1 didn't see any pluses. All I saw was weaknesses and
2 negative comments.
3 And I think in order for you guys to make the best
4 decision, you need to have all the information. You know,
5 certainly, I go into court and they swear you in and they
6 tell you to tell the truth, sure you will, but the whole
7 truth and all the truth. So I think you got the truth,
8 but I don't think you have the whole truth. And I think
9 you need more information in order to make an informed
10 decision.
11 So I would hope you would consider deferring this
12 and get the information, obtain it from interested
13 parties, much like your staff has an interest in where
14 they want to see this go; and also obtain information from
15 disinterested parties so you can look at all three
16 sources, look at the strengths and weaknesses, and then
17 make a decision.
18 Lieutenant Governor Bustamante made a comment
19 complimenting the staff at being at the forefront and the
20 cutting edge of many issues. And I think this is an
21 issue. You have an opportunity, here, to be at the
22 forefront and the cutting edge of setting a policy that
23 will allow this state to continue with hundreds of
24 millions of dollars of development, tens of million
25 dollars of revenue to the related ports. And I don't

1 think it's an opportunity you should pass up.
2 Thank you very much.
3 CHAIRPERSON WESTLY: Thank you, Mr. Palermo.
4 Let me just point out, we received volumes of
5 information here and we've looked at a good deal of it.
6 So please note how much time and effort has
7 already been expended on this.
8 I want to acknowledge Mr. Dick Ragatz, who's
9 kindly given his time to his president of Ragatz
10 Associates. And he's willing to answer any questions, if
11 necessary.
12 Thank you.
13 Gerri Retman, San Diego Port.
14 MS. RETMAN: Is that -- is that -- I'm speaking on
15 the opposite.
16 CHAIRPERSON WESTLY: Okay. We're going to hold
17 off and call you back in a moment.
18 Thank you. Next is Papa Doug Manchester, chair of
19 the Manchester Financial Group.
20 UNIDENTIFIED MALE: I think he had to leave.
21 CHAIRPERSON WESTLY: Okay. Colleen -- I was
22 curious to see. Colleen Manzer and then John McNab, and
23 we'll move on to all of the people on -- wishing to speak
24 in favor of the item.
25 MS. MANZER: Good afternoon. I wanted to read two

1 letters that came from me: One from my sister who wanted
2 to be here, but she's busy having a baby; and the other
3 from actually a very good friend who's a nurse and
4 working.
5 The first is from Julie Redner [phonetic], and she
6 said she wanted to talk about how timeshares had a
7 positive impact on her ability to go, as a family, on
8 vacation. And she says, "We have been able to go on
9 formal vacations with our family because of a timeshare
10 program. My parents-in-law own a timeshare and have
11 shared it with their entire family."
12 Trying to make this quick. "What makes the
13 timeshare concept so great was that the family with young
14 children were able to travel to wonderful destinations.
15 Also, by cooking meals in a timeshare together, it
16 enhances the camaraderie between the adults and eases the
17 stress of not having to take small children to a
18 restaurant, as well as saves us money.
19 "The money we save by eating in allowed us to have
20 and see more area attractions, making the vacation much
21 more memorable. And all in all, my family has been
22 positively impacted by a timeshare experience, and I hope
23 that we continue to have that ability in San Diego."
24 The second, from Marilyn Gilberteen [phonetic],
25 who's a nurse, says, "I have been a timeshare owner for

1 close to 20 years. I have had the chance to travel at
2 reasonable expense to these places, without the worry of
3 expensive hotels, for example, at the height of ski
4 season, which is my favorite.
5 "On many ski vacations, my family and guests and I
6 have been able to further curtail our vacation expenses by
7 cooking multiple meals in the kitchen at the timeshare.
8 What a wonderful feature to have included in a timeshare
9 vacation. The opportunity to travel and see the world and
10 know that options to continue to do so, at a reasonable
11 cost, have made me a believer in the benefits of timeshare
12 ownership. And I recommend it to my friends for years."
13 Thank you for my chance to speak.
14 CHAIRPERSON WESTLY: Thank you, very, very much.
15 John McNab.
16 MR. McNAB: John McNab. My apologies. I marked
17 the wrong box. I was opposed to the project and fully in
18 support of the staff's position.
19 CHAIRPERSON WESTLY: Can I come to you, back in
20 minute? Just want to get everybody in the same -- if we
21 can hold on -- we've asked to do this in a certain order.
22 I would like to ask -- Gerri -- we'll come back to
23 you -- John, rather. Forgive me.
24 Jerry Butkiewicz, secretary treasurer of the San
25 Diego Imperial County Labor Council.

1 Mr. Butkiewicz. I would like to note,
2 Mr. Butkiewicz, is a nationally recognized labor leader.
3 MR. BUTKIEWICZ: Thank you, Mr. Westly. And I
4 also want to thank you and other commissioners for your
5 service to the working class people in the state of
6 California.
7 I would like to speak in favor of the staff's
8 recommendation. Labor in San Diego has been working with
9 the environmental community on Public Trust issues. We
10 agree with the environmental community and your staff that
11 the timeshares are inconsistent with the Public Trust
12 Doctrine.
13 The working class people in this community are
14 counting on you to not let this domino start here, the
15 taking away of the public right access to our public
16 tidelands. Timeshares lead to condo-hotels, then straight
17 condos, until we limit working class people's public
18 access to our coast and our beaches.
19 At least if it's a hotel, we can buy one night and
20 enjoy the view of our coast. I must admit, for this
21 project to be the test case, is a slap in the face to
22 working class families in California.
23 I am proud to say that the labor movement in San
24 Diego County has a history of working with employers and
25 developers to grow our economic development in San Diego

1 County. But for this particular company, Woodfin Suites,
2 to ask the public to capitulate to an employer-developer
3 who has no respect for working class families, in fact,
4 refuses to follow the laws like livable wages, and to ask
5 working class families to give up our public access to our
6 beaches and our coasts, is an insult.
7 I would like to tell you that me and my wife were
8 recently in a timeshare presentation within the last
9 month. And I couldn't help but sit there and look at what
10 I would have to assume would be lower income families
11 being pressured in a room to buy a timeshare. If any of
12 you have been in that situation -- it's a pretty sad
13 situation, especially when they slid the paper in front of
14 my wife and I and were hoping we were so stupid, that we
15 didn't understand what 12 percent interest rates meant.
16 They do tell you, today, how many timeshares are
17 bought by working class people, but they fail to tell you
18 how many foreclosed timeshares there are on working class
19 people.
20 I would suggest you go home and click on ebay and
21 click on the timeshares and see how many foreclosed
22 timeshares there are.
23 I would suggest that they aren't people who make
24 over $50,000 a year, that were foreclosed on. I would
25 suggest that they were those people, working class people,

1 who got pressured in that room to buy that timeshare.
2 Please, I urge you to support your staff's
3 recommendation. Don't let this domino start here. It's
4 the people of San Diego and the people of California who
5 elect you, that represent everybody. I don't very often
6 disagree with our Port commissioners and our Port staff
7 here. But you need to remember that they are politically
8 appointed to that Port staff. And there is pressure on
9 them that isn't on you, Steve, because you're elected by
10 the People of California. So stand up for the People of
11 California, protect our coastline, and protect our
12 beaches. Thank you.
13 (Applause.)
14 CHAIRPERSON WESTLY: Thank you, Mr. Butkiewicz for
15 that presentation.
16 I would like to ask Ms. Laura Hunter, campaign
17 director, to come forward.
18 MS. HUNTER: Good afternoon. My name is Laura
19 Hunter, and I represent the Environmental Health
20 Coalition. And I too strongly urge your opposition to the
21 Woodfin-type kinds of projects. I understand, and I hear,
22 that Woodfin would have you believe this is just one
23 little part of one little project and don't look very
24 hard, you would hardly notice it. But it's really not
25 true. It's really going to be a Pandora's box. It's

1 going to open a whole flood of this kind of development,
2 that's going to just really cause serious problems with
3 public access and development on our coast.
4 Your staff has a broader view of what that means.
5 They have a longer-term view of our precious public lands,
6 and we really strongly urge you to turn this back at this
7 point. This is precedent, and this is a very negative
8 precedent. I'm sorry, if hotels are expensive to build,
9 than let's use some more public campgrounds. I mean, if
10 you want to have affordable visitor-serving experiences,
11 those are inexpensive to build, and almost anyone can go
12 visit those. But this is really going to start a flood of
13 development that will be very, very hard to turn back.
14 We're also very concerned with this kind of
15 action, what it would do to threaten the progress that
16 we've had made to the Chula Vista Bay Front Master Plan
17 that will be here, in front of you. In terms -- I think
18 what you are seeing is kind of a division between the
19 haves and the have nots. You talk about, whoa, this is
20 great, because if you make $50,000 a year, this is
21 affordable to you. Our members are living on 10 and 15
22 and 20,000 thousand dollars a year. This is not going to
23 be the kind of development that they are going to be able
24 to benefit from, but in fact, it's going to accelerate and
25 exacerbate development that's going to increasingly cut

