

COMMISSION MEETING  
STATE OF CALIFORNIA  
LANDS COMMISSION

DEPARTMENT OF HEALTH SERVICES  
1500 CAPITOL AVENUE  
SACRAMENTO, CALIFORNIA

TUESDAY, MARCH 25, 2008

10:00 A.M.

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CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 12277

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. John Chiang, State Controller, Chairperson

Mr. John Garamendi, Lieutenant Governor, represented by  
Mr. Bugsch

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

STAFF

Mr. Mario De Bernardo, Legislative Liaison, staff counsel,

Ms. Barbara Dugal, Chief, Land Management Division

Mr. Curtis L. Fossum, Senior Counsel

Ms. Ms. Mary Hays, Public Land Manager, Land Management  
Division

Mr. Matt Rodriguez, Attorney General's Office

Mr. Paul Thayer, Executive Officer

ALSO PRESENT

Mr. John Asuncion, Blue Whale Sailing School

Mr. Robert Lowes

Ms. Micaela Van Dine, Reysner Law Office

Mr. Michael Wall, NRDC

Mr. Bruce Wolfe, San Francisco Bay Regional Water Quality  
Control Board

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1 PROCEEDINGS

2 CHAIRPERSON CHIANG: Good morning. I'm calling  
3 this meeting of the State Lands Commission to order. All  
4 of the representatives of the Commission are present.

5 I'm John Chiang, the State Controller, and I am  
6 pleased to be joined today by a representative from the  
7 Lieutenant Governor's office and a representative from the  
8 Department of Finance.

9 For the benefit of those in the audience, the  
10 State Lands Commission administers properties owned by the  
11 State as well as its mineral interests.

12 Today, we will hear proposals concerning the  
13 leasing and management of these public properties.

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

16 May I have a motion to approve the minutes?

17 ACTING COMMISSIONER SHEEHAN: I'll move approval  
18 if there are no changes.

19 ACTING COMMISSIONER BUGSCH: Second.

20 CHAIRPERSON CHIANG: We have a motion and a  
21 second. These minutes are unanimously adopted.

22 The next order of a business is the Executive  
23 Officer's report. Paul, can we have that report, please?

24 EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

25 The Executive Officer's report this morning is

1 going to be devoted to an update on the Poseidon  
2 desalination facility and the steps taken by staff to  
3 develop the additional information requested by the  
4 Commission at its October 30th meeting when the Commission  
5 first heard this project.

6           Several of the Commissioners have requested that  
7 we do this to provide a public understanding of where we  
8 are on this. So I have a little detail here. And please  
9 interrupt with questions or wait until the end, whichever  
10 is more convenient.

11           The Commission did hear this on October 30th last  
12 fall. It was a project that would develop a 50 million  
13 gallon per day desalination facility in Carlsbad. The  
14 State Lands Commission postponed approval of the lease  
15 amendment authorizing use of the intake and outfall  
16 structures that are currently used by an existing power  
17 plant. And the Commission directed staff to develop  
18 additional information on two of the issues.

19           First, the desal facility will have the same  
20 impacts as a power plant that uses once recooling although  
21 at a lesser rate than the existing power plant. The  
22 existing power plant is authorized to use 830 million  
23 gallons a day. And the desal facility will use about 304  
24 million gallons per day.

25           The affect though is to cause the destruction in

1 marine eggs and larvae whenever ocean water is taken into  
2 the facility. The State Lands Commission has been working  
3 on this issue for several years, and I think two or three  
4 years ago adopted a resolution urging the phasing out of  
5 cooling the power plants because of their effect on public  
6 resources.

7           Poseidon has submitted a flow plan to the  
8 Regional Water Quality Control Board which outlines  
9 mitigation for this impact. And the Commission has wanted  
10 more specificity about where proposed wetland restoration  
11 would occur, more assurances that Poseidon would carry out  
12 the maintenance and actual restoration and justification  
13 for the restoration and other information.

14           The second issue of concern to the Commission  
15 focused on Poseidon's proposal to make the project carbon  
16 neutral. The day before the Commission hearing, Poseidon  
17 submitted a plan. Poseidon provided a list of categories  
18 of mitigation mechanisms. However, the Commission wanted  
19 more details about how this is going to be done and  
20 verification from staff that the carbon footprint of the  
21 facility would be zero as promised by Poseidon.

22           The Commission at the October meeting indicated  
23 it wanted to consider the details on the lease application  
24 at one of the next couple of meetings. Staff indicated  
25 again at the October meeting that the issues involved were

1 fairly complex and that our calculations of the carbon  
2 footprint varied substantially from the estimations used  
3 by Poseidon in developing their plan.

4           Two weeks after the October 30th meeting, the  
5 Coastal Commission met on November 15th and took up the  
6 same project. It did approve the coastal development,  
7 however it had a number of concerns specifically focused  
8 on the same two concerns that you, the State Lands  
9 Commission, had. As conditions of approval of its permit,  
10 it required that the same additional detail and analysis  
11 regarding marine impacts and mitigation and the greenhouse  
12 gas emissions mitigation plan be developed.

13           These Coastal Commission conditions required that  
14 the additional information and more fully developed plans  
15 be brought back to the Coastal Commission as our own  
16 process before the coastal development permit would be  
17 issued and construction could begin.

18           Poseidon and the Coastal Commission staff then  
19 met and developed and signed a mutually agreed upon Scope  
20 of Work. This document sets out what the information and  
21 analytical needs were and establishes the Coastal  
22 Commission's July meeting as the goal for completion of  
23 the work. This work is ongoing and won't be done until  
24 that July meeting.

25           Concurrently, the State Lands Commission staff at

1 your direction has twice exchanged information requests  
2 and responses with Poseidon. We received the latest  
3 response from Poseidon this month and is still under  
4 review. We've also initiated discussions with the staff  
5 of the Air Resources Board and the Energy Commission who  
6 we regard as the state experts on greenhouse gas emissions  
7 and mitigation. We hope to use those staffs to help us  
8 evaluate the final plan when it's completed.

9           We've also established a similar relationship  
10 with the staff of the San Diego Regional Water Quality  
11 Control Board. The flow plan I mentioned earlier contains  
12 the mitigation measures for the once-through cooling  
13 impacts. The Water Board staff's evaluation of the plan  
14 will be made using its expertise and analysis, and they  
15 work on these issues much more than we do.

16           In February, that Water Board staff sent a letter  
17 to Poseidon indicating again a lot of the same concerns  
18 about the lack of detail in the flow plan, the same  
19 concerns expressed by the other two commissions. Poseidon  
20 responded with an elaborate I think 93 page response. And  
21 the Water Board currently is scheduled to take up matter  
22 at its April 9th meeting. We're hoping that that review  
23 both by the Board staff and by the Board itself will help  
24 us reach a conclusion about the adequacy of that  
25 mitigation.



1           It's also true that I believe this permit  
2 requirements in respect to the final review of the flow  
3 plan has to occur before construction can start there as  
4 well. So it's the same sort of situation we have with the  
5 Coastal Commission in that this additional review has to  
6 occur before any construction can start.

7           Again, comment to all of these agencies has been  
8 a concern over the lack of detail in the plan submitted by  
9 Poseidon. We still have some concern about whether or not  
10 the mitigation plans as we presently understand them  
11 enable us to reach the conclusion that the greenhouse gas  
12 emissions will be zero. Poseidon has submitted a list of  
13 mitigation concepts or mechanisms, but haven't yet  
14 expressed which ones it's going to use. So it's difficult  
15 to come back with a conclusion. But we're working with  
16 the Coastal Commission staff and the staffs of these other  
17 agencies to evaluate what we've got.

18           So our present plans are we're going to continue  
19 that work. Our intention is to bring this back to the  
20 State Lands Commission roughly concurrently with when the  
21 Coastal Commission hears this. That is two benefits.

22           First, this Commission will benefit from all the  
23 information that's being developed in that process. And  
24 we won't be operating with substantially less information  
25 than the Coastal Commission has and there can be better

1 coordination between the two agencies.

2           And the second reason of making it concurrent is  
3 if we acted about the same time, this Commission is not  
4 causing any additional delay to private construction.  
5 They can't go forward without the Coastal Commission  
6 approval or without our lease. And once that approval  
7 occurs from the Coastal Commission, we want to make sure  
8 the lease is granted in a timely manner if it's the desire  
9 of the Commission to approve it at the same time. So we  
10 would be working with the Coastal Commission and your  
11 offices to schedule a meeting so that can be done.

12           I'd like to clear up a couple of misperceptions.  
13 There's been some information being passed around that has  
14 suggested that the Coastal Commission will not re-hear  
15 this matter until the State Lands Commission has granted  
16 the lease. Sort of a catch-22 situation. I personally  
17 spoke with the Coastal Commission staff who assured me  
18 that was not the case. That there's into need for this  
19 Commission to act prior to the Coastal Commission in order  
20 for the Coastal Commission to take up its consideration of  
21 the completion of those two conditions that will come back  
22 to it. So there's no problem that way.

23           There's also been speculation that we would not  
24 bring back this matter to this Commission until the  
25 Coastal Commission and the Water Board had acted. Again,

1 we do not have that position at all as a staff. This  
2 Commission would end up acting a week before or after the  
3 Coastal Commission. None of that is important from our  
4 perspective. We do think though that the Coastal  
5 Commission and the Water Board processes will provide  
6 information that will be helpful to the Lands Commission.

7           So that's the situation. And we'll keep your  
8 offices advised as we move forward on this with any  
9 hiccups along the way, any further delays. And I'd be  
10 glad to answer any questions if there are any concerns.

11           CHAIRPERSON CHIANG: Are there comments or  
12 comments?

13           ACTING COMMISSIONER SHEEHAN: I just want to  
14 clarify that our action is not contingent on either of the  
15 other agencies acting.

