

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

HOLIDAY INN ON THE BAY
1355 NORTH HARBOR DRIVE
SAN DIEGO, CALIFORNIA

THURSDAY, DECEMBER 17, 2009
10:07 A.M.

JAMES F. PETERS, CSR, RPR
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APPEARANCES

BOARD MEMBERS

Mr. John Chiang, State Controller, Chairperson

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

Ms. Mona Pasquil, Acting Lieutenant Governor

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Curtis Fossum, Chief Counsel

Ms. Judy Brown, Land Management Specialist

Mr. Mario De Bernardo, Legislative Liaison

Ms. Barbara Dugal, Chief, Land Management Division

Ms. Kimberly Lunetta, Executive Assistant

Mr. Steven Mindt, Staff Environmental Scientist

Mr. Gregory Scott, Chief, Mineral Resources Management
Division

Ms. Jane Smith, Land Management Division

ATTORNEY GENERAL'S OFFICE

Ms. Jamee Patterson, Deputy Attorney General

ALSO PRESENT

Mr. Martin Adams, Los Angeles Department of Water and
Power

Mr. David Millar, Fugro Pelagos

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Dean Rewertz, California Ships to Reefs Incorporated

Ms. Julie Riley, City of Los Angeles

Mr. William Van Wagoner, Los Angeles Department of Water
and Power

Mr. Bill Workman, City of Redondo Beach

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1 EXECUTIVE OFFICER THAYER: Yes, certainly.

2 Good morning, Chair and members of the
3 Commission. I'd like to start by noting that we don't
4 have either Joe Rusconi or Alan Hager our normal
5 representation from the Attorney General's office.
6 Instead, we have Jamee Patterson. I'd like to introduce
7 her. She has been the regular representative for the
8 Attorney General's Office at the Coastal Commission, so
9 she's extremely familiar with the coastal and Public Trust
10 issues. And I'm sure if the need arises, she'll be able
11 to capably advise the Commission.

12 The second thing I wanted to cover is our usual
13 litany of progress on violations. I'll take a couple
14 minutes to do this.

15 We're continuing to work with Jean Taylor, the
16 woman who owned the houseboat that was really a floating
17 house in the Delta. She's sold that house off. There's a
18 couple other things she needs to do, in terms of
19 downsizing the commercial pier that she purchased, so that
20 it will be recreational in size. And her lease requires
21 that that be done by October 31st, 2010. So she has some
22 time. And since the last Commission meeting, we've
23 communicated with her and advised her on how to get the
24 necessary permits from other agencies for that.

25 With respect to the home that she sold off, we've

1 been in contact with the new owner on several occasions in
2 November. And so far he hasn't been able to find the
3 marina that will accept the floating home legally. And if
4 progress isn't made, we intend to come back to the
5 Commission at the next Commission meeting for
6 authorization to proceed on trespass and ejectment for
7 that house.

8 The Courtland docks. This is small docks that
9 are south of Sacramento owned by Shawn Berrigan and Diane
10 House. These two individuals have done all the physical
11 improvements that are necessary to meet the lease
12 conditions, but they still owe us a bond, performance
13 bond. They are paying the annual rent. However, they're
14 both in bankruptcy at this point, and we're not clear that
15 there's going to be an easy solution for the bond --
16 getting the bond. We'll continue to work on this and
17 monitor it. But for now, it probably makes more sense to
18 leave them in ownership of the docks than potentially have
19 these abandoned, but we'll continue to report back to the
20 Commission on that.

21 With respect to the Blue Whale Sailing School.
22 This is the facility in the south bay owned by John
23 Asuncion. The Commission authorized staff to take
24 whatever legal steps are necessary to eject them from
25 State property. They have several boats permanently tied

1 up there, as well as a dock that aren't under lease. The
2 complaint was finalized since the last Commission meeting
3 and served on Mr. Asuncion on November 4th. He failed to
4 respond by the deadline of November 30th.

5 We, on December 8th, requested an entry of
6 default from the court. It hasn't been approved yet. But
7 if it is approved, the next action will be to appear in
8 court and offer proof of the damages we are seeking, which
9 is generally for him to remove all of his stuff, and then
10 the court would make a ruling.

11 So the timeline right now, it depends upon how
12 the court acts. But I wanted to let you know that we've
13 reached those stages.

14 Parallel to the Commission's action, BCDC has
15 been conducting its own enforcement. It voted on October
16 29th, 20 to nothing to approve a recommendation that BCDC
17 issue a cease and desist and civil penalty order against
18 Blue Whale. This order was served. It became effective
19 on December 3rd. And I imagine BCDC will have to go to
20 court to enforce that.

21 With respect to the Spirit of Sacramento. This
22 is the old ferry boat, which is on the Sacramento River
23 half sunk south of Sacramento. We've served the Barkers,
24 the owner. He originally did not respond within the
25 timeline the default was entered, but he then obtained

1 counsel. Counsel requested that we remove the default,
2 and he agreed to respond. More importantly, he's working
3 on a plan of removal.

4 Operations to raise the vessel were supposed to
5 start this week. And we've talked to the contractor, and
6 that's an accurate assessment of the situation.

7 So we're hopeful that with the vessel raised, we
8 can move forward to having that removed or brought under
9 lease. And we think that the Commission's legal
10 proceedings have made Mr. Barker more responsive to what
11 needed to be done.

12 And finally, I wanted to note that with respect
13 to the trespass not trespass -- the harassment of the
14 public at the north end of Lake Tahoe that the Commission
15 reviewed several meetings ago, that staff has -- the
16 survey crew went up there December 4th, and determined
17 precisely where the mean high tide line was, and staked it
18 out and took pictures, so that we'll be able to advise the
19 public and the property owners where the public can go and
20 can't go.

21 Copies of that survey and photographs were given
22 to Placer County. We're working with Placer County on
23 improving their ordinances to make sure that they will be
24 applicable to the public use areas. There's been some
25 opinion voiced by the County that they're not sure that

1 they can police for inappropriate public activity on the
2 public use areas. And we're working with the county to
3 either change that interpretation or revise their
4 ordinances, so that the Commission is in a position to say
5 that the public should be there, but that the county will
6 appropriately monitor their activity and to be able to
7 enforce if there's illegal activity.

8 Staff has contacted a contractor for removal of
9 the fence, which the surveys show is actually on the
10 county easement. Staff would like to discuss this matter
11 in closed session. A recent discussion with Mike Crow
12 from the Attorney General's office suggested a particular
13 approach that is consistent with the direction we've taken
14 so far, and we wanted to talk about this with the
15 Commission in closed session, and we'll do that.

16 Finally, I wanted to acknowledge that this is
17 Barbara Dugal's last Commission meeting. Barbara Dugal,
18 is in audience, is the Chief of our Land Management
19 Division and has been that since 2006.

20 She's certainly somebody who's risen through the
21 ranks. She started as a clerk, an assistant clerk, with
22 the State Lands Commission in 1981. She went to the
23 Department of Water Resources in 1992, realized the error
24 of her ways and came back four years later --

25 (Laughter.)

1 EXECUTIVE OFFICER THAYER: -- to the State Lands
2 Commission, where she's been ever since. And she's moved
3 right up. She was a Public Land Manager III. She became
4 a Regular Manager I in '01, a Manager II in '03, and
5 Assistant Division Chief in '05.

6 So she has 21 years of great service, most of it
7 for the State Lands Commission. Some of her recent
8 accomplishments as Division Chief, I want to note that
9 under her leadership new benchmarks for determining
10 revenue from leases were established at Tahoe.

11 And in the Delta this has resulted in increased
12 revenue to the State.

13 And in fact, the figures show that while she's
14 been chief, through a number of different mechanisms, the
15 overall receipts from surface leases, which is what her
16 division works on, have increased.

17 She's gracious. She's also tenacious. She's
18 generally smiling when she's not mad because something bad
19 has happened.

20 (Laughter.)

21 EXECUTIVE OFFICER THAYER: And she's always
22 thinking about what needs to be done to further the
23 mission of the Commission. She joins her husband in
24 retirement. They've purchased a house in the north coast
25 she's going to spend a lot of time at.

1 We're going to miss her personally. We're going
2 to miss her good work. And we'll hope she'll come back
3 and see us whenever possible.

4 So, Barbara, would you stand up and at least --
5 (Applause.)

6 CHAIRPERSON CHIANG: I think all of us wanted to
7 share a few words. So let's begin to my left.

8 Tom.

9 ACTING COMMISSIONER SHEEHY: Thank you, Mr.
10 Controller. Barbara, congratulations. It's a great
11 achievement your years of service. And it's a great
12 legacy that you leave behind at the State Lands
13 Commission. I have only been in this position for a short
14 period of time, but I've thoroughly enjoyed the meetings
15 that I've participated in with you, found you to be very
16 professional. And I just think you've set a great example
17 for your colleagues that remain behind.

18 And I want to thank you for your service to the
19 State of California. And I wish you all the best in your
20 future endeavors.

21 God Bless you.

22 LAND MANAGEMENT DIVISION CHIEF DUGAL: Thank you.

23 CHAIRPERSON CHIANG: Mona.

24 COMMISSIONER PASQUIL: Thank you, Mr. Chairman.

25 Barbara, congratulations. You are a class act.

1 You are a phenomenal public servant. We will miss you.
2 We will miss your ability to take any issue. And I know
3 in the short time that I've been doing this, I've thrown a
4 few at you. But with class, you've made everyone feel at
5 home and comfortable, and you've always been able to do a
6 great job. Thank you very much.

7 Good luck.

8 LAND MANAGEMENT DIVISION CHIEF DUGAL: Thank you.

9 CHAIRPERSON CHIANG: And, Barbara, I wish you a
10 life -- a future as rich as the one you have provided all
11 of us. The residents of California have benefited
12 immensely from your immeasurable talents. And then when
13 you get tired of retirement, please come back.

14 (Laughter.)

15 CHAIRPERSON CHIANG: We know just about after
16 Christmas you'll miss all of us, so you'll rethink your
17 decision. But again many, many thanks.

18 LAND MANAGEMENT DIVISION CHIEF DUGAL: Thank you
19 so much. I appreciate the kind words.

20 CHAIRPERSON CHIANG: Paul, have you concluded
21 your --

22 EXECUTIVE OFFICER THAYER: Yes, that concludes
23 the staff comments.

24 CHAIRPERSON CHIANG: Very good.

25 Next order of business will be the adoption of

1 the consent calendar. I call on our Executive Director,
2 Paul, to indicate which terms, if any, have been removed
3 from the consent calendar.

4 EXECUTIVE OFFICER THAYER: The staff would like
5 to remove consent calendar Items 13 and 38. And those
6 will be heard at a future Commission meeting.

7 ACTING COMMISSIONER SHEEHY: Mr. Chairman, I
8 would like to move approval of the consent calendar as
9 amended by Mr. Thayer.

10 CHAIRPERSON CHIANG: Very good.

11 Is there a second?

12 COMMISSIONER PASQUIL: Second.

13 CHAIRPERSON CHIANG: Okay, so a motion by Tom,
14 second by Mona. Without objection, motion passes.

15 Is there anybody who wanted to make public
16 comment on this item?

17 Okay. So the consent calendar is unanimously
18 adopted.

19 Now, onto the regular agenda items. Item number
20 39 is to consider a staff report on potential impacts of
21 sea level rise on facilities under the jurisdiction of the
22 Commission.

23 May we please have the staff presentation.

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

25 The presentation will be made by Jane Smith. And

1 in light of the last item we discussed, I should point out
2 that Jane Smith is someone who retired and who did return
3 to the Commission. And we're very glad of that. She
4 prepared this report, and I think has done an excellent
5 job.

6 CHAIRPERSON CHIANG: We love our retirees.

7 (Laughter.)

8 (Thereupon an overhead presentation was
9 Presented as follows.)

10 MS. SMITH: I just wish he would have done that
11 after I had left, because I started crying. And so I've
12 known Barbara for over 20 some years, so it's really hard
13 to see her go, but I'm really happy for her. So I'll
14 just -- okay.

15 Good morning, Mr. Chairman and members of the
16 commission. My name is Jane Smith, and I'm with the
17 Commission's Land Management Division.

18 As you may recall, at the June 1st meeting,
19 members of the Commission requested that staff conduct a
20 survey to assess the extent to which the Commission's
21 major grantees and lessees have considered the potential
22 impacts of sea level rise on facilities that are located
23 on the sovereign lands under the Commission's
24 jurisdiction.

25 On August 10th, staff sent out 104 surveys to its

1 major grantees and lessees. Forty responses were
2 received. The survey asked the respondents to identify
3 existing facilities and the anticipated life expectancy;
4 whether or not any consideration had been given to the
5 effect of sea level rise; how the facilities would be
6 impacted by projected sea level rise increases of 16
7 inches by mid-century and 55 inches by the end of the
8 century; what actions were being considered to address sea
9 level rise, including an estimate of cost; and whether
10 adaptation strategies were being considered.

11 Staff was directed to summarize the results of
12 the survey and include the efforts of California, federal
13 agencies and other coastal states, and provide
14 recommendations to the Commission for its consideration.

15 The results of the survey and staff's research
16 are contained in a report entitled a report on sea level
17 preparedness, a staff report to the California State Lands
18 Commission, copies of which you all have.

19 The results of the survey indicate that the
20 majority of the Commission's major grantees and lessees
21 have not yet begun to comprehensively consider the issue
22 of sea level rise. The Ports of Oakland and San Francisco
23 responded that their facilities would be subject to
24 occasional to frequent flooding, based on sea level rises
25 of 16 and 55 inches.

1 Both ports believe that adaptation strategies to
2 address sea level rise in the Bay Area must be considered
3 on a regional and State level, such as the amendments to
4 the Bay plan being considered by the San Francisco Bay
5 Conservation and Development Commission, or BCDC.

6 On December 3rd, the BCDC held a public workshop
7 on the proposed Bay plan revisions to address climate
8 change. BCDC directed that the draft policies be refined
9 to more strongly discourage new development in areas
10 vulnerable to flooding.

11 The Port of San Diego responded that its
12 facilities would not be greatly impacted by a sea level
13 rise of 16 inches. However, a 55-inch rise in the sea
14 level would likely result in substantial impacts and
15 potential inundation of certain facilities in both urban
16 and wildlife areas.

17 The port's environmental review process requires
18 the consideration of sea level rise for substantial
19 modifications to existing facilities and for all new
20 development.

21 The port will be preparing a climate action plan
22 that will include identifying strategies to adapt to the
23 effects of climate change and sea level rise. The Port of
24 Los Angeles responded that some possible flooding and wave
25 damage would occur from a 55 inch rise in sea level. The

1 Port is planning a study to identify vulnerable
2 facilities, develop a response option analysis plan, and
3 incorporate sea level rise considerations in its design
4 guidelines.

5 Major lessees of marine terminals and/or oil and
6 gas facilities generally concluded that their facilities
7 would not be impacted by sea level rise.

8 At the State level, a myriad of agencies,
9 departments, boards commission and universities are
10 involved in California's efforts to address the issue of
11 climate change and sea level rise. The Climate Action
12 Team established by the Governor on June 1st, 2005 is led
13 by the Secretary of the California Environmental
14 Protection Agency, and includes the Secretaries of the
15 Business, Transportation and Housing Agency, the
16 Department of Food and Agriculture, the Resources Agency,
17 the Chairperson of the Air Resources Board, the
18 Chairperson of the Energy Commission, and the President of
19 the Public Utilities Commission.

20 One of the major efforts ongoing in California is
21 the development of the state's climate adaptation
22 strategy. This strategy will summarize the best known
23 science on climate change, impacts to California, assess
24 California's vulnerability to the identified impacts, and
25 then outline solutions that can be implemented within and

1 across State agencies to promote resiliency.

2 Another major effort under the direction of the
3 Resources Agency is a Sea Level Rise Assessment Report,
4 which will advise how California should plan for future
5 sea level rise, and include information on sea level rise
6 projections, impacts on State infrastructure, and a
7 discussion of future research needs.

8 The assessment report will be prepared by an
9 independent panel of experts and is to be completed by
10 December 1st, 2010.

11 On the federal side, staff's report discusses
12 current legislative proposals being considered by
13 Congress, the efforts of federal agencies, including the
14 U.S. Environmental Protection Agency, the U.S. Geological
15 Survey, the National Oceanic and Atmospheric
16 Administration and the U.S. Department of Transportation
17 and the U.S. Army Corps of Engineers.

18 Many coastal states are also taking steps to
19 address the potential impacts of sea level rise.
20 Governors of several states, including Florida, Louisiana,
21 Maryland, New Jersey, New York, South Carolina, Virginia
22 and Washington have issued executive orders establishing
23 various climate change commissions and advisory committees
24 to consider the potential effects of global climate
25 change, including sea level rise.

1 According to the Pew Center on Global Climate
2 Change, some 36 states have completed or are in the
3 process of completing comprehensive climate action plans.

4 The staff reports include 15 recommendations for
5 Commission consideration. The recommendations include
6 directing staff to continue to consider the effects of sea
7 level rise in all environmental determinations, and
8 proposes some changes to the Commission's application to
9 require that all new coastal development projects consider
10 the implications of, and include adaptation strategies for
11 sea level rise.

12 Other recommendations include conduct an
13 inventory of existing leases to identify improvements in
14 infrastructure vulnerable to projected sea level rises of
15 16 and 55 inches;

16 Collect current information on the mean high tide
17 line, including, if necessary, conducting land surveys
18 along the coastline and bays and possibly some inland
19 waterways;

20 Evaluate structures, such as wharves, docks,
21 levees, break waters, piers, seawalls, flood control
22 structures, subject to the ocean environment for
23 structural integrity and potential hazards as sea level
24 rise;

25 Include a provision in future leases requiring

1 lessees to comply with any provisions or standards that
2 may be adopted by any regulatory agency that addresses sea
3 level rise;

4 Give careful consideration to future boundary
5 line agreements, and title settlements, including a
6 standard provision in such agreements, stating that the
7 Public Trust easement will move with submergence or when
8 subject to the ebb and flow of the tide.

9 It is important to note that additional budget
10 appropriations may be necessary in order for staff to
11 implement certain of these recommendations.

12 Staff is also recommending that copies of the
13 report be provided to all the survey participants and be
14 posted on the Commission's website. And that staff report
15 back in one year on the progress made by staff and the
16 Commission's grantees and lessees.

17 Staff does not anticipate the need for
18 legislation at this time. However, further
19 recommendations, including legislation, may be suggested
20 in the future, depending upon the annual review
21 recommended by staff of progress made to address this
22 issue.

23 The information and recommendations included in
24 the report are based on what is currently known about
25 climate change and sea level rise. As outlined in the

1 recommendations, staff will continue to coordinate with
2 and seek advice from key stakeholders at all levels of
3 government, in efforts to mitigate the impacts of climate
4 change and sea level rise on the lands and natural
5 resources under its jurisdiction.

6 I do want to note that we noted a few minor
7 corrections that need to be made to the report after it
8 was printed. And we will be making those corrections to
9 the document that's on line and via an errata sheet for
10 the printed copies.

11 I want to thank the staff members who assisted in
12 the preparation of this report, especially Drew Simpkin,
13 John Dye, and Jeanne Gunther.

14 And that concludes my presentation.

15 Thank you.

16 CHAIRPERSON CHIANG: Thank you, Jane.

17 Paul, are there other speakers?

18 EXECUTIVE OFFICER THAYER: I have a speaker's
19 slip from Bill Workman, the City Manager of Redondo Beach.

20 CHAIRPERSON CHIANG: Okay. Good morning.

21 MR. WORKMAN: Good morning, Mr. Chairman and
22 members of the Commission. My name is Bill Workman. I'm
23 the City Manager of Redondo Beach, California in the south
24 bay. We're very interested in sea level rise issues,
25 having a beach and a harbor.

1 And just yesterday, we did the groundbreaking on
2 our new lifeguard headquarters that will house also our
3 harbor patrol, and we made the adjustments necessary for
4 sea level rise.

5 The report that you have before you, I think, is
6 a real basic primer, and probably a good start. However,
7 I think some of the recommendations need to be further
8 fleshed out, and I have some specific suggestions and
9 comments about recommendations.

10 First of concern is both in Recommendation 8 and
11 in the final concluding statements of the report, it
12 indicates the Commission staff will continue to coordinate
13 with and seek advice from key stakeholders. And I would
14 submit that counties and cities along the coast,
15 particularly the area that I'm in, would be very
16 interested in providing specific feedback.

17 Oftentimes, cities likely Redondo Beach find
18 themselves sort of the last to know and we're forced to
19 implement measures that are adopted at a State or a
20 federal level. I think we can provide a whole lot of
21 early-on feedback about the practicality of things,
22 because we're the folks right there on the -- feet on the
23 road responsible for maintaining or funding these types of
24 things. And we really need to be in right at the
25 beginning to give some real practical advice on what's

1 doable and what's not.

2 Secondly, the report makes recommendations to
3 include adaptation standards and application requirements,
4 but there's really not a fiscal impact statement in this
5 report or a matrix of options for funding these
6 adaptations. And there was some suggestion in the report
7 that that might be part of the Ocean Protection Council
8 work.

9 I'm here as a local government official saying
10 please no unfunded mandates. We don't have the money.
11 You don't have the money. There's got to be a clear
12 identification in any work on the part of the State Lands
13 Commission to identify who is funding this. It just can't
14 be left to some other agency. It can't be left to the
15 local governments. We have no money.

16 The third area is, I think there was a little
17 light -- the report was a little light on the
18 environmental impact of the recommendations. I suspect
19 you may be pushing that forward into some of the other
20 application requirements, but I didn't see a whole lot of
21 review of what the environmental impacts would be of the
22 adaptation suggested.

23 Lastly, the fourth area is, I think there needs
24 to be a clear set of expectations of what the Commission
25 is looking to achieve, what are those results. While

1 there's some technical engineer things -- well, not so
2 technical. It says, hey, we want everything brought up
3 about 16 inches, I think there needs to be some clear
4 expectations.

5 Secondly, there needs to be training in this
6 area. All this is really new to us. You're probably a
7 little ahead of the rest of us. I'm going to be spending
8 a lot of time in 2010 on all these climate issues, sea
9 level rise issues. There needs to be training for the
10 planning staffs and for landholders who will have to be
11 filling out the applications to get a real understanding
12 of what is expected.

13 And then lastly, as I've reviewed the report in
14 looking at all the agencies, federal and State, and county
15 that are involved, folks there's going to have to be, at
16 some point, a one-stop location for all the requirements
17 and all the information. Otherwise, we're going to have
18 folks going from one agency to another trying to figure
19 out how to comply.

20 And I had this at city hall, where someone has to
21 go to the fire department, the police department. It has
22 to go to the building department, the engineering
23 department, and the planning department all to get
24 sign-offs.

25 Well, it could be even worse based on the array

1 of State agencies that look like that are getting
2 involved. So those are my comments, those four areas. I
3 applaud you for working hard on this. It's something that
4 I had doubts about, until probably this year. And seeing,
5 you know, the effects of storms and sea level rise in
6 Redondo Beach and some incremental pieces, I wake up at
7 night worrying about this. So thank you again for working
8 on this. I hope you consider the recommendations I just
9 made.

10 Thank you.

11 CHAIRPERSON CHIANG: Thank you, Bill.

12 Is there anybody else who would like to make
13 public comment?

14 If I could have staff comment on Mr. Workman's
15 recommendations.

16 EXECUTIVE OFFICER THAYER: Certainly. We agree
17 with his comments about the necessity of consulting with
18 local governments and other waterfront users, who would
19 both be affected by sea level rise and any action that the
20 Commission would take. And, of course, the survey, in
21 some respects was the first step. The Commission, the
22 Controller directed us to go out and survey those entities
23 to find out what they're doing, because there's some
24 expertise from the folks on the ground who are already
25 grappling with this.

1 And we saw this as a way to get some ideas on how
2 the State and the rest of the local entities could
3 respond. And we'll continue to do that. Copies of this
4 report were mailed, not just to those who responded, but
5 to everybody that we originally surveyed. And, of course,
6 if Mr. Workman or anybody else has suggestions about other
7 particular entities that we might not be reaching, we'd be
8 glad to involve them as well. So we'll continue the same
9 kind of outreach that we were doing as part of the
10 preparation of this report

11 With respect to the economic impacts, that's a
12 tough question for any governmental entity, at this point,
13 because finances are so bad in both the private and the
14 public sectors. But in some respects, the kinds of
15 requirements that are being proposed here are the same as
16 any other safety requirement that's being done to preserve
17 the health and safety of the public and of society.

18 And our other piece with those and the Commission
19 staff's perspective is that not designing to these
20 standards -- and again, these standards are tied to the
21 life span of the project. They're not intended to be
22 standards that are superfluous, applied to some
23 projects -- that the cost of upgrading facilities that
24 would be damaged by either the cost of upgrading them at a
25 later date, rather than doing it as part of the initial

1 design, or the cost of repairing the damage that would
2 occur after sea level rise, if no accommodation is made,
3 is far in excess of the cost of doing the engineering for
4 the new work now, and to accommodate the sea level rise.

5 Capitola indicated it would be millions of
6 dollars for them to rebuild their pier, which they thought
7 would be necessary if the sea level rise went up to 55
8 inches. We think that the primary thrust of this report
9 is to move people and entities in the direction of some
10 preventive design work, so that this kind of rebuilding or
11 that kind of damage won't occur in the future, and that
12 the cost now will be much less than what would have to be
13 incurred in the future.

14 The individual -- the environmental impact of
15 these recommendations, we think, is relatively small. All
16 of these recommendations generally deal with how a project
17 is designed. It means it will be designed a little
18 beefier or a little bit taller, that kind of thing. But
19 the impacts from new projects are likely to be fairly
20 similar, whether or not these are followed.

21 And, of course, individual environmental reviews
22 are generally required for these kind of projects anyway.
23 We're looking at these larger -- you know, these study
24 recommendations are focused on projects where the life
25 span of that project is going to be 50 years or more. So

1 we're talking about more significant development here.

2 I agree as well with Mr. Workman's comments about
3 clear expectations on what needs to be done and
4 commensurate training. The staff, of course, would be
5 preparing documentation that would go into the staff
6 recommendation -- or, excuse me, the permit applications,
7 so that there would be some guidance given to applicants
8 as to what needed to be done.

9 But on the other hand, the kinds of things that
10 need to be done are, in some respects, exactly what's
11 already done, which is engineering. If you're building a
12 new pier in the Port of Los Angeles it needs to be
13 engineered to withstand the existing rise and fall of
14 tides, as well as hundred year storms, that kind of thing,
15 seismicity. And we're just saying, if you assume the sea
16 level is at a higher level, do your engineering based on
17 that.

18 So we think that that converts into a fairly
19 routine engineering problem. We're just saying design to
20 that standard rather than the existing sea level.

21 And finally with respect to a one-stop location,
22 where local governments or private developers can go to
23 resolve these issues, we're -- in our existing functioning
24 with leases, we're always coordinating with other
25 agencies. So our staffs talk to the Coastal Commission

1 staffs or BCDC staffs at least on a weekly basis, on a
2 project-by-project basis, where we compare notes. We do
3 the best we can to avoid conflicting requirements being
4 imposed by this agency, with respect to requirements that
5 come from these other State agencies. And we'll continue
6 that work.

7 And certainly on a statewide basis, there's a lot
8 of work being done on a unified basis out of the Resources
9 Agency and elsewhere. The recent issuance of the
10 Adaptation Strategy Report by the Resources Agency is an
11 example of that. It deals with the jurisdiction of most
12 of the Resource Agency Departments and Commissions,
13 including us. And we had great input into that staff
14 report. And we're going to continue to do that work on a
15 go-forward basis.

16 So that would be the staff's response to the -- I
17 think all of these points are great. And they're the
18 sorts of things that there's not one answer to today.
19 They're the sorts of things that we're going to have to
20 continue to work on, as we will have to with other aspects
21 of sea level rise.

22 CHAIRPERSON CHIANG: Paul, in your view, for the
23 interested parties who have to conform to any potential
24 changes, from their perspective would you believe it's
25 clear? I mean, the request from Mr. Workman is for a

1 one-stop shop. And if the answer is in the negative,
2 perhaps we can discuss, you know, at the initial threshold
3 meetings, what type of design they would seek.

4 EXECUTIVE OFFICER THAYER: And we'd be glad to do
5 that. In terms of whether or not to have a one-stop shop,
6 the arguments for and against that are probably the same
7 as they are generally for permitting. And usually, the
8 answer so far has been to coordinate, but to understand
9 that different commissions have different jurisdictions
10 and issues that they're interested.

11 We're interested in Public Trust uses. The
12 Coastal Commission might be more focused on something
13 else. Whereas, Fish and Game is more wetlands. And so
14 rather than having one entity look at all those issues,
15 whether or not they have the expertise, the general -- as
16 it is with the existing permitting system, is to say that
17 each of these agencies should undertake their own review
18 pursuant to their own jurisdiction.

19 So I would resist if, by what he means a one-stop
20 shop, that somehow you get a check off on all climate
21 change and sea level rise implications from one entity,
22 because that one entity, you know, is not really
23 capable of dealing with all these other issues.