1 out their opportunities to be there.
2 We ask you to indeed make a decision today, set a
3 very strong direction that you are not going to support
4 this kind of activity on the state tidelands. I get that
5 it's happening on private lands, within the coastal zone,
6 but these are our precious public lands.
7 Please leave this can of worms solidly closed.
8 Thank you.
9 CHAIRPERSON WESTLY: Thank you, Ms. Hunter.
10 Mr. McNab, it is now your turn. Thank you for
11 waiting patiently. And if Molly Rhodes could please be on
12 deck. And again, we still have another 15 or so to go.
13 So if we can move this along, I would appreciate it.
14 MR. McNAB: John McNab, San Diego.
15 We've had nothing put problems with the Public
16 Trusts in San Diego. The training center, over half of
17 the tidelands were illegally extinguished. We have a
18 problem with Navy Broadway right now, where it's all going
19 into office buildings, without any ability for the public
20 to comment on it. This, again, is a trend by the same
21 people, same lawyers, continuing to bring these same
22 projects in San Diego. It's almost like we have become
23 the center around the state as far as public planning
24 policy. This is where it needs to start changing.
25 The public has most certainly voiced what their

1 priorities are with the passage of Prop 40 and the recent
2 park bond initiative. They want investment, public
3 investment in their infrastructure, and in their lands.
4 This is our prime land. You can't go out and buy this.
5 This is the best we have. And it shouldn't be made to be
6 more profitable for these people.
7 I was up in -- in San Pedro for the Coastal
8 Commission hearing, and all that -- that Board was seven
9 developers and only one public advocate advising the
10 Coastal Commission. And what they said is if we don't get
11 these through, we won't be able to get a 20 to 30 percent
12 net profit margin. They said, "We can't make obscene
13 profits." And they said, "We can't continue to pack the
14 coastal five star resorts unless we do this." Five stars
15 are not affordable to the average Californian.
16 We need to take a look at what is our priority.
17 And let's start moving towards low cost hotel rooms that
18 serve the average Joe in California.
19 And the other issue that we have is that
20 constantly -- all these policies that come down here.
21 Every time you say something, it gets bait and switched.
22 The policy that you set, it wink, wink, wink
23 changes. And pretty soon, you got something worse than
24 what you have approved. So we appreciate this one line in
25 the sand.

1 And I personally spent over $10,000 on lawsuits on
2 Public Trust cases. Keep it there, so at least we have a
3 fighting chance to keep them.
4 Thank you.
5 CHAIRPERSON WESTLY: Thank you, Mr. McNab.
6 Molly Rhodes, if you could come forward. And
7 Graham Forbes, if you could be on deck.
8 MS. RHODES: Hi. I'm Molly Rhodes with Unite
9 Here.
10 And just -- I can be quick. I pulled some census
11 data for you all about the state of our middle class in
12 California. I noticed, the applicant's attorney said that
13 18 percent of buyers of timeshares earn less than $50,000.
14 They said 50 percent make between 50 and a hundred
15 thousand. They didn't mention the remaining 32, which has
16 got to be over a hundred thousand.
17 And the sheet that I'm passing around begins with
18 a quote that I saw in a recent business news journal
19 saying that timeshare owners are affluent; the medium
20 income is $74,000 for recent buyers, and $81,000 for all
21 owners. And that was out of a national survey.
22 And then you will notice that the median income
23 for all Californians is $51,000. And then, I was also at
24 the Coastal Commission Workshop, and there was a lot of
25 talk about how do we get low cost visitors services for

1 people in the non-coastal cities, so coastal cities tend
2 to have -- we can go to the beach, we can get our car and
3 go.
4 So there was a discussion about the non-coastal
5 cities. And so I pulled the census out on those, and
6 those cities are all under $50,000.
7 The highest is Santa Ana, which I suppose they can
8 drive to the coast. But working class people, like, they
9 stay in their neighborhoods; they don't -- they don't go
10 to affluent neighborhoods where they are not comfortable.
11 And then Bakersfield is 45; Chico is 32. So, you
12 know, these are not -- it's a bunch of rhetoric that these
13 are for working people, basically.
14 So thank you.
15 CHAIRPERSON WESTLY: Thank you very, very much.
16 Mr. Forbes, can you please identify yourself.
17 MS. RHODES: Hi. My name is Graham Forbes, and
18 I'm also with Unite Here. And I appreciate your time.
19 This timeshare project is about which segments of
20 our society will have access to our coastal areas and to
21 what extent the State will allow developers, and not the
22 public, to shape our coastal cities.
23 Not only do timeshare units on State tidelands
24 restrict access to the minority, who can't afford to pay
25 the thousands of dollars required for the initial purchase

1 and ongoing maintenance fees, but they also drain
2 resources from the communities where they are developed.
3 We are currently experiencing a state and local
4 budget crisis. Resources for our parks, community
5 centers, schools, and other public services are drying up.
6 Transient occupancy tax is a crucial revenue source for
7 cities throughout California. And timeshare owners are
8 not automatically subject to pay their fair share.
9 Imposing TOT takes place at the local level, and
10 there's no guarantee that private interests will succeed
11 in shedding this financial obligation, leaving the burden
12 to local residents.
13 The timeshare industry is organized and actively
14 working against local efforts to assure that timeshare
15 owners contribute to the communities they are enjoying.
16 The American Resort Developer Association
17 self-entitled the Vacation Ownership Industry Interest,
18 boasted its steady and strategic owner advocacy and has
19 generated an impressive list of legislative and regulatory
20 triumphs.
21 This includes strong opposition to tax the
22 visitor, not the voter, campaigns that work towards
23 sustainable development and fiscal responsibility.
24 Concerning timeshares on Trust lands, your staff
25 has written that the potential benefits of such an

1 arrangement floated to developers and sellers of the units
2 and not to the public.
3 Given our City's financial condition and the
4 industry's determination to resist just contribution, now
5 is the time -- now is not the time to dole out public land
6 to assure greater profits for developers at public's
7 expense. We urge you that you support the staff
8 recommendation and reject the Woodfin timeshare proposal.
9 Thank you.
10 CHAIRPERSON WESTLY: Thank you very much,
11 Mr. Forbes.
12 Mr. Ian Trowbridge, also from Port of San Diego.
13 And I would like Victoria Cypherd to be on deck.
14 MR. TROWBRIDGE: Mr. Chairman, Commissioners, I
15 can be very brief.
16 First, I want to say what a -- what a wonderfully
17 well, reasonably-sized report was made by staff on this
18 issue. I wish some of the people down in San Diego City
19 could have come and seen it.
20 Two things: One is, this is precedent setting.
21 And what Perry Dealy didn't tell you while he is here, is
22 that he is the manager for Papa Doug Manchester's Navy
23 Broadway complex, which depending on which day of the week
24 it is, he wants five condo hotels on that property. And
25 so there's a little bit of self-interest there.

1 I'm simply a retired scientist. I have no
2 financial interest in this matter at all. And so that's
3 important.
4 The second point I want to make is this issue of
5 the Coastal Commission stuff, Coastal Commission stuff is
6 going to really look at the Navy Broadway development,
7 because it's basically -- it's based on an EIR that was
8 produced in 1990. And we actually have an appeal in front
9 of the city council, because we don't think a 16-year-old
10 EIR is valid anymore.
11 But the point is, the Coastal Commission rejects
12 the idea of condo hotels and stuff. So I don't think it's
13 true to say that they are in favor of it all the time.
14 And then I will leave it at that and let other
15 people speak. Thank you.
16 CHAIRPERSON WESTLY: Thank you very much, Mr.
17 Trowbridge.
18 Victoria Cypherd.
19 Again, we still have quite a long list. So if
20 people could be brief, I would be appreciative.
21 MS. CYPHERD: Victoria Cypherd, Solana Beach.
22 CHAIRPERSON WESTLY: Tracy Weiss, if you could
23 please be on deck.
24 MS. CYPHERD: If the State Lands Commission votes
25 to approve this project, it will be setting dangerous

1 precedent that will have enormous cumulative negative
2 impacts statewide. You will be giving ownership rights
3 away forever, to benefit a private developer, by allowing
4 Public Trust lands to be converted to private residential
5 use.
6 You will be opening up our entire coastline for
7 similar exclusive "condotel" and timeshare projects.
8 These developments are lucrative for developers but will
9 generate no additional review for the Port and citizens of
10 California.
11 And I would like to add that I also attended the
12 meeting in the Coastal Commission meeting in Monterey,
13 regarding the KSL project condotel. And I also went to
14 the hearing, or the workshop. And I was -- someone
15 mentioned earlier, you know, the Coastal Commission
16 approved this; why don't you?
17 Well, the Coastal Commission staff was unanimous
18 in their objection to this, and they had really wonderful
19 arguments, valid arguments, similar to what your staff has
20 prepared.
21 And that particular developer, KSL -- I just
22 thought about this, listening to the developer speak. The
23 same developer spoke about how he couldn't afford to build
24 his hotel on the last remaining Oakland bluff in
25 Encinitas. This gentleman also owned the Hotel Dell

1 [phonetic] and the La Costa Resorts, where you are seeing
2 condotels.
3 I believe that's it. I just had to say, I was
4 really shocked because the Coastal Commission staff had
5 such good arguments that the Coastal Commissioners,
6 themselves, voted against it. And there was a strong --
7 within the workshop. I concur with the previous speaker
8 there was a strong -- what's the word I'm looking for? It
9 was primarily developers, very few people speaking for the
10 environment.
11 Thank you very much.
12 CHAIRPERSON WESTLY: Thank you.
13 Ms. Weiss, would you please come forward? And if
14 Mr. Charles Yip could be on deck.
15 MS. WEISS: Tracy Weiss. I live in Solano Beach.
16 I'm just here; I have no financial profit motive
17 whatsoever.
18 I would just like to repeat what everybody else
19 said, but I won't. I will just say it's -- doing
20 condotels or timeshares, it's basically a money mechanism
21 for the developer, does not help the people, does not help
22 the state, they don't get anything. They can go ahead and
23 build their hotel anywhere. So it's basically a funding
24 mechanism to presell the units.
25 CHAIRPERSON WESTLY: Thank you very much.

