions over whether the mitigations are appropriate, should be done by the trustee and not audited later.

So the work needs to be done, as it's going to be done in this agreement, that there's going to be a study to look at the impacts and to try to come up with nex-ise", the plural of the word.

(Laughter.)
EXECUTIVE OFFICER THAYER: It's sort of like the
nurdle hurdle or something like that, to makeup the words
as you go.

But that ultimately that sort of decision should
be the Port's. It should look at what the impact is,
determine whether a nexus is there and therefore whether
it's appropriate to expend the funds. And then it can
turn around and say okay, we've seen there's this kind of
impact to trucks -- or from trucks on local traffic.
Therefore, we think it's appropriate to pay for new
signalization along the main streets in the area. We'll
give that money to whatever the equivalent of the
City -- of Gateway Cities is or even to the third-party
entity who could carry it out. But it's determining that
nexus is really the fundamental decision. And that I
don't think can be delegated.

DR. KNATZ: Can I add something?
I was just going to say I think we always
envisioned that we would have criteria. It may be school
filters, you know, for schools located in a certain
geographical area, you know, nearby transportation; goods
movement cars, what have you. It was not just going to be
here's a pot of money and come up with things. So
I -- and that process has yet to carry out, so we're
somewhat premature in really knowing if we've got issues
in that, because we need to actually do that.

But there's another key element to this, and that is the fact that the money goes into the account 2 ways. One is by sort of the natural growth that occurs. And honestly, there would be no money going in because we're -- our volumes are actually down this year.

But there's also money that goes in each time a major development project is approved. So there's -- the community has a stake in seeing that the Port grows and EIRs move forward. And honestly, I looked at some of the costs of doing filters on the school and the double-paned windows and what our airports spend. And I don't think we have an issue of insufficient money going into the account.

COMMISSIONER GARAMENDI: Well, I think -- it seems to me that it's possible to use a third party. It appears to be rather clear that the activities of the third party are ultimately -- must be reviewed by the Trust -- by the Port and approved. I'm not sure that they are specific to each individual window or school, but rather to the general purpose. And that if the Port decides that it is appropriate and then ultimately this Commission has to say, yeah, that's okay, we can do school mitigation or street lights or stop signs or whatever. And then let the third party go get it done and do it.

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Is that sort of where this might work?

EXECUTIVE OFFICER THAYER: I think so. So, for example, the lists of projects that are in the agreement are very specific projects. There's a filtration system for schools, the windows for nearby buildings, residences, whatever. There's funding for health clinics. I would point out that that shouldn't be entirely funding for the health clinic, but for the identifiable work that's done by the health clinic to address impacts from the Port.

Those sorts of things. I think those are very specific.

And if the Port approved expenditures for those purposes and then gave the money to a third-party entity to do those purposes, we don't see any problem with that. But the agreement is set up in a way that it would say that once the study is done, then this entity would be approving expenditures of the money in that fund for mitigation to address the impacts identified in the study. It doesn't really leave a role -- there's none identified for the Port Board in that process.

COMMISSIONER GARAMENDI: So we've got a little legal question about the way in which the MOU is drafted. And so a redrafting might very well solve the question that we have -- that the Commission staff has raised.

You went through a list of things here and I just want to have some sense of that. Health, noise, safety,
transportation, these are all things that are within the realm of mitigation?

EXECUTIVE OFFICER THAYER: Certainly. Those are the same sorts of things that are done in CEQA.

COMMISSIONER GARAMENDI: How about education?

That is education -- for example, we're going to train marine engineers and use the money from the Port to train marine engineers or aquatic scientists.

EXECUTIVE OFFICER THAYER: I won't say that that's impossible, but it's getting to be more difficult. I'm not sure what the impact is that would be mitigated by that measure.

DR. KNATZ: That's another discussion I'd like to have at another time.

(Laughter.)

DR. KNATZ: Not under this. I don't view that as an expenditure under this fund, but I think the Port has an interest in making sure that people are being educated in the maritime field so we can keep this operation going.

COMMISSIONER GARAMENDI: I didn't mean to connect it to the fund specifically.

(Laughter.)

COMMISSIONER GARAMENDI: So, yeah, thank you for drawing that distinction. But if, for example, the Port of Los Angeles wants to support an educational
apprenticeship program for crane operators?

EXECUTIVE OFFICER THAYER: If that were done in a way that anybody could apply, that wouldn't be so bad. But if it was done just as an adjunct to a specific school in San Pedro, there would be a problem, because you're, in effect, providing a local benefit.

DR. KNATZ: However, if I'm short 200 crane operators and I need to get the Port running and my major labor pool is San Pedro and Wilmington, then an investment in that area to train those people might be for the benefit of the State.

COMMISSIONER GARAMENDI: Investing in specific classes at any school in the area.

EXECUTIVE OFFICER THAYER: I'd want to look at that more. It raises the issues, which you could anticipate, which is that you're providing a benefit locally that is not available to anybody else.

COMMISSIONER GARAMENDI: Well, let's say a school in East Los Angeles decides to run an apprenticeship program for marine crane operators?

EXECUTIVE OFFICER THAYER: It's still the problem that you're benefiting that one school and you're not benefiting any other school.

COMMISSIONER GARAMENDI: Community college?

(Laughter.)
EXECUTIVE OFFICER THAYER: We're getting better.

(Laughter.)

EXECUTIVE OFFICER THAYER: Well, the point is that it's a community college or a UC or State college or whatever is generally available to anybody to apply to. Whereas, most high schools it's either -- there may be some theoretical way that somebody from the outside can get into, but frankly it's mostly available to locals.

COMMISSIONER GARAMENDI: Actually, I met a kid at that high school in San Pedro that was from the eastern part of the county of Los Angeles. So apparently they have some potential to travel to it.

EXECUTIVE OFFICER THAYER: Charter schools, sometimes more.

DR. KNATZ: I don't think we can just look at that issue. I think you have to look at what the employment needs are of the Port. I came on board -- I had 200 vacancies. I've got to grow my own people.

COMMISSIONER GARAMENDI: What's the salary? I'm looking for a job.

(Laughter.)

DR. KNATZ: Talk to me later.

(Laughter.)

EXECUTIVE OFFICER THAYER: If the Port wanted to set up at the Port a training class for crane operators,
it could certainly do that. That would be available to 
anybody. It's when it --

COMMISSIONER GARAMENDI: Why wouldn't the Port 
want to do something at a school that already exists 
rather than setting up a program on their own?

EXECUTIVE OFFICER THAYER: Well, the question is 
whether the high school -- again, it's benefiting a 
particular high school.

COMMISSIONER GARAMENDI: I think we may want to 
be a little more broad minded.

I want to get back to the TraPac, because it is 
the issue at hand. And apparently with regard to the 
nonprofit entity, further negotiations, along the lines 
that have been discussed here, could resolve most of the 
issues. I suspect that would have to come back to us for 
our nod and approval at some point that's within line of 
the general requirements.

EXECUTIVE OFFICER THAYER: If everyone reached 
agreement, the original parties, if they were involved 
with the agreement as well and were satisfied with the 
results, they could enter into that agreement themselves. 
We wouldn't have any objection to it. It's just basically 
with -- amongst these parties we would not have to approve 
it.

DR. KNATZ: And I would suggest rather than
amending the MOU, we actually work on the structure of the
agreement that is going to be the implementing agreement
and have everybody then review that.

EXECUTIVE OFFICER THAYER: We don't care what the
mechanism is, as long as the result works.

MS. LINPERRELLA: I agree. It doesn't sound like
we need to reopen the agreement in order to address the
concerns that were raised.

COMMISSIONER GARAMENDI: I think you just heard
from the staff how they view this and I don't think this
issue is done.

