

MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

ORIGINAL

HYATT REGENCY HUNTINGTON BEACH
THE FOUNTAIN ROOM
21500 PACIFIC COAST HIGHWAY
HUNTINGTON BEACH, CALIFORNIA

WEDNESDAY, OCTOBER 6, 2004
2:00 P.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

APPEARANCES

BOARD MEMBERS

Mr. Steve Westly, Chairperson

Mr. Cruz M. Bustamante

Ms. Donna Arduin, represented by
Mr. Bob Campbell

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Jack Rump, Chief Counsel

Mr. Gary Gregory, Division Chief

Ms. Kimberly Korhonen, Executive Assistant

Mr. Dave Plummer, Regional Manager

ALSO PRESENT

Mr. Tom Billings, Protect our Forests

Mr. Alan Hager, Deputy Attorney General

Ms. Julie Masters, Natural Resources Defense Council

Ms. Barbara Schussman, Port of Stockton

Mr. Patrick Tully

<u>INDEX</u>	<u>PAGE</u>
I. Open Session	1
II. Confirmation of Minutes for the Meeting of August 17, 2004	1
III. Executive Officer's Report	1
IV. Consent Calendar	4
V. Regular Calendar	
Item 53 (Informational) California State Lands Commission (Party)	5
Item 54 Patrick Stephen Tully and Wendy Mae Tully	13
Item 7 United States of America, Department of the Navy (Assignor); Port of Stockton (Assignee)	20
Public Comment	44
Adjournment	46
Reporter's Certificate	47

PROCEEDINGS

CHAIRPERSON WESTLY: Welcome everybody. What I'd like to do is call the meeting of the State Lands Commission to order. All of the representatives of the Commission are present. I am State Controller Steve Westly. And I'm joined today by Lieutenant Governor Cruz Bustamante on my right, and Bob Campbell representing the Department of Finance.

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

The first item of business is adoption of the minutes of the Commission of the last meeting.

May I have a motion?

COMMISSIONER BUSTAMANTE: So moved.

ACTING COMMISSIONER CAMPBELL: Second.

CHAIRPERSON WESTLY: All in favor say aye?

(Ayes.)

CHAIRPERSON WESTLY: The minutes are approved. The next order of business is the Executive Officer's Report.

Mr. Thayer, may we have that report.

EXECUTIVE OFFICER THAYER: Good afternoon,

1 members of the Commission and Chairman Westly. The
2 Executive Officer's Report will be very brief. And in
3 keeping with this morning's ceremony, I'd really like to
4 acknowledge some of the principal players on the
5 Commission staff who have been working on Bolsa Chica for
6 some time.

7 And, of course, you've heard their names from
8 other speakers this morning. But of course I want to
9 acknowledge, first, Jim Trout, who has been part of the
10 organizing committee, not only for this event, but for the
11 restoration of Bolsa Chica. Jim retired several years ago
12 from the State Lands Commission, but you couldn't keep him
13 away from his job. He's been working for us as a retired
14 annuitant specifically on Bolsa Chica. It's so complex
15 none of us wanted to tackle it and we're really glad he
16 stuck around to see it through. So Jim Trout is the first
17 name I wanted to mention.

18 CHAIRPERSON WESTLY: Great. Are you suggesting
19 most of the staff would in fact come back and continue to
20 work for free if we wanted.

21 (Laughter.)

22 EXECUTIVE OFFICER THAYER: I'm not sure it's for
23 free, but we're glad to have him nonetheless.

24 I don't know if he's still in the audience, but
25 Rick Ludlow is the attorney that for years worked on these

1 matters. He retired just in the last year. He also
2 worked hard on our oil matters for us. But he also did
3 Bolsa Chica stuff. And he is here on his own time. He
4 isn't being paid for his visit and he couldn't stay away.

5 Lance Kiley is another one who's retired and did
6 a lot of work. He's still doing retired annuitant work
7 for us. He's down here today mostly because he had to see
8 this thing through.

9 Pam Griggs is still on our staff. In fact, she
10 is a relatively new attorney. And she is taking up where
11 Lance has left -- where Lance and Rick have left off.

12 And finally, of course, as we mentioned earlier,
13 our old Executive Officer, Bob Hight, who was really
14 responsible for a lot of the legal maneuvering and
15 arrangements and agreements that enabled the funding to
16 occur at Bolsa Chica.

17 And that's really all I have for my staff report.
18 I want to make sure that these people are recognized.
19 There are other staff members that I am not mentioning,
20 not because they haven't done a good job, but I'm just
21 pointing out that these 5 people really were on top of
22 things, but others that have been as well.

23 CHAIRPERSON WESTLY: Great. Paul, I just want to
24 personally thank you and the staff again. I've said this
25 before, but I serve on over 50 Boards and Commissions.

1 This, more than any other board, when we get to the actual
2 meetings, it works like a symphony, because you have spent
3 the time with all of the stakeholders and the community as
4 often as humanly possible to work things out in advance.

5 More often than not, when we come to the meetings
6 it's like the civil war redux. And I know this is not
7 easy. Your staff does a particularly good job of this and
8 really serves the public interest well.

9 What I'd like to do, at this point, is ask for
10 the adoption of the consent calendar. And I'd like to
11 call on our Executive Officer, again, Mr. Thayer to
12 indicate which items have been removed from the consent
13 calendar.

14 EXECUTIVE OFFICER THAYER: There are three items
15 that will be removed, Items 39 and 51 will be removed and
16 heard at a subsequent meeting. Item 7 was on consent,
17 because at the time of the preparation of the summary, the
18 agenda for the meeting, there was no opposition.

19 Since then opposition letters have been received.
20 And so with the Commission's permission, you'd hear that
21 at the end of the regular calendar of the day.

22 CHAIRPERSON WESTLY: Terrific. We also have
23 speaker cards for 37, 52 and 54.

24 EXECUTIVE OFFICER THAYER: We understand that
25 with respect to 37 and 52 that those people are here as

1 representatives of the applicant, and would not need to
2 speak as long as the item remained on consent. They would
3 speak if it came off and there were questions.

4 Fifty-four I'm not -- and 54 is a regular
5 calendar item.

6 CHAIRPERSON WESTLY: Okay. Is there anyone in
7 the audience who wishes to speak on an item still on the
8 consent calendar. If not, the remaining group of consent
9 items will be taken up as a group for a single vote. And
10 what I'd like to do now is proceed with the vote.

11 May I have a motion, please.

12 COMMISSIONER BUSTAMANTE: The motion is to move
13 the consent calendar with numbers 39 and 51 to be put off
14 to a subsequent meeting. And that Item number 7 be placed
15 on the regular calendar.