1 Mr. Charles Yip, could you please come forward.
2 MR. YIP: My name is Charles Yip from San Diego.
3 I would like to give my time to Ken.
4 CHAIRPERSON WESTLY: Absolutely.
5 MR. ELLIOTT: Good afternoon.
6 CHAIRPERSON WESTLY: Good afternoon.
7 MR. ELLIOTT: My name is Kenneth Elliot, and I
8 have been employed in the hospitality industry for about
9 the past four years. I'm here today with my union
10 coworkers to speak in support of your staff
11 recommendation.
12 Many of the hotels are on public land. We
13 testified at the city council, when a Hyatt Hotel was
14 purchased last year. We understand -- we understand about
15 the lease transfer and how important it is to have hotels
16 to bring the public to the coast. But we don't like the
17 idea of selling our state public land in timeshares.
18 We work hard but we can't afford to buy one of
19 these ourselves. We also do not like giving the hotels an
20 opportunity nor the developer has had. The Woodfin
21 response to the Emeryville's living wage law shows
22 disrespect for the workers and for the law. If they
23 disrespect one law, why should we expect them to obey
24 others.
25 Please vote in favor of the staff recommendation

1 to prevent the sale of our lands.
2 Thank you very much for your time.
3 CHAIRPERSON WESTLY: I thank all of you for being
4 here. Thank you very, very much. Thank you, Ken.
5 MR. ELLIOTT: Thank you.
6 CHAIRPERSON WESTLY: Mr. -- Ms. Sandra Smelik, if
7 you could come forward. And then our -- then Gerri
8 Retman, if you could be on deck.
9 MS. SMELIK: My name is Sandra Smelik, and I have
10 been a timeshare owner for, like, 25 years. We have nine
11 children. All of those kids have been able to use the
12 timeshare. My parents have come from the Midwest and had
13 not -- had we not had the timeshare when they had time to
14 spend there also, they probably wouldn't come out as
15 often. So it has been not just us that bought the
16 timeshare venue, but a complete family. And the family
17 goes on. They all have children now.
18 They are using those timeshares. It wasn't just
19 for an individual.
20 And it's in this county. I'm not living at the
21 beach. To rent any type of housing on the beach today is
22 prohibitive. It -- it costs to such. This allows so many
23 people to enjoy one small space and enjoy the beach.
24 So the 25 years of ownership has been wonderful.
25 So I beg you to reconsider this. It is a benefit to all

1 families.
2 Thank you.
3 CHAIRPERSON WESTLY: Great. Just want to point
4 out, Ms. Smelik is speaking in opposition to the staff
5 report.
6 Gerri Retman and then Mr. Reznik, you will be a
7 final speaker. And then we can move forward on this
8 issue.
9 So I would like to keep the momentum going.
10 MS. RETMAN: I will try to be brief. Gerry
11 Retman. Thank you for this opportunity.
12 I think the staff did an excellent job outlining
13 the reasons as to why timeshares are inconsistent with the
14 Public Doctrine.
15 I would just like to say that I also attended
16 those Coastal Commission hearings and workshops, and I
17 listened closely to the Woodfin developers go to great
18 lengths to explain the difference between timeshares and
19 condotels, which someone referred to as a slippery slope,
20 and I do agree.
21 When I attended those hearings, I recognize much
22 of the same lingo. They are claiming that, you know,
23 condotels and timeshares, we can't build them unless we
24 have this upfront money, and this is why we have to do
25 this. So I do kind of think that condotels and timeshares

1 do have a similar component there. And that is that they
2 make exclusive what is meant to be very public.
3 And so I would also like to comment that the
4 reason I'm here is because there are -- these projects are
5 so lucrative to the developers that we are starting to see
6 such an increase in the number of applications at the
7 Coastal Commission for conversions of regular hotels to
8 condotels. And this is going to be a huge problem. It's
9 going to prioritize the entire coastline, eventually.
10 So I think this is a good start here, for you to
11 just deny this. Don't let this start. Please don't allow
12 this Woodfin project. They only have a small component
13 that they are asking for timeshares. And if they can
14 build that as all hotel, then let them do that.
15 So thank you very much for your time.
16 CHAIRPERSON WESTLY: Thank you very much.
17 Mr. Reznik?
18 MR. REZNIK: Thank you for this opportunity to
19 speak. My name is Bruce Reznik, the director of San Diego
20 Coastkeeper. I guess we started some of these problems.
21 I'm here obviously to support the staff
22 recommendation. I think they have done a tremendous job,
23 both with the report and presentation today. And I don't
24 mean to delve into the details of that, but we really
25 appreciate the work that they've done. I would also urge

1 that this does not get further delay. It's been delayed
2 once. It's been on the road for a year. There's a
3 tremendously detailed report. You have heard tremendous
4 testimony from the public on both sides of the issue.
5 We cannot allow these wars of attrition to
6 continue when this happens over and over again. And, you
7 know, clearly, I think the delaying tactic that we know
8 this is the last meetings of a couple commissioners, I
9 think it's pretty easy to get what the intent of that is.
10 I would like to talk about our coast. We lose our
11 coast; we are losing our coast and access to our coasts
12 every day in California, through overdevelopment, through
13 loss of beaches, because of the armoring of our coast.
14 Even pollution denies us access.
15 This is a place where, as Mr. McNab said, we need
16 to draw a line in the sand on our Public Trust lands and
17 public tidelands. We cannot let this further erode public
18 access to our coast.
19 This is, as has been pointed out, a slippery slope
20 of where we go from timeshares to condotels to condos.
21 And the other thing that was telling to me, and I was
22 actually trying to bite my tongue and not put in a speak
23 slip, but I wonder what San Diego people are living on.
24 Because the San Diego I heard on this side of the room is
25 very different from the San Diego I heard on that side of

1 the room.
2 We talked about, this is the same as a Ford, you
3 know, F-150. The people in San Diego need that the Ford
4 F-150 to get to work and have a job. And most San Diegans
5 are like me, praying to God that the housing bubble that's
6 bursting here in San Diego doesn't turn our mortgage
7 upside down so we're left out in the cold. We're hoping
8 that our apartments aren't converted to condos, which is
9 happening at an alarming rate, and our rents don't shoot
10 through the roof.
11 I think it's an amazing amount of disconnect, and
12 we're talking about the amount of profits for
13 Mr. Manchester and the folks. And I hate to show the
14 division, but this side of the room versus the real
15 concerns of working class people are just desperately
16 trying to maintain our access to the coast.
17 So thank you. Let this end here, and we
18 appreciate all the work you and your staff has done.
19 Thank you very much.
20 CHAIRPERSON WESTLY: Thank you, Mr. Reznik.
21 At this point, I'd like to ask either of the other
22 commissioners if they would care to ask questions.
23 Mr. Bustamante?
24 COMMISSIONER BUSTAMANTE: We have a -- we have a
25 1982 document, and we have a 1996 document. So for the

1 tiebreaker, the gentleman said he loved you.
2 (Laughter.)
3 COMMISSIONER BUSTAMANTE: So can you give us what
4 the current attorney general is thinking.
5 ASSISTANT ATTORNEY GENERAL HAGER: The current
6 Attorney General's Office has an opinion in 1996. The
7 opinion in 1996 says that timeshare resorts are not, per
8 se, incompatible with the Public Trust. But if -- if the
9 project will provide for significant use by members of the
10 general public and further Trust uses by increasing
11 opportunities for public access to the shoreline and
12 water-oriented recreation -- and that's a determination
13 for you to make in your discretion.
14 COMMISSIONER BUSTAMANTE: So does the current
15 attorney general accept that opinion as his own?
16 ASSISTANT ATTORNEY GENERAL HAGER: Yes.
17 COMMISSIONER BUSTAMANTE: Okay. Timeshares versus
18 hotels. I saw the chart. And I have had a briefing.
19 You know, there was a -- there was a person who
20 made a comment about $2500-a-night rooms versus other
21 kinds of rooms, and that we wouldn't be here, talking
22 about it, if they were expensive per night rooms.
23 Do we have a policy that -- that restricts
24 affordable -- affordable rooms, affordable facilities
25 along our coasts, either by default or by design, and