ACTING COMMISSIONER SHEEHY: I'm not sure that
there's unanimous agreement on the comment you just made,
Ms. LinPerrella. And one of the things that I'm very
concerned about is something that is in the staff report
that said that both prior to the Board's approval of the
MOU and after the Commission staff had repeatedly offered,
apparently to no avail, to meet with the Port staff to
discuss specific concerns they had with the MOU, no
meetings took place. I don't know if that's accurate or
not, but I would hope that there's good open communication
between the Port staff and between the State Lands
Commission staff, because it seems to me a lot of details
could be worked out. Rather than bringing problems to us,
you could be bringing solutions to us and we could approve
it and move forward.

And so I don't know -- it's not my job to know how that communication is happening. But I think that we would all agree that you need to have good communication on those points, specifically where the State Lands staff had raised these concerns.

DR. KNATZ: Yes. And I did receive a letter from State Lands. And I knew there were -- and also from PMSA raising these very specific concerns. And I notified both organizations that I can't answer those concerns and questions yet. We have to wait till we get started. And so the key thing was getting the interim entity on board, so then -- we actually haven't started. I don't know that we have problems. I was invited to come here and talk.

ACTING COMMISSIONER SHEEHY: I don't understand the linearity that you couldn't work with them before you got it started. Maybe, Mr. Thayer, could you comment on that.

EXECUTIVE OFFICER THAYER: Well, again, I think that's up to the Port. The Port was making some decisions as to how to proceed, but certainly, you know, Dr. Knatz and I had communicated before the agreement was brought to the Board and she indicated some of the possible directions the agreement might go. And I said there were potential Public Trust problems with that. Please, could
we talk about that, so that we can try and cure those.

But I think that Dr. Knatz, and she should say,

but was under -- was dealing with a lot of local factions

that she felt she needed to deal with and were very
difficult, and had a lot of balls in the air, frankly, I

think. But we made that offer before the agreement was

finalized.

DR. KNATZ: Right. And we intend to take him up

on that offer. We just haven't gotten to the point of

starting that. And the key was getting this interim

entity, which is really -- its purpose is to corral the 12

TraPac appellant groups and to facilitate the process of

discussion under contract on board. And we're working on

that.

COMMISSIONER GARAMENDI: It seems to me that

there's some clarity that's been achieved here today about

where the State Lands Commission staff is and the

responsibilities that these -- that the 3 Commissioners

have to the Constitution and the Public Trust, and any

rigorous and thorough communication go forward between the

Port, the plaintiffs. Is that the right word here?

MS. LINPERRELLA: Appellants.

DR. KNATZ: Appellants.

COMMISSIONER GARAMENDI: Okay, that that take

place. I think you have a pretty good sense of the
concerns that the staff has and the obligations that we have. And that there is a, it seems to me, a path that can be followed that would be beneficial and solve the issues at hand, both with regard to the nexus, with regard to the nonprofit entity, responsibilities of the Port and the Commission to carry out the Constitutional requirements.

Also, the nexus issue is one that should not be ignored or taken lightly. It is a very, very important issue that I don't see a way for us to get around. I think we can be creative. I do think you can educate people to run your cranes at a school. I'm not exactly sure that Paul has it correct as to where they may come from. But nonetheless, I think you ought to proceed on all of this through the course.

Are there -- yes.

MR. JACOB: Thank you, Lieutenant Governor. I just wanted to make maybe one final comment, because I think we agree with your summation 100 percent, Lieutenant Governor, that a third party can be used to administer funds. We call it ministerial. You may want to call it administering or contracting it. I think you can do that, so long as the trustee itself doesn't delegate their exercise of discretion as a trustee.

What our concern really goes to is I think a
comment that Dr. Knatz made. And, again, we understand
the context in which it was made and it's certainly
defensible. We just don't think it's consistent with the
Trust, which is that the beauty of the agreement is that
the Port is no longer involved.

DR. KNATZ: In day-to-day operations.

MR. JACOB: Okay. Thank you for that. Because
you can't delegate the authority to a nonprofit. That's
the crux of the problem. You can certainly, and you
should, involve the community in these efforts. If a
non-profit is the best person to administer the process of
changing out the old windows and putting in new windows
and putting in filters, as long as they meet all the
requirements, that's the best way to do it.

Frankly, it's the trustee's money to do with as
they wish, in terms of making a determination of who the
contract is and how much they pay and all that stuff.

So I think we are all on the same page in terms
of what the goal is. What we're talking about is what's
the process to get there. And we would welcome what you
recommend, the collaborative approach about talking about
how to do that.

MR. WILKENS: If I might also. Again, I'm
speaking of the facts of this particular matter. I would
offer one cautionary note and that is that nothing happens
in a vacuum. And anything that we do will be looked upon
as setting expectations.

And let me put on the table something that staff
is very much aware of. There are member cities in San
Diego of our district who would love to contract with us
in order to provide services to mitigate problems that
they believe are very real in their city, based upon the
impacts of our agency.

And that's a slippery slope, as we all know.

Once we go down that slope, it's hard to come backwards
from it. And, again, don't take my comments as to mean,
Mr. Lieutenant Governor, anything in opposition to what
you're advancing in this specific instance. I'm just
asking you to be mindful that there's a very real
discussion going on between one of our member cities and
us and your staff, where that city simply wants money,
because they don't believe that they're getting the
possessory interest tax portion commiserate with the
impacts on their community, because a terminal doesn't
have the same -- throw off the same local taxes as say a
hotel or a restaurant or a visitor-serving use, in that
context.

So just a cautionary note. It may be perhaps
something that you may be hearing from us further about in
that context.
COMMISSIONER GARAMENDI: I'm certain we will hear more.

(Laughter.)

CHAIRPERSON CHIANG: We will now take public comment. Again, I will call 3 at a time.

EXECUTIVE OFFICER THAYER: I just wanted to note with respect to that, we do have an elected official here that wants to speak.

CHAIRPERSON CHIANG: I'm well aware.

The first 3 are Counsel member Janice Hahn from the City of Los Angeles, Melissa Stephens and Tim Schott.

Great to see you.

LOS ANGELES CITY COUNCILMEMBER HAHN: Great to see you, Commissioner. It's very good to be here in San Diego. We welcome you to have this Commission meeting at the Port of Los Angeles any time.

And I really want to thank you, Lieutenant Governor, for your leadership in exactly bringing forward this issue. I think it's rather historic that you're actually taking up this item where you are having this much debate and discussion on the idea of, you know, off-port impacts. And we appreciate you doing that.

I am Los Angeles City Councilwoman Janice Hahn. I represent the harbor area communities of San Pedro and Wilmington. Communities that have for years been
affected, both positively and negatively, by operations at
the Port of Los Angeles.

And this all started when a group of civic,
environmental and public health organizations challenged
the Port's approval of the EIR for the TraPac Terminal
Expansion Project. This challenge was made in the form of
an appeal to the Los Angeles City Council, wherein it was
referred to the Trade, Commerce and Tourism Committee,
which I chair.

And my role in the formation of this MOU involved
many long hours sitting at the table with Port staff, with
members of the San Pedro and Wilmington communities,
including the San Pedro Homeowners Association, the Harbor
Watts Economic Development Commission, the Coalition for a
Safe Environment, the Sierra Club, the NRDC, the Coalition
for Clean Air, the Los Angeles Alliance for a New Economy,
the American Lung Association. And I will say there was a
comment that we should bring you solutions instead of just
problems, and that is how I see this.

We're actually bringing you a solution. And I
give great kudos to everyone who stayed at the table to
negotiate this MOU. I give great kudos to Dr. Knatz, the
President of the Commission, Dr. Freeman. It was really
quite an exercise in bringing everybody together to come
up with this solution.
My goal in this was to move -- was to find a way
to move forward with the TraPac project, because it will
bring good jobs to Los Angeles, and it will be good for
the regional economy. I worked to do whatever I could to
keep this appeal that was brought to the City Council from
turning into a lawsuit, which could have potentially
stalled this project for years to come.