24 CHAIRPERSON CHIANG: That's a good perspective.
25 I didn't take the one-stop shop, because clearly everybody

1 has their responsibilities and authorities. I took that
2 as -- and perhaps I was incorrect, one-stop shop. So for
3 clarification, you know, edification, what the
4 requirements are.

5 EXECUTIVE OFFICER THAYER: Yes. That's something
6 we'll take up with the Resources Agency. I know there's
7 ongoing work on this. And, as I say, the adaptation
8 strategy was intended to coordinate the State on this and
9 we'll work with them on that.

10 CHIEF COUNSEL FOSSUM: And if I could add, we
11 can't forget that the federal government has some primary
12 authority over this as well. The Corps of Engineers, in
13 most instances, would be issuing permits for that. They
14 have some expertise in that area, or are supposed to. And
15 so even though the State will be adopting hopefully very
16 good standards, we always have to consider what the
17 federal government will be doing as well.

18 CHAIRPERSON CHIANG: Further comments?

19 Tom

20 ACTING COMMISSIONER SHEEHY: Great. Thank you,
21 Mr. Chairman.

22 Thank you, Ms. Smith, for a thorough report. On
23 November 14th Governor Schwarzenegger issued Executive
24 Order S-13-08. Makes you wonder why it wasn't entitled
25 S-13-09. Maybe that's a mistake. At any rate in mid --

1 what?

2 EXECUTIVE OFFICER THAYER: That was issued last
3 year, that order. It wasn't this year.

4 ACTING COMMISSIONER SHEEHY: Oh, well why is --
5 but then he did a press release recently that referenced
6 back to -- maybe it's because of the coordination with
7 Copenhagen.

8 EXECUTIVE OFFICER THAYER: Well, and also the
9 adaptation strategy report, which was called for by
10 that -- came out.

11 ACTING COMMISSIONER SHEEHY: All right. My
12 mistake. Thank you, Mr. Thayer for correcting me.

13 At any rate the Governor issued an Executive
14 Order last year at about this time, which is
15 totally -- well, almost totally, consistent with the
16 direction of which the State Lands' Commission staff was
17 going with the development of this resolution, Mr.
18 Chairman, and fellow Commissioners.

19 So we're very supportive of this I would just
20 note a couple of things. However, in the Governor's
21 executive order for November of '08, he did ask the
22 Resources Agency, in cooperation with some other State
23 agencies, the Department of Water Resources, the
24 California Energy Commission, other State coastal
25 management agencies. To request the National Academy of

1 Sciences to convene independent panel to complete a
2 comprehensive sea level rise assessment report.

3 And he's asked for that report to be -- he's
4 asked the Resources Agency to bring that report back to
5 the legislature and the administration by December of
6 2010. And so in light of that, I'm wondering if a couple
7 of the recommendations here by staff might possibly be a
8 little premature. And if my colleagues feel that way,
9 might we consider adopting the resolution and maybe
10 putting a couple of these recommendations over to be
11 revisited in December of next year, perhaps January of
12 '11, after they've had a chance to look at it.

13 Specifically, I understand that there is a
14 scientific basis for the range that's here in this report
15 the 16 to 55 inches. However, it's unclear to me what
16 this independent NAS panel will come back with. And
17 before we start expending public and private resources on
18 that standard, it might be prudent for us to see what this
19 panel comes back with, so I'd like -- I'm asking my
20 colleagues to consider that.

21 And then I'm also wondering, and maybe Mr. Thayer
22 could comment on this -- I'd like comment on -- respond to
23 all my comments. If it might be appropriate to also phase
24 in the requirements on the private side, because in the
25 Governor's Executive Order, he did require all State

1 agencies to act immediately.

2 So I'm just wondering -- what I'm really asking,
3 Mr. Chairman, is there a way maybe to address these two
4 issues that I've raised, so that I can vote along with
5 you, if that is your predilection to support this, because
6 I think that would make this set of recommendations by the
7 State Lands Commission staff very compatible with the
8 Governor's Executive Order.

9 Mr. Thayer, maybe you could respond.

10 EXECUTIVE OFFICER THAYER: Certainly. Staff is
11 aware of the both the Executive Order from the Governor as
12 well as the particular provisions that Commissioner Sheehy
13 was alluding to.

14 Staff used as the basis for the 16 inches and 55
15 inches standards, reports that have come out of California
16 planning efforts. In particular, the 55 inch standard is
17 at the upper range of the estimates that were in the
18 Climate Action Team's report from March of this year.
19 It's also one that -- an estimate that was developed by a
20 private entity or a nonprofit, the Pacific Institute out
21 Berkeley that Peter Gleick heads up.

22 The 16 inches is also consistent with that
23 Climate Action Team report. And both of these figures as
24 well show up in the adaptive strategy that was recently
25 issued by the Resources Agency. And the 16 inches again

1 for the 2050 time frame is what the BCDC is using. So we
2 feel like that there's reasonably a good sound basis for
3 bringing forward those recommendations.

4 I think it's also true that the -- if you look
5 back over the last 10 years, the estimates for sea level
6 rise have been changing, as people begin to appreciate
7 different factors that can contribute to that, and when we
8 begin to see how climate is changing, how greenhouse gases
9 are increasing. So that it may very well be that this
10 report that comes back a year from now may have slightly
11 different numbers. But I think we're beginning to focus
12 in on numbers. And, again, we would stand behind these
13 numbers at this point.

14 ACTING COMMISSIONER SHEEHY: I have a suggestion.

15 Mr. Chairman, may I follow up, I have a
16 suggestion for further consideration.

17 In light of Mr. Thayer's comments, might a
18 potential direction we could go be to add a 16th
19 recommendation to this report that might say something
20 like direct staff to review the results of the sea level
21 rise assessment report that is going to be completed in
22 December 2010, pursuant to the Governor's Executive Order.
23 And as soon as feasible thereafter, when it's released to
24 come back to the Commission at a future meeting and make
25 recommendations as to appropriate sea level rise estimates

1 that should be accommodated by new development in any of
2 the sovereign lands that we have jurisdiction over.

3 And as part of these recommendations, staff could
4 help evaluate phasing procedures and make recommendations
5 as appropriate. Perhaps maybe with the inclusion of this
6 type of recommendation, that might address some of the
7 issues I've raised, Mr. Thayer. Could you respond to
8 that.

9 EXECUTIVE OFFICER THAYER: Well, I would
10 certainly make clear that the Commission will consider the
11 results that come out of that study, that will come out a
12 year from now, and direct staff to, in fact, evaluate that
13 and come back with recommendations. Just to be clear, so
14 the proposed change is that alone and it's not to exclude
15 these other --

16 ACTING COMMISSIONER SHEEHY: Well, I'm really
17 looking for some direction from my colleagues on the
18 Commission and from staff. I've stated my general strong
19 support for where we're going. And I've raised concerns
20 about the specific levels identified and the phasing
21 issue. But I want to be supportive of this action by the
22 Commission, but I'd like to have some consideration for my
23 issues.

24 So I'm open to suggestion.

25 CHAIRPERSON CHIANG: Tom, if I can pose a

1 question to you. I'm not quite clear. I'm greatly
2 appreciative to both your and the Governor's support and
3 his direction to pursue a separate study. I think that's
4 also beneficial.

5 My intention is not to halt the progress that we
6 have gone, but I certainly want to make an accommodation.
7 So from your motion, are you asking that when that study
8 comes forward that we give the opportunity for staff to
9 review that study and to reconcile the progress that's
10 already made or are you asking us to pause at this time
11 and not move forward, because that is, the latter, not the
12 course I want to pursue.

13 I want to move forward. We can grandfather the
14 standards that would be established today to make
15 accommodations, upon the reconciliation. But I think --
16 you know, we're all on the same set of tracks. So the
17 question is, you know, once that second train comes up and
18 gets there, we can all move forward. But I don't want to
19 stop the first train.

20 ACTING COMMISSIONER SHEEHY: I agree with you,
21 Mr. Chairman. I don't want to stop this process from
22 going forward either. I think it's important.

23 So what I'm asking is if we can incorporate a
24 specific recommendation, if we can incorporate some
25 language into this resolution that says staff will come

1 back to the Commission and that might be 30, 60, 90 days,
2 whatever is appropriate, after the final report comes out,
3 with recommendations of any changes, conforming changes,
4 that may be appropriate or necessary for the Commission to
5 consider.

6 My concern about the 16 to 55 inch issue is
7 before we expend too many resources on that range, what if
8 the range comes back different? Right. And since these
9 are engineering issues, you know. So I'm not asking that
10 we not do it, but I am asking that we direct staff -- that
11 we put language in the resolution to direct staff to bring
12 that report back to us for consideration to see how it
13 might -- if there's any conforming changes we'd consider
14 making here.

15 And I think then that way, it would allow this
16 process to go forward, but also create a process for this
17 report, which is going to include coordination with all
18 key State agencies that have a stake in this. I think it
19 would be appropriate for us to look at.

20 Does that make sense?

21 EXECUTIVE OFFICER THAYER: Certainly.

22 CHAIRPERSON CHIANG: So that I'm clear, so that
23 where I'm at right now is I'm okay with the 16 to 55
24 standard, and then the staff will reconcile. And then if
25 they make adjustments to the 16, 55 standard, then we can

1 make the appropriate adjustments.

2 ACTING COMMISSIONER SHEEHY: Yes, I'm agreeable
3 to that, Mr. Chairman. That would be fine.

4 CHAIRPERSON CHIANG: Okay.

5 Mona, did you have comments? I apologize.

6 COMMISSIONER PASQUIL: I did. I wanted to thank
7 the staff for doing a great report. It is a good start.

8 But I want to bring up an issue of there's a lot
9 of follow up that we have to do. And I'm very mindful of
10 the fact that that means additional resources. And so I
11 would like to see if the staff can perhaps work in
12 coordination -- a partnership with OPC to possibly
13 identify funding or the resources to do this follow up,
14 because, you know, we got 40 responses back, and that's
15 great.

16 Hopeful at 40. Really, really, happy if we can
17 get more of that. So is there -- would there be a process
18 to follow up with those folks who have not, because in
19 looking at some of the responses, they were kind of all
20 over the map. And so to -- you know, we may all want to
21 be on the same page. We may want to take some time to
22 bring everybody back to the table or at least reach out to
23 them, so that they do have an opportunity to respond.
24 They may change some of their answers in here.

25 And so that's number one, because I'm concerned

1 about, just for example, Long Beach being the second
2 busiest port in the nation and we didn't really -- they
3 didn't really -- I think their answers and their feedback
4 could have been stronger. That's a concern. And so I'd
5 like to see that -- and for those local governments
6 that -- and cities that are affected. Is there a
7 mechanism to reach out again to them, because this could
8 be -- this is a great start and a great report. It can be
9 even greater with more feedback from more people.

10 So I think it's great. I think that we need to
11 identify resources, because I do believe that we need to
12 move forward.

13 And that's all I have, Mr. Chairman.

14 CHAIRPERSON CHIANG: Very good.

15 EXECUTIVE OFFICER THAYER: If I could respond. I
16 think that Ms. Pasquil has some good points. And, again,
17 the 15th recommendation is that we report back in a year
18 on the progress. And I think I can commit, at this point,
19 that we'll just -- we'll rerun the survey in next summer
20 and see what changes have occurred. It will be
21 interesting to see what they are. And I think also the
22 publicity that this report is getting and will get after
23 the Commission approves it is likely to cause some
24 reconsideration on the part of the surveyees that didn't
25 respond as to their participation, and certainly will

1 encourage a broader participation when we redo the survey.

2 COMMISSIONER PASQUIL: Mr. Chairman.

3 Thank you. And I didn't mean to call out Long
4 Beach. But, you know, it's important for folks to have
5 the time. Everybody is busy. You can talk to the
6 gentleman from Redondo Beach, everyone has got a million
7 things going on. But if, A, we have a little bit more
8 time and we set that timeline out for people and a
9 mechanism for them to call back with questions and
10 clarifications, I think that would be really helpful.

11 Thank you.

12 EXECUTIVE OFFICER THAYER: We'll do that.

13 And as you point out, there are costs just as Mr.
14 Workman did, to all of this. And several of these staff
15 recommendations, we acknowledge in the report,
16 recommendations 2, 10, and 11 are really directions to
17 staff to do inventory and this sort of thing. You can't
18 really do that with more resources. And we understand
19 clearly that we may not get those resources. And so, of
20 course, we look for other ways to gather some of the same
21 information. But everybody, in essence, has to do what
22 they can with what they have.

23 ACTING COMMISSIONER SHEEHY: Mr. Chairman, if
24 it's appropriate, I'd like to try to craft a motion that
25 we could agree on?

1 CHAIRPERSON CHIANG: Sure, please.

2 ACTING COMMISSIONER SHEEHY: I would like to move
3 approval of the staff recommendation to adopt the
4 resolution for Calendar Item number 39, with one
5 additional recommendation, and the language can be drafted
6 by staff. But the idea would be to ask staff to bring
7 this policy back to the Commission, at some reasonable
8 period of time, I don't know, 60, 90 days, whatever is
9 appropriate, after the release of the final report in
10 December of 2010, and make any recommendations or present
11 any findings to the Commission at that time that might be
12 worthy of consideration to amend the policy we're adopting
13 today.

14 CHAIRPERSON CHIANG: Very good. Thank you, Tom.

15 And, Mona, your comments, did you want to add an
16 additional provision or are you comfortable of just having
17 asked staff for them to take that task on separately?

18 COMMISSIONER PASQUIL: I'm comfortable asking the
19 staff to just follow up.

20 CHAIRPERSON CHIANG: Very good. So we have a
21 motion.

22 Is there a second?

23 COMMISSIONER PASQUIL: Second.

24 CHIEF COUNSEL FOSSUM: Mr. Chairman, if I could
25 interject. Just to clarify on Item number 6, where it's

1 asking the Commission to adopt engineering standards. The
2 Commission is actually severely limited in being able to
3 do that, except for marine terminals. So I think if we
4 could add two words in there saying, "where authorized"
5 after the standards, that would make a clarification to
6 that item.

7 ACTING COMMISSIONER SHEEHY: I will incorporate
8 that into my motion, Mr. Chairman.

9 CHAIRPERSON CHIANG: Thank you.

10 COMMISSIONER PASQUIL: Second.

11 CHAIRPERSON CHIANG: Duly noted.

12 Motion, second. Motion by Tom, second by Mona.

13 Without objection, the motion passes.

14 EXECUTIVE OFFICER THAYER: Thank you.

15 CHAIRPERSON CHIANG: Next item, please.

16 EXECUTIVE OFFICER THAYER: The next item is the
17 item regarding Moat and Row, I believe -- excuse me, hold
18 on just a second.

19 CHAIRPERSON CHIANG: It's a revocation of a
20 geophysical survey.

21 EXECUTIVE OFFICER THAYER: Fugro Pelagos.

22 This has to do with the geophysical permit that
23 was Fugro Pelagos when there was the unfortunate incident
24 involving the death of the blue whale on the north coast.
25 The staff recommendation will be presented by Greg Scott,

1 who's the Chief of our Marine Resources Management
2 Division.

3 (Thereupon an overhead presentation was
4 Presented as follows.)

5 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

6 SCOTT: Mineral Resources.

7 EXECUTIVE OFFICER THAYER: I'm sorry, Mineral
8 Resources.

9 (Laughter.)

10 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

11 SCOTT: Good morning, Mr. Chair and Commissioners. My
12 name is Gregory Scott. I'm the Chief of the Commission's
13 Mineral Resources Management Division. This morning I'll
14 be presenting Calendar Item 40, recommending for your
15 consideration a revocation of the general geophysical
16 permit, PRC 8391 issued by the State to Fugro Pelagos
17 Incorporated for a violation of permit conditions while
18 conducting geophysical activities in State waters, and at
19 which time a whale was struck and killed.

20 And I believe you've been given a copy of my
21 presentation slides.

22 CHAIRPERSON CHIANG: We have.

23 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

24 SCOTT: Approximately two months ago on October the
25 19th --

1 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

2 SCOTT: This is the map of the area where the whale strike
3 occurred.

4 Well, my pointer isn't working, but -- can I get
5 back to the map Alicia. I just wanted to mention that
6 this location is where the incident occurred. And that's
7 about 100 miles north of San Francisco.

8 --o0o--

9 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

10 SCOTT: Can you go back a slide, Alicia.

11 Next one.

12 Thank you.

13 The geophysical permit issued to Fugro Pelagos
14 identifies certain types of equipment allowed for
15 conducting geophysical surveys, and they are listed on
16 this slide. Each of these types of equipment create
17 acoustic signals of a certain amount of energy, which
18 reflects off the seafloor or other underwater hard
19 features. And the data collected can be used to measure
20 water depth, create topographic maps, identify rock
21 outcrops, pipelines, et cetera.

22 The energy limitation that this equipment is
23 restricted to is established at a measure of two
24 kilojoules, that is a level set many years ago by the
25 State Lands Commission, that was determined not to be

1 harmful to marine life, but adequate for data acquisition
2 using the equipment listed here.

3 --o0o--

4 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

5 SCOTT: Among the conditions within the permit that Fugro
6 Pelagos was operating under, four of the more important
7 conditions are shown here. Before a survey can be
8 initiated, the permittee must notify the State Lands
9 Commission staff 15 days in advance of the survey work.

10 The permittee must have a marine wildlife monitor
11 on board the vessel at all times to and from port and
12 during survey operations, and the monitor must be approved
13 by NOAA.

14 If the monitor observes a marine mammal or
15 reptile within two kilometers of the vessel, the survey
16 company cannot start its acoustic generation equipment.
17 And the permittee also must have a wildlife contingency
18 plan approved by the State Lands Commission and also an
19 approved oil spill plan.

20 --o0o--

21 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

22 SCOTT: Two permit conditions were violated at the time of
23 this geophysical survey. One, Fugro did not notify the
24 State Lands Commission staff prior to initiating its
25 survey activities. And two, Fugro Pelagos did not have a

1 marine wildlife monitor on the vessel at the time of the
2 survey.

3 --o0o--

4 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

5 SCOTT: It is the recommendation of staff that the
6 Commission authorize revocation of Fugro Pelagos
7 non-exclusive general permit to conduct geophysical
8 surveys on tide and submerged lands of the State of
9 California. Fugro Pelagos has told us that the survey
10 conducted by them in State waters was an activity not
11 requiring State Lands Commission permit. It is the
12 position of State Lands, however, that this survey
13 activity was a permissible activity.

14 Staff recommends that the revoked permit be
15 restored after 30 days from this Commission date, if Fugro
16 agrees in writing that ocean floor mapping using multibeam
17 sonar equipment is an activity that is covered by the
18 existing permit, and that Fugro Pelagos will comply with
19 all provisions of the permit, including mailing required
20 notices and providing a marine wildlife monitor on the
21 vessel at all times.

22 In addition, staff recommends that the Commission
23 authorize the billing of staff expenses incurred in
24 connection with its investigation of this incident.

25 And lastly, staff recommends the Commission

1 authorize further legal action to preclude Fugro Pelagos
2 from operating without a permit, and to enforce permit
3 provisions in the event that the permit is restored.

4 That concludes my presentation. I and other
5 staff here are available to answer questions, if you'd
6 like.

7 CHAIRPERSON CHIANG: Mona, did you have any
8 questions?

9 COMMISSIONER PASQUIL: Thank you very much, Mr.
10 Scott, for doing this.

11 I have a couple questions. Have there been any
12 other permit violations by this company?

13 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF
14 SCOTT: No. We have not any violations, other than the
15 one that I just presented.

16 COMMISSIONER PASQUIL: Have there been others
17 like this? My thing is I'm looking at 30 days. And is
18 that just -- is that normal for a permit to be revoked?

19 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF
20 SCOTT: The language in the permit does address
21 revocation. It does not state in the language any type of
22 period, during which time the permit can be restored. We
23 have considered that we are really attempting to secure
24 compliance by Fugro Pelagos. It is not necessarily our
25 intention to be -- apply very strict punitive measures.

1 We do want them to come into compliance, and allow them to
2 continue operations, if they do agree to the terms that we
3 have stated in our recommendation.

4 COMMISSIONER PASQUIL: Okay, thank you.

5 EXECUTIVE OFFICER THAYER: I would say that
6 another factor is that discussions we've had with State
7 Coastal Conservancy staff, who were involved in generating
8 the mapping project, which was being conducted. Although,
9 the bonding -- bond money for that project was not
10 available on a State basis, and therefore NOAA was the
11 entity that was involved at that particular moment.

12 But comments from their executive officer
13 indicates that they believe that this was an accident. It
14 wasn't a case of having a whale on the surface where the
15 absence of a marine observer contributed to that accident.
16 Instead, the whale is believed to be -- have been
17 surfacing and come up underneath the boat and struck it.

18 And so based on that, staff believes that this --
19 even if the observer had been on board, this accident may
20 have occurred.

21 Nonetheless, we believe action should be taken by
22 the Commission, because, in fact, the terms of the permit
23 were violated, and could have led to that kind of
24 accident. Our recommendation would probably have been
25 different if the whale had been on the surface and had

1 been struck and it would have been preventable by having
2 an observer on board.

3 ACTING COMMISSIONER SHEEHY: I would like to make
4 one comment.

5 CHAIRPERSON CHIANG: Sure.

6 ACTING COMMISSIONER SHEEHY: I just wanted to
7 say, I was -- in my briefing -- I apologize for missing
8 your presentation. I had to step out. But in my briefing
9 by the Commission staff on this item, I thought that their
10 recommendation was even-handed, firm, and appropriate, and
11 I'm prepared to support the staff recommendation on this
12 item, Mr. Chairman.

13 CHAIRPERSON CHIANG: Very good. I have one
14 question. How many other companies perform similar
15 services?

16 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF
17 SCOTT: Presently, under permit, there are eight survey
18 companies operating off shore.

19 CHAIRPERSON CHIANG: Very good. And then what
20 were the costs incurred by our Commission?

21 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF
22 SCOTT: There was staff cost incurred, time involved in
23 conducting the investigation, and determining cause, and
24 preparing the material for the Commission meeting today.

25 We have, I think, accumulated up to 70 staff

1 hours, which translates to a little over \$13,000.

2 CHAIRPERSON CHIANG: Thank you.

3 Is there a motion?

4 EXECUTIVE OFFICER THAYER: We want to make sure
5 to take testimony.

6 CHAIRPERSON CHIANG: Oh, I'm sorry.

7 We have two -- and I apologize, two individuals
8 who have signed up to speak. David Millar, who's
9 president of Fugro, followed by Mr. Jerry Wilson who's a
10 commercial manager representing Fugro.

11 So if we could have you please join us, first
12 David.

13 Welcome.

14 MR. MILLAR: Good morning, Mr. Chairman and
15 members of the Commission. Thank you for the opportunity
16 to speak to you today.

17 Before I begin, can I just ask is five or six
18 minutes allowable time to present my --

19 CHAIRPERSON CHIANG: We usually give three, but
20 there's only two of you signed up, so that's fine.

21 MR. MILLAR: Thanks very much.

22 It is a complex issue.

23 My name is David Millar, and I am president of
24 Fugro Pelagos, Inc. of San Diego, California

25 I'm speaking before you today to explain why

1 Fugro Pelagos does not believe we violated the provisions
2 of our off shore geophysical survey permit, when
3 conducting a hydrographic survey in State waters on
4 October 19th, 2009.

5 Before I begin, I would like to comment on the
6 incident, and just say that myself and the company is
7 deeply saddened by the accident. It was a tragedy. And
8 while there was no loss of human life, we certainly don't
9 minimize the fact that a large mammal was killed, and we
10 do feel bad about that.

11 The company has been operating for over 30 years.
12 Has always complied with all regulatory requirements and
13 has never had such an incident or accident.

14 So I do want to emphasize the fact that Fugro
15 Pelagos was not ignoring the requirements of the permit at
16 the time of this incident. Rather, we did believe -- I'm
17 sorry, we did not believe nor do we believe that a
18 hydrographic survey using solely an echo sounder is
19 subject to the provisions of an off-shore geophysical
20 survey permit.

21 While Fugro Pelagos does indeed hold such a
22 permit, it would only be used when we are performing
23 geophysical surveys. We readily acknowledge that prior
24 notification was not provided to State Lands nor were NOAA
25 approved marine wildlife monitors on board the vessel

1 during this hydrographic survey. That is because we were
2 not conducting a geophysical survey as defined by the off
3 shore geophysical survey permit.

4 My objective today is to demonstrate how the
5 off-shore geophysical survey permit requirements are and
6 will continue to be unclear and subject to various
7 interpretations by the marine survey industry.

8 Furthermore, I advocate that Fugro Pelagos off
9 shore geophysical survey permit not be revoked, and that
10 further investigation, including direct discussion among
11 the parties, be conducted.

12 We believe the underlying issue here is that an
13 antiquated permitting requirement that was originally
14 intended to manage and control geophysical surveys and
15 geological surveys on State lands for the purposes of
16 resource exploration and development is now being used to
17 address subsequent State land objectives. In the process,
18 the intent, purpose, and application of the off-shore
19 geophysical survey permit has become distorted, such that
20 the language contains numerous ambiguities and
21 contradictions.

22 First, I would like to point out that the
23 background text provided on this calendar item contains
24 language that is not presented anywhere else in the
25 off-shore geophysical survey permit or its requirements.

1 In fact, the only reference to the type of survey
2 activities included within the permit is in Section 3,
3 Scope of Activities, which state that, "The permittee
4 shall comply with the terms of the permit whenever the
5 equipment specified in Section 4 is deployed or
6 geophysical survey data are collected within the permit
7 area. Geophysical surveys shall include seismic, gravity,
8 magnetic, electrical, and geochemical methods of measuring
9 and recording physical properties of subsurface geologic
10 structures.

11 A hydrographic survey using an echo sounder or
12 any other type of depth sounder is not measuring or
13 recording physical properties of subsurface geologic
14 structures, but rather is measuring the depth of the water
15 above the seabed.

16 If, however, as State Lands maintains, the
17 application of the off-shore geophysical survey permit is
18 driven by the equipment specified in section four, then
19 this creates an even larger contradiction. It is the
20 equipment -- I'm sorry. If it is the equipment and not
21 the activity that dictates the application of the
22 off-shore geophysical survey permit, then virtually every
23 vessel operating in State waters would require an
24 off-shore geophysical survey permit, and be subject to its
25 requirements.

1 Nowhere in the off-shore geophysical survey
2 permit are the terms "hydrographic survey" or "echo
3 sounder" mentioned. If the antiquated reference to
4 fathometer is meant to include echo sounders, then
5 thousands of vessels operating equipment similar to Fugro
6 Pelagos should be subject to the provisions of the
7 off-shore survey permit.

8 This would include ocean-going freighters, bulk
9 carriers, container ships, cruise ships, research vessels,
10 commercial and sports fishing boats, recreational boats,
11 lifeguard and police launches, and pilot boats.

12 The technology used by Fugro Pelagos on a
13 hydrographic survey is virtually the same as an essential
14 piece of maritime safety equipment found on almost every
15 vessel operating in State waters.

16 Given the above and given that there are over a
17 dozen references to geophysical surveys, geophysical data,
18 and/or seismic within the permit, Fugro Pelagos did not
19 and does not believe our hydrographic survey activity
20 using a multibeam echo sounder was subject to the
21 provisions of an off-shore geophysical survey permit.

22 And we are not alone in this belief. There is
23 confusion within the marine survey industry regarding this
24 very issue. Survey companies, academic institutions, and
25 government agencies do not know how to interpret the

1 permit.

2 As a result, there is no consistency of
3 application and no real possibility of equitable
4 enforcement. In fact, there's virtually no current
5 enforcement ongoing, so those not complying do so without
6 consequences.

7 We have requested a meeting with the State Lands
8 Commission to review our interpretation of the off-shore
9 geophysical survey permit, and have offered our assistance
10 in refining the language of the permit to resolve its
11 current ambiguities.

12 Despite this, the State Lands Commission is
13 considering the revocation of our off-shore geophysical
14 survey permit here today without fully understanding and
15 appreciating the issue and how we ended up in this
16 position.

17 Revocation of our permit, even if it is restored
18 after January 17th, 2010 will have an impact on both the
19 finances and reputation of Fugro Pelagos.

20 Furthermore, if Fugro Pelagos agrees in writing
21 with a stipulation specified by the State Lands Commission
22 in Calendar Item 40, then we are, in effect, being held to
23 a different regulation, permit, and standard than other
24 permittees.

25 Nor would this step resolve the root problem,

1 which is the intent, purpose, wording, and application of
2 the off-shore geophysical survey permit. Without
3 addressing this and without enforcement, the playing field
4 would not be level and only Fugro Pelagos would be
5 handicapped.

6 Once again, I ask that the State Lands Commission
7 not revoke Fugro Pelagos's off-shore geophysical survey
8 permit, and request that further evaluation, including
9 direct discussions among the parties be conducted. We
10 again offer our experience and expertise to assist the
11 State Lands Commission in refining the language of the
12 permit to resolve its current ambiguities.

