1 map on the large one. And you see the red circle. That's
2 where the power plant is located. And as you can see,
3 there's sense of wild lands -- wetlands on one side and
4 thousands of residents living downwind of the plant. And
5 so the public health impacts, I'm sure you have heard much
6 about, are the emissions from the air emissions' impact on
7 the coastal resources due to the use of water cooling and
8 the uncertain future, as we just discussed here, while the
9 lease is coming to a close in the near future and Duke is
10 currently in the process of installing a replacement
11 plant.
12 Now, just to respond to -- it seems like a little
13 disingenuous for Duke to come out and say that they've met
14 with stakeholders. I mean the only meeting that we know
15 of with the Environmental Health Coalition was one
16 meeting. And since then every attempt that we made to
17 create a community working group that represents not only
18 environmental interests but also labor and community-based
19 interest has been blocked by Duke. And so I just want to
20 raise that as a flag because I mean you hear them saying,
21 "Oh, yes, we're bringing the stakeholders together, we're
22 having this public process." We don't see it happening
23 from our side. And as a result, in the past several
24 months we have worked with stakeholders on our own and the
25 port to create a work group that specifically addresses

1 these community concerns. And, again, I've only seen Duke
2 kind of interfere with that process and delay it.
3 As you can see, I -- there's another handout you
4 have here that has upcoming major events. As you can see,
5 I mean the air permit is coming up for renewal in March of
6 2004, the water permit is coming up for renewal in --
7 sorry -- for reinsurance in June of 2004. You heard about
8 the CEC process. The Chula Vista master plan, the first
9 draft is due to be completed January of 2004. There's
10 lots of events coming up. And the community hasn't had
11 really an opportunity to really to address our concerns in
12 regards to those issues. And we feel that creation of a
13 work group will be the first step in kind of getting the
14 community up to speed, exchanging information, having
15 these discussions about alternatives, the concerns being
16 aired. And we can move forward on all of these, including
17 the planning process and the permits.
18 The key example again is the Chula Vista Bay
19 Front Master Plan. You have a handout there again that
20 shows you the properties. You can see the power plant is
21 clearly a crucial part in this redevelopment process. And
22 as far as we know, redevelopment process can only go
23 forward and really have a good planned-out redevelopment
24 plan if we have the power plant included in that. And we
25 believe this underscores a need for the creation of a work

1 group and to immediately address these concerns, and as
2 the power plant and the planning process has moved forward
3 on its own for the past couple months already.
4 In addition, Duke again has -- you've heard
5 already, has still not announced its plans for the
6 demolition and/or its replacement. And -- but the port
7 staff has been working with us and trying to get this work
8 began. As we say, you know, that we haven't had this
9 happen yet. As a result I mean the public side has been
10 left out in the dark about this whole process, much -- as
11 I hear Steve was saying before, you guys want to have more
12 information about what's going to happen.
13 We request -- first of all we support the
14 recommendations that the State Lands Commission staff has
15 made.
16 We would request that you add one more
17 recommendation, and that be to support the port's effort
18 to recreate this work group. It will allow the community
19 the opportunity to meet, discuss, exchange ideas and to
20 prepare for the upcoming events.
21 If by December 1st this work group is not
22 created, we ask the State Lands Commission to step in on
23 their own and provide the leadership to make it happen.
24 Again, we thank you for this opportunity to
25 address you.

1 And next will be Al Shur from IBEW Local 569.
2 MR. SHUR: Chairman Bustamante, Commissioners.
3 My name's Allen Shur. I represent -- I'm with IBEW Local
4 569 here in San Diego. And I represent almost 3,000
5 workers in the electrical industry and their families.
6 I'm here to help ensure that the South Bay Power
7 Plant not only has quality jobs, but it's also good for
8 the environment that our families live in.
9 We advocate replacing South Bay Power Plant with
10 a dry cooled -- air cooled power plant. And it should be
11 sited away from the coast if at all possible. The IBEW
12 strongly supports cleaner sources of energy, solar power,
13 dry cooled power plants.
14 We request that the State Lands Commission ensure
15 the creation of this power plant working group to allow
16 the members of the public, our workers, and
17 environmentalists to meaningfully participate in the
18 public process and to begin the discussion about the
19 concerns that we have for the South Bay facility.
20 Thank you.
21 CHAIRPERSON BUSTAMANTE: Thank you.
22 Bruce.
23 MR. REZNIK: Honorable Chairman, Commissioners,
24 thank you for this opportunity to speak. I am Bruce
25 Reznik, the Executive Director of San Diego Bay Keeper.

1 I'm also testifying as a representative member of Surf
2 Rider Foundation and other members of the San Diego Bay
3 Council Alliance.
4 I should probably stop doing caffeine at lunch
5 because I just sit in the back and get more and more
6 frustrated as I hear some of the testimony that goes on.
7 The first thing I want to talk about is a win-win
8 scenario. To make it very clear, a win for the
9 environment is a win for the economy. It is that simple.
10 There's also win for the communities being impacted by
11 this power plant. Or as Sylvia Earl once said, a
12 conservationist, "The economy is a wholly owned subsidiary
13 of the environment." And if we continue to have a
14 pollution of our communities, a pollution of our bay, and
15 we continue to have our children in our communities sick
16 from asthma because of archaic technology, that is a loser
17 for everybody.
18 And the reality is I don't know who won when the
19 markets -- the energy markets are being manipulated,
20 prices are being manipulated. And I certainly don't think
21 the communities of California won. There may have been
22 some winners maybe in this room, but it certainly wasn't
23 the vast majority of Californians. And I want to make
24 that clear.
25 I would have been hoping for more at this point,

1 to be honest, in the process. I disagree with one thing.
2 I think -- did a great job. The permit for the waste --
3 or the discharge permit for water isn't coming up in June
4 '04. It actually was up in December '01. Unfortunately
5 that process has been delayed for two and a half years as
6 Duke continues to need more studies and more time and more
7 studies and more time. It's a process that I think the
8 Commissioners are very familiar with and I think are
9 getting frustrated with, as are the environmental
10 communities.
11 This is an archaic plan. It's a polluting plan.
12 We all know that. It was highlighted in the report that
13 environmental groups issued in December of '01 called
14 "Deadly Power," which I think you all have. You know, the
15 reality is, based on the history of what has gone on in
16 California with the energy industry -- I don't trust the
17 plants to get this plant done and I don't trust the plants
18 to get it off the bay. We need a dry cooled plant, we
19 need a cool plant. That is -- an air cool plant. That's
20 what's going to be good for everybody. That is the
21 win-win situation.
22 Now, I do support the working group proposal that
23 is out there. I support it somewhat reluctantly as a
24 member of many, many working groups that often go nowhere
25 for the environment, is often not represented, where we

1 are not listened to and we're up there as tokens. I will
2 support the working group, but only if we can ensure that
3 it is balanced, it is fair, and it is meaningful. And by
4 balanced, I mean environmentalists are represented. Fair:
5 We got to figure out a way to get them on there because we
6 are always at a resource disadvantage when it comes to the
7 other side. And meaningful: We need to actually be
8 listened to, and we need strict deadlines, and we need to
9 get this thing done.
10 Again, I have to echo what Al said about the
11 stakeholder process so far. You know, as one of the
12 people that's supposedly been involved in the stakeholder
13 process, I missed it. And so it needs to be a real
14 stakeholder process. We need to move this forward, get
15 this plant, this old plant, this archaic plant, this dirty
16 plant, we need to get it down. We need to do it. It's
17 good for San Diego, it's good for Chula Vista, and it's
18 good for our communities and our children.
19 Thank you very much.
20 CHAIRPERSON BUSTAMANTE:
21 Allison.
22 MS. ROLFE: Honorable Chairman, members of the
23 Commission, thank you for the opportunity to speak to you
24 today. My name is Allison Rolfe and I'm the Policy
25 Director at San Diego Bay Keeper. And I'm also a member

1 of the Port Chula Vista CAC for Bay Front Planning.
2 We're encouraged that there's a process for bay
3 front planning and that that's been established and
4 underway. I've been working hard to make sure that it's a
5 meaningful process and that the objectives of the CAC are
6 analyzed and considered in the development of the latest
7 alternatives for the bay front vision.
8 And for obvious reasons, air pollution, impacts
9 to the bay and marine life, and the huge obstacle that the
10 power plant presents for planning the Chula Vista bay
11 front, we are here -- we want the plant closed and moved
12 from the bay front.
13 But without getting into that in detail today, we
14 want to emphasize the need for a focused discussion about
15 the power plant. We need to discuss it. Otherwise we're
16 all going to call into question the value of the bay front
17 planning process.
18 What happens with the power plant is integral to
19 the long-term plan for the bay front. It has a huge
20 impact on the shape and character of the bay front. So we
21 urge to form -- or we're urging the port and Chula Vista
22 to form a technical advisory committee as a subcommittee
23 of the CAC.
24 I was one of the people that met with Duke. We
25 met once. And we certainly didn't have any input on site

1 selection. But we did talk about the need for a technical
2 advisory committee and community involvement. The CHC
3 should be invited to recommend representatives with
4 appropriate expertise to sit on the technical advisory
5 committee. And due to the urban location of the power
6 plant, people will be watching. And some people will be
7 skeptical about the authenticity and composition of the
8 group. So it needs to be balanced and we need to ensure
9 that.
10 Again, the urban environment that this power
11 plant is located in means that there needs to be lots of
12 community involvement and there needs to be a transparent
13 process. And the tasks of the TAC and the mandates of the
14 TAC needs to be fair and tangible. So we're urging and
15 asking for a meaningful stakeholder process to the extent
16 that that's not an oxymoron.
17 Thank you very much.
18 CHAIRPERSON BUSTAMANTE: Thank you.
19 Jim Peugh.
20 MR. PEUGH: I am Jim Peugh and I'm the Chairman
21 of the Conservation Bay of San Diego Audubon Society?
22 Well, much of what needs to be said has been said. You
23 all know that this power plant grinds up fish eggs, it
24 grinds up juvenile fish, and then grinds up the adult fish
25 that should be reproducing instead of getting squashed.