16 ACTING COMMISSIONER CAMPBELL: Second the motion.

17 CHAIRPERSON WESTLY: All in favor say aye?

18 (Ayes.)

19 CHAIRPERSON WESTLY: Thank you.

20 Let's jump right then to Number 53, is that where
21 you'd prefer to start?

22 EXECUTIVE OFFICER THAYER: Yes. This is an
23 informational item. No action is necessary by the
24 Commission. It's a report from our Division Chief of the
25 Marine Facilities Division about the Oil Spill Prevention

1 Conference, the Commission held, as it does every 2 years,
2 in September. Gary Gregory is going to cover different
3 aspects of that conference, which is a very successful
4 conference and represents the Commission quite well.

5 (Thereupon an overhead presentation was
6 Presented as follows.)

7 DIVISION CHIEF GREGORY: Good afternoon, Mr.
8 Chairman and Commissioners. I'll just take a few minutes
9 here to describe the Prevention First 2004. As you see on
10 the screen here, this is our logo for Prevention First.
11 You'll see it on the bags that are on the table in front
12 of you and on the program.

13 This is the logo that we've used throughout.

14 --o0o--

15 DIVISION CHIEF GREGORY: Okay. Prevention First
16 2004 is an onshore and offshore pollution prevention
17 symposium technology conference was held in early
18 September at the Long Beach Westin Hotel.

19 --o0o--

20 DIVISION CHIEF GREGORY: We held Prevention
21 First -- yes, sir.

22 COMMISSIONER BUSTAMANTE: Excuse me. I'm going
23 to need for staff to let my staff know what the
24 approximate value of this, so that I can make sure and put
25 it on my economic interest statement.

1 (Laughter.)

2 EXECUTIVE OFFICER THAYER: We will make sure that
3 you get that information.

4 (Laughter.)

5 COMMISSIONER BUSTAMANTE: Thank you.

6 DIVISION CHIEF GREGORY: Six dollars, sir.

7 COMMISSIONER BUSTAMANTE: Thank you.

8 (Laughter.)

9 --o0o--

10 DIVISION CHIEF GREGORY: Prevention First 2004
11 was part of a continuing outreach program that the Marine
12 Facilities Division works on. And we have held biennial
13 conferences since 1994. So it's 10 years and this is our
14 5th conference.

15 The conference is to promote pollution prevention
16 and accident prevention. And it provides a forum for
17 meaningful discussion and ideas and information, and
18 actually for us too for the government. We have a large
19 number of government entities that show up here. And it's
20 to help them to glean information from the industry.

21 --o0o--

22 DIVISION CHIEF GREGORY: The outreach model that
23 we use at the Marine Facilities Division is shown in this
24 illustration. We have standards, which are required by
25 the Lember-Keene-Seastrand Oil Spill Prevention and

1 Response Act.

2 The Act -- those standards are put in place in
3 marine oil terminals through their operations' manuals.
4 We monitor and inspect those facilities. And we analyze
5 the data that we find from those monitoring and
6 inspections. And through our outreach program in working
7 with the industry, this circle continues, and we work to
8 define and refine our standards and our program as we move
9 along. It's a very important part of what we do.

10 --o0o--

11 DIVISION CHIEF GREGORY: The program had several
12 items of special interest: Seaport security, which is a
13 significant item today; and liquefied natural gas. These
14 were outside of the normal sphere of what we do at
15 Prevention First. We always look for a couple of
16 different special interest items to bring forward.

17 We had 4 tracks of breakout sessions over a day
18 and a half. Two of the tracks were the domain of the
19 Marine Facilities Division, and our Division of
20 Environmental Program Management. Mineral Resources
21 Management Division has one track, in which they do their
22 items. And we partnered with the Department of Fish and
23 Game, Office of Spill Prevention and Response, and they
24 carried one track through the whole program also.

25 --o0o--

1 DIVISION CHIEF GREGORY: The program has a number
2 of standing issues: Human and organizational factors;
3 marine oil terminal engineering, as you can see are
4 off-shore facilities; environmental issues that are
5 brought forward; ballast water management being added; and
6 global perspectives and shipping, which has been something
7 that's sort of brewing in the background.

8 All of the papers and presentations that we've
9 received by our presenters will be placed on our web site
10 and we hope to have that up by this Friday, so that
11 they'll be available to all persons. We originally had a
12 notebook that we gave to people, followed that up last
13 with a CD. Now it's on the web for everybody to use the
14 information.

15 --o0o--

16 DIVISION CHIEF GREGORY: I need to tell you about
17 our sponsors for just a moment. We had 60 some-odd
18 sponsors. We had Platinum Sponsor, ConocoPhillips. They
19 came in big time and helped us out.

20 Eleven gold sponsors that you can see listed
21 there.

22 --o0o--

23 DIVISION CHIEF GREGORY: Fourteen silver
24 sponsors.

25 --o0o--

1 DIVISION CHIEF GREGORY: And 30 donors and
2 exhibitors.

3 In total, we had \$139,900 in donations from these
4 organizations. And this is how we make these sorts of
5 programs run. Without those donations, without that
6 sponsorship of the program, we just would not be able to
7 run the program at all.

8 --oOo--

9 DIVISION CHIEF GREGORY: One more page here.
10 Participants, this was the biggest show we've had. We
11 typically cap the show at 400 people. We had such a
12 response that we worked at the hotel and were able to
13 increase the number of attendees to 450. We had 317
14 people that were just attendees. Sixty exhibitor
15 attendees. Those were people that had 44 exhibitors were
16 there, along with some of the other sponsors. And we had
17 73 participants. That is speakers and moderators who were
18 there as part of the panels and were actually part of the
19 show itself.

20 --oOo--

21 DIVISION CHIEF GREGORY: We do an evaluation at
22 Prevention First. This time around we received 54
23 evaluations out of about 400 that were passed out. As you
24 can see, that we had 95 percent rating, basically as
25 everything as being good to very good. So we feel

1 pretty -- well, feel that we did pretty well with the show
2 this time around. We had one gentlemen who said they must
3 have pretty tough chickens down there in southern
4 California, because my piece of chicken was pretty tough.

5 I looked him up and told him so was mine. So,
6 you know, we commiserated on that. But we have 5 or 6
7 pages of written comments of how the conference went for
8 folks of these evaluations. And we use this, in what we
9 call in military terms, a "Hot Washup", to go over what
10 we've learned, what we're hearing in evaluations and how
11 we can move forward in the future to make sure that
12 everything works out even better than before.

13 --o0o--

14 DIVISION CHIEF GREGORY: We need to say a special
15 thanks to the Center for International Trade and
16 Transportation, which is part of the Cal State Long Beach
17 organization. They were our business partners in the show
18 and really made our jobs very, very easy.