Protecting the economic engine that provides
these good jobs throughout the region, throughout the
State of California, while protecting the health of
communities of San Pedro and Wilmington has always been my
biggest challenge, but it is my responsibility and
obligation I believe as a public servant.

This agreement provides the ideal mechanism to
provide that balance. Every container that enters the
Port of Los Angeles represents commerce. It represents
commerce to the whole state and to the entire country.
But every container that comes into the Port of Los
Angeles represents a risk, both to the safety of our
communities and to their health risk.

And under this agreement, every new container
representing growth that comes into this port will
represent finally a direct benefit to the communities of
San Pedro and Wilmington through this fund that will
mitigate past, present and future negative impacts of port
operations.

The community organizations that appealed the
certification of the TraPac EIR are incredibly well
coordinated and well represented by groups such as the
NRDC. And I believe that as long as we continue to ignore
the real impacts of Port operations on these communities,
we only mitigate for CEQA issues in our EIRs, while
continuing to ignore long-existing impacts of port
operations off port property, we will continue to be
challenged effectively and successfully as we attempt to
grow this port.

And, you know, I must take issue with one of the
statements that the local community gets the greatest
benefits and some negative impacts. I would venture to
say that the benefits that most communities in California
reap are positive benefits, while really the local
communities are reaping the most negative impacts of port
operations. My communities suffer the highest instances
of cancer and asthma and congestion of port traffic.

We can see for ourselves -- I now the Lieutenant
Governor when he came to the Port of Los Angeles a few
weeks ago, saw that port operations don't stay on port
land. Air emissions travel into our neighborhoods. Sound
pollution is constant. Cargo containers are piled high
next to homes. And there are heavy-duty trucks parked in
residential streets and barreling through our neighborhoods.

It's no coincidence that it took 7 years for the Port to bring forth an EIR for a port terminal project. It is extremely difficult to move forward with projects with such an engaged and vocal, and rightly so, challenged community. If we want to continue to grow this port, it must be done responsibly and we must address all vestiges from current and past port operations.

In response to the staff report on, you know, who has responsibilities and in some way suggesting that it was lax city zoning laws that contribute to tires being, you know, abandoned in communities, you know, I take real issue to that. You know, it's the City's responsibility in land-use -- you know, we had land-use codes that were put into place long before the advent of containerization in the 1970s. The City never planned for this Tsunami of growth at the Port.

And what I've done under my tenure is actually introduce new zoning laws, new ordinances. I have one that we will prevent all future container storage sites in Wilmington. But we could not obviously remove existing uses. We would have been accused of inverse condemnation. So those were all grandfathered in. But under my tenure, we have changed some of the city zoning laws so that we
can deal with it.

And by the way, I don't have abandoned tires anywhere else in the city of Los Angeles, like we do in Wilmington. And it is a direct result of the trucks that are there only for port operations that contribute to that.

You know, that's why, again, I believe that this MOU is the perfect mechanism to address these issues. Funds from this agreement will be used, as was said, for paying things -- for things like air filtration systems in local schools, window replacements. There was a reference to airport and FAA funds. The Los Angeles International Airport has entered into a community benefits agreement with surrounding cities, where funds are used very similarly to impact -- to mitigate impacts of the airport.

You know, we in the city of Los Angeles hold the tidelands at the Port in Public Trust for the People of California. I want to stress the words Public Trust, because when we ignore the real impacts of port operations and do not mitigate them, I believe we are betraying that Public Trust And the public trusts us to do right by them, and that includes using harbor revenues responsibly to address public health and environmental impacts in the nearby areas, as well as the region as a whole.

I hope that you will stand with us to acknowledge
that these impacts, off-port impacts, are real and are
only a result of port operations. And I hope you will
work with us as we set up the interim entity and the
nonprofit organization, which is the one way that I
believe we can uphold the Public Trust.

So 3 things. I would love for this Commission to
acknowledge that there is a nexus between port operations
and the negative public health and environmental impacts
in the surrounding communities.

Two, that you will direct your staff to work with
us to implement this MOU in accordance with the Public
Trust Doctrine.

And that this Commission will regularly request
updates on the progress of this historic agreement to
ensure that we are all working together towards the same
goal.

Thank you very much.

CHAIRPERSON CHIANG: Thank you, Councilmember.

MS. STEPHENS: Councilwoman Hahn, my name is
Melissa Stephens. I am with the American Lung
Association. So thank you for this segue way into some of
the environmental issues that were touched upon earlier
today and throughout. Again, I work for the Asthma
Coalition here in San Diego. And we do have partnerships
with our local port district as well here in San Diego.
The American Lung Association has offices throughout the state, including LA, where we are involved in the TraPac MOU as well with the Port of Los Angeles.

We believe this MOU provides a great example to address community health impacts caused by existing port operations and future operations at the expanding TraPac terminal, because the increased port work will increase air, noise, light and pollution in communities adjacent to the terminal and the public streets utilized by trucks going into and -- to and from the terminal.

The health impacts of air the pollution from the combustion diesel engines are well documented as you know. Pollutants like ozone, the particle pollutants, are serious threats to public health. Numerous scientific studies have linked these pollutants to lung cancer, asthma attacks, heart attack, strokes and early death, as well as increased hospitalizations for breathing problems.

The Childrens Health Study conducted by USC indicates that children living in more polluted communities have reduced lung function, more school absences from acute respiratory problems, asthma exacerbation in areas with more traffic-related problems and more cases of newly diagnosed asthma.

These conclusions in the study correlate with a critical asthma prevalence rate data from the Los Angeles
county -- Department of Health. And in 2005 the LA County's Health Survey reported a 30 percent higher increased rate of asthma for children in the harbor health district area compared to the average county rate.

This MOU could provide the mechanism to continue to build on this health data and continue to add -- or continue to fully quantify community health impacts from port operations.

While focusing on the TraPac MOU in the communities of Wilmington and San Pedro, the nexus issue is important for the State Lands Commission to consider for all port communities including San Diego.

In San Diego specific, we are -- our data from the Air Resources Board that quantifies that San Diego is the 4th -- or 4th largest emitter of PM, Particle Mass, 10 in San Diego. So we're looking at this as a local issue as well. The health data, that is not enough to reduce pollution on port property. Mitigation measures need to occur in the communities that are impacted, for example, truck traffic facilitated by movements of goods. In order to protect public health, it is important that most impacted schools have the support to install local air filtration systems into HVAC systems. And we strongly support other mitigation projects outlined in the TraPac MOU, Exhibit A, all with a clear nexus to the TraPac
In conclusion, the American Lung Association thanks the State Lands Commission for considering these issues. And we look forward to working closely with you in the future for the TraPac MOU.

Thanks again.

COMMISSIONER GARAMENDI: Thank you. Tim Schott.

MR. SCHOTT: Thank you, Commissioners. Tim Schott again on behalf of the California Association of Port Authorities, which is comprised of the 11 commercial publicly-owned ports. We want to ask you to consider 4 issues, I suppose, or items.

The first is to make sure that the Commissioners are aware of the very differences of California's individual ports. We have a diverse port system here in California. And there are 3 large containerized facilities, LA, Long Beach and Oakland. But we're also blessed with 8 smaller niche ports, if you will, that have very important local, regional and statewide economic benefits.

And not to suggest that there aren't also environmental community impacts at those ports, because there are. We want to make sure that you have an idea of the scale -- the difference between the Ports.

LA, Long Beach and Oakland move somewhere north...
of 90 percent of the goods coming into the state. And the
smallest 6 ports between them, between all of them,
handles just about 1 percent of the cargo. So it's very
important to understand that the impacts are different in
that the Ports are each unique and different in their
approach. And we want to make sure that the Commission --
we think it's important the Commission recognize those
significant differences and avoid sweeping changes to the
Public Trust Doctrine that could have diverse and
unintended consequences.