1 allow for the more expenses -- expensive facilities to be
2 able to take place?
3 EXECUTIVE OFFICER THAYER: No. There's -- the
4 Public Trust Doctrine doesn't go to that issue at all.
5 COMMISSIONER BUSTAMANTE: But if we have a policy
6 in place that, by default, allows for more affordable, is
7 it -- does it make a difference at that moment or at this
8 time, whether it's stated or not, but because of the
9 unintended consequences of a policy, we are only allowing
10 more expensive facilities? Isn't that a problem?
11 EXECUTIVE OFFICER THAYER: It could potentially
12 be. And of course, the Commission would need to evaluate
13 whether or not, in the whole of the context, you're asking
14 about timeshare versus hotels --
15 COMMISSIONER BUSTAMANTE: At this point, I'm just
16 talking about -- I'm not talking about the issue of the
17 timeshare or a condo.
18 I'm talking about the unintended consequences of
19 policy that we have. Because I was a speaker of the
20 Assembly. I wrote a lot of unintended consequences in the
21 bills.
22 (Laughter.)
23 COMMISSIONER BUSTAMANTE: The unintended
24 consequences that were actually unintended sometimes have
25 very dramatic consequences in terms of how it affects

1 people.
2 EXECUTIVE OFFICER THAYER: Absolutely.
3 COMMISSIONER BUSTAMANTE: Do we have a system,
4 right now, in place, that does not incentivize -- that
5 does not incentivize affordable mechanisms by which public
6 have access to our beaches? I mean, the idea of having
7 public access and finding places where people can actually
8 gain access to what was previously sort of domiciled, made
9 unavailable for access, to our beaches, is something that
10 we've been fighting over. And we have been extremely
11 aggressive at making sure that we have -- so that the
12 folks from east L.A. and South Central can access the
13 beaches of Malibu. And there's no clearer policy that we
14 have made in this -- it's about having access. And so do
15 we have a policy currently that, by default, is not
16 allowing affordable facilities?
17 EXECUTIVE OFFICER THAYER: I don't believe so.
18 And --
19 COMMISSIONER BUSTAMANTE: Make a brief case.
20 EXECUTIVE OFFICER THAYER: My briefcase would
21 be -- it's under the table.
22 (Laughter.)
23 EXECUTIVE OFFICER THAYER: But my brief case is
24 that the State reacts or has a variety of planning
25 mechanisms for development along the coast. And the State

1 has responded to the very issue you're talking about, in
2 the provision to the Coastal Act, which encourages and
3 requires affordable housing to occur. That's not
4 inconsistent with the Public Trust Doctrine. And it's not
5 something that's created a problem for us. And we think
6 it's the State's approach to dealing with that issue.
7 ACTING COMMISSIONER SHEEHAN: Under the City's
8 General Plan, is that what you're talking about?
9 EXECUTIVE OFFICER THAYER: No. Under the Coastal
10 Act. The Coastal Act itself encourages low cost,
11 affordable accommodations and cities that adopted the
12 local coastal programs, which our general plan -- were
13 required to include that within their own planning.
14 So although we, at the Lands Commission, look at
15 as many issues as we can -- in fact, as a State, this
16 issue has been addressed.
17 COMMISSIONER BUSTAMANTE: You know, because I
18 think that having access to our beaches is a major
19 concern. Whether it's by default or by design, elitist
20 access to our beaches is not acceptable. It's just not.
21 I don't -- this is not -- this is not San Diego's
22 coast. It's not Santa Barbara's coast. It's not
23 Monterey's. It's California's coast. In fact, one could
24 say it is the world's coast.
25 And so having access to it is something that is

1 extremely important to me, but it's also extremely
2 important to all the inlanders and all the Californians
3 and some, even, Californians who live near the beach but
4 can't afford to actually go there. It's extremely
5 important.
6 And so having mechanisms and policies in place to
7 try to accentuate that and to try to enhance and nurture
8 that, I think, is extremely important. And so, you know,
9 taking a proposal out of hand and saying something is not
10 acceptable, I think, is something that we should open
11 ourselves up to for possibilities of these kinds of
12 activities.
13 But -- and I think also that beach communities
14 ought to be held responsible and ought to be required to
15 ensure that they have affordable and accessible facilities
16 that are built into their plans as a master plan for a
17 city. They have a responsibility, as far as I'm
18 concerned, to the rest of the city -- not just to
19 themselves, but to the rest of the state, to make sure
20 that we are going to be having access -- affordable
21 access.
22 I don't think that this proposal has made that
23 case. But I do think that the issue needs to be aired out
24 fully. I think that the case has to be made on behalf of
25 those people who are not here to talk about it. I think

1 whether you're a surfer or you're just a poor working guy
2 from Fresno, you ought to be able to have access to
3 California's beaches. In some cases, you wouldn't want to
4 have access, the way we're polluting our coasts. And with
5 the huge amount of pollution that we're draining into it,
6 you probably ought to be very careful what days you go
7 there.
8 But the fact is, that having access, affordable
9 access, is extremely important. And we ought not allow
10 ourselves to fall into a state of slumber on a public
11 policy that, by default, does not allow that access.
12 So I would support the staff recommendation. But
13 I think the debate has to be continued.
14 CHAIRPERSON WESTLY: Great. Thank you, lieutenant
15 governor.
16 I would like to make a quick comment, because I
17 have to go to the airport to attend another event. And
18 I'm going to ask my deputy controller, Ms. Aronberg, to
19 vote for me.
20 I would like to thank all of the members of the
21 public, on both sides, that have come out. This is a very
22 complex issue, and I appreciate your strong arguments on
23 both sides.
24 First, there have been calls by the opponents to
25 the staff report to postpone this issue, to read more, to

1 learn more. I just want to say, while you have spoken
2 very articulately, I have read voluminously about this and
3 I'm very clear on the issues here, again, complex issues.
4 But I believe, strongly, we should vote on this issue
5 today.
6 Second, on balance, I believe timeshares, you
7 know, can be positive institutions. Many people enjoy
8 them. I appreciate the testimony today.
9 I believe that they are, by their nature,
10 exclusive and do not meet the nature of the Public Trust
11 Doctrine.
12 Two points here: First, I want to be clear in
13 saying I fully understand, these are not the vehicles of
14 the super rich, but neither are they accessible to
15 everybody. It's quite clear, and by your own data,
16 18 percent of the people who are using them earn less than
17 $50,000. 82 percent are earning over the state's average
18 income.
19 A comment was also made by Mr. Butkiewicz. I just
20 have to comment on this, personally, that many people go
21 to what are very high pressured meetings for timeshares.
22 Unfortunately, I have to confess, I have been to two of
23 these meetings. I was on the faculty at Stanford's
24 Graduate School of Business at the time, with my wife. In
25 both cases, I raised two questions: What are the interest

1 rates here? The consumer needs to know this. This is an
2 important question. The interest rates, frankly, were
3 exorbitant. I raised that question.
4 I asked, "What are the foreclosure rates?"; basic
5 fundamental things that consumers should know.
6 In both cases, I was asked to leave.
7 (Laughter.)
8 CHAIRPERSON WESTLY: But that is not the
9 fundamental reason for my position. My position is that,
10 on a legal basis, I do not believe this meets the Public
11 Trust Doctrine.
12 As a result, I would like to make a motion that we
13 pass the staff report. I know, before we do that,
14 Ms. Sheehan has some very thoughtful questions for you.
15 I wanted to, again, thank all of the members of
16 the public, on both sides, for being here.
17 I apologize. I have a commitment, and I have to
18 be at the airport. But I wanted to emphatically say what
19 a good job I thought the staff did with a complex issue,
20 how strongly I support staff's report. With that, I'm
21 going to hand the gavel over to my able deputy controller.
22 Before I do that, I would like to ask Ms. Sheehan
23 to raise the questions that you have.
24 ACTING COMMISSIONER SHEEHAN: I've got a couple
25 of --

1 COMMISSIONER BUSTAMANTE: Second the motion.
2 ACTING COMMISSIONER SHEEHAN: A couple of
3 questions, and I would like for the opponents of the
4 project to maybe to -- I don't know, to come forward and
5 clarify; and then also possibly some of the people who
6 were concerned.
7 You know, I came in very sympathetic to where the
8 staff is, understanding many of the issues. But I guess
9 the problem I have is I'm not, unlike where the lieutenant
10 governor is, in terms of -- it was like we don't want the
11 timeshare that the hotels potentially that come in could
12 be much more expensive. I mean, if we look at those two
13 hotels that are next to that project now, I'm not sure
14 what they are at night, but I know they are not cheap in
15 terms of that.
16 So I would agree with the lieutenant governor that
17 we could potentially be creating a -- you know, an even
18 more exclusivity by doing this.
19 I also have some questions on -- which is why I
20 would encourage a better discussion. This is probably the
21 best discussion I have been party to in terms of this
22 entire issue. Really understanding the concerns. I would
23 love to continue this, as I've discussed with the staff,
24 and having an entire hearing on condotels, timeshares, for
25 me to understand what these issues are. I need to know