19 Pacific Maritime Magazine also was our official
20 media partner. And for being called the official media
21 partner, we got lots of coverage in their West Coast
22 Magazine, and it was very, very helpful. And the Westin
23 Long Beach Hotel where the event took place has over time
24 worked with the program and has increased their
25 capabilities, and it was the best that we've had so far.

1 --o0o--

2 DIVISION CHIEF GREGORY: And special thanks to 2
3 people. Unfortunately, they're not here today, but Don
4 Hermanson our field operations supervisor and his
5 assistant Dennis Vogel. These guys were the brains behind
6 this. These guys worked long, long, long hours and moved
7 this forward in quite an excellent manner.

8 You've got to have somebody lead and these were
9 the guys who are leading forward with Prevention First.
10 Interestingly too, maritime organizations in southern
11 California right now are preparing to do conferences in
12 early spring. And they've asked me if I can loan them
13 these 2 people for the time being. And I, of course, told
14 them no, I couldn't. But we're working with them to help
15 to make sure their conferences are successful also.

16 That's my briefing on Prevention First 2004. If
17 you had any questions, I'd be happy to try and answer
18 them.

19 CHAIRPERSON WESTLY: Terrific. Thank you.

20 Any questions from the other board members?

21 All right.

22 Anything else on that, Mr. Thayer?

23 EXECUTIVE OFFICER THAYER: No, sir.

24 CHAIRPERSON WESTLY: That brings us then, because
25 that was an informational report, to Item 54, which is a

1 recreational pier permit proposed on the Sacramento River.

2 May we have the presentation.

3 REGIONAL MANAGER PLUMMER: Good afternoon,
4 Chairman Westly and Commissioners. My name is Dave
5 Plummer. I'm a regional manager with the Land Management
6 Commission. The item before you today involves a new
7 construction of a recreational pier along the Sacramento
8 River. And this item was originally scheduled to be heard
9 on August 17th.

10 On the morning of August 17th the applicant's
11 next door neighbor wrote a letter requesting that this
12 item be removed because they had concerns about the
13 placement of the dock. And his statement in his letter
14 was that, "It wouldn't work".

15 So we pulled that item, scheduled it for today.
16 And the following day on the 18th, we called and suggested
17 we get together and have a meeting, and get to know what
18 his concerns were. And he didn't want to meet with us
19 until such time as the existing floating dock that's in
20 front of the applicant's property was removed.

21 On September 7th, Commission staff went out and
22 we did a survey of the property. And I believe you have a
23 reduced copy of this.

24 In front of you this is the applicant's property.
25 Their 100-foot wide lots along the river. They're often

1 consistent sizes, except for this one. We took a
2 measurement of how far out the dock is going to extend and
3 the distance between docks. And generally speaking, you
4 have about -- this one has -- upstream, you have 65 feet
5 between this dock. You have between Mr. Tully's proposed
6 dock and the next door neighbor Mr. Huth's dock you have
7 56 feet. So they're all fairly centered, fairly
8 consistent. They extend out in the river fairly
9 consistently.

10 On September 23rd we once again called Mr. Huth,
11 advised him that this was going to be heard at today's
12 Commission meeting. We requested that he send us a letter
13 and tell us what your concerns are. We offered to meet
14 with him either in our offices or at his house on site, so
15 we could understand what his concerns are. And he still
16 has not complied with our requests.

17 In the meantime in processing the application,
18 staff has talked to the other agencies issuing permits,
19 the Corps of Engineers, U.S. Fish and Wildlife Service,
20 NOAA Fisheries. All the staff that are processing those
21 permits have indicated that there are no problems from
22 their perspective. We specifically asked the Corps of
23 Engineers who also looks at navigational issues whether
24 they saw any issues, and they did not.

25 So that brings us here today. And as part of

1 this approval of the project, the Corps of Engineers will
2 impose construction windows. And the construction windows
3 are fairly tight on the Sacramento River. By the time you
4 look at all the different agencies and the different
5 species you're trying to protect, you have a very short
6 window of August 1st through October 31st to actually do
7 in-water work.

8 So an approval today would allow the applicant to
9 get forward and actually get this dock built this year.
10 Otherwise, he would not be able to construct the dock till
11 August of the following year of 2005.

12 So with that, it's my recommendation that this
13 Commission approve this application as presented.

14 I'll be happy to answer any questions. And the
15 applicant, Mr. Tully, is also here available.

16 CHAIRPERSON WESTLY: Terrific. We do have
17 members of the public to speak. Is Mr. Tully here?

18 MR. TULLY: Yes, thank you. I'm Patrick Tully,
19 the applicant, 3067 Garden Highway.

20 I just wanted to speak briefly to say of course
21 I'm in support of my own project. This is a process that
22 we started 2 years ago. And I'm quite embarrassed to
23 actually have to be up here, because this really comes
24 down to a neighbor who has not been behaving too well.

25 I also do have a letter for your staff from other

1 neighbors in support of this. So, you know, it's pretty
2 much an isolated incident.

3 I do want to say, though, that I've been very
4 impressed, as you mentioned earlier, with Lands Commission
5 staff. They have been great. Dave Plummer's staff, Tim
6 Limpscomb have been very good to work with. The amount of
7 people that have come out to my property to look at this
8 project has been quite overwhelming.

9 I run my own business in downtown Sacramento. I
10 have property, have other leases with the State -- well
11 not with the State but with the railroad. And you guys
12 have been really good to work with. So if you have any
13 questions, I'd be able to answer those.

14 CHAIRPERSON WESTLY: Thank you very much for
15 coming. Thanks for the kind words for the staff.

16 What I'd like to do is ask if either of the other
17 Commission members have any questions for the staff or Mr.
18 Tully since he's been kind enough to come all the way down
19 here from Sacramento.

20 Mr. Bustamante.

21 COMMISSIONER BUSTAMANTE: It's to staff, isn't
22 this normally some formula driven kind of activity that is
23 worked out at staff level? I mean, there are -- this
24 consent calendar and every consent calendar is replete
25 with many of these things. And it's been pretty much a

1 forgone conclusion that once they meet standards, the
2 staff comes with a recommendation.

3 I mean, not that we shouldn't check your work
4 every once in awhile, but it seems like this is a fairly
5 routine matter that is normally dealt with on the consent
6 calendar. Why does this one raise such a problem?

7 EXECUTIVE OFFICER THAYER: From staff's
8 perspective, this is a routine application. And it's a
9 routine project, which is similar to probably over 100
10 that are north of Sacramento on the Sacramento River. And
11 in the 7 years that I've worked at the Commission, I don't
12 think we've had anything like this brought to the
13 Commission before. We're somewhat embarrassed to bring
14 this, but it's been a case of where we've spent the last 2
15 months trying to iron out differences between 2 neighbors
16 and haven't been successful.