13 Thank you for your time and consideration.

14 CHAIRPERSON CHIANG: David, we'd like to ask you
15 a few questions, if you don't mind.

16 MR. MILLAR: Sure.

17 CHAIRPERSON CHIANG: Tom.

18 ACTING COMMISSIONER SHEEHY: Thank you, Mr.
19 Millar for coming today to present your position on this
20 matter and on the staff's recommendation.

21 I'd like to know, Mr. Millar, if you
22 are -- recommendation number four says authorize staff to
23 restore the revoked permit after January 17, 2010, if
24 prior to that restoration, staff is satisfied that Fugro
25 Pelagos has agreed in writing, and then it has these two

1 conditions.

2 The ocean floor surface mapping using multibeam
3 sonar equipment is an activity that's covered by the
4 issued permit -- that's Provision A -- and Fugro Pelagos,
5 Inc. will comply with all provisions of the permit,
6 including, but not limited to, provisions relating to
7 notices and to the presence of marine wildlife monitoring
8 during survey operations. That's provision B.

9 I'd like to know if, setting aside the revocation
10 issue for a moment, are you in agreement with Provisions A
11 and B, and are you willing to stipulate to those?

12 MR. MILLAR: I guess I can say, as I presented in
13 my comments, we don't believe that our acceptance of those
14 terms would be acceptable or fair or equitable without
15 that being applied to all permittees. So by us agreeing
16 to survey, subject to those specific restrictions, doesn't
17 necessarily mean that others under permit don't make
18 future similar misinterpretations or, I guess, fall into
19 the same trap, if you like.

20 ACTING COMMISSIONER SHEEHY: Okay. Very well.
21 Then, Mr. Millar, I understand you're making an equity
22 argument that if your company is subject to these
23 provisions, then all companies doing the same work or very
24 similar work should be subject to them. Let's say that
25 aside for a moment, would these two provisions here cause

1 a hardship for your company.

2 MR. MILLAR: I would say not necessarily, if the
3 playing field were level and all survey companies were --

4 ACTING COMMISSIONER SHEEHY: Okay. So Fugro
5 Pelagos could abide by these two provisions without it
6 having a material impact on your company's ability to do
7 business?

8 I understand your equity argument. I want to get
9 to the nut of this, at least in my mind.

10 MR. MILLAR: Yeah, I think so. There is another
11 more complex issue here, I believe is, is there even
12 enough science available to determine whether these
13 measures are required for a survey of this type.

14 ACTING COMMISSIONER SHEEHY: Okay, very well.
15 We're not going to decide that today.

16 Now, Mr. Chairman, may I ask staff a question?

17 CHAIRPERSON CHIANG: Sure.

18 ACTING COMMISSIONER SHEEHY: Mr. Millar is
19 asserting that these conditions, Provisions A and B, are
20 not or would not or may not be applicable to probably what
21 are competitors of his or other entities that may be doing
22 this work. Is that the case?

23 EXECUTIVE OFFICER THAYER: Staff has looked into
24 that. And other -- some other permittees have provided
25 the notice, and presumably have had the observer on board

1 for conducting surveys that are similar to the ones that
2 are being -- that were conducted in October, the seafloor
3 mapping.

4 So our approach has been consistent that we
5 believe that those kinds of surveys are subject. We don't
6 have an enforcement arm, so it may very well be that there
7 are other entities out there without permits or with
8 permits that aren't following that approach. Where we
9 find out about that -- and there was somebody - I can't
10 remember the company - who wrote a letter of complaint to
11 us in the last year about their company being subject to
12 these permit requirements and other operations under way,
13 where those companies -- other companies have not obtained
14 a permit from us. And when we find out who's involved, we
15 pursue that.

16 And, in fact, Calendar Item 37 today is -- which
17 the Commission approved as part of the consent calendar,
18 is a new permit for the University Corporation at Monterey
19 Bay. And that's an example of one where we had heard that
20 they were conducting operations without this permit. We
21 contacted them, told them they needed a permit, and
22 they've applied, and this was brought to it.

23 So we agree entirely with Fugro, that this should
24 be consistently applied. It's unfair to impose a business
25 expense on one entity and not the others. There's

1 probably more work to be done to complete that.

2 ACTING COMMISSIONER SHEEHY: So, you know, we
3 can't enforce this on those entities that we don't know
4 about and that haven't come forward for a permit. I mean,
5 you know --

6 EXECUTIVE OFFICER THAYER: Right.

7 ACTING COMMISSIONER SHEEHY: We can only enforce
8 it on those entities that we know about, who are doing
9 business in accordance with the law in California. And an
10 enforcement issue is separate issue. It's an important
11 issue. But with those entities that do have permits by
12 the State Lands Commission to do this type of work, are
13 these requirements part of the permit?

14 EXECUTIVE OFFICER THAYER: Yes.

15 ACTING COMMISSIONER SHEEHY: I want to make sure
16 that we're not -- I want to make sure I fully understand
17 the equity argument that Mr. Millar has made. We are
18 not -- it is your position, staff's position, that we are
19 not singling out this company and treating them
20 differently, is that correct?

21 EXECUTIVE OFFICER THAYER: No -- that's an
22 appropriate question. But no, we are not inventing a
23 different set of standards for Pelagos.

24 ACTING COMMISSIONER SHEEHY: So these set of
25 standards therefore would be applied to anybody and

1 everybody who we know about and who's operating legally?

2 EXECUTIVE OFFICER THAYER: Yes.

3 ACTING COMMISSIONER SHEEHY: It is quite
4 possible, probably likely, that there are entities that
5 either, knowingly or unknowingly, are operating illegally,
6 and therefore, you know, they don't have any conditions
7 like this, because they don't have a permit.

8 EXECUTIVE OFFICER THAYER: Right.

9 ACTING COMMISSIONER SHEEHY: Is that right?

10 EXECUTIVE OFFICER THAYER: I should follow up on
11 a couple -- with the permission of the Commission, I'd
12 like to respond to a couple other points there too.

13 We would agree with Mr. Millar that a review of
14 this program is appropriate. And I think as we've
15 discussed with the Commissioners individually, we're
16 interested in conducting a new environmental review of the
17 potential impacts from these kinds of operations, whether
18 it be seafloor mapping or other kinds of geophysical
19 surveys that are done. We don't have the money and
20 entities -- I don't know whether Pelagos was one of them,
21 but we've gotten feedback from a number of the entities
22 that they can't afford to pay for this review.

23 So we have approached Ocean Protection Council.
24 We sent them a letter asking for funding. We had some
25 favorable informal staff response, but as with other

1 programs that require bond funding, they haven't been able
2 to sell bonds because of the State's fiscal situation, and
3 we haven't yet received that money.

4 We've put the permits for new -- or the new
5 permits or the permit renewals on a one-year cycle, so
6 that we can do that kind of study and determine if changes
7 are warranted.

8 They might very well end up with permits not
9 being required for certain activities and more
10 environmental protection than others. But until we've
11 done that review, we're not prepared to come to the
12 Commission, at this point, and make recommendations for
13 changing the existing program, so we continue to maintain
14 that.

15 ACTING COMMISSIONER SHEEHY: I have one final
16 question, Mr. Chairman.

17 Paul, I don't know how many permittees there are
18 out there with permits like this from State Lands, but
19 would it be reasonable within the resources of your
20 budget, such as it is, that, at some point in the future,
21 a notice could be sent out to all of them notifying them
22 of this incident and reinforcing these specific
23 requirements as just sort of a heads up just to remind
24 you, subject to your permit provides that. I mean, is
25 that something that -- I don't want to ask for -- I don't

1 know what it would cost and I want to be sensitive to
2 budget. Is that something that would be within your --

3 EXECUTIVE OFFICER THAYER: Absolutely.

4 ACTING COMMISSIONER SHEEHY: Okay. Mr. Chairman,
5 regardless of how we resolve this issue this morning, I
6 would like to incorporate into the motion a requirement
7 for staff to notify all permittees, and the specific --
8 and to let them know -- we don't need to mention -- I'm
9 not -- I want to clarify Mr. Millar, I'm not -- it's not
10 my intent on any level to draw attention to your company
11 specifically. I'm sure you're quite sincere about the
12 harm that was done to this mammal. And so I'm not --
13 that's not my -- that's not where I'm coming from.

14 So I don't know that it's necessary -- I don't
15 think it would be necessary to mention the company that
16 was involved, because I'm not trying to create bad public
17 relations for Fugro, but maybe you could mention there was
18 an incident that happened in this notice and to remind
19 permittees that they are subject to these requirements.
20 And that if they have any questions about these
21 requirements or other provisions of their permit, that
22 they should contact the State Lands Commission staff for
23 clarification.

24 I'd like to incorporate that, Mr. Chairman, into
25 any motion that's made.

1 CHAIRPERSON CHIANG: Yeah, Tom. I'm of the same
2 thinking.

3 Mona, did you have any questions or comments you
4 wanted to make?

5 COMMISSIONER PASQUIL: I agree, because I -- in
6 listening to Mr. Millar, I'm concerned about the
7 ambiguity, and the fact that not everybody understands the
8 language the same. You know, folks, we have to be able
9 to -- in order to follow the rules, we all have to
10 understand the rules.

11 So I think it's very important for us to be able
12 to reach out to everyone, as well as companies, you know,
13 who have permits to also be very proactive in clarifying,
14 and really coming to the table to ask these questions
15 before, you know, we come to a situation like this.

16 CHAIRPERSON CHIANG: I think you can see that the
17 members here are not trying to create a situation where
18 there's unequal treatment or inconsistent application of
19 the law. I did take note of another one of your comments
20 about being highlighted.

21 You know, I can ask you the question, if you
22 revisit your position - and I'm clearly not speaking for
23 my colleagues - that you will acknowledge that ocean floor
24 mapping using multibeam sonar is an activity that is
25 covered by the issued permit; you will comply with all the

1 provisions of the permit; that you will pay for the
2 billing somewhere around 15,000 for the incident response
3 and investigation, I don't see a need, personally right,
4 to put you through -- to revoke your permit, if you agree
5 here to the terms of what the staff has recommended.

6 I don't know how much that factors into your
7 embarrassment or so. But, you know, as I said, I don't
8 speak for the others. But we're trying to accommodate
9 you. I think you acknowledged the severity and the
10 seriousness of what transacted. They are natural precious
11 resources.

12 And so, you know, we're not trying to harm you,
13 but we want to take light of the legal and policy
14 considerations.

15 MR. MILLAR: Excuse me, can I comment?

16 CHAIRPERSON CHIANG: Please.

17 MR. MILLAR: I understand your position. I guess
18 my concern, and there is still a concern, it's related to
19 those that are currently surveying without a geophysical
20 survey permit. And I know we discussed the lack of
21 enforcement, and the difficulties in enforcement, the
22 number of eight permittees within the state. We believe
23 that there are significantly more survey companies
24 currently surveying within State waters conducting
25 hydrographic surveys that do not believe they are subject

1 to geophysical survey permit requirements.

2 So until the actual permit itself, the language
3 of the permit itself, is clarified, then I think we still
4 have the problem here. That those people that aren't
5 getting notice from the Commission because they already
6 are under permit, that's not the issue, so much as the
7 folks that are operating without a permit, conducting
8 these activities without a permit, may continue to do so,
9 because they're not getting that notice, right, and
10 they're not aware of this issue.

11 They continue to interpret it the way that they
12 interpret it. We're unique, in that, we did hold a
13 geophysical survey permit, and we comply with the terms
14 when we're conducting that activity. We didn't believe
15 this activity fell within the definition of the permit.
16 So that's -- I think that's an important point.

17 CHAIRPERSON CHIANG: Yeah. And I want to draw a
18 distinction. I appreciate you securing the permit. I
19 understand your concern about people not in compliance.

20 However, we found you, or I find you outside of
21 compliance. So clearly, you know, to address your
22 specific matter based on other people not complying,
23 doesn't allow me to provide you with the benefit of the
24 doubt, in my mind.

25 COMMISSIONER PASQUIL: Go ahead.

1 ACTING COMMISSIONER SHEEHY: I may be prepared to
2 support you, Mr. Chairman, in the suggestion you made
3 about the license revocation, but I'd like to hear
4 something from Mr. Millar.

5 CHAIRPERSON CHIANG: Mr. Millar, you have an
6 indication that two of us are willing not to revoke your
7 permit, if you will comply with what the staff has
8 recommended. So, in essence, you know, you have a clear
9 choice whether you choose to have your permit revoked or
10 not.

11 MR. MILLAR: Yes, we do not want to have our
12 permit revoked.

13 CHAIRPERSON CHIANG: So will you comply with the
14 terms as offered by the staff?

15 MR. MILLAR: Can we, I guess, have a statement
16 from the Commission that the language will be revisited
17 and addressed? And is the Commission willing to seek
18 public input from survey companies conducting this
19 activity?

20 EXECUTIVE OFFICER THAYER: We would be glad to
21 converse with Mr. Millar about the language and take into
22 account any suggestions he has for clarifying that. Since
23 we are on a one-year term now on the permit, there will be
24 opportunities to make changes to the language to the
25 permit, if he feels that would make it clearer.

1 And, frankly, if he's willing, we'd be interested
2 in any assistance he has to identify companies that are
3 operating on these kinds of surveys without benefit of a
4 permit.

5 ACTING COMMISSIONER SHEEHY: Mr. Chairman, may I
6 make a suggestion?

7 CHAIRPERSON CHIANG: Yes, Tom.

8 ACTING COMMISSIONER SHEEHY: Paul, could you --
9 if that's the direction this body goes, can you make some
10 sort of notice on your website available that
11 you're -- that this review of the language is being looked
12 at on a prospective basis, so that if there are any other
13 entities beside Mr. Millar and his company that would like
14 to have input, that they have that opportunity?

15 EXECUTIVE OFFICER THAYER: Certainly.

16 Well, and we would just conduct a mailing to
17 everybody on the permit, as well -- who has permits as
18 well as putting something on the website that we're
19 looking at this, and circulate drafts that kind of thing.

20 CHAIRPERSON CHIANG: Okay. Let me ask that
21 question. Are you okay with that?

22 MR. MILLAR: Yes.

23 CHAIRPERSON CHIANG: Okay. So we have, at least
24 so that we clarify the understanding, you have agreed to
25 comply with the staff's requests to admit that ocean floor

1 mapping is an activity that is covered by the issued
2 permit using multibeam sonar. You will comply with the
3 provisions of the permit, including -- that you will pay
4 for the billing for staff expenses; that the staff will
5 work with you on this particular issue. And then it's up
6 to my colleagues to decide whether we will not revoke the
7 permit.

8 ACTING COMMISSIONER SHEEHY: As long as Mr.
9 Millar is agreeable to those terms, Mr. Chairman, I would
10 be prepared to waive the staff's recommendation on the
11 revocation of his permit, so that his permit may stay in
12 good standing.

13 COMMISSIONER PASQUIL: Mr. Chairman, I agree.

14 CHAIRPERSON CHIANG: Okay. And then in the event
15 that those terms are, in fact, not followed, that we will
16 revoke the permit.

17 ACTING COMMISSIONER SHEEHY: Yes, I agree.

18 CHAIRPERSON CHIANG: Okay. We have a motion by
19 Tom. We have a second by Mona.

20 Oh, I'm sorry. We have another speaker from your
21 firm. Did you want to speak or --

22 ACTING COMMISSIONER SHEEHY: If you've got the
23 votes --

24 (Laughter.)

25 ACTING COMMISSIONER SHEEHY: -- you may not want

1 to go any further.

2 (Laughter.)

3 MR. MILLAR: This was a back up.

4 ACTING COMMISSIONER SHEEHY: I learned from my
5 mentor a long time ago.

6 CHAIRPERSON CHIANG: We wanted to offer public
7 fairness. But sometimes when you're winning, you might
8 want to stop.

9 (Laughter.)

10 CHAIRPERSON CHIANG: Motion and second.

11 Without objection, the motion passes.

12 Thank you very much.

13 MR. MILLAR: Thank you.

14 CHAIRPERSON CHIANG: Paul, next item, please.

15 EXECUTIVE OFFICER THAYER: The next item is, in
16 fact, the L.A. item I mentioned previously. This has to
17 do with an amendment to the lease for lands located in
18 Owens Lake and the proposal for a Moat and Row project
19 there.

20 The staff presentation will occur from the Land
21 Management Division by Judy Brown, and from our
22 Environmental Unit by Steven Mindt.

23 I also have to acknowledge, and I'd be remiss if
24 I didn't note this as well, that this is also Judy Brown's
25 last meeting, who will be making the presentation for Land

1 Management. And Judy has been with us a number of years,
2 has worked on projects of great importance to us, such as
3 this one. And her guidance has been really important to
4 me and to the Commission to getting the work done. I
5 would note that her husband is Dave Brown, who's in charge
6 of our administrative unit. We hope that whatever she's
7 got won't be catching to quickly for him, because we don't
8 want him to leave so quickly.

9 (Laughter.)

10 EXECUTIVE OFFICER THAYER: But I don't want to,
11 by saying that, minimize the importance she's -- how much
12 importance she has had for our work and to thank her
13 publicly for her good work.

14 CHAIRPERSON CHIANG: I don't know, we may want to
15 review management now that --

16 (Laughter.)

17 CHAIRPERSON CHIANG: Mr. Thayer, you know, we
18 ought to have a little visit with you about trying to
19 retain great staff better.

20 (Laughter.)

21 EXECUTIVE OFFICER THAYER: Clearly, I've got a
22 problem here.

23 (Laughter.)

24 CHAIRPERSON CHIANG: Please.

25 LAND MANAGEMENT SPECIALIST BROWN: Good morning,

1 Mr. Chairman and members of the Commission. My name is
2 Judy Brown and I'm a member of the Land Management
3 Division staff.

4 Calendar Item 41 involves an application that was
5 submitted by the City of Los Angeles Department of Water
6 and Power on March 24th, 2009 to amend an existing lease
7 to include the construction of 3.5 square miles of Moat
8 and Row dust control measures on the dry bed of Owens Lake
9 in Inyo County.

10 The existing lease has a 20-year term that began
11 on May 1st, 1999, and authorizes the installation,
12 construction, operation, and monitoring of a total of 40.3
13 square miles of dust control measures on Owens Lake,
14 primarily for the implementation of shallow flooding and
15 managed vegetation. This is just under half of the total
16 area of Owens Lake which is a hundred square miles.

17 The proposed Moat and Row project includes the
18 following elements:

19 Up to an 89-foot wide corridor that contains a
20 five-foot high earthen berm or a row, with steep sloping
21 sides; an access road on both sides of the berm flanked on
22 the other side by a four to five and a half foot ditch or
23 moat.

24 Rows, which are mounded soil berms, serve as wind
25 breaks to capture the sand. The current design of the

1 Moat and Row elements are arrayed in a grid pattern
2 oriented to be perpendicular with the primary and
3 secondary wind directions. Minimum spacing of the
4 elements would be approximately a hundred feet center to
5 center.

6 Five-foot high sand fences would be installed on
7 top of the rows, and in some places would be installed on
8 the open playa.

9 The City has also proposed the placement of a
10 variety of enhancements within the Moat and Row areas to
11 gain greater dust control efficiencies. The enhancements
12 include the use of additional moats, rows, fencing,
13 managed vegetation, and shallow flooding.

14 In August of this year, Commission staff
15 presented an informational calendar item to you
16 summarizing staff's involvement in the CEQA review
17 process, concerns with the anticipated environmental
18 impacts that may result from this project, and the
19 project's inconsistencies with the Public Trust.

20 The Commission requested that Commission staff
21 and the City work together to try to resolve our concerns.
22 Since then, staff has met with the City and those
23 discussions have not eliminated staff's concerns. Staff
24 continues to assert that the Moat and Row project is
25 inconsistent with the Public Trust needs and the resources

1 and values of Owens Lake.

2 And as you know, Owens Lake is a State sovereign
3 land held in trust for the people of the State under the
4 Public Trust doctrine. This common law doctrine ensures
5 the public's right to use California's waterways for
6 navigation, fishing, boating, and other water-oriented
7 activities. Preservation of lands in their natural state
8 to protect scenic and wildlife habitat values is also an
9 appropriate Public Trust use.

10 Uses that do not protect or promote public trust
11 values, are not water dependent or oriented and exclude
12 rather than facilitate public access and use are not
13 consistent with the trust.

14 The Commission has the responsibility to manage
15 Owens Lake on behalf of the public to protect these rights
16 and values. In addition, staff still has outstanding
17 concerns with the potential environmental effects of the
18 project, and Steve Mindt from the Commission's Division of
19 Environmental Planning and Management will be presenting
20 this information and these concerns to you after my
21 presentation.

22 Staff is recommending that the Commission deny
23 the City's application for the construction of the Moat
24 and Row project on Owens Lake. Additionally, City staff
25 has recently discussed a new concept for the Owens Valley,

1 which includes the use of Owens Lake for a solar
2 demonstration project. Staff has not received many
3 details from the City on the proposed use of solar arrays
4 as a dust control measure, nor has it been reviewed or
5 approved yet by the Great Basin Control District.

6 However, staff anticipates that the City will be
7 submitting an application for a solar demonstration
8 project at Owens Lake, which will need to be analyzed
9 pursuant to CEQA and brought to the Commission for its
10 consideration at a future meeting.

11 This concludes my presentation, and I would like
12 to introduce Steve Mindt from the Commission's Division of
13 Environmental Planning and Management who will be giving
14 you a brief PowerPoint presentation on our environmental
15 concerns with Moat and Row.

16 CHAIRPERSON CHIANG: Thank you, Judy.

17 STAFF ENVIRONMENTAL SCIENTIST MINDT: Good
18 morning, Mr. Chairman and members of the Commission.

19 CHAIRPERSON CHIANG: Good morning.

20 STAFF ENVIRONMENTAL SCIENTIST MINDT: My name is
21 Steve Mindt and I'm a Staff Environmental Scientist with
22 the Division of Environmental Planning and Management.

23 (Thereupon an overhead presentation was
24 Presented as follows.)

25 STAFF ENVIRONMENTAL SCIENTIST MINDT: I've

1 prepared a PowerPoint here on the Owens Lake Moat and Row
2 project.

3 Next slide, please.

4 --o0o--

5 STAFF ENVIRONMENTAL SCIENTIST MINDT: Commission
6 staff has had and continues to have concerns in several
7 areas. One, the biological impacts, the visual impacts,
8 and the Public Trust impacts.

9 This slide shows the Moat and Row locations
10 outlined in red on the map and a current view from a
11 vantage point on the lakebed.

12 Next slide.

13 --o0o--

14 STAFF ENVIRONMENTAL SCIENTIST MINDT: There are
15 currently three dust control measures approved by the
16 Great Basin Air Pollution Control District as best
17 available control measures at Owens Lake. They are
18 shallow flooding, managed vegetation, and gravel cover.

19 Moat and Row is still an experimental control.
20 Gravel has not been approved by the Commission on a large
21 scale application.

22 This is a table comparing some of the
23 characteristics or impacts of the three approved
24 dust-control measures and Moat and Row. Moat and Row is
25 the first -- I'm sorry I lost my place here.

1 It's the only dust-control measure that has the
2 potential of animal entrapment, and if approved, will be
3 the only dust-control measure that does not provide
4 habitat. If you follow along on that.

5 --o0o--

6 STAFF ENVIRONMENTAL SCIENTIST MINDT: Here are a
7 few pictures of the currently approved dust control
8 measures, management vegetation, and shallow flood.

9 --o0o--

10 STAFF ENVIRONMENTAL SCIENTIST MINDT: And then
11 gravel application. Here are a few pictures of the
12 existing Moat and Row Demonstration Projects --

13 --o0o--

14 STAFF ENVIRONMENTAL SCIENTIST MINDT: -- which
15 the Commission approved in 2007. Notice the potential for
16 biological entrapment and the potential to obstruct
17 movement. If you just hold there for a second.

18 These are about five feet deep. And as you can
19 see, the sides are quite steep. And if you have small
20 animals or birds, there is a potential there for
21 entrapment.

22 Next slide.

23 --o0o--

24 STAFF ENVIRONMENTAL SCIENTIST MINDT: Here is a
25 picture of the existing Moat and Row next to managed

1 vegetation.

2 --o0o--

3 STAFF ENVIRONMENTAL SCIENTIST MINDT: And then
4 against shallow flooding with Moat and Row.

5 Next slide, please.

6 --o0o--

7 STAFF ENVIRONMENTAL SCIENTIST MINDT: Here are a
8 few more pictures of the Moat and Row Demonstration
9 Project. As you can see from ground level, when you have
10 a fence that's just five feet high, there's not much of an
11 obstruction, but if you put it up on top of a moat, it
12 clearly obstructs the background area.

13 Next slide.

14 --o0o--

15 STAFF ENVIRONMENTAL SCIENTIST MINDT: Here is a
16 design graphic for the Moat and Row element. This
17 represents T37-1. And this represents the average density
18 of the Moat and Row elements. Please note the potential
19 to obstruct biological movement and also the potential, if
20 you remember the last slide, of obstructing views from the
21 lake floor.

22 Next slide.

23 --o0o--

24 STAFF ENVIRONMENTAL SCIENTIST MINDT: Here is --
25 the top is a current view of Owens Lake. On the bottom is

1 a simulation with the Moat and Row elements out there.

2 Next slide.

3 --o0o--

4 ACTING COMMISSIONER SHEEHY: Could you go back to
5 the previous slide.

6 STAFF ENVIRONMENTAL SCIENTIST MINDT: I'm sorry,
7 back one, please.

8 Yes, sir.

9 CHAIRPERSON CHIANG: I'm sorry where is the Moat
10 and Row.

11 STAFF ENVIRONMENTAL SCIENTIST MINDT: Yes, the
12 lower one, the black down here.

13 ACTING COMMISSIONER SHEEHY: I don't see
14 anything.

15 (Laughter.)

16 ACTING COMMISSIONER SHEEHY: What is it we're
17 supposed to see?

18 STAFF ENVIRONMENTAL SCIENTIST MINDT: What it
19 shows is that there are Moat and Row element there.
20 There's a black -- on the white playa, there is a blacked
21 out area there that represents the shadowing of the Moat
22 and Rows and the Moat and Rows over there in that area.

23 ACTING COMMISSIONER SHEEHY: Okay. It doesn't
24 exactly jump out at you.

25 STAFF ENVIRONMENTAL SCIENTIST MINDT: No. No.

1 From the views they did. But if you'd go back one more
2 slide, you can see when you're down on the Owens Lake
3 Valley, it does -- it's 10 feet high. And so for the
4 average person at a five-foot eye level, it's quite
5 obvious. Thank you.

6 Go head, I guess, two slides.

7 Where are we?

8 I'll go back one to the -- sorry.

9 This is another graphic design of the largest
10 dust control measure that they're proposing in Moat and
11 Row. It stretches a little over three and a half miles.
12 And this portion of the lake is very popular with the
13 public for wildlife viewing.

14 Next slide, please.

15 --o0o--

16 STAFF ENVIRONMENTAL SCIENTIST MINDT: This is a
17 summary of the footprint of the proposed project. As you
18 can see, we have the Moat and Row areas there. And
19 basically we'll have 58 miles, almost 60 miles, of the
20 Moat and Row elements, and then below it shows that we
21 have about 118 miles of trenches and about 60 miles of
22 mounds, about 21 miles of fencing and a footprint of about
23 325 acres.

24 ACTING COMMISSIONER SHEEHY: Excuse me.

25 STAFF ENVIRONMENTAL SCIENTIST MINDT: Yes, sir.

1 ACTING COMMISSIONER SHEEHY: Mr. Chairman, may I
2 ask staff a question?

3 CHAIRPERSON CHIANG: Yes.

4 ACTING COMMISSIONER SHEEHY: I'm sorry, Mr.
5 Mindt. I don't know if you have laser pointer, but if you
6 don't, could you --

7 COMMISSIONER PASQUIL: Your mike.

8 ACTING COMMISSIONER SHEEHY: I apologize.

9 I'm sorry, Mr. Mindt, I don't know if you have a
10 laser pointer. But if you don't, would it be possible for
11 you to go to the diagram and show us the total area of
12 Owens Lake, and then what specific areas are proposed for
13 Moat and Row, just so that we can get in perspective,
14 because just hearing this statistics is rather meaningless
15 to me.

16 STAFF ENVIRONMENTAL SCIENTIST MINDT: Sure. Can
17 we go back to the very first slide in the presentation.
18 It shows that a little bit better if we just go ahead and
19 start over.

20 This around here is the entire Owens Lake
21 perimeter here. These elements here that are marked with
22 a T are the proposed Moat and Row elements. They're
23 outlined in red. And this is the largest one we looked at
24 the graphics. And then the T37 is right up here.

25 ACTING COMMISSIONER SHEEHY: May I ask a

1 clarifying Chairman, Mr. Chairman.

2 What's going on with all this area in here that's
3 just white?

4 STAFF ENVIRONMENTAL SCIENTIST MINDT: Right now,
5 that is -- there's a certain amount of open playa.
6 There's a brine pool here.

