

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

COURTYARD BY MARRIOTT EMERYVILLE
5555 SHELLMOUND STREET
EMERYVILLE, CALIFORNIA

THURSDAY, JANUARY 26, 2012
10:00 A.M.

KATHRYN S. SWANK
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 13061

APPEARANCES

COMMISSION MEMBERS

Mr. John Chiang, Chairperson, State Controller,
represented by Mr. Alan Gordon

Mr. Gavin Newsom, Lieutenant Governor

Ms. Ana J. Matosantos, Director of Finance, represented by
Mr. Pedro Reyes

STAFF

Mr. Curtis Fossum, Executive Officer

Ms. Jennifer Lucchesi, Chief Counsel

Mr. Dave Brown, Chief, Administrative Services

Mr. Colin Conner, Assistant Chief, Land Management

Mr. Jim Frey, Staff Counsel

Ms. Mary Hays, Public Land Manager

Ms. Ninette Lee, Public Land Manager

Ms. Sheri Pemberton, Chief, External Affairs

Mr. Chris Scianni, Staff Environmental Scientist

Mr. Greg Scott, Chief, Mineral Resources Management
Division

ATTORNEY GENERAL

Mr. Joe Rusconi, Deputy Attorney General

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Ade Adesokan, Bruno's Island

Mr. John Berge, Pacific Merchant Shipping Association

Ms. Abigail Blodgett, San Francisco Baykeeper

ALSO PRESENT

Mr. John Diepenbrock, Diepenbrock & Elkin LLP

Mr. Robert Gregory, Foss Maritime

Ms. Diana Hall

Ms. Cea Higgins, Sonoma Coast Chapter of Surfrider

Ms. Norma Jellison

Ms. Jessica Martini-Lamb, Sonoma Coast Water Agency

Ms. Karen McDowell, San Francisco Estuary Partnership

Mr. Jonathan Mendes, Harley Marine Services

Mr. Christopher Peterson, Crowley Maritime Corporation

Mr. David Phillips, Hydrex

Mr. Greg Price

Ms. Lauren Silva, American Coatings Association

Mr. David Snodderly, Bruno's Island

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1 May I have a motion to approve the meeting of the
2 minutes?

3 COMMISSIONER NEWSOM: So moved.

4 ACTING COMMISSIONER REYES: Second.

5 ACTING CHAIRPERSON GORDON: Moved and seconded.

6 All those in favor?

7 (Ayes.)

8 ACTING CHAIRPERSON GORDON: Minutes are
9 unanimously adopted.

10 Next order of business is the Executive Officer's
11 report. Mr. Fossum, may we have the report, please?

12 EXECUTIVE OFFICER FOSSUM: Thank you, Mr. Chair,
13 Commissioners. Good morning.

14 In seeking to provide relevant information to the
15 public, I'm pleased to report that we've updated the
16 Commission's website again, this time with new useful
17 information. One, that identifies and provides links to
18 the new laws that affect the Commission's jurisdiction;
19 and second, that it identifies legislation covering the
20 last 160 years involving statutory trust grants and tide
21 and submerged lands of over 85 governmental entities. The
22 nearly 600 statutes are organized by region, then county,
23 and finally, by the government entity receiving the
24 grants. We often receive requests for these statutes and
25 they are not readily available to the public, generally,

1 but now they will be accessible to all on our website.

2 I'm also pleased to announce that on
3 December 30th, the First District Court of Appeal upheld
4 the Commission's actions involving the lease to Chevron
5 for its Richmond Long Wharf Marine Terminal. The
6 challenge was based on a number of issues, but the Court
7 went to great lengths explaining and upholding the
8 Commission's actions involving both CEQA and the Public
9 Trust. This is the Commission's largest producing surface
10 use lease, and it generates \$996,000 a year to the General
11 Fund.

12 It's also worth noting that the Commission had put
13 Venoco Oil Company on notice that the lease for its marine
14 oil terminal at Elwood, Santa Barbara County, would not be
15 renewed. A new pipeline has now been constructed and the
16 last shipment of oil from that terminal is scheduled to be
17 shipped by barge next month. This has been a long sought
18 resolution of this matter.

19 In the first half of fiscal 11/12, the Commission,
20 through its surface leasing and mineral operations,
21 generated \$242 million to the General Fund and 4.2 million
22 to STRS. If oil prices remain at current levels, we
23 anticipate generating a half a billion dollars during this
24 fiscal year.

25 I'm very pleased to announce the Governor's

1 recently released budget. It recognizes the opportunity
2 for the Commission to participate in a significant way in
3 helping California reach its renewable energy goals by
4 2020. Given the past loss of staff positions, the 2012/13
5 budget will provide six positions for a school lands
6 program to help consolidate acreage and market lands for
7 renewable energy projects. The passage of AB 982 in late
8 2011 calls for the Commission to enter an MOA with the
9 Secretary of the Interior and subsequently effectuate land
10 exchanges in the California desert. We will be bringing
11 the MOU to you at the next meeting.

12 We've already been meeting with BLM and the
13 military to discuss the exchange of properties that
14 facilitates solar wind and geothermal energy development
15 in the desert. Three additional positions will work in
16 conjunction with other agencies, gathering information on
17 priority projects, including ocean energy opportunities,
18 and also assist in developing GIS layers of ownership and
19 mineral interests and identifying existing commission
20 leases both onshore and offshore.

21 This effort is part of the Commission and the
22 Administration's geospatial data inventory to bring
23 improved coordination among local, state, and federal
24 agencies and make useful information available to the
25 public.

1 In addition to participating on several agency
2 teams seeking to develop alternative energy projects in
3 the desert, the Commission has received a growing number
4 of inquiries from the renewable energy industry about
5 developing offshore marine renewable resources. Staff's
6 participating in interagency working groups in this area
7 already.

8 Finally, nine positions are being provided to
9 increase our auditing and enforcement capabilities in
10 dealing with oil companies and other entities involved in
11 operations on state property. This will help ensure
12 compliance with the law so that the State gets the revenue
13 it's entitled to.

14 In another move towards making the renewable
15 energy goals the reality of the Governor, the Secretary of
16 the Interior, on January 13th, signed an MOU that includes
17 the Commission as a participant cooperating with other
18 state and federal agencies to achieve the alternative
19 energy goals.

20 In response to the growing need for the Commission
21 to both respond to applications and participate
22 proactively in the renewable energy planning, we've set up
23 a multidisciplinary alternative energy team which includes
24 our environmental planning, land management, mineral
25 resources, legal, and administrative staff to accomplish

1 the State and Commission's goals and responsibilities.

2 I do have a number of personnel matters to briefly
3 mention as well. We had a number of very strong
4 candidates for a legislative liaison position, and I'm
5 extremely pleased to announce that we've coaxed Sheri
6 Pemberton away from the Legislature. Sheri has over
7 twelve years of legislative experience with an extensive
8 background in environmental and lending, foreclosure
9 relief, public policy issues. Sheri worked in a variety
10 of roles in the Legislature including chief of staff to
11 former Assemblymember Ted Lieu and legislative director to
12 several former Assembly members. Sheri will be our new
13 Chief of External Affairs. I would like to have her stand
14 up to identify her.

15 (Applause)

16 EXECUTIVE OFFICER FOSSUM: It was a tough year not
17 having a legislative liaison last year, so we're very
18 happy to have her.

19 We've also been fortunate to land two Sea Grant
20 fellows. In the program's 24-year history, the current
21 class of 11 fellows in the Marine Policy and Resource
22 Management Program is the largest ever. While the Coastal
23 Commission, BCDC, Parks and Rec, Fish and Game, State
24 Water Resources Control Board, Natural Resources Agency,
25 NOA, and the California Ocean Science Trust landed one

1 each, the Commission received two -- Amanda Newsom and
2 Holly Wyer. We're very pleased to have them with us as
3 well.

4 I do have a couple of sad notes to add. Last
5 week, Craig Webster, who served the Commission as a
6 process safety engineer, passed away in his sleep. Craig
7 was only 53. After 25 years of experience working in and
8 around the oil and gas business, Craig joined the
9 Commission family in February of 2006. Since that time,
10 Craig served as a member of the Safety and Spill
11 Prevention Audit Team. Because of Craig's
12 professionalism, attitude, and experience, he was promoted
13 to an associate processing engineering position on the
14 team two years ago. He continued his professional growth
15 and that earned him increasing responsibility and respect,
16 allowing him to coordinate the safety audit and follow-up
17 activities on Platform Eva and take the lead role in
18 conducting the safety and spill prevention audit at the
19 Montalvo State and oil gas leases. Craig recently began a
20 major field assignment with the entire team on the Long
21 Beach safety audit. He will be deeply missed by the close
22 knit team and his family and his many other friends and
23 associates at State Lands. Our deepest sympathy goes out
24 to Craig's family.

25 Commission family also lost one of its most

1 venerable and venerated employees. Last November, Myrtle
2 Stratton passed away after celebrating her 95th birthday
3 weeks earlier. Myrtle was an institution who will never
4 be forgotten by those who met her. Myrtle began work for
5 the Commission in 1944 as a file clerk. She became a
6 protector of the integrity and importance of the
7 Commission's records. Myrtle retired in 1981 after 37
8 years of service, but she did not give up her role as
9 protector. She served the next 23 years as a retired
10 annuitant until she was 88, a total of 60 years.

11 Anyone who's fortunate enough to meet her has a
12 story to tell, and I have several. She was feared and
13 loved but, most of all, respected. Her dedicated examples
14 set a high standard for all of us. She will be missed.

15 I do have two more losses to report -- a transfer
16 and a retirement. First, Lynn Takata, the manager of our
17 Marine Invasive Species program, has jumped ship --
18 sorry -- and will be taking her scientific expertise to
19 work for the Department of Water Resources Aquatic Ecology
20 section. And we wish her all the best in those endeavors.

21 Lynn, stand. Thank you very much for your --
22 (Applause)

23 EXECUTIVE OFFICER FOSSUM: And finally, as I
24 reported at the last meeting, we are losing chief of our
25 Mineral Resources Management Division, Greg Scott. I

1 would like to ask Greg to come forward and let me read
2 this resolution into the record.

3 "Whereas, Greg Scott has given the People of
4 California over 22 years of dedicated and distinguished
5 public service; and,

6 "Whereas, Greg Scott, following 3 years of service
7 in the United States Army and 17 years in the Petroleum
8 Industry entered State service with the Mineral Resources
9 Management Division of the California State Lands
10 Commission in July, 1989 as a Petroleum Engineer; and,

11 "Whereas, Greg Scott, since 1989, has provided
12 expert technical service and managerial direction,
13 initially as a Petroleum Engineer, later Operations
14 Manager and Engineering Manager, and rising to Assistant
15 Chief of the Mineral Resources Management Division in
16 2001; and,

17 "Whereas, Greg Scott, in January 2009, was
18 promoted to Chief of the Mineral Resources Management
19 Division of the California State Lands Commission; and,

20 "Whereas, Greg Scott has ably and conscientiously
21 guided the Commission's Mineral Resource Management
22 Division staff with his dedication, expertise, and
23 leadership; and,

24 "Whereas, Greg Scott, through his managerial
25 guidance, effective leadership skills, technical

1 expertise, and strong industry background, has identified
2 opportunities and initiated and accomplished resource
3 enhancement programs on state leases and granted trust
4 lands that have provided significant financial benefits to
5 the State of California, resulting in the Commission
6 sending a total of over \$3 Billion during his 22 years
7 with the Commission and over \$1 Billion during his 3 years
8 as Chief to the General Fund; and,

9 "Whereas, Greg Scott, through his leadership while
10 managing the Mineral Resources Division, has ensured the
11 highest level of environmental protection and public
12 safety involving development of mineral resources under
13 the Commission's jurisdiction; and,

14 "Whereas, Greg Scott, through the determined
15 involvement and persistent advocacy was instrumental in
16 efforts for the development of the Santa Rosa waste water
17 pipeline and injection for recharging the Geysers
18 geothermal field thereby expanding clean renewable energy
19 for all Californians and financially benefiting the State
20 Teachers Retirement System; and,

21 "Whereas, Greg Scott, has kept abreast with
22 advances in petroleum technology by his long time
23 participation in professional society, the Society of
24 Petroleum Engineers, serving as Los Angeles Basin Section
25 Chair, and his leadership in the Society's technical

1 meetings; and,

2 "Whereas, Greg Scott, as a person, rejuvenates his
3 stamina for State service, by delving in artistic outlets
4 in wood sculpturing and model outrigger canoe building,
5 collecting artifacts of the American West, and enjoying
6 Hawaiian sunsets."