17 And so because the upstream neighbor, Mr. Huth,
18 continues to oppose this lease, we were obligated to put
19 it on the regular calendar. We didn't feel it was fair to
20 Mr. Tully to keep it off of the Commission's agenda in
21 hopes of working something out with the neighbor, because
22 he was going to be held up in completing the project. And
23 we haven't been able to really obtain information from Mr.
24 Huth to better explain his concerns.

25 COMMISSIONER BUSTAMANTE: So you see no validity

1 in any of his concerns?

2 EXECUTIVE OFFICER THAYER: No, sir, we do not.

3 COMMISSIONER BUSTAMANTE: And the one who is
4 complaining, this Huth -- the property owner that's next
5 door, he also has a dock.

6 EXECUTIVE OFFICER THAYER: Yes, he does.

7 COMMISSIONER BUSTAMANTE: And he's complaining
8 because his neighbor's going to get a dock?

9 EXECUTIVE OFFICER THAYER: Yes.

10 COMMISSIONER BUSTAMANTE: On one side, but not on
11 the other side, who also has a dock?

12 EXECUTIVE OFFICER THAYER: That's correct.

13 COMMISSIONER BUSTAMANTE: I see. Is there a
14 reason why -- because when you look at the properties and
15 you look at the docks most of them are dead center on the
16 property. Is there a reason why there's an offset toward
17 the complaining neighbor, is that part of the reason that
18 there is this problem?

19 EXECUTIVE OFFICER THAYER: The complaining
20 neighbor, at one point --

21 COMMISSIONER BUSTAMANTE: Does he have a big boat
22 and this is going to shave off a few feet of his entry
23 into -- I mean, I don't know.

24 EXECUTIVE OFFICER THAYER: The complaining
25 neighbor has jet skis. I'm not sure if he has other

1 boats.

2 REGIONAL MANAGER PLUMMER: Yes, my understanding
3 is he has a jet ski. He currently does not have a boat
4 today that we know of.

5 EXECUTIVE OFFICER THAYER: And Mr. Huth did
6 express concerns, at one point, about whether or not the
7 new dock would interfere with the use of his dock. But as
8 you can see, that distances is 56 feet and still gives him
9 some maneuverable room.

10 As to centering them, we do not have a Commission
11 policy that requires them to be centered. My
12 understanding, and I think Mr. Tully can say precisely,
13 the reason that this dock is 7 feet up from the center is
14 because of the existing deck that would be interfered with
15 by the dock gangplank. But Mr. Tully might be able to
16 explain that better.

17 MR. TULLY: Yeah, that is correct. There's an
18 existing deck on land. The dock is actually not too far
19 off center. The gangplank is actually what -- if you
20 just -- if you're out there with the gangplank, it comes
21 over off the center where some of the docks have their
22 gangplank in the center, some have them upfront.

23 There's a general rule of thumb, if you were to
24 put your boat in reverse, you need about a boat length and
25 a half. So he should be able to navigate within 30 feet

1 easily for a boat the size of that dock. And actually the
2 extra feet he has, he has plenty of room.

3 CHAIRPERSON WESTLY: Thank you, Mr. Tully.

4 COMMISSIONER BUSTAMANTE: Move the item.

5 CHAIRPERSON WESTLY: You've made a very forceful
6 case. May I have a motion and approval?

7 ACTING COMMISSIONER CAMPBELL: Second.

8 CHAIRPERSON WESTLY: All in favor say aye?

9 (Ayes.)

10 CHAIRPERSON WESTLY: Mr. Tully, thank you for
11 coming all the way down. Thank you to staff for moving
12 this forward.

13 With that, I'd like to move on to the
14 controversial part of today's program.

15 Are you prepared to speak to item C7?

16 REGIONAL MANAGER PLUMMER: Yes, I will.

17 The item before you today is an application by
18 the Port of Stockton for the construction of a bridge
19 called the Daggett Road Bridge. And it's a new
20 construction of a bridge, although there is an existing
21 Daggett Road Bridge.

22 And just by way of background, the Port has
23 prepared a development plan for a complex which they call
24 the West Complex. And the Port Redevelopment Plan
25 includes revitalization of former navy marine terminals

1 and warehousing facilities, and development of
2 approximately 500 acres of commercial and light industrial
3 park.

4 And this West Complex was formally known as the
5 Rough and Ready Island. It started out as a Navy supply
6 center. And sometime in the sixties became a Navy
7 communications center. And about 2002, as part of base
8 closures, the Navy conveyed this property to the Port
9 under a public benefit conveyance.

10 This is an island. It's surrounded on all 4
11 sides by water. And currently the only access to the
12 island is on the eastern end. It's served by a bridge
13 called Navy Drive Bridge. It's a bridge that was built, I
14 believe, some time in the thirties. It's really
15 substandard to today's standards, but it is the access
16 that's currently used today.

17 The existing Daggett Road Bridge, and there is
18 one, was built in the 1920s. And it was a swing bridge.
19 A little type that used to turn and go to the center and
20 let vessels go by. And in the 1970s the Navy turned that
21 bridge open, and was left open ever since, and never had
22 been used as an access after about the mid-1970s.

23 The Port of Stockton, as I said, proposes to
24 replace the existing Daggett Road Bridge with a new
25 bridge. And the new bridge would be constructed adjacent

1 at about 200 feet from the existing bridge.

2 And the new bridge would be constructed with all
3 modern standards, CalTrans' standards, trucking standards.
4 And the bridge ultimately will provide 4 lanes of traffic,
5 and will allow -- shallow draft vessels will be able to
6 pass underneath.

7 The new bridge would provide improved truck
8 access from the marine terminals at the refurbishing on
9 the island, to provide truck access to Highway 4 and
10 ultimately to Highway 5. And as part of their -- once the
11 new bridge is built, the old bridge will ultimately be
12 taken down. That will require separate environmental
13 analysis to remove the old bridge.

14 Under CEQA the Port of Stockton was the lead
15 agency and prepared an Environmental Impact Report and
16 mitigation monitoring program. An EIR was designed to
17 function as a programmatic EIR for the overall development
18 plan, and also as a specific EIR when it got down to the
19 Daggett Road Bridge and also for a dredging project that
20 was taking place in the Stockton deep-water ship channel.

21 The EIR was certified by the Port on June 23rd,
22 2004. And staff's aware that there has been a lawsuit
23 filed by the Natural Resources Defense Council and Delta
24 Keeper and 3 community interest groups. They filed a
25 petition for a Writ of Mandate against the Port, to get a

1 stay, and to get a restraining order for the Port to move
2 forward on this project.

3 And from my information, I think that that has
4 not been granted and that the Port is free to move forward
5 with this project at this time.