7 ACTING COMMISSIONER SHEEHY: But this is all part
8 of Owens Lake?

9 STAFF ENVIRONMENTAL SCIENTIST MINDT: This entire
10 area.

11 ACTING COMMISSIONER SHEEHY: This whole area is
12 Owens Lake?

13 STAFF ENVIRONMENTAL SCIENTIST MINDT: Yes, this
14 entire area is the Owens Lake. A hundred and ten square
15 miles is the actual footprint of the Owens square lake --
16 I'm sorry Owens dry lakebed.

17 ACTING COMMISSIONER SHEEHY: Thank you.

18 STAFF ENVIRONMENTAL SCIENTIST MINDT: Yes.

19 ACTING COMMISSIONER SHEEHY: I'm sorry. So the
20 Moat and Row areas specifically are the areas outlined in
21 red?

22 STAFF ENVIRONMENTAL SCIENTIST MINDT: Correct.

23 ACTING COMMISSIONER SHEEHY: And that's what's
24 proposed in this lease?

25 STAFF ENVIRONMENTAL SCIENTIST MINDT: That is

1 correct. It's 3.5 square miles.

2 ACTING COMMISSIONER SHEEHY: Thanks.

3 STAFF ENVIRONMENTAL SCIENTIST MINDT: And then
4 also down in this area, there is a -- Fish and Game has
5 Cartago Springs Wildlife Preserve. And then up here in
6 this area, there is a large Delta area, which is also home
7 to a number of species and redevelopment habitat projects.

8 Okay. The State Lands staff recommends that the
9 Commission deny this project on the basis of the
10 biological and visual impacts, and the dust control
11 measures will have on the Owens Lake.

12 We've already asked questions. I guess, I can
13 ask, are there any more questions that I might be able to
14 help you with?

15 ACTING COMMISSIONER SHEEHY: I have a question.

16 CHAIRPERSON CHIANG: Please.

17 ACTING COMMISSIONER SHEEHY: I think the visual
18 impact issue is pretty straightforward. It's the visual
19 impact of the moats and the rows. That's not meant to be
20 flippant, but I mean that's the issue there. So I
21 understand that point.

22 Could you, Mr. Mindt, go into anymore detail
23 about the biological impacts.

24 STAFF ENVIRONMENTAL SCIENTIST MINDT: Yes.

25 There's been some discussion on the potential -- if you

1 can put up the slide right before this one, please.

2 In this area here, we have some shallow flooded
3 areas, some managed vegetation, and shallow flooding.
4 Down here, we have a large wildlife preserve.

5 One of the concerns that we have, there's a
6 number of birds there. There's a particular bird, the
7 Snowy Plover, that will nest where it can see the shallow
8 flood areas. The concern is with the very steep sides and
9 the deep trenches that, you know, those along with other
10 waterfowl may fall into these trenches and not be able to
11 escape.

12 ACTING COMMISSIONER SHEEHY: Okay. So we're
13 concerned about the Snowy Plovers. Now you said that
14 they -- their nesting areas are near where the shallow
15 flooding is?

16 STAFF ENVIRONMENTAL SCIENTIST MINDT: Yes. We
17 talked to some bird experts and there's some disagreement
18 there. At least within a half mile where they can
19 unobstructedly observe water. And potentially up to one
20 to three miles they have a preferred nesting habitat.

21 With the fence arrays, with the mounds up there,
22 it will significantly -- they're right adjacent to the
23 shallow flood areas. They'll remove approximately --

24 ACTING COMMISSIONER SHEEHY: How adjacent? Do
25 they literally abut up to it?

1 STAFF ENVIRONMENTAL SCIENTIST MINDT: Yes,
2 within -- there's probably a 15 to 100 foot separation.
3 There's a road. There's some, you know, dewatering
4 trenches and some other equipment, but anywhere from about
5 15 to 100 feet, it will abut up against yes.

6 ACTING COMMISSIONER SHEEHY: Has the lease
7 applicant made any suggestion on how they might mitigate
8 Snowy Plovers from -- and I don't mean this to be funny,
9 but I don't know how else to say it -- from sort of
10 falling into the moats?

11 STAFF ENVIRONMENTAL SCIENTIST MINDT: We've had a
12 number of discussions. I don't know if Paul would like me
13 to answer. I'm not sure how diplomatic I can be. We have
14 made a number of suggestions, including a demonstration
15 project with a surrogate species. And they refuse to go
16 down that road.

17 We looked at additional mitigation measures with
18 Fish and Game, and they basically said that the only thing
19 that they were willing to do was to go ahead with the
20 project, and after a certain mortality threshold was
21 reached, then they would decide what to do.

22 But what they had decided to do would depend on
23 the potential feasibility and the impact on the dust
24 control measures. And we asked them to look at those
25 mitigation measures and see which ones were feasible and

1 which were not feasible, as it related to the dust control
2 measures. And they did not come forward with that study
3 or any feedback.

4 ACTING COMMISSIONER SHEEHY: Mr. Mindt, are
5 there -- it's just hard, because it's such a big area with
6 all the different color codes. It's just hard to sort of
7 get my head around all of this. But are there other large
8 areas of shallow flooding where Moat and Row will not abut
9 up to it?

10 STAFF ENVIRONMENTAL SCIENTIST MINDT: I can't
11 answer that off the top of my head. This area was picked
12 by the Great Basin Air Pollution Control District, based
13 on emissiveness via a NASA satellite, so I'm not certain
14 that I could answer that or that I'm qualified to answer
15 that.

16 ACTING COMMISSIONER SHEEHY: All right. Let me
17 try asking the question another way. I understand that
18 currently there's a significant amount of shallow flooding
19 taking place, that's right?

20 STAFF ENVIRONMENTAL SCIENTIST MINDT: That is
21 correct, yes.

22 ACTING COMMISSIONER SHEEHY: And so therefore, my
23 question is, for the lease application for Moat and Row,
24 and you've testified or you've stated that Moat and Row
25 abuts right up close to the shallow flooding, and it's

1 that area close to the shallow flooding where there's a
2 higher probability of the Snowy Plovers to be. What I'm
3 asking is, is that area where Moat and Row would abut up
4 to the shallow water a large area? I mean, in other
5 words, if you look at the total amount of shallow flooding
6 that's going on, are they just impacting a small portion
7 of that or are they impacting a large portion of that? I
8 want to get some perspective here.

9 STAFF ENVIRONMENTAL SCIENTIST MINDT: What
10 they're impacting is anything within a half mile up to
11 three miles of the shallow flood. So where we have
12 shallow flood here, potentially out to hear about three
13 miles out and from this one here. So this whole area is
14 no longer available for Plover habitat.

15 ACTING COMMISSIONER SHEEHY: But don't they have
16 a -- but my question is, is isn't there a tremendous
17 amount of shallow flooding higher up in that slide?

18 STAFF ENVIRONMENTAL SCIENTIST MINDT: Up here?

19 ACTING COMMISSIONER SHEEHY: Yes.

20 STAFF ENVIRONMENTAL SCIENTIST MINDT: There is
21 some shallow flooding up here. What we look at is Fish
22 and Game and also in the Environmental Impact Report, they
23 looked at traditional Snowy Plover habitat, where they
24 have nested in years and years.

25 Down here, there's a natural seep and a wildlife

1 preserve. So this area here and around here had a high
2 number of Plovers there naturally. What they're proposing
3 to do is to remove this from the Snowy Plover habitat.

4 What we don't know, and that's what we asked them
5 to look into, is if the Plovers still try to nest along
6 this area here and possibly out into the Moat and Row
7 area, what the potential for entrapment or fatality would
8 be, and that's where we ran across it.

9 ACTING COMMISSIONER SHEEHY: Well, I'll look
10 forward to hearing more clarifying information either from
11 staff and/or from the lease applicant. I'm still trying
12 to get a sense of how -- in other words, if the total
13 habitat area that could be for Snowy Plover was a hundred,
14 is their lease application impacting five out of the
15 hundred, 20 out of the hundred, 80 out of the hundred.
16 Because while I'm concerned about the biological impact,
17 I'm trying to get a sense of magnitude and proportion,
18 because there's another side to this equation, where
19 there's tremendous benefit to human life, and to prevent
20 lung disease, and human death from the massive amounts of
21 dust that can be kicked up from this lake.

22 And we know, you know, in a perfect world, if
23 water wasn't a scarce resource, that the best thing to do
24 here would be to simply flood this whole basin, right?

25 STAFF ENVIRONMENTAL SCIENTIST MINDT: Yes.

1 ACTING COMMISSIONER SHEEHY: I mean, you know,
2 that would be the best thing visually, habitat wise,
3 everything. But water is an extremely scarce resource in
4 this state. We are, in practical -- you know, we, in some
5 areas of the state, we're in an emergency situation. And
6 so we've got to find some way to control this dust without
7 having to use hundreds of thousands of acre feet more of
8 water.

9 So what I'm trying to do, Mr. Thayer and Mr.
10 Mindt, is get a sense of magnitude of this biological
11 impact relative to that whole area there and everywhere
12 else where they're doing shallow flooding. Does that make
13 sense?

14 STAFF ENVIRONMENTAL SCIENTIST MINDT: Yes.

15 EXECUTIVE OFFICER THAYER: You know, Steven, if I
16 can ask you, in a way that I hope would be helpful to the
17 Commissioner. Would you identify which of those colored
18 areas up there are shallow flooded areas.

19 STAFF ENVIRONMENTAL SCIENTIST MINDT: Yes. Right
20 along here, this is a shallow flood area.

21 EXECUTIVE OFFICER THAYER: The entire blue area?

22 STAFF ENVIRONMENTAL SCIENTIST MINDT: The entire
23 blue area.

24 ACTING COMMISSIONER SHEEHY: So that looks like a
25 much bigger to me than these other little areas down here,

1 is that right?

2 STAFF ENVIRONMENTAL SCIENTIST MINDT: That is
3 correct.

4 EXECUTIVE OFFICER THAYER: Correct.

5 STAFF ENVIRONMENTAL SCIENTIST MINDT: That is.
6 And then along here, there are some proposed shallow flood
7 areas. And I'm not sure if, Judy, you know, which ones
8 are in Phase 7 that they're -- they're currently being
9 built. We had about 15 square miles that were proposed.
10 I believe there was an area here and an area out here.

11 ACTING COMMISSIONER SHEEHY: Okay. So based upon
12 what you just showed me - and, Paul, please push back if I
13 get this wrong - it looks to me like the amount of shallow
14 flooded coastline -- not coastline, shoreline that would
15 be impacted by this Moat and Row application is a pretty
16 small proportion relative to the total? That's how it
17 appears to me based upon what you're telling me.

18 EXECUTIVE OFFICER THAYER: I think it's much less
19 than half, yes.

20 ACTING COMMISSIONER SHEEHY: You would say it's
21 much less than half?

22 EXECUTIVE OFFICER THAYER: Yes. Steven, would
23 you agree?

24 STAFF ENVIRONMENTAL SCIENTIST MINDT: I'm sorry,
25 I was --

1 EXECUTIVE OFFICER THAYER: Would you agree that
2 the area affected by shallow flooding, in terms of
3 providing potential sites for nesting that are affected by
4 Moat and Row, is less than half -- much less than half of
5 the total potential nesting sites that are created by
6 proximity to shallow flooding?

7 STAFF ENVIRONMENTAL SCIENTIST MINDT: What I will
8 say, I do tend to agree with that. But what we do is we
9 have, as I mentioned before, because we have some natural
10 wildlife areas, they're a higher density of existing
11 Plover activity down here. But with the shallow flood
12 that they've added, they are starting to increase the
13 Plover nesting up there.

14 One of our discussions with LADWP had looked at
15 habitat enhancement to try to replace the two dozen
16 nesting sites here with highly rated habitat.

17 And either, you know, in this area or up in this
18 area to try to compensate and offset. During those
19 negotiations, Los Angeles Department of Power and Water
20 had indicated that they were going to pursue a solar. And
21 they had indicated to us -- and that's one of the reasons
22 why I didn't bring massive amounts of material, is that
23 they no longer wanted to pursue Moat and Row, but
24 preferred to pursue the solar. I don't know if that's
25 still currently their position.

1 ACTING COMMISSIONER SHEEHY: We don't have a
2 solar proposal before us, do we?

3 STAFF ENVIRONMENTAL SCIENTIST MINDT: No.

4 ACTING COMMISSIONER SHEEHY: Well, then I'd be
5 happy to hear more about solar later. But the proposal
6 that's before us today, Mr. Mindt, is the Moat and Row.

7 STAFF ENVIRONMENTAL SCIENTIST MINDT: I
8 understand that.

9 ACTING COMMISSIONER SHEEHY: So while we may want
10 to engage in some discussion at some point about solar,
11 because I think that's an interesting idea, that's not
12 what's before us today.

13 STAFF ENVIRONMENTAL SCIENTIST MINDT: I
14 understand that.

15 ACTING COMMISSIONER SHEEHY: Okay.

16 STAFF ENVIRONMENTAL SCIENTIST MINDT: One of the
17 things we have asked Los Angeles Department of Water and
18 Power to do is look at all of the potential impacts of
19 biological movement, because that is a well-visited public
20 area. We have a five and a half foot deep 19-foot across
21 one and a half to one slope of very unstable soils, asking
22 them not only about, you know, birds but also potential
23 inhabitants.

24 Our discussion didn't go that way, whether we
25 were looking at fencing or signs or somebody looking over

1 that area, once again, because they indicated to us that
2 they wished us to -- or wished the Commission to deny the
3 Moat and Row, therefore they could pursue solar. I
4 understand what you just quantified.

5 But what I'm saying is that we didn't go down
6 that road to answer all the questions, because they
7 indicated to us that they no longer wanted to pursue that.

8 CHIEF COUNSEL FOSSUM: Mr. Chairman, if I could.
9 To answer Mr. Sheehy's question, I think it's maybe
10 better -- you actually have before you an exhibit that is
11 supposed to be the same one as on the screen. And I think
12 it's much easier to see the physical one in your hands.

13 ACTING COMMISSIONER SHEEHY: What page is that,
14 Curtis?

15 CHIEF COUNSEL FOSSUM: Well, it doesn't have a
16 page number.

17 STAFF ENVIRONMENTAL SCIENTIST MINDT: It's the
18 second to the last slide.

19 CHIEF COUNSEL FOSSUM: And the Moat and Row
20 projects, as I understand them, are the ones that are in
21 gray color on there. And what you can see on those is
22 that in each instance they are adjacent to wet areas,
23 shallow flooding or ponds or habitat, shallow flooding,
24 and so forth.

25 And so I think that's the point in regard to the

1 Snowy Plovers is that there are these existing shallow
2 flooding or wet areas that are habitat that they want to
3 be near, and yet they are, if not surrounded, which they
4 are in many instances, the Moat and Row projects are
5 either surrounded or very much adjacent to those areas.
6 And so that's the kind of connection between the nesting
7 sites and the need to be near the water.

8 ACTING COMMISSIONER SHEEHY: Well, that's very
9 helpful, Mr. Fossum. I appreciate that. And the other
10 thing that I see from looking at this image -- but you're
11 right, it's very helpful to look at this. I don't have a
12 TV camera blocking my view.

13 Sorry, I was taking a little shot at AGP.

14 (Laughter.)

15 ACTING COMMISSIONER SHEEHY: Is that I see a
16 tremendous amount of shallow flooding area for which there
17 is no obstruction at all. The vast majority of this
18 shallow flooding area would not be abutted by the Moat and
19 Row. That's what this shows me.

20 CHIEF COUNSEL FOSSUM: And I don't think it's the
21 shallow flooding that gets abutted. I think it's that the
22 nesting -- Snowy Plovers, I think, like to nest not on
23 water, but near water.

24 ACTING COMMISSIONER SHEEHY: Right, and so what
25 I'm -- Mr. Mindt testified that it was within a mile and

1 that there were some people that believed it went even
2 further, maybe up to three miles, I believe that was your
3 testimony, right?

4 STAFF ENVIRONMENTAL SCIENTIST MINDT: That is
5 correct.

6 ACTING COMMISSIONER SHEEHY: So if I look at this
7 image here, which is what I was trying to get my head
8 around. I think Paul agreed with me, it was safe to say
9 that less than 50 percent of the total, what I'll say
10 shoreline -- I don't know the right technical term -- is
11 impacted by the proposed Moat and Row.

12 It's not my intent to minimize the impact where
13 it exists. I think it's probably very real, and there
14 probably, if this goes forward, would be loss of some
15 Snowy Plovers. I think that would be impossible to avoid.

16 I'm just trying to put it in perspective, because
17 it seems like the vast majority of the shallow flooding
18 here would not be abutted by the Moat and Row, and
19 therefore would not be an issue relative to the Snowy
20 Plovers nesting. That's all. I'm just looking for order
21 of magnitude here.

22 CHIEF COUNSEL FOSSUM: And I think what staff has
23 told me is that the -- one of the concerns they have is
24 that if you look on the very -- I guess it's the last --
25 or the very first slide that shows those Moat and Row

1 areas, that in the southern part where --

2 ACTING COMMISSIONER SHEEHY: You mean, the cover,
3 when you say the very first slide? You mean the actual
4 cover?

5 CHIEF COUNSEL FOSSUM: Yeah, the cover. That
6 those in the southern part of the lake where the majority
7 of the Moat and Row is are ones where there is substantial
8 Snowy Plover habitat.

9 ACTING COMMISSIONER SHEEHY: So there's a
10 higher -- so that issue is therefore -- of the habitat
11 that's there, there's a higher concentration of the Snowy
12 Plovers in the area where they would be putting Moat and
13 Row?

14 EXECUTIVE OFFICER THAYER: That is correct.

15 ACTING COMMISSIONER SHEEHY: So while the total
16 magnitude might be much less than 50 percent on a spatial
17 basis, what you're suggesting is, is that where they are
18 putting Moat and Row, would have more of an impact because
19 there's a higher population of Snowy Plovers there?

20 STAFF ENVIRONMENTAL SCIENTIST MINDT: That is
21 correct.

22 ACTING COMMISSIONER SHEEHY: Is that a static
23 situation or is that a dynamic situation, and is it
24 possible that over time that may change?

25 STAFF ENVIRONMENTAL SCIENTIST MINDT: We only

1 have a few years of data since they've been looking at
2 that area. All I can say is that we had a very high
3 concentration in this area, the southern part of the lake
4 over the last five years. We have seen an increase of the
5 total population of nesting. There has been more up here.
6 There also has been a significant increase down in this
7 area. So, yes, it is a dynamic picture and all of Owens
8 Lake is increasing.

9 One of the things that we are looking at is, you
10 know, because of the wildlife area down here, it is a very
11 popular public area for visiting, and everything, is that
12 the impact there, I think, would approach a significant
13 impact. When you have Plover nesting, you usually get
14 broods of about 18 to 24 individuals. And we're only
15 looking at about 250 to 280 individuals on the lake during
16 brooding season.

17 So if you have say five nests here and you have,
18 you know, 100 brooding people, that could be -- approach
19 half the population on the entire lake. And if our
20 mortality level is 23 individuals, which I agree is not
21 huge, but we could lose 23 individuals in one event if a
22 brood fell in the moat, and, you know, it became entrapped
23 there.

24 ACTING COMMISSIONER SHEEHY: Mr. Chairman, that's
25 all I had at this point in the presentation.

1 CHAIRPERSON CHIANG: Very good. Thank you, Tom.
2 Mona.

3 COMMISSIONER PASQUIL: I just had a question, and
4 I know you've probably just said it, but I want to hear it
5 again. You said, there is the population down below, but
6 they are moving up to where there is more -- you know,
7 there has been more shallow flooding.

8 STAFF ENVIRONMENTAL SCIENTIST MINDT: Well, there
9 are new populations being established, so basically we
10 have --

11 COMMISSIONER PASQUIL: So they are moving as the
12 water increases?

13 STAFF ENVIRONMENTAL SCIENTIST MINDT: Well, as --
14 yes. As you have habitat -- and there are certain things
15 out in the center here, where they're going to hold them
16 back. There's a brine pool. And the salt content out
17 near the middle of the lake and the unstable soils is so
18 high that nothing ventures out there.

19 So there is a very large brine pool. I can't
20 remember the exact size, if it was about 40 square miles
21 or so -- 25 square miles is the actual brine pool in this
22 area, which is basically not suitable for any mammals.
23 It's even so salty that the brine flies don't live there.
24 There's just a few bacterium and such.

25 COMMISSIONER PASQUIL: Thank you.

1 Thank you, Mr. Chairman.

2 EXECUTIVE OFFICER THAYER: If I could clarify on
3 that. As Steven I think pointed out, they're not moving
4 up there. They're new individuals that are coming up
5 there. But it's not like they're leaving the area where
6 the moats and rows are proposed. And, in fact, you know,
7 the concern is that as long as the shallow flooding
8 continues to be in the area of the Moat and Row, then
9 there will be a population that will move in there.

10 COMMISSIONER PASQUIL: Thank you.

11 CHAIRPERSON CHIANG: Okay. I'm sorry, Paul.

12 EXECUTIVE OFFICER THAYER: No. I think that
13 concludes the staff presentation. I wanted to wrap up
14 with a couple points.

15 You know, the first is that originally, you know,
16 Owens Lake was a thriving lake. It has steam vessels on
17 it. It was entirely Public Trust. It wasn't a dry lake
18 bed. It was dried out as a result of diversion of the
19 water. It remains therefore subject to State Lands
20 Commission jurisdiction, because it was the former bed of
21 a navigable water.

22 The dust problem is something that has been dealt
23 with through the years through negotiations between the
24 Great Basin Air District and LADWP. The State Lands
25 Commission has -- even though we're the landowner and it's

1 our land where all of these projects are going in, we've
2 kind of been put into reactive and trailing mode on the
3 solutions that were developed between Great Basin and
4 LADWP.

5 And there's some reasonableness to that. It's
6 not our dust problem. It's really L.A.'s dust problem,
7 because they made it. And the air district has their
8 responsibilities with respect to improving air quality for
9 the local residents. But we have -- are land managers and
10 have a responsibility to make sure that the measures that
11 are chosen comply with our overall mission.

12 And to date, the measures that were chosen are
13 largely coincidental with our mission. The managed
14 vegetation and the shallow flooding brought back some of
15 the habitat values that were there originally when Owens
16 was a lake.

17 So it would have been very easy for staff to come
18 to the Commission and say well, we weren't really
19 consulted about this, but this is a win-win situation. It
20 improves Public Trust values. It improves the dust
21 control. It improves the air quality.

22 For us, moat and row breaks that tradition. And
23 again, we were brought this without our consultation. The
24 Commission did approve the pilot project to see how it
25 would work. But basically the air district and LADWP

1 reached an agreement to apply this to three and a half
2 miles, and now we're asked to approve this.

3 Moat and Row does nothing for Public Trust
4 values. It decreases them, because of the potential
5 impacts to the Snowy Plovers. It eliminates this area for
6 access that kind of thing. So we do not have a win-win
7 situation here. Or maybe it's better to say, well, we
8 have a win-loss situation.

9 The win is, the dust, according to L.A. they have
10 reason to believe that dust will be controlled and air
11 quality will be improved. And I think that's an important
12 consideration. That's an important public benefit. But I
13 think it's important for the Commission in its role as a
14 manager to consider what's right for the lake,
15 particularly if there are alternatives, which have been
16 used right along, that will create that win-win situation.

17 Now, L.A. has indicated that -- L.A. has come
18 under criticism in the media several years ago for the
19 amount of water that's been devoted to this project. It's
20 something like 60,000 -- a little over 60,000 acre feet
21 are now being used for the shallow flooding and the
22 managed vegetation. So it's reasonable that L.A. looks
23 for an alternative.

24 But it's against that background that we've been
25 evaluating these recent proposals or these recent ideas

1 brought by L.A. again to deal with the solar projects.
2 And so that's the context that we think it's appropriate
3 for the Commission to consider to look at this. We have a
4 choice here. Do we want to accept this Moat and Row,
5 which certainly benefits for air quality, but harms the
6 Public Trust values, which is why we're recommending no to
7 that.

8 And if there were no other alternatives that
9 would be one context for the Commission to consider it.
10 But we think there are alternatives. There's the shallow
11 flooding, and there's the managed vegetation. And there's
12 these recent proposals that L.A. has brought to us. We
13 spoke -- we met with -- and I want to go over this and
14 take a couple minutes to talk about, you know, that
15 situation and how staff -- the two staffs have been
16 involved.

17 Initially, management of LADWP came and met with
18 me last June. They broached the possibility. They had no
19 plans. We asked for more details, but said we'd be
20 willing to look at that.

21 In late November -- not much happened in between.
22 We were originally supposed to meet with them in
23 September, but that meeting was canceled by LADWP with a
24 promise that there would be additional meetings later on
25 to describe the solar project.

1 In late November, I'm suddenly contacted by
2 management and asked if we would be willing to bring a
3 solar project to the Commission in lieu of Moat and Row in
4 December, but they had no details on what the acreage
5 would be or what the project would look like, and of the
6 impacts, that kind of thing.

7 And so I indicated -- they hadn't even made a
8 project application. And so I indicated that we wouldn't
9 really be able to do that. They were proposing -- and
10 then further discussions occurred, and it turned out they
11 were proposing somewhere between -- somewhere over 300
12 acres as a pilot project to test the concept of whether or
13 not solar could calm the dust.

14 The Board was interested enough in that, that the
15 LADWP Board approved that project with a categorical
16 exemption in early December. But upon review by this
17 staff, again, we had no details about the project. And
18 when you look at what the history of environmental review
19 has been in California, pursuant to CEQA of photovoltaic
20 projects, this is the biggest project -- just this
21 demonstration project, the biggest project that would ever
22 have been approved in California or carried out in
23 California.

24 Right now the biggest project is one that will
25 start up in January, 21 megawatts over about 200 acres.

1 This was going to be over 300 acres and be 50 megawatts.
2 And yet the were proposing to do no environmental review
3 of it. This seemed unacceptable to us.

4 But we weren't done. As far as we were
5 concerned, this was still worth pursuing. We had further
6 discussions. A representative came up and met with us,
7 and we discussed the idea of how we could approve a
8 demonstration project and what the larger overall project
9 was that L.A. envisioned.

10 On the latter point, their general approach has
11 been, can we do a multi-thousand acre solar array project
12 in conjunction with a habitat project, and could the
13 Commission approve that?

14 Staff indicated to L.A. that we could bring that
15 to the Commission with a favorable recommendation, if we
16 could find that the overall habitat value of the overall
17 project, this combination of solar and habitat
18 improvement, cause a net increase in Public Trust values
19 on the lake. And that as far as we were concerned, we're
20 just talking about numbers, about the balance between the
21 two, and reaching a balance where we could make that
22 finding.

23 We also discussed with them how we could move
24 forward with a demonstration project, because clearly
25 that's necessary for a solar array -- this overall larger

1 concept needed to be proven as to the feasibility of dust
2 control at an earlier stage before all that money was
3 spent.

4 And so we basically said, look, why don't we
5 figure out the maximum size project that could be done
6 through a mitigated negative dec. L.A. could be the lead
7 agency, because they're probably faster on their feet, in
8 terms of getting the consultant contract done or doing the
9 work in house. We even went so far as to talk about well,
10 could we bring that back to the Commission as soon as
11 February, maybe April. How long would it take?

12 And staff has done the additional work to find
13 that, kind of in the context of how these projects are
14 dealt with throughout California, pursuant to CEQA, is
15 that projects up to about 80 acres have been approved
16 using mitigated negative decs. We haven't heard back from
17 L.A. yet as to whether or not that's big enough to test
18 the concept of using solar arrays for dust control.

19 So the reason we're interested in this is because
20 it seems like another win-win situation. It's actually a
21 win-win-win, because, number one, it controls the dust.
22 Number two, we end up being able to recommend the project
23 because there's a net benefit to Owens Lake and Public
24 Trust values. And the third benefit is it's a new
25 renewable energy project. It helps the State meet the

1 renewable portfolio standards that the Governor has laid
2 out and the Legislature has approved as well.

3 So it's in that context that we continue to
4 recommend denial of Moat and Row. We think -- we would
5 point out that while L.A. has represented that there's no
6 conflict between the two projects, in fact the
7 demonstration project that they originally proposed was
8 going to be where the Moat and Row is. One of the Moat
9 and Row parcels, and I can't remember which one, was going
10 to be the site of the new demonstration project. So if
11 they go out there and build Moat and Row, the question is
12 will they take that out for their solar project or will
13 they build around it.

14 Will they, in fact, want to take out some of the
15 other managed vegetation and solar -- excuse me, shallow
16 flooding and replace it with solar in order to reduce the
17 amount of water that they're going to use on the project.

18 We think it makes more sense to deny Moat and
19 Row, continue these very productive discussions that have
20 already started, in terms of looking at ways that the
21 overall vision that L.A. has described for this and could
22 meet Public Trust requirements, allow those to move
23 forward.

24 So that's why we continue to recommend denial.

25 CHAIRPERSON CHIANG: Have you concluded, Paul?

1 EXECUTIVE OFFICER THAYER: That concludes staff's
2 presentation.

3 CHAIRPERSON CHIANG: Okay. I'm going to call for
4 a 15-minute break.

5 (Thereupon a recess was taken.)