7 We all do that, I think.

8 (Laughter.)

9 EXECUTIVE OFFICER FOSSUM: "And, whereas, as a
10 result of his conscientious commitment, dedication, and
11 superior intellect, Greg Scott has succeeded in compiling
12 an impressive record of career achievements, earning him
13 the admiration and respect of not only those who have had
14 the privilege of working with him, but those representing
15 opposing interests; now, therefore, be it

16 "Resolved, by the California State Lands
17 Commission, that Greg Scott is commended and thanked for
18 his distinguished record of professional service for more
19 than 22 years serving the State Lands Commission; and, be
20 it further

21 "Resolved, that the Commission extends its sincere
22 best wishes to Greg Scott for a rewarding and gratifying
23 retirement, and the very best in years to come."

24 (Applause)

25 MR. SCOTT: That was a mouthful, Curtis.

1 EXECUTIVE OFFICER FOSSUM: I'm done.

2 MR. SCOTT: Thank you very much, and,
3 Commissioners, thank you. It's been a gratifying 23 years
4 to work for State Lands Commission, particularly under the
5 leadership of Curtis, and Paul Thayer before him, and the
6 wisdom of the Commission. It's been a great experience
7 for me. I'm going to miss the Commission very much. But
8 I'm going to leave knowing that in a small way, I think
9 I've been able to help the Commission do a lot of good
10 things for the state and people of California.

11 I also want to say, Curtis, that after I leave
12 that you will continue to be in good hands with our
13 professional staff, Marina Voskanian. And I want to wish
14 you the best for this year and the years to come.

15 So thank you for the recognition. Appreciate it.

16 ACTING COMMISSIONER REYES: Thank you.

17 (Applause)

18 EXECUTIVE OFFICER FOSSUM: Thank you very much,
19 Greg, and I think Greg exemplifies our senior staff who
20 have spent many years coming up through the ranks and is
21 serving the Commission very well. And he will be very
22 much missed. We're trying to bring him back as a retired
23 annuitant.

24 Moving on, I guess to the Consent Agenda, we have
25 pulled a number of -- removed from the agenda a number of

1 items -- Item 39, 47, 64, 65, and 74.

2 And we have taken three items from the consent
3 agenda as well to be put on the regular agenda. People
4 have asked to speak on these numbers. They are No. 10,
5 No. 22, and No. 81.

6 So we can take those up after the consent -- I'm
7 sorry. I've been noticed that we have another one,
8 No. 83. Oh, I believe that's only if it comes off
9 consent? Yes, that's correct. So that will stay on
10 consent unless --

11 ACTING CHAIRPERSON GORDON: Is there anyone in the
12 audience who would like to talk on any of the remaining
13 items on the consent calendar?

14 That said, I would like to call for a motion on
15 the consent calendar minus Items 39, 47, 64, 65, and 74,
16 all pulled from the calendar; and Items 10, 22, and 81,
17 which will be heard separately as part of the regular
18 agenda.

19 Do I have a motion?

20 ACTING COMMISSIONER REYES: So moved.

21 COMMISSIONER NEWSOM: Second.

22 ACTING CHAIRPERSON GORDON: Vote. All in favor?

23 (Ayes.)

24 ACTING CHAIRPERSON GORDON: It's unanimous. The
25 consent calendar is adopted.

1 Item 88 is an update on Commission staff's Audit
2 Action Plan in response to the BSA audit.

3 May we have the staff presentation, please?

4 EXECUTIVE OFFICER FOSSUM: Dave Brown, the head of
5 our administrative division, will be presenting this item.

6 ADMINISTRATIVE SERVICES CHIEF BROWN: I am Dave
7 Brown, chief of Administrative Services.

8 At the Commission's direction, staff has prepared
9 this report to update Commission on the progress staff has
10 made in implementing its 2001 Audit Action Plan. The
11 Commission staff submitted its 60-day response to the
12 Bureau of State Audits on October 24, 2011. The Bureau's
13 report assessing staff's 60-day response in implementing
14 the Bureau's recommendations will not be released until
15 mid-February. Staff's six-month response to the Bureau is
16 due on February 23rd.

17 Staff was able to secure a preliminary evaluation
18 of the 60-day response from the Bureau. Their findings
19 indicated that of the 27 recommendations made in the
20 report, six are fully implemented, nine are partially
21 implemented, nine are pending, and three had no action at
22 all. Additional information, documentation, and
23 clarification was subsequently provided to the Bureau for
24 consideration, and staff expects several items will be
25 redesignated as fully or partially implemented.

1 This will not be known, though, until the report
2 is published in February. Probably as far as our
3 accomplishments to date, probably the most significant
4 that Curtis mentioned earlier was, we were able to secure
5 nine additional positions in the 2012/13 governor's
6 budget. Four of these are auditors in our Long Beach
7 unit, and five will be lease compliance appraisal staff
8 for the Land Management Division. It is expected that
9 these positions will increase General Fund revenues by up
10 to \$6 million annually.

11 Regarding the delinquent leases, in this area
12 staff has made significant progress on several cases and
13 has implemented a process that includes executive level
14 review of cases, coordinating action among the divisions
15 in pursuing the parties. Several items on today's agenda
16 reflect settlements or requests to pursue further actions
17 against those parties.

18 On holdovers, staff continues to make progress in
19 reducing the number of leases in holdover. As previously
20 reported, 24 of the 32 leases identified in the audit have
21 been eliminated from holdover status. Of the remaining
22 eight, one, GP Gypsum, was brought current at the October
23 meeting. Another, the PG&E master lease is on today's
24 agenda. Two will remain in holdover status due to ongoing
25 environmental cleanup obligations and a determination of

1 final disposition. The remaining four are awaiting
2 completion of environmental process. All have been
3 brought current on rental rates.

4 Regarding rent reviews, staff continues to make
5 progress in refining processes and procedures regarding
6 rent reviews. Many changes, such as earlier
7 identifications of those needing review, have been
8 effective in helping staff complete the reviews in a
9 timely manner. Staff is also expanding the use of CPI as
10 an alternative to the more lengthy process of appraisals.
11 Benchmark appraisals are also being updated to reflect
12 current values and a schedule has been put in place to
13 keep them current.

14 Regarding audit cycles, staff continues to make
15 significant progress in conducting audits that were
16 scheduled for this year. As of January 2012, we've
17 completed an audit of Long Beach Unit revenues for the
18 fiscal year periods 2007/8 and 8/9, as well as the audit
19 for DCOR's royalty payments for 2005 through 2009.

20 Moreover, staff has started to work with the
21 selected consulting firm to audit the royalty payments
22 from the Rosetta Resources lease for 2006 through 2011.
23 This was the instance where we were going to an outside
24 firm to augment our audit staff.

25 Statutory trust grant oversight. As previously

1 reported, staff requested additional positions to
2 implement the Commission's Statutory Trust Grant
3 Compliance Program. However, the request was not
4 approved. Staff is continuing to work with the State's
5 trustees to commit their annual financial reports, as
6 required by Public Resources Code, Section 6306, in a
7 format that readily identifies the trustee's trust funds
8 and details the income and expenditures.

9 Staff, with its limited resources, is also making
10 every effort to assist local trustees with the waterfront
11 revitalization programs.

12 The lease database. Staff is continuing to make
13 improvements to the database and the process is to keep it
14 current. Enhanced management reports are being devised to
15 assist managers and prioritizing workload. Staff has also
16 been exploring possible alternative systems and have
17 contacted vendors for various demos.

18 Regulations in legislation. Staff is actively
19 working on a regulation package to update Section 2003,
20 the rent section, in the Commission's regulations in Title
21 2, California Code of Regulations. Staff hopes to submit
22 a package to the Office of Administrative Law within the
23 next couple of months.

24 Staff is also recommending that the Commission
25 direct staff to develop and sponsor legislation that would

1 give the Commission authority to assess monetary penalty
2 against lessees who are out of compliance with surety bond
3 and liability insurance or who are in trespass.

4 These proposals follow up on several
5 recommendations by the Bureau to the Commission to secure
6 more authority to ensure compliance with lease terms and
7 facilitate enforcement of trespass. These legislative
8 proposals are described in more detail in Item 91 on the
9 agenda today.

10 This concludes my presentation. I'm available for
11 any questions.

12 ACTING CHAIRPERSON GORDON: Questions from the
13 Commission?

14 COMMISSIONER NEWSOM: I just want to express my
15 appreciation for the progress made to date. As you're
16 looking forward, what are the big red zone items for you,
17 the frustration in terms of the big things yet to be
18 accomplished, the ones that will take much longer than
19 those that you have just referenced?

20 ADMINISTRATIVE SERVICES CHIEF BROWN: The
21 legislation is one.

22 COMMISSIONER NEWSOM: Yeah.

23 ADMINISTRATIVE SERVICES CHIEF BROWN: Getting that
24 authority to go out and actually do something in a more
25 expeditious manner.

1 The other is the database. That's going to take
2 some time to -- we're working with the data base we have.
3 I would like to replace it. But that's going to take some
4 time. Identifying one.

5 COMMISSIONER NEWSOM: What would that entail?

6 ADMINISTRATIVE SERVICES CHIEF BROWN: Identifying
7 one. We have a very limited IT staff. I have one
8 programmer.

9 COMMISSIONER NEWSOM: Just one?

10 ADMINISTRATIVE SERVICES CHIEF BROWN: So it's
11 something that I'm looking to try to find some
12 off-the-shelf package, and there's several out there. I
13 mean, we're not the only one that do land management.

14 COMMISSIONER NEWSOM: Right.

15 ADMINISTRATIVE SERVICES CHIEF BROWN: But it's one
16 to fit -- trying to take something from private industry
17 and make it fit into the government environment right now.
18 And there are some prospects out there, but the one I
19 found, it looked good, but it's horribly expensive.

20 COMMISSIONER NEWSOM: Out of curiosity, give me a
21 sense of what horrible costs.

22 ADMINISTRATIVE SERVICES CHIEF BROWN: 175,000 a
23 year.

24 COMMISSIONER NEWSOM: A year.

25 ADMINISTRATIVE SERVICES CHIEF BROWN: That's not

1 development cost. The way this company operates, instead
2 of having user licenses, where we would have maybe 20 or
3 30 users, they license each property, and we have 4,000
4 properties.

5 COMMISSIONER NEWSOM: Oh, lord.

6 ADMINISTRATIVE SERVICES CHIEF BROWN: So it got a
7 little expensive. I'm going to be talking to them and see
8 if we can't try to get that fixed.

9 ACTING CHAIRPERSON GORDON: Any other questions?

10 ACTING COMMISSIONER REYES: No.

11 ACTING CHAIRPERSON GORDON: I would like to
12 turn -- thank you.

13 I would like to turn to Item 22 now, which was
14 pulled from the consent calendar. This has to do with a
15 general recreational lease at 2280 Sunnyside Lane in Lake
16 Tahoe. We have a speaker who would like to speak on the
17 subject, Mr. Price. Is there more than one?

18 EXECUTIVE OFFICER FOSSUM: Mr. Chair, staff also
19 has a presentation to make, and we can sort of take it
20 either way, whether you would like to have staff
21 presentation first or the....

22 ACTING CHAIRPERSON GORDON: Why don't we go with
23 the staff presentation first, so the citizen can respond
24 to the staff presentation.

25 PUBLIC LAND MANAGER HAYS: Good morning,

1 Mr. Chair, and members of the Commission. My name is Mary
2 Hays, and I'm a public land manager for the Northern and
3 Central California region of the Land Management Division,
4 and I will speak on Calendar Item No. 22.