6 Yesterday, staff received a considerable amount
7 of information from both the NRDC and Shute, MiHaly and
8 Weinberger, the law firm representing Delta Keeper and the
9 community groups. And it really looked at a number of
10 things, including the overall adequacy of the EIR for the
11 overall project, not specifically for the Daggett Road
12 Bridge.

13 Approval of this item today by the Commission,
14 the Commission would be acting as a responsible agency.
15 And if you approve this item today, it would be for the
16 issuance of a new Daggett Road Bridge as well as an
17 assignment from the old bridge, which was held by the
18 Navy. The Navy had a lease from us for the old Daggett
19 Road Bridge. And this would approve an assignment to the
20 Port for the old bridge so that they would have the
21 responsibility and the liability for that bridge until
22 such time as it's removed.

23 And I believe there's members here from both
24 Natural Resources Defense Council and from the Port of
25 Stockton here today.

1 CHAIRPERSON WESTLY: Yeah. What I'd like to do
2 is ask Ms. Barbara Schussman the attorney for the Port of
3 Stockton to come forward who's here.

4 MS. SCHUSSMAN: Here or over there?

5 CHAIRPERSON WESTLY: Why don't you come over here
6 to the full podium.

7 MS. SCHUSSMAN: I'm Barbara Schussman. I'm from
8 the law firm of Bingham McCutchen. And I represent the
9 Port of Stockton. The Port of Stockton is ready to
10 construct the Daggett Road Bridge, which, as you've just
11 heard, is a component of the Port's West Complex
12 development plan.

13 The bridge would provide secondary access to
14 Rough and Ready Island, not primary access. The Navy
15 Drive Bridge that is the current access point would be
16 replaced and it would continue to serve as the primary
17 access to the island.

18 The Daggett Road Bridge functions, as I said, as
19 the secondary access, but also takes the role of taking
20 traffic away from the Boggs Tract neighborhood. The
21 project opponents who submitted letters to you apparently
22 are not familiar with the geography surrounding the Port
23 of Stockton.

24 And vehicles that currently drive through a
25 low-income neighborhood adjacent to the Port's East

1 Complex drive through there to get to the east complex.
2 And if you go over to the Navy Drive Bridge to the West
3 Complex, those same vehicles would drive then through the
4 East Complex over that bridge to the West Complex.

5 The Daggett Road Bridge, it's the only part of
6 the project before this Commission, is not next to the
7 low-income neighborhood. And vehicles would not drive
8 through that neighborhood to access the Daggett Road
9 Bridge.

10 Detailed traffic analysis has been done and is in
11 the EIR for this project. And that analysis does not show
12 traffic going through that neighborhood to access the
13 Daggett Road Bridge. So that's just a point of
14 clarification.

15 Under the California Environmental Quality Act,
16 when this Commission acts as responsible agency, CEQA
17 actually instructs that the Commission must presume that
18 the Environmental Impact Report approved by the Port of
19 Stockton as the lead agency is adequate under the
20 California Environmental Quality Act. There are 2
21 provisions in CEQA that directly say that and I quoted
22 them in my letter to you. And I've also cited to a case
23 that interprets that, and holds that assertions that a
24 lead agency's environmental documentation is inadequate do
25 not enable a responsible agency, like this Commission, to

1 stand in the shoes of the lead agency.

2 So all of the complaints that you've seen about
3 the adequacy of the EIR will be at issue in the litigation
4 against the Port of Stockton, but are not to be an issue
5 before this Commission under CEQA.

6 CEQA instructs that when a lawsuit has been
7 filed, like the present one, and no injunction has been
8 issued -- and no injunction has been issued here -- this
9 Commission must presume that the EIR is adequate and rely
10 upon it.

11 The only other question then is does this
12 Commission have its own mitigation obligation over this
13 component of the project. We know you have to rely on the
14 EIR, but do you have a mitigation obligation?

15 And again I've quoted in my letter that the
16 provisions under CEQA for that, a lead agency looks at the
17 project as a whole. A responsible agency, like this
18 Commission, CEQA instructs has more limited authority than
19 a lead agency. A responsible agency only can require
20 changes in a project to lessen or avoid effects that
21 pertain to the part of the project that is before you.

22 That is not the entire West Complex Development
23 Plan. This is the Daggett Road Bridge. Now, CEQA does
24 talk about indirect and direct effects, but that does not
25 swallow the entire rule that this Commission only looks at

1 the part before it.

2 CEQA also says that a lead agency has broader
3 authority to disapprove a project than does a responsible
4 agency. And a responsible agency can only disapprove a
5 project based upon the effects of the part of the project
6 that it has before it for its authority to carry out.

7 In this case, the EIR for the West Complex
8 Development plan had an entirely separate chapter that
9 dealt with the Daggett Road Bridge project. And that
10 chapter quantified the environmental effects having to do
11 with that project only.

12 And there are no significant and unavoidable
13 effects having to do with that project. That project does
14 not result in traffic effects or noise effects in a
15 residential area that would be within this Commission's
16 obligation to mitigate.

17 The only traffic effect was a temporary effect at
18 the intersection of Daggett Road and State Route 4 during
19 construction. And the Port's adopted mitigation to deal
20 with that effect.

21 So there are no significant effects that have not
22 already been mitigated to a less than significant level by
23 the Port's mitigation. So this Commission under CEQA
24 bears no further mitigation obligation.

25 It's important that the Commission understand the

1 facts here, that this is not an environmental justice
2 issue. That the project opponents do not represent the
3 neighborhood in Boggs Tract. This is a case that's been
4 brought by wealthier residents across the shipping channel
5 that own riverfront property, and a couple of other
6 organizations whose issues really have to do with things
7 like ballast water and emissions from ship operations.

8 The Daggett Road Bridge project would benefit the
9 community near the Port by taking traffic out of that
10 community. This Commission is entitled to rely on that
11 EIR, and CEQA instructs actually must rely on that EIR.
12 And so your staff has done its homework. And I'm asking
13 that the Commission adopt the recommendation of the staff
14 and act on this project today, and not grant a
15 continuance.

16 We had the same thing happen in Stockton, where
17 literally reams of paper were submitted the day before the
18 hearing, and then a continuance was sought. In that case,
19 we did carry it over, address every single one of these
20 comments, and then certify that EIR. But that tactic
21 can't continue. We need to move forward with this
22 project. We need to get this out to bid during the winter
23 before costs escalate and not waste public funds. And
24 this is properly before the Commission for approval.

25 CHAIRPERSON WESTLY: Thank you. What I would

1 like to do is give our other speaker a chance to say a few
2 words, and then allow the members to ask questions of you.
3 So if you could sort of stay up in the front row here,
4 we'd appreciate that.