1 It poisoned the water with -- and copper. And he took the
2 bay to a tremendous extent disturbing some tire ecology.
3 These are things we shouldn't be doing. We particularly
4 shouldn't be doing them with public resources. This is --
5 the power plant is on public land. We shouldn't be using
6 public land to degrade the bay that belongs to the public.
7 There are a -- I would strongly urge you to ask
8 really hard questions about this process. And as it --
9 when it starts to lag, sort of, you know, kick people a
10 bit about it. Hold the parties accountable to come up
11 with a solution that really does protect and enhance
12 environmental resources, like you've said in the new
13 graft. And make sure the process stays very public. You
14 know, as I hear today, this sounds like all three of you
15 are very eager to do all of those three things, and so I
16 really appreciate that.
17 Thank you.
18 CHAIRPERSON BUSTAMANTE: Thank you.
19 Mike Aguirre.
20 MR. AGUIRRE: Good afternoon. I'm a local
21 attorney here in San Diego. And I've had an opportunity
22 to review many of the internal documents that the port has
23 with regard to the South Bay Power Plant.
24 First off, there is a little bit of a misnomer,
25 because the power plant is not out of date. The power

1 plant has been upgraded many, many, many times. It is a
2 relatively efficient plant. Three -- two mechanics and
3 one engineer that work there, I've discussed it
4 extensively with them. And they -- one of the things that
5 they asked that it be pointed out is that the plant for
6 purposes of generation of electricity has been on a
7 continuous basis during the time that it was owned by
8 SDG&E as well the time that it's been owned by Duke has
9 been upgraded.
10 Secondly, there's a document that I request that
11 you look at when trying to decide the RMR future of the
12 power plant; and, that is, the prospectus that was used to
13 describe the plant at the time that it was sold, because
14 it described the congestion and the difficulty of getting
15 electricity into San Diego during high periods of demand
16 and how strategically important the power plant is. So
17 the likelihood of it not becoming an RMR -- the RMR status
18 changing is remote and it's remote for many, many, many
19 years, if ever.
20 Number 3, I was disappointed to see that Duke
21 slid into the record after your staff had made the report
22 a letter dated October the 20th, which raised I assume
23 under the commercial feasibility provision of the contract
24 the condition that Duke be able to secure a third party
25 power purchase agreement. That is a very significant

1 condition because what that tells us is that Duke is
2 talking about obligating the plant to a third party and
3 having a third party sign such a condition after it knows
4 that the major retail consumer has declined to do that
5 with Duke. So that's a significant condition that needs
6 to be looked at.
7 The fundamental problem that Duke has standing
8 before you today is a credibility problem. It's apparent,
9 during the time that it was negotiating the unfortunate
10 lease agreement and the cooperation agreement, entered
11 into a secret agreement with the former chairman of the
12 port commission in which Duke's parent agreed to make
13 payments. That port commissioner has subsequently pled
14 guilty to felonies in relationship to his relationship to
15 those payments. That is significant because the port
16 commissioner involved was the overall architect of the
17 relationship. Every single condition that was placed into
18 the lease agreement was tainted and was scarred by that
19 relationship. And that information was not brought to
20 your attention when you approved the original
21 relationship. The original lease and the original
22 cooperation agreement, when you allowed that to go
23 forward, you were not told of that material information.
24 Whether those payments constituted a bribe in
25 connection with the agreement -- the lease agreement and

1 the cooperation agreement is an open question. That issue
2 has not been investigated by our district attorney. It
3 has not been investigated by our state attorney general.
4 It has not been investigated by FERC. And it has not been
5 investigated by the Port District.
6 And it seems to me that one of the things that we
7 have to do in deciding whether to proceed ahead and how to
8 proceed ahead is we have to understand the nature of the
9 lessee and whether the lessee has in fact engaged in
10 corrupt practices and improper practices.
11 The second part is even a more serious problem,
12 also not having been -- not investigated. And that is the
13 question of whether Duke during the time that it has
14 controlled the power plant has used the plant to
15 manipulate the prices of electricity in California, both
16 by way of withholding -- and it's physical withholding of
17 power in the market as well as by way of congestion
18 manipulation.
19 The ISO conducted an investigation of 5,000 bids
20 that Duke put into the market -- into the ISO market and
21 determined that approximately 90 percent of those involved
22 physical withholding. The Federal Energy Regulatory
23 Commission has completely and totally failed -- and I
24 think there's almost a unanimous opinion with perhaps the
25 exception of Duke and the other power manipulators -- has

1 wholly failed to investigate these issues.
2 And so to summarize, although I think that the
3 staff member who performed the review did as good a job
4 under the circumstances as she could, I've had an
5 opportunity to discuss the matter with her and she has
6 invited a letter which I intend to write asking for a more
7 thorough review of the alleged unlawful and perhaps bribe
8 payments that were made to the prior chairman of the port
9 commission as well as the issue of price manipulation.
10 I think that we have to resolve those issues as
11 best you can. I know you're not set up to do that and
12 it's going to be difficult. But since Duke has cooperated
13 and has indicated that they will submit to your
14 information requests, I think I can provide you in a
15 letter sufficient detail to require additional information
16 from Duke, which you -- and its parent, which you may want
17 to avail yourselves, particularly the circumstances of the
18 manipulation and the alleged bribe payments.
19 Thank you.
20 CHAIRPERSON BUSTAMANTE: Before you leave. From
21 the attorney general's office, to what extent are we
22 obligated or is the port obligated to involve themselves
23 or to continue a contract in which the state government,
24 ISO, indicates there has been physical withholding that's
25 been taking place? Is there -- if that were to be found

1 to be true, is there then a recourse?
2 ASSISTANT ATTORNEY GENERAL HAGER: I don't know
3 the answer to that, but I'd be glad to find out.
4 CHAIRPERSON BUSTAMANTE: Would you?
5 ASSISTANT ATTORNEY GENERAL HAGER: Yeah. And
6 we'd assume that there's some criminal activity. And then
7 in that case what is its effect on the contract at stake;
8 that's your question, right?
9 CHAIRPERSON BUSTAMANTE: Well, the question is is
10 that if there is -- if there in fact has been physical
11 withholding in the process of using a facility that's on
12 state lands and a state agency declares that 90 percent of
13 the energy that was produced or 90 percent of the
14 incidences had physical -- had physical withholding that
15 was taking place, seems to me that we're kind of rewarding
16 an entity, whether it's Duke or anyone else, an entity,
17 allowing them to remain on state lands when we know that
18 there was in fact damage that was done to the taxpayers of
19 the State of California.
20 ASSISTANT ATTORNEY GENERAL HAGER: I understand.
21 I'll have to find out.
22 CHAIRPERSON BUSTAMANTE: You will check on it?
23 ASSISTANT ATTORNEY GENERAL HAGER: Yes.
24 MR. AGUIRRE: May I add one point about that?
25 CHAIRPERSON BUSTAMANTE: Please.

1 MR. AGUIRRE: There is a provision in the
2 contract, which I'll be glad to include in my letter, that
3 provides that it is subject to termination if there is a
4 finding that Duke has violated California law in the way
5 in which it's operated the plant.
6 And so beyond -- or aside from the issue of what
7 additional steps could be taken, the contract itself has a
8 termination provision. And that's one of the issues that
9 I will be raising in my letter to the Commission with
10 regard to a possible review.
11 CHAIRPERSON BUSTAMANTE: Thank you. Those are
12 very serious allegations. Of course that takes us to a
13 completely different level.
14 My guess is that at this point, if you could just
15 call us back -- or get back to us and let us know. My
16 guess is that would be more in your domain than in ours.
17 But we would like to have an update on what that would
18 mean in this particular situation.
19 ASSISTANT ATTORNEY GENERAL HAGER: Yes.
20 CHAIRPERSON BUSTAMANTE: Michael, could you give
21 a little bit more about this third party purchasing
22 agreement?
23 MR. AGUIRRE: Right. The third party purchasing
24 agreement basically would provide an insurance policy to
25 Duke that there is a retail or a wholesale purchaser that

1 has committed itself to purchase a substantial portion of
2 the output.
3 And really the only local purchaser is SDG&E.
4 And at least up to this point, SDG&E has not indicated
5 that it's willing to play that role for Duke.
6 So by inserting that as a condition -- and,
7 again, I assume that that is in connection with the
8 commercially reasonable provision of the lease -- duke is
9 essentially setting up a barrier that it knows it's
10 unlikely to be able to get over as --
11 CHAIRPERSON BUSTAMANTE: That was in the original
12 agreement?
13 MR. AGUIRRE: Right. If you'd look at the
14 PowerPoint that the -- I don't if they can bring up the
15 PowerPoint that the port put on -- but you'll see that one
16 of the conditions for the replacement plant is that it be
17 found to be commercially reasonable. And that is the kind
18 of subjective condition that up to now had not been fully
19 defined. And it appears that what Duke is doing is
20 defining it in such a way as to make it insurmountable.
21 CHAIRPERSON BUSTAMANTE: I see.
22 MR. AGUIRRE: Thank you.
23 EXECUTIVE OFFICER THAYER: If I could respond to
24 that.
25 CHAIRPERSON BUSTAMANTE: Please.

1 EXECUTIVE OFFICER THAYER: I think you're making
2 reference to this letter that they passed out today?
3 MR. AGUIRRE: Correct.
4 EXECUTIVE OFFICER THAYER: Right. That letter
5 has no more status than -- you know, the opinion of
6 Duke as to ways that this facility could be made more
7 commercially feasible. And they raised -- they proposed a
8 couple different ways that even the Commission -- they've
9 solicited the Commission's assistance in legislation that
10 would incentivize them to open up this power plant. This
11 doesn't change the meaning of words in the contract on
12 commercial viability. They're just talking about the ways
13 they can helped in getting over that.
14 CHAIRPERSON BUSTAMANTE: But they're raising --
15 the gentleman's raising that there is a potential of being
16 able to utilize this particular standard in order to be
17 able not to comply. I believe that that's --
18 MR. AGUIRRE: Right.
19 EXECUTIVE OFFICER THAYER: I think certainly from
20 the State Lands Commission staff's perspective, that Duke
21 can raise that issue, but that does not mean that they've
22 redefined the term as it is in the contract. So I guess
23 what we're saying is, I'm hearing his concern, but I don't
24 believe we'd accept Duke's reasoning.
25 CHAIRPERSON BUSTAMANTE: I see.