16           EXECUTIVE OFFICER THAYER: Correct.

17           ACTING COMMISSIONER SHEEHAN: And the information  
18 as I recall from our hearing were the two issues, the  
19 carbon neutral and the mitigation plan. If we get  
20 information that addresses those issues for us, we could  
21 act -- you know, to our satisfaction you felt addressed  
22 the concerns and you need to have these specifics that  
23 you're looking for we could act --

24           EXECUTIVE OFFICER THAYER: We could potentially  
25 act sooner, although Poseidon has entered into this

1 agreement with the Coastal Commission which basically  
2 indicates they reached an agreement with the Commission  
3 and are working through this process with them the same  
4 sort of things. But, yes, it's absolutely true.

5           ACTING COMMISSIONER SHEEHAN: The same issues  
6 that we have?

7           EXECUTIVE OFFICER THAYER: Yes.

8           ACTING COMMISSIONER SHEEHAN: And are we getting  
9 the same -- they're keeping us and the Coastal Commission  
10 from providing us the same information, keeping us up to  
11 date on the development on these two issues.

12           EXECUTIVE OFFICER THAYER: I believe so. But  
13 whether or not that's true, the Coastal Commission staff  
14 and our staff are exchanging all the information that's  
15 provided by Poseidon. So everyone is up to date with what  
16 each other has done.

17           ACTING COMMISSIONER SHEEHAN: To the extent we  
18 can get information, we can act. But we need some of the  
19 additional questions answered that we had.

20           EXECUTIVE OFFICER THAYER: Yes. There was a  
21 conference call between the various agencies or a number  
22 of the agencies last week and were planning for a very  
23 comprehensive call in early May when all this new  
24 information from Poseidon has been reviewed. We're hoping  
25 to involve Fish and Game in that as well so we can reach

1 some conclusion.

2           ACTING COMMISSIONER SHEEHAN: Perfect. So it  
3 sounded like Water Board is at least on schedule to meet  
4 April 9th.

5           EXECUTIVE OFFICER THAYER: That's correct.

6           ACTING COMMISSIONER SHEEHAN: Thanks

7           CHAIRPERSON CHIANG: Do you have any questions or  
8 comments?

9           ACTING COMMISSIONER BUGSCH: Just a clarification  
10 of the status of where we are at with those two issues. I  
11 know maybe you could just recap what's gone on a little  
12 bit. You did a little bit. But I know we had initially  
13 asked on the mitigation in both the carbon neutrality  
14 issue and they came back to us with an initial response  
15 and then we went back to them. But where are we at in  
16 particular in them answering or addressing those issues  
17 and our staff's comfort level and where we're at?

18           EXECUTIVE OFFICER THAYER: I think we're  
19 narrowing the gap. And so after their first response to  
20 our first set of questions, there are a number of issues  
21 that we think are resolved in terms of us having  
22 sufficient information. We sent a second letter which was  
23 more focused on the remaining issues and received a  
24 response to that. So I think we're seeing progress along  
25 those lines. And hope to complete that work.

1 CHAIRPERSON CHIANG: Very good. Thank you very  
2 much, Paul.

3 The next item is the consent calendar. I call on  
4 our Executive Officer to let us know what items have been  
5 removed from the consent calendar.

6 EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.  
7 There are five matters that will be removed. Four of them  
8 will be heard at an additional future meeting when some  
9 details are resolved. Those are items 14, 29, 44, and 73.

10 In addition we received a letter or fax of  
11 opposition to item 57 and we'll take that off the consent  
12 calendar, but will hear that in the regular calendar  
13 today.

14 CHAIRPERSON CHIANG: So I have two people who  
15 wish to speak on item 58. So we'll take that during the  
16 regular calendar.

17 EXECUTIVE OFFICER THAYER: Yes, sir.

18 CHAIRPERSON CHIANG: And then I have a question  
19 for the representative from the attorney general's office  
20 about item C 85. Are we required to approve this item?

21 ATTORNEY GENERAL RODRIQUEZ: As I understand it,  
22 the State Lands Commission staff has looked at this and  
23 made the findings that are necessary for this matter. So  
24 yes, you don't have any discretion at this point because  
25 of those findings.

1 CHAIRPERSON CHIANG: Thank you.

2 And is there anyone in the audience who wishes to  
3 speak on an item that still remains on the consent  
4 calendar? Okay.

5 Seeing none, if not, the remaining group of  
6 consent items will be taken up as a group for a single  
7 vote. We will now proceed with the vote.

8 Is there a motion?

9 ACTING COMMISSIONER SHEEHAN: I will move  
10 approval of the consent items with the exception of 14,  
11 29, 44, and 73, and 57.

12 ACTING COMMISSIONER BUGSCH: I'll second the  
13 motion.

14 CHAIRPERSON CHIANG: We have a motion and a  
15 second. All those this favor please say aye.

16 (Ayes)

17 CHAIRPERSON CHIANG: All those opposed?

18 Without opposition, the motion passes.

19 The next item is the regular calendar. Should we  
20 proceed with --

21 EXECUTIVE OFFICER THAYER: Now that we've  
22 approved the consent calendar, we can take up 57 now at  
23 this point.

24 CHAIRPERSON CHIANG: Let's bring up the items  
25 that were removed from the consent calendar.

1 EXECUTIVE OFFICER THAYER: This is calendar item  
2 57 and has to do with the extension of some deadlines  
3 actually for compliance with a lease at Courtland. And  
4 Barbara Dugal, who's chief of our Land Management Division  
5 will give a presentation on this.

6 CHAIRPERSON CHIANG: We have two individuals who  
7 have signed up to speak on this item. The first is Shawn  
8 Berrigan from the Reysner Law Office. The second person  
9 is Robert Lewis. If you would please introduce yourself  
10 for the record.

11 LAND MANAGEMENT DIVISION CHIEF DUGAL: Good  
12 morning. My name is Barbara Dugal. I'm the Chief of the  
13 Land Management Commission of the State Lands Commission,  
14 and I'm here today to present information on item number  
15 57.

16 The Commissioners may recall at the December 3rd,  
17 2007, meeting staff presented an item regarding the  
18 issuance of a ten-year general lease commercial use to  
19 Shawn Berrigan and Diane House. It is for the operation  
20 of a commercial marina, as Paul mentioned, in the town of  
21 Cortland.

22 At the meeting, there was a test run provided by  
23 members of the public about the improvements located on  
24 the leased premises which were in need of repair. After  
25 discussion, the Commission did approve staff's



1 recommendation, but they also instructed staff to issue a  
2 Notice of Default of the lease and that the lessees would  
3 have 90 days to cure those defaults.

4           On December the 7th, staff conducted a site  
5 inspection with Mr. Berrigan and his attorney. During the  
6 inspection, Mr. Berrigan indicated that he would be able  
7 to rebuild the docks and to make the repairs to the marina  
8 a within the 90-days period that was provided by the  
9 Commission.

10           On December the 13th, staff issued a Notice of  
11 Default to the lessees. To date, the lessees have and are  
12 in the process of curing those defaults. And first of  
13 all, they have continued to pay the back rent and interest  
14 on a monthly basis. They have removed a wall which  
15 constituted a residential occupation. And they did  
16 acquire some used docks. But once they got those docks,  
17 they determined that they were not going to be appropriate  
18 for use, and they're in the process now of trying to  
19 secure new floating docks.

20           On March the 23rd, the Commission received a fax  
21 from Susan Wilkinson who stated her opposition to  
22 approving the extension of time to hear the defaults.  
23 Ms. Wilkinson's fax contains several allegations that are  
24 difficult to prove. And of course, staff cannot find the  
25 lease in default without proof of those defaults.

1           However, there is no dispute as to who the legal  
2 owner of the property is. It is Shawn Berrigan and Diane  
3 House who are the State's lessees.

4           Staff agrees the improvement are worn down and  
5 need to be repaired and replaced. And I think that we  
6 would all agree that this is not perfect arrangement. But  
7 staff is recommending that the Commission consider giving  
8 the lessees more time to cure those defaults which will  
9 allow the lessees additional time to try to make the  
10 marina a viable business again.

11           And I think there is somebody here to speak on  
12 behalf of the lessees. And thank you.

13           CHAIRPERSON CHIANG: Thank you very kindly.

14           EXECUTIVE OFFICER THAYER: If I could interrupt.  
15 The alarm that we all heard was because somebody had gone  
16 out an emergency exit and that exit was alarmed. But it  
17 doesn't appear to be any real problem.

18           CHAIRPERSON CHIANG: Okay. Next speaker, please.

19           MS. VAN DINE: Hi. I'm Micaela Van Dine, a  
20 representative from the Reysner Law Office. Shawn  
21 Berrigan is our client. I'm here today to represent Shawn  
22 Berrigan and Diane House just to give a little status  
23 update as far as where they are on their improvements.

24           They have been in compliance with the Commission  
25 had requested they do as far as moving the wall back on

1 the residential building that resides on the property. So  
2 that no longer invades into the State Lands' space. That  
3 is Shawn's residence as of today. Actually, he's been  
4 living there ever since he started the improvements on  
5 this and was granted the lease from the Commission.

6 As of right now, he did find investors and  
7 funding in order to buy new docks to replace the old  
8 docks. And at this time, he is waiting for the weather to  
9 basically calm down and no other storms. Because the soil  
10 around the land is very soft, having a crane or any type  
11 of contacting going on at that time with the land the way  
12 it is is just not safe. So with this extension that we're  
13 requesting, we will be able to rip out the old docks and  
14 replace them with the new ones and make sure it's safe for  
15 anybody who's working on that land. Thank you.

16 CHAIRPERSON CHIANG: Thank you very much. And  
17 Robert.

18 MR. LOWES: Robert Lowes. I've been working for  
19 Shawn helping him fit the marina and move that wall back,  
20 as she was stating. And the north docks are actually in  
21 pretty good shape, but he has determined, like she's  
22 saying, he wants all new aluminum docks in there. So I  
23 believe he's trying to get a request in June 1st if  
24 possible. He's already obtained a delivery date of May  
25 1st. And I don't see any opposition. So if there's

1 anything further needed, I'm in support of their extension  
2 also.

3 CHAIRPERSON CHIANG: Thank you very much.

4 Any questions or comments?

5 ACTING COMMISSIONER SHEEHAN: Just a question for  
6 the staff. So now it goes to May 2nd; is that correct?

7 EXECUTIVE OFFICER THAYER: That's the extension  
8 that's written up now. But if we're hearing he can't  
9 reasonably get the docks in until sometime in May --

10 MR. LOWES: Actually, May 1st is the delivery  
11 date he just acquired from the dock company that's going  
12 to install them. And he's asking until June first if it  
13 would be possible for the Commission to do that, please.