1 the process the Port went through in terms of some of the
2 changes that were made. I heard a lot about these two
3 weeks, 29 days, 30 days, you know, what really is the
4 bottom line in terms of this.
5 The transient occupancy tax was raised. I don't
6 know whether they pay it in these hotels, whether they
7 don't; how that's handled. I would have a lot of
8 questions on that.
9 The economics of how these projects were versus
10 the economics of just a hotel project. I know a couple of
11 speakers said, you know, some people would say, this is
12 the way they are financing it, understanding, you know,
13 from -- whether it be from some of the bankers or whomever
14 do these types of things, how those financial deals are
15 put together.
16 You know, it sounded like nobody will build
17 another hotel unless they do timeshares. I don't know
18 whether that's true, but that's what I heard or at least
19 that's -- that seemed to be communicated.
20 I must also -- I heard a lot about the cutting off
21 public access and that you're privatizing. I would ask
22 the counsel, are we -- are we handing over public land to
23 private ownership? I mean, is that the structure of this
24 deal?
25 Are we -- because I heard that from a number of

1 speakers from this side, that you are privatizing, so do
2 they have title to that land? Because it's my
3 understanding, that is not -- even if we wanted to do
4 that, we couldn't do it easily.
5 As I say, I have a lot of questions. So I don't
6 know, you know, who would like to address them. But I am
7 concerned. I would like to understand the structure of
8 this before I vote on this.
9 If the other commissioners want to vote today, I
10 will abstain until I get the answers to some of mine,
11 because I want to understand, really, this whole thing.
12 I'm concerned about the Coastal Commission. I heard they
13 were opposed, yet then I heard they voted for these
14 projects. I understand they are not on Public Trust
15 lands. But did they -- they have approved projects; is
16 that correct?
17 EXECUTIVE OFFICER THAYER: Yes.
18 ASSISTANT CHIEF COUNSEL FOSSUM: On private
19 property.
20 ACTING COMMISSIONER SHEEHAN: Right. Not on
21 Public Trust lands, okay.
22 And then I also would like to understand, maybe
23 from the opponents, the timing of this. You know, if the
24 commissioners want to act today, that -- what happens
25 there? If we don't, you know, I would want to commit that

1 no other stuff would be taken until we come back and get
2 the answers to those. So Curtis or whomever.
3 EXECUTIVE OFFICER THAYER: If I could first ask, I
4 think we can probably respond to most of those questions
5 today.
6 ACTING COMMISSIONER SHEEHAN: Okay.
7 EXECUTIVE OFFICER THAYER: You might have
8 additional questions, and at some point we might have to
9 say we have to get some additional information to you on
10 that.
11 But I just wanted to say, generally, that the
12 staff has been working on this issue, on one way or the
13 other, since the '96 opinion came out. It was shortly
14 after I came to the Commission. That was one of the first
15 things I looked at, was that decision. There's a lot of
16 discussion of that.
17 And since then, we've, you know, talked with the
18 proponents here. We met with them last spring. We've
19 talked with the Port. We talked with all sides. I went
20 to that Coastal Commission workshop. The staff report for
21 the earlier scheduled meeting, in October, was available
22 to the commissioners. And we felt prepared then, but
23 we've done additional work since then.
24 So we think the work has gone into it, but I'm not
25 sure if you wanted to do that today or not.

1 ACTING COMMISSIONER SHEEHAN: If you can address
2 some of them, it would be helpful, you know.
3 ASSISTANT CHIEF COUNSEL FOSSUM: I would like to
4 address one of the --
5 COMMISSIONER BUSTAMANTE: There was a question,
6 also, who I said was going to get an answer today.
7 EXECUTIVE OFFICER THAYER: Right. That had to do
8 with the difference between the Coastal Commission and our
9 approach.
10 COMMISSIONER BUSTAMANTE: Can you make sure we get
11 an answer today?
12 EXECUTIVE OFFICER THAYER: Then let's start with
13 that. And that is that the Coastal Commission has
14 approved some of these projects on private land. They
15 have not had the opportunity to review one on tidelands,
16 yet, in the same way that none has been approved yet on
17 tidelands, yet, anywhere in the state, so they haven't
18 taken that step.
19 And I would say, the distinctions between the two
20 entities and why our staff recommendation is different
21 from what the Coastal Commission itself did on the other
22 projects, are twofold. One is that public/private
23 distinction. There are special rules that attach to the
24 use of Public Trust lands, which are very more limiting
25 than what they are for -- for the private land.

1 And in fact, that's the very nature of the Public
2 Trust Doctrine and the Public Trust lands is that, just
3 historically, it was recognized, in a lot of societies,
4 that these are special lands that are supposed to be
5 reserved for particular uses.
6 And the second distinction is, in fact, associated
7 with that as well, which is that the Coastal Commission
8 acts pursuant to the Coastal Act, which doesn't affect
9 our -- you know, isn't the same sort of legal framework
10 that we evaluate things on. And so they look at the
11 Coastal Act. They make their decisions based on that;
12 whereas we look at, usually, CEQA or the Public Trust
13 Doctrine. And I think that's is the difference.
14 With respect to the rooms -- excuse me, to the
15 intervals involved with this project, the staff report and
16 the developer are in agreement on what the court -- the
17 Port's action was, which is that the Port approved the
18 sale of up to two intervals a year to any one individual,
19 each interval being one week long -- as long as one week.
20 I think that what the staff noted in its report is
21 that there's at least the theoretical option that
22 people -- as they do, they trade timeshare -- trade
23 timeshares. Someone could buy a timeshare on another
24 project and trade into this project, and so that they
25 would be able to stay here for a longer period of time.

1 But staff's view is that these numbers, of whether it
2 should be 14 days or 29 days, or what's the right amount
3 of time, is not central to the discussion -- or to the
4 issue that staff sees it with respect to the Public Trust
5 Doctrine. And that's an exclusivity that goes to the
6 privatization issues that you raised, which is that for no
7 matter for how long, the point is that people have
8 purchased -- now they are -- are they an owner or not?
9 They don't really own the land, but they have purchased a
10 lease, and that gives them an exclusive rights to a room.
11 Now, the developer has made much of the fact that
12 this room is floating. They are not guaranteed any one
13 room. But the point is, nonetheless, once you have
14 purchased that, you have a right to that room once a year;
15 and nobody else in the public has that. And you have the
16 right to exclude the public from that.
17 So that's the distinction that we see as most
18 important here, is that -- we're not saying -- again, the
19 developer's representatives have said that this isn't a
20 residential use. We agree with that. I don't know why
21 that's such a big issue.
22 But the issues of residences and the issues of
23 timeshares are similar in terms of how the Public Trust
24 Doctrine affects them. And that's the exclusive use, that
25 when you look at legal cases, the briefs, the writings

1 that have been done on residences, all it talks about is
2 exclusivity of use, that this is public land, and that
3 ultimately, private use of it in a residence is the
4 ultimate conversion of private uses.
5 We are not saying these are residences, but it's
6 residential blight to the extent that, in timeshares,
7 people buy the right or lease the right, whichever -- you
8 know, they are paying a certain amount of money for it, so
9 that they have exclusive use of a room, whether it's a
10 single -- the specific room or some other room, and that
11 excludes other people.
12 So that answered some of your questions. I'm
13 happy to go through others or give Mr. Kaufmann a chance.
14 ACTING CHAIRPERSON ARONBERG: I'm going to chime
15 in.
16 As lieutenant governor has pointed out, there is a
17 motion and the second on the floor. So response to your
18 question, we're going to definitely vote today.
19 And perhaps we can hold a quorum for hearing on
20 this subject. Let me ask staff, how do you feel about
21 that? And then I also -- we've got to wrap this item up.
22 The lieutenant governor needs to --
23 COMMISSIONER BUSTAMANTE: I'm gone in ten minutes.
24 So whatever we can do to help resolve the issues and
25 answer the questions.

1 ACTING CHAIRPERSON ARONBERG: We have people who
2 want to speak on other items.
3 ACTING COMMISSIONER SHEEHAN: I do have some other
4 questions.
5 You know, I will abstain today, because I've got
6 questions. I would like to have, you know, a further
7 discussion because it -- as you raise them and I know
8 we've been briefed. I moved by briefing three or four
9 times. It's been a little hectic around the Department of
10 Finance, as you know. So I apologize for that.
11 As I said, I'm sympathetic to some of the issues.
12 And the issue that Mr. Bustamante raised, I -- I am
13 concerned that we are -- we could be backing into an
14 exclusivity -- not this kind of exclusivity but a
15 different kind of exclusivity. You know, okay, so we're
16 going -- if not this, we're going to have a Four Seasons
17 or a Ritz. I mean, it's like then we really are not going
18 to have people who are accessible. You know, most of us
19 sitting in the room couldn't afford the rates of those
20 hotels.
21 So that is -- I -- you know, go ahead and take it.
22 I will abstain, not because I'm against or for or
23 whatever. But so many issues were raised today that, you
24 know, I guess it's one member moving forward to encourage
25 further discussion.