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

7 PUBLIC LAND MANAGER HAYS: I did give you a --
8 this item recommends that the Commission authorize a new
9 general lease, recreational use, between the Commission
10 and the applicant, known as 2280 Sunnyside Lane, LLC. The
11 applicant is the owner of the upland lakefront residential
12 parcel adjacent to state sovereign lands in Lake Tahoe.

13 The applicant's predecessors in ownership had been
14 under lease with the Commission for the use of the pier
15 and one mooring buoy since the late 1970s, and the
16 previous leases qualify for rent-free recreational pier
17 leases because the past owners had held title as
18 individuals under former Public Resources Code Section
19 6503.5.

20 The most recent lease, approved by the Commission
21 in 2000, and its subsequent assignment to other family
22 members, was approved in 2001. The lease was set for a
23 term that was to expire on November 29th, 2008. However,
24 an application was not received until November 23rd of
25 2009, at which time staff became aware that the title to

1 the upland lakefront property had been transferred to a
2 limited liability company.

3 This transfer disqualified the lease as rent free
4 pursuant to a special provision of the lease requiring the
5 lessee to notify the Commission and that rent may be
6 implemented pursuant to law.

7 --o0o--

8 PUBLIC LAND MANAGER HAYS: Slide No. 1.

9 As part of the negotiation for a new lease, staff
10 calculated back rent for the time the ownership changed on
11 July 28th, 2004, to October 26th, 2011, the day of the
12 last Commission meeting. Consideration of the application
13 by the Commission was postponed from that meeting at the
14 request of the consultant because the applicant and
15 consultant were not able to attend.

16 The photo -- the slide shows the exhibit to the
17 calendar item which shows the location of the State's
18 sovereign boundary at 6223 Lake Tahoe Drive and a drawing
19 showing the area of the pier and a 10-foot use area around
20 the pier as well as two mooring buoys.

21 As part of the negotiation of the new lease, staff
22 calculated back rent for the ownership change on
23 July 28th, 2004, forward, to October 26th.

24 Sorry about that. I just repeated that. Using
25 the Lake Tahoe benchmark, the seven years of back rent was

1 calculated in the amount of \$12,893, which consists of
2 rent attributable to one mooring buoy at \$1,230 and the
3 pier at \$11,663.

4 For purpose of rent, the pier area is calculated,
5 including the actual footprint of the pier, on state
6 lands, and a 10-foot use area lying adjacent and around
7 the pier.

8 --o0o--

9 PUBLIC LAND MANAGER HAYS: Slide two.

10 This photo is a Google Earth photo taken on
11 June 14th of 2001, which the lake level was at
12 approximately 62 -- I believe it's at 6227-something, so
13 it's near high water.

14 EXECUTIVE OFFICER FOSSUM: It's 2011.

15 PUBLIC LAND MANAGER HAYS: It's 2011, excuse me.

16 Since at least 1971, leases for private
17 recreational pier and buoy use at Lake Tahoe that did not
18 qualify for rent-free status have included a 10-foot use
19 area in the annual rent calculation. For over 40 years,
20 it's been a practice of the Commission to include a
21 10-foot use area around and adjacent to a pier as a
22 reasonable area of use by a lessee for mooring buoys or
23 other personal watercraft, on- and off-loading passengers,
24 and an area that the recreating public will generally
25 avoid because of the proximity to and visual deterrence of

1 a private thick structure. Rent has been applied to the
2 area -- to the use area as a charge for the public's
3 reduced access to public land.

4 In addition, all rent-free recreational pier
5 leases issued in the past, including the above expired
6 lease, contains a grant of lease provision that the lease
7 area consists of only those sovereign lands and a
8 reasonable use area lying underneath, adjacent, and around
9 the improvements.

10 --o0o--

11 PUBLIC LAND MANAGER HAYS: This is a photo
12 submitted by the applicant of their pier, and we have
13 several consecutive photos of the same pier. And I
14 apologize for the quality, but it didn't blow up very
15 well.

16 The lease before you today also includes a
17 recommendation to include one additional existing mooring
18 buoy at the request of the applicant. This buoy has not
19 been previously authorized by the Commission. However,
20 the applicant has certified that the buoy has existed on
21 state lands for many years.

22 Staff has calculated annual rent going forward in
23 the amount of \$2,765 for the new lease using the current
24 Lake Tahoe benchmark for the area occupied by the pier and
25 buoys. The area calculated for the pier does include the

1 10-foot use area.

2 In December 2011, staff reviewed its practice of
3 charging full rent for the use area for leases at Lake
4 Tahoe, and based on provisions of Public Resource Code
5 Section 6503.1 to consider local conditions, are
6 recommending a 50 percent discount for the use area at
7 Lake Tahoe as a reasonable charge for the public's reduced
8 access going forward because of the seasonal use of the
9 10-foot use area.

10 If you could show the next several slides.

11 --o0o--

12 PUBLIC LAND MANAGER HAYS: They show the pier at
13 low water.

14 --o0o--

15 PUBLIC LAND MANAGER HAYS: And this is showing,
16 just looking up at the upland.

17 --o0o--

18 PUBLIC LAND MANAGER HAYS: Staff recommends that
19 the Commission authorize acceptance of the back rent in
20 the amount of \$12,893 and issuance of the lease as
21 outlined in the Calendar Item No. 22.

22 Colin Conner, Assistant Chief of the Land
23 Management Division, is prepared to explain the
24 Commission's practice on the methodology behind the
25 establishment of the benchmark and is here to answer any

1 additional questions.

2 And the applicant, Mr. Gregory Price, is also here
3 to address the Commission and -- on the issues of the
4 reasonable use area, the use of the benchmark, and the
5 resulting rent.

6 ACTING CHAIRPERSON GORDON: Mr. Price, do you
7 think it would be best for our understanding of this for
8 you to speak now, or would you like to have the staff
9 explain the benchmark to the Commission first and how they
10 calculated the rent?

11 MR. PRICE: It might be helpful to have the staff
12 go through that. I mean, I summarized it in my
13 presentation.

14 ACTING CHAIRPERSON GORDON: I think I'm going to
15 go along -- let me bring the staff up. I want to fully
16 understand how this is calculated and give you a full
17 opportunity to discuss it.

18 MR. PRICE: Sure.

19 LAND MANAGEMENT ASSISTANT CHIEF CONNER: Good
20 morning, Commissioners. My name is Colin Conner, and I'm
21 the Assistant Chief of the Land Management Division. I
22 also have a presentation. I would like to have that
23 called up, if I could. And I believe you have it -- here
24 we go.

25 (Thereupon an overhead presentation was

1 presented as follows.)

2 --o0o--

3 LAND MANAGEMENT ASSISTANT CHIEF CONNER: So --
4 let's see if I can go through this.

5 --o0o--

6 LAND MANAGEMENT ASSISTANT CHIEF CONNER: What I am
7 going to do is try and provide a brief overview of our
8 benchmark methodology specific to Lake Tahoe.

9 --o0o--

10 LAND MANAGEMENT ASSISTANT CHIEF CONNER: The
11 leasing authority of the Commission flows down from the
12 state constitution through Public Resources Code and then
13 through the California Code of Regulations. This is the
14 most recently enacted law, and this is what was known as
15 SB 152. It became effective January 1st. This is going
16 to convert basically all our rent-free recreational pier
17 leases to revenue producing leases. So you are going to
18 be seeing a lot more of these types of things, and these
19 questions might come up again.

20 --o0o--

21 LAND MANAGEMENT ASSISTANT CHIEF CONNER: The Code
22 of Regulation gives the Commission broad discretion in all
23 aspects of leasing or setting rates.

24 --o0o--

25 LAND MANAGEMENT ASSISTANT CHIEF CONNER:

1 Benchmarks are typically used to establish a
2 uniform rental rate in a given and specific geographic
3 area, where we have a large number of a similar type of
4 facilities, mostly in areas where we have private
5 recreational piers.

6 There are two types of benchmarks -- a
7 recreational and residential. The recreational ones are,
8 by far and away, the largest number. The use of
9 benchmarks improves consistency throughout the geographic
10 area with respect to the application of rent, you know, a
11 fair playing field, and it also improves staff efficiency
12 in that we don't have to appraise each particular
13 property.

14 EXECUTIVE OFFICER FOSSUM: Colin, I would like to
15 add that the new law that was enacted does direct staff
16 and the Commission to use local conditions for valuation.

17 LAND MANAGEMENT ASSISTANT CHIEF CONNER: Right.
18 And we will get into that methodology aspect as well.

19 The Lake Tahoe benchmark has been in use since
20 1985 and it was last updated in February of 2007. We're
21 currently using it for approximately 70 leases in the Lake
22 Tahoe area. It also goes to Donner Lake, as a matter of
23 fact.

24 As SB 152, the new law -- it's in effect, but as
25 the previous rent-free leases come due, they will be

1 converted to revenue generating. There's approximately
2 600 of those in this area.

3 The other benchmark areas that we have -- Southern
4 California, which includes Huntington Harbor, Sacramento
5 River, the Sacramento-San Joaquin Delta, San Francisco,
6 Monterey Falls. The ones at the bottom -- Monterey Falls,
7 Colorado River -- there's not a lot of those right now but
8 we do want to establish an even playing field. The
9 residential benchmarks -- Huntington Harbor for
10 cantilevered decks; Sandy Beach for decks; and Solano
11 Beach for seawalls.

12 Okay. The methodology -- and I'm going to be more
13 specific with Lake Tahoe right now. But generally
14 speaking, recreational benchmarks are based on the
15 principle of substitution, and part of the reason for that
16 is, at Lake Tahoe, we would love to be able to set a rent
17 based on what other people are paying for renting of
18 recreational piers. Unfortunately, those are primarily
19 private land owners and they use those, so there's no real
20 market to sample for that.

21 So we look at principle of substitution. If a
22 property owner had a boat or wanted to get a boat, but
23 didn't have a dock, what did he do? He would go to a
24 marina, you know, probably lease a berth there. So what
25 we do for this benchmark methodology is we survey nearby

1 marinas and buoy fields as to their docking mooring,
2 docking mooring sizes, and rates.

3 So I'm to use "slip" and "berth" interchangeably
4 here, because essentially they're the same thing. But
5 slip rates are generally expressed as a dollar per linear
6 foot. So if you go to rent a slip or a berth from a
7 marina, he's going to quote you something like 10 or 12
8 dollars per lineal foot, and that can be based on the size
9 of your vessel or, more accurately, the size of the slip
10 that he happens to have available. He might happen to
11 have a 25-foot slip available. You have got a 20-foot
12 boat. He's renting you the slip. So, you know, it would
13 be \$25, or whatever the rate is, times that slip length.
14 This is going to come in, in a moment, the lineal foot
15 thing.

16 So basically, we take the results from the survey
17 and we try and get an average of that, for both the size
18 of the slip rates and the rates that are being charged in
19 Lake Tahoe.

20 --o0o--

21 LAND MANAGEMENT ASSISTANT CHIEF CONNER: The key
22 thing here is going from a per lineal foot basis, the way
23 they charge rent to the way we charge rent, which is a per
24 square foot method, because what we're dealing with isn't
25 necessarily slips or berths. So we use a publication from

1 the Department of Boating and Waterways, which is entitled
2 "Layout and Design Guidelines for Marina Berthing
3 Facilities." Basically what they do is -- there's several
4 tables. They just look at various berth sizes and what an
5 appropriate submerged land area is for that. It helps
6 people who are building or redesigning their marinas how
7 to plan it. How many square feet do I need?

8 So we use that. We extrapolate the results from
9 their -- from the survey, the dollars per lineal foot, but
10 we found from our survey it was a dollar per square foot.
11 And then we apply a 5 percent rate of return to that
12 amount.

13 --o0o--

14 LAND MANAGEMENT ASSISTANT CHIEF CONNER: This is a
15 sample of the Boating and Waterways publication. And they
16 are basically trying to say, okay, marina operator, might
17 have -- this is a double-berth design, so you basically
18 have two boats next to each other with catwalks on either
19 side. But you can see, it's fairly mathematical here and
20 that's how it results in these tables.

21 So we reference that. We look at, what's an
22 average slip? And we're referencing their table.
23 Something like 25 feet on this double-berth layout. We
24 use the double-berth because we feel it's probably the
25 most efficient with respect from a marina operator

1 standpoint; it's less facilities for him to build. And
2 what it worked to is 628 square feet of submerged land
3 area.