14 EXECUTIVE OFFICER THAYER: Staff would be willing  
15 to recommend that date.

16 ACTING COMMISSIONER SHEEHAN: Because are we  
17 meeting between now and then?

18 EXECUTIVE OFFICER THAYER: We don't have a  
19 meeting scheduled.

20 ACTING COMMISSIONER SHEEHAN: So, I mean, it's  
21 up -- but it sounded like it wasn't quite going to meet  
22 the -- and then June 1st and then one way or the other  
23 we'll know what's going to happen in terms of that.

24 So, you know, I'm comfortable for the additional  
25 whatever 30 days, because it sounds like progress is being

1 made on this.

2           ACTING COMMISSIONER BUGSCH: I would just prefer  
3 that we set a deadline that can be met and we don't have  
4 to extend this an additional time. It's come up for an  
5 extension already. That we set something that can be  
6 reasonably accomplished because they've been showing  
7 progress towards meeting the lease, but that that would --  
8 we need assurances from you that that we're going to  
9 set -- if we extend it to June 1st then that you can meet  
10 that deadline and you will not be coming back and asking  
11 for an extension.

12           MR. LOWES: That will give us 30 days.

13           ACTING COMMISSIONER BUGSCH: We want to see  
14 compliances. We'll give you adequate time to do that.

15           MR. LOWES: If you're suggesting you can extend  
16 that beyond that June 1st -- we believe everything can be  
17 in and installed by June 1st. We have a delivery date of  
18 May 1st on the docks. That's to the property. To remove  
19 the old docks and install the other docks, 30 days is  
20 sufficient time.

21           But if you're suggesting that you could extend  
22 that until the 15th of June to ensure that there's not  
23 another meeting about this, it would be nice to extend it  
24 to the 15th of June.

25           ACTING COMMISSIONER BUGSCH: I would prefer to

1 set it to a date where they feel comfortable they can meet  
2 that.

3 MS. VAN DINE: June 15th would be preferred to  
4 make sure we don't have to come back.

5 ACTING COMMISSIONER BUGSCH: And if they come  
6 back and ask for that again, I don't think the Commission  
7 will be very lenient in extending it any further.

8 EXECUTIVE OFFICER THAYER: I think there's some  
9 indication we may be meeting around June 24th if we expect  
10 a meeting before then. But June 24th would give us an  
11 opportunity to come back in a timely way and report back  
12 to the Commission as to whether the June 15th deadline --

13 ACTING COMMISSIONER BUGSCH: We don't want the  
14 dog ate my dock excuse or anything.

15 CHAIRPERSON CHIANG: Is that a motion?

16 ACTING COMMISSIONER BUGSCH: Yeah. I'd move to  
17 extend it to June 15th.

18 ACTING COMMISSIONER SHEEHAN: I'll second.

19 CHAIRPERSON CHIANG: We have a motion and a  
20 seconds.

21 All those in favor say aye.

22 (Ayes)

23 CHAIRPERSON CHIANG: None opposed. The motion  
24 passes. Next item.

25 EXECUTIVE OFFICER THAYER: The next item, Mr.

1 Chair and members of the Commission, is Item 87. This has  
2 to do with an enforcement action. And Mary Hays from the  
3 Land Management Division will give the staff presentation.

4 LAND MANAGER HAYS: Good morning, Mr. Chairman  
5 and members of the Commission. My name is Mary Hays.  
6 I'm a Public Land Manager with the Land Management  
7 Division. I'm here to present information on calendar  
8 item 87.

9 This item asks the Commission to consider staff's  
10 recommendation to give the South Bay Yacht Club an  
11 extension of time to cure certain defaults of their lease.  
12 The lease authorizes the use and maintenance of docking  
13 facilities on Alviso Slough.

14 On September 13th, 2007, the Commission  
15 authorized staff to issue a Notice of Termination and take  
16 steps to terminate the lease to the Yacht Club for failure  
17 to maintain the docking facilities in good repair and to  
18 provide public access to Alviso Slough. At that meeting,  
19 the Commission gave the Yacht Club 90 days to cure the  
20 defaults.

21 In October of 2007, staff performed a site visit  
22 after the Yacht Club submitted a full work plan outlining  
23 a timetable to complete the repairs and what permits would  
24 be needed. At that time, the Yacht Club described their  
25 plan for providing public access and the plan was

1 acceptable to staff.

2           On December the 3rd, 2007, staff met with the  
3 permitting agencies to understand the length of time  
4 needed to complete the permitting process, because it  
5 became clear that the vegetation removal must be performed  
6 before the bulk of the dock repairs could take place. The  
7 vegetation removal will require a Department of Fish and  
8 Game streambed alteration permit. And this permit could  
9 take up to one year to issue because of the environmental  
10 review necessary due to potential impacts to habitat for  
11 protected animal and plant species.

12           On March 20th of 2008, staff performed a site  
13 visit to confirm that the Yacht Club has removed abandoned  
14 and derelict vessels from the leased premises and has made  
15 progress in performing as much work as they can prior to  
16 obtaining the necessary permits.

17           Based on the previously unforeseen time to obtain  
18 these permits, staff is recommending a extension to cure  
19 the default of the lease from December the 13th, 2007, to  
20 December 13th, 2008, which will give the Yacht Club time  
21 to do the repairs once the permits have been issued.

22           Staff and a representative of the South Bay Yacht  
23 Club who is present today are here to answer any questions  
24 you might have. Thank you.

25           CHAIRPERSON CHIANG: Thank you. Any questions or



1 comments?

2           ACTING COMMISSIONER BUGSCH: Do you have any  
3 photos? We saw photos the last time.

4           LAND MANAGER HAYS: Oh, yes, I do. I have some  
5 photos. Actually, I have one set -- I apologize -- of  
6 what was at the meeting in September. But I have a full  
7 set of current photos that were taken on March 20th.

8           During our inspection on the 20th, it appeared  
9 there really hadn't been a considerable more work done on  
10 the repairs than we had seen back in September of '07.  
11 And that was because of the permitting issues. So these  
12 photos show the obvious vegetation that's really impacting  
13 the entire Yacht Club.

14           CHAIRPERSON CHIANG: Questions or comments?

15           We have one individual who has signed up for  
16 public comment, Mr. Asuncion. Thank you very much.

17           MR. ASUNCION: Good morning. It's nice to see  
18 everybody again. Long drive from Santa Barbara this  
19 morning, but I made it.

20           I'm John Asuncion, and I'm the president and  
21 founder of the Blue Whale Sailing School. We're a  
22 charitable educational corporation here in the state for  
23 the last 14 years. The educational foundation was created  
24 by myself and my wife for people of color to give them a  
25 chance to go out on the bay, go sailing in San Francisco,

1 up and down the coast of Santa Barbara. The foundation is  
2 known for all the classic yachts that we've restored over  
3 the years. My yacht, US 49, challenged for the America's  
4 Cup in 1987. We bought that boat for the foundation for  
5 our flagship. The numbers on the boat are 49 after the  
6 state of California. That's one of our major yachts.

7           We just donated another yacht I had to the city  
8 of Seattle for their programs for abused children.

9           I've purchased a piece of property on the Alviso  
10 Slough eight years ago for the general public for public  
11 access. It was a dump site. I can't begin to tell you  
12 what a dump site it was. It was abused for years and  
13 years and years and the previous owner in the South Bay  
14 Yacht Club.

15           I adopted the slough in 2000. And at this time,  
16 we've retrieved 47 tons of garbage out of the South Bay  
17 from the Gull Street Bridge to the Dumbarton Railroad  
18 Bridge. At this time, we've had to witness the derelict  
19 boats, human waste discharged into the bay. I brought a  
20 large photograph, and I hope you get to see it to show  
21 what's really out there. The average person that comes  
22 down and looks out at a building and sees this and weeds,  
23 you're not seeing the whole thing.

24           At this time, the State of California Fish and  
25 Game -- I've been assisting them for a couple of years

1 now -- are doing a State report some of the members, okay,  
2 for killing the different animals, trapping the animals.  
3 We've had beavers come up on our site. Because our  
4 site -- just picture walking into Golden Gate Park.  
5 That's what our park looks like.

6 I'm a retired golf course architect and a  
7 landscape architect, plus I was a contractor. I built  
8 projects from the day it started to the hotel was  
9 completed. So when you take a look at these photographs,  
10 these are the real photographs of this site. So private  
11 citizen like myself had to pull my checkbook out.

12 I have filed a lawsuit against the South Bay  
13 Yacht Club. I'll have them in court Thursday of this week  
14 for our second meeting with the judge and that will go  
15 forward.

16 And I'm appalled for this agency of State Lands  
17 that I sure respect a lot and all their staff is to give  
18 any type of continuance, you know, more time or anything  
19 like this on this project. When you see these  
20 photographs, I think you'll really realize what I've had  
21 to witness and see.

22 But the most important thing is now the  
23 Department of Justice ADA has stepped forward last week  
24 and they have denied our students -- you know, my wife's  
25 program supports the handicap in Santa Clara County for

1 public access. You know, when you come to our site

2 CHAIRPERSON CHIANG: Excuse me. Your time has  
3 elapsed. Do you mind if I give a couple more minutes?  
4 We'll give you a couple more minutes.

5 MR. ASUNCION: You know, I'm not pleading with  
6 you. I don't plead with anybody.

7 But the most important thing is to really digest  
8 what's really going on. You know, this site -- this is  
9 for 100 years this has been going on. A man in  
10 San Francisco is going to go to prison because of his  
11 neglect of a tanker. The Fish and Game is out two weeks  
12 ago and to see these huge oil spills going out into the  
13 bay. It's appalling to me. It is absolutely appalling.

14 And as a taxpayer, I'm not going to stand for it.  
15 So I've stood up and told our attorney, Rocky Ortega, I  
16 don't care what it costs. We're going to close this place  
17 down. Thursday, I will ask the judge for a restraining  
18 order to close this place down. If the State doesn't do  
19 their job, I think I'll have to do the job for the State.