I think Dan Wilkens mentioned one of the
differences we see that while a lot of pressure is on the
larger ports to mitigate the impacts, what we're seeing is
a very real concern that some of the smaller facilities
are actually desired by some to take port property either
out of the Trust purpose entirely or to simply get at
Trust revenue.

So the second is to recognize that while
California ports all vary in different size, commercial,
scope and governance, what is not different is their
commitment to the local communities and to the
environment. And I think it's really my principle --
purpose here today, while we're having this discussion, is
to make sure that we don't lose site of the commitment of
all of our ports, the best possible management of their
facilities and related Trust properties.

All of California's ports have significant community outreach and the public participation programs, including advisory bodies and they incorporate community input directly into the planning process.

In fact, the issue we're largely in discussion here -- the controversy we're discussing here is because one of our member ports has gone out of its way to make sure that its commitment to the community is clearly defined and precise. And, you know, it would be challenging some of our Trust -- our Trust experience to today.

California's ports are on the cutting edge of the clean transportation debate and are national and international leaders in everything from vessel emissions reductions to the use of the hybrid locomotives to the employment of off-peak work and congestion management price. We're proud to say that the Ports are doing this by working closely with those communities and cities and by working closely with the businesses and tenants that rely on the Ports and port facilities as well.

All of California's ports have programs to manage and mitigate the impacts and work closely with the communities. And they're aggressively doing that. I think it's also important to keep in mind as the
Commission wrestles with some of these Trust issues that we need to put some of that effort into the broader state context as well and recognize that the State and many other State entities, are aggressively working to reduce emissions, improve environmental stewardship efforts and mitigate community impacts as well. And we point to the ARB as one clear example as it relates to ports, where they not only have the direct port and goods movement emissions reductions program, but they have specific emission reductions programs for each of the major emission sources that serve the Ports.

Because I think as we look at the residual environmental impact, that does need to be addressed -- many of the members here are talking about needs to be addressed at 100 years of residual, we have to recognize that we want to make sure it shouldn't all fall on one project -- or addressing that concern shouldn't fall on one project, one area. And that the State, in fact, is taking a very active role in addressing those concerns, a historic role in addressing those concerns.

Then finally, we've mentioned we believe the existing tideland Trust rubric has the flexibility to address the impacts of Port activity and make appropriate nexus decisions for mitigation and use the Trust resources on a case-by-case basis. We don't believe it's necessary
to make any wholesale changes to the Public Trust Doctrine
in order to mitigate the impacts or manage the Trust
property appropriately.

We look forward to working with you and your
staff as this issue goes forward.

Thank you very much.

CHAIRPERSON CHIANG: Thank you.

John Miller, Jesse Marquez and Kathleen
Woodfield.

DR. MILLER: I'm Dr. John G. Miller an emergency
room doctor. I live in the diesel death zone town of San
Pedro near the Port of Los Angeles. I'm speaking today
about the health impacts and related health care costs of
diesel exhaust pollution created by the Port activity in
the communities near the Ports.

I speak as an ER doctor with 30 years of practice
in the South Coast air basin. A multitude of adverse
health effects, such as cancer, asthma, chronic
obstructive pulmonary disease, heart attacks and strokes
have been linked to diesel exhaust air pollution from the
Ports.

Surveys done in Wilmington reveal that more than
70 percent of families there report one or more family
members with some type of respiratory problem, including
lung cancer. It appears from the surveys that Wilmington
suffers from more than 120 times the national average rate for lung cancer. Experts tell us that the non-lung cancer effects of diesel exhaust, such as asthma, are 10 times greater than the cancer effects.

Indeed, port-related activity accounts for 25 percent of the total air pollution in the South Coast air basin, according to SCAQMD. Using data from the Union of Concerned Scientists, the healthcare costs of Port-related diesel emissions for 2004 were $2.6 billion. This would correlate to a healthcare cost of over $450,000 per ship call at the Ports.

The citizens of California are massively subsidizing the shipping industry by paying these externalized costs. And I submit to you that this is a violation of the Public's Trust.

Analogous to the air quality problems that led to wide spread call for change are the industrial uses in the near-port communities, which have grown in tandem with huge increases in freight volumes. Your otherwise excellent staff report fails to mention 2 key points. One, many of these near-port impacts were created or sanctioned through discretionary actions by the Harbor Commissioners, such as the container facility on the McFarland Avenue, deep in a residential neighborhood, reauthorized and expanded by the Board of Harbor

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Commissioner's action September 2004.

The report claims that many of these activities occur in "another jurisdiction", closed quote. It fails to note that in the case of Wilmington and San Pedro, we are both part of the City of LA as is the Port. We are all in the same jurisdiction. Indeed, the paperwork supporting these discretionary actions taken by the Board of Harbor Commissioners often indicates that they're acting for the City of Los Angeles and these actions have to be approved by the LA City Council.

The Port and State Lands Commission cannot avoidmitigating documented near-port impacts by saying they're in some other jurisdiction. If you own the positive impacts of something, such as all the jobs we've heard about, all the economic activity, you must also own and mitigate the negative impacts.

It should be a statewide benefit to mitigate those negative impacts incidental to Port operations and discretionary actions by the Ports that occur in near-port communities.

Thank you for your kind attention to my remarks.

CHAIRPERSON CHIANG: Thank you, Doctor.

Jesse.

MR. MARQUEZ: Thank you for this opportunity to speak. My name is Jesse Marquez. I'm a lifetime
Wilmington resident. I live 4 blocks from the TraPac container terminal. I'm also the founder and executive director of the Coalition for a Safe Environment.

I'm here to support the Port of Los Angeles and the Memorandum of Understanding that was developed. My request from you is that you direct the State Lands Commission staff to be more thorough in their information they're preparing and presenting to you.

I've given you a handout. I'm not going to read it, because it goes into more detail, but I'll just gloss over some of my concerns.

For example, in the earlier presentation, they mentioned how the green park in Wilmington and the Welcome Park in San Pedro would not be eligible for State Lands funding, because it's limited in scope to the local community. But on the other hand, had they had a public meeting in Wilmington and San Pedro and had they interviewed our organization, the San Pedro Homeowners Associations and others, there would have been more information revealed. And what would it have revealed? The fact that the Port of Los Angeles purchased over 200 acres in Wilmington off tidelands property and over 200 acres in San Pedro off tidelands property.

So therefore in Wilmington, where we have a need for soccer fields, girls softball fields and Pop Warner
Football fields, the land is not available, because the Port owns it. In the case of San Pedro, a youth baseball team field just got closed down because the land was sold. But across the street the Port owns the land that's currently being leased to a tenant, Amerigas, which is a natural gas facility. Well, if that natural gas facility wasn't there, then that land would be available for it.

Another example. I was attending an LA Unified School District meeting in Wilmington for new potential elementary school sites. They announced that 2 sites were eliminated because of the high methyl bromide concentrations in the area. And I'm thinking, methyl bromide, that's been banned in 99 percent of the world. Well, guess what? The Ports have an exemption to that law. And what happened is that the Port of Los Angeles had a warehouse for fumigation of containers on site. They knocked it down, because they wanted it for container back lands.

So what happens now? It forces the tenants to have to go off-port property in a particular area to go out into the public realm of things. So they contract with a company who opens up a facility in a Wilmington industrial park, but happens to be fence-lined to Wilmington residents. Not only are they fumigating containers, they're doing it outside in the back. They
throw a tarp over it like you termite a house. And 50
feet away are children playing there in their houses.
There's a church, there are apartments and there's small
businesses. In fact, Janice Hahn is only a block away.

It turns out that the City of Los Angeles does
not know that they are doing methyl bromide fumigation
there. The Port of Los Angeles never notified the City
Council, never notified City Planning that there could be
a potential impact. That's an example.