4 Now we're going to get into calculations.

5 --o0o--

6 LAND MANAGEMENT ASSISTANT CHIEF CONNER: Actually,
7 I'm getting ahead of myself here.

8 These are the results of the survey. At Lake
9 Tahoe, we identified twelve marinas; seven responded to
10 our survey. Again, this is back in 2007. At that time,
11 there was a 99.4 percent average occupancy at these seven
12 marinas, and six of which were a hundred percent occupied.

13 The average length surveyed was 25 feet.

14 The average rent was \$33.66 per lineal foot.

15 As for mooring buoys, there were 11 marinas with
16 buoy fields that were identified. Their occupancy was
17 93.4 percent. Their swing radius was 25 percent, with an
18 average monthly rent of \$542.

19 A couple things here: The swing radius, at Lake
20 Tahoe you have a buoy, and literally the boat can pivot
21 all the way around this thing. And so you have to space
22 the buoy fields so that the boats don't, you know, bump
23 into each other, basically. So what we looked at is,
24 what's the typical swing radius at Lake Tahoe? We found
25 25 feet. So that basically says that you are going to

1 have a vessel of 25 feet or less attached to that buoy.

2 At Lake Tahoe, the season varies a little bit but
3 it typically goes from about May to September or October.
4 But they reported seasonal rates. We translated that into
5 a monthly rate.

6 --o0o--

7 LAND MANAGEMENT ASSISTANT CHIEF CONNER: So we
8 have all the information. We have the methodology. And
9 by the way, the methodology is what we've been doing since
10 1985; we're just carrying it forward, with slight
11 variations based on -- we noticed there is an increase in
12 the swing area and the vessel length. The marinas
13 apparently have larger slips now.

14 So we take that \$25 average berth and we apply it
15 to the average lineal foot rate, and we get 841.50 per
16 month. Multiply that by 12 months. So if you are in a
17 marina, you are going to be paying \$10,000 for that berth
18 a year. Okay? If you don't have a dock and you want to
19 berth your vessel, you are going to pay \$10,000.

20 And I see a math error right there, by the way.
21 It would be 10098, not 10980. And I don't think that
22 calculation, that mistake, was carried forward, but I can
23 double-check that.

24 The 5 percent of gross income is typically the
25 rate that we charge for a commercial marina operator, and

1 what that rate reflects is the fact that a marina operator
2 has built the marina. He's provided all the amenities --
3 the docking, the parking, everything. What we're bringing
4 to the table is submerged land. Yes, it's a necessary
5 part, but our cost component is a lot less than what he's
6 put forth. He has to get a return on his investment and a
7 return of his investment. So basically, he has to get
8 paid back in. He's got profit. We feel he deserves the
9 lion's share of that, so we're going to charge him more.
10 We're going to get 5% of his gross income.

11 That works out to 504 dollars -- approximately 505
12 per year, our rate. We divide that by 628 square feet,
13 which gets us to the benchmark rate. That's the 80 cents
14 that we're applying to docks. We feel this is very
15 reasonable for a couple of reasons. If the guy had to --
16 if the property owner had to go out and get a berth, he
17 would be paying \$10,000. You know, ours is 80 cents times
18 whatever area. In this case, I believe it's \$2,500 for
19 his dock in the use area.

20 --o0o--

21 LAND MANAGEMENT ASSISTANT CHIEF CONNER: The buoys
22 are calculated a little bit differently. We take the
23 swing area and we calculate the -- basically the area of a
24 circle. That went up from the 20-foot radius, that was
25 used in the prior benchmark, to 25 feet. So you can see,

1 the area has increased.

2 The actual monthly rent from the prior survey in
3 1992 -- that's another thing to bear in mind. This is
4 1992 to 2007 that the benchmark had not been increased.
5 The survey indicated a large increase in rates. It more
6 than doubled. So we applied that rate of increase to this
7 new area.

8 The bottom line is it went to \$340, basically,
9 from \$93 in 1992 to 340 now.

10 --o0o--

11 LAND MANAGEMENT ASSISTANT CHIEF CONNER: Okay.
12 Alternatives. What else could the Commission do out
13 there? The Code of Regulations do provide for rent based
14 on -- I'm going to back up for just a moment.

15 As I said earlier, in a perfect world, we would be
16 able to sample what other people would be renting their
17 recreational piers for. That doesn't happen. They use
18 them. So we go to marinas.

19 What other methodology is available? Well, the
20 regs basically say that we can charge rent based on
21 9 percent of appraised land value. Well, if we look at
22 that, we would say that the pier and the submerged land
23 underneath the pier are tied to the uplands. So we would
24 be looking for residential land sales.

25 As you can imagine, residential land sales in

1 Tahoe -- first of all, there's not a large inventory of
2 vacant land that's selling. Mostly it's already built up.
3 If you do see sales of land, it might be an old cabin that
4 a new person would buy that property, would demolish that,
5 and would build a new house on it.

6 The key thing here is that if we go that way,
7 we're most likely going to result in a much higher rent --
8 much, much, much higher rent. We have not gone this path
9 for a couple of reasons, and it gets back to that
10 efficiency. The benchmarks are based on local conditions,
11 but at Tahoe, local conditions vary -- the north shore
12 versus the south shore; the level of water dependent, for
13 instance; the steepness of the shore. We would have to do
14 either -- appraise each property as they came up, which
15 could mean 600 properties in the near-term future, you
16 know as these things cycle through this previous
17 rent-free, we don't have the staff for that.

18 So we think the benchmark that we establish is the
19 most reasonable and efficient and effective from a staff
20 perspective, alternative.

21 --o0o--

22 LAND MANAGEMENT ASSISTANT CHIEF CONNER: This is
23 just a summary of what I just spoke about. Eighty cents
24 per square foot per year for docks in the use area; 340
25 for the buoys. We think the methodology -- the

1 methodology is based on principle of substitution. We
2 think that's fair. There's few other alternatives out
3 there.

4 Those alternatives that are out there, the one
5 specifically which would require appraisals, is probably
6 going to result in a greater hit to the property owner.

7 The other advantage of the benchmark is it's
8 applied consistently and efficiently by staff.

9 So that concludes my presentation. I understand
10 that the applicant is here, and I will be available to
11 answer any questions, or if you have any questions right
12 now.

13 ACTING CHAIRPERSON GORDON: I have a couple of
14 procedural questions.

15 With the change in law that went into effect this
16 month, have we done anything to notify these leaseholders
17 that their previously free use of these piers is going to
18 change?

19 LAND MANAGEMENT ASSISTANT CHIEF CONNER: To my
20 knowledge, no. We're looking at probably, you know, in
21 this case -- well, over statewide, probably over a
22 thousand, 1200, approximately 1200.

23 What we've been doing -- our typical practice is
24 to notify a person one year in advance of their lease
25 coming due. At that time, we would notify them that they

1 would be subject to the provisions of this new law. So
2 they are going to be given a standard one-year advance.

3 ACTING CHAIRPERSON GORDON: A one-year notice.

4 EXECUTIVE OFFICER FOSSUM: Other than having put
5 it in on our website, the new laws that are in effect and
6 a link to the actual law so that -- and a description of
7 it, if anybody goes to our website and looks there, they
8 would see that.

9 We are looking at several other alternatives. One
10 is to contact all the property owners that are involved
11 directly, and also to have -- particularly there's a lot
12 of concern in Orange County, in Huntington Harbor. Two of
13 the channels there are owned by the State and the other
14 channels are not. So certain property owners won't have
15 to pay rent because they happen to have a right to use the
16 channels in front of their property, whereas those that
17 the State owns will be paying rent. We have a number of
18 them under rent already -- under lease already. But
19 there's a number that we're going -- a larger number, even
20 than Lake Tahoe, that are not under lease and so we're
21 considering contacting them in various ways, including
22 possibly having a public workshop down there to answer any
23 questions and even contact the press with information as
24 well. So we're working on that right now.

25 ACTING CHAIRPERSON GORDON: Have you estimated

1 what the cost would be -- I'm sorry. How many
2 leaseholders do we have statewide that are possibly
3 affected over time?

4 LAND MANAGEMENT ASSISTANT CHIEF CONNER:

5 Approximately 1200.

6 ACTING CHAIRPERSON GORDON: 1200.

7 Have we estimated the cost if we were to send a
8 uniform notice to all 1200 of these people that as their
9 leases become due to notify them of this law? I
10 understand that one year, which makes a lot of sense, but
11 just give them a lot of lead time to prepare for the fact
12 that -- I mean, I think in some of these cases, people
13 probably have had these leases for generations, where they
14 haven't had -- and it's going to be a major, major change.
15 And sometimes just the prophylactic effect of giving
16 notice, just with a copy of the law, so that they will be
17 ready when they get the notice that says one year from
18 now, you are going to have to start paying.

19 EXECUTIVE OFFICER FOSSUM: We can certainly do
20 that. As I think either Colin or Mary in her presentation
21 noted that, for example, in Lake Tahoe we have 60 that
22 were already paying rent. It's just that the vast number
23 of them have not been because of the way they were holding
24 title on their property. So -- and there are a number in
25 Huntington Harbor and throughout the state, Sacramento

1 River as well, that have been paying rent and now it's
2 just everybody will be doing it consistently. We can
3 certainly look at that, all our currently free leases, and
4 come up with a letter to notify them.

5 COMMISSIONER NEWSOM: Why not? I mean, it's an
6 additional step. I appreciate, we're doing it a year in
7 advance formally. But, you know, I could -- if you
8 haven't paid anything or you paid a little bit and all of
9 a sudden, you are going to have all kinds of questions and
10 I think more notice, the better, more transparency, the
11 better. The last thing we need to do is spend the next
12 three years doing this.

13 EXECUTIVE OFFICER FOSSUM: Ten.

14 COMMISSIONER NEWSOM: Next ten years just doing
15 this.

16 EXECUTIVE OFFICER FOSSUM: Thank you.

17 ACTING COMMISSIONER REYES: Does the staff need a
18 motion to direct staff to provide for this? I imagine the
19 1200 -- probably 600 bucks to do this thing. Some of
20 these leases are ten years old, so some of the folks who
21 got their lease last year will not be reached for nine
22 years.

23 EXECUTIVE OFFICER FOSSUM: Some of them that you
24 are actually issuing today will not be having to pay rent
25 for ten years, because the way the bill was amended by the

1 author, and with requests from Lake Tahoe, in fact,
2 representatives there, there were cut off dates going back
3 to March 31st for applications for last year and having a
4 lease in effect. So some of those people who are on the
5 agenda today actually qualify and will still have another
6 ten years. That was the way the law was written.

7 ACTING COMMISSIONER REYES: So in ten years, they
8 will get a letter.

9 EXECUTIVE OFFICER FOSSUM: Yeah. We will be
10 contacting all the property owners and inform them of the
11 changes in the law and what they can expect.

12 ACTING CHAIRPERSON GORDON: That's a good idea.
13 Mr. Price.

14 MR. PRICE: You bet.

15 As this is being recorded, I hope my use of the
16 term "swing area" never gets taken out of context.

17 (Laughter.)

18 MR. PRICE: Anyway, I was one of those owners that
19 was very surprised, because we've had this property since
20 the 1940s. And my presentation doesn't go into the detail
21 that Mary provided about the background, because there's
22 no dispute there. We just didn't realize that we owed any
23 additional amount. And then when the lease came up, we
24 didn't realize that when we moved it from individuals to
25 the same individuals in an LLC, that triggered all sorts

1 of other things.

2 So staff was very patient -- Mary, Ninette, and
3 Colin -- and just walking me through what they just put
4 together here, and, again, there's no disputing the
5 background.

6 This presentation is just looking at going forward
7 because it's not easy. And one of the pieces that wasn't
8 brought up is that the rent increase, when the adjustment
9 was made in 2007, resulted in a 375 percent increase. So
10 folks that had been paying rent, like LLCs and marinas and
11 such, saw a -- nearly 400 percent increase just from that.
12 And then you add to that, you know, the majority of
13 owners, 600, who are going to be shocked that they are
14 paying anything at all. So there's going to be a parade
15 of people over the next few years. So hopefully we can
16 get this ready.