6 CHAIRPERSON CHIANG: Good afternoon. We will
7 reconvene.

8 We have next, public -- well on the public
9 comment calendar, we have Martin Adams from the Department
10 of Water -- Director of Water Operations for the Los
11 Angeles DWP.

12 MR. ADAMS: Thank you, and good morning, Mr.
13 Chairman and Commissioners.

14 My name is Martin Adams. I'm with the Department
15 of Water and Power in Los Angeles. And I appreciate the
16 opportunity to address you here today regarding our
17 request for the Moat and Row lease. And I'd also like to
18 acknowledge our thanks to Paul Thayer and his staff for
19 working so closely on this project and the previous
20 projects on the Owens Lake.

21 There's been a lot of challenges, as you've
22 heard, and a lot of issues to get through. And certainly
23 we appreciate the efforts that they've made to try to work
24 out the details with us.

25 And I would like to also thank Barbara Dugal who,

1 I guess got to work with the last couple of months and now
2 she's leaving, I just found out, so I'm saddened by that.

3 (Laughter.)

4 CHAIRPERSON CHIANG: Is that a statement about
5 you?

6 (Laughter.)

7 LAND MANAGEMENT DIVISION CHIEF DUGAL: It's
8 nothing personal Martin.

9 (Laughter.)

10 CHAIRPERSON CHIANG: For the record.

11 (Laughter.)

12 MR. ADAMS: I'm going to get a complex, I think.

13 I have a few briefly prepared statements, which I
14 found a lesson against preparing, is now I want also to
15 address some of the questions that came up from the
16 Commission. So I'll try to cover all that.

17 Los Angeles Department of Water and Power, we
18 believe that we can control dust emissions on the Owens
19 Lake bed at the same time to help the State reach many of
20 its goals, including its renewable energy goals, as Mr.
21 Thayer talked about.

22 And I was intrigued by the speaker for Item
23 number 39, talking about climate change and rising lake
24 levels. And I think that this Commission and the staff
25 recognizes this is a real issue for the State. And we are

1 looking for a better solution at Owens Lake than the
2 solutions we've had in the past. That might get us to
3 where the State thinks it needs to be, certainly in terms
4 of carbon emissions and that sort of thing.

5 When Paul mentioned that we really have not
6 involved them much in the past, I would like to admit
7 right up front that when L.A. Water and Power first was
8 given orders to abate the dust at Owens Lake, we did so,
9 sort of in a vacuum. We've not really consulted with the
10 State. And when we were meeting together a few weeks ago,
11 I said, you know, this is like throwing a party at someone
12 else's house.

13 And certainly, in moving forward, you know, it's
14 my commitment that we will involve State Lands and the
15 staff in every step that we do. And we do not want to
16 work in a vacuum. We want to work hand-in-hand in a
17 cooperative effort toward a better project.

18 We are committed to retaining and expanding the
19 habitat values in the lake. And we are interested in a
20 master plan. We're actually ready to launch a master plan
21 process with a huge number of stakeholders, with whom
22 we've have had some preliminary meetings, and we've
23 involved State Lands in that. And we're about to select a
24 mediator that can get us to a better place than we've been
25 on the lake.

1 What's happened on the lake is we've had phase by
2 phase construction, usually with the promise that this is
3 the last phase. And then something else is judged to be
4 emissive and we have another phase.

5 And, at this point, we've been constructing for
6 nearly 10 years. We've invested over \$500 million. We
7 have 60,000 acre feet a year of water going to the lake,
8 mostly for evaporation. And in April it will be 90,000
9 acre feet of water or more. And so we're talking water
10 for over 700,000 Californians.

11 So it is a substantial investment and a
12 commitment by the Department. We take it very seriously.
13 And we are looking for other options and for a better fix.
14 And we do believe that in the mix of things for the
15 future, improved habitat in a designated area, where we
16 can really do it right. And the installation of solar
17 panels as both dust mitigation and for renewable energy
18 will be a great example for this State to move ahead to
19 show how technology and environment can all move together
20 well and show basically an example for the nation.

21 We also ask that we move forward in this, that we
22 very much welcome any direction from the Commission. As
23 trustees of the land, we think that your direction towards
24 solar and what you think we should be following, we take
25 that very seriously. We think it's important guidance for

1 us, as we move ahead.

2 And so I would welcome any thoughts. And I
3 certain could go -- I could probably go for hours, like
4 the other day at Inyo County, about solar and some of the
5 options. But if you have any questions, I'll get into
6 that. But I know that's not really the subject of the
7 conversation today.

8 Even with the great plans for the vision for the
9 lake for the future, we still have an existing obligation
10 to continue with dust mitigation. And it's orders that
11 we've already been given and compliance mandates and
12 deadlines have been set. Item number 41 before you today
13 is our request for a lease of the seven scattered parcels.
14 That total, three and a half square miles of the 110-mile
15 lake bed.

16 And the request is to construct a waterless dust
17 control technology called Moat and Row. I'm here to ask
18 today that you approve the lease request and allow us to
19 begin construction of Moat and Row by the January 1st
20 deadline as directed by Great Basin Air Pollution Control
21 District.

22 It is L.A. Water and Power's position that we
23 must have this lease, if we are to remain on track with
24 the dust control commitments that were adopted in the 2008
25 State Implementation Plan and for which the State Health

1 and Safety Code obligates us.

2 I further request that if it's your decision to
3 grant such a lease, that you do so under the language in
4 Exhibit C in your packages, which has been worked on by
5 both your staff and my staff for quite some time. There's
6 some alternate language offered in Exhibit D that we have
7 not really reviewed, but on the face, it looks like there
8 are commitments in there that the City could not legally
9 enter into.

10 But the Exhibit C language that has been worked
11 on between the staffs would be acceptable for us. And
12 again, time is of the essence for us, we are facing a
13 January 1st deadline for construction.

14 And even though we have this better vision for
15 Owens Lake, we know that the move to the future is going
16 to take some time. Installation of large amounts of
17 photovoltaic cells is going to be a very long process,
18 many, many years. And we know that not all areas of the
19 lake will be conducive to either habitat or photovoltaic
20 cells. There are places where nothing is living and
21 nothing will live, and the soils don't support any other
22 kind of mitigation.

23 And we believe that Moat and Row is not mutually
24 exclusive. It's not incompatible with the planned move
25 ahead with solar power. In fact, there are instances

1 where solar power could utilize Moat and Row or elements
2 of that to shield the cells. And if the lease is granted,
3 we would move ahead again with the pilot program as Steve
4 Mindt talked about, the pilot demonstration project. And
5 we have discussed some plans to move that ahead. And we
6 would do that consistent with the Moat and Row project.

7 To point out, in terms of environmental impacts,
8 Moat and Row actually turns out to be the most
9 environmentally sensitive form of dust mitigation we have,
10 in terms of greenhouse gas emissions. In comparison to
11 what we have right now for shallow flood. If we were to
12 do shallow flood on the three and a half square miles of
13 lake bed. The replacement water that the City of Los
14 Angeles would have to bring down to L.A., rather than
15 taking water from the aqueduct and generating
16 hydroelectric power, that replacement water comes out of
17 the Delta. And it come through the State's most expensive
18 pumping operation.

19 The replacement energy to put that water into Los
20 Angeles would generate a little under 8,000 metric tons of
21 greenhouse gases annually. The greenhouse gas emission
22 from constructing and maintaining Moat and Row for 20
23 years is just under 2,000 metric tons.

24 So we have an 80-fold increase. So even though
25 there are some benefits to habitat for water, there are

1 certainly some minuses, some negatives in terms of lost
2 generation capability, and then impacting other areas of
3 the State and including greenhouse gas emissions.

4 Approval of the lease will expedite our immediate
5 efforts to reduce unhealthful emissions that are coming
6 from the lake bed and it does offer a template for
7 waterless dust control technique that is complementary to
8 solar generation and can be considered for future uses.

9 As a measurement of our commitment, as was
10 mentioned earlier, we are working with State Lands' staff
11 to do a pilot solar demonstration project. We're looking
12 at the acreage and the appropriate environmental
13 documentation. We've taken the comments seriously. And I
14 hope to be back to you in late spring or early summer with
15 a pilot project, and show that there is a way to move
16 ahead and to do something better out on the lake.

17 But again, I have to emphasize that at this
18 point, the City of Los Angeles does have a legal
19 commitment to comply with dust control. We do have
20 emissions coming off the lake today that need to be
21 abated. They do cause a health effect and that needs to
22 be ended. And so I do ask for your approval of this lease
23 at this time.

24 Thank you for your consideration of these
25 comments. And If I could real quickly, I want to just

1 answer a few questions that came up just to make sure.

2 And I realize that staff works on a lot of
3 projects, so they probably don't have the advantage of
4 some of the little details.

5 Is this really hard to see?

6 EXECUTIVE OFFICER THAYER: We're going to put up
7 that other map. Maybe that will help you.

8 ACTING COMMISSIONER SHEEHY: That's not bad
9 though. I mean that's --

10 MR. ADAMS: I like these colors, because I think
11 my eyes are getting old. But in this map, this is a map
12 of all the lake.

13 ACTING COMMISSIONER SHEEHY: Marty, why don't you
14 set it on the -- excuse me, Mr. Chair. Why don't you set
15 it on that easel and then it will free up your hands.

16 MR. ADAMS: Is that better?

17 CHAIRPERSON CHIANG: Very good.

18 MR. ADAMS: On this map, these dark brown areas
19 are the Moat and Row areas. And so there's five that are
20 dark brown. There's actually two that are green that are
21 the Moat and Row pilot areas. And you'll see that they're
22 all discontinuous. Of the seven Moat and Row areas, a
23 question came up about the area by Cartago down here at
24 the south end. The very south end by Cartago does not
25 involve any Moats or Rows. It's sand fences only.

1 And that is an area that has been expressed by
2 Audubon and some other groups to look at the possibility
3 of increasing habitat down there. And as we enter the
4 master plan process, my thought is that with the Moat and
5 Row lease, that that area is one of those that goes last.
6 And that hopefully the master plan process will then catch
7 up to see if there's another option for some areas like
8 that.

9 As you notice, there's a number of areas that are
10 not next to any shallow flood. I did pull out of the EIR
11 the question about nests on the lake. At the time of the
12 EIR, they did a study on the lake -- well, I won't show
13 you this. You need binoculars.

14 But there's about 80 dots showing nesting areas
15 in the lake. When the EIR was written, three of the seven
16 shallow Moat and Row areas had a total of seven nests in
17 them, out of the 80. And there's been a total of 21 nests
18 discovered since 2000 in the Moat and Row areas. So your
19 question about the significance and where this falls, on
20 this map, there's actually three nests within the Moat and
21 Row areas and about a half dozen that are adjacent.

22 One question came up on some of the areas --
23 could I see that slide that kind of looks like a skeleton
24 of the lake.

25 Okay, the area that's -- on the bottom, this area

1 here -- just for reference, this area here that was
2 pointed out -- I think Steve Mindt pointed this area out.
3 This is called T1A-4. This is the area that we pitched
4 for the solar pilot project. And that actually has the
5 densest areas of Moat and Row, because it's probably got
6 some of the worst soil of anywhere on the lake.

7 For reference, the area right above here is the
8 U.S. Borax mining area that you approved by consent agenda
9 on Items 30 and 35 this morning. The area right -- the
10 area right -- did I do that?

11 The area right here below it is a managed
12 vegetation area. That although it's managed vegetation,
13 it's saltgrass. It's still been identified as very low
14 habitat potential and had a total of one nest in it. And
15 so, you know, the areas that we're looking at for solar
16 and this idea, including some of the Moat and Row areas
17 are not necessarily in or adjacent to great habitat. This
18 test area, which was a Moat and Row test area is by ponds.
19 And this Moat and Row test area is sort of near some
20 ponds. These Moat and Row areas are pretty far from
21 everything, except for the brine pool, which is this large
22 area here in the middle.

23 So I was trying to remember some of the questions
24 that came up this morning, because I know that staff
25 didn't have all the documents at their fingertips, but we

1 had the advantage of pulling some pages out to give you
2 some answers.

3 COMMISSIONER PASQUIL: Mr. Chairman.

4 MR. ADAMS: Yes, ma'am.

5 COMMISSIONER PASQUIL: You mentioned you have a
6 mandated order to have a plan in place by January one

7 MR. ADAMS: Yes. Actually, what happened was
8 originally, according to the State Implementation Plan and
9 our compliance agreement, we were supposed to have Moat
10 and Row constructed by this past October.

11 There's two parts of Phase 7. One part is
12 shallow flood ponds. We currently have 26 miles of ponds
13 in the lake. We have another nine miles of ponds that
14 will be being filled in April. And with that, the other
15 part of the Phase 7 was three and a half miles of Moat and
16 Row. That was supposed to be done in October, knowing
17 that we did the Supplemental EIR, and we had more
18 documentation and more work to do, because the design
19 changed from a regional design -- I think that someone
20 alluded to that earlier.

21 We vetted the new design under the supplemental
22 EIR. And we went to Great Basin and we asked for a
23 variance, so they gave us a one year variance. So
24 currently, the Moat and Row is due to be constructed by
25 next October. So that's our current due date. But in the

1 order, we have to have construction started by January
2 1st, or two things happen. One is we're subject to fines
3 of \$10,000 per day.

4 COMMISSIONER PASQUIL: Hold on, \$10,000 per day?

5 MR. ADAMS: Per day, right.

6 COMMISSIONER PASQUIL: For not having a plan or
7 not having started construction?

8 MR. ADAMS: Right, for not having started
9 construction.

10 COMMISSIONER PASQUIL: Ten thousand dollars a
11 day. Where does that \$10,000 a day come from?

12 MR. ADAMS: That comes from our revenues, which
13 come from the ratepayers of the city of Los Angeles.

14 COMMISSIONER PASQUIL: Ratepayers.

15 MR. ADAMS: And then on top of that, they also
16 have the ability to go back and look at any emissive data
17 that's come out over of the lake. And basically, areas
18 that are currently being studied and future orders can be
19 moved up. And so we actually got an Email two days ago
20 saying that areas that were slated for dust control
21 potentially in April 2011 could happen in January.

22 And so we'd be facing additional --

23 COMMISSIONER PASQUIL: So we're talking less than
24 a month --

25 MR. ADAMS: Yes.

1 COMMISSIONER PASQUIL: -- right? And we're
2 having this conversation now. Wow, okay.

3 Question then. You're talking about solar, but
4 the staff doesn't have any of that information.

5 MR. ADAMS: Right. We've talked to them and
6 really kind of pitched a whole flood of ideas and I'm
7 amazed at how well --

8 COMMISSIONER PASQUIL: Nothing on paper?

9 MR. ADAMS: -- they've digested them.

10 We have nothing on paper yet. We've talked --
11 we're trying to get kind of a size and a process down, and
12 then we'll bring more on paper. We just talked about
13 where we were out with some wind tunnel testing for
14 effectiveness of dust control, because we have to get
15 solar vetted as an acceptable method of dust control. And
16 so we're in that process. But we wanted to talk about
17 both the idea of solar on the lake and a solar pilot
18 and also this overall master plan idea to make sure that
19 State Lands is an integral part of that process.

20 COMMISSIONER PASQUIL: They have to be. And time
21 is of essence, because \$10,000 a day paid by ratepayers.
22 Ya'all -- right. So time for communication is now. The
23 staff needs to have background. If you -- we have had
24 this issue with Moat and Row and conflict with this for
25 awhile, listening to the staff.

1 How are you going to jump-start this project so
2 they everybody feels like we can move ahead? I mean,
3 we've got to -- we can't vote -- we can't put this off,
4 right? There's no way we can put this off thinking about
5 how this affects ratepayers in Los Angeles, if we -- if
6 you all don't give us a plan that works, right?

7 MR. ADAMS: Well, if you vote on this lease and
8 give us the lease, then my own forces will actually do the
9 work. And so I will move dirt on schedule so that we're
10 in compliance.

11 If you elect not to, then it somewhat blows up
12 the process. We'll go back to State Lands -- not State
13 Lands. I apologize -- go back to Great Basin and we'll be
14 in somewhat of a legal impossibility. And we don't really
15 know the exact road ahead at that point. But it will --
16 we know one thing is that it will take a number of months
17 before anything different is done.

18 COMMISSIONER PASQUIL: At \$10,000 a day?

19 MR. ADAMS: Right. And I don't know that we have
20 another acceptable solution. Because of the water crisis
21 going on in the state, I don't know that we could imagine
22 that there's water available in these areas. In addition
23 to that, there's no piping available to a lot of the
24 areas. And so there's no good answer, bottom line.
25 There's no other good answer.

1 COMMISSIONER PASQUIL: Well, there has to be an
2 answer, because we're talking about --

3 MR. ADAMS: Well, Moat and Row is the current
4 answer.

5 COMMISSIONER PASQUIL: Okay, right.

6 But you've got to address the issues that the
7 staff has. So how do we get to yes? Not only for you and
8 for us, but the people of Los Angeles that will see
9 increased rates, \$10,000 a day, because, you know, we keep
10 putting this off.

11 MR. ADAMS: A couple things we've done, and we've
12 done this in response to concerns.

13 When the EIR was written, the consultants that
14 did the EIR were selected by State Lands staff and
15 Department of Fish and Game. We provided a list and they
16 made the selection. So they -- so the hand-picked
17 consultants have written the Environmental Impact Report
18 and the supplement, I should say.

19 A couple of things that they've done is they have
20 identified potential habitat. Based on the nesting
21 information I gave you, most of the Moat and Row areas is
22 viewed as very low habitat. One of them has absolutely no
23 habitat value and no habitat history, so that's a good
24 thing, and that's been vetted by these experts.

25 They've also looked at bird mortality that was

1 mentioned. The slope design has changed. The slide that
2 Steve had up earlier was of the existing Moat and Row, and
3 it was decided that those sharp sides on the moat could
4 entrap animals. And so the new design actually lays that
5 slope down, so that there's much -- it's much easier for
6 an animal to crawl out of the moat, and it has a very
7 shallow slope. So that's a change in design. So a lot of
8 those issues have been addressed. And then the plan is --

9 COMMISSIONER PASQUIL: And the staff has that?

10 MR. ADAMS: The staff has that. But they don't
11 have a slide, because it doesn't exist yet. But the slide
12 they showed is of what we've constructed as a test. So it
13 is what is out there.

14 But the design has changed to reflect those
15 concerns. We've agreed, and we've got our terms for a
16 1600 agreement with Fish and Game are laid out down to the
17 last couple of details. And what we've looked at is a
18 plan to monitor the Moats and Rows and see -- monitor bird
19 behavior and potential mortality and make modifications as
20 are necessary.

21 COMMISSIONER PASQUIL: Okay. Have you looked at
22 how do we get to yes for everybody. And I'm thinking, you
23 know, there's not -- we can't go extreme. Everyone has
24 got to give here. So have you thought about and talked
25 with staff about a potential to proceed maybe with both?

1 So you've got some of the moat and row, right, but then
2 you're also, you know, working in through your master plan
3 that you're going to bring back, how you would also put
4 solar in some of the areas that would address some of the
5 issues and the concerns that the staff has.

6 MR. ADAMS: My goal would be -- to be in legal
7 compliance would be to begin Moat and Row in the least
8 sensitive areas. And I think that this area where the
9 pilot demonstration would go is ideal, because Moat and
10 Row could be constructed to support the solar demo that
11 would follow right on its heels.

12 At the same time, although there is a deadline
13 for Moat and Row, I am more than willing to go back to
14 Great Basin. And I think that there would be potentially
15 staff support and support from the environmental community
16 to look at other options for some of the areas.

17 We're looking at how dust is measured, you know,
18 when is the lake in compliance. Dust is measured on this
19 lake different than anywhere else in the world. And I
20 think we have to look at that. And I think that
21 there's -- maybe we should all ask ourselves, does all of
22 Owens Lake need to be torn up and changed?

23 Right now, the current model is nothing is going
24 to stay the way it is. I'm not sure that that's valid.
25 And I think that we all owe it to ourselves, and to the

1 ratepayers, and to the environment to ask the question is,
2 can some of Owens Lake stay the way it has been for the
3 last hundred years, because there are habitat values out
4 there, in its current state, not just associated with the
5 areas where we're growing vegetation and have ponds. So I
6 think there's a multitude of habitat issues that need to
7 be addressed.

8 And I was starting this master plan process, I
9 think we'll have a broad audience of people who are
10 interested in the overall welfare of the lake. And my
11 plan is to listen to those people and to take their input.
12 And if we can come up with options for some of these
13 areas, such as the area by Cartago, maybe the fences can
14 become some kind of imitation seeps and springs to expand
15 what's going on out there, but I do have to start to be in
16 compliance and then that gives me some room to move ahead.

17 COMMISSIONER PASQUIL: I understand that, and I
18 appreciate that. And I appreciate you coming here. I
19 think that we all want you to be in compliance.

20 What I think you have to note though is, is that
21 you're talking about some -- you're answering some
22 questions that, unless I'm crazy, I don't think they knew.
23 They didn't have some of that information, because they
24 would have -- the staff -- he would have brought that up
25 in the presentation. So communication is really key.

1 MR. ADAMS: I understand.

2 COMMISSIONER PASQUIL: The clock is ticking.
3 January one is right around the corner. We've got to be
4 able to get to yes. So how do we do that?

5 And, you know, like I said, it looks like it's
6 going to happen -- it could possibly be a combination of
7 both. Present a plan, where, you know, you go -- you
8 start off with some Moat and Row, but you look at the very
9 favorable resource of solar and how that can work.

10 MR. ADAMS: One thing about a Moat and Row lease
11 does not obligate to us to build everything that's in the
12 lease

13 CHAIRPERSON CHIANG: I'm sorry, Marty. Could you
14 say that again.

15 MR. ADAMS: I said a lease for Moat and Row,
16 permission to build would not obligate us to have to build
17 everything. So if we had the lease to build, it doesn't
18 say that we can't circumvent pieces of that and come up
19 with another project, another option within that.

20 ACTING COMMISSIONER SHEEHY: That you'd bring
21 back to us.

22 MR. ADAMS: Absolutely.

23 CHAIRPERSON CHIANG: And how quickly could you do
24 that?

25 MR. ADAMS: Well, the solar plan -- this is

1 break-neck speed right now. But the plan is to try to
2 have something, I'd love to say, early spring, and maybe
3 late spring to have -- we originally had proposed an
4 exemption. And just to clarify, because I've gotten
5 criticism from everybody including my own boss for why we
6 did the categorical exemption.

7 The reasoning was that the area that we were on
8 we knew was a very low habitat value. And we'd studied it
9 thoroughly, so we knew that the only real impacts were
10 visual impacts, which were comparable to what the previous
11 project had identified. And so because it was for a
12 pilot, that's why he thought the exemption would go.
13 Apparently, there's nobody on board with the exemption,
14 and I understand that.

15 So we're looking to prepare a Mitigated Neg Dec
16 for that area, and to try to expedite that using the
17 information that we already have, so it's fully vetted,
18 and then propose a solar project. And so that would then,
19 with Great Basin's blessing of course, we would use that
20 as part of the Moat and Row area. So we would proceed, I
21 think, on a site-by-site basis on what makes the most
22 sense.

23 I'm very sensitive to the areas along 395 where
24 there is very low habitat value, but it is the closest
25 stuff to the view shed. And I don't have a great

1 solution, but I'm search quickly to see if there are other
2 options. The existing Moat and Row test areas, by having
3 a lease, would allow those to stay the way they are, which
4 is the way they've have been since 2007. So that would
5 remove -- otherwise in May I have to remove those, and I
6 have nothing else to put there.

7 So there are things that can be worked out
8 together. And I think working hand-in-hand -- I just had
9 a great conversation with Steve Mindt, and staff is
10 excited about some options out there, and we are too.

11 And I think that, you know, we have a problem
12 because we're trying to do something better. At the same
13 time we have a gun to our head in terms of compliance.
14 And so I need to be able to meet my regulator's
15 requirements and then try to move ahead. And if we don't
16 get the lease, then we still have to try to move ahead,
17 but then we have some stickier legal matters on top of
18 that.

19 COMMISSIONER PASQUIL: Thank you, Mr. Chairman.

20 ACTING COMMISSIONER SHEEHY: I have some
21 questions, Mr. Chairman.

22 CHAIRPERSON CHIANG: Okay, go ahead, please.

23 ACTING COMMISSIONER SHEEHY: Thank you, Mr.
24 Adams. I want to just follow up on a couple points, that
25 my colleague made and just ask a couple of other

1 questions.

2 First of all, can we back up a little bit. What
3 is the proposed duration of this lease term?

4 LAND MANAGEMENT SPECIALIST BROWN: It's 20 years.

5 ACTING COMMISSIONER SHEEHY: Twenty years.

6 LAND MANAGEMENT DIVISION CHIEF DUGAL: It's
7 actually the amendment to an existing lease and that term
8 is 20 years.

9 ACTING COMMISSIONER SHEEHY: I'm sorry?

10 CHIEF COUNSEL FOSSUM: It started in May '99 and
11 it's a 20 year lease, so it goes through April of 2019.

12 ACTING COMMISSIONER SHEEHY: That's for the
13 demonstration project. I'm asking --

14 CHIEF COUNSEL FOSSUM: It's for the entire lease.

15 ACTING COMMISSIONER SHEEHY: Time out. Time out.
16 We haven't approved a lease yet, so we can't have
17 something that started 10 years from ago.

18 CHIEF COUNSEL FOSSUM: It's an existing lease.

19 EXECUTIVE OFFICER THAYER: What's before the
20 Commission is an amendment to the existing lease. So the
21 existing lease for doing these various dust control
22 measures started in 1999, and has a life span of 20 years.
23 So they're just amending this into that lease.

24 ACTING COMMISSIONER SHEEHY: I see. So therefore
25 if we approved some version of their request today, it

1 would be -- that lease would be, in tact, for how long?

2 CHIEF COUNSEL FOSSUM: Ten years.

3 ACTING COMMISSIONER SHEEHY: Ten years, okay. So
4 ten years.

5 CHIEF COUNSEL FOSSUM: A little less.

6 ACTING COMMISSIONER SHEEHY: Now, Mr. Adams, you
7 made the comment early on in your presentation, and I
8 don't know all the geographic -- the names of these
9 different areas, but what I'm going to call -- I'm
10 assuming that that's a north/south orientation, what I'm
11 going to call the southern part --

12 (Thereupon a cell phone rang.)

13 ACTING COMMISSIONER SHEEHY: I apologize for
14 that, ladies and gentlemen.

15 Let me turn this cell phone off. Just a second
16 please. I apologize.

17 So the southern area. We heard testimony earlier
18 from staff that there was a higher concentration of Snowy
19 Plovers, which is, I think, the biological species that
20 we've been concerned about, vis a vis the Moat and Row,
21 that there's a higher concentration of them in the south.
22 And then you commented that in those Moat and Row areas
23 there in the south, that it wasn't all Moat and Row, that
24 some of it, in fact, were just sand fences -- or would be
25 proposed to be sand fences. And so, first of all, I want

1 to know -- I have several questions, and I'll get them all
2 to you at once.

3 First of all, I want to know, did I understand
4 you accurately, is that what you said?

5 Number two, I want to know, therefore that
6 means -- well, I guess, that obviously means we don't have
7 the problem of them falling into the moats. Is that sand
8 fence only as effective as the Moat and Row. If so, why
9 aren't we just doing sand fences everywhere?

10 So why just -- did I get that right? And why is
11 it just the sand fences down there in the southern end.
12 And I suppose I'm trying to get to a conclusion, after you
13 answer my questions, that if the sand fences are less
14 deleterious -- if they're less deleterious to the Snowy
15 Plovers, then I suppose what you're really trying to say
16 is therefore, the biological impact in that area, where
17 there's a higher concentration of them would therefore be
18 less than it would be if we were doing Moat and Row?
19 That's what I thought you were trying to get to. Could
20 you elaborate on that please, Mr. Adams?

21 MR. ADAMS: I'll do my best. In this area, yes,
22 there's just sand fences, no Moat and Row. And a lot of
23 this has to do with soil condition and emissiveness and
24 wind direction and wind speed. So in this area, the sand
25 fences, they don't control dust as well as Moat and Row.

1 And some of the Moat and Row has sand fences on top and
2 some of it doesn't. So even within the Moat and Row,
3 there's two different styles based on how emissive the
4 soil is.

5 So in this area, the sand fences were determined
6 to be sufficient to control the dust that would be emitted
7 from there. The other areas would need the Moat and Row.
8 And even within them in the design drawings, you would
9 note that there's different spacings. And the spacings --
10 as a matter of fact this area here where the solar is
11 envisioned has the densest spacing of any of the Moat and
12 Row, because it's the most emissive area. And so it is
13 somewhat customized. It's not a one-size-fits-all, in
14 terms of that.