1 MR. AGUIRRE: I think -- If I might respond. The
2 language reads -- that I'm particularly concerned about,
3 which I think puts us on notice, and that's why I say the
4 last-minute notice -- I believe that this may have come in
5 to provide last-minute notice. But it said -- it reads as
6 follows: A key consideration that could affect the
7 ultimate construction of an RGP will be Duke's ability to
8 secure a third party power purchaser" -- I'm sorry -- "a
9 third party power purchase agreement. And where it says,
10 "A key consideration that could affect the ultimate
11 construction" I think is an effort to put us on notice
12 that they are in fact going to try to insert that as a
13 part of the commercially reasonable condition.
14 CHAIRPERSON BUSTAMANTE: Thank you.
15 Does Duke want to respond to any of these or --
16 rather than we going through other testimony, I thought
17 I'd give you a chance to respond.
18 MS. O'BRIEN: Yeah, and I'd like to address
19 basically the last issue. Randy may want to address any
20 operational issues regarding allegations of withholding
21 power.
22 But the issue with regards to commercial
23 reasonableness and having a power purchase agreement to
24 help support that concept of commercial feasibility of the
25 plant, ultimately for the plant to be commercially

1 feasible going forward we have to be able to get
2 financing. That's the reality of today's market as it is
3 right now. Not to say it will be in 12 months or 24
4 months. I don't know. But today's market we have to have
5 financing to build a plant.
6 There are no more spec plants being built in the
7 merchant industry, at least not by my company. And in
8 order to get financing we're going to have to have at
9 least some percentage of the output, probably a majority
10 of the output sold under a long-term arrangement. And
11 that's the situation as it is today. There are any number
12 of other issues that could also factor into commercial
13 feasibility. But that is one of the major hurdles that we
14 will have to overcome.
15 MR. HICKOCK: There are a couple other issues I
16 can address.
17 Regarding the withholding accusations. Duke has
18 absolutely never withheld power. We've been fully
19 investigated by the FERC. We have turned over as part of
20 that investigation dispatch records for every hour of the
21 entire period -- I believe it was a two-and-a-half-year
22 period that the FERC investigated. The ISO similarly
23 turned over their records. And we were absolved of any
24 accusations of withholding power in California. And
25 there's a very good reason for that, is because it

1 absolutely never happened.
2 Duke has run that power -- not only -- not only
3 have we not withheld power; we've done everything in our
4 power to get as much power out of that unit and all our
5 units during the energy crisis as we could. The plant has
6 never run any cleaner than it's running today. We've
7 retrofit the plant with SCR. You know, we've tried to do
8 everything right to ensure adequate supply to California,
9 not conversely.
10 And I'm unaware of any unresolved ISO
11 investigations or accusations that haven't been fully
12 addressed on that. So you all can follow up on that. But
13 that's Duke's position on that one.
14 Regarding the stakeholder process, I mean we
15 fully support a stakeholder process. You know, I'm
16 hearing some frustration that Duke hasn't been sitting at
17 a roundtable with some stakeholders and talking about the
18 plant. But part of that is we're not exactly sure what we
19 would talk about until we know what sort of plant would be
20 appropriate, what technology, what size, where it would be
21 located. And much of that is: What is the need for
22 incremental generation in San Diego and where would it be
23 located? And, you know, we are trying to find somebody to
24 buy -- to sign a power purchase agreement. And if we know
25 that there is a home for the power, then we can get

1 started on the stakeholder process to talk about what that
2 should look like. Now, if you want to start that earlier,
3 we're happy to participate.
4 CHAIRPERSON BUSTAMANTE: Well, maybe the members
5 of the audience here who are interested in participating
6 with you can contact you and to begin that process.
7 Because I think some of the issues that you just raised
8 are some of the reasons that they would like to actually
9 meet. Okay?
10 MR. HICKOCK: Okay.
11 Thank you.
12 MS. O'BRIEN: And I if I could --
13 CHAIRPERSON BUSTAMANTE: And I wanted to give you
14 an opportunity to make sure that you said whatever you
15 needed to say in defense of Duke's position on the record
16 while you were here.
17 MR. HICKOCK: Okay.
18 CHAIRPERSON BUSTAMANTE: We didn't want you to go
19 back to the office and they say, "How come you didn't say
20 anything?"
21 MS. O'BRIEN: Yeah, I'd just like to reiterate
22 what Randy said and that we're going to be fully
23 supportive of the port's process as they go through and
24 set up -- whether it's called a working group or a
25 technical advisory group or whatever they do as part of

1 the CAC process. So we will be involved in that.
2 CHAIRPERSON BUSTAMANTE: Yeah, I think that the
3 groups are not only well intentioned; I think that what
4 they're basically saying is that they'd like to help you
5 arrive at a decision that would be good for the community.
6 It seemed -- I don't know, it seems like often times
7 industry groups think of various environmental groups as a
8 hindrance to them getting business done. Sometimes, you
9 know, if you're going to come to a meeting for permit
10 process, chances are you'd like to have them with you.
11 MS. O'BRIEN: Absolutely. I wasn't against --
12 CHAIRPERSON BUSTAMANTE: I mean I know it's a
13 crazy thought.
14 (Laughter.)
15 CHAIRPERSON BUSTAMANTE: But, you know, having
16 them engaged and letting them see your process and letting
17 them see that, in fact, you are doing your due diligence;
18 and the fact that if you did do that due diligence, they
19 would be able to testify in your favor rather than raising
20 questions as to what you're doing, if anything. Just a
21 thought.
22 We have, if there's nothing else, Lupita Jimenez,
23 and then Mr. Hancock.
24 MS. JIMENEZ: Good afternoon. Commissioner
25 Bustamante and other Commissioners.

1 I am Lupita Jimenez. I am Co-chair of the San
2 Diego County Green Party. And I wish to speak in favor of
3 decommissioning the South Bay Power Plant and removing the
4 plant from the Chula Vista bay front as soon as possible.
5 We have formed in Chula Vista a coalition of
6 community groups. The EHC, Environmental Health
7 Coalition; Friends of Wildlife; Bay Keeper; Cross Roads
8 II; the Audubon Society; the Green Party; and several
9 other groups are all members of the coalition.
10 Through a survey we undertook in April of this
11 year we found that the community is overwhelmingly
12 supporting this view of removal. We cite the air and
13 water pollution that has been going on for thirty some
14 years and the degradation of health in the downwind
15 populations.
16 This coalition has worked mightily to bring about
17 the joint planning of port lands with the privately hailed
18 land called the mid-bay front, which is environmentally
19 sensitive. The mid-bay front area is contiguous to the
20 salt-water marsh wildlife habitat immediately to the
21 north.
22 The port is now planning the development of lands
23 under their authority. We demand of the two areas that
24 this planning include the decommissioning of the South Bay
25 Power Plant. With coherent joint planning we envision

1 development which will include a landmark park for the
2 citizens of Chula Vista; a destination hotel, which will
3 fill many needs for us; and sustainable mixed use
4 development, with some imaginative low-rise residential.
5 We understand the city's concern for loss of
6 tech's revenue from the power plant. We feel intelligent,
7 out-of-the-box, creative problem solving on the part of
8 Chula Vista, the port, and the development will culminate
9 in our vision becoming a reality. We ask that this
10 Commission facilitate the complex planning that is
11 involved in this bay front development.
12 Thank you.
13 ACTING COMMISSIONER MATEO: Thank you very much.
14 Let me see if I can say this name correctly. Is
15 this Nephi?
16 MR. HANCOCK: Nephi.
17 ACTING COMMISSIONER MATEO: Nephi. There we go.
18 MR. HANCOCK: My name's Nephi Hancock. I'm a
19 resident of Chula Vista and I'm also a member of the IBEW
20 Local 569.
21 I got involved with some of this because my local
22 asked me to come to the port hearings sometime last year,
23 and it was on the South Bay project. And since that time,
24 because I live in Chula Vista and my children, grand
25 children live there, that I am concerned about the

1 pollution, how we're going to deal with this. And I would
2 definitely like to see that we have community input into
3 what's going on. And we've tried -- these people have got
4 up and spoke previously to me. I've been with them at
5 committees, meetings and sat and listened. And it seems
6 that a lot of the presentations are put on, but then
7 they're out of time, and the people don't have a chance to
8 respond. There's just not enough time. It's time to go
9 home. We're all done. They don't get a chance to
10 respond. The people need a chance to respond to all of
11 these things that have been brought up previously to me
12 speaking.
13 And I appreciate your time for coming down and
14 listening to us. Thank you.
15 ACTING COMMISSIONER MATEO: Thank you.
16 Would the record please reflect that Cindy
17 Aronberg is sitting for the Controller at this point and
18 Lorena Gonzalez is sitting for the Lieutenant Governor.
19 Thank you.
20 ACTING COMMISSIONER GONZALEZ: Was there anybody
21 who didn't get a chance to speak who still wanted to on
22 this issue?
23 Okay. Before I call for a vote, I just have a
24 clarification on -- and, excuse me, because stepped out, I
25 think. Did the Lieutenant Governor ask the port about the

1 working group?
2 EXECUTIVE OFFICER THAYER: He has not.
3 ACTING COMMISSIONER GONZALEZ: Okay. I'm trying
4 to read his comments.
5 He had wanted to ensure that the working group
6 that the port had created -- or was thinking of creating
7 was in fact going to happen, and wanted to know if you
8 could get an agreement from the port that we could at
9 least start on that process.
10 MS. ANDERSON: Yes. I think as we said in our
11 presentation, the working group is being formed. There's
12 a meeting of the Citizens Advisory Committee on November
13 3rd, at which the details will be discussed as to how it's
14 formed, who will sit on it, what its mission will be. So,
15 yes, it will be formed in the next meeting of the CAC.
16 That's November 3rd. That should be culminated.
17 ACTING COMMISSIONER GONZALEZ: And he also wanted
18 to know that a representative of the State Lands
19 Commission or a member could be a part of that group.
20 MS. ANDERSON: We would welcome their
21 participation, yes.
22 Thank you.
23 ACTING COMMISSIONER GONZALEZ: Okay, great.
24 Thank you.
25 ACTING COMMISSIONER MATEO: Okay. Was that an

1 informational item overall? Is there any action required?
2 EXECUTIVE OFFICER THAYER: We had suggested -- or
3 recommended that the Commission direct staff to write the
4 letter to Duke urging them to meet these timelines -- in
5 an attempt to sort out whether or not Duke was going to be
6 going forward, that there would have to be some public
7 commitment by observing these time lines. And then
8 reporting back -- the Commission directed staff to
9 reporting back after each of these two timelines as to
10 whether it had been done.
11 ACTING COMMISSIONER MATEO: You'd like a formal
12 action on that?
13 EXECUTIVE OFFICER THAYER: Yes.
14 ACTING COMMISSIONER GONZALEZ: I'd like to move
15 that that happens, along with I think the opinion that the
16 Lieutenant Governor wanted from the Attorney General's
17 office, and a commitment -- a follow-up -- sorry -- with
18 the port concerning the working group.
19 Now, if I have missed what some of the groups
20 wanted beyond that, please remind me, things that
21 actually -- besides obviously decommissioning the plant --
22 things that we missed. I know there was a separate call
23 for the environmental justice policy. The Lieutenant
24 Governor was also -- let me take the two separate because
25 I think the two are two separate ideas.