You've heard about some of the containers, these
storage yards were running rampant. You think oh, they're
pretty much benign, but there are millions of containers.
There's hundreds of thousands of them in Wilmington. They
become rat havens. The homeless are there. They are not
desanitized or decontaminated. So when we talk about the
West Nile Virus, they're mosquito havens. They're not
cleaned out for any bacterias, any funguses, any molds.
They're painted with lead paint. They pulverize,
deteriorate and fly into the community.

So these are just some of the few examples that
when staff does outreach, meets with the public, then they
can clarify in more detail that there are off-port
off-tidelands impacts that do need to be addressed.

And I thank you for this time.

CHAIRPERSON CHIANG: Thank you, Jesse.

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MS. WOODFIELD: Good afternoon. And thank you for having us on the agenda. I feel that it's just so important to be here and I'm just so glad to be here to be apart of this.

And I'm not sure how much I can actually contribute to this, because so many people have so eloquently stated everything I wanted stated. And I want to thank Dr. Knatz and Melissa and Councilwoman Hahn because really they said everything that I would hope they would.

I am the vice president -- my name is Kathleen Woodfield. I'm vice president of the San Pedro and Peninsula Homeowners Coalition. We are about 14 homeowners groups that joined a coalition and we focus very strongly on the Port, because it's one of our biggest issues that impacts our daily lives.

And in that capacity, I'm also on the Port Community Advisory Committee, which is a committee of the Commissioners of the Port of LA. And I'm also one of the TraPac Appellants.

But I think maybe what I bring here, if it's anything that's unique, that I am a mother who's raising a child in San Pedro. And I do worry all the time, not just about my son, but about my husband who's had cancer. And I worry about myself. I don't have the best of health
either. And I know that some of my health issues and our
family health issues are definitely exacerbated by the air
pollution.

I want to say to you -- although, I think it's
been inferred many times today -- that healthy communities
and healthy Californians that is a benefit to the State.
And we have a situation where you're undermining the
health of part of your citizens, and undermining the
economics of the citizens, then you are not helping the
state.

And so I was extremely pleased when Mr. Thayer
identified the Wilmington buffer area as being a
mitigation that absolutely has a statewide benefit. I
think actually he said if you mitigate impacts of Port
activities, then that has a statewide benefit. So that
seems to be pretty all-encompassing when you look at the
MOU and you look at our Exhibit A, which we worked very
hard on and were very careful to be conscientious and to
make sure that those types of mitigations that are in
Exhibit A and that MOU have a nexus, and everyone at the
table agreed that they had a nexus. And it was a diverse
group of people at the table, including the Port of Los
Angeles, that these had a nexus. And I'm so pleased to
hear that.

Also, everyone in this room who has spoken seems
to also agree that they have a nexus. So I am just so
pleased about that. And I wanted to ask you to please
recognize that the MOU requires an interim entity to get
involved in some of these legal issues. And it is the
purpose of that entity to sit down with the stakeholders,
and that includes State Lands, and to figure out -- is my
time up? I'm sorry. -- and to figure out some of these
legal issues.

So I just want you to know that the MOU does
allow for that. And please let's move forward and have
that happen. I am so excited to have this MOU move
forward. We are waiting for the benefits that the MOU
provides.

Thank you very much.

CHAIRPERSON CHIANG: That's great. Thank you,
Kathleen.

Questions or comments?

COMMISSIONER GARAMENDI: I think we've covered
this. I want to thank everybody for participating in this
and particularly the witnesses that have come forward.

It's an important issue. We are dealing with a much
larger port and a much greater impact. And we're
understanding the health issues and the environmental
issues that were really not part of the, somewhat ancient,
history of ports. So we'll move forward.
Thank you very much, Paul. You've got your work cut out for you. Go get it done.

CHAIRPERSON CHIANG: Yeah. I think we'll just have staff work with them. We agendized this as a discussion item, so we can't take formal action. But we can ask staff to work with you on the 3 points that were raised.

Okay. Thank you.

Next item, please.

EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair. The next item is item -- the court reporter would like a break.

CHAIRPERSON CHIANG: Sure. We'll take a 10-minute break.

(Thereupon a recess was taken.)

ACTING CHAIRPERSON ARONBERG: Okay, let's start the meeting again.

EXECUTIVE OFFICER THAYER: Very good. And as the audience will note the 2 Constitutional officers are now represented. And just to acknowledge, the rules provide that only one can be represented at a time. The other one can't even participate. So there's going to be -- by a mutual agreement, they're going to alternate back and forth on the items as to who's going to be participating in them.
ACTING CHAIRPERSON ARONBERG: We will figure it out.

ACTING COMMISSIONER SHEEHY: Well, I'm glad they're not going to fight over it.

(Laughter.)

EXECUTIVE OFFICER THAYER: So we're --

ACTING CHAIRPERSON ARONBERG: Are we on 57 now?

EXECUTIVE OFFICER THAYER: We're on 57. This is a resolution requested by the Lieutenant Governor regarding the use of school lands, which are managed by the State Lands Commission, for alternative energy projects. And our legislative liaison, Mario De Bernardo, will make the staff presentation on this.

LEGISLATIVE LIAISON De BERNARDO: Good afternoon, Commissioners. Like Paul said, my name is Mario De Bernardo. And the State has hundreds of thousands of acres under its jurisdiction called school lands. These are not Public Trust lands. And by law the State Lands Commission manages these lands and has a duty to take all actions necessary to fully develop school lands into a permanent and productive resource base.

Also, by law, the revenue from these lands go into the State Teacher's Retirement Fund. And, as you know, these school lands are -- they're mostly remote, isolated land-locked desert lands. But they do -- they...
may not sound like they have a lot of potential for revenue, but they do have a potential for renewable energy projects related to solar, wind, biomass and geothermal projects.

Specifically, State Lands has managed these lands for geothermal projects and has yielded 74 million megawatt hours of electric power. These projects help combat climate change, create jobs and contribute to our national security, since they take us away from our dependency on foreign oil.

So this resolution basically it supports the environmental response -- the environmentally responsible development of school lands under the Commission's jurisdiction for renewable energy-related projects. And it encourages the submission of applications for these projects.

EXECUTIVE OFFICER THAYER: That concludes staff presentation.

ACTING CHAIRPERSON ARONBERG: Great. Are there any comments on Item 57 from the Commissioners?

Any public comment?

Please, go ahead.

ACTING COMMISSIONER SHEEHY: I was just going to move approval. I apologize. I preempted you.

ACTING CHAIRPERSON ARONBERG: No problem, Mr.
Sheehy. We have a motion.

Is there any public comment on the motion?

Seeing none, is there a second?

ACTING COMMISSIONER BUGSCH: Second.

EXECUTIVE OFFICER THAYER: So I think if you're running the meeting, I think you're participating on these.

ACTING CHAIRPERSON ARONBERG: Okay. I think I'm just not going to vote.

EXECUTIVE OFFICER THAYER: Oh, okay. That's fine. Got it.

ACTING CHAIRPERSON ARONBERG: A motion and a second. The motion passes 2-0 --

EXECUTIVE OFFICER THAYER: Thank you.

ACTING CHAIRPERSON ARONBERG: -- with me not participating.

EXECUTIVE OFFICER THAYER: Thank you.

ACTING CHAIRPERSON ARONBERG: Is our next item 58?

EXECUTIVE OFFICER THAYER: Yes, it is. This is an update by Jim Trout who's now a retired annuitant for us and has been for some time. And I just have to acknowledge that we're so glad he's been around for, how long since you've official retired?

MR. TROUT: 38 years.

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EXECUTIVE OFFICER THAYER: And when did you officially retire?

MR. TROUT: I retired in '95.

EXECUTIVE OFFICER THAYER: Sorely.

(Laughter.)

MR. TROUT: Sorely.

EXECUTIVE OFFICER THAYER: So he understands the ins and outs for the last 14 years and has continued to carry that ball, after retirement, on the ins and outs of Bolsa Chica. And he's here to give a report on the one year progress that's occurred since the ocean entrance was opened.