20 Thank you very much for your time. It's very  
21 nice seeing all of you.

22 CHAIRPERSON CHIANG: Thank you very much.

23 Questions or comments?

24 ACTING COMMISSIONER SHEEHAN: Yeah. And I don't  
25 know who I should direct this to in terms of -- as I

1 understand the gentleman, he does not want us to extend  
2 the lease. What happens if we do not do that? I mean, I  
3 guess from a practical perspective, they are taking steps  
4 to begin to clean it up, meeting with Fish and Game. And  
5 it's not as quickly as you want. If we do not extend it,  
6 I'm not sure that's going to get it cleaned up any faster.  
7 At that point, who then becomes the responsible party?

8 MR. ASUNCION: Excuse me. I'll pay for it.  
9 From day one, I stepped up to the Yacht Club and the  
10 county and the attorney in Santa County. I would pay for  
11 the cleanup of the whole site, get every permit, bring in  
12 the different contractors we need to give public access  
13 back to the general public. And they have denied it. You  
14 know, the Yacht Club has denied it. So if you wonder  
15 who's going to pay for it, I'll pay for it.

16 ACTING COMMISSIONER SHEEHAN: Okay. So in terms  
17 of who -- financially, you were responsible. I would have  
18 to ask the lawyers is that's within our jurisdiction.

19 But the other question I have is one of the  
20 issues is getting the proper -- we have to go through Fish  
21 and Game and a couple of other agencies. So even though  
22 we may have someone who's willing to pay for it, we still  
23 have the issue of the process, Fish and Game and some of  
24 the other agencies, and what is that -- because  
25 regardless, somebody has to go through that process.

1            SENIOR COUNSEL FOSSUM: That's right,  
2 Commissioner Sheehan. Basically, what we found is that  
3 everybody desires to clean up the slough. The question is  
4 how do you do it legally. And the Department of Fish and  
5 Game has to issue a streambed alteration for that. That  
6 take times. They have to do environmental studies to  
7 determine what's appropriate under the circumstances. And  
8 we understand that's moving ahead.

9            The water district which is just across the way  
10 from the Yacht Club has a major task of wanting to clean  
11 up the slough. But there's a lot of habitat in there they  
12 have to protect when they're doing that. There may be  
13 mitigation measures and everything else that will be part  
14 of the process. That's why we're asking the Commission to  
15 give them a longer period of time, because they need to  
16 get these permits to do it legally. It's not that they're  
17 not attempting to it, do but they don't want to break the  
18 law and do it.

19            ACTING COMMISSIONER SHEEHAN: Okay. And then I  
20 guess back to the first question when he said he would be  
21 willing to pay for it.

22            SENIOR COUNSEL FOSSUM: I'm sure they would  
23 accept a donation to pay for the removal of that, because  
24 it's probably going to be quite expensive.

25            The other thing is they do have a period to cure.

1 When they're in breach of lease, a number of the terms of  
2 the lease they were in breach of they have a 30-day period  
3 to cure. That's what we're asking the Commission to give  
4 them additional time because they can't get the permits in  
5 30 days to do the work.

6           ACTING COMMISSIONER SHEEHAN: The staff is  
7 requesting, if I understand it here -- although we're sort  
8 of into the year already because of our scheduling. It  
9 would be now nine months; correct? Are we confident that  
10 we're not going to be back here discussing the same issue?  
11 Or how confident or what can we do to make sure? Because  
12 this goes back to previous Commission members since we  
13 first heard from the gentleman.

14           SENIOR COUNSEL FOSSUM: I believe some of the  
15 things that have transpired in the last few weeks give us  
16 much more confidence than we may have had before. The  
17 December date was initially picked by the staff because  
18 the Department of Fish and Game said it may take as much  
19 as a year to complete the studies. It's now believed the  
20 studies may be done in a few more months. And of course  
21 getting the contractors in to do the excavation. We don't  
22 what the environmental treatment will be. It may be  
23 species in there nesting at certain times of the year.  
24 All those issues should come out in the environmental  
25 treatment that's being done to do the project cleaning out

1 the slough.

2 EXECUTIVE OFFICER THAYER: If I could supplement  
3 that answer a little bit. It was somewhat surprising to  
4 us and almost an object lesson to hear how long the BCDC  
5 process was taking and the Fish and Game process was a  
6 necessary component to getting the stuff cleaned up.

7 So we believe it can be done by December, but  
8 we're -- there are a number of different players and  
9 different agencies involved. And we don't know precisely  
10 how long that will take. Certainly we'll monitor the  
11 process. And if it takes longer than that, we'll be  
12 prepared to tell the Commission why that's taking longer,  
13 whether it's been problems on the part of the Yacht Club  
14 or other circumstances that cause the delay. But right  
15 now, we believe that's the length of time we need.

16 ACTING COMMISSIONER SHEEHAN: I guess one of the  
17 issues is are we confident that the Yacht Club owners are  
18 doing everything they can to expedite the process? And  
19 that it's -- you know, Fish and Game has to go through,  
20 BCDC has to go through the process, especially as you say  
21 with the species and some of the issues they have to deal  
22 with. But I would hope we could communicate with those  
23 agencies also to try to --

24 SENIOR COUNSEL FOSSUM: Expedite things. I think  
25 your experience last year was exactly that. And we didn't



1 have so much confidence that they weren't moving it in due  
2 speed. But I think that their coordination now with both  
3 BCDC and Department of Fish and Game and the water  
4 district shows they are in fact joined in the effort now  
5 to try to move it ahead. So we are much more confident.

6           ACTING COMMISSIONER SHEEHAN: Have we had  
7 discussions with those fellow agencies?

8           SENIOR COUNSEL FOSSUM: Absolutely.

9           ACTING COMMISSIONER SHEEHAN: To confirm they are  
10 in fact proceeding as they --

11           SENIOR COUNSEL FOSSUM: Almost daily.

12           ACTING COMMISSIONER SHEEHAN: Okay.

13           ACTING COMMISSIONER BUGSCH: The same thing goes  
14 back to what I had said before in terms of setting a  
15 realistic deadline and then meeting that deadline. I  
16 think at least this Commissioner would like those  
17 deadlines to mean something and not continue to delay.

18           I understand that we're not in full control of  
19 this situation. There's other extenuating circumstances  
20 that could push it back. But again if we're going to set  
21 another deadline, this one was up before. We heard this  
22 last year. And then we're coming back and then extending  
23 it again. If we're continuing this on, I think we need to  
24 set hard deadlines to do that.

25           The other question is if they do not get a

1 permit, first of all, what's the realistic expectation  
2 that Fish and Game is going to grant this permit. And  
3 second, if they do not get the permit, what's the end game  
4 from there?

5           LAND MANAGER HAYS: It's my understanding -- and  
6 I have had conversations with the Department of Fish and  
7 Game -- is that they are looking at -- the Santa Clara  
8 Valley Water District is preparing an environmental  
9 document for the dredging the entire slough, which would  
10 include that area where the Yacht Club is. Their draft  
11 document, the water district has -- and I confirmed it  
12 with the water district. They believe the draft document  
13 will be out in May or early June. And the final would be  
14 adopted in late summer. That would give -- the Fish and  
15 Game would like to use that document in order to issue  
16 their permit. And then it's just a matter of time. They  
17 already have their docs ordered. They have some of their  
18 docks ordered. So they would begin the repairs.

19           They actually would have to do the reed removal  
20 first and then do the repairs. So we felt that -- and  
21 through talking with them that they could make that  
22 through December. Because some of the work they need to  
23 be done is after the nesting season. So it was a good  
24 window.

25           But we have talked with the Yacht Club. And if

1 we find that the environmental document is not moving  
2 along at the same pace that we anticipated, they're going  
3 to then have to do their own studies and go for their --  
4 to get a separate environmental review of just their area.  
5 So we are going to be monitoring them right through the  
6 spring to see where this documents -- when it's going to  
7 be released. And Fish and Game has reviewed this  
8 document, and they feel very comfortable it's going to  
9 cover what they expect.

10           ACTING COMMISSIONER BUGSCH: So they think they  
11 will be able to grant this permit and should be granted by  
12 the middle of the summer?

13           LAND MANAGER HAYS: That's what they told us.

14           ACTING COMMISSIONER BUGSCH: You think if that  
15 takes place that December deadline would be sufficient to  
16 clear the weeds and put in the new docks and get it in  
17 compliance?

18           LAND MANAGER HAYS: That's what my understanding  
19 is talking to the South Bay Yacht Club and the agency.  
20 That should give them enough time.

21           ACTING COMMISSIONER BUGSCH: Again if we go  
22 forward with this, I almost prefer to grant a little bit  
23 more leeway in terms of doing something so that when we  
24 come back I want the deadline to mean a deadline. So we  
25 build into that if they don't agree to it by mid summer,

1 they get to it by the end of the summer -- I don't know  
2 how the nesting season factors into that if that means we  
3 have to delay another year, another six months.

4           But I just want to play out a little bit more  
5 exactly a realistic expectation. So we're doing our dual  
6 diligence as a Commission to allow people with flexibility  
7 for things that may come up that are anticipated or  
8 unanticipated and then setting that. If you can't come  
9 into compliance at that point, then that's the deadline.

10           ACTING COMMISSIONER SHEEHAN: Yeah. I certainly  
11 understand what the Lieutenant Governor's representative  
12 is saying.

13           I would be reluctant to give any additional time  
14 at this point in time. We're going to have at least one  
15 if not two or three meetings between now and the time of  
16 this in December. At that point in time if, you know,  
17 some further delays then we would have the time to act on  
18 an extension. I mean, I would rather stick to the  
19 December date, get updates at our meetings especially if  
20 we meet late June. By then we would know whether the  
21 information, the environmental report is out, and it can  
22 go to Fish and Game, or at least the preliminary one in  
23 terms of that. I mean, my instinct would be to stick with  
24 the date.