1 But first I'd like to make a motion for those
2 issues.
3 ACTING COMMISSIONER MATEO: Could you restate
4 your motion for the record please?
5 EXECUTIVE OFFICER THAYER: If I could --
6 ACTING COMMISSIONER GONZALEZ: The motion --
7 okay. Go ahead, Paul.
8 EXECUTIVE OFFICER THAYER: I would just interpret
9 that as perhaps a second -- regarding the working group,
10 that the proper place that should be directed to of course
11 would be the port. And so I could also write a letter --
12 ACTING COMMISSIONER GONZALEZ: Just follow up
13 with the port.
14 MS. ANDERSON: We're providing your staff with
15 monthly status reports. We will include the status of the
16 working group in those as we proceed.
17 ACTING COMMISSIONER MATEO: Paul, would you state
18 for all of us what you believe we have come to now. It
19 sound like two letters.
20 EXECUTIVE OFFICER THAYER: Yes. I understand
21 that two letters and a request of the Attorney General's
22 office. So the original recommendation was for a letter
23 to Duke regarding meeting these two timelines, these two
24 time goals. A direction to staff to report back to the
25 Commission on the results of that. A request that the

1 Attorney General's office investigate the -- I guess the
2 contract provision that called for it to be forfeited or
3 affected if there was violations of state law and whether
4 any of the allegations that were mentioned today could
5 affect -- could bring about that result. And then finally
6 a letter or a communication to the port urging them to
7 establish the working group that has been requested.
8 Does that --
9 ACTING COMMISSIONER GONZALEZ: That sounds right.
10 I'd like to make that motion.
11 ACTING COMMISSIONER MATEO: Okay. Do we have a
12 second?
13 EXECUTIVE OFFICER THAYER: And of course --
14 ACTING COMMISSIONER MATEO: I second that.
15 All in favor?
16 (Ayes.)
17 ACTING COMMISSIONER ARONBERG: For the recorder,
18 the Controller is supportive. Besides the fact that I
19 don't think the law forbids us for procedural reasons from
20 voting.
21 ACTING COMMISSIONER GONZALEZ: Now, I think the
22 second part of that, there was a request made concerning
23 Cal EPA's environmental justice guidelines and a request
24 that we review those and see if we could actually
25 strengthen ours. I understand that that might take

1 legislation. I was wondering if we could get for the next
2 meeting maybe an item on sponsoring legislation that would
3 do that. So it could still need a vote. But at least an
4 item to come before you vote that would ask the Commission
5 to sponsor such a legislation.
6 EXECUTIVE OFFICER THAYER: What we'll do is
7 since...
8 ACTING COMMISSIONER GONZALEZ: All right. I'm
9 going to withdraw that motion. And I will work out with
10 the Controller's office then to see what we can do.
11 EXECUTIVE OFFICER THAYER: Certainly. Let me say
12 though that in the spirit of I think what was said to the
13 Commission, as was pointed out, the Commission was one of
14 the first entities at which -- you know, the
15 Commissioners -- to adopt an environmental justice program
16 and that that has been adopted almost word for word by the
17 resources agency. And when we brought that matter to the
18 Commission, we indicated that we fully understood that
19 this was sort of a frontier policy issue and that we
20 expected that we would be bringing back changes. And we'd
21 look for inspiration at any place for improvements. And I
22 think the Cal EPA effort is one that we certainly want to
23 look at.
24 My understanding is that there was a report put
25 together by one of their action committees or groups that

1 was recently approved by one of the other groups at Cal
2 EPA, but that perhaps the process isn't even done yet.
3 But, no matter, we'll continue to look at that process and
4 see if there's items in there from the Cal EPA process
5 that would allow us to improve our product.
6 It's my somewhat naive understanding that in fact
7 the Cal EPA process was directed by specific legislation
8 and that they therefore may have different authority under
9 the law than we have. And that led to some concern on my
10 part that we might need legislation in order to do the
11 same thing as Cal EPA. We need to look into that more
12 fully.
13 But the spirit of what I'm trying to say is we're
14 entirely in favor of what the witness suggested, and we'll
15 go back and look at Cal EPA process and figure out where
16 we need to go next. And that was my ideas.
17 ACTING COMMISSIONER GONZALEZ: And it's been
18 suggested to me my motion should have said come back with
19 an analysis of that --
20 EXECUTIVE OFFICER THAYER: Sure. And if we come
21 up with some clear -- if there's some easy
22 recommendations, we'll come back with those as well and it
23 will be an action item for amendments.
24 ACTING COMMISSIONER GONZALEZ: Okay. And do we
25 need a motion then to ask you to do that? Or that

1 just comes back, we need to do that?
2 EXECUTIVE OFFICER THAYER: I would suggest --
3 whatever you're most comfortable with. But I certainly
4 accept that as Commission direction.
5 ACTING COMMISSIONER GONZALEZ: Okay.
6 All right. I think that resolves then Item No.
7 62.
8 Item 63 was moved to the consent item calendar.
9 I believe we're on Item 64.
10 EXECUTIVE OFFICER THAYER: Yes, Madam Chair.
11 Item 64 has to do with title settlement and boundary line
12 agreement with the Bel Air Bay Club in Los Angeles.
13 And our staff attorney, Curtis Fossum, will make
14 the staff presentation of this item.
15 SENIOR STAFF COUNSEL FOSSUM: Good afternoon,
16 Commissioners.
17 Item 64 requests your consideration of approval
18 of a title settlement agreement involving an eleven
19 hundred thirty-five foot strip of beach lying between two
20 segments of Will Rogers State Beach in the City of Los
21 Angeles.
22 ACTING COMMISSIONER MATEO: Could you -- hold on
23 a moment.
24 SENIOR STAFF COUNSEL FOSSUM: Sure.
25 ACTING COMMISSIONER MATEO: Could the audience

1 just stay sort of quietly, so that we can hear you, we can
2 think.
3 SENIOR STAFF COUNSEL FOSSUM: In your packet
4 you'll see an Exhibit A and B. And we have two maps
5 behind you. We have a map here to try and show you the
6 area to get an idea of the lay of the land.
7 The goals of the proposed settlement are, first,
8 for the state to obtain clear title to a 780 foot stretch
9 of sandy beach lying in front of the Bel Air Bay Club.
10 It's an area from which the public has been excluded for
11 75 years.
12 The second element is that the Commission is
13 being asked to enter into three lease agreements with the
14 club for the following purposes:
15 Lease 8465 would be to maintain these
16 pre-existing groins stretching from club property onto
17 state tide lands, for a rental of $13,323 a year. They're
18 shown in orange on this map and on Exhibit B of your
19 packet.
20 Lease 8466 is for a club receational use of a
21 small triangle of beach, less than 3/10 of an acre; at the
22 rate of $50,596 the first three years, followed by $56,921
23 for the next two years; and thereafter rent will be
24 adjusted by the Commission. That area is shown, in this
25 triangle, on the right-hand side of the photograph.

1 The third lease, 8467, is for construction of
2 temporary sand berms by the club, in exchange for the club
3 providing beach cleaning, lifeguard services, and
4 construction of a stairwell or similar device that will
5 allow public access across the city-maintained groin at
6 the upper end of the club.
7 Right now off of the club's property but adjacent
8 there's a groin that's been there also since the 1920's
9 that is under lease from the Commission to the City of Los
10 Angeles that prevents lateral access along the beach. And
11 that's the motivation for that element of that lease.
12 First a little background information is
13 necessary to put the settlement into context. In 1927 the
14 club's predecessor and other nearby property owners
15 contructed a series of groins into the ocean to protect
16 their beach-front property from wave action. Sand
17 accretion resulted from those groins.
18 In 1930 the Attorney General's office and the
19 District Attorney of Los Angeles filed an action to abate
20 those groins as a nuisance. The subsequent year the
21 Legislature authorized the newly created Division of State
22 Lands in the Department of Finance to permit such
23 structures. The club's predecessor applied for permits in
24 1932. And in the next few years considerable discussions
25 between the club's engineers and State Lands Division

1 staff took place.
2 Nineteen thirty-seven however was a very critical
3 year in analyzing the current situation. In April club
4 representatives and Carl B. Sturzenacker, who was Chief of
5 the Division of State Lands, discussed establishing an
6 arbitrary mean high-tide line. That same month the state
7 issued a 25-year lease -- excuse me -- 25-year easement to
8 the club for $2 a year for 3.3 acres of land under the
9 Political Code Section 675.
10 In July the club requested a boundary line
11 agreement with the state.
12 On October 29th Sturzenacker entered into a
13 binding arbitration agreement with the club pursuant to
14 Political Code Section 690.10. The arbitration decision
15 was adopted by Arthur Alexander, a state petroleum
16 inspector, and the club's civil engineer. It was signed
17 November 2nd, establishing an ordinary high water mark, a
18 line they established you see in this map, the dark line
19 back there. Excuse me. The yellow line. The yellow line
20 out on the beach was the line that they established.
21 On November 8th an agreement was executed setting
22 that as the boundary line. And that agreement was
23 recorded.
24 So since 1938 there's been -- excuse me -- '37
25 there's been a recorded agreement establishing that yellow

1 line as the boundary.
2 The following year this agreement became a minor
3 player, in it was a major controversy for Governor
4 Merriam's administration. That controversy revolved
5 around oil leasing by the Department of Finance and its
6 Division of State Lands. The controversy had been going
7 for about 10 years, but it came to a head in the election
8 year of 1938. In March Governor Merriam called a special
9 session of the Legislature. Item one was to create a
10 State Lands Commission. While the Governor's version of
11 the Commission makeup did not pass, he wanted two of the
12 three Commissioners to be his cabinet members.
13 Nonetheless he signed the bill on March 24th and the
14 Commission became effective the following June.
15 Five days after the Commission came into
16 existence the State Personnel Board began an investigation
17 of Sturzenacker and of Alexander, the individuals who had
18 arbitrated the boundary and were involved in the oil
19 controversy. A complaint was filed with the State
20 Personnel Board, and they were suspended by the
21 Commission. Following months of investigation the State
22 Personnel Board dismissed them both. However, in that
23 dismissal no discussion of the Bel Air -- excuse me -- the
24 Bel Air Bay Club boundary line was set forth in the
25 findings by the Personnel Board.