MR. TROUT: I know Cindy is familiar with this project, as she --

ACTING CHAIRPERSON ARONBERG: Mr. Sheehy, did you want to say something.

ACTING COMMISSIONER SHEEHY: Just before you start, I just wanted to commend you on your service. And I think that it's a great thing that you come back as retired annuitant to serve on the State Lands Commission. This Commission, like many other State government agencies, really benefits from the service of people who do come back and work. It's particularly important now. I was just having a conversation with your colleagues upstairs when I was trying to have a sandwich. You know,
with the Baby Boomers approaching retirement, we have more
and more brain drain from some of our key agencies. And
some I just wanted to publicly acknowledge, I think it's
great that you're continuing to serve and I appreciate
that, sir.

(Thereupon an overhead presentation was
Presented as follows.)
MR. TROUT: Thank you. I appreciate that.

There's a number of us that are still, I guess, fighting
on or laboring on in stuff that we are familiar with.

What I wanted to do today, and basically maybe
leave you on a high note is that the State's been
involved -- the Commission and its staff has been involved
in the Bolsa Chica Lowlands since 1970 when the developer
first proposed to build massive subdivisions on the
property. And the question of whether the developer
actually owned the property was raised before the
Commission.

And over 3 years between 1970 and 1973, we worked
to clarify the title on a portion of the land, about 1,280
acres there. And it was determined the State already
owned 230 acres of the property. That created a major
problem for the title company that had ensured it.

And then in 1995, the Ports of LA and Long Beach
needed mitigation for an extensive multi-modal project
development that would fill hundreds of acres of San Pedro Bay. As a result of the Commission, 3 other State agencies and 4 federal agencies, we reached an agreement on mitigation, whereby the Ports would pay for mitigation to be done by this -- these federal and State agencies.

It was sort of a pay and walk operation.

But I want to tell you that the ocean entrance that you see in this one right here, this ocean entrance, was opened in August of 2006. In the 15 months between then and October 1st of 2007, the project was opened to the ocean and we were interested in finding out how successful it was. And I want to tell you it's been a success.

On July 26th of this year, the LA Times, in an editorial, said, "It is so refreshing and instructive to read about the rebirth of wetlands, like those feared lost at Huntington Beach. In fact, Bolsa Chica wetlands are back. And a dried out oil field is once again linked to the ocean."

So I think that really means that we've gotten some recognition.

The next slide will show you what the project looked like before we started.

--o0o--

MR. TROUT: And that is a 1,200 acre oil field
with an ecological reserve along the Pacific Coast Highway
at the bottom of the project.

MR. TROUT: The next slide shows the
after-restoration at full tide. This is what it looks
like at high tide.

MR. TROUT: The next slide shows what it looks
like at low tide and gives you an idea that the exposed
areas that show kind of green in there are tidal flats
that are used for loafing, for feeding, for growing things
like Eelgrass and Cordgrass. And so that's what it looks
like today.

I've got a few more slides to go over with you
just real quick.

MR. TROUT: We have several phases of monitoring.
Avian monitoring has indicated that there are literally
tens of thousands of birds in the area, in the season
between March and August, that are using the property.
The bird on the left is a Snowy Plover. It's a
State and federal rare endangered species. The slide at
the bottom right shows different birds, some Terns and
some others, as an example of the success that's been
going on there.
We've had a real good successful second year as well and that report will be out soon.

--o0o--

MR. TROUT: The next slide shows the fish monitoring, which our consultant did. In the lower left is about a 2-year old halibut that probably came in from the ocean. We haven't seen halibut hatch there yet. The lower right shows Top Smelt, which is a numerous fish and major food source for larger fish and birds.

--o0o--

MR. TROUT: The next slide -- one of the requirements of the Corps of Engineers and the Coastal Commission is that we are concerned about beach erosion. So we were required to monitor the beach width monthly. And this just illustrates the effect of doing that. There's been no erosion and we haven't had to take any steps.

--o0o--

MR. TROUT: The last slide is that we have to monitor the vegetation. This is an example of some of the vegetation that has returned.

The restoration is one of the largest undertaken on the west coast. And it was financed largely with Tideland Trust money from the Ports of LA and Long Beach. And there was 20 million in State Park and water bond...
funds put in there. But while it was a multi-federal and
State operation, the State paid 97 percent of the cost of
the restoration planning and all of that.

So I think that it was just good for us to be
reminded of what our goals are and what we’re trying to
achieve here and to see some evidence of success.

This is the full report. If any of you are
interested, I can send it to you on a CD.

--o0o--

MR. TROUT: So the last slide is the water
quality monitoring, which shows that the ocean off shore
of the -- this is inside the project. But the ocean
waters off shore of the project are cleaner than they were
before the project was opened to the ocean.

So I think it’s something that we, on the staff,
and you as Commissioners can be kind of proud of.

Thank you.

EXECUTIVE OFFICER THAYER: Thank you, Jim.

ACTING CHAIRPERSON ARONBERG: Thank you, Jim,
very much. And I am lucky to have been hearing from you
and working with you for too many years on this already.

I’ve always known you as a retired annuitant. And now I
know why, it’s been a long time since you retired in ’95.

Good for you for being here. I echo Mr. Sheehy’s
comments. And I think he’s got something to say.
ACTING COMMISSIONER SHEEHY: I just had a quick question. You offered the report on a disk. Is the full report available or could it be available as a link on the website or does the --

MR. TROUT: This full report is available on CD.

EXECUTIVE OFFICER THAYER: We could put it on the website.

ACTING COMMISSIONER SHEEHY: I mean is that -- I don't want to make a special request, Mr. Thayer. Is that something you normally do? I mean, this is such a wonderful success story or appears to be headed in that direction.

EXECUTIVE OFFICER THAYER: I don't know if technically we couldn't put it up. I think you've got a point and we'll do that.

ACTING COMMISSIONER SHEEHY: That would be great. Then could you send me the link once it's up.

(Laughter.)

EXECUTIVE OFFICER THAYER: You bet.

EXECUTIVE OFFICER THAYER: No, it's just an informational item.

ACTING CHAIRPERSON ARONBERG: So Item 59 is off calendar.

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EXECUTIVE OFFICER THAYER: It's off calendar.

ACTING CHAIRPERSON ARONBERG: And we've had Item 60 already, the panel presentation, out of order. We have some public commenters, which is our next agenda item, Mr. Thayer?

EXECUTIVE OFFICER THAYER: Yes, ma'am.

ACTING CHAIRPERSON ARONBERG: Great. I have a few speaker slips here. You know, there are 3 of you, so I'm going to call all 3 you of in this order, Bryan Pease, the general counsel of the Animal Protection and Rescue League. Dorota Valli, and then Eric Townsend. And actually following that it will be Robert Ray.

So, Mr. Pease, if you're still here.

MR. TOWNSEND: I'm sorry Mr. Pease actually left. He had something he had to take care of.

Okay, great. Is Ms. Valli here?

CHIEF COUNSEL FOSSUM: He may have ducked out too.

ACTING CHAIRPERSON ARONBERG: Were you going to speak on behalf of Mr. Pease?

MR. TOWNSEND: My name is Eric Townsend. I was actually after that. There was the confusion.

Thank you, Commissioners for having me here today. My name is Eric Townsend. I'm with the Environmental Legal Clinic with the University of San
Diego Law School.

And we're here today because we're trying to forward some legislative -- some legislation where the Public Trust Doctrine where it's in conflict with actual land grants that are given to certain municipalities or cities. Where there's conflict that -- for one that there be legislation to help -- to give overriding effect of the Public Trust Doctrine over preexisting trust or deed that's inconsistent with the Doctrine.

We're also here to seek your help in trying to speak with maybe Senator Kehoe to have actual changes made to legislation that was made in 1931, regarding the Children's Pool in La Jolla. And that's what this is in regards to.