1 I think the type of workshop that the Coastal
2 commission had, it sounds like it was very helpful in
3 terms of understanding some of these issues.
4 MR. KAUFMANN: I'm happy to answer the questions,
5 quickly, that you raised.
6 COMMISSIONER BUSTAMANTE: Go ahead.
7 MR. KAUFMANN: Steven Kaufmann.
8 Quickly, if you don't take action today, we will
9 put off the Coastal Commission and make sure that you get
10 the chance to take action.
11 If you do take action today, one of the things
12 that we've been talking with support staff about is an
13 in-lieu fee. Paying an in-lieu fee towards a campground
14 on tidelands and the port, something new, something that
15 we hoped would be developed in this process.
16 The Port Board has authorized staff to work with
17 us in that regard, and the Coastal Commission recently
18 required that of a condo hotel that it approved.
19 You've raised the question about what happens.
20 What happens is a couple of different possibilities: One
21 is, they haven't had boutique hotels in the Port. That's
22 a problem. You're not going to get boutique hotels unless
23 something happens, either you raise your prices so it
24 becomes more exclusive, or you value engineer it and you
25 lose some of the public amenities, or the Port comes along

1 and takes money that it could use for true Public Trust
2 kinds of uses, because it wants a hotel -- that's what it
3 wants -- with all those amenities.
4 The 29 days, this Port Master Plan Amendment
5 requires use restrictions. You can't get more than two
6 weeks. TOT, we pay it on the hotel; we pay it on the
7 timeshare.
8 Cutting off public access? No, we're not cutting
9 off public access. We're going to take something where it
10 doesn't exist, and we're going to make it happen the best
11 it possibly can.
12 Title to the land is not given away; it's done
13 through sublease. There's no fee title. And as to
14 exclusivity, you can call expedia.com today. If you want
15 to get a better rate on a room, book it in advance, and
16 you get a better rate. And you can get that one week.
17 I will tell you, I've -- I have one -- when I was
18 married, I had one favorite place that I liked to go to
19 every year. And I paid -- prepaid, March for December,
20 and I never -- I had good time. But I never thought for
21 the week or ten days that I owned a piece of the rock when
22 I left. I just wanted to come back and make sure that I
23 got there.
24 Again, so I think the problem I have with this is,
25 I understand where this goes, way out there. Clearly, the

1 Port drew lines on this. It drew some clear lines. And
2 at some point, as a lawyer, I can't say that this isn't
3 consistent with the Public Trust, because it is really in
4 sum and substance. It's the same thing as what you get
5 with a hotel. And the trick is making it happen, making
6 sure the restrictions are there, and making sure that all
7 those public access amenities that you require are a part
8 of it.
9 So I -- I ask you to give us a chance to work with
10 your staff, and we'll do that, and to work with this
11 Commission.
12 Thank you for the additional time.
13 ACTING CHAIRPERSON ARONBERG: Very briefly because
14 we've got to wrap up.
15 MR. HARDAGE: Yes. Sam Hardage, chair of the
16 Woodfin Suite Hotel.
17 I think it's very apparent that there is a great
18 deal of information and a great deal of misinformation.
19 And this is a very, very important issue that deserves to
20 be fully explored. And so I would just like to ask that
21 the chairman of the company that's making the application,
22 I would like to reiterate that we absolutely would put off
23 pursuing this with Coastal Commission until an exploratory
24 or workshop is developed to explore these issues as soon
25 as possible, if the Commission is supportive of that.

1 ACTING CHAIRPERSON ARONBERG: Thank you,
2 Mr. Hardage.
3 And perhaps, a hearing or a workshop of some kind
4 is in order. But there's a motion and a second on the
5 floor.
6 So all in favor?
7 (Ayes.)
8 ACTING CHAIRPERSON ARONBERG: Opposed?
9 Abstentions?
10 ACTING COMMISSIONER SHEEHAN: I will abstain. But
11 I will be going to the workshop.
12 (Applause.)
13 ACTING CHAIRPERSON ARONBERG: The court reporter
14 needs a quick break.
15 So we're going to take a very, very quick, true
16 five-minute break.
17 (Thereupon a break was taken in
18 proceedings.)
19 (Commissioner Bustamante did not return for
20 the remainder of the meeting.)
21 ACTING CHAIRPERSON ARONBERG: Okay. If we could
22 call the meeting back to order. It won't be too much
23 longer. Just a few more items.
24 Mr. Thayer, we have an item that was taken off the
25 consent calendar, and we're going to hear from you about

1 it now.

2 EXECUTIVE OFFICER THAYER: Yes. With the

3 permission of the Commission, one item that was taken off

4 was Item 36, which has to do with the Trans Bay Cable.

5 This is a cable that runs from -- is proposed to be

6 constructed from the Pittsburg area, in the Delta, in

7 northern California, to San Francisco.

8 This item was placed on the consent calendar

9 because we knew of no opposition.

10 As the commissioners are aware, about a week ago,

11 we did receive a letter from one individual expressing

12 some concerns. I've been over that letter. The one that

13 seemed -- the concern that seemed relevant to the

14 Commission's jurisdiction had to do with whether or not

15 this project -- first, I should say, I'm not sure this

16 individual is here. It might be worthwhile to determine

17 if there's any opponents to Item 36, in the audience.

18 ACTING CHAIRPERSON ARONBERG: Is there anyone here

19 on Item 36? I don't have any cards for anyone on 36.

20 EXECUTIVE OFFICER THAYER: In which case --

21 ACTING CHAIRPERSON ARONBERG: Seeing nobody.

22 EXECUTIVE OFFICER THAYER: -- let me proceed,

23 then, to try and summarize what he said rather than -- say

24 it if he were here.

25 But he had some general concerns about power

1 planting in California, which didn't seem relevant to the
2 Commission's jurisdiction. However, there was one issue
3 which had to do with whether or not the facility --
4 onshore facilities at the San Francisco Cable would
5 prevent access for wetland restoration in the Pier 70
6 areas in San Francisco.
7 We reviewed this project further and found that he
8 had made comments along these lines earlier in the
9 process, and that the project had been modified, so that a
10 building at the shoreline, there, had been moved back, and
11 so that it was no longer right on the shoreline. I would
12 guess, from looking at the picture, perhaps 75 feet.
13 UNIDENTIFIED MALE: 200 feet.
14 EXECUTIVE OFFICER THAYER: 200 feet.
15 So I think that particular issue has been
16 resolved. We did speak with the individual yesterday. He
17 indicated that he still had some concerns about whether
18 access would occur. We have also spoken with the Port of
19 San Francisco who indicate that they are actually working
20 on a trail in this area, and hope to go forward with that.
21 So I wanted to make sure the Commission was aware
22 of that. I want to say, we can put things on consent,
23 whether there's opposition. And so this is off the
24 consent calendar, and nonetheless, the staff's
25 recommendation is for approval.

1 ACTING COMMISSIONER SHEEHAN: If there are no
2 further comments, I will move approval for the staff
3 recommendation.
4 ACTING CHAIRPERSON ARONBERG: I will second.
5 All in favor?
6 (Ayes.)
7 ACTING CHAIRPERSON ARONBERG: The motion carries.
8 Okay.
9 The next item -- Mr. Thayer, is that right? We
10 have Item 49?
11 EXECUTIVE OFFICER THAYER: Yes.
12 ACTING CHAIRPERSON ARONBERG: I know there are
13 speakers here. So I'm going to take it out of order so
14 that these speakers' time will be respected.
15 Is that okay with you, Ms. Sheehan?
16 ACTING COMMISSIONER SHEEHAN: Yeah.
17 ACTING CHAIRPERSON ARONBERG: Item 50 is a
18 resolution supporting the remediation of contaminated
19 sediment in the San Diego Bay.
20 Will staff please begin with the presentation.
21 EXECUTIVE OFFICER THAYER: The contaminated
22 sediments issue is one of those that was brought to us by
23 some of the environmentalists in the room, here -- the
24 Environmental Health Coalition and other people.
25 The problem -- this is a problem in many urban

1 water areas. The causes are many: urban runoff,
2 industrial discharge, vessel-bottom paints, or shipyard
3 construction, which is the case here.
4 Many of these factors have now been controlled,
5 but the legacy of the contamination remains.
6 The contaminated sediment work their way up the
7 food chain, damaging not only aquatic species but
8 ultimately presenting a human health risk. And in fact,
9 here in San Diego, the fishing piers are posted about the
10 dangers of eating the fish here, in San Diego. So it's a
11 definite threat.
12 In the past couple of years, the Commission has
13 approved several dredging leases in San Diego to help
14 remediate some of the contamination.
15 In April of 2005, the San Diego Regional Water
16 Quality Control Board issued a tentative cleanup and
17 abatement order for additional contaminated areas in the
18 areas of several shipyards. This is an important first
19 step, but actual cleanup hasn't yet occurred, and the
20 contamination remains.
21 The Regional Board staff indicate that
22 implementation measures are being developed and that the
23 order will be issued. The resolution before the
24 Commission today urges that this occur expeditiously and
25 to end the threat from contamination.