25           And then what other options do we have in terms

1 of other types of monitoring penalties on the Yacht Club  
2 if they don't meet the December 7th date or December --  
3 whatever it is. So I realize we're limited in what we can  
4 do in that regard. But to put a date and to have them  
5 shoot for that target.

6 I'm reluctant to push it back at this point in  
7 time, because as I say, I guess I'm the one Cindy, when  
8 she worked -- we've heard this. And I think the  
9 30 days -- I think we all realize 30 days was not  
10 sufficient to actually fix it all. But I think it was,  
11 all right, we're serious about doing something about this.

12 I think the goal is to get it cleaned up, you  
13 know. And that's why if we don't do it, that doesn't  
14 solve the problem that you have. I'm not sure even if  
15 you're willing to step up for the dollars and all that  
16 it's not going to actually get it cleaned. I'm trying to  
17 keep my eye on how do you get the whole thing cleaned up  
18 and fixed.

19 So I would go with the staff recommendation now.  
20 I think at our next meeting if we could have an update,  
21 you know, and get the report from BCDC as well as the  
22 water district and Fish and Game as to where they are in  
23 the process and where they are on the schedule. And then  
24 as we go through the summer and fall, we can decide what  
25 else would be done. But I would put that date out there

1 and tell them we expect that one to be met. So that would  
2 be my only observation. Because I think we always have  
3 the time to do that. But if you move it out now, you're  
4 just prolonging so --

5           ACTING COMMISSIONER BUGSCH: I'm okay with that.  
6 I mean, if we don't have a clear idea of what we're doing  
7 in general.

8           I just want to make sure that we're moving in  
9 that direction, setting deadlines and making them.

10           SENIOR COUNSEL FOSSUM: If they're not to the  
11 complete the work this fall, basically, then it's probably  
12 going to be until the following August until they can  
13 complete the work or start the work again because of  
14 construction windows dealing with working in the slough  
15 and habitat impacts. So if they miss it this --

16           ACTING COMMISSIONER BUGSCH: Go ahead. Repeat  
17 that again.

18           SENIOR COUNSEL FOSSUM: There are certain  
19 construction windows when they're dealing in the wetlands  
20 along the slough. The way this is phased is obviously  
21 they want to dredge, remove the vegetation, dredge it out,  
22 clean it up, and then bring in the docks.

23           There's certain construction windows they are  
24 allowed under Fish and Wildlife and Fish and Game permits  
25 to work within because of habitat. There could be

1 spawning species. There could be nesting species and  
2 different things like that. So, you know, if you wanted  
3 to give them six months probably it might not do any good  
4 at all, because they may not be able to actually do the  
5 work.

6           ACTING COMMISSIONER BUGSCH: There's certain  
7 windows for construction. If they miss this window, the  
8 next opportunity would be next fall.

9           SENIOR COUNSEL FOSSUM: That's what I'm told.

10           ACTING COMMISSIONER BUGSCH: Can I -- one more  
11 quick comment. I'm definitely in support of working with  
12 the lessees to try to do that. I'm not advocating that we  
13 move forward with the legal process or anything like that  
14 and to move them out. But I think that's always the best  
15 way for us to do that.

16           ACTING COMMISSIONER SHEEHAN: What can we do to  
17 expedite the process so that we could do the work this  
18 year? Is there anything this Commission can do or the  
19 staff can do so we're not into, you know, a nine and  
20 twelve month delay?

21           SENIOR COUNSEL FOSSUM: I think we have been  
22 encouraging the other agencies, BCDC and Fish and Game and  
23 the water districts, to all work together so that the  
24 project can proceed this summer.

25           ACTING COMMISSIONER SHEEHAN: Because certainly,

1 you know, Fish and Game and BCDC are State agencies. And  
2 I think we can communicate with them, you know. And if  
3 so, go up through the agency to incur. The water district  
4 obviously is a little different. But if there is any way  
5 we can impart to them the importance of this and trying to  
6 get it done this year, I would encourage us to do that.

7 EXECUTIVE OFFICER THAYER: We will do that. And  
8 we did have a meeting or telephonic meeting with some of  
9 these agencies in December, and that really highlighted a  
10 lot of the problems that we saw. And I think in the long  
11 run, we're going to end up being a facilitator here  
12 between the yacht club and these other agencies that will  
13 involve both sides.

14 CHAIRPERSON CHIANG: Paul, do you have anything  
15 else to add?

16 EXECUTIVE OFFICER THAYER: No. To conclude,  
17 staff's -- number one, we want to see this place cleaned  
18 up. And we think that Mr. Asuncion has correctly  
19 identified a number of problems that are existing out  
20 there. I know he wants things to move at a faster pace,  
21 and we would like to have them move faster as well.

22 However, we also believe that this permitting  
23 process, once we dug into it, is causing the delays and  
24 resulting in them not being able to meet the original  
25 deadline. And this new deadline is a reasonable



1 approximation of when we think that these improvements can  
2 be made.

3 MR. ASUNCION: Can I say one more thing?

4 The agencies -- number one, BCDC, didn't do their  
5 Job. Santa Clara Valley Water District, this sits under  
6 their nose. One of the Chairperson, Richard Santos, is a  
7 member of the yacht club. He can look out the building  
8 every day, and he didn't do his diligent work as a  
9 representative of the taxpayers. You know, our  
10 representatives in Mountain View, Sally Lieber's office,  
11 has failed all the taxpayers, okay, of that county and who  
12 she represents and to support this yacht club over the  
13 years.

14 And this has been going on for 100 years okay. I  
15 just came onto the scene eight years ago when I purchased  
16 this property and then donated it to our foundation for  
17 public access.

18 So the bigger picture is here let's give them  
19 another year. Let's give them another year. Let's give  
20 them another year. Not one of these individuals go out  
21 and pick up any weeds or trash out of the bay. When I'm  
22 up here every other week, I'm in my boots. I'm in the  
23 water. All of the volunteers are picking up garbage. We  
24 are doing our diligent work. But I'm not trying to tell  
25 anybody how to clean their house. But they're next door

1 to me, I want them to clean their house. And I'm going to  
2 be to guy that's going to stand up and bark and yell and  
3 to make them clean their place up.

4 Santa Clara Valley Water District are a bunch of  
5 buffoons. That's the only word to use. I have a lawsuit  
6 with them with the South Bay Yacht Club. And their  
7 attorney's here. They're part of this lawsuit, because  
8 this is a public nuisance. They have put the general  
9 public, the businesses, and the residents in harm's way  
10 because of fires. The agencies of the city of San Jose  
11 fire department cited State Lands plus the yacht club,  
12 because of this derelict wasteland that's there. And it's  
13 been there. And I hope they clean it up.

14 But what I'm trying to do is they are responsible  
15 for the cleanup. They are not going to piggyback up on  
16 Fish and Game's permit. And that's going to be their  
17 savior.

18 You know, Ms. Hays is making a statement they're  
19 working with Fish and Game. She does not know there's  
20 another investigation and another division what has been  
21 going on at this yacht club. So I think Ms. Hays better  
22 make a call today and get ahold of some of the officers  
23 that we've been transporting out into San Francisco Bay  
24 for the last two years.

25 So I thank you for your time. And I know you're

1 going to do the right thing. And the most important thing  
2 is for all of the taxpayers of California is to clean the  
3 place up. And the people that have the lease stand up and  
4 do it. Get out there and clean it up. The contractor  
5 they had abandoned the place for two months. There are  
6 sunken boats as we speak right now in that slough at the  
7 State Lands' property. There is photographs there. I  
8 don't any anybody really looked at those photographs.  
9 Okay. That's the most important thing.

10 Thank you very much.

11 CHAIRPERSON CHIANG: Thank you.

12 Is there a motion?

13 ACTING COMMISSIONER SHEEHAN: I'll move staff  
14 recommendation.

15 CHAIRPERSON CHIANG: We have a motion of staff  
16 recommendation.

17 ACTING COMMISSIONER SHEEHAN: I would like to  
18 though emphasize that we'd like regular updates as part of  
19 that motion would be helpful.

20 EXECUTIVE OFFICER THAYER: We'll make that part  
21 of the OE report, routine outstanding enforcement action.

22 ACTING COMMISSIONER BUGSCH: Second

23 CHAIRPERSON CHIANG: There is a second. All  
24 those in favor say aye.

25 (Ayes)

1 CHAIRPERSON CHIANG: None opposed. Motion  
2 passes.

3 Next item, please.

4 EXECUTIVE OFFICER THAYER: The next item involves  
5 the Suisun Bay Mothball Fleet. The Lieutenant Governor's  
6 office in particular had asked for a briefing on the  
7 situation down there. We also have a closed session item  
8 about this as well.

9 But Mario De Bernardo of our staff has invited  
10 several different agencies to come and testify. There's  
11 been some scheduling conflicts that reduced the  
12 participation some. We still have representatives from  
13 the Regional Water Quality Control Board and NRDC who has  
14 filed a lawsuit against the federal government for some of  
15 the contamination that's alleged to have occurred from the  
16 ships.

17 But opening this briefing will be Barbara Dugal  
18 giving a brief background.

19 LEGISLATIVE LIAISON DE BERNARDO: Can I quickly  
20 say something, Commissioners? We invited MARAD to  
21 participate as well as NOAA who will be conducting a study  
22 on the contaminated sediments in the Suisun Bay. They  
23 both couldn't make it. So as part of -- NOAA has conveyed  
24 some information to me. And as part of my report, I will  
25 let you know about that. But I wanted to let you know the

1 federal agencies were also invited.

2 CHAIRPERSON CHIANG: Can you introduce yourself  
3 for the record?

4 LEGISLATIVE LIAISON DE BERNARDO: Mario De  
5 Bernardo, Legislative Liaison, staff counsel, for State  
6 Lands.

7 CHAIRPERSON CHIANG: Thank you very much.

8 LAND MANAGEMENT DIVISION CHIEF DUGAL: Good  
9 morning, again, Mr. Chair and Commissioners.

10 For the record, my name is Barbara Dugal, and I'm  
11 Chief of Land Management Division. And I'm going to give  
12 you a brief overview of item number 88. And it regards  
13 the Mothball fleet down at Suisun Bay.