ACTING COMMISSIONER SHEEHY: I missed that second point. What was the second point?

ACTING CHAIRPERSON ARONBERG: This is concerning the Children's Pool, which is a nearby beach, where there's been a conflict for years about the seals or sea lions on the beach and then used by humans, because of it. And so maybe, Paul, do you want to discuss this and then maybe respond.

MR. TOWNSEND: Forgive me. I didn't have a lot of time to prepare this. We didn't know until yesterday that this was actually available.
EXECUTIVE OFFICER THAYER: As the gentleman indicated, in 1931 the Legislature granted this property to San Diego for management in the same way a lot of other grants have occurred.

However, prior to that time, I believe a prominent woman in the area had created a breakwater, a U-shaped breakwater to protect the area and allow it to be used for children's swimming. And it's come to be known as Children's Pool.

The language in the grant specifically recognized this area for use as a children's pool, but also allows for other uses to occur. In language it's a little bit ambiguous, but there's no doubt that it refers to a children's pool.

More recently seals have started to use this area as a pupping area and protected, of course, under the Marine Mammals Act. But those who have enjoyed using the pool in the area for children or for bathing have been foreclosed from using it. There have been docents there who tell people they can't get a certain distance from the marine mammals pursuant to federal law.

Water quality measurements indicate that the -- what the mammals leave behind in the water has ruined the water quality and it's not safe to swim in. And I believe there was even one incident where a woman was bitten by

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one of the seals. And so effectively people haven't been
using the pool.

A lawsuit was filed. And the court determined
that the language of the grant favored the use of the
property as a children's pool. It required the City to
take steps to restore it to that use with dredging and
take steps that would keep the seals away.

From the State Lands Commission's perspective,
either one of those uses are Public Trust And the court's
decision with the grant required that a certain use be
favored have settled that issue. But I think from reading
this letter from the Animal Protection and Rescue League
and hearing this gentleman's comments, I think what
they're seeking is legislation to change the thrust of
what the Legislature is mandating, that the property be
used for and presumably would allow to be used for -- by
the seals rather than for swimming.

The State Lands Commission has no jurisdiction
over making that change itself. It's a product of the
law, that the statute that the Legislature enacted. And I
believe at least the letter suggests is that they have
approached Senator Kehoe to introduce legislation to
change it back to a seal use -- or change it to a seal
use. And that she has said that the Legislature can't
interfere with the courts.
I don't know her real reason for not wanting to introduce this legislation, but, in fact, that's not strictly true, because the Legislature could change how these uses occur. We could certainly inform Senator Kehoe of this if the Commission believes that we should. And there's no action here.

I think as well, in reading this letter, it's suggested here that, I think, the State Lands Commission should support that kind of an amendment. And that would be up to the Commission to decide. Generally, of course, when it comes to grants we haven't weighed in on one use versus the other. But we could certainly -- and you couldn't do that today without noticing this to be heard at a future date. But if it were the direction from the Commission, the staff could write a letter to the Senator indicating that this matter is amenable to legislation if she chose to introduce it.

ACTING CHAIRPERSON ARONBERG: I guess I'm concerned about the Marine Mammal Protection Act and how does one move the seals out of the area without violating the Marine Mammal Protection Act, which I think prevents harassing --

CHIEF COUNSEL FOSSUM: This is Curtis Fossum, Chief Counsel. We've been involved in this litigation in the State Court. We took the position that the City, as
the trustee, would represent the State's interest in this and they were unsuccessful in court. There was a separate action brought in federal court trying to assert the Marine Mammal Protection Act. And the result of that was that there are exceptions to the Marine Mammal Protection Act. And the court, in that instance, found that what was proposed in dredging this apparently would not be in conflict with the Act if it was done properly.

So --

ACTING CHAIRPERSON ARONBERG: It's not a matter of chasing the seals away. It's a matter of dredging the area?

CHIEF COUNSEL FOSSUM: Well, it's how it's done. And one would expect that interference with marine mammals, you know at certain points in time, could be in conflict with the Marine Mammal Protection Act, but there are exceptions, and the court pointed to those exceptions. Clearly, the Legislature created this statutory trust. The Legislature can amend it. And I think, as Paul said, if it was the desire of the Commission we could inform Senator Kehoe of that fact. That if she wants to carry a bill or if anybody else does, that's her prerogative.

MR. TOWNSEND: There's a couple of things I'd like to address there. One is that the actual Superior Court judge is going to be ruling on the 21st of this...
month. And he's requested to have a ruling on furtherance
of the order before the City has actually gone with what
they were supposed to do under the order. And he ordered
in an ex parte hearing about 2 weeks ago that whoever has
the power to remove the seals should be there at that
meeting, should be there at that next hearing.

So it sounds like they are going to forcibly try
to remove the seals, actually have them removed. So this
is kind of an urgent matter that we're -- that's the
reason why we're coming here today. It's an urgent
matter.

And the Marine Mammal Protection Act under
Section 109(h) is actually the exception. And the
exception is for animals that are -- the rule that allows
you to actually do that under nuisance is like, if you
have one rogue seal may be attacking fishermen or
attacking people in like one case or another. It never
has applied to a whole group of seals. And that's kind of
the point that we're stating here today.

It's like the Public Trust Doctrine, we have a
public interest in the natural resources and the
environment. And the seals obviously fit within that
purview. So we want to protect them under the Public
Trust Doctrine, under that interest. And to have that one
spot across the beach used as entirely for a children's
pool would completely remove the whole interest that we
have in the seals. There's nothing similar to this all up
and down the coastline of southern California. This is
the only place where visitors and people coming to visit
San Diego can see something like this that close to a
municipality. It's a great thing to have and it's really
going to be a big loss.

The other Public Trust is that people using the
beach for enjoyment and use, which there's 500 miles of
coastline up and down the southern coast of California,
for people to swim and use anyway they want.

ACTING COMMISSIONER SHEEHY: Excuse me. That
same argument could be used for the seals. I mean, you've
got to be logically consistent. I'd like to ask a
question of our staff.

ACTING CHAIRPERSON ARONBERG: Please.

ACTING COMMISSIONER SHEEHY: Mr. Thayer, is it
true that the Public Trust Doctrine would be met under
either scenario with this being used as a bathing pool for
humans or as an area that would be a protected area or a
special area for the seals?

EXECUTIVE OFFICER THAYER: Both uses -- and
Curtis can confirm or deny this -- are consistent with the
Public Trust Doctrine. Neither one are in violation.

ACTING COMMISSIONER SHEEHY: I thought that's
what I heard you say. It seems to me, and, you know, others may feel differently, that this is not the type of thing that the State Lands Commission would necessarily want to stick its nose into and say we're in favor of the seals or we're in favor of the children. I mean, I think the optics of this either way are not pretty.

And if the land -- if in either case if it's consistent with the Public Trust Doctrine, which our staff is telling us, I would be reluctant to have the State Lands Commission, you know, take a position in the middle of this, because in either event it is our responsibility to make sure that the Public Trust Doctrine is being upheld, is going to be the case.

And so I appreciate your passion, but I just don't think this is the right venue for that type of fight to take place.

MR. TOWNSEND: We're aware of that, Commissioner. The point -- the reason why we're here is just trying to seek help. We're at a point now where there's pretty much nothing that can be done. The actual issue of the Public Trust Doctrine in the actual Superior Court was never brought up. There was never an issue addressed.

The only addressed issue was the legislative intent of the actual 1931 Act, and that's all. We feel like we've been let down by the system basically, in that,
you know, when it comes to the Public Trust Doctrine and the protection that the public has in its interests to the, you know, Public Trust which incorporates habitat and wildlife, that needs to be protected. That's something that we can't just take the only source that we have of this kind of rookery so close. So many people use it. We have 80,000 visitors that they estimate a month that come to view this. Tons of revenue that's coming in every month from all these visitors, general tax revenue, business revenue. And we're going to replace it with a $250,000 to $500,000 a year cost of redredging that pool every year. I mean, now we're going to substitute revenues for cost.