1 On May 3rd, the following the year, the State
2 Lands Commission denied a club application to modify the
3 groins; and, in addition, repudiated the line of the
4 ordinary high water mark entered into by Sturzenacker.
5 Three years later the Commission directed staff
6 that an effort be made to effect readjust of the boundary
7 line. Sixty-one years later we are here complying with
8 that request.
9 (Laughter.)
10 SENIOR STAFF COUNSEL FOSSUM: Better late than
11 never.
12 The Commission since its inception has been
13 involved in modifications to the Bel -- the Bal -- the Bel
14 Air Bay Club groins -- I've been involved in too many
15 projects -- and the issuance of leases with the club more
16 than a half dozen times. However, this is the first time
17 staff has brought the readjustment to the Commission that
18 it requested in '42.
19 The crux of this dispute and rationale for the
20 settlement is that while the facts the Commission have
21 developed indicate the accretions to this beach were the
22 result of the groins, state officials entered into an
23 agreement in 1937 that purported to fix the boundary. We
24 have for the last 18 months researched facts and laws and
25 subsequently argued and negotiated with club

1 representatives based on the strengths and weaknesses of
2 our respective claims.
3 Your staff and the Office of the Attorney General
4 have concluded that the proposed settlement, which
5 provides for the state obtaining a stretch of beach in
6 excess of three acres -- excuse me -- three quarters of an
7 acre and 780 feet in length is a fair and equitable
8 resolution of those claims.
9 Some people might ask: "Why make such a big deal
10 out of such a relatively small beach area the public
11 hasn't used in 75 years?" I believe it's important to
12 note that this beach is the only stretch of sandy beach
13 along the shore between Topanga Canyon and Palos Verdes
14 peninsula that the public has no right of access and use.
15 It may in fact be the only area similarly situated in Los
16 Angeles County outside of Malibu.
17 In actions taken on Item 18 through 30 earlier
18 today, except 19 and 28, you authorized acceptance of 11
19 additional areas of public beach access and recreational
20 use in Malibu. The Commission has now accepted a total of
21 186 beach easements for the public at no taxpayers'
22 expense. Obtaining these areas for public use without the
23 expenditure of tens of millions of dollars is a remarkable
24 accomplishment of the Commission.
25 The eleven easements accepted today total 640

1 linear feet of beach. The parcel to be deeded by the Bel
2 Air Bay Club to the state covers 780 linear feet.
3 In conclusion, the settlement before you will
4 open up for public use a stretch of beach which the public
5 has been excluded from for over 75 years. It provides for
6 maintenance of the beach and lifeguard services at no cost
7 to the public, and will result in revenues to the General
8 Fund of over one and a half million dollars over the lease
9 term. Staff respectfully requests your approval.
10 I'll be happy to answer any questions.
11 ACTING COMMISSIONER GONZALEZ: The Lieutenant
12 Governor just had one question, and I think you answered
13 it. But I just for the record wanted to clarify.
14 He wanted to ensure that the Attorney General's
15 office in fact felt like this was the best settlement we
16 could get.
17 ASSISTANT ATTORNEY GENERAL HAGER: Yes, we do.
18 ACTING COMMISSIONER GONZALEZ: Thank you.
19 ACTING COMMISSIONER MATEO: Okay. I think we've
20 got three folks who've indicated an interest in speaking
21 on this item. I'd like -- we have a number of people
22 after this who have signed up for public comment. So in
23 the interests of time I'd like you all when you come up to
24 limit your remarks to three minutes please, no longer.
25 And I'd like the staff to keep track of the time.

1 The first one here is Mr. Martin Murphy.
2 MR. MURPHY: May I approach the Commission? I
3 have some handouts.
4 My name is Martin Murphy. And I oppose the
5 quitclaim deed to the Bel Air Bay Club for the following
6 reasons -- four reasons:
7 First, it's unconstitutional. Article 15,
8 renumbered as Article 10 of the Constitution, forbids the
9 state from divesting itself of tidelands. Article 4 of
10 the Constitution forbids the state from gifting tidelands
11 to any person. Article 3 of the Constitution, Section
12 31 -- Article 3 Section 3 requires the State to comply
13 with State law. And the California Coastal Act Section
14 30609.5 forbids the state from divesting itself of lands
15 between the nearest public highway and the sea, which is
16 Pacific Coast Highway.
17 Secondly, the original agreement under which
18 the -- the original boundary line agreement entered in by
19 Sturzenacker and Alexander was entered into in violation
20 of the Constitution. These people were removed from
21 office. As part of their removal from office it was
22 charged that persons dealing with the state were required
23 to pay money to an associate of theirs before their
24 applications would be considered. In addition,
25 Sturzenacker required a percentage of business from

1 certain people. And when we was questioned of his
2 activities by the Director of Finance, he lied. So
3 clearly any activity that Sturzenacker and Alexander
4 engaged in while they were state employees was not
5 authorized by the State. They had no authority to enter
6 into these contracts. So the original boundary line
7 agreement is void.
8 What was this original boundary line agreement?
9 To simplify it I've -- this map in red and blue. And if
10 you would look at that map, you will see that there was
11 this uncertainty in 1937 as to where the tideland. But
12 that uncertainty was only whether the tideland was 50 feet
13 or 100 feet from Pacific Coast Highway. What Sturzenacker
14 did, he granted the club a boundary line that was 275 feet
15 from Pacific Coast Highway along a stretch of land that's
16 1200 feet long. That's a lot more than a hundred thousand
17 square feat. It's a couple of acres.
18 And such a boundary line agreement is void on its
19 face. And you can not now correct that boundary line
20 agreement by entering into another boundary line agreement
21 because the requirements for a boundary line agreement is
22 that there's a genuine dispute as to where the boundary
23 line is. The genuine dispute was only between where the
24 1923 and '15 boundary lines. There is no genuine dispute
25 for the 1937 boundary line. It was an accretion.

1 Two more points. In addition to the --
2 ACTING COMMISSIONER MATEO: If I could ask you to
3 wrap it up.
4 MR. MURPHY: -- wrap it up. Okay.
5 The proposed exchange -- if you could track to
6 the last page of a photograph in the handout. What you're
7 getting in return for giving up a couple of acres of
8 land -- what you're getting is the patch of land between
9 the yellow and the green over there on the diagram. And
10 that is largely undersea. What you're giving up -- the
11 state is giving up a prime beach land in return for land
12 that's largely submerged to which it already owns access.
13 And I would strongly -- and I have a written
14 submission attached to this because I knew the time might
15 be limited. I would strongly urge you to take this matter
16 under advisement.
17 And with respect to the burden of proof which I
18 think has led to the staff's conclusion, I think the --
19 you know, the arguments of the club have been heard not in
20 public but in private. I think that the burden of proof
21 in this matter is misplaced. The burden of proof is on
22 the club to show that it's entitled to this land. This is
23 a large piece of land in the most valuable portion of the
24 Will Rogers State Beach that is most heavily used by the
25 public in Los Angeles. And you're giving away millions of

1 dollars worth of state land in return for nothing.
2 So I would strongly urge that this matter be
3 reconsidered.
4 ACTING COMMISSIONER MATEO: Thank you very much.
5 The next testifier would be Mr. George Smith.
6 MR. COLEMAN: My name's Howard Coleman. I'm not
7 George Smith. I'm the lawyer for George Smith. And I'll
8 be very, very quick.
9 First, a boundary line agreement is not by
10 definition a conveyance. It sets what the existing
11 ownership is. So there is no conveyance. There is no
12 restrictions based upon the Constitution because nothing
13 is happening in terms of transferring property.
14 Secondly, with regard to Judge Sturzenacker and
15 Mr. Alexander, there were allegation made with regard to
16 their activities in the Bel Air Bay Club. There was no
17 findings with regard to the fact that they did anything
18 unlawful insofar as the Bel Air Bay Club boundary line
19 agreement was concerned. So the inference is that they
20 did nothing wrong in terms of the 1937 boundary line.
21 Thirdly, with regard to this presumption that we
22 should have the burden of proof, there's -- in the Public
23 Resources Code Section 6341 there's a statute of
24 limitations with regard to boundary -- challenging
25 boundary line agreements. And that has long since ceased.

1 And my last point is with regard to where the
2 last natural condition of the line is. That's a very
3 difficult question. It goes -- it could go beyond the
4 area that's been talked about. And these hearings could
5 go back to 1891 when the great wharf was built not too far
6 away from this site.
7 Thank you.
8 ACTING COMMISSIONER MATEO: Thank you.
9 Do members have any questions of those who
10 testified?
11 ACTING COMMISSIONER MATEO: Does staff have any
12 comments?
13 EXECUTIVE OFFICER THAYER: No. I think -- I
14 think the history of this has been very interesting for
15 staff. And we've spent a lot of time going back. And
16 Curtis Fossum, our staff attorney, spent a lot of hours in
17 an attempt to go back and get all the records to find out
18 the validity of these earlier agreements. And I think
19 based on all of that research we think we've come up with
20 an equitable situation -- or an equitable solution to the
21 situation.
22 ACTING COMMISSIONER MATEO: Okay. We have any
23 further comment?
24 ACTING COMMISSIONER ARONBERG: I know that has
25 been a long, difficult one. For those involved in it, has

1 been hard work. And I want to sort of echo the speaker,
2 limited question, which is: Is this the best that can be
3 done on behalf of the State? And can you go ahead and
4 make a little opinion about that one more time, in light
5 of the speaker who raised some legal issues?
6 SENIOR STAFF COUNSEL FOSSUM: Commissioners, as
7 Paul has indicated, we've spent about 18 months searching
8 the record, analyzing the laws, reviewing legal arguments
9 on all sides on this. And I guess our conclusions
10 basically are that -- there's several elements to this.
11 It's not just the three quarters of an acre that the
12 public will now have that they haven't had for 75 years.
13 But we also have three groins out there that are
14 potentially hazardous to the public. We're going to be
15 putting them under lease.
16 We're following the Commission's recent policy
17 addressed to the staff to charge rent for those kind of
18 structures. We're getting rent for those. We're getting
19 $50,000 plus a year for a small triangle.
20 And we're having all the other things that
21 inhibit public access on the beach removed -- fences, all
22 other kinds of items.
23 Now, that doesn't get the legal issue. But I
24 wanted to say that there's more than just the property per
25 se. That we're getting public access, which is a major

1 accomplish we believe in the face of an agreement that's
2 been on the books since 1937 -- a recorded agreement.
3 I've been at the Commission now for 26 years.
4 And one of the mantras that I was really taught was that
5 we will never challenge a State Lands Commission boundary
6 line agreement. And I was admonished early on this one.
7 And I ultimately was successful I think by telling them
8 that this was not a State Lands Commission boundary line
9 agreement. It was a predecessor to the Commission that
10 existed at the time. And so we are not challenging one of
11 our agreements, but of the predecessor's. And we're
12 challenging it, but that doesn't mean that we'd be
13 successful in court. We don't know what would happen.
14 It's the old adage of half a loaf or a bird in hand.
15 So we've all discussed it, the executive level,
16 and the Attorney General's office. And our conclusion was
17 this is in fact a very good deal for the State of
18 California and we believe an equitable one for the parties
19 involved. And it does not violate any provisions of the
20 Constitution.
21 ACTING COMMISSIONER ARONBERG: Thanks for the
22 clarification. WE appreciate it.
23 ACTING COMMISSIONER MATEO: We have before us a
24 staff recommendation.
25 Do I have a motion?