15 One thing I did mention about here. This is the
16 Cartago Habitat Area. And immediately what I'm going to
17 move to do is to look at options down there, because I
18 realize we've had -- the environmental community brought
19 this, that it's very sensitive to them, that area. And
20 they would love to see an opportunity for that to expand.

21 And if we go with the master plan for the lake,
22 and just generically -- and I don't want to circumvent the
23 master plan process at all, but the kind of thoughts we
24 have from the Department of Water and Power's standpoint,
25 is that -- I better maybe use this here -- but this upper

1 band of the lake at the north end is where most of the
2 habitat is. And you mentioned success with number of
3 birds. We have more birds out there now than we planned
4 on, but we also have more shoreline than the lake ever
5 had. The lake originally had 62 miles of shoreline around
6 it. Because of the moat of the shallow flood ponds and
7 the roads, we have over three times that amount of
8 shoreline now.

9 But we're looking at the opportunity to expand
10 habitat here and actually create a situation of islands
11 where we believe we can get ten times the historic
12 shoreline in a better habitat area.

13 Then we would take some of this area here going
14 from the solar demo proposal kind of going up -- this is
15 Highway 190 here -- going up this direction. And the idea
16 here would be to take some of those existing ponds that
17 are very saline. It gets saltier down there, and they do
18 not support much habitat, in some cases none. And to take
19 those out of circulation to replace those with solar as a
20 tradeoff then for working to improve the habitat up here,
21 and perhaps even establish something on the order of a
22 State Park that has fixed funding or some kind of preserve
23 that has funding.

24 ACTING COMMISSIONER SHEEHY: Okay, before we go
25 too far down that road, that sounds like that's going to

1 be the subject of a lot of further discussions and
2 negotiations with staff and future presentations to this
3 body. And I'm fascinated by all of it, but in the
4 interests of time may we narrow the focus of this back to
5 my questions.

6 MR. ADAMS: Sorry. So your question, this is
7 sand fence. Sand fence alone will not work and all the
8 others, believe me, in terms of costs and time. I would
9 love it if it did.

10 ACTING COMMISSIONER SHEEHY: And is the sand
11 fence a lower impact to the Snowy Plovers than Moat and
12 Row?

13 MR. ADAMS: It is, in the terms of there's
14 nothing to get entrapped in. I mean, there's still
15 potentially --

16 ACTING COMMISSIONER SHEEHY: Are they going to be
17 able to get through the sand? I mean, that might obstruct
18 them from getting --

19 MR. ADAMS: There are some breaks in the fence.

20 ACTING COMMISSIONER SHEEHY: -- from point A to
21 point B.

22 MR. ADAMS: There are some breaks.

23 ACTING COMMISSIONER SHEEHY: Are there some
24 breaks where they could get through?

25 MR. ADAMS: There are some strategically located

1 breaks.

2 ACTING COMMISSIONER SHEEHY: Okay. All right.
3 Let's move on, unless there's some key point you haven't
4 made it.

5 MR. ADAMS: No, sir, just whatever questions you
6 have.

7 ACTING COMMISSIONER SHEEHY: So then I'd like to
8 hear one more time from you why, succinctly, if we were to
9 approve a Moat and Row lease amendment today, how that is
10 not mutually exclusive with LADWP moving forward and
11 coming back in the future with a fully thought-out
12 thoughtful proposal on solar? And would you, in fact, be
13 put in a position where you were having to tear out Moat
14 and Row to put solar in? Could you please explain why
15 they're not mutually exclusive and how we could be
16 comfortable moving forward with a vote today knowing that
17 we could still pursue a solar power plant in this location
18 in the future?

19 MR. ADAMS: One of the things that would happen
20 with solar is that we would have to build access roads,
21 which typically are, in any case, above the lake bed
22 because of flooding issues. And for the same reason that
23 solar would be envisioned to have some sort of berm around
24 it.

25 And so, not the moat so much, but the row of Moat

1 and Row would be comparable to something that you would
2 build around a solar installation.

3 There are a couple ways to look at it. And it
4 just struck me on the way down. And I apologize, I
5 haven't even had a chance to talk to Paul about this at
6 all. But if the existing Moat and Row area that's a test
7 area stayed, it would be possible to put solar panels in
8 between those areas. Now, the environmental documentation
9 from Moat and Row identifies the service of a certain
10 percent of the area, because the area between the Moats
11 and Rows is not disturbed.

12 So certainly solar on that would be something
13 that would have to be addressed and looked at, because
14 there could be a nest in between the moats and rows.

15 But the rows themselves offer a shield to help
16 the solar work, better in terms of dust control. And it
17 is possible that we're looking right now with modeling --
18 we've modeled the solar application. A typical solar has
19 a fairly good tilt, so you maximize the efficiency to
20 capture the sun's energy.

21 On the lake in order to control dust, solar has
22 to be about three feet off the ground. It has to be very
23 flat in comparison, so you lose some efficiency. One of
24 the concepts is that maybe you put gravel down under a
25 tilted solar, and then you also test it at the other flat

1 angle, and you compare, because you want to see how well
2 they control dust, what they look like, how hard is it to
3 install, do they get dirtier, how much power does it
4 generate, and overall what's the best solution?

5 So there's some options. Now, it could be even
6 with, say the Moat and Row test area, the demonstration
7 that's out there, solar there which would be like solar
8 pods that are smaller, because the moats would be closer
9 together than a large solar installation with just one row
10 around it.

11 So this you might have it broken it up. And you
12 might say, solar could go at its traditional angle without
13 any gravel, inside the Moat and Row cell. And between the
14 two of them, they mitigate the dust, because we already
15 know that the Moat and Row is largely effective on its
16 own.

17 And so these are the kind of things that we need
18 to know, so we know about the installation. And I think
19 that, you know, as we do Moat and Row, we'd move ahead
20 very carefully, that it is not in contradiction. There's
21 no installation or contradiction to solar. And maybe if
22 solar is coming closely on the heels, maybe some of this
23 is eliminated. Say, well, we don't want to put these Moat
24 and Rows so close together. We want to eliminate some,
25 which is still, under the terms of the lease would be

1 allowed. It would be just not doing something that's
2 allowed, but not required. It's allowed.

3 And so those are the kind of things that we would
4 look to find out, and why, in any case, you'll have some
5 kind of elevated road, some kind of protection around the
6 solar. The question is are they close together or far
7 apart? And that's an option that could go either way
8 really.

9 ACTING COMMISSIONER SHEEHY: Okay, thank you, Mr.
10 Adams.

11 And then, Mr. Chairman, I have just one more
12 issue I'd like to ask about. And I don't know if this is
13 appropriate for Mr. Adams or Mr. Thayer and Fossum or
14 both. But I notice on the -- I'm looking at page three of
15 the staff write-up, which has the chart, Paul, the
16 comparison of substantive lease --

17 EXECUTIVE OFFICER THAYER: Yes.

18 ACTING COMMISSIONER SHEEHY: I'm looking at the
19 white pages. I don't know, did we get a whole new set of
20 green pages. Is it still page -- no, so on page three of
21 the staff write up on Item 41, there's a chart that says,
22 "Comparison of Substantive Lease Amendment Provisions."
23 And then there's three columns, and it lists the
24 provisions in the left column. In the middle column, it
25 lists L.A.'s position on these issues. And in the right

1 column, it lists where the State Lands Commission
2 recommendation is.

3 So I have a couple questions. The first one is
4 Mr. Adams has said that LADWP, if there was support today
5 for their lease amendment on Moat and Row, that they would
6 have preferred the Exhibit C language, which is language
7 they said that they've talked with you about, and that
8 they agree with. And there's language in Exhibit D that I
9 think you would like that they don't feel -- that they
10 don't have a comfort level with.

11 So my first question is, I guess, to Paul. Is
12 that what this chart is? Is this chart comparing Exhibit
13 C with Exhibit D, is that what this is?

14 EXECUTIVE OFFICER THAYER: Yes.

15 ACTING COMMISSIONER SHEEHY: Okay. I'd like to
16 know then from Mr. Adams if this Board's going to take an
17 action today, having looked at the chart that the staff
18 has put together, I see several provisions here where,
19 just as a layman, not being an expert like you and your
20 staff, I can see some areas here that would create
21 probably some concern for you. But I see some other areas
22 here that to me seem like a no-brainer, that we would want
23 to incorporate into the language of Exhibit C.

24 So I don't want to delay -- I don't want to take
25 more time now, because it may not be appropriate. But if

1 there is support today to do this, I'd like to -- I think
2 it would be appropriate to have a discussion about this,
3 to see if we can incorporate some of the language that the
4 staff -- some of the provisions that staff has recommended
5 in Exhibit D, and get your agreement, Mr. Adams, to
6 incorporate that into C to make it a better lease
7 amendment agreement.

8 So I'm prepared to have that discussion when it's
9 appropriate, Mr. Chairman, if it's appropriate.

10 EXECUTIVE OFFICER THAYER: And I think Mr. Sheehy
11 refers to sort of a decision tree, which is in front of
12 the Commission right now. And it seems like the first
13 decision is whether it wants to go forward with a lease or
14 not for a Moat and Row. And then once it's gotten past
15 that, then we should probably get into exactly the
16 conversation you're talking about.

17 ACTING COMMISSIONER SHEEHY: Exactly, Paul.

18 If it's appropriate, I'd like to just make a
19 statement. There's no question.

20 CHAIRPERSON CHIANG: Sure.

21 ACTING COMMISSIONER SHEEHY: Thank you, Mr.
22 Chairman.

23 This has been a very difficult issue, I think,
24 for all to sort of get our heads around. And I think
25 quite honestly some of the blame for that is for the Los

1 Angeles Department of Water and Power. And you were very
2 up front in the beginning of this discussion, that, you
3 know, you did a lot in a vacuum without bringing the State
4 in. And so I'm not going to beat you up over that. I
5 think you're very sincere, Mr. Adams, and I appreciate
6 that. And I really appreciate the change in tone today
7 too from our last meeting, which is very much noted.

8 So it's been very difficult. And I think we've
9 gotten some different signals from different members in
10 your organization about what it is you really want to do.
11 What seems clear to me are a couple of things though. And
12 that's really what I want to focus on.

13 I'm taking you at your word, that you're sincere
14 in working with the State Lands Commission staff on a
15 going-forward basis.

16 MR. ADAMS: Absolutely.

17 ACTING COMMISSIONER SHEEHY: And I'm taking you
18 at your word that LADWP will not simply use its political
19 muscle to then continue to operate in a vacuum and give us
20 a take-it-or-leave-it situation.

21 I also know that there's great public value that
22 somehow has to be incorporated into the Public Trust here.
23 There's great public value in finding a way to do dust
24 mitigation on Owens Lake without consuming massive amounts
25 of water. And I know that our -- I know that our former

1 Lieutenant Governor, Mr. Garamendi felt passionately about
2 that. He had expressed that publicly. He had told me
3 privately that we had to find a way to cut all this water
4 we were putting out there. And I agree with him.

5 And I know, you know, my boss, Governor
6 Schwarzenegger, is interested in doing everything he can
7 to conserve water in the State as well as to develop new
8 sources of water.

9 And so I think that that is, not just a worthy
10 goal, but I think it's critical. We've got to find ways
11 to mitigate the dust on Owens Lake and without having to
12 use massive amounts of new water. Because I said earlier
13 in this meeting, that in a perfect world where water
14 wasn't a scarce resource, I wouldn't go along with any of
15 this. I'd say let's just flood the whole area, because we
16 know that would work. It would be esthetically pleasing.
17 It would be great for habitat, all those great things.

18 But we don't live in a perfect world, and water
19 is a very scarce resource in California, so that's just
20 not possible. And even managed vegetation takes a certain
21 amount of water. And you can't do managed vegetation over
22 that whole area, because in some areas it's so saline and
23 alkaline that you couldn't even grow managed vegetation.

24 So I know that Moat and Row hasn't been as
25 thoroughly tested as we all would like. But it seems to

1 me that it has great potential to reduce dust in these
2 areas. And you are under legal requirements to comply
3 with the air basin. This is a major source of dust, which
4 is a potential public health hazard that we can't turn a
5 blind eye to. And I'm concerned about -- I am duly
6 concerned about the biological impact here, but I believe
7 that it is a very small impact relative to the entire area
8 that we're talking about. And I'd like to believe that
9 you will -- LADWP would continue to work with the State to
10 find ways to mitigate that.

11 I'm frankly, all due respect to staff, I'm a
12 little bit less concerned about the visual elements here
13 with respect to CEQA. I think it's a legitimate CEQA
14 issue. But this Commission member is less swayed by that.
15 So I'm not -- you know, to the extent that the visual
16 aspect can be done in a way to minimize it looking bad --
17 I don't know the right way to put it -- that's great. I'm
18 all for it. But I don't believe that's a strong enough
19 reason to turn down this opportunity to find a waterless
20 way to control the dust.

21 So, Mr. Chairman, I am prepared today to support
22 LADWP in their amendment to this lease over the next 10
23 years to include Moat and Row in those areas. And if
24 there's more support, I'd like to have a discussion to see
25 if we could incorporate some additional provisions into

1 that agreement that are not in Exhibit C.

2 CHAIRPERSON CHIANG: Thank you, Tom.

3 Let me begin by my line of questioning, and this
4 is of staff. And, Marty, I might get to you at some
5 point.

6 Do you envision any scenario interim or permanent
7 where the use of Moat and Row can by help us get to a
8 point where we would develop, even close to maximize, the
9 Public Trust and the use of Owens Lake. Right, you know,
10 the commentary right now is, you know, sort of immediately
11 focused. You can design Moat and Row such that, you know,
12 it would be used as cover for some of the dust for the
13 solar.

14 EXECUTIVE OFFICER THAYER: As it's proposed by
15 L.A., which is the only form of Moat and Row we know --
16 and certainly we've had internal discussions about the
17 design of it. The slopes of the moat, for example --
18 actually, they were original two to one and they've gone
19 to 1.5 to one. They haven't responded to the issue yet.
20 That was what created that issue.

21 It seemed that each increment of redesign of Moat
22 and Row made it worse for the Public Trust perspective.
23 So that, in my mind, there's kind of a fundamental
24 conflict between that method of dust control and Public
25 Trust values.

1 It has potential adverse impacts to Snowy Plover
2 and other wildlife. It has adverse impacts of public
3 access. And out there, those are kind of the two things
4 that are of value left on the lake bed.

5 So I don't see how that that's possible.

6 CHAIRPERSON CHIANG: Paul, if I can just ask you
7 that question again. Specific focus, interim or
8 permanent, can any use of this, in the interim, until --
9 providing you with time value to come up with a solution
10 for, you know, the -- I'm momentarily enamored of the
11 solar opportunity. I don't know that if it's best use.
12 But certainly this State has clean energy concerns that
13 are going to have natural consequences, economic
14 consequences that are very profound for the residents of
15 this state.

16 And so that if we're head in a direction perhaps
17 of the development of solar, right, I don't know what the
18 maximum design would be for the enhancement of a solar
19 facility there. And in thinking of that solar facility,
20 right, any portion of this can you use the moat and row
21 too, even, as I said, interim?

22 EXECUTIVE OFFICER THAYER: Right. Here's my
23 thinking about that. It may be possible to do some of the
24 things that Marty is talking about, in terms of Moat and
25 Row goes in, and then you retrofit solar on top of it.

1 But I think he was talking about envisioning some of this
2 on the road down here. And that's sort of in the problem
3 for the last couple months is it's kind been on the fly
4 discussions about how we might do this sort of thing.

5 So in that sort of generalized way, anything is
6 possible. I mean, there may be some way to do it, but as a
7 practical matter, there's no real way to say, at this
8 point, that that's feasible.

9 The other side of this is Mr. Adams indicated
10 that, you know, somehow the Commission should take comfort
11 in the fact that just because we authorize three and a
12 half square miles, they're not obligated to build three
13 and a half square miles. They could cut short that.

14 And, of course, the agreement with the air basin,
15 which he says is the gun at their head, requires them to
16 do the three and a half miles. The point is the
17 Commission has a limited amount of control here. And
18 certainly we could approve the Moat and Row for only a
19 limited period of time. But in trying to read what's
20 going on at LADWP as to what they really want, you know,
21 the Moat and Row as was brought to us and as they're
22 continuing to ask for it is a permanent installation.

23 And they like it, because it doesn't use water,
24 and there's good policy reasons for that, even though they
25 have that adverse Public Trust impact.

1 But in at least one or two documents, one that
2 I've read, their budget document for this year, there was
3 speculation that if Moat and Row worked, they could expand
4 it to use in other places in the lake. So they may be
5 interested in solar right now. And as you say, you know,
6 there is an attractiveness to that.

7 I don't know, you know, whether the
8 infrastructure issues -- I mean, right now the lines the
9 last time we met, Mr. Adams and I, he indicated that there
10 wasn't sufficient capacity on there to handle that much
11 power, and that they'd have to put in more lines, this
12 sort of thing. So there's so many unknown questions that
13 we have -- what we have in front of us is Moat and Row.

14 And I think that natural inclination, once it
15 gets in and the same way that there are pilot projects for
16 Moat and Row. They have several different areas around
17 where they installed some Moat and Row to test it, and
18 they want to leave those in. They're going to want to
19 leave those in.

20 I also, if you don't mind, I'd like to respond to
21 a couple other points he made. One of them was this
22 concept of well they don't have to go forward with all of
23 it. Once we've authorized, of course, it's out of our
24 hands.

25 And the fact that the slope hasn't been

1 addressed. In fact, that's another example of where the
2 incremental design that's occurred, in order to make Moat
3 and Row work has caused an increase of impact.
4 Originally, it was 2.0 to one. And there was some thought
5 that chicks could get out. And then it became 1.5 to one,
6 and that's when we got excited and Fish and Game had
7 gotten excited. So that issue is not really resolved.

8 And then not meaning to be flippant about this,
9 but Mr. Adams referred to there being a gun to his head.
10 Well, I don't know what the district will do. I can't
11 predict that.

12 At one point, we had a discussion with our staff
13 with whether or not -- and their staff raised this
14 possibility, that if it became legally impossible for them
15 to comply with the agreement -- and I've talked with
16 Curtis about this, and we don't know how it's going to
17 turn out. We can't provide assurance to the Commission.
18 Whether that's a defense against the basin finding them in
19 violation, that they don't have the ability to go forward
20 with. I don't know how that would work out.

21 But to say that they're going to have the \$10,000
22 a day fine imposed on them automatically, I don't think is
23 necessarily true. Certainly, they're eligible for that.
24 I'm not going to say it isn't going to happen. I don't
25 know what will happen.

1 But I have to say that Mr. Adams talk about there
2 being a gun to their head, that they have to comply by
3 January 1st. We didn't put that gun to their head. They
4 entered into an agreement with the air basin to establish
5 these deadlines over this particular kind of project,
6 prior to approval from the State Lands Commission.

7 And again, without meaning to be flippant, I'm
8 reminded of that famous scene from Blazing Saddles, where,
9 you know, the sheriff put the gun to his head and said,
10 oh, you know, help me, help me. I'm going to get shot.

11 And these people set up this deadline. And you,
12 the Commission, are now saddled with the responsibility
13 of, you know, half a month before this deadline coming
14 true of having to respond to that in a way that
15 potentially is damaging to the public trust.

16 CHAIRPERSON CHIANG: Marty, let me ask you a
17 question. How does the decision-making process work
18 internally? I mean, is it your Board who makes the
19 decision? Is it David who makes the decision? Do you got
20 to go to the Mayor?

21 MR. ADAMS: Our Board sets the policy for L.A.
22 Water and Power. And the general manager, you know, takes
23 his ideas and plans to the Board, and then the Board
24 agrees or disagrees.

25 And I know there's been some confusion as to

1 where L.A. stands on this. We would love to have a better
2 plan for the lake. And we're committed to working toward
3 a better plan for the lake. But our Board has made it
4 very clear to me, and a very clear direction, that their
5 position is we will comply and do everything we can to
6 comply with our obligation. And I've been directed to do
7 whatever I have to to try to get this lease, so that we
8 can remain in compliance. They have no intention of being
9 out of compliance.

10 CHAIRPERSON CHIANG: I have no doubt about your
11 sincerity and how earnest you are about making this happen
12 today. Again, you know, you have some extraordinary
13 talent at the Board and within the City. You know, I
14 don't like to jump on anybody. I'm a little bit
15 disappointed by, you know, what's been proposed thus far,
16 right, because the City of Los Angeles -- and I live in
17 the County, but the City of Los Angeles used to be my
18 home. You know, you want your home to be as innovative
19 and forward thinking as possible. And so this is sort of,
20 you know -- so Mona was, in essence, trying to cheerlead
21 and do the right thing and try to find some balance and
22 compromise so that we can assist you and fulfill our
23 Constitutional obligation in regards to, you know,
24 fulfilling the Public Trust.

25 MR. ADAMS: I'll be honest. You know, one of the

1 difficulties is that there's only a few accepted ways to
2 control dust. One is shallow flood, which involves a lot
3 of water. One is managed vegetation, which takes five or
4 six years to establish, because you have to go grow
5 millions of your own seedlings, and it still takes a third
6 to half the water, plus a whole lot of fertilizer and a
7 zillion maintenance issues.

8 The other approved dust technology is gravel.
9 And Mr. Garamendi was very much in favor of gravel. We've
10 not got a very positive response to gravel. And in
11 addition to that, it's very expensive up-front. It's a
12 one-time cost, for the most part. But it is very
13 expensive, and you have to have a source, which becomes
14 another environmental issue.

15 And so the challenge has been to find another
16 solution. And I fully agree that we have operated too
17 much in line with only Great Basin to find a solution on
18 lands that are under your jurisdiction. And I no longer
19 plan to sit down to do any negotiations with the dust
20 regulators without State Lands present as the property
21 owner, because I think that you need to have a voice in
22 what happens out here, absolutely. It's your lake. And
23 so, you know, with that, that's my plan ahead.

24 CHAIRPERSON CHIANG: At the moment --

25 MR. ADAMS: And I know that there are other areas

1 that are currently being ready to be ordered to abate.
2 These issues will be up right away that we have to find a
3 solution to, together though.

4 CHAIRPERSON CHIANG: Yeah. I want to be helpful.
5 But at the moment, I don't see a pathway to do so.

6 CHIEF COUNSEL FOSSUM: Mr. Chairman?

7 CHAIRPERSON CHIANG: I just -- you know, but I do
8 believe, you know, at the end result of this is going to
9 be something incredible.

10 MR. ADAMS: I think there's great possibilities.

11 CHAIRPERSON CHIANG: I'm sorry Curtis, you had a
12 statement.

13 CHIEF COUNSEL FOSSUM: What I wanted to say is
14 that one time the City of Los Angeles when they were
15 discussing this with us, they were concerned about Moat
16 and Row themselves, because it's a very expensive
17 installation from what they were telling us. And so
18 that's one of the reasons they were looking at the
19 alternative of solar. And so if they commit significant
20 amounts of money to that project, then it's certainly
21 something that they may have a hard time pulling back if
22 it doesn't work or whatever else.

23 So that was one of the motivations they indicated
24 to us that -- because they're certainly concerned about
25 the ratepayers too. Even though we don't know that the

1 Air Board would give any fines, they are authorized to
2 give fines up to \$10,000. They could find them in
3 violation and not fine them anything.

4 And so \$10,000 sounds like a lot of money, but
5 over three million people, it's --

6 CHAIRPERSON CHIANG: Between the 3.6 and 4.1.

7 CHIEF COUNSEL FOSSUM: -- just a few cents a day.

8 ACTING COMMISSIONER SHEEHY: I'm sorry, Mr.
9 Chairman. I hope we don't make our decision based upon
10 what the burden is to the ratepayers.

11 Mr. Chairman, I'd like to, for purposes of trying
12 to get closure, I'd like to see if there's -- I think Mr.
13 Thayer mentioned sort of a decision tree. The first
14 decision was, should there be a lease amendment for Moat
15 and Row. And then if there's support for that answer,
16 then we could have a discuss about the terms.

17 So in order to see whether we can get to the
18 terms, I'd like to make a motion to support the amendment
19 to the lease, so that LADWP can move forward with Moat and
20 Row.

21 CHAIRPERSON CHIANG: Okay, Tom. There's a
22 motion. I'm not inclined.

23 COMMISSIONER PASQUIL: I'll second.

24 CHAIRPERSON CHIANG: We have a second by Mona.
25 Please take roll.

1 ACTING COMMISSIONER SHEEHY: Can we then, if
2 there's a second --

3 CHAIRPERSON CHIANG: Is that an official motion
4 or are you just asking to get a sense?

5 ACTING COMMISSIONER SHEEHY: No, wanted to see,
6 because if there wasn't a second to my motion, then I was
7 going to suggest that we move forward to the next item or
8 have a substitute motion or something.

9 But I would like to have -- I do think it would
10 be appropriate then -- Ms. Pasquil has seconded my motion,
11 I assume then she and I might find common ground. And I'd
12 like to have a discussion of the terms.

13 COMMISSIONER PASQUIL: Right. I do want to talk
14 about the terms, because I don't want it -- listening to
15 Paul, once there's an approval, you had said then our
16 hands -- we can't do anything.

17 And so I want to have this discussion. It's
18 wonderful for you to sit here today and tell us you're
19 willing to help. But if history means anything, you know,
20 you've really got to -- you have to step up to the plate
21 here, and so I want to some of the terms.

22 MR. ADAMS: Can I offer a comment?

23 On the terms, the biggest issue in the new terms
24 that we have, is that some of the new terms would give
25 State Lands the ability to require Los Angeles to go to

1 shallow flood, if Moat and Row didn't work or certain
2 obligations weren't met.

3 And also I think there's another provision that
4 would require, with this master plan, to dedicate a
5 certain amount of shallow flood. And that speaks to the
6 water rights of the City of Los Angeles, which can only be
7 given up by a two-thirds vote of the people.

8 And so there are some conditions that we could
9 not legally enter into, because of the -- if it goes down
10 that path, we would not be allowed -- you know, could not
11 meet that condition.

12 So that's probably the biggest issue between the
13 two, and in someplaces that we have, are the ones that
14 pertain to future water rights.

15 ACTING COMMISSIONER SHEEHY: Mr. Chairman, may I
16 ask -- may I proceed?

17 CHAIRPERSON CHIANG: Please.

18 ACTING COMMISSIONER SHEEHY: Thank you.

19 Is it possible, Mr. Adams, for our benefit, then
20 can we turn to this staff chart here on page three and go
21 through these? Would that be a way to do it, Paul?

22 EXECUTIVE OFFICER THAYER: Certainly.

23 ACTING COMMISSIONER SHEEHY: I'm trying to think
24 how we can do this simply and Quickly.

25 EXECUTIVE OFFICER THAYER: Sure. Or the other

1 caution might be -- I don't know whether Mr. Adams has had
2 the opportunity to review Exhibit B, I think is the staff
3 one, and whether -- just as you've just identified,
4 whether you can point to certain provisions that you would
5 advocate being removed.

6 MR. ADAMS: We could probably do that, because
7 there are a couple others that we agree with or one --
8 like, there's one that says we need a plan for maintenance
9 of the areas. And I fully agree with that. The only
10 caveat is it says we need a plan before we can start
11 construction.

12 And because of the timeframe, I fully agree that
13 you should be -- that you should agree with what we plan
14 to do. I just have a concern of the timeframe, because
15 that could potentially put us out of compliance very
16 simply.

17 ACTING COMMISSIONER SHEEHY: Mr. Thayer --

18 EXECUTIVE OFFICER THAYER: The only reason I
19 suggested doing that is it's much more definitive than our
20 summary up here

21 ACTING COMMISSIONER SHEEHY: Mr. Thayer, since --
22 that's great. That's great. What I think would be
23 helpful for us would be to get to a decision quickly here,
24 that they can live with. And so if you think you can work
25 off Exhibit D, are you prepared to say what you -- in

1 other words, it looks like there is support today to
2 approve this amended lease. I thought some of the
3 provisions that were in your -- that were identified in
4 this chart here seemed reasonable and that they should
5 agree with. Can you quickly come to an agreement on what
6 you can and can't agree to, so that we can close on this
7 and move on.

8 MR. ADAMS: I'm bringing up Julia Riley, who's my
9 version of Curtis, so we can make sure I do this right.

10 ACTING COMMISSIONER SHEEHY: I mean I noticed in
11 the chart on page three, the very first provision said
12 mitigation for impacts to biological resources. And it
13 says L.A. no, staff yes. I would think that would be a
14 reasonable thing to include in the lease agreement. So I
15 would hope that that wouldn't be an issue for you.

16 I see down here it says, "No improvements or
17 modifications to design or location of Moat and Row
18 components." It says L.A. no, staff yes. I think that
19 you should be flexible there and work with us.

20 It says, "Removal of abandoned structures and
21 responsibility for obtaining necessary permits, past
22 future costs associated with the study, environmental
23 review for CEQA...", so and so forth. It says L.A. no,
24 staff yes. I think that that seems reasonable.

25 MR. ADAMS: Just to point out, where it says City

1 of L.A., that's the language that we've been working on
2 together. So it's not just our language. That was the
3 existing language, so just to clarify.