17 So I thought -- are my slides here? Great.

18 (Thereupon an overhead presentation was
19 presented as follows.)

20 MR. PRICE: Staff was incredibly patient and
21 indulged my every question. Unfortunately there was a
22 document that outlined in more detail what Colin just
23 reviewed but I didn't have an opportunity to review until
24 we had a conversation.

25 But the agreement is, it's difficult to assess the

1 value for a residential pier because those aren't on the
2 market. You need to base the value on something, and
3 principle of substitution certainly makes sense. The
4 State should, in my view, as an individual, collect lease
5 payments for these piers as opposed to having them be
6 free. Others may challenge that, but I think that's
7 reasonable and fair.

8 A call-out to the staff for their help. Needs to
9 be consistent, needs to be local to the market, and to
10 have a common and simple-to-understand approach. I don't
11 think there's any disagreement, I hope, in any of those
12 points.

13 I will just go through the next three slides
14 quickly. Can I advance them? Oh great.

15 --o0o--

16 --o0o--

17 --o0o--

18 MR. PRICE: So Mary already put that up.

19 --o0o--

20 MR. PRICE: And I don't have any slides of the
21 pier, just cool pictures. So this was an August day with
22 mist, which I thought was cool. But it just gives -- this
23 is the summer before last. And the reason I wanted to put
24 this in here -- because one of the issues that I have is
25 regarding the use area. And you can see, the lake level

1 is relatively high, but there's just no way a boat can
2 practically dock against most of the pier. I mean, it's
3 only one little area where we have a catwalk where we can
4 actually use the pier. So I get into that.

5 Again, the seasonal aspect of Lake Tahoe, just
6 wanted to emphasize that. And then even over Memorial Day
7 weekend, even during high season, it can enjoy wonderful
8 weather.

9 So Colin went through all this. I'm presuming
10 there are no questions.

11 --o0o--

12 --o0o--

13 MR. PRICE: And then this is for the buoys.
14 Again, Colin -- I just replicated that.

15 --o0o--

16 MR. PRICE: The challenge that I had in going
17 through this -- and again, just for my background, I'm a
18 manager of a nonprofit. I'm not a lawyer. I'm not in
19 real estate. I'm just a guy reading through some really
20 complicated stuff and trying to synthesize it.

21 So late last night, over the internet, I just
22 tried to find some comparables to slip -- 25-foot slips.
23 So near Homewood and Tahoe Keys, that's what they are
24 charging for five months, September to May.

25 If you look at the figure, and everything in

1 quotes is from the benchmark. If you look at the figure
2 841.50, that's from the benchmark. If you apply the
3 seasonal amount for that, it's \$4,207.

4 If you have ever been up to Tahoe in the winter,
5 and you walk by a marina, there are going to be maybe one
6 or two boats, and they are going harbor patrol and other
7 folks. People are not on the lake in winter because of
8 storms and snow and everything else.

9 So Colin did mention the principle of
10 substitution, that if we didn't have a pier, we would pay
11 \$10,000 a year. Much more likely, we would be paying
12 around \$4,200 a year, which is in line with the benchmark,
13 because we use it seasonally.

14 --o0o--

15 --o0o--

16 MR. PRICE: So the calculation, if you go back
17 here, it takes this -- this is, again, the benchmark
18 numbers. It takes the monthly number, which is, again,
19 the high season number, and then multiplies it by 12.
20 Tahoe Keys does offer winter rates, which are incredibly
21 low and incredibly available. Everyone is completely
22 booked for the summer. So that's the first challenge.
23 I'm not understanding why they are using the high season
24 and I'm not understanding why staff is using a 12-month
25 multiple on that. It just seems to make sense to me,

1 again, the number that they have, the monthly rate,
2 completely aligns with what the market is saying for
3 seasonal. So those are the first two issues.

4 And then I went ahead, just because I really enjoy
5 PowerPoint, and calculated what the rent would be using a
6 seasonal rate. And that's what this section is here. So
7 using, again, the same numbers, the 5 percent rate of
8 return, generates that level of income, attributed to the
9 submerged land, divided by the 628, again, in quotes,
10 which is there. I'm not sure where that comes from, but
11 it's basically the amount of land that should be under a
12 commercial marina for a 25-foot boat. But using that
13 number, you come up with that square footage.

14 --o0o--

15 MR. PRICE: Any questions on that, so far? Am I
16 on a roll? Keep going. Okay.

17 So the second area of confusion for me was that
18 the -- the seasonal versus annual, we already talked
19 about. The calculation of the buoys, they didn't use the
20 market rate. What they used was a 1992 rate of \$93. They
21 then escalated that by the market rate that they
22 calculated, compared to the 1992 rate, and just calculated
23 that increase and multiplied it times 92, as opposed to
24 using the market rate, which it doesn't make sense why
25 they did that.

1 The second thing is that they increased the swing
2 area, which makes sense. But if you take a look at the
3 actual rate in their benchmarks for a buoy, which is \$541,
4 multiply that times the seasonal rate, which is \$2,700,
5 and then if you look at -- again, this was online last
6 night. The seasonal rate for a buoy in Homewood and Tahoe
7 City ranged between 27 and 33 hundred. So we're within
8 the ballpark. If you then use that -- their own rate and
9 go through their same calculations, the larger swing
10 radius, calculating the square foot, but then apply the
11 5 percent rate of return, which they don't do in the buoy
12 calculation. In the buoy calculation, they calculate the
13 entire radius and you pay rent on the entire radius;
14 whereas, in the slip -- I should be a consultant about
15 this, by the way. With the slip, you calculate the rate
16 of return, which is just the 5 percent. So there's an
17 inconsistency there that doesn't make sense to me.

18 And then I think I covered all those
19 inconsistencies. So any questions on that? No? Okay.

20 --o0o--

21 MR. PRICE: And then the third is absolutely --
22 it's a challenge figuring out how you charge for a
23 residential pier. So using something that's similar makes
24 sense.

25 The challenge that I have is that if you have seen

1 a commercial marina, it's protected -- boats are very
2 dense, everything's stacked up in there -- versus a
3 residential pier -- most of the piers in Tahoe are open
4 pile so swimmers and canoers and ducks and everything else
5 go back and forth under the pier, and you can't tie up
6 your boat if you don't want it damaged, because storms
7 come up, waves come up, winds, and it's just going to
8 smash against an open pier.

9 So the challenge that I have is that they have
10 taken the evaluation of a commercial marina and just
11 applied that, without any changes, to a residential pier.

12 So in the benchmark, they have calculated a
13 double-berth layout, which makes no sense to a residential
14 pier, to use that concept throughout the entire
15 calculation of what they are doing.

16 And then the second part of that is the use area
17 itself. I understand that it's been practiced, but it
18 doesn't make it a good decision, even if you have been
19 doing it for 40 years. I don't think anyone has really
20 brought this up, because if you are getting a lease with a
21 giant use area around it, but you are just signing
22 something for ten years and there's no dollar amount, it
23 doesn't really matter to you.

24 So what the actual impact of this has is that if
25 you calculate and then the state -- these are the State's

1 numbers. If you calculate the square footage of our pier,
2 it's 1,150. If you add the 10-foot use area around it,
3 which, in talking with staff, it is, you know, the
4 presumed area you can park jet skis and boats -- which is
5 completely impractical, because they are going to go under
6 the dock and slam up against the pier -- but that
7 increases the lease area by 250 percent by just broadening
8 that large area around it.

9 Now, the executive director last month did make a
10 concession -- because I presume I'm not the first person
11 to come up to staff with this -- and change the price
12 associated with the use area a 50 percent discount, which
13 was explained to me -- and Mary mentioned it -- as
14 seasonal usage, as opposed to actual usage. So those are
15 the issues with the use area.

16 Staff does have a precedent as far as not charging
17 use area where it's not practical. So if there is a
18 boatlift, which we don't have a boatlift, that area would
19 not be calculated as a use area. And if you have a
20 boathouse that has walls that go down in the water, that
21 area, where you couldn't tie up a boat, wouldn't be
22 calculated as a use area. So there's precedent for this.
23 And what I would argue is that you should charge a use
24 area where it's being used. And each lease goes through
25 this calculation.

1 --o0o--

2 --o0o--

3 MR. PRICE: You know, in the map --

4 --o0o--

5 MR. PRICE: -- you know, the State is doing this,
6 anyway.

7 --o0o--

8 MR. PRICE: I don't think it would be very
9 difficult to either have the applicant just circle where
10 their boat is, as opposed to this presumed imaginary --
11 you know, I can dock ten boats along the pier, which it
12 doesn't seem to make sense.

13 --o0o--

14 --o0o--

15 --o0o--

16 MR. PRICE: And then the last thing is, obviously,
17 my focus is on Lake Tahoe and our little slice of it. The
18 staff is looking at the entire state, and I think one of
19 the challenges is that a pier is a pier, so if you look at
20 the delta, completely different usage. You don't have the
21 same type of weather patterns. You don't have
22 seasonality; it's a longer season. So you do have tie-ups
23 around piers. And that kind of same concept of commercial
24 was implanted on residential and the same delta use was
25 put on residential.

1 --o0o--

2 MR. PRICE: So in summary, the inconsistent use of
3 submerged land attributed to income -- so that 5 percent
4 rule that Colin went through -- was used for the slips and
5 not for the buoys, and I'm not sure why.

6 The inconsistent application of local conditions
7 and seasonal use. So in buoys, they used seasonal
8 calculations, but in the slips, they used the high season,
9 and then stretched it out over 12 months.

10 And then for the buoy calculation, at least, they
11 weren't using their own market rates. They were taking a
12 1992 rate, upped it by a percent increase, which, again,
13 didn't make sense to me.

14 And then the whole commercial -- the pier use area
15 doesn't make sense. I mean, it seems to me that you want
16 to charge for the pier and charge for the area that you
17 are using. And then I didn't realize that there was 600
18 folks like me in line.

19 And then one thing I would ask is that there is a
20 Lakefront Owners Association. A representative there has
21 been helping me, just because this is all new to me and
22 understanding the language. One of the things that I
23 would request is that the Commission ask staff to engage
24 stakeholders, and this is a significant stakeholder, to
25 review these issues so that you don't have to hear from

1 folks like me in the future.

2 ACTING CHAIRPERSON GORDON: Any questions?

3 COMMISSIONER NEWSOM: I got so many questions I
4 don't even know where to begin.

5 ACTING CHAIRPERSON GORDON: Bring staff back up.

6 COMMISSIONER NEWSOM: I hope you wrote all those
7 concerns down. You want to sort of knock through them?

8 EXECUTIVE OFFICER FOSSUM: Let me mention
9 something initially. We certainly appreciate the analysis
10 that Mr. Price has given us.

11 When the question was asked about notifying
12 property owners and so forth, he just mentioned the
13 representative from the Tahoe Lakefront Owners
14 Association, that representative or lobbyist participated
15 at the hearings in the Legislature when this bill was
16 going on -- in fact, spoke with the author's office -- and
17 that's why some of the provisions in the new law were
18 enacted. For example, local conditions, but also as to
19 the deadlines, cutoff deadlines, for when these things
20 would be implemented.

21 Commission staff and the Commission have actually
22 been improving leases over the last three years that would
23 have made these rates retroactive -- not retroactive, but
24 leases that were already in existence for the last three
25 years had provisions that would have allowed us to charge

1 rent immediately instead of waiting ten years.

2 Those things were all amended out at the request
3 of the representative of the Lake Tahoe Owners
4 Association. So their representatives are fully aware of
5 this law, even if they didn't contact their clients.

6 MR. PRICE: But if I'm not mistaken, there hasn't
7 been an actual meeting where the Commission has asked you
8 to connect with stakeholders --

9 EXECUTIVE OFFICER FOSSUM: That's correct.

10 MR. PRICE: -- and have a conversation at Tahoe.

11 EXECUTIVE OFFICER FOSSUM: And we will be -- doing
12 it now.

13 ACTING CHAIRPERSON GORDON: There's a suggestion
14 for some kind of a workshop with staff with the applicant.

15 Mr. Newsom?

16 COMMISSIONER NEWSOM: Well, I just -- you know,
17 let's just knock right through all these points and get
18 your feedback. Does any of that make sense? Do you
19 disagree with all of it?