5 Is Julie Masters the attorney from the Natural
6 Resources Defense Council here?

7 Terrific.

8 MS. MASTERS: Yes, thank you. Good afternoon,
9 I'll try to be as concise as I can be. But I might go a
10 little bit over the 3 minutes if that's okay.

11 First of all, I just want to start out by saying
12 that NRDC in fact represents ourselves, our members and
13 also the environmental justice communities of Boggs Tract
14 and the other communities that surround the Port. Wealthy
15 communities are represented by another party.

16 I'm here today to request that you continue this
17 item until the next Commission hearing. Unfortunately,
18 neither we nor the resident groups that are most affected
19 by this project learned of it until just a few days ago.
20 So we haven't had the time to fully brief you on all the
21 issues to provide the comments that we'd like to and we'd
22 like an opportunity to do that.

23 Also, we think it's very, very important that you
24 have an opportunity to consider our comments fully and
25 also those other comments of other interested parties

1 before you approve of a lease that will have significant
2 consequences for thousands of people.

3 The Daggett Road Bridge may, at first glance,
4 appear to be a relatively small action. But, in fact,
5 this bridge will facilitate as many as 2.2 million diesel
6 truck trips every single year in and out of Rough and
7 Ready Island and the surrounding communities.

8 The community of Boggs Tract, which is adjacent
9 to the Port, will be particularly affected by this action,
10 not only by the traffic congestion, which will be severe,
11 but also by the toxic impacts of the diesel trucks. And
12 this is true whether the trucks drive directly through
13 that neighborhood or they take the Chart -- the nearby
14 Charter Way Route to the I-5 which is planned in the EIR.

15 Diesel exhaust is a potent carcinogen. In fact,
16 the Air Resources Board has recently concluded that diesel
17 exhaust accounts for over 70 percent of the cancer risk
18 from air pollution. Diesel also causes other serious
19 problems, such as asthma, which is on the rise
20 particularly among children.

21 On top of that, Boggs Tract, as you know, is a
22 low-income community of color. Almost half the residents
23 are Latino. And the mean income level is well below that
24 of the U.S. generally. So adoption of this project is an
25 EJ concern, and has serious environmental justice

1 implications. And we think without the proper mitigation
2 measures, would be contrary to the Commission's important
3 EJ policy.

4 The fact is that there are many mitigation
5 measures that are feasible and that have been adopted by
6 other Ports that can be adopted to offset the pollution
7 and other impacts from the trips -- sorry the trucks and
8 other traffic. The Port could ship more cargo by rail and
9 thereby limiting the number of trucks that are on the
10 road. And it could do a number of other things.

11 Nevertheless, the Port has adopted this project
12 including the Daggett Road portion without any meaningful
13 mitigation measures.

14 We are very familiar, by the way, with the
15 geography of the surrounding area of the Port. I want to
16 point out that while it is true that the Daggett Road
17 Bridge may eventually divert many of these 2 million
18 trucks away from the Boggs Tract area, the EIR points out,
19 in the traffic portion, that the I-5 ramp at Charter Way,
20 which is the route that the trucks would take from the
21 Daggett Road Bridge, is currently rated at a level service
22 of E, which has severe congestion. And when the project
23 is in operation, it is anticipated to have a level of F,
24 which is closed to gridlock conditions.

25 And so while in the EIR there are suggested road

1 improvements to alleviate this traffic congestion, the
2 Port has classified those improvements as long term with
3 no set timeframe for the execution, while the bridge is
4 going to be approved as one of the first things.

5 So in the meantime trucks that are faced with
6 severe congestion will very likely be looking for another
7 route to the freeway. And they may very well find
8 themselves in Boggs Tract, which is currently the way that
9 trucks travel in and out of the East Complex towards the
10 I-5 freeway.

11 But just to be clear, even if every truck takes
12 the expected route down Charter Way, the residents of
13 Boggs Tract still will be directly and significantly
14 affected by the diesel pollution due to their proximity.

15 In addition to these truck impacts, construction
16 of this bridge is also going to enable the Port to develop
17 the larger West Complex Development Plan Project, which is
18 a massive expansion project that will triple the current
19 size of the Port.

20 In fact, the EIR acknowledges, and you heard
21 today, that the existing Navy bridge, which is the only
22 existing pathway in and out of Rough and Ready Island, is
23 obsolete, and incapable of handling the magnitude of
24 traffic that would be created by this project.

25 So as the EIR also acknowledges, Daggett Road

1 Bridge is a necessary component that will cause and
2 facilitate the development of the larger project. As
3 such, it's going to be a but-for cause of those greater
4 impacts and all of the development that will happen there.

5 The West, that larger project, will add 130
6 diesel vessel calls each year, 51,000 truck and vehicle
7 trips every day and a significant use of diesel tugboats,
8 yard equipment and trains. It will therefore have very
9 serious implications on water, water quality, air quality,
10 public health, noise and traffic.

11 Unfortunately, as our CEQA petition outlines, the
12 Port's EIR, we believe, violates CEQA in numerous
13 respects. Most importantly, we think, as with the trucks,
14 the Port has failed to consider and adopt feasible
15 mitigation measures to offset those and the other impacts
16 of this project.

17 The good news we believe is that while the Port
18 may have decided to proceed with the Daggett Road Bridge
19 Project immediately without first putting mitigation in
20 place, that does not mean that the Commission has to do so
21 as well.

22 Under the CEQA guidelines, we believe that this
23 Commission absolutely can make its own conclusions on
24 whether and how to approve this project. And it must make
25 an independent review of the Port's EIR and can come to

1 its own conclusions.

2 And aside from your ability to conduct your own
3 environmental review, this Commission also has the
4 ability, and we believe the responsibility, to require
5 mitigation measures that offset the direct and the
6 indirect impacts of this project. And as I just stated
7 this road -- this bridge is going to, at least indirectly,
8 but we believe directly, cause all of the greater impacts
9 of the West Complex Development Plan Program.

10 In closing, I just want to make one more point
11 really clear. And that is we are not opposed to the
12 development of Rough and Ready Island, especially
13 development that would create permanent living wage jobs
14 for Stockton area residents.

15 But that expansion has to be done in a way that
16 alleviates, to the greatest extent possible, the harms
17 that will be inflicted on the communities of Boggs Tract
18 and the other communities that are right across the
19 channel. Some of them are only 600 feet away.

20 Jobs and the protection of the public health are
21 not mutually exclusive, and both should be of paramount
22 concern to the Port and to this Commission.

23 Thank you very much.

24 CHAIRPERSON WESTLY: Thank you. This has
25 obviously turned out to be a more complex issue than

1 perhaps we had anticipated. But since we have
2 authoritative voices on both sides, why don't you hold on
3 here for a minute. I am certain that my colleagues will
4 have questions of one or both of you.