1 ACTING CHAIRPERSON ARONBERG: Thank you.
2 Ms. Sheehan, do you have anything?
3 ACTING COMMISSIONER SHEEHAN: No, but we can hear
4 the speakers.
5 ACTING CHAIRPERSON ARONBERG: Okay. Great.
6 So why don't we start with Gabriel Solmer.
7 MS. SOLMER: Thank you so much, Chairman Aronberg.
8 And we do have a PowerPoint presentation, if we
9 can turn that on. I have handouts if we need that.
10 EXECUTIVE OFFICER THAYER: Oh, great.
11 MS. SOLMER: Always prepared.
12 Let me start while we work that out.
13 (Thereupon an overhead presentation was
14 presented as follows.)
15 MS. SOLMER: My name is Gabriel Solmer, staff
16 attorney at San Diego Coastkeeper. And I'm also a member
17 of the San Diego Bay Council, which is a coalition of
18 environmental organizations. We're dedicated to the
19 protection and restoration of San Diego coastal waters.
20 And members of the Bay Council include Environmental
21 Health Coalition; San Diego Coastkeeper; the Surfrider
22 Foundation, the San Diego chapter there; San Diego Audubon
23 Society; and the San Diego chapter of the Sierra Club.
24 I just wanted to tell you a little bit more about
25 the history. I thank staff for giving you that

1 introduction. What we have here is almost 50 years of
2 primarily shipyard-induced bay contamination of the
3 sediments which underline the bay. And in 1997, a NOAA
4 report was issued that found San Diego Bay to be the
5 second most toxic in the nation, just behind New Jersey.
6 Not much has changed since 1997. Obviously, we
7 have hot spots and we have environmental and economic
8 impacts from that contamination.
9 And as staff mentioned, the Port has reposted
10 those piers, fishing piers, with advisories. But really,
11 we think that we need to move beyond warning, to action,
12 at this point.
13 We push for the pier advisories, but we really
14 need to move beyond there.
15 --o0o--
16 MS. SOLMER: So where we are today, we were here
17 three and a half years ago, before the State Lands
18 Commission, with fishers and their families to ask you to
19 provide your leadership on this issue. So in one way, we
20 have some changes. We have some posted advisories. We
21 have a tentative cleanup order, but there hasn't been much
22 movement other than that.
23 And thanks to a survey done by the Environmental
24 Health Coalition of the piers, the fishing piers, we know
25 that the majority of the people eating the fish out of the

1 Bay are minority families, that they eat the fish that
2 they catch, that they feed it to their families.
3 We have a draft cleanup and abatement order, so we
4 are moving in the right direction. It would remove
5 885,000 cubic yards of sediment and set some protective
6 standards, but we're not there yet, mostly because that
7 action and that order has not been implemented.
8 --o0o--
9 MS. SOLMER: So we are pursuing state legislation.
10 We're working actively with state legislation to make that
11 happen.
12 We're reaching out to the governor, to provide
13 appointments for the Board, the Regional Board, to make
14 that happen at the Board level. And we're working
15 cooperatively with the Port District and with agencies,
16 such as the State Lands Commission.
17 So what we are asking for today is policy
18 direction from the State Lands Commission that reinforces
19 this goal of protective levels of sediment remediation and
20 protecting the Public Trust.
21 ACTING CHAIRPERSON ARONBERG: Thank you.
22 Ms. Hunter?
23 MS. HUNTER: I'm just here in support of the
24 resolution.
25 ACTING CHAIRPERSON ARONBERG: Thank you.

1 ACTING COMMISSIONER SHEEHAN: Question. Who is
2 the responsible party?
3 EXECUTIVE OFFICER THAYER: There are a number that
4 are actually named. In the abatement order, a number of
5 them are named. They include --
6 ACTING COMMISSIONER SHEEHAN: Are they shipping
7 companies, or is this also going back to the Navy?
8 MS. SOLMER: There are a number -- there are eight
9 named potentially responsible parties. Two of them are
10 the major shipyards: NASSCO and the former Southwest
11 Marine Shipyards. We always have the Navy; we have the
12 City of San Diego; and we have a number of oil companies
13 and refineries: Chevron, Arco, BP, those kinds of groups.
14 ACTING COMMISSIONER SHEEHAN: And the order -- the
15 abatement order has already been issued. But is it just
16 the enforcement of this? Where are we in this regulatory
17 process?
18 MS. SOLMER: Well, that is the big question.
19 The tentative cleanup abatement order has been
20 issued, but it's been stalled at the Regional Board level.
21 We're now waiting for a technical report, which any time
22 you follow the Regional Board, should be out by the end of
23 the week and another two months. So that is our
24 frustration, that the cleanup abatement order was issued
25 over a year and a half ago.

1 And we're still waiting for that technical support
2 to support those findings. So we think that any action
3 that this Commission can give to let them know that --
4 that this isn't just an academic exercise; there are
5 people, every day, fishing out of the bay.
6 So this means a lot. Thank you.
7 ACTING COMMISSIONER SHEEHAN: I'm happy to move
8 approval of the resolution.
9 ACTING CHAIRPERSON ARONBERG: Thank you,
10 Ms. Sheehan.
11 I'm going to quickly make the remarks the
12 Controller would make.
13 The pollution in the San Diego is harmful across
14 the spectrum. It's destroying the ecosystem. It's
15 harmful to people. As a result, the coastal economy
16 suffers, and that impacts all of San Diego and all of
17 California.
18 We have a $42 billion ocean economy in this state,
19 and it's value is directly tied to water quality. There's
20 more than 50 years of harmful sediment piled on the bottom
21 of the bay, and we can't wait any longer for action
22 because the risks are too great. As Ms. Solmer mentioned,
23 the Regional Water Quality Board's cleanup and abatement
24 order claimed eight parties, identified 885,000 cubic
25 yards of contaminated sediment to be removed. And it even

1 identified the cost. Now it's time for action.
2 This order needs to be final, and it needs to be
3 expedited. And that's what this resolution is asking for.
4 So I think I second the motion. But again, I will
5 second it.
6 All in favor?
7 (Ayes.)
8 ACTING CHAIRPERSON ARONBERG: The motion carries.
9 Moving now back to Item 49, which is a resolution
10 concerning protection of the Klamath River.
11 Staff presentation?
12 EXECUTIVE OFFICER THAYER: Certainly.
13 Historically, Klamath River has been one of the most
14 important salmon streams on the West Coast. Scientists
15 calculate that over a half million salmon come back to
16 that annually -- historically, not nearly that today.
17 Other species, such as steelhead, which have over
18 a million coming to that stream, and lamprey, were
19 abundant. These fish sustained local Native American
20 tribes and became an important part of their culture.
21 After statehood, a commercial fishing industry was
22 established and was dependent on these fish.
23 Over-harvesting by the industry probably initiated the
24 decline of the fish populations, but other factors have
25 become more important today. The most significant are the

1 construction of a series of hydroelectric dams and the
2 diversion of water for agricultural purposes.
3 The low populations of the large fish kill in 2002
4 and controversy over diversions in Oregon have focused
5 attention on restoring the river.
6 There are settlement discussions among the water
7 users and dam owners, other stakeholders, and government
8 entities. Licenses for several of the dams are expiring
9 and requiring removal by the Federal Energy Regulatory
10 Commission.
11 Many have suggested that removal of dams which do
12 not supply a large amount of electricity would be the most
13 effective measure to help us clear the river.
14 Dam removal would make upstream spawning grounds
15 available again, and would result in lower water
16 temperature. One study states that the dam removal would
17 be less expensive than the construction of fish ladders
18 and other alternative measures. The dam removal has been
19 supported by a variety of stakeholders. The Humboldt
20 County Board of Supervisors, State Senator Wesley Chesbro,
21 and others. The Pacific Corp. has indicated that it is
22 not opposed to dam removal if alternative energy supplies
23 were available, as property ownership was concerned two
24 weeks ago. Dam removal on the Klamath was discussed at a
25 meeting with the Ocean Protection Council.

1 As chair of the Commission, the Controller
2 participated in this meeting just two weeks ago. Because
3 fisheries are an important public trust resource, the
4 Controller afterwards asked staff to draft a resolution
5 regarding Klamath.
6 While the official comment period on the dam
7 relicensing has ended, these other settlement discussions
8 are still going forward. So staff believes that adoption
9 of this resolution of this Commission will contribute to
10 that discussion at that meeting.
11 The resolution urges consideration of dam removal
12 and other measures necessary to restore the Klamath River.
13 This concludes the staff presentation.
14 ACTING CHAIRPERSON ARONBERG: Thank you.
15 Ms. Sheehan?
16 ACTING COMMISSIONER SHEEHAN: In -- at courtesy of
17 the Controller, I will move the resolution.
18 ACTING CHAIRPERSON ARONBERG: The controller
19 appreciates that motion.
20 I know what he would say, if he were here, again,
21 is that the problems are well documented. And what's
22 causing those problems is well documented too. It's time
23 that these dams and the damage they are causing are
24 addressed.
25 There's a good deal of agreement here from Trinity

1 County to the California Energy Commission, to the
2 Department of the Interior, and as Mr. Thayer mentioned,
3 even Pacific Corp. doesn't oppose dam removal if certain,
4 the Controller thinks, probably very reasonable conditions
5 are met. So let's get the job done.
6 All in favor?
7 (Ayes.)
8 ACTING CHAIRPERSON ARONBERG: And opposed?
9 Go ahead, Paul.
10 EXECUTIVE OFFICER THAYER: Well, I -- that's fine.
11 But I just wanted to add that Commissioner Sheehan raised
12 a legitimate concern over the public availability of this
13 resolution. And with her guidance, we will do our best to
14 avoid that in the future.
15 ACTING CHAIRPERSON ARONBERG: I probably think
16 that this, you know, is partially my fault, my personal
17 fault. And we will 100 percent make the most effort that
18 we can to have everything available with as much advance
19 notice as possible.
20 ACTING COMMISSIONER SHEEHAN: We have an
21 obligation to be transparent to the public on anything
22 that we're voting on. And I just think people need to
23 have it in front of them.
24 EXECUTIVE OFFICER THAYER: I couldn't agree with
25 you more.