20 EXECUTIVE OFFICER FOSSUM: Could you turn your
21 microphone, please?

22 COMMISSIONER NEWSOM: You heard me.

23 LAND MANAGEMENT ASSISTANT CHIEF CONNER: Yeah.
24 Mr. Price has shared these concerns with us in a prior
25 conversation. And I think the biggest thing is trying to

1 understand the benchmark. It is complicated. I think the
2 underlying principle is easily understood: Substitution.
3 But how do you get there?

4 I think one of the key things -- and I just want
5 to talk about a couple of things. One is, when we were
6 talking about the pier and we're comparing it to a marina,
7 the pier is fixed for a year. I mean, the pier is there.
8 We are charging for a structure that is there all the
9 time. For rent-setting purposes, we're going to the
10 marinas to get an idea of what they are charging for rent.
11 And then we're saying, we don't own your marina
12 improvements. But that's -- that pier, you can't look at
13 that from a seasonal basis. We have to charge for the
14 annual occupancy. His pier, his recreational pier, is out
15 there twelve months a year. Whether or not he has a boat
16 on it, he's using it, whoever is using it. It's there.

17 So we're taking the information from the market
18 and we're applying that on an annual basis. We think
19 we're being reasonable by looking at only a 5 percent
20 percentage of that. Okay? If you just even looked at the
21 numbers that he provided, at Obexer's or something, you
22 would be paying over \$4,000 for a slip or, you know, 3800
23 to 4,000.

24 MR. PRICE: For a season.

25 LAND MANAGEMENT ASSISTANT CHIEF CONNER: What's

1 the proposed rent at this point?

2 EXECUTIVE OFFICER FOSSUM: Twenty-seven.

3 LAND MANAGEMENT ASSISTANT CHIEF CONNER: \$2,700
4 for a structure that's going to stay there forever,
5 basically. You have got the annual ongoing use of this
6 structure. So we think that's reasonable. And the same
7 thing is, with the buoys, from the information that he
8 compiled, we are charging \$340 per buoy for the year. If
9 you are using it beyond the season, great. You have got
10 the right to do that. You don't have to take it out.

11 The seasonal rates that he's quoting are several
12 thousand dollars. Again, we think this is reasonable.
13 The methodology, while complex, I think from back in the
14 '80s -- and I wasn't around -- was designed to be
15 reasonable. What is a reasonable -- you know, a
16 reasonable way? How do we get there? This is the process
17 that was developed. And on both counts, while the --
18 again, the math might be, you know, hard for the layman to
19 follow, the results are very reasonable.

20 ACTING CHAIRPERSON GORDON: Doesn't it seem
21 like -- as a nonmathematical wizard, let me see if I can
22 get to kind of the bottom of this.

23 So Mr. Price, your argument is that they are
24 charging you a high season rate for 12 months as opposed
25 to, say, the six months when it might be in heavy use.

1 MR. PRICE: Well, again, I'm conceding that you
2 have to base it on something. And the challenge that I
3 have with the methodology is that the method is an income
4 stream method, which is primarily seasonal. And what they
5 did was they took that high season rate and applied it
6 year-round.

7 The second point, from Collin's comments, was that
8 these piers just didn't grow out of the ground like
9 mushrooms. The residents have built them as well. So the
10 exact same argument for the commercial, as far as, you
11 know, rate of return and everything else, the residents
12 have built it. So again, I'm using their numbers.

13 ACTING CHAIRPERSON GORDON: Let me kind of go
14 beyond the numbers here.

15 MR. PRICE: Sure.

16 ACTING CHAIRPERSON GORDON: If the cost to put the
17 boat in a marina for six months would be 4,000-some-odd
18 dollars --

19 MR. PRICE: Right.

20 ACTING CHAIRPERSON GORDON: -- if you didn't have
21 a pier --

22 MR. PRICE: Right.

23 ACTING CHAIRPERSON GORDON: -- and, yet, using all
24 these very complex calculations, you come up to an annual
25 rate of \$2,700 --

1 MR. PRICE: Right.

2 ACTING CHAIRPERSON GORDON: -- it strikes me,
3 without going through all the math, that it's a fairly
4 equitable result for the property owners.

5 MR. PRICE: What you are not considering, though,
6 is that the pier didn't just appear. So there's building
7 of the pier. We've had continued maintenance of the pier.
8 Storms hit and took out our catwalk. So the exact same
9 argument that is used for the commercial seems to get
10 disconnected when you are talking about a residential
11 pier. Meaning, you could pay several hundred thousand
12 dollars to build a pier and have this \$2,700 rent, or you
13 could save several hundred thousand dollars and not build
14 a pier, and pay 4500 a month -- or a season. Does that
15 make sense?

16 EXECUTIVE OFFICER FOSSUM: That is a rationale for
17 only charging 5 percent as opposed to a marina would be a
18 hundred percent. So we're taking 1/20th.

19 I would also like to mention one thing, and that
20 is, while there isn't typically a market for these things
21 outside the marina, we have seen, from time to time,
22 advertisements, either in the papers or on Craigslist or
23 something like that, where individuals on the lake have
24 offered, for a week or something, to lease their buoys or
25 docks, and sometimes those are in excess of a thousand

1 dollars for one week -- obviously in high season, maybe on
2 the 4th of July or something -- but very high rates for
3 those.

4 And, in fact, there's been kind of a waiting list
5 for people who don't have piers on the lake who would love
6 to have one, but because of the complications that have
7 been going on with the Tahoe Regional Planning Agency and
8 trying to get their environmental regulations approved,
9 they actually had people applying to give a hundred
10 thousand dollars to TRPA just for, basically, a mitigation
11 fund to apply, because of the impact it had on the lake.

12 What we think -- and this really gets maybe more
13 into the 10-foot use area around the lake. Obviously,
14 some piers, people can dock there, but many of them -- as
15 you see in Mr. Price's -- would be unlikely to use it very
16 much of the time. And we may have referred to it as a use
17 area in there, but, in essence, it's really a -- public
18 isn't going to be using that area. It's a visual and
19 psychological impediment, I think, for the public being
20 able to go out on the lake. And I wouldn't -- typically,
21 if I was out kayaking or canoeing or boating or fishing
22 wouldn't pull up within that ten feet of the person's
23 pier. It's probably a much larger area that the public
24 would be unlikely to use out there just because of that.

25 And so that's the real reason that we have a

1 10-foot area, and it's also the reason that we have
2 discounted 50 percent. We talked about it a lot. And the
3 fact is, the fish get to swim through there and the ducks
4 and everything else in those areas, but the public isn't
5 likely to go there, so they are being excluded, and that's
6 the rationale behind it. So it's kind of a nonuse area
7 for the public, even though it can be used.

8 ACTING CHAIRPERSON GORDON: Mr. Newsom?

9 COMMISSIONER NEWSOM: That was my remaining
10 question. I mean, you were shaking your head at -- I
11 won't say dismissively, but in -- give us your sense.

12 LAND MANAGEMENT ASSISTANT CHIEF CONNER: Right. I
13 think that Curtis touched on it. We're going through this
14 mathematical function relating to piers -- excuse me, a
15 marina, you generate \$10,000. Okay? A marina operator,
16 he rents out that slip and he generates, over the course
17 of that year, \$10,000, or maybe he doesn't get it for the
18 full year. Maybe he's -- some boats are taken out, I get
19 that.

20 He's basing his rates on that, though, that his
21 facility is out there on an annual basis. And whether or
22 not there's boats on a seasonal basis or maybe some stay
23 out there, he's collecting just enough rent to help him
24 pay off that annual facility, to make a profit on it as
25 well.

1 We're trying to reflect that by saying, hey, we're
2 only taking 5 percent annual return on that because we
3 recognize your investment. How he charges rent and
4 collects his rent and structures his rent, he knows that
5 his marina is going to be out there every year as well,
6 and so he might have to make his rates high during the
7 summer. He might -- a lot of people keep their vessels in
8 there. But again, we're looking at only 5 percent of
9 that.

10 It gets back to, what is a reasonable rate of
11 return on our contribution? Our contribution is the
12 submerged land.

13 COMMISSIONER NEWSOM: It's understood.

14 ACTING COMMISSIONER REYES: I guess the way I look
15 at this is that based on the calculations is sort of a
16 proxy. You could come up and say, it's going to be a
17 dollar and a quarter plus a X percent surcharge for a land
18 around it. A dollar and quarter per square foot plus X
19 percent and then call it a day. And then people
20 challenge, how do you arrive at a dollar and quarter? We
21 can call it, you know, 25 cents, people will challenge,
22 how did you get to 25 cents. So the way I look at it is,
23 it's kind of a proxy. And you do the discount by doing
24 the 5 percent.

25 And the -- I have spent a lot of time up in Tahoe

1 and I'm in the Tahoe Conservancy as well. And then -- so
2 I'm sort of with staff, that when you are canoeing around
3 the area, you don't have a tendency to go under those
4 piers. You have a tendency to respect that and view that
5 as -- knowing better, I still respect it as a private
6 property. If I'm out there with my family, the dock, I
7 wouldn't want people swimming under that thing. So that's
8 kind of the way I look at it.

9 So I just view it as a proxy and the best guess by
10 staff is a proxy that we use. And I think it is a sticker
11 shock because we haven't done it before, and I think it's
12 a critical part. More than anything else, it's something
13 that we're now required to do.

14 COMMISSIONER NEWSOM: Just -- not to get off
15 topic, but the issues of the back rent, those are not
16 issues for you?

17 MR. PRICE: No. Staff was very accommodating.
18 Again, it was just a surprise to us. And then digging
19 into it, why do we owe rent and how is that calculated?

20 COMMISSIONER NEWSOM: Yeah.

21 MR. PRICE: But, again, you can go on the internet
22 and you can see what the seasonal rates are. Colin and I
23 did have a conversation about this. But it just -- it's
24 not \$10,000 a year. I mean, you can see online, they are
25 charging \$4,000 or so for the season and then the marinas

1 are empty in the wintertime. So to base it on a \$10,000
2 number, granted, it has to be based on something.
3 Absolutely. But at least start with what's actually
4 happening in the market, and instead of a number that
5 can't be supported by the market.

6 ACTING COMMISSIONER REYES: Would it be better if
7 they used the number and do the dollars per month for the
8 five or six months as seasonal, and then don't do a big
9 discount? Do a 50 percent instead of the 5 percent?
10 There's different ways to get to --

11 MR. PRICE: So if I had to call it, I think what
12 would make sense would be to start with the market rates
13 for both the buoys and the slips, which there's
14 inconsistency there, which would both be seasonal in Lake
15 Tahoe, and apply the rent to the pier itself -- I think
16 that is completely reasonable -- and then apply the rent,
17 this use area, to where a boat could be used for
18 offloading.

19 But I think you are going to have a lot a people
20 saying, why am I spending rent -- you know, why is my rent
21 going up 250 percent because of this use area? And we do
22 have a lot of folks that go right under our pier. So I
23 mean, granted, it is a visual barrier, but it's not
24 completely off limits.

25 ACTING COMMISSIONER REYES: So let's just say for

1 now that we disagree on the surface area. But if we were
2 going your route and we use the monthly rate and limit it
3 to the deck surface area and did not do a discount at all.

4 MR. PRICE: Well, but the discount is applied to
5 the use area. It's not applied to the pier.

6 ACTING COMMISSIONER REYES: Got it.

7 MR. PRICE: So there's the pier. And then there's
8 the 10-foot use area which increases, in our case,
9 250 percent of the leased area, and then that 250 percent
10 is then discounted to 125 percent of the increased lease
11 area.

12 ACTING CHAIRPERSON GORDON: Let me see if I can
13 summarize where we are right now. The Commission has
14 several options before us. First option is that we could
15 pass the -- we can go for exactly as it is marked up here
16 on Item 22, which would be both back rent and going
17 forward.

18 We could split it. We could implement the back
19 rent and split going forward and determine that we wish to
20 have maybe some workshops with the owners over there and
21 look at the formula that is being used and bring this back
22 at a future date.