4 But on some of those there are a few answers.

5 ACTING COMMISSIONER SHEEHY: Well, I guess, let
6 me just be clear for the benefit of my colleagues and
7 staff. I want to incorporate as much of the staff's
8 recommendation as is possible, without putting you in a
9 position where you're saying we can't legally do that.

10 If there's a bona fide legal reason why you can't
11 do something, then I don't want to -- I don't -- I don't
12 want to adopt it. But with respect to other suggestions
13 that staff has made here on things like mitigation and so
14 on and so forth, I'd like to try to incorporate that.

15 Do you understand where I'm coming, from Mr.
16 Adams?

17 MR. ADAMS: I absolutely do.

18 ACTING COMMISSIONER SHEEHY: I don't know, but
19 I'm assuming my colleague is in agreement with that.

20 COMMISSIONER PASQUIL: Absolutely, because
21 everybody has got to give here, right. We've got to get
22 to yes, but we've got to be -- let's be smart about it, so
23 let's go through them.

24 MS. RILEY: Perhaps we could have ten minutes for
25 the legal counsel of both sides to discuss these terms.

1 We haven't had the opportunity to do that.

2 ACTING COMMISSIONER SHEEHY: Sorry. I just want
3 to give you direction. I want you to be very -- I think
4 it would be helpful. It's in your interest to be very
5 flexible and work all this out in 10 minutes, because
6 we're not going to sit through a 30 minute negotiating
7 session or so.

8 MS. RILEY: We understand.

9 MR. ADAMS: I appreciate that. And there are a
10 number of terms that we're already okay with.

11 CHAIRPERSON CHIANG: And then if you can come
12 back and articulate the hurdles. For instance, the fact
13 that, you know, it requires a two-thirds vote by the
14 people of Los Angeles. I think all of that needs to be
15 cleared to all us of.

16 MS. RILEY: Thank you.

17 (Thereupon a recess was taken.)

18 CHAIRPERSON CHIANG: They will continue to meet
19 and so we will go to the next item.

20 EXECUTIVE OFFICER THAYER: The next item has to
21 do with a proposal that the Commission support a
22 particular piece of legislation dealing with the
23 conversion of ships to reefs. And Mario De Bernardo, our
24 Legislative representative will give that presentation.

25 CHAIRPERSON CHIANG: Okay, very good.

1 LEGISLATIVE LIAISON De BERNARDO: Good afternoon,
2 Mr. Chairman, Commissioners. Like Paul said, my name is
3 Mario De Bernardo, legislative liaison for the State Lands
4 Commission

5 CHAIRPERSON CHIANG: And you're the one who's not
6 retiring.

7 (Laughter.)

8 LEGISLATIVE LIAISON De BERNARDO: Not yet.

9 I'm here today because the California Ships to
10 Reefs organization asked the Commission -- or is asking
11 the Commission to support AB 634, which is authored by
12 Diane Harkey. And this bill would give the State, as well
13 as nonprofit organizations who are operating a reef ship
14 immunity from any injury, personal injury, or property
15 damage that occurs as a result of scuba diving.

16 The Ships to Reef organization, they have a
17 couple of members here that would like to speak after me.
18 And I think they submitted slips. Their vision is to
19 promote ship reefing for the purpose of diving towards
20 them and benefiting the environment.

21 Ships to Reefs believes that this particular bill
22 that would create immunity to the State for any injury
23 related to scuba diving would allow the Commission to
24 judge a ship reefing proposal, because they would need to
25 submit obviously a lease application of some sort to have

1 a ship reefed on State sovereign lands.

2 They think that this bill would allow the
3 Commission to consider such a proposal on its merits, and
4 not out of fear of possible litigation.

5 The current law -- I have two slides here. The
6 current law states that there's -- the State has no
7 liability for injuries occurring as a result of hazardous
8 recreational activities. Hazardous recreational
9 activities means a recreational activity on public
10 property that has a substantial risk of injury. And under
11 the code, there are 26 activities which I do not believe
12 are exclusive. There could be other activities that fall
13 into it, if it meets the definition stated in the upper
14 box there.

15 And some of the activities are boating, skiing,
16 diving into water. There is an exception to this immunity
17 if a specific fee is charged for the use of public lands
18 to conduct this hazardous activity.

19 This should say there's no immunity instead of no
20 liability. There's no immunity for independent
21 concessionaires, and that's expressed in the Code. They
22 purposely included a section that stated that independent
23 concessionaires are still liable.

24 What AB 634 would do specifically is list scuba
25 diving as a hazardous recreational activity, and therefore

1 the State would not be liable for injuries occurring, as a
2 result of scuba diving. There's some language in there
3 that would state that charging a fee for scuba diving on
4 an artificial reef is not a specific fee, and therefore
5 the immunity still exists if a specific fee is charged.

6 And then, like I said earlier, the proposed
7 legislation would limit the liability of a nonprofit
8 corporations, which the statute currently does not do.

9 Staff recommendation, at this time, is to remain
10 neutral if the current bill is amended. The reason why is
11 that before the Commission should take any sort of
12 position, it should review a project first before taking
13 any action that is construed as supporting ship reefing.

14 And there are some examples, there's material in
15 the staff report indicating some of the issues that have
16 been caused -- from ship reefing. And so I think if a
17 project was vetted -- staff believes that if a project was
18 vetted, the Commission would be in a better decision to
19 make a decision -- better position to make a decision on
20 this issue.

21 The Ships to Reefs claim that immunity is
22 essential for -- or this bill is essential for the
23 Commission to judge a project on its merits is not
24 necessarily true. We can have provisions in the lease
25 that have insurance requirements and things like that, so

1 that we take care of our liability issues.

2 And the amendment part, what staff would like to
3 see amended is the section that creates Immunity for
4 nonprofits, because the Code already states that
5 nonprofits and other independent concessionaires should be
6 liable. We think this is a matter of public policy, and
7 therefore are recommending that amendment.

8 That's the end of my presentation.

9 CHAIRPERSON CHIANG: Thank you.

10 We have one individual signed up for public
11 comment. And that's Mr. Dean Rewerts, Vice President of
12 Reef Development for California Ships to Reefs.

13 Welcome.

14 MR. REWERTS: Mr. Chairman, Members. If I may,
15 I'd just like to respond quickly to Mario's analysis, and
16 then I'll take questions in the interests of time. We'll
17 just leave it at that. I won't make any kind of long
18 involved statement.

19 First of all, we are amending the specific fee
20 provision and the provision immunizing nonprofits out.
21 There's precedent in the law for conservation trusts for
22 the nonprofit remembers of that being treated as though
23 they were government employees for the immunity.

24 However, we have agreed to take the specific fee
25 provision out, and that provision that was a mirror image

1 basically of the Conservation Land Trust. So this only
2 would apply to the State and to local government entities
3 who are holders of granted lands on which our ships would
4 be reefed. So all of the provisions involving the
5 501(c)(3), which would basically be us, or one of our
6 affiliate nonprofits, are going to be amended out of the
7 bill. So I hope that addresses that issue.

8 The issue basically of this whole bill is that
9 reefing ships is good for the environment and good for the
10 economy. Here in San Diego, the Yukon, which was reefed
11 nine and a half years ago. We're coming up on her 10th
12 anniversary, cost \$1.2 million to reef. And she brings
13 \$4.5 million just in direct dive-related income into the
14 Port of San Diego every year.

15 If you just go on that basis, if we reefed 10
16 ships up and down the coast, we're going to be bringing
17 in, you know, multiple tens of millions of dollars to the
18 California economy, primarily to the historic ports, which
19 have just been hammered by the fishing losses and losses
20 of other industry. For instance, Eureka has lost both
21 fishing and logging, so they are just incredibly hammered.

22 It benefits diving. It benefits fishing. And it
23 benefits the environment. There really is no downside to
24 it.

25 And with that, I'll take questions.

1 CHAIRPERSON CHIANG: Thank you.

2 Yes, Tom.

3 ACTING COMMISSIONER SHEEHY: So I understand then
4 the purpose of this bill is to give the State some
5 immunity, so that if we were to grant leases in the
6 future, we wouldn't be sued by -- if some diver died in a
7 diving accident in a reefed ship, they wouldn't turn --
8 and it was on State tidelands, they couldn't turn around
9 and sue the State, is that right?

10 MR. REWERTS: Correct.

11 ACTING COMMISSIONER SHEEHY: That's the idea?

12 MR. REWERTS: That's exactly right.

13 ACTING COMMISSIONER SHEEHY: In that scenario, if
14 the dive company -- let's say it's a charter dive, if the
15 dive master was negligent or the dive company hadn't --
16 you know, there was some negligence found, would they be
17 liable for the death in that case?

18 MR. REWERTS: Essentially -- I'm a diver. And
19 basically, every diver, when they go with a charter group,
20 a charter boat, they sign a liability waiver. And it
21 basically says, I, Dean Rewerts, understand that scuba
22 diving is an inherently dangerous thing and it lists all
23 the things that can happen. If it's a rec dive or a dive
24 on one of our reefs, they also go into the dangers of
25 penetration into a structure.

1 So if you're diving with an organized charter
2 boat, you're going to sign one of those waivers. The
3 danger is the guy that goes out on his own and dives
4 possibly untrained, possibly ill-equipped.

5 ACTING COMMISSIONER SHEEHY: Okay. So I'm --
6 assuming that the ships, before they're reefed, have been
7 completely decontaminated, any residual oil, hydraulic
8 fluids, I mean assuming that all the necessary
9 environmental stuff has been done so that we're not
10 polluting the ocean floor, I'm in support of this concept
11 of your bill, because I think it does provide habitat for
12 a marine species. Albeit, it's not the same habitat as
13 they would get in a natural reef. It's a different type
14 of habitat. And I also think that it is a recreational
15 opportunity for Californians and others. And I think
16 there is a -- I don't know whether your economic
17 analysis -- it sounds a little bit like the back of an
18 envelope analysis. But I think you're probably right,
19 there's an economic benefit.

20 But I'd like to hear from Mr. Thayer or Mr.
21 Fossum if there's any significant -- and I appreciate your
22 presentation, Mario, but I'd also like to hear from the
23 leadership of the organization. Is there any significant
24 policy issue here this raises that we should be really,
25 really concerned about?

1 EXECUTIVE OFFICER THAYER: I don't think it does,
2 really. The changes that they want to make are the ones
3 that we would have potentially -- if they hadn't been
4 made, we would have potentially been asking for opposition
5 from the Commission on. So that, as Mario explains, that
6 brings us up to a neutral recommendation from staff's
7 perspective.

8 But we look at it, that this is something, you
9 know, the State Lands Commission can review these leases
10 and decide whether they want to approve them or not.
11 There are a variety of mechanisms for addressing the
12 immunity situation, the organization that's reefing the
13 ship can obtain assurance or provide a bond that kind of
14 thing.

15 So absent a Commission policy on ships to reefs,
16 it seemed like if they want to go to the legislature and
17 try and get immunity, which will benefit their program,
18 then fine, have at it. That's their program, but we
19 didn't see it as a State Lands Commission initiative or
20 something that we knew a lot about, absent the
21 environmental review that we would do when they come
22 forward with an individual project.

23 ACTING COMMISSIONER SHEEHY: Two very quick
24 follow-up questions. Paul, has the State Lands Commission
25 taken positions of support, oppose, or neutral on bills in

1 the past?

2 EXECUTIVE OFFICER THAYER: Certainly.

3 ACTING COMMISSIONER SHEEHY: And have we done
4 that on bills that we haven't sponsored? Have we ever
5 taken a support position on a bill that we haven't
6 sponsored?

7 EXECUTIVE OFFICER THAYER: Yes, I can't remember
8 precisely which one, but I'm sure we have.

9 ACTING COMMISSIONER SHEEHY: Okay, so this
10 wouldn't be precedent setting is what I'm really getting
11 at.

12 EXECUTIVE OFFICER THAYER: No, no. We've taken
13 positions on bills before. Usually, we focus on things
14 that deal with the Public Trust or that kind of thing.

15 ACTING COMMISSIONER SHEEHY: Okay. I don't know
16 where my colleagues are, but I'll just say that I would be
17 willing to take a position of support, if amended, with
18 those amendments on this bill for this purpose.

19 MR. REWERTS: If I could just respond briefly.
20 There are three -- at least three artificial reefs --
21 ship-based artificial reefs, either on State lands or
22 administered by State agencies right now. There's one
23 here in San Diego Harbor, or San Diego Bay, Mission Bay
24 that is administered by the State Department of Fish and
25 Game, although it's on granted lands.

1 And the Palawan off of Redondo Beach is on State
2 lands.

3 And there's a newly discovered reef consisting of
4 a destroyer. And we're not sure whether it's on State
5 lands or Navy lands, but it's on one of the Channel
6 Islands that was just discovered recently by divers, who
7 are doing penetration dives on that vessel.

8 EXECUTIVE OFFICER THAYER: None of these have
9 been approved by the Commission.

10 CHIEF COUNSEL FOSSUM: Mr. Chairman, we have had
11 a lot of experience at the State Lands Commission with a
12 ship that was made into an artificial reef in the Ventura
13 area, Oxnard, Ventura area. It's called the La Jenelle.
14 And it's been a significant albatross around our necks for
15 a long time because of both liability issues, maintenance
16 safety issues, and things like that.

17 It's actually in the surf zone and it's been a
18 real problem for the Commission. So we're a little
19 hesitant in getting into these projects. We were trying
20 to help the local government in that instance. But, you
21 know, the best laid plans don't often go the way we expect
22 them to. This has probably been 30 or 40 years ago that
23 this was reefed there. So there are some bad examples we
24 have of similar things that -- so we're somewhat concerned
25 about it.

1 CHAIRPERSON CHIANG: Curtis, can you fill in the
2 blanks for me. So the connection between the albatross
3 and this legislation?

4 CHIEF COUNSEL FOSSUM: Well, I think the
5 legislation obviously is a green light to support
6 additional reefs out there. It would protect the
7 Government from liability issues. It would -- if amended,
8 it would no longer protect the NGOs. But there's still
9 safety issues involved in that. And if there became a
10 problem that we were knowledgeable about and had permitted
11 that, then I think there would be obligations on the State
12 to go in and try and remedy that situation, so that it was
13 no longer a hazard to the public.

14 So anytime we start doing any kind of activity
15 like that, that has the potential for being hazardous, I
16 don't think the State can immunize itself if it's aware of
17 a truly hazardous situation. And even though the proposed
18 legislation declares it one in which it's acknowledged
19 hazardous. If it's truly one that has an extreme amount
20 of hazard to the public, you know, nuclear fuel being
21 dumped off the shore, things like that. We just have to
22 be careful about any kind of projects we get in.

23 And as Paul pointed out, the Commission would
24 have to approve those projects, if they're on our
25 property. The one that happened down in San Diego was

1 approved by the City of San Diego as a trustee of the
2 State. The State Lands Commission had absolutely no
3 involvement in that.

4 So it would allow other local governments to do
5 similar projects that we would not be involved in and
6 would not be in a permitting process to review.

7 CHAIRPERSON CHIANG: And then the -- not positive
8 or negative, I just -- I serve on 78 boards and
9 commissions. So anytime there's a legislative proposal, I
10 just don't want to open it up for a vote on every single
11 legislative proposal.

12 So the strongest nexus between this particular
13 legislative proposal and the State Lands Commission?

14 EXECUTIVE OFFICER THAYER: In terms of why the
15 Commission should get involved?

16 CHAIRPERSON CHIANG: Yes.

17 EXECUTIVE OFFICER THAYER: Well, to take their
18 side, you know, the argument would be that this -- that
19 Ships to Reefs could be determined by the Commission to be
20 a benefit to the public, and that we'd like to see that
21 occur. And that this bill would eliminate the liability
22 that the State might have or would try and limit it
23 subject to the restrictions that Curtis was outlining as
24 an attorney.

25 This could potentially limit the State's

1 liability should the Commission decide to approve one of
2 those projects. I think that's -- when you say a nexus is
3 that responsive?

4 CHAIRPERSON CHIANG: Yeah, I used the term nexus.
5 And so the frequency of that happening is what?

6 EXECUTIVE OFFICER THAYER: Well, we haven't had
7 any proposals brought to the Commission yet, but I think
8 this gentleman's organization is very interested in
9 pursuing that and in multiple locations.

10 MR. REWERTS: Yeah, we're working right now with,
11 I believe, 11 possible sites from San Diego all the way up
12 to Eureka that could become reefing sites. The science --
13 with all due respect to counsel, the science of reefing
14 has come a long way since 40 years ago. And vessels are
15 completely cleaned of all toxics, they are set up for
16 penetration dives to the best of our ability. And so that
17 the animals can get inside of them and create habitat and
18 breed and hide on them.

19 And the United States EPA has adopted a best
20 practices manual for cleaning. And we expect that CalEPA
21 would probably be even stricter on that and we are
22 perfectly prepared to comply with that.

23 ACTING COMMISSIONER SHEEHY: Mr. Chairman.

24 MR. REWERTS: Our reefing areas are being
25 surveyed for up to one year before we would ever consider

1 putting a vessel down, for habitat and the appropriateness
2 of putting a vessel in that place, current, surge, what
3 kind of shelter, what kind of bottom, are there natural
4 reefs in the area?

5 EXECUTIVE OFFICER THAYER: If I could interrupt,
6 I can --

7 ACTING COMMISSIONER SHEEHY: Mr. Chairman, I have
8 a suggestion. Since I'm -- I must leave shortly, and we
9 have this other issue pending. And since your legislation
10 that you're sponsoring is going to have to go through the
11 legislative process next year, would one possibility for
12 right now for expediency be to simply put this matter
13 over. I don't think you live or die on this State Lands
14 Commission decision today. I know you'd probably like to
15 get our endorsement to get it out of the house of origin,
16 but quite frankly if you don't have the support to get it
17 out of the house of origin, I'm not sure that our
18 imprimatur that's going to make the difference.

19 But if it's really important for you to get this
20 body's support, which you may or may not get, you could
21 come back and ask again. And I apologize, but we have
22 this other matter. And I'm going to have to leave
23 shortly, and it would be unfair to the other folks here if
24 I left, then I kill their proposal. And I don't want to
25 do that.

1 MR. REWERTS: Understood.

2 CHAIRPERSON CHIANG: Is that okay with you, Mr.
3 Chairman. So we'll put it over til January -- or next
4 hearing.

5 EXECUTIVE OFFICER THAYER: And the other
6 possibility, not to delay this any further, is I don't
7 know where the Commission is on this. But if there is a
8 disposition on the part of the other two Commissioners to
9 support this, you know, without prejudice we could look at
10 this question after we're done with this. And then if you
11 two want to vote out in support, then I think Mr. Sheehy
12 would be happy for that result. If you weren't, then we'd
13 put it over.

14 ACTING COMMISSIONER SHEEHY: Yeah, that's fine.

15 EXECUTIVE OFFICER THAYER: Does that make sense?

16 CHAIRPERSON CHIANG: Thank you.

17 MR. REWERTS: Thank you.

18 CHAIRPERSON CHIANG: We'll revisit the prior
19 item.

20 Are they here?

21 MS. RILEY: Julie Riley, Deputy City Attorney for
22 Los Angeles.

23 I think counsel and I have agreed on some
24 proposed amendments to Exhibit D, which were acceptable to
25 both agencies.

1 CHIEF COUNSEL FOSSUM: Basically, Mr. Chair,
2 should the Commission wish to approve the lease of a Moat
3 and Row project to the L.A. Department of Water and Power,
4 we would recommend that the Commission amend Exhibit D,
5 which is found on page four of Exhibit D. It's Section
6 2 --

7 ACTING COMMISSIONER SHEEHY: Sorry, what page is
8 that on, Curtis?

9 CHIEF COUNSEL FOSSUM: It's of Exhibit D. It's
10 page four. It's basically three small amendments that we
11 believe will satisfy the concerns of the city.

12 The first one is A1. And at the end of the --

13 ACTING COMMISSIONER SHEEHY: A1 is on page three
14 of six, is it not?

15 CHIEF COUNSEL FOSSUM: It's on four of six of
16 mine.

17 DEPUTY ATTORNEY GENERAL PATTERSON: 2(a)(i).

18 CHIEF COUNSEL FOSSUM: I'm sorry, Section 2(a)(i)

19 ACTING COMMISSIONER SHEEHY: Section 2(a)(i).

20 CHIEF COUNSEL FOSSUM: Page four.

21 And at the end of the sentence after "resources"
22 add, "...shall be supplied within 90 days of Commission
23 approval".

24 ACTING COMMISSIONER SHEEHY: Are you agreeable to
25 that?

1 MS. RILEY: Yes, we are.

2 ACTING COMMISSIONER SHEEHY: Just speak up if
3 you're not, so we know.

4 MS. RILEY: I will. Thank you.

5 CHIEF COUNSEL FOSSUM: And double i, at the end
6 of that sentence, strike "perpetuity" and substitute,
7 "...for the terms of the lease or until a master plan is
8 approved by the Department of Fish and Game and the State
9 Lands Commission".

10 MS. RILEY: You would actually strike "in
11 perpetuity".

12 ACTING COMMISSIONER SHEEHY: What else?

13 CHIEF COUNSEL FOSSUM: You're right, in
14 perpetuity. Strike in perpetuity.

15 ACTING COMMISSIONER SHEEHY: What else, Curtis?

16 CHIEF COUNSEL FOSSUM: And the last one is (c).
17 And on that one on line six of (c), strike the
18 parenthetical phrase and add, "...as will be determined
19 by..." unquote. And then substitute -- excuse me.

20 DEPUTY ATTORNEY GENERAL PATTERSON: Add in.

21 CHIEF COUNSEL FOSSUM: "...as will be determined
22 by the lessor."

23 ACTING COMMISSIONER SHEEHY: Lessor.

24 CHIEF COUNSEL FOSSUM: No, I'm sorry. I'm sorry.
25 Strike the parenthetical phrase and strike "...as will be

1 determined by..."

2 ACTING COMMISSIONER SHEEHY: So you want to put a
3 period after "lake"?

4 CHIEF COUNSEL FOSSUM: No. After lake we're
5 going to add one -- or two words, "'acceptable to' the
6 lessor."

7 ACTING COMMISSIONER SHEEHY: "acceptable to the
8 lessor."

9 CHIEF COUNSEL FOSSUM: Correct.

10 ACTING COMMISSIONER SHEEHY: Are there any other
11 changes?

12 CHIEF COUNSEL FOSSUM: No.

13 ACTING COMMISSIONER SHEEHY: So basically then if
14 I understand that right, Mr. Fossum, this is your
15 language.

16 CHIEF COUNSEL FOSSUM: This is our language.

17 ACTING COMMISSIONER SHEEHY: This is your
18 language with these three amendments, is that right?

19 CHIEF COUNSEL FOSSUM: This is language
20 acceptable to staff.

21 ACTING COMMISSIONER SHEEHY: I'm sorry. I wasn't
22 trying to put you in a box.

23 This was language acceptable to staff with three
24 amendments that you made to it, is that right?

25 CHIEF COUNSEL FOSSUM: Right.

1 ACTING COMMISSIONER SHEEHY: Mr. Chairman, I
2 would move approval of Exhibit D as amended.

3 CHAIRPERSON CHIANG: We have a motion.
4 Is there a second?

5 COMMISSIONER PASQUIL: I have a question.
6 Everybody's issues are -- may I ask a question?

7 CHAIRPERSON CHIANG: I'll second for courtesy
8 purposes.

9 COMMISSIONER PASQUIL: Everybody's issues are
10 addressed here. You feel comfortable?

11 CHIEF COUNSEL FOSSUM: If the commission desires
12 to issue a lease for Moat and Row, then these are the
13 lease terms that the staff would be recommending.

14 MR. ADAMS: And we're okay with that.

15 CHAIRPERSON CHIANG: Okay. What does it mean?
16 (Laughter.)

17 CHAIRPERSON CHIANG: How far can they go? How
18 much do we have the ability to pull back? Because, I
19 mean, obviously you just gave us the language. So, you
20 know, we haven't filtered out all circumstances.

21 EXECUTIVE OFFICER THAYER: I would say, in
22 general, this provides a lot of side-boards to the
23 proposal, but that this proposal -- I mean, if approved --
24 if this were approved by the Commission, LADWP would be
25 authorized to construct the entire 3.5 square miles of

1 Moat and Row pretty much as they've designed it with
2 these, I would regard them as mostly, environment and
3 procedural amendments.

4 So there's no limitation to their ability to
5 proceed, once this is approved. And they would have that
6 for the remaining term of the lease, which is nine and a
7 half years about.

8 CHAIRPERSON CHIANG: And we don't have any
9 authority to construct solar or create some other type
10 of --

11 EXECUTIVE OFFICER THAYER: There's no requirement
12 in there that would do that.

13 ACTING COMMISSIONER SHEEHY: Well, they'll have
14 to come back for that wouldn't they, anyways with the --
15 it's not mutually exclusive.

16 EXECUTIVE OFFICER THAYER: Right. No, not in
17 terms -- I mean, legally they could come back at any point
18 and amend the lease, as they've done in the past, to
19 construct different improvements.

20 CHIEF COUNSEL FOSSUM: But it will allow them to
21 do the entire project as proposed for the next nine and a
22 half years.

23 CHAIRPERSON CHIANG: Yeah, I'm not there.

24 COMMISSIONER PASQUIL: Okay. I thought -- I have
25 another question. What I was hoping that we would get to

1 is a yes, where there would be some language where you
2 would talk about Moat and Row, but you would also look at
3 the possibilities of solar in certain areas. This doesn't
4 address that term that I had asked about, that I had
5 talked about.

6 MR. ADAMS: In terms of requiring to come back
7 with a solar plan?

8 COMMISSIONER PASQUIL: Right. My --

9 MR. ADAMS: Because we do have that plan, but it
10 doesn't require us to bring it back.

11 COMMISSIONER PASQUIL: You do have a plan.
12 Nobody's seen it, but see there's where I feel a little --
13 I have trepidation.

14 So I'm concerned about that. Now, I know we have
15 a timing issue here. And maybe for the purposes of -- and
16 I don't know what you think about this -- the purposes of
17 you staying in compliance, maybe we -- there could be a
18 motion for you to build say a fence -- the fence that you
19 were talking about right, so that you could start building
20 by January 1.

21 But folks here's the deal, the issue is, is that
22 we all have to come to the table and talk about all of
23 this, rather than saying, okay, here we're going to give
24 you -- we're going to give you this issue and you may not
25 do it. You may not come back.

1 MR. ADAMS: We could put in there, if it's
2 acceptable to Paul and his folks, you know, the commitment
3 that we will initiate within X number of days the master
4 plan process.

5 COMMISSIONER PASQUIL: With all parties.

6 MR. ADAMS: With all parties. Because actually
7 we plan to kick it off in January anyway. So I would have
8 no problem to make sure that you have a written commitment
9 that we are going to move ahead on this broader plan.

10 EXECUTIVE OFFICER THAYER: The trouble is we
11 don't know when that's going to be completed.

12 Another way to go would be to say that the
13 Commission authorizes that -- was it the southern area
14 that was all fenced right now?

15 MR. ADAMS: Right.

16 EXECUTIVE OFFICER THAYER: So would that -- I
17 mean the requirement in your agreement with -- you've
18 described to me as saying we need to get a bulldozer out
19 there breaking ground by January 1.

20 MR. ADAMS: We could -- you could do area or you
21 could, you know --

22 ACTING COMMISSIONER SHEEHY: I'm sorry. Time
23 out. If we don't trust that they're going to come back
24 with a solar proposal, I'm pulling my motion off the table
25 right now. That's not an issue for me. And if that's an

1 issue for my fellow Commissioners, I'll just pull my
2 motion. I think we are getting lost here.

3 We heard the testimony. We know what they want
4 to do. They don't have a legitimate solar proposal to
5 bring forward now, because it's not fleshed out. We can't
6 force them to do something that doesn't exist. If we
7 really don't trust them, then we shouldn't approve this,
8 and let the chips fall where they may.

9 So, I mean, really all due respect, Ms. Pasquil,
10 if you're that concerned that they're not going to come
11 back with a solar proposal, you shouldn't vote for this.
12 I'll withdraw the motion. Let's just move on.

13 I think they're going to do -- I believe that
14 they're going to do what they say. And I believe that
15 they say what they mean, and they'll do what they say.

16 I know it's a big bureaucracy, and, you know,
17 we'll probably have issues with them in the future. But,
18 you know, they seem to be -- you know, they want to do
19 this solar thing, but they can't materialize it out of
20 thin air. And we can't force it at this moment. So if
21 that's the requirement we have to do, then I think we just
22 have to walk away from this and say we gave it our best
23 try.

24 COMMISSIONER PASQUIL: With all due respect, I am
25 not asking to do that. What I am asking is, is that I was

1 looking at history. People haven't been talking to each
2 other. I'm asking -- you know, those were part of my
3 terms. Those were part of what I had asked for. I'd like
4 to see this move forward, but I'd also like to see that,
5 you know, you step up to the plate and do the right thing.