14 The US Maritime Administration, or MARAD, which  
15 is an office within the Department of Transportation, has  
16 been using Suisun Bay to station its reserve fleet since  
17 1946. However, it was not until August of 1995 that a 25  
18 year lease between MARAD and the Commission was entered  
19 into. The lease authorizes several things.

20 First, it authorizes the placement of the ships  
21 in the bay.

22 Second, it authorizes a 1,400 foot long pier and  
23 improvements around the pier that are used to maintain the  
24 fleet.

25 At one point, the original fleet contained over

1 500 vessels. However, today, the number of ships in  
2 Suisun Bay is less than approximately 80 vessels. The  
3 majority of these vessels are classified by MARAD as being  
4 non-retention vessels. What that means is they're  
5 non-operational and will likely be scrapped in the future.

6 In February of 2007, an assessment was  
7 commissioned by MARAD. And that assessment indicates the  
8 hulls of the vessels in the fleet may have already lost as  
9 much as 19 tons of heavy metals, cooper, led and zinc.

10 In October of 2007, the San Francisco Regional  
11 Water Quality Control Board sent a letter to MARAD  
12 requiring the preparation of submittal of a technical  
13 report in the form of an impacted sediment investigation  
14 work plan. And that plan was to be provided by February  
15 first of 2008.

16 In November of 2007, the Commission sent a letter  
17 to MARAD requesting pursuant to terms of the lease that  
18 the same report that was required and requested by the  
19 Regional Board be provided to the Commission.

20 In January of this year, MARAD responded to the  
21 Commission's November letter and advised rather than  
22 conducting the independent site assessment, that MARAD was  
23 going to defer the study that would be conducted by NOAA,  
24 which has been authorized by Congress.

25 Staff understands that the NOAA study is in the

1 preliminary stages of development and that the study could  
2 take up to four years to complete.

3           On March 18th, Commission staff advised MARAD  
4 that while we hope that we will be able to use the NOAA  
5 study and it will be comprehensive in nature and staff  
6 will be reviewing it and providing comments as the study  
7 progresses. The study does not relieve MARAD of its legal  
8 responsibilities on the lease.

9           Staff also advised MARAD it has a continued  
10 obligation under the lease to prevent discharges of  
11 hazardous substances, waste, and other materials into  
12 Suisun Bay. And it must take all necessary steps to  
13 comply with federal, state, and local laws and  
14 regulations, all activities associated with the  
15 management, maintenance, removal, and disposal of the  
16 fleet in Suisun Bay.

17           I'd like to introduce Mario who will be giving an  
18 overview of the NOAA report and discussing some  
19 legislative issues associated with the fleet.

20           ACTING COMMISSIONER SHEEHAN: The lease? They  
21 have a lease from us that we got in 1996?

22           LAND MANAGEMENT DIVISION CHIEF DUGAL: 1995.

23           ACTING COMMISSIONER SHEEHAN: And the lease is  
24 for how long?

25           LAND MANAGEMENT DIVISION CHIEF DUGAL:

1 Twenty-five years.

2           ACTING COMMISSIONER SHEEHAN: And in terms of --  
3 perhaps this is maybe -- I should direct some of these in  
4 terms of our enforcement mechanisms for some of the  
5 requirements that they're supposed to be carrying out as  
6 part of that is what? What? Can we give them a 30 days'  
7 notice?

8           EXECUTIVE OFFICER THAYER: There are a variety  
9 of --

10           ACTING COMMISSIONER SHEEHAN: A cure.

11           EXECUTIVE OFFICER THAYER: There are a variety of  
12 options like that. And I think we intend to take those up  
13 in closed session since a lot of them --

14           ACTING COMMISSIONER SHEEHAN: That addresses  
15 that.

16           LEGISLATIVE LIAISON DE BERNARDO: So I'll be  
17 talking about the legislative approach that State Lands  
18 staff has taken to address the issue of the Mothball fleet  
19 in Suisun Bay.

20           There are three major legislative goals with  
21 addressing this issue. The first one is the goal of  
22 removing the ships. Second one is the goal of cleaning up  
23 the sediment. And the third goal is preventing additional  
24 paint discharges into the bay while we await for ship  
25 disposal.



1           Talking about the first point, ship removal. As  
2 you may know, in 1994, congress passed law requiring MARAD  
3 to dispose of the ships federally-owned obsolete vessels  
4 including the ships in the Suisun Bay by 1999. In 1997,  
5 Congress extended the deadline to 2001.

6           In 2000, congress extended the deadline to 2006.  
7 2006 has come and gone, and the ships are still there. In  
8 January of this year, the Defense Authorization Act,  
9 Senator Boxer was able to get language into the bill that  
10 created a vessel disposal program. And the program  
11 creates a working group. And the working group is to  
12 provide a plan to Congress sometime in May or June  
13 outlining the plan to dispose federally-owned obsolete  
14 vessels according to federal and state environmental law.

15           The enabling statute for the working group  
16 allowed the working group to invite interested state  
17 environmental agencies to participate. We have on several  
18 different levels requested that the working group include  
19 agencies from California to participate, and our requests  
20 have been rejected.

21           I'm currently working with Senator Boxer,  
22 Congresswoman Tauscher, Congressman George Miller's  
23 offices to lobby the working group for our participation.  
24 And I have a phone call with Boxer's office this afternoon  
25 on this issue. Hopefully, the plan will lead to either

1 the agency's disposing of the vessels or Congress passing  
2 law that requires them to comply with the plan. So that's  
3 ship removal.

4           The second goal legislatively is the cleanup of  
5 the sediment. In order to conduct a cleanup, we need to  
6 know the extent of the contamination in the Suisun Bay.  
7 As Barbara said, we asked MARAD to provide a site  
8 assessment, and they deferred to a NOAA study. The NOAA  
9 study was authorized by legislation in December. Again,  
10 pushed by Senator Boxer's office as well as some of the  
11 other Congressional delegation from California. The law  
12 gives \$15,500,000 to conduct a study this year on the  
13 contaminated sediments in the Suisun Bay.

14           NOAA said they couldn't make it today. But I  
15 wanted you to know they wanted me to tell you they are  
16 trying to conduct a scientific study on this. I think  
17 they've been very professional about this and very  
18 transparent. They've already met with State agencies such  
19 as State Lands, Water Board, DTSC, to discuss the goals of  
20 this study. They met with NGOs, and they're meeting with  
21 MARAD this week to discuss goals. They've also met with  
22 several State agencies to discuss the technical aspect of  
23 the plan.

24           They hope next month to put together a draft of a  
25 sampling plan, which they would then implement in the

1 field this summer and then do lab analysis this summer.  
2 In September they plan on releasing data to the State  
3 agencies, MARAD, and I think some of the NGOs. They've  
4 promised us they will submit the data to us simultaneously  
5 as they submit it to MARAD. So transparency, once again,  
6 is one of their objectives. They plan on receiving  
7 comments from State agencies and in February publishing a  
8 final report.

9           Now, this \$1.5 million going into the study this  
10 year is only part of a comprehensive plan to determine the  
11 contamination of the sediment in the Suisun Bay. NOAA has  
12 estimated a comprehensive plan could take up to four years  
13 and cost \$8 million. And State Lands staff is working  
14 with the relevant Congressional offices to propose that to  
15 draft legislation that will include additional funding to  
16 NOAA so they can continue their study.

17           Our goal then is to take the study once it's  
18 done, and hopefully there will be legislation or the  
19 agencies will act on that information and help clean up  
20 the sediment in the bay.

21           And then the third goal is the ongoing discharge  
22 of paint while the vessels are waiting for removal. As  
23 Barbara said, there's been about 17,000 kilograms,  
24 anywhere from 17 to 19 tons, however that is converted, of  
25 metals that have been already discharged into the bay from

1 these ships. And these metals were contained in the  
2 paint.

3           There's according to a study Commissioned by  
4 MARAD, there's 55,000 kilograms of these types of metals  
5 still on the ships. And so we are going to discuss with  
6 the legislators and the federal government possible ways  
7 to address this through legislation.

8           The Water Board has been one of the agencies that  
9 has been most concerned about this ongoing paint  
10 discharge. So I will segue now into introducing the Water  
11 Board. Bruce Wolfe is here.

12           MR. WOLFE: Good morning. Thank you, Mario. I'm  
13 Bruce Wolfe, the executive officer of the San Francisco  
14 Bay Water Quality Control Board.

15           The Mothball fleet is a significant concern for  
16 us, and we appreciate the opportunity to work with State  
17 Lands staff on this as well as other State agencies been  
18 involved, Department of Toxic Substances Control. To a  
19 certain degree, I'd say it's been a great combined staff  
20 effort we've been able to speak largely with one voice to  
21 the maritime administration. Unfortunately they're not  
22 hearing that one voice clearly.

23           It's useful to note that not only are we the  
24 Regional Board for the San Francisco Bay, Suisun Bay area  
25 that addresses all water quality aspects pursuant to the

1 State Water Code, we are also implementing the federal  
2 Clean Water Act as delegated from U.S. EPA. And this is  
3 significant to note, because at times the Maritime  
4 Administration has said that everything would be fine if  
5 we didn't have to comply with state of California  
6 requirements. Actually, we're implementing federal  
7 requirements. And it's confusing to us why this is an  
8 issue in California and not elsewhere, the two other  
9 Mothball fleets around the country.

10           Nonetheless, as Mario stated, there are three  
11 significant areas of water quality concern that we are  
12 working and have been coordinating with both State Lands  
13 staff and DTSC staff. That is the cleaning of the ships  
14 in the bay uncontrolled. We first became aware of that in  
15 the summer of 2006. Unfortunately, it had to come through  
16 the press to be aware of that.

17           We had then contacted Maritime Administration  
18 saying we needed to get plan and monitoring proposals for  
19 how they're going to control the pollutants that were  
20 coming off the cleaning of the ship holes. And since  
21 October 2006, no ships have been cleaned in the bay.  
22 Unfortunately, we still do not have a satisfactory plan  
23 for cleaning the ships. And we are optimistic that a  
24 proposal by a private entity to reopen the Mare Island dry  
25 docks for the purpose of dismantling ships here rather

1 than having to have them towed through the Panama Canal to  
2 Brownsville, Texas, that that will be an opportunity to  
3 get many of these ships disposed.