23 Or we could reject everything that is in No. 22
24 here, both the back rent and the forward rent, and bring
25 the whole thing back.

1 I leave it to the other members of the Commission
2 to determine which direction they would like to go at this
3 point. If we could get a motion on one of these items.

4 Curtis, you are looking perplexed by those
5 options.

6 EXECUTIVE OFFICER FOSSUM: I am perplexed only
7 that it would postpone some of the elements. Might I
8 suggest that what we could do is -- this is my suggestion:
9 Approve the item and direct the staff to go back and look
10 at some of these issues that Mr. Price has brought up.
11 And if -- at a subsequent Commission meeting, we bring
12 them back to you for a presentation to modify the approach
13 we've taken, that that would be retroactive for Mr. Price
14 as well and any other Lake Tahoe property owner that might
15 be approved at today's meeting. I think we want to treat
16 everybody the same.

17 ACTING CHAIRPERSON GORDON: Would that work for
18 you if we approve with the caveat in the record that we
19 are going to go forward, review the calculations, and come
20 back at a future date, after holding some, maybe,
21 workshops in Tahoe with the property owners to determine
22 if this calculation works?

23 MR. PRICE: Yeah. I think the option 2, as you
24 outlined, made sense. But I think there's a disconnect
25 because I'm hearing workshops and meetings with

1 stakeholders, and I'm hearing from the executive director
2 to just meet with me. So I think meeting with
3 stakeholders would be incredibly helpful because that
4 would help -- you know, I'm just one circumstance. So I
5 think getting more folks involved in that and
6 understanding what the issues are.

7 EXECUTIVE OFFICER FOSSUM: That's fine. I think
8 Mr. Price has outlined probably other remarks that some of
9 the people have commented to us and done an eloquent job
10 of doing so. It certainly is another position to look at,
11 so I think we're certainly willing as staff to try and be
12 reasonable. We think we already are reasonable, but
13 there's different ways to approach this, and so we're
14 prepared to look closely.

15 We are doing a new benchmark this year for Tahoe,
16 so the rates are likely to go up again.

17 As far as the 2007 benchmark, there is another
18 five years in the can that we will have to look at what
19 values may have changed in that period of time. But we
20 always want to be reasonable and so we're certainly
21 willing to reassess this. And if the Commission wants us
22 to have a hearing or a workshop up at Tahoe to get input
23 on these issues....

24 ACTING CHAIRPERSON GORDON: Mr. Reyes, do you have
25 a motion?

1 ACTING COMMISSIONER REYES: Yeah.

2 DEPUTY ATTORNEY GENERAL RUSCONI: Excuse me,
3 Commissioners. I just want to put something on the
4 record, that if that's the approach you want to take, I
5 just want to make sure that Mr. Price understands that if
6 this lease is approved as it is now, if he wishes to
7 challenge it, then the clock is going to start ticking on
8 his challenge to the Commission's action, should no change
9 happen in the future. Just want to make sure you
10 understand that.

11 ACTING COMMISSIONER REYES: Is there a way to -- I
12 mean, the question here is, we want to direct staff to
13 take another look at this. We have information. Talk to
14 the folks in Tahoe and see if there's something there that
15 could be taken into consideration when establishing this.
16 If, in fact, nothing can be done and, in fact, the current
17 ruling stands, then I would like the clock to start, for
18 purposes of his appeal, at that point, when folks walk
19 away.

20 Can we, on the record, provide for an extension or
21 leave the item open? Because, you know, if we stall this
22 for three months, then it runs out of time and I don't
23 think that would be equitable.

24 EXECUTIVE OFFICER FOSSUM: Commissioner Reyes, he
25 always has the opportunity to re-approach the Commission

1 to ask for a modification in that regard. You can always
2 amend the lease. What I am suggesting is that if the
3 Commission decides at a subsequent meeting to direct staff
4 to use a different approach to calculate these things --
5 as Colin said in his original presentation in the first
6 few slides, the Legislature has directed the staff to
7 charge rent for these things --

8 ACTING COMMISSIONER REYES: Correct.

9 EXECUTIVE OFFICER FOSSUM: -- but your regulations
10 do give you flexibility as to how you do this, so it's up
11 to the three commissioners. These are staff
12 recommendations as to how we've approached it at this
13 point. We think it's fair and reasonable, and so we're
14 recommending approval of this. But we will certainly take
15 your direction, and if your direction in the future is to
16 modify these rents retroactively, we can do that as well.

17 ACTING COMMISSIONER REYES: So here's kind of --

18 EXECUTIVE OFFICER FOSSUM: If he wants to
19 challenge it legally, is that what you are getting at?

20 DEPUTY ATTORNEY GENERAL RUSCONI: I think the
21 question he asked is whether we can toll running the
22 statute of limitations on the challenge, and, yes, the
23 Commission can do that.

24 ACTING COMMISSIONER REYES: Okay. And I wouldn't
25 want that to happen. And I guess that's what I want to

1 say. Is that the -- so I'm prepared to move with staff's
2 recommendation to approve the lease now, but I also want
3 to be clear and ask staff to spend time with the
4 association and the property owner right now, in the near
5 future, to try to take a look at this. If the decision --
6 when do we meet next? In two months?

7 EXECUTIVE OFFICER FOSSUM: March.

8 ACTING COMMISSIONER REYES: March. So by March, I
9 think, you should be in a position to tell us -- we can
10 put it in the agenda as, this is a new methodology or no
11 changes to the methodology. Then at that time, if there
12 are no changes to the methodology, at that time, his clock
13 would start.

14 And I don't know if that's an action of the board
15 or if we preclude him from making that. Because then at
16 that point is when he's going to know that, you know, I
17 want to pursue other courses.

18 ACTING CHAIRPERSON GORDON: So what I am hearing
19 would be a conditional approval of the lease for the two
20 months until our March hearing, at which point we would
21 bring the lease back for a final approval at that point in
22 time. Does that summarize your point, Mr. Reyes?

23 DEPUTY ATTORNEY GENERAL RUSCONI: I wouldn't
24 consider it a conditional approval. I would say that it's
25 approved.

1 However, the Commission will toll the running of
2 the statute of limitations on any challenge until the next
3 meeting.

4 EXECUTIVE OFFICER FOSSUM: And the Commission
5 staff will bring the Commission, at the next meeting, an
6 agenda item that will have a staff report on what's taken
7 place and if --

8 ACTING COMMISSIONER REYES: Whether or not we're
9 changing the methodology --

10 EXECUTIVE OFFICER FOSSUM: That's correct.

11 ACTING COMMISSIONER REYES: -- and if the
12 methodology changes and impacts this property owner, then
13 it will be adjusted accordingly.

14 COMMISSIONER NEWSOM: For the Chair, my only
15 concern about that, in the next two months you are not
16 necessarily going to have had an engagement with the
17 stakeholders in Lake Tahoe. So I imagine the methodology
18 most likely won't change because you haven't had enough
19 engagement except for with the applicant himself.
20 Nonetheless -- oh.

21 PUBLIC LAND MANAGER HAYS: Through Mr. Price, we
22 have talked with the executive officer from the Lakefront
23 Property Owners and said that we were going to be setting
24 up a meeting within two weeks after this Commission
25 meeting to discuss this.

1 COMMISSIONER NEWSOM: Good news. Then I think the
2 direction makes a lot of sense. That's fabulous. I
3 certainly would support that direction.

4 MR. PRICE: Can I play back what I think I heard?
5 So there's back rent that I think goes through
6 October 2011? Okay. So we'll get an invoice for that.
7 The new lease would be from October until -- five years or
8 ten years? Ten years. But we won't know that current
9 rate until this all gets sorted out. And I'm not sure of
10 the comment about the toll. So I don't know what that
11 means.

12 ACTING CHAIRPERSON GORDON: Counsel, would you
13 explain what you mean by the toll?

14 DEPUTY ATTORNEY GENERAL RUSCONI: The rent that is
15 currently in the calendar item in the proposed lease will
16 be approved under -- my understanding of the motion --
17 starting in that date, it might be changed in two months,
18 based on the staff's work. However, it might not.

19 MR. PRICE: Right.

20 DEPUTY ATTORNEY GENERAL RUSCONI: But your ability
21 to challenge that new rent will not start, the clock won't
22 start, until the next meeting.

23 MR. PRICE: Got it. Okay.

24 ACTING CHAIRPERSON GORDON: Do you understand?

25 MR. PRICE: Yep.

1 EXECUTIVE OFFICER FOSSUM: One other item. What
2 we would like to be able to do is send this to -- this is
3 what we do with reimbursement agreements is, they submit
4 the funds to the State and then they're reimbursed.

5 For example, we received a letter from one
6 applicant in Huntington Harbor who submitted his \$2,500
7 and was sending a letter complaint that he -- you know,
8 why am I having to spend all this money? And I'm not
9 getting interest on it. The State is keeping it. Our
10 records show that he will be -- as soon as he signs the
11 lease -- getting back \$1,800 of that \$2,500.

12 So what we would recommend is that if the
13 Commission in the future does change these calculations or
14 agrees to that, that we would refund those anybody who
15 paid it. It should be paid now so the contract is valid.
16 They have not been under a valid lease for the last four
17 years because of the change in ownership and so we would
18 like to have a lease in effect.

19 ACTING CHAIRPERSON GORDON: So what you are -- let
20 me see if I can understand what you are saying.

21 So Mr. Price would begin paying immediately based
22 on the amount set in the item that is before us. However,
23 if come the March meeting, we determine that we would
24 lower that or raise it after we calculate, that the amount
25 of --

1 EXECUTIVE OFFICER FOSSUM: I think -- he has said
2 if he signs the lease, he's not going to be able to raise
3 it.

4 ACTING CHAIRPERSON GORDON: If we were to lower
5 it, that he would get refunded his money --

6 DEPUTY ATTORNEY GENERAL RUSCONI: Back to October.

7 ACTING CHAIRPERSON GORDON: Yes. Okay?

8 ACTING COMMISSIONER REYES: That's my motion.

9 COMMISSIONER NEWSOM: I will second it.

10 ACTING CHAIRPERSON GORDON: All those in favor?

11 (Ayes.)

12 ACTING CHAIRPERSON GORDON: All those opposed?

13 Nice job.

14 MR. PRICE: Thank you so much.

15 EXECUTIVE OFFICER FOSSUM: Chair, if I could, I
16 would like to ask the Commission to take up Item 91, our
17 legislation, next. The reason for that is that we may
18 lose a quorum for voting purposes, our inability to vote
19 on that if we don't have enough commissioners present.

20 ACTING CHAIRPERSON GORDON: Okay. Let's move to
21 Item 91.

22 CHIEF, EXTERNAL AFFAIRS PEMBERTON: Good morning.
23 Presenting on Item 91 -- and we have three -- or
24 five legislative proposals. The first deals with --

25 THE REPORTER: State your name, please.

1 CHIEF, EXTERNAL AFFAIRS PEMBERTON: Sheri
2 Pemberton.

3 The first legislative proposal deals with
4 quitclaim deeds for land leases. There's an existing
5 bill, AB 1054, authored by Assemblymember Skinner, that
6 delays the effective date of a quitclaim for a lease with
7 the Commission until the lessee reclaims or restores the
8 land. And AB 1054 is nearly identical to a bill that
9 Commission sponsored two years ago that the governor
10 vetoed.

11 And as background, current law, enacted in 1955,
12 allows a lessee to file a quitclaim at any time, at which
13 point they no longer pay rent on the land, and they may
14 reclaim or restore the land for many years after it has
15 filed its quitclaim, and so the State is unable to collect
16 rent or use the land for any other purpose during that
17 time. And in addition, the lessee is not required to
18 maintain their insurance or their bond so the State's
19 liable for any financial risk or property damage.

20 So we think this bill would remedy that situation
21 by delaying the effective date of the quitclaim until the
22 Commission approves the restoration. So this bill was
23 approved by the Assembly Natural Resources Committee and
24 the Assembly Appropriations Committee earlier this month,
25 and should be voted on by the full Assembly today and the

1 recommendation is for the Commission to sponsor that, that
2 legislation.