ACTING COMMISSIONER SHEEHY: Madam Chair, I'm afraid that with the 80,000 visitors a month, pretty soon we're going to be hearing from the residents saying that they want to do mitigation and use their Public Trust funds in order to do that mitigation, because of all the increased traffic through their neighborhood and tires on the side road.

MR. TOWNSEND: The business owners are really happy.

ACTING CHAIRPERSON ARONBERG: Mr. Townsend, would a letter demonstrating what staff said, which is that these are equivalent Public Trust uses, would that be...
something that you'd be interested in? I mean, just --

MR. TOWNSEND: That would be fantastic.

ACTING CHAIRPERSON ARONBERG: Is that

something that --

EXECUTIVE OFFICER THAYER: It would be relevant
to either of the Public Trust uses. I think, as was
stated though, the court case turned on not the Public
Trust, but turned on what the grant said. And so the cure
for that particular issue, and there are several issues
that are raised here, remains that the Legislature could
decide to change the legislation and reverse that.

And so, again, we would be happy to write a
letter saying either is a Public Trust use, in general, if
that's helpful. And we could also, in that letter, say
that the Legislature, according to court ruling, has
already chosen between those uses, and, of course, has the
ability to continue to stay with that choice or it can
change its choices if it wants.

ACTING COMMISSIONER BUGSCH: Would it just be a
letter to Senator Kehoe or would this be a letter to --

ACTING CHAIRPERSON ARONBERG: Yeah, and --

CHIEF COUNSEL FOSSUM: Staff actually wrote the
letter to the City about 10 years ago outlining that same
position, that either of those uses seem to be consistent
with the Trust and it was really up to the City to manage
the lands. However, the court basically found that our
letter was not convincing to them. And so they ruled that
the pool was the only use that the City could have under
the statute. And so it's basically the statute that, as
interpreted by the courts, that's binding at this point,
and only the Legislature can change that.

EXECUTIVE OFFICER THAYER: And I think that
letter has been a little bit outdated just because the
court has ruled. But I'm not sure whether it would be
appropriate to write to Senator Kehoe. I mean, a variety
of legislators could decide to get involved in this. And
perhaps we could write a letter to this organization and
just say questions were raised at our meeting and a
response to those questions. Here's the view of staff.
Again, we can't -- the Commission can't take action on
this anyway, just because it's an informational item under
the public comment item.

But if it's acceptable to the Commission, staff
would write a letter laying out those points that both are
acceptable. The grant has been interpreted by the court
to allow only swimmers. And finally, you know, this is
legislation that's malleable and the Legislature can
either sustain or change its mind on this point.

Would that be helpful?

MR. TOWNSEND: That would be fantastic. We're
kind of -- obviously, we have an interest in keeping the seals. We have kind of a -- we have an opinion that the actual Public Interest, it's kind of if the seals were to be removed, we would be removing the whole interest. That's pretty much the only place that's similar to this for the seals, where they're located at.

And there was actually a Supreme Court case that was in -- that was determined in, I think, it was 18 -- the late 19th century. It was an Illinois case. It had to do with a railroad that went across the waterfront of Chicago. And basically the Supreme Court said where you have a whole interest that's removed -- and the whole purpose of the Public Trust I'm sure you guys, as Commissioners, fully understand it. The Public Trust Doctrine used to be so people could get to the water. It used to be so they could travel up and down the rivers and streams. And it turned into enjoyment and use. And now, it's further been turned into where we're protecting the environment.

But our opinion is, in that case, they actually had trusts. They'd given a grant to the railroad, the whole entire waterfront of Chicago. And the Supreme Court came back and said you've removed the whole interest of the public with the water. And they said this is not allowable. You cannot give away the whole Public Trust
You can do small things in furtherance of it. And we feel that this is analogous to where we're at now with the seals. This is the only interest we have like this in seals in a rookery where schools can come, you know, elementary school kids can come and actually see how a -- what a rookery looks like, what a seal colony looks like.

This goes through a municipality. And there's nothing similar to it. And that's what we tried to argue is that having those bathers -- having it used as a children's pool removes that whole interest. And having the seals there, doesn't remove the whole interest of the actual swimmer. The swimmers can go to any beach they want.

I know you said the same thing about the seals, but, in fact, that's not really the case, because the seals -- that's a pretty unique environment for those seals. They don't have other environments that are exactly similar to that.

ACTING CHAIRPERSON ARONBERG: So to me I think the sense of the Commission is that this letter would be a fine thing for staff to write it. And I would agree that it would be right for staff to provide such a letter. You know, there's a -- near San Simeon, I think there's elephant seals and a great docent program educationally for Californians on the beach there. Maybe something
similar to that could be created here.

MR. TOWNSEND: That would be fantastic. That's exactly what we're looking for.

ACTING COMMISSIONER SHEEHY: I think that's a good solution, Madam Chair.

MR. TOWNSEND: Thank you for your help. I appreciate your interest. Thank you very much.

ACTING CHAIRPERSON ARONBERG: We have a couple of other speakers on this issue. Do they no longer want to speak?

Ms. Valli?

MS. VALLI: I would like to make a brief comment.

ACTING CHAIRPERSON ARONBERG: Please limit your comments to 3 minutes.

MS. VALLI: My name is Dorota Valli. I'm a member of the Animal Protection and Rescue League. I'm also a resident of La Jolla. And just to mention the docent program already exists. We daily are asking people not to disturbs the seals, and to indicate to them about a safe distance from these animals. So we have it most of the time. And it's very costly and a huge effort.

I would like to speak also as a taxpayer. The recent court's ruling places a huge burden on the San Diego taxpayers. We know that the budget is reality tight. San Diego's budget is pretty much empty. And we feel like
there's -- the judge ordered and pretty much retired a
week later. It places a huge monetary burden on us
taxpayers.

Right now, the City is obliged to go through the
whole permit process to complete the dredging. Just the
Environmental Impact Report is a half a million dollars,
not to mention dredging itself, which has to be repeated
every year, too, because sand will keep building up.

Also, we don't feel like this ruling will be a
remedy to the conflict, because the public has a huge
interest in wildlife watching at this place. And this is
the only place they can do it, recreational wildlife
watching.

So we have a huge interest not only in preserving
the environment but also monetary interest in stopping
this process. And we feel like -- we feel discriminated
as the public. We know a majority of San Diegans would
rather have the seals protected. We sponsored an
independent Zogby poll.

So I would like to thank the Commissioners for
writing the letter to our organization and clarifying what
legislators can do in this matter, because we heard
comments, as the lawyer indicates, from Senator Kehoe
saying that she cannot change the current situation. And
right now, also we feel like, you know, just this bad
ruling has terrible consequences on the finances of San Diego.

That's what I wanted to mention.

Thank you.

ACTING CHAIRPERSON ARONBERG: Thank you very much for your comments.

ACTING COMMISSIONER SHEEHY: I just would like to reiterate it sounds like this is the best advice -- the best course of action for you is to try to get a change in the law. I think without that you will be unsuccessful in your efforts.

ACTING CHAIRPERSON ARONBERG: We have one final speaker card. So if there's anyone else other than Robert Ray please fill out a speaker card.

Is Mr. Ray still here?

Okay, Mr. Ray is not here.

I think we've reached the end of the open session. Do you know of any other business, Mr. Thayer?

EXECUTIVE OFFICER THAYER: Not at all. We're ready for closed session.

ACTING CHAIRPERSON ARONBERG: Great. Let's adjourn by acclamation. And may we please have the room cleared for closed session.

(Thereupon the State Lands Commission meeting adjourned and recessed into)
closed session at 2:23 p.m.)

CERTIFICATE OF REPORTER

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of October, 2008.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
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