1 ACTING COMMISSIONER ARONBERG: Move adoption.
2 ACTING COMMISSIONER MATEO: Second.
3 All in favor?
4 (Ayes.)
5 ACTING COMMISSIONER MATEO: That motion passes.
6 Paul, does that bring us to the section where we
7 take general public comment?
8 EXECUTIVE OFFICER THAYER: Yes, it does.
9 ACTING COMMISSIONER MATEO: Okay. Then if I
10 could ask you folks again to limit your comments to three
11 minutes.
12 The first individual we have here is -- and if I
13 say this incorrectly, I'm sorry -- Mr. Andrew Marderich.
14 MR. MARDERICH: That's all right. You can stop
15 at Andrew.
16 And I'll also speak for Agustin, who had to leave
17 early.
18 (Thereupon an overhead presentation was
19 Presented as follows.)
20 MR. MARDERICH: On my comments you may want to
21 turn around because 99 percent of it is visual.
22 No, you've got a monitor ahead of you. Great.
23 Okay. We wanted to let the Commission see what's
24 happening in the Port of Los Angeles rather than give a
25 narrative. And we isolated the presentation with regards

1 to blight through visual intrusion, a phenomena that
2 hasn't been addressed in the past, and also related to
3 project-specific mitigation.
4 --o0o--
5 MR. MARDERICH: A little over a year ago a
6 question was asked at the Commission hearing: Why is it
7 that with billions of dollars in Port of Los Angeles
8 expansion over the last 30 years there has never been any
9 project-specific mitigation in San Pedro or Wilmington off
10 of port lands? That question still goes unanswered to
11 date. Even though there was a staff report that was
12 generated to that question, it was never answered.
13 --o0o--
14 MR. MARDERICH: Here's a scene of an intersection
15 in the Wilmington area four blocks from the port. And you
16 can see how overpowering these cranes are. Just so you
17 understand, that these cranes -- the houses and the
18 residences were here many, many years before the cranes
19 appeared. The EIRs were silent with regards to the
20 impact.
21 --o0o--
22 MR. MARDERICH: Here's another intersection,
23 still four blocks away. And there's a forest of cranes.
24 This is a predominantly Hispanic low-income residential
25 area.

1 Real estate sells very cheap there, by the way,
2 now.
3 --o0o--
4 MR. MARDERICH: The port's EIRs remain silent on
5 these blight generators. A survey was recently done of
6 past EIRs by a community advisory group. And they found
7 that issues with regards to visual intrusion and blight
8 were either not addressed or not mentioned or nor was
9 mitigation proposed in these projects.
10 --o0o--
11 MR. MARDERICH: The blight extends far beyond
12 these children's line of sight. The children are a little
13 dark there on the street corner.
14 --o0o--
15 MR. MARDERICH: And here you can see the same
16 cranes from Wilmington extend miles beyond, over San
17 Pedro's horizon, and into an adjoining city. So it's not
18 restricted to just right adjacent. This blight, this
19 visual intrusion, extends for miles.
20 --o0o--
21 MR. MARDERICH: This is another shot a little
22 further to the east of the horizon from Rancho Palos
23 Verdes, which is one of the tenth most wealthy areas in
24 the United States. And these people as well as the people
25 in Wilmington have a right to a scenic horizon.

--o0o--

MR. MARDERICH: Going up the hill even further away, still the blight from Wilmington is inescapable.

--o0o--

MR. MARDERICH: Look a little to the south and you can see the China shipping cranes -- from the horizon in San Pedro.

--o0o--

MR. MARDERICH: Here you can see how the cranes dominate the sky line.

--o0o--

MR. MARDERICH: Now, this is an intrusion to the most extreme. What you're doing is seeing a photograph taken from inside an individual's residence.

--o0o--

MR. MARDERICH: This -- yeah, thanks.

So this is what you would see if you sat in your living room and looked out, these cranes.

They were never mentioned in EIR.

--o0o--

MR. MARDERICH: The next shot is a view from the front porch. And you can see the emissions coming out of the ship.

--o0o--

MR. MARDERICH: This is the ceiling fan coated

1 with port balloons in that individual's home. They have
2 three asthmatic children that live at this residence. And
3 you say why don't they clean it and so forth. But If you
4 have a sealing fan, normally it dirty on the top. Take a
5 look. This is dirty all the way around, everywhere. And
6 it's a gooey substance. It's not a dust.
7 --o0o--
8 MR. MARDERICH: The community asks, will State
9 Lands allow project-specific mitigation under CEQA off of
10 port lands? That's' second question.
11 --o0o--
12 MR. MARDERICH: Now, we looked at the public
13 trust doctrine and paraphrased it.
14 The Commission must also comply with the
15 requirements of other applicable law, such as the
16 California Environmental Quality Act. Then, again, why is
17 it that with billions of dollars in port expansion, not
18 one dollar has been spent on any project-specific
19 mitigation in San Pedro or Wilmington off of port lands?
20 And then the new question: Will the Commission
21 allow EIR project-specific mitigations under CEQA off the
22 port lands?
23 ACTING COMMISSIONER MATEO: I need to ask you to
24 wrap up please.
25 MR. MARDERICH: I've wrapped up. That's the end

1 of it.
2 ACTING COMMISSIONER MATEO: Thank you very much.
3 Is Ms. Feuer here?
4 MS. FEUER: I'm Gail Ruderman Feuer. I'm here
5 on --
6 ACTING COMMISSIONER GONZALEZ: Well, I'm sorry.
7 If this is helpful at all -- and I know you probably want
8 to present as well. But I know there are at least two of
9 us who have gotten individual presentations on this
10 matter.
11 I'd like to go ahead and ask the staff again to
12 work on this.
13 Well, Lieutenant Governor's position is this:
14 And I'll just be very clear. He's in support. You know,
15 who's not in support of having more parks in areas that
16 need parks? Absolutely supportive. We're concerned about
17 the health of the children in this area. We're concerned
18 about the quality of life issues.
19 Unfortunately, I don't think a right to a skyline
20 view is one that we're given in California, at least
21 that's what the Coastal Commission has told me when I
22 asked for my rights to a scenic view. But we are -- we
23 share your concerns. But we also have gotten concerns at
24 least in our office from the attorney, not only in State
25 Lands but also the Attorney General's office.

1 So in accordance to what I told Julie when she
2 came from NRDC to speak with me, we want to see this
3 happen, but we need NRDC or the -- is it the Homeowners
4 Association there in San Pedro? -- to work with the
5 Attorney General's deputy, the State Lands attorney, and
6 for everybody to come together and form a consensus so we
7 can allow it to happen in a way that's legal and that's
8 constitutional. We don't want to be making exceptions
9 even for environmental groups or even for good projects
10 that we'd be -- later be forced to make for developers. I
11 mean that's the problem that we run into.
12 So -- and you can go ahead and do your
13 presentation. But the Lieutenant Governor's position on
14 this -- it's not an item yet -- is that he'd like to see
15 it as an item, but he would like first for NRDC and some
16 homeowners association to get together, streamline some of
17 the ideas; and see also the staff from State Lands as well
18 as the Attorney General's office to work with them the
19 same way that we worked with developers in San Francisco
20 and other projects to make their projects consistent with
21 public trust. Let's do that for these people so we can go
22 forward and we can vote on a project that's both legal and
23 makes sense for the community.
24 Now, that's what I'm asking staff to do.
25 ACTING COMMISSIONER MATEO: It would help me to

1 understand what the "it" was all the way through here. I
2 don't know -- I really don't know what your issue was.
3 MS. FEUER: Okay. Well, those comments are
4 helpful in terms of telling me -- giving us some
5 direction. We have talked to staff. And I can tell you
6 what the "it" is in a second.
7 We have met with staff and with the Attorney
8 General's office, and we are eager to talk with them some
9 more. And I think there is a general agreement that we'd
10 like to make this work and to find a legal way to do it.
11 We think there is a way to do it. We think there is a way
12 to do it.
13 I should tell you from NRDC's perspective, we are
14 very concerned about the improper use of public trust
15 funds. You've probably seen us on other occasions saying,
16 "This is an improper use." So one thing that we would
17 like to see is to -- there's one of two ways out of this.
18 One is to find a creative way to avoid this issue
19 altogether. And we know this has been suggested both by
20 staff and by the Commissioners. If we can find that
21 solution, wonderful. If not, we would like to have on the
22 agenda a policy item to help define what are the proper
23 boundaries. And we think those boundaries would include
24 these two projects.
25 And I apologize for doing this backwards. And

1 we'll get to the "it" of the two projects.
2 But what we think is a policy that would, we
3 hope, allow these projects to go forward, what would make
4 clear what is the boundaries so you don't have hundreds of
5 inappropriate projects coming to staff or coming to the
6 Board for approval.
7 Quickly, what the "it" we're talking about is --
8 I represent NRDC and a number of homeowner groups in a
9 litigation we call the China Shipping litigation. It's a
10 lawsuit filed against the Port of Los Angeles to stop an
11 expansion project at the port that did not have the proper
12 environmental review. We won in court. What happened is
13 the Court of Appeals stopped project. But as a result of
14 a settlement of that lawsuit, the settlement set aside --
15 did a number of things. But one of the things it did is
16 it set aside $20 million to mitigate the aesthetic impact
17 of the port expansion.
18 And I should note this on the side. One of the
19 issues raised in the litigation was the impact of huge
20 cranes and containers on the view of the local community.
21 And that was, we believe, an environmental impact that
22 needed to be mitigated.
23 That money -- the number one use of that money is
24 for park land. And so the question is there are now nine
25 proposals for how to use money to those proposals, and

1 only two are for park lands, one in Wilmington, one in San
2 Pedro. While clearly there's a local interest in having
3 those parks, we at NRDC believe that the principal purpose
4 is for the state. The state needs parks. The state needs
5 parks near coastal property. The port would benefit from
6 the park land because it would improve business at
7 Catalina terminal and the cruise terminals.
8 And for a variety of reasons we therefore -- and
9 also, as Andy Marderich just showed, there's been decades
10 of impact on the community, and we believe this would be
11 proper mitigation.
12 So to wrap up, we think that these two projects
13 are a proper use of the funds. But we are eager to work
14 with Commission staff, with the Commissioners, with the
15 Attorney General's office and figure out a solution to
16 deal with these. But our hope in the end is that these
17 two parks really aren't -- shouldn't be approved for the
18 local interest. They should be approved for the statewide
19 interest. And that's why we are asking for it.
20 So we appreciate the time you've spent with us,
21 the time staff spent with us. And we hope that we can
22 reach a fix. And the fix may be in December to have on
23 your agenda a policy item to figure out what is the scope
24 of when these public trusts money is appropriate for park
25 land and when it's not. Because some parks it's not

1 appropriate. There are a lot of projects that are not
2 appropriate. We think these two are.
3 ACTING COMMISSIONER GONZALEZ: I just want to
4 reiterate, if you'd please work with Mr. Lockyear's office
5 and trying to present us something that would allow the
6 Commission to go forward with confidence that it's going
7 to uphold the law. We absolutely are in support and would
8 like to see that happen. But I think we need to get some
9 positive direction from the Attorney General's office.
10 MS. FEUER: We will do that, and we will call Mr.
11 Hager tomorrow to start the process.
12 So thank you very much.
13 ACTING COMMISSIONER MATEO: And we just want to
14 echo here from the Department of Finance perspective that
15 the appropriate use of funds would be extremely critical
16 to us, and we have questions here.
17 Thank you very much.
18 And I think the next person up would be Janet
19 Gunter.
20 MS. GUNTER: Good afternoon, ladies.
21 Good afternoon, Ms. Aronberg. I spoke to you
22 before when you worked in the -- a few times. Thank you.
23 You were always very helpful.
24 MS. GUNTER: I think that the point was very
25 clearly made by the two previous speakers. And I just