4           However, because there's over 50 ships and only a  
5 couple of dry docks, it's clear the ships are going to be  
6 out there for a long time. One of our concerns is the  
7 historic level of pollutants that have come off these  
8 ships. The February 2007 report indicated that there's  
9 multiple tons of materials that have come off these ships.

10           And then the ongoing discharge of material from  
11 the ships. And that is something that we could regulate  
12 under the federal Clean Water Act. We would essentially  
13 say no discharge is allowed of those type of materials.  
14 We are currently implementing cleanup plans for materials  
15 such as mercury and PCBs in the bay, and the material that  
16 comes off these ships is much more than anything allowed  
17 in those cleanup plans.

18           So it's clear that not only do we have  
19 environmental problem, but we have many parties that are  
20 concerned that they are being closely regulated when the  
21 Maritime Administration and these ships is not. If it was  
22 anybody but a federal agency at this point, we would have  
23 brought enforcement actions and fines and penalties  
24 against the party for the non-compliance. The Maritime  
25 Administration remains in non-compliance, and we are

1 proceeding to get representation from the attorney  
2 general's office to consider our enforcement actions.

3           And we have, with State Lands staff and legal  
4 representatives of State Lands, signed a confidentiality  
5 agreement to be able to talk about the enforcement  
6 approaches. Because we recognize that it's probably going  
7 to be inefficient for all of the agencies involved to  
8 initiate certain enforcement actions when it's been  
9 difficult to get any response or any satisfactory response  
10 out of Maritime Administration to this point.

11           So I'll stop my discussion at this point. Be  
12 happy to answer any questions. But I wanted to make sure  
13 it was clear that this is significant enough of an issue  
14 to us that I felt it important that I come up today to  
15 address you and provide an opportunity to discuss it  
16 further with you.

17           CHAIRPERSON CHIANG: Thank you, Bruce.

18           We have Michael Wall.

19           MR. WALL: Good morning. It's a pleasure to be  
20 here. I appreciate the opportunity to address the  
21 Commission.

22           My name is Michael Wall. I'm a senior attorney  
23 with the Natural Resources Defense Council based in  
24 San Francisco where I lead our litigation team. NRDC has  
25 more than 100,000 members in California and offices in Los

1 Angeles and San Francisco as well as elsewhere throughout  
2 the country.

3           In October of last year, NRDC along with Bay  
4 Keeper sued the Maritime Administration in federal court  
5 over this ghost fleet. We brought that suit because MARAD  
6 had shown no intention of complying with existing federal  
7 law. And I'd like to briefly outline the problems that we  
8 see that we hope to address through the suit and how we  
9 expect it to proceed.

10           I'd also like to emphasize I believe our  
11 interests are largely consistent with those of the  
12 Commission and the Regional Board and we have had ongoing  
13 discussions with the staff.

14           As you've heard, MARAD has these more than 50  
15 obsolete degrading ships anchored in Suisun Bay. I don't  
16 know if you've seen the pictures, but some of these ships  
17 have large pieces flaking off the hulls. MARAD did an  
18 analysis which you heard about last February that  
19 concluded that at least 19 tons of heavy metals had come  
20 off of 40 of those ships. But in reality, the amount of  
21 metals that came off was greater than that. At one point,  
22 this fleet had 500 ships. And many of those that have  
23 been removed were in very seriously degraded condition.

24           The metals at issue are your typical range of  
25 toxic heavy metals, many of which are already impairing



1 the San Francisco Bay and Suisun Bay, which the State has  
2 formally designate as being impaired for metals. And the  
3 quantities of metals that are known to have come off the  
4 ships are, as the Regional Board indicated, orders of  
5 magnitude above the levels of pollutants that major  
6 industrial dischargers in the bay area are permitted to  
7 discharge under the Clean Water Act. So this is a very  
8 significant source of metals contamination.

9           Now, this bay is contaminated from a number of  
10 sources historically, and the particular spot in Suisun  
11 Bay where the vessels are anchored is subject to tidal  
12 action and wind scouring. So it may be difficult to pin  
13 down precisely where all the metal has gone. But there is  
14 no doubt it has come off. It has gone into the bay. The  
15 bay is impaired. There are fish advisories advising  
16 people not to consume many of the fish in the bay, and  
17 that this is an ecosystem, as you are aware, that is in  
18 steep decline.

19           Now, over the years, Congress has enacted a  
20 number of laws requiring MARAD to address this problem.  
21 And MARAD has systematically ignored those federal laws.  
22 We are pleased the Congress is looking at this once again  
23 but have lost confidence in MARAD's willingness to comply  
24 with either federal law or the explicit orders of the  
25 Regional Board, and that's why we filed suit.

1           Our suit has three basic components. First, we  
2 sued under the federal Clean Water Act, because these  
3 ships are discharging pollutants into the bay without a  
4 permit. That is illegal. Every other discharger in the  
5 bay that wants to discharge pollutants has to go in and  
6 get a rigorous permit. These guys don't have one. They  
7 never applied for one. It's illegal.

8           Second, essentially what MARAD has done is it's  
9 like we woke up in 2006 and realized some obscure federal  
10 agency was floating rusting barrels of hazardous waste in  
11 Suisun Bay and leaving it there until it figured out  
12 perhaps decades from now what it intended to do about it.  
13 No private party would be allowed to do that. Storage and  
14 disposal of hazardous waste are strictly regulated under  
15 California's hazardous waste laws and under the Federal  
16 Resource Conservation Recovery Act. And MARAD has never  
17 applied for a permit, doesn't have a permit to do that.  
18 So we brought an enforcement action under that as well.

19           We also have a NEPA claim because MARAD has done  
20 no environmental analysis including on plan it developed a  
21 come of years ago that was supposed to provide for the  
22 disposal of these ships, but instead indicates MARAD  
23 intends to maintain a fleet of ships perhaps as many of 50  
24 of them indefinitely.

25           Now, our lawsuit is brought under the citizens

1 provision of these statutes. Under RCRA, that allows us  
2 to seek civil penalties from MARAD. Under both RCRA and  
3 the Clean Water Act and NEPA we can seek an injunction  
4 from a federal court. And our hope is that a federal  
5 court will have more persuasive power than Congress has  
6 had or the Regional Board or over government regulators  
7 have had to date.

8           The nature of litigation is that it's sometimes  
9 slow. If the present court schedule sticks, we would have  
10 a trial in the summer of 2009. Probably with some motions  
11 before that. We are optimistic that because the facts in  
12 this case -- the relevant facts really aren't in dispute,  
13 we may be able to resolve this case well in advance of  
14 that. But we can't guarantee if it's going to happen.

15           And if these statutes are complied with, the  
16 Clean Water Act and the Resource Conservation Recovery  
17 Act, they don't themselves explicitly call for disposal of  
18 the ships. But in our view, there's no way that MARAD  
19 could comply with these statutes other than taking the  
20 ships out of Suisun Bay and properly disposing of them.  
21 And we look forward to continuing to work with the  
22 Commission, the staff, and the Regional Board staff and  
23 hope that you'll cooperate in that endeavor as the land  
24 owner.

25           I'm available to answer any questions. Thank you

1 for the opportunity to speak.

2 CHAIRPERSON CHIANG: Thank you very much.

3 Comments?

4 ACTING COMMISSIONER BUGSCH: Yeah. First of all,  
5 I'd just like to thank the staff and thank NRDC and the  
6 Water Board for speaking on this issue. The Lieutenant  
7 Governor thinks it's very important. And he asked that  
8 the panel be held to shine a little more light on this  
9 issue.

10 Specifically, I think the delta we all know how  
11 important it is. We're finding out more daily how  
12 important it is to the state and its future and doesn't  
13 need additional barriers such as this.

14 And I want to encourage us to continue to, as  
15 we're doing it -- I think we're doing a good job of this  
16 -- continuing to leverage our relationships with these  
17 various agencies to put pressure. I mean, kind of the  
18 same thing that Anne was saying. We all wanted it cleaned  
19 up and everything, the other issue. We want to do it in a  
20 constructive manner and to build those partnerships, and I  
21 think we're moving in the right direction. So I just want  
22 to complement everybody on that. And us continue to shed  
23 light on this and put pressure on the federal government,  
24 because as hard as it may be to get the South Bay Yacht  
25 Club cleaned up or whatever, to get the federal government

1 to move sometimes can be more difficult.

2 I just had one other question regarding the ship  
3 removal. And one of the things that you were advocating,  
4 Mario, was that we ask our -- the other partner would be  
5 the federal legislators which we're also using. But you  
6 discussed we're asking them and other people to have State  
7 Lands be part of the vessel disposal program, I think,  
8 working group. Is there any other things or any other  
9 ways that we can kind of push forward with to leverage or  
10 different ideas that we can do to kind of move forward  
11 with the ship removal aspect? I know this is a difficult  
12 thing we're pushing along. Maybe the Water Board may have  
13 some comments on it as well.

14 LEGISLATIVE LIAISON DE BERNARDO: Well, the  
15 working group seems like a good idea in that they are  
16 finally -- I mean, they are actually meeting and they do  
17 have to report to a number of committees 90 days from  
18 enactment of the law, which was January 28th. They have  
19 to comply with the federal and state environmental law in  
20 their plan. So we were trying to get on the working group  
21 to give the state environmental law perspective to the  
22 situation. Whether or not they actually invite us is up  
23 in the air. But we can certainly provide the members of  
24 Congress that are on these committees a report stating the  
25 State law, stating any sort of recommendation we have, and

1 persuading them in that way to move forward with the  
2 legislation.

3 I'm not sure if that addresses your question.

4 ACTING COMMISSIONER BUGSCH: That's fine.

5 The other question was just in terms of you  
6 mentioned that they would be there for quite a while. And  
7 one of the options may be in sort of trucking them from  
8 the Panama Canal to Texas to try to dismantle them  
9 locally. What is the realistic nature of that actually  
10 being an option?