5 ACTING COMMISSIONER CAMPBELL: I'd like to
6 address my first question to the Port representative. The
7 EIR is currently being challenged in court. When is that
8 matter likely to be heard?

9 MS. SCHUSSMAN: We have a hearing date set of
10 April 19th. No injunction or stay has been issued by the
11 court. Nobody's gone ahead and tried to get one. So all
12 project components are proceeding while the litigation is
13 pending, just as it is allowed to do under CEQA.

14 I'd also like to mention briefly, if you'd
15 indulge me, the EIR does include a comprehensive health
16 risk assessment of the carcinogen effects of diesel
17 exhaust, and found that the project would not result in
18 any significant health risks relating to diesel exhaust.

19 ACTING COMMISSIONER CAMPBELL: So the Port's
20 intention -- if this matter was approved today, the Port's
21 intention would be to immediately proceed with the
22 project?

23 MS. SCHUSSMAN: Yes, the Port needs to proceed
24 immediately, needs to get this out to bid. So it's on a
25 critical path timeframe.

1 ACTING COMMISSIONER CAMPBELL: Do you have any
2 idea of the impact on the project that would result if
3 this matter was put over to the next hearing?

4 MS. SCHUSSMAN: If this matter were put over, the
5 Port would not be able to go out to bid on the project
6 immediately, because there would be too much risk. Their
7 risk would increase the bid price, which would result in a
8 waste of public funds.

9 If the Port has to wait to go out to bid on the
10 project, the Port believes that the bid prices would also
11 go up. That this is a particularly good time to go out to
12 bid when contractors have time available. They believe
13 that if they go out to bid right now, they would be able
14 to get the best price. And since they have done all of
15 their homework, they've complied fully with the California
16 Environmental Quality Act. There's really no reason to
17 hold this over.

18 ACTING COMMISSIONER CAMPBELL: That's it.

19 CHAIRPERSON WESTLY: Great.

20 Lieutenant Governor.

21 COMMISSIONER BUSTAMANTE: First of all, I greatly
22 appreciate 2 attorneys coming to this body and telling us
23 what our job is.

24 (Laughter.)

25 COMMISSIONER BUSTAMANTE: But what I'd like to do

1 is I'd like to -- since there seems to be a conflict, I'd
2 like to ask the Attorney General to give us his opinion of
3 with regard to who is correct in this particular instance.
4 It seems to be diametrically opposed, which you would
5 expect from opposing counsel. So we need the guy in the
6 middle.

7 ASSISTANT ATTORNEY GENERAL HAGER: I will try and
8 do what I can. It's been just a very short view we've
9 had. I don't pretend to be an expert. But I'm thinking
10 that the guy in the middle I'm finding things that I agree
11 and disagree with both.

12 First, the EIR, even though it is being
13 challenged, is to be presumed to be correct. You can go
14 on with your permitting activities, even though the EIR is
15 being challenged. And we're not here to challenge or
16 question the EIR.

17 But the Commission has the responsibility, has
18 under the guidelines, and this is 15096(g)(2), the ability
19 to find and require a quote here, "...any feasible
20 alternative or feasible mitigation measures within its
21 powers that would substantially lessen or avoid any
22 significant effect that the project would have on the
23 environment."

24 That is, I think, where your authority lies. And
25 I think the Board's --

1 COMMISSIONER BUSTAMANTE: Can you say that in
2 English?

3 (Laughter.)

4 ASSISTANT ATTORNEY GENERAL HAGER: The
5 important -- you can require certain mitigations. The
6 mitigations though are not to address anything in the
7 project. It's to address matters that are within your
8 powers. You're leasing for a bridge. You have powers
9 over where the bridge is placed, for example, the size of
10 the bridge. Anything, you know, connected with the power.
11 You have -- you can order mitigation.

12 And what I am going back to where I started,
13 saying that I have limited time to look at this. And, you
14 know, what is the scope within your powers, it's a
15 project, there's a bridge, it's going to bring traffic.

16 COMMISSIONER BUSTAMANTE: Would it be helpful for
17 you to have some additional time to review this matter?

18 ASSISTANT ATTORNEY GENERAL HAGER: Yes.

19 COMMISSIONER BUSTAMANTE: Also, has staff made
20 any kind of a cursory review of the EIR? Do you find in
21 the review, meaning we have expertise on staff. And
22 regardless of what is being contended here, if we know
23 that we are -- even a portion of a project that has a
24 faulty EIR, I want to know what that is. I want to
25 know -- I want to be able to say to the Port that you have

1 problems here that we've been able to discern that perhaps
2 you didn't realize. I don't want this project to move
3 forward if what we see in this 6-page letter appears to be
4 correct.

5 So I mean, have we done such a review even in a
6 cursory way?

7 EXECUTIVE OFFICER THAYER: We have looked. It's
8 a large document. We've looked at it extensively. What
9 we haven't had as much time to look at has been kind of
10 the sharper arguments that have come out in the last
11 couple days, where we've received these letters from the
12 representatives of the various plaintiffs.

13 The problem looking at the EIR is that a lot of
14 the areas we don't have expertise in. We don't know air
15 quality. We don't know water quality, that sort of thing.
16 We don't have staff hired to do that, because that's not
17 generally within our scope of work and there are -- the
18 air quality district and the regional water quality
19 control boards generally address those issues.

20 But it is also true that for any particular
21 impact there are a variety of mitigation measures that can
22 be used. And some of the ones that the plaintiffs have
23 raised, cold ironing ships, requiring that all port
24 handling equipment use propane are ones that frequently
25 require feasibility tests to determine whether or not it's

1 practicable to do. CEQA says you have to mitigate unless
2 it's infeasible.

3 COMMISSIONER BUSTAMANTE: You mean there's a
4 standard operating procedure that are at all the Ports?

5 EXECUTIVE OFFICER THAYER: Some of these are
6 becoming standard operating procedures in some ports, but
7 that's only occurred in the last year or so. The first
8 cold ironing facility, for example, was in L A.

9 Now could that be done in Stockton? Potentially,
10 yes, but we're not sure.

11 COMMISSIONER BUSTAMANTE: Let me ask you my last
12 question. And that is that without having to go through a
13 formal review process, is there any way between now and
14 the next meeting to get just a cursory review of this?
15 Calling upon a few folks to give us their thoughts so that
16 we might be able to have a better sense as to where the
17 allegations really should fall? Is there a way of being
18 able to do that?

19 EXECUTIVE OFFICER THAYER: We can certainly look
20 at -- and come up with some reasoned analysis of some of
21 these disagreements, and give some advice and
22 recommendations to the Commission.