1 want to reiterate that I think that when people get
2 creative, they can do lots of great things. And I mean
3 the bay we have here, and that was the urgency of Pier
4 400, Energy Island, and the predication of public safety
5 as an alternative use for that property urged the port and
6 State Lands to work together to find a relocation for the
7 wetlands that they had to accommodate. And if you
8 remember, part of the impetus for that was -- I have an
9 article that I'd like to pass over to you to look at just
10 real quickly.
11 In the eighties -- no, excuse me, 1972 there were
12 a couple of explosions in a harbor which encouraged the
13 port to relocate all the hazardous chemicals away from the
14 local residents, because the residents are just within
15 blocks of these facilities. And based on that they
16 decided they would build a 195 or 190 acre parcel of land
17 in the middle of the blue water out from the residences so
18 that they would allow that safety factor to exist. And
19 instead of that, once this group created legislation to
20 find a home for the lease turn in the wetlands area, that
21 became a 580 acre land mass that is totally used for parvo
22 containing. And all of the hazardous chemicals still
23 remain in the original locations that they were at the
24 time.
25 And, by the way, this is also a view from my

1 house prior to Pier 400. And this is what it looks like
2 today.
3 And in there EIR draft report, which I also have
4 here, you will see that there is no recognition of any
5 visual impact whatsoever. There's no disruption of a rock
6 outcropping or anything else.
7 So the mitigation has not existed. The lies that
8 have been circulated through the port and the analysis
9 have missed oversight, and that's a real tragedy.
10 One element that was not mentioned is the word
11 "blight." And blight, I believe that the State of
12 California has a very strong -- in their Public Safety
13 Code there is a three-page definition -- California Health
14 and Safety Code -- regarding the obligation of the state
15 to work with cities to eliminate blight. And this
16 blight -- this blight is due to the industrialization of
17 the port. So 30 years of industrialization and 400
18 percent in growth over the past 15 years that's produced
19 this blight. Which apparently some people -- staff people
20 in State Lands have said we're not necessarily the culprit
21 here, that it could be a number of factors. There is no
22 other industry that has had that kind of growth in that
23 period of time, yet it's completely overlooked.
24 One more thing and I will leave. You have copies
25 of articles of a survey -- mentions a survey that I

1 conducted in 1999 to all the cruise passenger -- or cruise
2 terminals. And it has to do with their input about the
3 impression that the cruise terminal passengers have. They
4 actually rated the Port of Los Angeles as the worst port
5 in the nation. And they described it as dirty, concrete,
6 industrial, ugly -- all of those things. The surrounding
7 area reflects that as well. If we wanted to increase
8 tourism, if we wanted to build that opportunity for the
9 port, the port could do a lot, a lot to maximize that
10 potential.
11 Thank you very much.
12 ACTING COMMISSIONER MATEO: Thank you.
13 Mr. Skip Baldwin.
14 MR. BALDWIN: Good afternoon, Commissioners. My
15 name is Skip Baldwin I'd like to introduce myself as being
16 a resident of Wilmington. And I'm also a member of the
17 Los Angeles Community Advisory Board for the Port of Los
18 Angeles. I'm Chairperson of the Land Use Committee of the
19 Wilmington Neighborhood Council. And since you mentioned
20 the community groups, I am the Chairperson of Wilmington's
21 only homeowners association. It's called the Wilmington
22 Citizens Committee.
23 I understood what you had to say today about
24 working with the community, and you have your restrictions
25 and so forth. I do -- since I'm here, come all this way,

1 I would like to read my public comments however.
2 I am here today to bring up the subject of
3 mitigation funds designed to be spent in Wilmington by the
4 stipulated superior court decision of the Los Angeles
5 Superior Court, Case No. BS 070017.
6 The stipulations in this case state that the Port
7 of Los Angeles must provide mitigation funds to Wilmington
8 because of port-provided blight and other impacts on the
9 community.
10 Spending the mitigation funds are carefully
11 articulated in the stipulated judgment. In the judgment,
12 projects of funds are to be spent for or prioritized as,
13 first, open space and parks; second, landscaping
14 implication; and, third, funding for educational arts and
15 athletic facilities.
16 I asked our Los Angeles City Councilwoman Janice
17 Hahn to request that mitigation funds stipulate we said
18 we're willing to be spent in the East Wilmington Green
19 Belt Park Projects.
20 Some of reasons are:
21 1) The Wilmington Green Belt Project doesn't
22 just meet one of the prioritized stipulations. It exceeds
23 all the prioritized stipulations.
24 2) The Wilmington green belt area is directly
25 negatively impacted by many port actions. The direct

1 nexus between port activities and park area are too
2 lengthy to enumerate here. But I can simply sum it up by
3 saying, if there were no port, there would be no negative
4 impacts.
5 3) The community bearing the negative port
6 impacts may be described as low income, Spanish speaking,
7 with an extremely low ratio of park space per person.
8 4) Spending court mitigation funds in a
9 Wilmington green belt will trigger other grants to the
10 park. Council Hahn has requested that funds be spent on
11 the park. And the request has been denied on the basis
12 that there was no nexus between the port and the park.
13 I have replied to the Lands Commission in
14 writing, but received no reply from that. Therefore, my
15 public comment today.
16 So I will be looking forward to appearing on any
17 of your meetings in the future.
18 Thank you.
19 ACTING COMMISSIONER MATEO: Thank you.
20 Ms. Laura Hunter.
21 MS. HUNTER: Thank you. Good afternoon. And I
22 will be very, very brief.
23 My name is Laura Hunter with the Environmental
24 Health Coalition. And I just welcome the opportunity to
25 quickly brief you on -- I know you've heard a lot about

1 the Chula Vista Bay Front Development today. But there's
2 this one other little element that I just wanted to give
3 you a quick update on -- clear your thinking on.
4 The Bay Front Development on Chula Vista you have
5 both private property owned on the mid-bay front and then
6 the port properties that you've heard a lot about today.
7 What we have been working on is a joint plan of a
8 comprehensive plan for the entire bay front. And I'm
9 here -- and we believe that we have to plan the whole bay
10 front together in order to get the best plan and actually
11 to address some of the issues that you've heard about in
12 other issues. You've got an underserved community in
13 terms of park land. You have very sensitive resources.
14 The good news is we have a lot of land to work
15 with, and so we're really pushing for a joint plan.
16 Part of what we think may be where we need to go
17 is to look at some potential for some land trading between
18 the port and the private property owner. I have good news
19 on that score. So far we're very optimistic, that
20 dialogue is happening and that we're moving forward. But
21 there -- as you heard from earlier speakers, there are
22 some questions about what's allowable under a land trade,
23 what isn't.
24 So we just didn't leave it up to the four winds.
25 We contracted with outside counsel in the form of

1 Schupolly & Weinberger in San Francisco, which is a law
2 firm that has very extensive knowledge about these things,
3 and asked them some questions that had been -- kept coming
4 up for us locally. One is, is a land trade legal? Number
5 2, is it doable? What are the conditions? What are the
6 whereases, and all that kind of stuff. And third, which
7 is more of a coastal commission question: If you downzone
8 an area, does that constitute a taking under the
9 California Coastal Act?
10 And we're all looking for very creative
11 solutions. But we think they gave us a very good
12 analysis. They said clearly it's legal, it's doable.
13 They gave us the conditions. And in fact you can
14 downzone. LZPs does not constitute a taking. And so
15 we're very encouraged that we're hoping we will move
16 forward on this.
17 I wanted to provide you a letter with that. And
18 we will continue to keep you updated on our collective
19 progress.
20 Thank you.
21 ACTING COMMISSIONER MATEO: Thank you.
22 Mr. Stanley Zobel?
23 Mr. Zobel's not here?
24 Then we're to Jim -- and I can't pronounce your
25 last name.

1 MR. PEUGH: Peugh.
2 ACTING COMMISSIONER MATEO: Peugh.
3 MR. PEUGH: Something I heard and I learned to do
4 it as a small child.
5 The State Lands Commission is obviously set up to
6 protect unique public lands. The habitat areas around the
7 bay front that Laura was just talking about are really
8 special. They're among the highest quality wetlands left
9 in the San Diego Bay. Unfortunately the properties they
10 sit next to aren't necessarily the properties that will
11 allow them to be best protected.
12 Laura talked about land swaps among -- between
13 private property and tidelands. That's absolutely
14 essential for being able to provide appropriate land uses
15 next to these wetlands. And so we also hope that you'll,
16 you know, look -- try and help people to look for create
17 solutions and help facilitate, you know, some sort of an
18 arrangement so that these really sensitive habitat areas
19 can be better protected in the long term. We know this
20 area is going to develop. We just want it to develop in a
21 way that allow people to have both commerce and
22 residential areas and wildlife areas and avoid the
23 conflicts between them.
24 Thank you.
25 ACTING COMMISSIONER GONZALEZ: And, Paul, my

1 understanding is you've talked with Ms. Hunter and we are
2 working with them to provide as much be expertise and --
3 that we have.
4 EXECUTIVE OFFICER THAYER: I've spoken personally
5 with her after our last meeting. And I believe there's a
6 workshop coming up next month that we're going down to
7 participate in. And we want to be as helpful as we can.
8 Ultimately of course the port has to work with
9 EHC and the other groups to -- and the developer to
10 formulate a proposal that would bring -- that the Lands
11 Commission would then have to approve for it to become
12 effective.
13 And we saw the letter that I guess came in last
14 week from, which I think penalized a -- penalized a
15 hypothetical proposal. But in fact it used swap -- it
16 proposed swapping or analyzed swapping some lands that
17 were now in the trust, which were somewhat removed from
18 the waterfront, in fact had been swapped into the public
19 trust I think a few years ago or something. And that's
20 the sort of proposal that has some traction in it.
21 And so we're happy to continue working with them.
22 If I may, I'd also like to respond just briefly
23 to the San Pedro-Wilmington project. And that is to say
24 that we have spent a lot of time meeting with the folks
25 who spoke today and some of the others as well.