6 I'm still in support, but I'm telling you
7 publicly right now, you know, there's a communication
8 issue here.

9 MR. ADAMS: If we want to add language that says
10 we'll begin this master plan process, and the State Lands
11 will be a full partner in it, I'd be absolutely supportive
12 of that, if that helps.

13 COMMISSIONER PASQUIL: Does that help you,
14 Curtis?

15 ACTING COMMISSIONER SHEEHY: That's fine with me.
16 Ms. Pasquil, that's fine with me.

17 COMMISSIONER PASQUIL: Fine with me.
18 Paul?

19 CHAIRPERSON CHIANG: But do we have a -- I mean,
20 we can engage and discuss the plan. Right, there's a
21 difference between it actually happening, right, and
22 that's --

23 EXECUTIVE OFFICER THAYER: Well, that's the
24 concern.

25 CHAIRPERSON CHIANG: Right, because at the end of

1 the day, we're the body responsible for Public Trust of
2 this use, right. Anybody can come up with -- I got
3 involved in a little bit of this City politics in Los
4 Angeles about solar there. Right, I got caught in the
5 middle of it, right. You can have energy plans just go
6 awry, because of the politics. And I don't want to get
7 caught again in this situation. I learned from that
8 experience, so I want to make sure we have a solar plan
9 that works for people.

10 MR. ADAMS: And if I could add two things.

11 One is the master plan to do better habitat. You
12 know, solar is not -- we actually envisioned working
13 toward this before the solar idea came about. So solar
14 complements that, but it doesn't live and die with solar
15 being there. So the master plan has to happen anyway.

16 The other is that the three and a half miles that
17 would be Moat and Row, there is the three and a half mile
18 offset for habitat until -- it exists until a habitat plan
19 is accepted, and until there's a master plan. And that's
20 part of our 1600 agreement with Fish and Game.

21 So there is some guarantee and there is an
22 incentive for us to make sure this happens, because we're
23 locking up another three and a half miles of shallow
24 flood, until such time that State Lands and Fish and Game
25 agree on a master plan that would set the state for the

1 entire lake. So there are some protections and incentives
2 to continue for it.

3 CHAIRPERSON CHIANG: Paul, you said we could
4 start the construction of a fence or something, so that
5 they could be in compliance. Clearly, we're trying to
6 help you, so that you're not in violation of the law.

7 But I want to establish that we can have a firm
8 timeline by which we get a discussion under place, but
9 more importantly for me, we can get some agreement and
10 some real plan, not just a discussion.

11 EXECUTIVE OFFICER THAYER: Well, again, one idea
12 might be --

13 ACTING COMMISSIONER SHEEHY: I'm sorry. I'm
14 going to leave. My motion is on the floor. If you want
15 to take a vote, we can vote. I don't mean to be rude, but
16 I told everybody 40 minutes ago I was going to leave. And
17 I am walking out the door. So if you can catch me before
18 I go, you know where I stand. I've got a motion on the
19 table.

20 If somebody else can make up a quick one before I
21 go, I'm all for it, but I can't stay any longer.

22 EXECUTIVE OFFICER THAYER: One proposal would be
23 to approve the construction of the fences in that southern
24 area, or wherever the area is that you're doing largely
25 fences, have the Commission direct staff to return with a

1 recommendation on the remainder of that at the April
2 meeting. And by then, as a condition of the approval, or
3 the understanding would be, is if you don't have a
4 mitigated negative dec done and a proposal before the
5 Commission on the solar array, then the Commission may not
6 be approving the rest of Moat and Row in April.

7 So that puts their feet to the fire, not for the
8 whole plan, but at least to get the process moving on
9 solar. And, frankly, what staff would be doing at that
10 point is talking to Great Basin to see if that sort of
11 progress will help them out too.

12 CHAIRPERSON CHIANG: I'm sorry. So --

13 EXECUTIVE OFFICER THAYER: So the proposal would
14 be approve now, so that they don't get in trouble with
15 Great Basin. And Mr. Adams can tell us whether this will
16 work or not, because they've started construction --

17 CHAIRPERSON CHIANG: I'm sorry, Paul. Approve
18 what now?

19 EXECUTIVE OFFICER THAYER: Approve the fence-only
20 portion of the project. And I don't mean where fences are
21 interspersed without --

22 CHAIRPERSON CHIANG: She's shaking her head no,
23 because we don't have to engage in conversation.

24 MS. RILEY: I'm sorry. Great Basin has
25 communicated to our staff that they are prepared to

1 implement fines of \$10,000 a day. The variance that we
2 have from the Great Basin Hearing Board itself imposes a
3 milestone of January 1st to begin construction of the Moat
4 and Row. If we put a fence post in and don't have any
5 additional construction under way, it also has a milestone
6 of having that complete by October 1st of 2009. So it's
7 just --

8 CHAIRPERSON CHIANG: The mile post is
9 construction of what exactly?

10 MS. RILEY: The Moat and Row. The Moat and Row
11 dust control.

12 CHAIRPERSON CHIANG: So Moat and Row. So if you
13 naturally -- does the construction of Moat and Row
14 operationally happen simultaneously, you build Moat and
15 Row?

16 MR. ADAMS: Yeah, they have the same.

17 MS. RILEY: Of the dust control measure itself.
18 I couldn't answer you specifically as to whether the moats
19 and the rows are constructed at the same time.

20 EXECUTIVE OFFICER THAYER: But when we say Moat
21 and Row, that's shorthand hand for this last three and a
22 half square miles, which in some places includes Moat and
23 Row without fences. In some places, it includes fences
24 without Moat and Row.

25 What we're suggesting is approve today -- the

1 commission approves if it's so inclined, the fence
2 portion, so that you are out there by January 1st working
3 on that project. And it's my understanding, I'm haven't
4 read the agreement, is that you're obligated to start
5 construction by January 1st. You're obligated to complete
6 construction by October.

7 MS. RILEY: Yes.

8 EXECUTIVE OFFICER THAYER: And so if you're
9 constructing those fences, which are part of the Moat and
10 Row project -- I don't mean the fences on top of the rows,
11 but the fence -- that part of the project which is fences
12 only, have you met the requirements from Great Basin?

13 MS. RILEY: I would turn to Mr. Adams as far as
14 how -- what the construction schedule is if you simply put
15 a small, very minuscule portion of the entire project
16 under way, and then you would have to return to this body
17 for its February meeting, you would be putting yourself
18 far behind construction.

19 MR. ADAMS: Probably the challenge would be if
20 you don't start the actual construction activity - that
21 takes time - is that you could not meet the compliance
22 deadline. So I think that would be the challenge.

23 And if we're looking for other options, you know,
24 to see the fenced area we're talking about, that's an area
25 that looks like it's maybe more viable to make part of the

1 habitat in the Cartago area.

2 You know, when we get into September/October next
3 year, if there's things that we want to change, our
4 ability to appeal for a change and potentially extend the
5 variance will be based largely on what progress we've made
6 and how good a faith we've done.

7 And I don't think we get any traction up front.
8 But if we're well along the project, I think that there's
9 many members that are particularly, you know, on the Great
10 Basin Board that are interested in a better product out
11 there as well. And so I think that an appeal, at that
12 time, as we're moving forward with the master plan with a
13 group that's working together, I think that it opens up
14 the options considerably, at that point. But I don't
15 think those options are there now.

16 EXECUTIVE OFFICER THAYER: And so part of the
17 scenario, of course, would be is if the Commission in
18 April approved the demonstration project for solar arrays.
19 That's another 80 acres, which could be again put on the
20 Moat and Row area. So you know this is all atmospheric,
21 but we're putting you in a better and better position to
22 be able to talk to the Great Basin about this.

23 MR. ADAMS: If we did get the lease for the Moat
24 and Row area, I mean, we will start on the area that makes
25 the solar demo work. That's where we'll initiate our

1 work, is to do the work that would be hand in hand with
2 what we'd come back for the solar demo, the roads and the
3 areas around the solar panel installations.

4 CHAIRPERSON CHIANG: Curtis.

5 CHIEF COUNSEL FOSSUM: I have a question. Are
6 there places where in the future you don't intend to try
7 the moat -- excuse me, the solar project, but you still
8 have attainment problems that would allow you to begin
9 construction now on portions of the lake bed.

10 And I'm just wondering -- I think you were
11 indicating that the solar project, you were looking for
12 the eastern part of the lake and maybe those areas on the
13 northwest are not --

14 MR. ADAMS: Right, and the two south areas, where
15 we're looking at the solar demo and adjacent to it, would
16 be logical to start Moat and Row, keeping the Moat and Row
17 in the demonstration areas, at least for the time being
18 until the master plan is developed, and we know how those
19 areas will vet out.

20 The top Moat and Row demonstration area is next
21 to habitat. I assume that it may become habitat in the
22 future. But the fact that it could stay keeps it in
23 compliance.

24 The areas on the side of there, they're kind of
25 lone rangers. They're by themselves. There's no real

1 good options. I think there's maybe a broader discussion
2 of maybe alternatives and techniques that we have not
3 vetted yet, that would be worth having. That's what I'm
4 interested in doing.

5 But I can't get their up front. I might be able
6 to get there with the time of making progress, starting at
7 the lower -- the south end and working there during the
8 course of the year, and work toward an answer. But I
9 won't be able to go up front and say I don't have a
10 solution up there.

11 EXECUTIVE OFFICER THAYER: I don't know.

12 MR. ADAMS: But in terms of language, if there's
13 a way to put in the language that we are going to start
14 this process and that we're committed to, you know, doing
15 the process for the master plan, and include the -- you
16 know, the viability of solar power in that master plan, if
17 that helps get where you're comfortable with, I mean, that
18 is fully our intention. That is where we want to go.

19 CHAIRPERSON CHIANG: I'm for the fence.

20 COMMISSIONER PASQUIL: Well, it's just how to do
21 this.

22 CHAIRPERSON CHIANG: It's not perfect, but it's
23 something.

24 COMMISSIONER PASQUIL: Do you have to -- you
25 could get this out today, if we can start something with

1 the language of starting with the fence on January 1.

2 EXECUTIVE OFFICER THAYER: Right.

3 COMMISSIONER PASQUIL: Working together straight
4 away, and then building towards, you said, April 1st --

5 EXECUTIVE OFFICER THAYER: Well, I think the idea
6 would be is if they started on the fence, we should also
7 be starting, like tomorrow or Monday or whatever, on
8 firming up the demonstration project. I mean, I
9 understand that informally you said that 80 acres, which
10 we thought could be done with a mitigated negative dec was
11 going to be sufficient for you to test, you know, that
12 concept.

13 And so let's get that done, and the mitigated
14 negative dec underway. And then the Commission could
15 potentially hear more of this in February, either more on
16 Moat and Row -- I don't think the mitigated negative dec
17 can be done by February, but --

18 MR. ADAMS: It would be a challenge.

19 EXECUTIVE OFFICER THAYER: It would be a
20 challenge, but April is possible. And so then we'd be in
21 a position where hopefully we'd be approving that --
22 where -- you were proposing it for or A-4, right?

23 MR. ADAMS: Yeah T1A-4. It's actually -- T1A-4
24 is 616 acres, so it would be -- and again, in this case,
25 it would be 80 acres of the 616 acres. So maybe what I

1 could offer is that if we were allowed to start in that
2 area for Moat and Row, and so instead of just a fence --
3 if we could do that, then we'd get two things. We
4 actually have a real process starting that we can say with
5 a straight face to Great Basin, we've really started work.

6 It also doesn't make us lose those months of
7 construction, that would throw us, almost guaranteed, out
8 of compliance in October.

9 It would be an area that the solar demo would be
10 part of. And so the Moat and Row that we'd construct
11 would be consistent with the solar demo. And the solar
12 demo will only be 80 out of 616 acres in that area.

13 So it still has to have the rest of the solution.
14 If we did that, that would be a significant step forward
15 to staying on schedule, and I think meeting the spirit of
16 compliance. It obligates us then to come back and to have
17 the solar plan, and, you know, whatever other plans or
18 progress on the master planning process that we've got.

19 So you know we'll be back in front of you,
20 because the other areas are still -- we're still obligated
21 to deal with, but it gives us something real that we can
22 make progress on as we're required to do.

23 CHAIRPERSON CHIANG: I'm trying not to get to
24 Moat and Row, right. What I'm trying to do is give you
25 the time to get somewhere out of Moat and Row, right,

1 because trying to keep you out of violation. But where I
2 am, don't want Moat and Row, right, unless you can fit
3 Moat and Row as to what I said, in terms of maximum
4 effectiveness for whatever we're trying to do so that L.A.
5 is looked upon, as you know the Mayor says, the best place
6 for renewable energy. That's where I want to get.

7 MR. ADAMS: Well, I mean --

8 COMMISSIONER PASQUIL: And if we can -- listen,
9 you've got the votes to get that out today, right, to get
10 it out. And then working with these folks starting
11 tomorrow on the other alternatives, because it may end up
12 to a negotiated area for Moat and Row. You know, it may
13 end up to that. But we've got to get everybody working
14 together to talk about that. Paul and Curtis, am I --

15 CHAIRPERSON CHIANG: Because you're not going to
16 get -- I'm sorry, were you finished?

17 COMMISSIONER PASQUIL: No, go ahead.

18 CHAIRPERSON CHIANG: You're not going to get
19 hauled into court on January 2nd, right? You know, if we
20 can get something going --

21 MR. ADAMS: Yeah, if we can get something going
22 then I think we can walk.

23 CHAIRPERSON CHIANG: You get fence. You have
24 something worked. Right, I don't if you get into court
25 late January, February, but you can say we've dealt -- we

1 did this far --

2 MR. ADAMS: We did receive an email during the
3 break from Great basin who's watching this, that said that
4 they're prepared for a \$10,000 a day fine on January 1st,
5 and make no doubt about it. They emailed us that during
6 the break. So if we could get the fence and become legal,
7 then if that's --

8 COMMISSIONER PASQUIL: It's a start right. It's
9 a way to get out of here today.

10 MR. ADAMS: Right. And I would appreciate the
11 ability to be in compliance and stay with that.

12 CHAIRPERSON CHIANG: Right. Tell Great Basin
13 we're trying to work at even something better.

14 COMMISSIONER PASQUIL: And then staff -- you can
15 work with staff to make sure we can get to the next steps.
16 And, like I said, it could end up that those next steps
17 include Moat and Row.

18 But, Paul, this would be an option.

19 EXECUTIVE OFFICER THAYER: I'm sorry?

20 COMMISSIONER PASQUIL: We're talking about the
21 fence.

22 EXECUTIVE OFFICER THAYER: Right. Right. So if
23 we approve --

24 COMMISSIONER PASQUIL: As a way to get to move
25 this so that they can be in compliance and they can get

1 moving.

2 EXECUTIVE OFFICER THAYER: Right. And the
3 language actually -- the Deputy AG was proposing -- but
4 the idea would just be to authorize a sand fence as
5 proposed to be located in the Cartago area. I think what
6 we would do then is start work with them on the solar
7 part. We can always do a mid-course correction in
8 February, if something weird comes out of Great Basin at
9 that point at our next Commission meeting. But that with
10 the idea that come April, we would hopefully be back
11 before the Commission with a demonstration project.

12 MR. ADAMS: Even if in February, if we found
13 another bite that was agreeable to take at that point --

14 EXECUTIVE OFFICER THAYER: Sure we can discuss
15 that.

16 COMMISSIONER PASQUIL: Absolutely.

17 Because, listen we're all getting to yes here.
18 So they're making a lot of concessions, we need to be able
19 to say, listen, in February if they make the case and
20 everybody agrees, that they can start on -- they can
21 proceed with a moat -- a portion of the Moat and Row,
22 we've got to be able to do that.

23 EXECUTIVE OFFICER THAYER: And I think the
24 staff's perspective on the fence is there's a lot less
25 inertia about a fence. You build a fence, you can take

1 that out pretty easily. You build a Moat and Row, you've
2 got a lot of sunk costs, and it's expensive to take it
3 out. And so that's why, you know, we think that's not
4 going to be a big problem to put in the fence.

5 You also don't have the problem of the chicks
6 falling in the moat. So from a very policy-driven
7 perspective going forward with a fence doesn't raise the
8 concerns that we see with the Moat and Row, in general.

9 CHIEF COUNSEL FOSSUM: Do we have a specific
10 parcel in mind here, that so --

11 EXECUTIVE OFFICER THAYER: Well, it's T1A-1,
12 which you say is all fences, or mostly fences?

13 MR. ADAMS: Is it all fence down there T1A-1

14 MR. VAN WAGONER: It's all fence, except for a
15 pipeline to get some water out in the area.

16 CHAIRPERSON CHIANG: And how big is that, Paul?
17 Or, Marty, how big is that?

18 MR. ADAMS: Do you know how many acres that is?

19 MR. VAN WAGONER: I don't recall what the acreage
20 is.

21 MR. ADAMS: It's got to be

22 DEPUTY ATTORNEY GENERAL PATTERSON: We need your
23 name for the record.

24 MR. VAN WAGONER: William Van Wagoner, Los
25 Angeles Department of Water and Power.

1 MR. ADAMS: It's on the order of 300 acres about.

2 MR. VAN WAGONER: Yeah, it may be a little more.

3 CHAIRPERSON CHIANG: I'm sorry, I didn't hear
4 that.

5 MR. ADAMS: I think it's on the order of 300
6 acres. I don't have the exact measurement, but judging
7 from the size of the parcels that I recognize the size of,
8 it's got to be between 250 and 300 acres, I would say.

9 CHAIRPERSON CHIANG: And, Paul, you're okay with
10 that?

11 EXECUTIVE OFFICER THAYER: Absolutely.

12 MR. ADAMS: And the other part is there's a
13 pipeline, which is for getting water to habitat. That
14 fence is up --

15 EXECUTIVE OFFICER THAYER: I don't think that's a
16 problem. I mean, that's for good purposes.

17 CHAIRPERSON CHIANG: Okay. It's our best
18 thinking right now. Let's continue to work.

19 So we'll make that motion.

20 EXECUTIVE OFFICER THAYER: Okay.

21 CHAIRPERSON CHIANG: Mona, do you have a
22 question?

23 COMMISSIONER PASQUIL: It's changed so many
24 times. I'll make the motion.

25 CHIEF COUNSEL FOSSUM: The motion will be to

1 accept Alternative D for the area, involving T1A-1, as
2 amended.

3 EXECUTIVE OFFICER THAYER: Right.

4 DEPUTY ATTORNEY GENERAL PATTERSON: Exhibit D?

5 CHIEF COUNSEL FOSSUM: Exhibit D.

6 COMMISSIONER PASQUIL: So moved.

7 CHIEF COUNSEL FOSSUM: Approve the lease there.

8 DEPUTY ATTORNEY GENERAL PATTERSON: Do you need
9 the specific --

10 CHIEF COUNSEL FOSSUM: And make the appropriate
11 findings.

12 MS. RILEY: It would be helpful if the Commission
13 ordered the Los Angeles Department of Water and Power to
14 report back at your next Commission meeting on our
15 progress. Can we include that? It will probably coincide
16 with --

17 CHAIRPERSON CHIANG: Can we have -- so that they
18 at least understand how serious this is. Can we have --
19 what would be maximum beneficial, the earliest point they
20 can report and also for your benefit too. You know, what
21 makes sense, do we want to wait till the next meeting?

22 CHIEF COUNSEL FOSSUM: If they're working with
23 staff on a daily basis, I think we'll be prepared to come
24 back to the Commission as they would at the next meeting
25 and give you a progress report.

1 EXECUTIVE OFFICER THAYER: But why don't you
2 direct us and direct us to be moving forward with the -- I
3 think this is consistent with what you're saying, with the
4 solar array proposal, as an alternative which is intended
5 to deal with the dust issue in the Moat and Row area.

6 I'm trying to --

7 MR. ADAMS: Yeah, I like that.

8 CHAIRPERSON CHIANG: So what would be a
9 constructive reporting timeframe, right? You're working
10 on it daily or somebody is, right. Somebody is
11 thinking -- you know, clearly, people are thinking about
12 it. So what makes beneficial sense for you to report and
13 what makes sense for us --

14 MR. ADAMS: The February meeting is fine to
15 report back.

16 CHAIRPERSON CHIANG: A February meeting?

17 EXECUTIVE OFFICER THAYER: And that's fine, I
18 think, for us too. We'll keep you advised as we go.

19 CHAIRPERSON CHIANG: So we'll report by our
20 February meeting?

21 EXECUTIVE OFFICER THAYER: Yes, on progress on
22 the construction, negotiations with Great Air Basin, and
23 the progress on the pilot project for dust control using
24 solar arrays.

25 CHAIRPERSON CHIANG: And when is our February

1 meeting?

2 EXECUTIVE OFFICER THAYER: It's not set yet.

3 CHAIRPERSON CHIANG: How about the end of
4 January, by January 31st?

5 EXECUTIVE OFFICER THAYER: We could do that, but
6 we can report back to you in writing.

7 CHAIRPERSON CHIANG: They can report to you.

8 CHIEF COUNSEL FOSSUM: If you want them to report
9 to the staff on their progress. I think if we're in
10 communications on a daily basis, we'll have a pretty good
11 idea of how it's progressing and both --

12 CHAIRPERSON CHIANG: I want it official.

13 CHIEF COUNSEL FOSSUM: Got it

14 EXECUTIVE OFFICER THAYER: Yeah. Yeah. Okay. A
15 report from them by January 31st.

16 CHAIRPERSON CHIANG: I don't know if it helps
17 you, right, because you're saying hey, you're -- right, I
18 was hearing the sense you wanted to --

19 MS. RILEY: That would be very helpful,
20 Commissioner. In addition, we would ask that all other
21 aspects of the lease amendment would also be continued
22 until the next Commission meeting. So we will be directly
23 communicating with staff on a regular basis. We will
24 report back to you the situation with the Great Basin Air
25 District, and the construction of the sand fences at that

1 point, with the option for the Commission in the future,
2 if it wanted to act on the Moat and Row lease amendment,
3 it would have the ability to do so at its next Commission
4 meeting.

5 CHAIRPERSON CHIANG: Okay. So they officially
6 have to report to you by the end of the month. In
7 essence, if they're talking to you every day, they're
8 reporting to you, so they've met the requirement. That if
9 we vote on it, we've established it.

10 EXECUTIVE OFFICER THAYER: So you're suggesting
11 that we would be required to bring this back, the whole
12 Moat and Row project back.

13 MR. ADAMS: I'm just saying keep it open, so that
14 we don't have to start square one.

15 MS. RILEY: Perhaps continue the item.

16 EXECUTIVE OFFICER THAYER: The rest of it?

17 MS. RILEY: Yes, the remainder.

18 EXECUTIVE OFFICER THAYER: Which is the same
19 thing we did in the first phase of this, exactly. So
20 we'll approve this part of it. And the rest of it, we're
21 not denying, we're just trailing it.

22 MR. ADAMS: Yes. You don't want me to present
23 all this again.

24 (Laughter.)

25 EXECUTIVE OFFICER THAYER: We'll stipulate.

1 CHAIRPERSON CHIANG: I'm sorry, Marty, what did
2 you say?

3 MR. ADAMS: I said you don't want me to present
4 all this again, so better to be continued.

5 CHAIRPERSON CHIANG: Your life is short as is
6 mine, so I don't know.

7 (Laughter.)

8 CHAIRPERSON CHIANG: Okay. So I so move.

9 COMMISSIONER PASQUIL: Second.

10 CHAIRPERSON CHIANG: Is there any concerns
11 anything, Jamee? Anything that we should be aware of?

12 DEPUTY ATTORNEY GENERAL PATTERSON: No, you're
13 just approving a portion of the lease and you can bring
14 the remainder back if you need to in the future. And it's
15 conditioned as we indicated that they're allowing the sand
16 fence by Cartago.

17 CHAIRPERSON CHIANG: I'm sorry, I didn't hear the
18 last portion.

19 DEPUTY ATTORNEY GENERAL PATTERSON: You're
20 allowing the sand fence down in T1, I think it is, by
21 Cartago.

22 CHAIRPERSON CHIANG: Okay.

23 Without objection, motion passes.

24 EXECUTIVE OFFICER THAYER: And staff should
25 clarify that that motion deals both with the substance of

1 allowing the fencing in that one area, as well as all the
2 other relevant CEQA findings and that kind of stuff that
3 we put in there. So that it's one motion dealing with the
4 whole thing.

5 CHAIRPERSON CHIANG: Yes. Thank you.

6 MR. ADAMS: Thank you.

7 Next item.

8 EXECUTIVE OFFICER THAYER: Okay. So we're going
9 back to the Ships -- Item 43, the Ships to Reefs -- 42, is
10 that -- yes. Whether or not, the Commission was of a mood
11 to act on that today or wanted to deal with that in
12 February?

13 CHAIRPERSON CHIANG: I'd like to put it over.

14 COMMISSIONER PASQUIL: I would too.

15 EXECUTIVE OFFICER THAYER: Okay.

16 CHAIRPERSON CHIANG: I'd like to think about it a
17 little bit more.

18 LEGISLATIVE LIAISON De BERNARDO: I would only
19 add that this bill has to pass the Assembly floor by the
20 end of January.

21 EXECUTIVE OFFICER THAYER: It's in that first
22 committee.

23 LEGISLATIVE LIAISON De BERNARDO: Right.

24 EXECUTIVE OFFICER THAYER: So it hasn't passed
25 out of the first committee.

1 LEGISLATIVE LIAISON De BERNARDO: No, it hasn't
2 been scheduled for a committee hearing yet. So, I mean,
3 we could get involved mid-stream, but if we wanted to take
4 a position before it went to committee then.

5 EXECUTIVE OFFICER THAYER: It will come up for a
6 vote there first.

7 CHAIRPERSON CHIANG: And, in effect, to the
8 proponent, if you get two of the three members
9 individually send letters, right, the Legislature sort of
10 knows.

11 (Laughter.)

12 CHAIRPERSON CHIANG: It doesn't have the official
13 imprimatur of the State Lands Commission. You know, but
14 if people wrote as a State Lands Commissioner.

15 So thank you.

16 MR. REWERTS: Thank you.

17 CHAIRPERSON CHIANG: Next item.

18 EXECUTIVE OFFICER THAYER: The final item is Item
19 43, which are some more legislative proposals that staff
20 has worked up and that Mario De Bernardo will give the
21 presentation

22 (Thereupon an overhead presentation was
23 Presented as follows.)

24 LEGISLATIVE LIAISON DE BERNARDO: And we just do
25 this very briefly. There's four total proposals. The

1 first proposal, as you can see here, involves land
2 exchanges. It would allow the Commission to convey trust
3 lands to a local trustee when a land exchange occurs. And
4 if it's appropriate to convey that land to say like a
5 local grantee, which in most cases is a city.

6 The second proposal has to do with ballast water.
7 There are three proposals. One is to codify our discharge
8 standards, which begin to take effect January 1st, 2010.
9 Right now they're only incorporated by reference.

10 The second is a technical scientific amendment.
11 We've discovered a typo in the current standards. And
12 then the third one is the Commission's required to conduct
13 sampling on 25 percent of the vessels that come to the
14 State, this would require us to inspect rather than
15 sample. And this is a proposal that's been brought up by
16 staff.

17 There are instances when ballast water is not
18 discharged, so sampling wouldn't be appropriate.
19 Inspection allows us to do a wider range of activities,
20 such as inspecting documents, and equipment. The third
21 proposal is regarding the grant to the City of Pittsburgh,
22 the grant of trust lands. There was an earlier grant,
23 this decade. We've discovered some problems with it.
24 We've worked with the city. It was all packaged in a bill
25 last year, but it died in committee because of timing

1 issues, with amendments.

2 And so this would basically ask the Commission
3 for support to propose a similar bill this year to do some
4 cleanup language.

5 The fourth one is piggybacking off of the October
6 Legislative Proposal, in which you approved legislation
7 that would authorize the Commission to administratively
8 impose penalties against unauthorized structures and
9 facilities on State lands.

10 Obviously, since that Commission meeting, we
11 discovered the incident involving the death of the blue
12 whale. I've also discovered that there was garbage
13 dumping on some school lands up in northern California.
14 This would extend the idea, that trespass idea, to any
15 sort of violation or for situations where somebody doesn't
16 actually come to obtain a permit when they should obtain a
17 permit and would allow the Commission to impose
18 administrative penalties against that violator.

19 And those are the legislative proposals for this
20 meeting.

21 CHAIRPERSON CHIANG: Okay. Does anybody want to
22 make comment?

23 Is there a motion?

24 COMMISSIONER PASQUIL: I move that we proceed and
25 sponsor the legislation.

1 CHAIRPERSON CHIANG: Okay. There's motion by
2 Mona. I will second it.

3 Without objection, motion passes.

4 Any other public comment?

5 Okay. Curtis, You have a comment.

6 CHIEF COUNSEL FOSSUM: No, I just want to say
7 that we will have a short executive session.

8 CHAIRPERSON CHIANG: Okay, very good.

9 For those of you who are not participatory in the
10 executive session, please leave the room as quickly as
11 possible.

12 (Thereupon the California State Lands
13 Commission meeting recessed into closed
14 session and adjourned at 2:47 p.m.)

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