23 This will still of course be within the umbrella
24 that the Attorney General is talking about, in that the
25 first -- the 2 legal points here. Do we have to use the

1 existing EIR? And the law is clear on that one of the 2.
2 And the second one is what are the direct and indirect
3 impacts from that project -- part of the project that
4 we're looking at?

5 Do you accept the argument of the plaintiffs who
6 say, you know, virtually have said every part of the rest
7 of the Rough and Ready Island project is dependent upon
8 this bridge and therefore we should address all those
9 impacts?

10 Or do you accept the Port's perspective, which is
11 this is just a bridge. It's infrastructure and the lead
12 agency is generally required under CEQA to look at the
13 overall impacts of the project and not the responsible
14 agency.

15 Our scope here of our review is actually less as
16 a responsible agency for this bridge than it would be if
17 the only part of the project were this bridge and we were
18 the lead agency, we'd have more responsibilities.

19 So that's a long way of saying we can do the
20 analysis, but when we bring it back in December, we'll
21 still need to grapple with these legal issues.

22 COMMISSIONER BUSTAMANTE: I understand. I'd like
23 for you to include anything that you would discern to be
24 feasible mitigating impacts.

25 And as far as I'm concerned, I'm an elected

1 official. I have a higher responsibility to the people
2 who elected me. If I believe that there's a possibility
3 that there's a flawed EIR or there is a flaw in a
4 particular project, and my actions are going to allow it
5 to move forward with that knowledge, I think I have a
6 responsibility to do my due diligence and to check.

7 I think this will give the Attorney General time
8 to be able to -- the office to really give us their
9 decision, as well as your being able to review it.

10 And with that, Mr. Chairman, I would move
11 postponement till the next meeting.

12 CHAIRPERSON WESTLY: What I'd like to do is ask a
13 point of information here. I'm very much, I think, in the
14 same boat as the Lieutenant Governor. I think both sides
15 gave very good arguments today. I think this would be a
16 wonderful project. I would like in many ways to get the
17 show on the road.

18 Having said that, some new information has come
19 forward that is quite powerful and has raised some serious
20 concerns. And I think we need to take a look at those.

21 The point of information is, because I don't want
22 to delay this, or I think we'll need 2 months till the
23 next meeting, in December unless we need that full amount
24 of time, do you -- if you had three or four weeks, could
25 we do a special meeting, perhaps by phone where you could

1 come back and have time to address some of these issues
2 with the parties and perhaps be able to recommend a
3 reasonable resolution at that point, and have gone through
4 some of the data, which clearly has come forward today for
5 the first time.

6 EXECUTIVE OFFICER THAYER: We could do our best.
7 And I think what I would need to do is take some time with
8 staff over the next couple days to get a better idea of
9 the scope of that work and report back to you. I think
10 there's nothing procedurally that prevents us from
11 following the course that you laid out. I'm not quite
12 sure about --

13 CHAIRPERSON WESTLY: What I would like to do, and
14 I plan to support the Lieutenant Governor's motion here is
15 to simply see if I can make a friendly amendment, that if
16 the staff decides over the next week they can come back to
17 us sooner rather than later, that you make every effort to
18 do that. If the case turns out to be more complex than
19 anticipated, I'm fully comfortable with it being heard in
20 December. But I think I'm in the same place that we need
21 just a little bit more time.

22 COMMISSIONER BUSTAMANTE: I think that's wholly
23 acceptable. I mean I'm from the central valley. I know
24 the need to expand. And if they have an opportunity to
25 really expand in terms of economic development, no one

1 wants to hold that up.

2 But the issues that are here are major issues,
3 and I feel we have to do our due diligence, so I would
4 accept that amendment.

5 CHAIRPERSON WESTLY: Is staff clear on the
6 motion? And if you are, I will call for a vote and I see
7 some nodding faces there.

8 Clear on the motion?

9 EXECUTIVE OFFICER THAYER: Yes.

10 CHAIRPERSON WESTLY: Great. I would like to
11 second the motion.

12 All in favor please say aye?

13 (Ayes.)

14 CHAIRPERSON WESTLY: It carries unanimously. I'd
15 like to thank both speakers. This is a complex issue. We
16 need to know and understand both of your perspectives.
17 We'll try to move forward as quickly as we can.

18 Thank you.

19 With that, that concludes the regular calendar.

20 This is the time where speakers who wish to
21 address the Commission during the public comment period
22 can come forward. We do have Tom Billings from Protect
23 Our Parks.

24 If there's anybody who would like to speak after
25 Mr. Billings, I would like for you to fill out one of

1 these cards and proceed to the front row.

2 Mr. Billings.

3 MR. BILLINGS: Here?

4 CHAIRPERSON WESTLY: Whichever you prefer, this
5 is your moment in the spot light.

6 MR. BILLINGS: Thank you very much. Mr.
7 Chairman, Members of the Commission, my name is Tom
8 Billings and I represent Protect our Forests in the City
9 of Newport Beach just up the road here. There's currently
10 a proposal to create 12 timeshares or fractional units on
11 State tide lands, on the harbor front of Newport Beach.

12 These fractionals would be sold in increments of
13 3 to 4 months each, and would use one-third of the bay
14 front of the 8.1 acre parcel, which is public park land,
15 known as Marina Park.

16 We feel that the timeshares and fractionals are
17 primarily residential in character, and such use is
18 contrary to the public trust. We also are concerned that
19 the sale of these proposed units could result in less than
20 fair market rent to the tidelands trust.

21 We support strict interpretation of the public
22 trust and denial of any request for timeshare units on
23 bayfront beach tidelands.

24 Thank you very much.

25 CHAIRPERSON WESTLY: Thank you. Mr. Billings,

1 this is fascinating. What I'd like to do, at this point,
2 is ask the staff to look into this issue. I don't think
3 any of us have much background on it, and report back as
4 is appropriate.

5 Thank you for the heads up on that.

6 MR. BILLINGS: Thank you.

7 CHAIRPERSON WESTLY: If there are any other
8 public comments, we'd love to hear them?

9 If not, that will conclude the open part of the
10 meeting. And seeing no other business before us, we will
11 go ahead and adjourn.

12 Thank you all very much for being here today.

13 (Thereupon the California State Lands Commission
14 meeting adjourned at 3:00 p.m.)
15
16
17
18
19
20
21
22
23
24
25

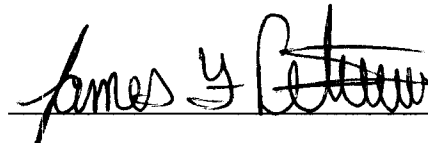
CERTIFICATE OF REPORTER

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of October, 2004.

A handwritten signature in cursive script, appearing to read "James F. Peters", is written over a horizontal line.

JAMES F. PETERS, CSR, RPR

Certified Shorthand Reporter

License No. 10063