11 MR. WOLFE: That's a realistic option. The  
12 opportunity is real there at Mare Island, because the dry  
13 docks do exist. There is silt in front of the dry docks.  
14 The proponents of that are pursuing permitting through us  
15 for the permit federal permit. They're also pursuing  
16 permits to remove the sediment. Lennar Corporation owns  
17 much of that land, and they need to work out a lease  
18 arrangement with these parties. We're trying to see what  
19 are -- if there are impediments in there and is there  
20 anything the State can do to remove the pediments.

21 So that's something we're going to continue to  
22 push because this would be a very appropriate helpful  
23 partial solution. And I say partial in the effect that  
24 again there's two dry docks there. They are not large  
25 enough to accept all ships that need to be disposed of.

1 But they at least could start the process. But where  
2 there's a minimum 50 ships, there's a few more added to  
3 the fleet, the non-retention fleet, each year. So it's  
4 clear there's going to be a lot of ships out there. Even  
5 if there is disposal at Mare Island, we remain incredulous  
6 it's more cost effective to these ships to through the  
7 Panama Canal. It takes about four to six weeks to do it.

8           And that's where the rub is, where they're taken  
9 out of the bay waters they need to comply with the federal  
10 Invasive Species Act. They need to be cleaned. And the  
11 problem was. It wasn't just the growth on the hulls that  
12 was coming off during the cleaning, it was parts of the  
13 hull three-quarters of an inch thick and all the materials  
14 that we definitely do not want in the bay. So we're  
15 continuing to try to push Maritime Administration to come  
16 up with an approach that would satisfactorily clean the  
17 ships. They are looking at -- there is one larger dry  
18 dock in San Francisco that's predominantly used for cruise  
19 ships, large naval vessels. So it's in demand. And  
20 nonetheless, that company that owns that I understand has  
21 been in negotiations.

22           The Maritime Administration is concerned that  
23 some of these ships are so old they could go into dry  
24 dock. And even though they are supported while they're  
25 sitting in dry dock, their hulls may fail while they're in

1 dry dock. They may go in and never come out. They  
2 apparently are demanding that the dry dock owner take full  
3 liability for that. And the dry dock owner say, wait. We  
4 can go very far, but we can't go quite that far. So  
5 that's something we're trying to see is there something  
6 the State can do to get into that. But again it's a  
7 challenge through the federal contracting laws. And  
8 presently, there is -- other than this dry dock in  
9 San Francisco, which is trying to become an approved  
10 cleaning facility and disposal facility, there's nothing  
11 else on the west coast. So that's the challenge.

12 I've had many private parties come into my office  
13 and say hey, I have this great idea. Here's something we  
14 tried in Hong Kong. Here's all this. I say I'm not the  
15 one. You need to get on the list from the Maritime  
16 Administration and have them accept that your approach is  
17 satisfactory. It can fit with the federal contracting.  
18 And that's been the difficult action.

19 ACTING COMMISSIONER SHEEHAN: I have a question.  
20 I don't know who this is for. If I heard the numbers, at  
21 one time there were 500 ships and now down to 50.

22 LAND MANAGEMENT DIVISION CHIEF DUGAL: It's about  
23 80 approximately.

24 ACTING COMMISSIONER SHEEHAN: Are they still  
25 sending ships there?



1           MR. WOLFE: Our understanding is there are "new  
2 ships" -- these are very old. And the reason there's  
3 approximately 80 ships there is that part of them are what  
4 they call retention. In other words, they're still owned  
5 by the Navy or Coast Guard so they may at some point come  
6 back into service or, for instance, the USS Iowa  
7 battleship is there. The Navy still owns that. The Coast  
8 Guard and Navy are putting money in maintenance of those  
9 ships.

10           But when they're classified as non-retention,  
11 which about 50 to 55 of them are at this point, this means  
12 they're never coming back. The Maritime Administration is  
13 responsible, and they get no money to maintain these  
14 ships. And so they tell us Congress said get rid of the  
15 ships. They may nothing about maintaining the ships.  
16 That's the difficulty. It's clear those ships are going  
17 to be out there for some time. And Maritime  
18 Administration says it's not their irresponsibility to  
19 maintain them.

20           ACTING COMMISSIONER SHEEHAN: You said the USS  
21 Iowa or whatever, are we confident the standards --  
22 they're not contributing to this problem?

23           MR. WOLFE: Well, in a broader base, we  
24 understand the Maritime Administration has gone through  
25 and rated each of those ships. And there is a report that

1 is -- one of their consultants has prepared that  
2 apparently is coming up with they say is a plan to address  
3 what the status of these ships not only in Suisun Bay but  
4 also in Virginia and Texas where there are fleets like  
5 this. And then come up with a coordinated plan for what's  
6 the priority when do we get rid of those.

7           We understand that that report has at least been  
8 completed into sort of final draft, but we have not seen  
9 it. And I understand that Mario may be able to speak to  
10 this that State Lands staff has submitted a Freedom of  
11 Information Act request for that report. So it's clear  
12 again that there's different levels of the potential  
13 ultimate environmental impact of those ships.

14           Maritime Administration has told us in the past  
15 that they've removed the most significantly poor  
16 maintained ships from the fleet and that none of the ships  
17 are in danger of collapsing in place. We haven't seen any  
18 report that sort of documents that. So we're very nervous  
19 about the longer those ships are in the place that they  
20 could be more than just paint coming off. It may be the  
21 whole ship coming a part.

22           ACTING COMMISSIONER SHEEHAN: Well, and I assume  
23 the report to have to be done on an ongoing basis, because  
24 the state of the ship. If you have new ships coming in --

25           MR. WOLFE: If new ships are put into this -- so

1 it's true. And I think to a certain degree, the Maritime  
2 Administration understands that, but they push back and  
3 say there are certain things that are mandates certain  
4 things that are not and certain thing we get funded for  
5 and other things we are not. But nonetheless, in our  
6 mind, they are the responsible party. They have a  
7 discharge, and it needs to be controlled.

8           ACTING COMMISSIONER BUGSCH: One other thing you  
9 said, if I could just to make sure I heard you right, you  
10 said the Maritime Administration says that the ships that  
11 are non-retention they believe are not their  
12 responsibility to maintain.

13           MR. WOLFE: Correct. Initially in our  
14 discussions they said, well, we'll look at how we  
15 maintain. We're not quite sure. The ships are close  
16 together. It's hard to do this.

17           We told them we require under federal Clean Water  
18 Act that, for instance, when the Golden Gate Bridge or Bay  
19 Bridge is painted and chips of paint are scrapped off they  
20 collect those. It is not a rocket science technology to  
21 clean the ships and control everything. So then they've  
22 took the next approach come back and say, oh, well, we  
23 have no funding to do any of that, so we're not going to  
24 consider that. So that's continued --

25           ACTING COMMISSIONER BUGSCH: Are they saying we

1 don't have the funding to do that or it's not our  
2 responsibility.

3 MR. WOLFE: They've taken the approach to say we  
4 don't have the funding.

5 ACTING COMMISSIONER BUGSCH: They're not saying  
6 they it's not their responsibility?

7 MR. WOLFE: They segued to the fact Congress has  
8 told us that's not our mandate. Our mandate is dispose of  
9 ships, not necessarily to maintain the ships.

10 ACTING COMMISSIONER BUGSCH: Interesting.

11 CHAIRPERSON CHIANG: Okay. Next item. Very good  
12 that concludes this item. As we've alluded to, we'll  
13 discuss this in closed session in terms of other actions  
14 that the Commission could take.

15 The final action has to do with the resolution  
16 which was requested by the Controller for adoption by the  
17 Commission which has to do with regulation of greenhouse  
18 gas emission. And Mario will give the presentation on  
19 that.

20 LEGISLATIVE LIAISON DE BERNARDO: This resolution  
21 recognizes the steps that California is making in  
22 combating climate change and greenhouse gas emissions. It  
23 asks the federal government to adopt policies following  
24 the lead of California and make a move towards reducing  
25 the country's greenhouse gas emissions.

1           The resolution also addresses the EPA -- recent  
2 decision made by the administrator of the EPA regarding  
3 the Clean Air Act waiver applied for by the California Air  
4 Resources Board. Resolution asks the U.S. EPA to  
5 reconsider its decision and reverse it.

6           CHAIRPERSON CHIANG: Very good.

7           Questions or comments?

8           ACTING COMMISSIONER SHEEHAN: No. I'm happy to  
9 support this resolution. I appreciate the Controller  
10 bringing this. Needless to say, as someone who works for  
11 the Governor, this has been an issue we have been tracking  
12 with the EPA.

13           Matt, the AG filed something recently in this  
14 regard like today, yesterday. Is that on the waiver?

15           ATTORNEY GENERAL RODRIQUEZ: I'm not familiar  
16 with that.

17           ACTING COMMISSIONER SHEEHAN: I get things on my  
18 Blackberry from the Governor's office.

19           ATTORNEY GENERAL RODRIQUEZ: I'll check on mine  
20 as well.

21           ACTING COMMISSIONER SHEEHAN: But anyway, I'm  
22 happy to support and be happy to move approval, if there's  
23 no other comments on this, and applaud the Controller and  
24 the Commission for also weighing in on this important  
25 issue. Sooner or later, we're hoping to get the attention

1 of the federal government on this one.

2           ACTING COMMISSIONER BUGSCH: I'll second the  
3 motion and Anne's comments.

4           CHAIRPERSON CHIANG: Okay. Good. We have a  
5 motion and a second. All those in favor say aye.

6           (Ayes)

7           CHAIRPERSON CHIANG: None opposed. The motion  
8 passes.

9           And that concludes the open session portion of  
10 this meeting. We will now adjourn into closed session.  
11 May I please ask -- I apologize. Does anyone wish to make  
12 public comments? Thank you very much. This concludes  
13 this public portion of the open session and we will now  
14 adjourn to closed session.

15           (Thereupon the California State Lands Commission  
16 recessed into closed session at 11:31 a.m.)

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## 1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand  
3 Reporter of the State of California, and Registered  
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing hearing was reported in shorthand by me,  
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the  
8 State of California, and thereafter transcribed into  
9 typewriting.

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

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 8th day of April, 2008.

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TIFFANY C. KRAFT, CSR, RPR

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