1 ACTING CHAIRPERSON ARONBERG: Just one little
2 note, though, which may allay your concerns a little bit.
3 This issue has been out there for years. And as I
4 mentioned, those other agencies have held hearings, and
5 the issues have been discussed ad nauseam. So there's a
6 great deal of agreement. Otherwise, I would be equally
7 concerned about the public notice. So I think we --
8 Mr. Attorney General, was that vote good enough for you?
9 ASSISTANT ATTORNEY GENERAL HAGER: Yes.
10 ACTING CHAIRPERSON ARONBERG: Okay. Looks like
11 that is the end of the regular calendar. We've got some
12 public commenters here.
13 Bruce Reznik, who is no longer in the room, but
14 maybe someone is here to speak on his behalf.
15 And then Katheryn Rhodes, is she in the room
16 still?
17 And Laura Hunter is no longer in the room.
18 Great. Ms. Rhodes.
19 MS. RHODES: Thank you. Katheryn Rhodes, and I
20 live here in San Diego.
21 What I want to talk about was, there's
22 Alquist-Priolo earthquake fault all along the San Diego
23 Bay.
24 You know, there's the old police headquarters that
25 they actually voted for coastal development, or the Port

1 did, when they knew in their Final EIR that they had to do
2 the whole investigation. They didn't do the fault
3 investigation. But during this meeting today, I heard
4 that they are going to actually do it. So someone came up
5 to me today and told me they are going to do it, so I'm
6 happy about that.
7 But on the Navy Broadway complex, that site is
8 right next to the old police headquarters. That's -- I
9 think there's faults going straight toward there. There
10 is the active Coronado fault, that just started being
11 active, or known to be active in 2001. The Alquist-Priolo
12 was redone in 2003. On Coronado, they just found the
13 active portion of it in 2006.
14 And Manchester, with Perry Dealy there, they are
15 not releasing fault investigation to the city, to CCDC, to
16 the Port, to no one. And what I'm asking you, as part of
17 the state agency, is to see if you could get -- they said
18 they did a fault investigation, and there's nothing there.
19 But if we could have that fault investigation because
20 we're having an appeal to the City of San Diego regarding
21 the EIR. And part of it, mine is, is that San Diego
22 wasn't considered a -- in 1993, San Diego, the Rose Canyon
23 fault zone, is now considered active.
24 This EIR was done in 1990. And because of that,
25 you know, the fault investigation is needed. They are

1 saying the EIR is fine even though the laws have changed.
2 The state laws have changed. The federal laws have
3 changed regarding ports and ships coming into here. So we
4 have so much more parking and so many different issues
5 with this. So anything that you could do to help us get
6 the new EIR as part of the Navy Broadway complex would be
7 great.
8 And anything you could do to see if you could get
9 Manchester, who's a tenant of the port and has port
10 property, here, in San Diego, if you could get them to
11 release the fault investigation that they said they did,
12 for the Navy Broadway complex, and also they could
13 release -- release the lease that they signed with the
14 Navy, a couple weeks ago, so we will actually know what's
15 in that lease, that would be great. If you guys could do
16 anything, that could be wonderful.
17 Myself, since we can't get any information, I'm
18 going to actually pay, with my own money, to get a fault
19 investigation done on Port property. And hopefully, the
20 Port is going to allow me to do that. I still have to get
21 a right-of-entry permit. And so I plan on doing that and
22 doing an investigation in about two weeks.
23 But the Port of San Diego supposedly is not in the
24 downtown special study zone, even though there are so
25 many -- there's a fault going straight here to the

1 public -- Public Trust tidelands property, or whatever you
2 call it. It's going straight to this area, and they are
3 considering that they don't really need fault
4 investigations.
5 So I want to see if somebody could turn it around,
6 in the state level, that says, you guys have to do fault
7 investigations in San Diego, between Laurel Street, that's
8 two blocks down, all the way downtown, just to the
9 downtown special study zone.
10 Thank you.
11 ACTING CHAIRPERSON ARONBERG: Thank you, Ms.
12 Rhodes. Thanks so much for your patience, through our
13 long meeting as well.
14 And I think Mr. Wilkens has something to say about
15 this.
16 MR. WILKENS: Thank you, Madam Chair. I just
17 wanted to clarify two things for you: I'm not taking
18 issue with the speaker's comments, but, one, the Broadway
19 complex is a development that is between the Navy --
20 United States Navy and the proposed developer, who happens
21 to be the Manchester Group, which happens to be a Port
22 tenant.
23 So the -- if you want to think of that, there's
24 two separate Manchesters; okay? There's a Manchester
25 who's the proposed developer of the Broadway Complex and

1 there's a Manchester who has developed the Marriott and
2 the Hyatt, on property. That's just fact one.
3 ACTING COMMISSIONER SHEEHAN: Is it the same
4 person?
5 MR. WILKENS: It's the same company, ma'am. Or
6 least the LLC portion of it.
7 So that's the first thing.
8 Second thing, the old police headquarters
9 property, which is part of a separate port development,
10 Mr. Manchester has nothing to do with that. It's across
11 the street from the Hyatt in one area and it's across the
12 street from the Broadway complex in another.
13 And the speaker's concern at our meeting -- I'm
14 not again taking issue here -- was that the developer of
15 the old police headquarters. It's a historical building
16 that is being adaptively reused, had not done, in her
17 judgment, a sufficient earthquake study. There are some
18 off-line conversations with technical people, including
19 the developers and geotechnical people. I'm not up to
20 speed on that. If she says that people are going to do
21 things, I believe her.
22 And then finally, with regard to the earthquake
23 fault under the Broadway complex again, that's the City of
24 San Diego's Redevelopment Agency's responsibility.
25 And there is, apparently, a difference of opinion

1 between their technical experts and perhaps the speaker.
2 I don't know, and I don't speak for either party. But I
3 just want to kind of parse this so you understand moving
4 parts. From the Port's point of view, and I'm the
5 executive vice president of the Port, we're coming her way
6 in trying to work through it. But we also have a tenant
7 who has adaptive reuse plans in play and is getting advice
8 from the City of San Diego in terms of what these issues
9 may entail or not entail. So it's a long explanation.
10 ACTING CHAIRPERSON ARONBERG: Mr. Thayer has a
11 couple of words.
12 EXECUTIVE OFFICER THAYER: Just real briefly, I
13 don't think we necessarily have any particular expertise
14 in fault lines.
15 If some of these projects are on Port property,
16 and it sounds from Mr. Wilkens like at least most of them
17 are not, then we'll certainly look into this. Otherwise,
18 if there's some other avenue that we can develop for the
19 speaker to pursue, we'll try and provide that information.
20 ACTING CHAIRPERSON ARONBERG: Great. We have the
21 speakers' information, and we'll be in contact with her
22 about that.
23 EXECUTIVE OFFICER THAYER: We have her number
24 here.
25 ACTING CHAIRPERSON ARONBERG: Unless Ms. Hunter

1 returns, our last public speaker is Bruce Reznik.
2 MR. REZNIK: Thanks. I will be brief.
3 My name, again, is Bruce Reznik. I'm from San
4 Diego Coastkeeper.
5 I just wanted to take this opportunity -- and Paul
6 stole a little bit of our thunder -- but to thank the
7 entire Commission, but particularly the two commissioners
8 who this is their last meeting. And unfortunately, they
9 both had to go. I had a chance to speak, at least,
10 briefly, before Mr. Bustamante left.
11 This agency, under the leadership of these two
12 gentlemen, has been the most aggressive and protective
13 that we've ever seen in State Lands. I don't think we can
14 understate the importance of opening up the process,
15 bringing meetings throughout the state.
16 I don't remember going to a State Lands Commission
17 hearing before the leadership of these two gentlemen. The
18 resolutions, there are so many that have already been
19 made. But the ones that particularly the Bay Council
20 Groups had a role in -- the Copper Bay paint, marinas,
21 ballast water, once-through cooling resolution, obviously
22 today, we had sediments and of course the Woodfin decision
23 to further protect our Public Trust lands.
24 So you set a very high bar for State Lands
25 Commission. Hopefully -- I hope actually our next

1 commissioners even go above and beyond.
2 But we just wanted to recognize, on behalf of the
3 Bay Council, which is San Diego Coastkeeper, Environmental
4 Health Coalition, Surfrider, Sierra club, Audubon Society.
5 And the California Coastkeeper Alliance called me and they
6 wanted their name on this too.
7 We just put a plaque together for the outgoing
8 commissioners, so thank you very much for all your effort.
9 ACTING CHAIRPERSON ARONBERG: Thank you,
10 Mr. Reznik. I know that the admiration, at least from
11 Controller Westly is definitely mutual. And I'm sure that
12 Mr. Bustamante would say the same thing.
13 Thank you very much.
14 So that is -- unless there are any other public
15 speakers, that is the end of the regular calendar.
16 We're going to have a very fast closed session.
17 If we could have the room cleared, please.
18 (The Commission recessed into closed
19 session.)
20 (The State Lands Commission meeting
21 adjourned at 5:00 p.m.)
22
23
24
25

CERTIFICATE OF REPORTER

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

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

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

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

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