1 And we also understand that the Commission as
2 well as its staff firmly believe that the ports are not
3 exacting any California environmental law and that they
4 must comply with CEQA as well as the air and water quality
5 statutes that the state has. And kind of the Public Trust
6 Doctrine is not a shield that the Commission -- that the
7 ports can use to prevent compliance with those laws. But
8 there are a variety of ways that they can comply. And we
9 think that the appropriate ways are to harmonize public
10 trust requirements with these other statutes.
11 And as presented to us now, we disagree with the
12 assertions of the attorney and several others. We think
13 that these two particular projects -- expending port
14 revenues on those projects are not consistent with the
15 Public Trust Doctrine. But as the Commissioners have said
16 time and time again, as we considered today, that we're
17 interested in opening the situation as well. And that I
18 think I've discussed with Ms Feuer as well as some of the
19 other -- some of the Commissioners, some ideas that we've
20 generated in-house -- Curtis actually was the initiator of
21 it -- that have to do with sort of a three-legged swap,
22 where the net effect would be that non-trust -- or trust
23 expenditures would be used to buy good -- or land for good
24 trust uses. And with the concurrence of the city perhaps
25 some of that money would be revolved into buying these two

1 properties. And we would be able to protect the public
2 trust precedent, which is extremely important up and down
3 the state, and still end up with a situation where these
4 parts, which have been enormously important to the
5 communities here, the communities have been working on
6 them for many years, before this settlement was entered
7 into with China Shipping, and hopefully soon the work will
8 be done and we'll all be successful.
9 So we're interested in having that, and we're
10 working to that end. And in fact Ms. Feuer and others
11 have sent us letters in the last couple weeks asking us
12 not to respond with our view of what -- of the consistency
13 of these projects with the Public Trust Doctrine, but
14 instead you work longer on a win-win situation. And we're
15 very happy to do that.
16 But having said that, I guess we're looking
17 for -- there were several suggestions from the witnesses
18 as to how the Commission might proceed.
19 ACTING COMMISSIONER MATEO: Well, we have one
20 other person to testify.
21 Okay. I'm sorry.
22 ACTING COMMISSIONER MATEO: And so if you
23 could --
24 EXECUTIVE OFFICER THAYER: -- hold that thought?
25 ACTING COMMISSIONER MATEO: -- wait to get that

1 in -- yeah, hold that thought.
2 Mr. Eichwald.
3 MR. MARDERICH: As I said, he asked me to speak
4 for his behalf. But I think it very appropriate now to
5 identify myself as the President of the San Pedro
6 Homeowners United. And we are one of the litigations in
7 China Shipping.
8 And we are not proposing any specific project.
9 We don't believe in gifts, funds. We don't even subscribe
10 to the report I mentioned about is communities abusing the
11 trust. And we are concerned with a process. And we would
12 like to sit down with State Lands and discuss a process
13 where, if there's a negative impact in the community, that
14 it be identified, quantified, and then a fair and
15 reasonable effort made to mitigate it. It's simple as
16 that. Follow the law in the process.
17 And I would like to enter into discussions with
18 State Lands on just the process, not looking to make these
19 fancy land swaps and these gifts that don't have a nexus
20 to a project specific. And that was the kernel in my
21 presentation, project-specific mitigation.
22 ACTING COMMISSIONER GONZALEZ: Can you hold on.
23 I'm sorry.
24 The process that they're describing, is that one
25 that would require us to change the law?

1 EXECUTIVE OFFICER THAYER: I'm not sure.
2 ACTING COMMISSIONER GONZALEZ: Can we look at
3 that as a -- can we talk about a process and how we would
4 go about adopting -- or looking at this process? I'm a
5 little confused as well, because the process -- the end
6 result of the process that he seems to be talking about
7 would be in conflict with the public trust doctrine. Is
8 that correct, Paul?
9 EXECUTIVE OFFICER THAYER: Well, I --
10 MR. MARDERICH: Let me help answer that, because
11 there's one player that's missing here, and that's the
12 Port of Los Angeles, who does the EIR, they're the lead
13 agency, and approves it. And historically whenever they
14 did an EIR, they were silent on this issue and it was
15 never done. State Lands is not, how should I say, an
16 active participant in that. But they've been doing it
17 for -- a century now? And to now say, yes, there is a
18 negative impact, to identify it, and say, this is how the
19 community's been negatively impacted, it's a cultural
20 change for the Port of Los Angeles.
21 And then you have throughout the state -- a
22 perfect example is the City of Oakland, who's going into
23 extremes. You have the rare and famous nexus lawsuit,
24 which at one time our group was assigned to do an amicus
25 brief on the side of the state because we thought that was

1 not proper use of state funds.
2 So we understand thoroughly the issue. It's a
3 matter of active communication and just doing the process
4 under CEQA. That simple.
5 ACTING COMMISSIONER GONZALEZ: So we can work
6 with the Port of Los Angeles to ask them to include this
7 process? The same way we've worked with the Port of San
8 Diego to deal with some issues we've had down here, can we
9 do the same with L.A., and then in the next Commission
10 meeting hear the results or status report on that?
11 EXECUTIVE OFFICER THAYER: Well, I don't want to
12 put words in Mr. Marderich's mouth. But what I understand
13 him to say is that perhaps -- it would be his view that
14 L.A. was not properly following CEQA the before, and that
15 probably their lawsuit was a wake-up call and that they
16 would anticipate that the kinds of issues he's talking
17 about right now will be and should be dealt with by the
18 port in the CEQA process. And it's not a separate
19 process. I mean it's not something that can be done
20 between now and December, but it needs to be done in this
21 project.
22 MR. MARDERICH: We are in no rush, on a deadline
23 for December. In other words, this process has been, how
24 should I say, absent for a century at the Port of Los
25 Angeles. So a month here, a month there. But I think

1 it's -- the Commission needs to give some guidance to the
2 port, because you have people that have protected the
3 city -- the state's interests to the degree where I can't
4 do this because it's off of port land. And then when you
5 have the issue where you overcharged the port for city
6 services, that then was an overreaction. Now you can't do
7 it. And so it's an educational type of thing, a cultural
8 change. And I think the Commission and staff needs to do
9 some training. But at the same time the community needs
10 training on how not to abuse the system.
11 EXECUTIVE OFFICER THAYER: And so I would say --
12 I mean it's sort of a continuum. And Mr. Marderich and us
13 may not be that far apart in that. You know, we've been
14 down there a year and a half or so ago to talk about what
15 the Public Trust Doctrine meant to P-Cap. The Commission
16 required that we put together a public trust policy to
17 help try and explain and interpret. We're just not done
18 yet. And I suspect that they'll be more discussions with
19 the port and with the community.
20 So I'm not sure what we'd bring back because it
21 would be more general principles along the lines of what
22 we did in our public trust policy. I mean we'd be happy
23 to take criticism --
24 ACTING COMMISSIONER GONZALEZ: Well, it sounds
25 then -- correct me if I'm -- I may be completely off. I'm

1 now confused. I thought we were talking completely about
2 these two parts. And it seems like there's two different
3 things going on. There's the park issue and there's
4 the -- you're not confident that the L.A. Port is going to
5 continue in their process of looking out for these types
6 of issues so we're not correcting them in the future, is
7 that correct?
8 MR. MARDERICH: When it comes to the park issue,
9 it was my preference that there should have been an EIR to
10 find a negative impact and propose an appropriate nexus.
11 It could be a park. It could be something else.
12 But what's happened is -- and even right now the
13 port is asking for corrective measures before an
14 evaluation is done. And the port unfortunately has a
15 habit of never admitting or evaluating any negative
16 impacts. So after the EIR process -- we're talking about
17 real time now -- after their EIR process is over with,
18 that there won't be any nexus of a record item. It was
19 just six months ago when the staff stated that there was
20 no record of negative impacts at the Port of Los Angeles.
21 And they are absolutely correct because there is no
22 negative impacts stated in any prior EIRs. They're right.
23 I agree with them.
24 EXECUTIVE OFFICER THAYER: So I guess in response
25 to your identification of this division of issues here --

1 you know, and that's what I was asking for direction more
2 on, was what to do about the two parts. But what I hear
3 Mr. Marderich talk about is the larger issue. And that's
4 the one that I was responding to most recently and saying
5 that this is not something that we could just bring back,
6 but it's something we need to consider --
7 ACTING COMMISSIONER GONZALEZ: Something you can
8 report on -- and let us know how the education process is
9 going with the ports when it comes to issues pertaining to
10 public trust and mitigation impacts.
11 EXECUTIVE OFFICER THAYER: And so then we turn.
12 MR. MARDERICH: Yes, that makes sense.
13 ACTING COMMISSIONER GONZALEZ: Then that makes
14 you happy, part of a longer term.
15 MR. MARDERICH: As long as I have a two-way
16 communication with that young gentleman here.
17 ACTING COMMISSIONER GONZALEZ: And if not, feel
18 free to call us as well. But I know that they're very,
19 very responsive.
20 And the second being the question of the parks.
21 And that was the one where I asked on behalf of Lieutenant
22 Governor that staff obviously continue to find creative
23 solutions, to have NRDC or whoever's representing
24 plaintiffs to talk to the Attorney General's office as
25 well as our attorneys to make sure whatever is being

1 proposed or if anything comes forward, that it's something
2 that the Commission can support comfortably. I mean
3 obviously something that's legal. So that was what I had
4 asked on behalf of Lieutenant Governor.
5 EXECUTIVE OFFICER THAYER: And so for the next
6 meeting we should have some sort of report back obviously.
7 And I'm not quite sure -- well, we can discuss it with the
8 staff.
9 ACTING COMMISSIONER GONZALEZ: I don't think we'd
10 have an item to direct you to write a letter to -- it's
11 not legal. So I don't think that --
12 MR. MARDERICH: I'll help you with that one.
13 ACTING COMMISSIONER GONZALEZ: So it will be
14 worked --
15 EXECUTIVE OFFICER THAYER: We'll continue to
16 work, and we'll keep in contact with the Commission's
17 office about the results.
18 ACTING COMMISSIONER GONZALEZ: Thank you.
19 ACTING COMMISSIONER MATEO: Is there anybody else
20 from the audience who wishes to provide public comment?
21 Okay. That brings that section of the agenda to
22 a close.
23 Are we going to have a reason to go into closed
24 session?
25 EXECUTIVE OFFICER THAYER: Yes.

1 ACTING COMMISSIONER MATEO: Do you have anything
2 that needs to be read into the record prior to that?
3 You just go into closed session?
4 This is a little different than some of the other
5 boards and commissions I sit on. But we usually have a
6 paragraph there.
7 Okay. At this time we are going to go into
8 closed session. And I would ask the audience to leave the
9 chambers please.
10 (Thereupon the California State Lands
11 Commission recessed into closed session.)
12 (Thereupon the California State Lands
13 Commission meeting adjourned at 5:45 p.m.)
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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:
5 That I am a disinterested person herein; that the
6 foregoing California State Lands Commission meeting was
7 reported in shorthand by me, James F. Peters, a Certified
8 Shorthand Reporter of the State of California, and
9 thereafter transcribed into typewriting.
10 I further certify that I am not of counsel or
11 attorney for any of the parties to said meeting nor in any
12 way interested in the outcome of said meeting.
13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 27th day of October, 2003.
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