3 ACTING CHAIRPERSON GORDON: So moved.

4 COMMISSIONER NEWSOM: I have no questions either.

5 ACTING CHAIRPERSON GORDON: All those in favor?

6 COMMISSIONER NEWSOM: That recommendation moves
7 forward to legislation.

8 CHIEF, EXTERNAL AFFAIRS PEMBERTON: And the
9 second legislative item involves a title settlement and
10 land exchange with the City of Newport Beach that the
11 Commission approved last year, and it's simply, when
12 settling the title and boundary dispute with the City, we
13 acquired a public trust parcel as part of Marina Park
14 Title Settlement and Land Exchange Agreement that the
15 Commission approved last year and the governor signed in
16 January. So a provision of that agreement just requires
17 the Commission and the City to pursue legislation to
18 include that public trust parcel in the City's Statutory
19 Trust Grant.

20 So the recommendation is to sponsor that
21 legislative proposal.

22 ACTING CHAIRPERSON GORDON: Is there anyone in the
23 audience who would like to speak on that? A motion?

24 COMMISSIONER NEWSOM: Moved.

25 ACTING CHAIRPERSON GORDON: Second?

1 All those in favor?

2 (Ayes.)

3 CHIEF, EXTERNAL AFFAIRS PEMBERTON: And the
4 third --

5 ACTING CHAIRPERSON GORDON: Passed.

6 CHIEF, EXTERNAL AFFAIRS PEMBERTON: Thank you.

7 The third legislative item is very similar. It
8 also involves a title settlement and land exchange with
9 the City of Long Beach that the Commission approved last
10 year and the governor signed in August of 2011. And that
11 title exchange -- that title settlement and land exchange
12 agreement includes a provision that the Commission and the
13 City will also pursue legislation to include those final
14 public trust parcels in the City's Statutory Public Trust
15 Grant.

16 ACTING CHAIRPERSON GORDON: Would anyone in the
17 audience like to speak on that item?

18 Do we have a motion?

19 COMMISSIONER NEWSOM: I will move it.

20 ACTING CHAIRPERSON GORDON: Second.

21 All those in favor?

22 (Ayes.)

23 CHIEF, EXTERNAL AFFAIRS PEMBERTON: Thank you.

24 The fourth proposal involves trespass and this was
25 a bill that the Commission sponsored in 2009 that the

1 former governor vetoed. The rationale for the bill is
2 that the Commission regularly deals with trespassing
3 structures and facilities on state lands and our only
4 remedy, if the person responsible refuses to apply for a
5 lease or remove the structure, is to take the person to
6 court, which involves significant attorney general time,
7 staff time, and a lot of money. And there's also really
8 no deterrent for a trespasser when they are making that
9 initial decision whether to come under lease or remove the
10 structure.

11 So I think, in practical terms, it takes about
12 three to five years from the first contact to retaining
13 the services of the attorney general. So in that time
14 frame, the trespasser is occupying state lands and we
15 aren't receiving any revenue or able to manage the land
16 for any other purpose.

17 So this proposal would give the Commission
18 administrative authority to impose monetary penalties
19 against the person for trespass, and that's consistent
20 with the authority other states have and other state
21 agencies --

22 COMMISSIONER NEWSOM: If I may, Mr. Chairman, what
23 was the rationale for the veto? Do you recall reading a
24 veto message?

25 CHIEF, EXTERNAL AFFAIRS PEMBERTON: Yeah. The

1 governor felt the bill was too broad and there could be
2 due process considerations for private property owners.

3 COMMISSIONER NEWSOM: Is this -- does this new
4 legislation take into effect those concerns, or is it
5 literal, or are we just resubmitting the old legislation
6 as is?

7 CHIEF, EXTERNAL AFFAIRS PEMBERTON: I think at
8 this time our intention or recommendation is to resubmit
9 the previous proposal and we feel that there are adequate
10 due process provisions in the bill. There's eight
11 different mitigating factors. There's a 60-day area
12 carryover there. There's a 30-day notice provision to the
13 individual. They have the opportunity to come before the
14 Commission. They have the opportunity to apply for a
15 lease, remove the structure and --

16 ACTING CHAIRPERSON GORDON: Which governor vetoed
17 this?

18 CHIEF, EXTERNAL AFFAIRS PEMBERTON: Arnold
19 Schwarzenegger.

20 ACTING CHAIRPERSON GORDON: The rationale may not
21 apply --

22 COMMISSIONER NEWSOM: I hear you.

23 ACTING CHAIRPERSON GORDON: Do we have any
24 comments from the public?

25 A motion?

1 COMMISSIONER NEWSOM: So moved. Support.

2 ACTING CHAIRPERSON GORDON: Second.

3 All those in favor?

4 (Ayes.)

5 ACTING COMMISSIONER REYES: Mr. Chair, I will
6 abstain.

7 ACTING CHAIRPERSON GORDON: It is approved,
8 two-nothing.

9 CHIEF, EXTERNAL AFFAIRS PEMBERTON: Thank you.

10 And the fifth proposal involves a recent Bureau of
11 State Audit report stating that the Commission is not
12 adequately enforcing their insurance and bond
13 requirements. Current law requires most lessees to ensure
14 their premises and post a bond. The specific insurance
15 and bond requirements vary depending on the type of the
16 lease, the size of the structure, and other factors. The
17 BSA report found that the Commission, as I mentioned, is
18 not consistently ensuring that lessees maintain their bond
19 and liability insurance. So their report and subsequent
20 recommendation to the Legislature suggested that we
21 consider seeking legislation to provide the authority to
22 assess a monetary penalty against lessees who are out of
23 compliance with their bond or insurance requirements.

24 And staff is continuing our research and working
25 toward developing legislation to do that. So the

1 recommendation is just to -- for staff to continue that
2 process with the intention or hope of introducing a bill
3 this year.

4 And that's the last item.

5 ACTING CHAIRPERSON GORDON: Comments from the
6 public?

7 We have a motion.

8 MS. HALL: I do not believe --

9 ACTING CHAIRPERSON GORDON: Can you please come up
10 to the microphone and identify yourself for the record.

11 MS. HALL: I am Diana Hall, and I believe that
12 it's just too easy for you guys to just shove this stuff
13 down the public and not consider them. I think you are
14 taking advantage of the public.

15 ACTING CHAIRPERSON GORDON: Specifically with
16 regard to what?

17 MS. HALL: Well, I'm not very good at speaking,
18 but I'm just telling you, the things I'm hearing are
19 very -- like, pushing through the previous one, and now
20 you want to start a new bill. And who reads these bills?
21 Do you read these bills?

22 ACTING CHAIRPERSON GORDON: Ma'am, just first,
23 it's a legislative process. These bills -- they are
24 introduced, they go online. They cannot be heard in
25 committee for 30 days after they have been introduced.

1 There are various bills that go through the Legislature.
2 If someone doesn't know about, they will be noticed. You
3 can sign up. There are websites for all different kinds
4 of subjects that go through the Legislature.

5 So what you are objecting to -- you do understand,
6 this is a piece of legislation. It will go through five
7 or six committee hearings in the Legislature, have to be
8 voted on by both floors, and then be signed by the
9 governor before it would then become law.

10 MS. HALL: Okay. I just think at this level, that
11 you go a little too quickly on to these things. I think
12 we need less restrictions so that people can have a way to
13 make a living and to be able to support this California,
14 period. We live here.

15 ACTING CHAIRPERSON GORDON: Let me make a
16 suggestion. If we go ahead and authorize this piece of
17 legislation, it will be introduced. It will be posted on
18 the Commission's website.

19 MS. HALL: Okay.

20 ACTING CHAIRPERSON GORDON: I would go to the
21 website, find out about it. Any hearings on the bill in
22 the Legislature before committees will be posted. You
23 will have an opportunity to show up in the Legislature, if
24 you so choose, to testify for or against the legislation
25 at that point in time.

1 That will take -- if they drafted the bill this
2 week, it would be introduced in the Legislature somewhere
3 around February 24th. It would have until
4 September 15th to move through the Legislature, through
5 all those processes. So it would be six months with
6 numerous legislative hearings where you would have the
7 opportunity to be notified and check online, the progress
8 of the bill, and support or opposition that you might
9 have.

10 And if you look at the analysis of the bill that
11 will appear online, you will see organizations that will
12 come down and support or oppose. You have an opportunity
13 to call those organizations, get to work with them, and
14 work through the process if you have problems with the
15 legislation. But just a suggestion.

16 MS. HALL: Okay. But just getting these things
17 there, and then it's up to the public to fight against
18 them, I think you should have more concern of what you are
19 putting there on your own behalf. That's what my feeling
20 is. You should know what it is so you can put -- not just
21 get them in there and then it's up to the public to fight
22 it. You need to take it into more consideration before
23 you put it there. It causes way too much work for
24 everybody.

25 ACTING CHAIRPERSON GORDON: Thank you, ma'am.

1 MS. HALL: Yes.

2 ACTING CHAIRPERSON GORDON: Do we have a motion on
3 the item?

4 COMMISSIONER NEWSOM: I move the item.

5 ACTING CHAIRPERSON GORDON: I will second it.

6 All those in favor?

7 (Ayes.)

8 ACTING COMMISSIONER REYES: I will abstain.

9 ACTING CHAIRPERSON GORDON: And Mr. Reyes is
10 abstaining for the vote on this.

11 EXECUTIVE OFFICER FOSSUM: Thank you, Mr. Chair.

12 Item 10, who indicating that they wish to be
13 speaking to the Commission, that was pulled from the
14 consent agenda, today, after hearing Item 22, they have --
15 I've let them know that the same terms would apply to them
16 and so they do not wish to make a presentation at this
17 time.

18 ACTING CHAIRPERSON GORDON: This is Item No. 10?

19 EXECUTIVE OFFICER FOSSUM: Yes. But I think it
20 would be appropriate to do a vote on that as well.

21 ACTING COMMISSIONER REYES: I so move Item 10.
22 And also for any of the other leases subject to the same
23 adjustments, that we allow for that as well as a clock,
24 the statute of limitations.

25 COMMISSIONER NEWSOM: That's right. I support

1 that. So move.

2 ACTING CHAIRPERSON GORDON: So this is on Item
3 No. 10. Do I have a motion?

4 ACTING COMMISSIONER REYES: So moved.

5 COMMISSIONER NEWSOM: Second.

6 ACTING CHAIRPERSON GORDON: All those in favor?
7 (Ayes.)

8 ACTING CHAIRPERSON GORDON: Next -- all right.
9 I'm going to do a little time management right now, just
10 for everybody in the audience. I think the item that will
11 take the longest for us, for the rest of the day, is Item
12 No. 89, the biofoul management regulations. We are going
13 to need a closed session at some point that will include
14 the Lieutenant Governor, and he has informed me, he's got
15 about another between 30 and 45 minutes. I am thinking we
16 will probably going -- I think we're going to move right
17 now to Item No. 89, which is the biofouling.

18 EXECUTIVE OFFICER FOSSUM: I was just going to
19 suggest, if you wanted to take a break, we think the
20 closed session would probably take about five minutes, and
21 it may be that other people want to take a break as well.
22 So it's up to you.

23 ACTING CHAIRPERSON GORDON: I will tell you what
24 we're going to do. We're going to go into closed session
25 right now. It will take us about five minutes. What time

1 is it right now?

2 SECRETARY LUNETTA: 11:43.

3 ACTING CHAIRPERSON GORDON: 11:43. At 11:55, we
4 will come back to open session. So if we could clear the
5 room, I think. If we can clear the room, so we can go
6 into closed session, we will come back at 11:55 and
7 continue with the agenda.

8 (Thereupon the meeting recessed into
9 Closed session at 11:43 a.m.)

10 (Thereupon the meeting reconvened
11 In open session at 11:56 a.m.)

12 ACTING CHAIRPERSON GORDON: Call the Commission
13 back to order, please.

14 I would like to turn to Item 89 on your agenda,
15 which is an update of biofouling management regulations
16 for vessels operating in California waters. May we have a
17 staff presentation, please.

18 (Thereupon an overhead presentation was
19 presented as follows.)

20 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Thank you.
21 My name is Chris Scianni and I'm a staff environmental
22 scientist with the Marine Invasive Species Program in the
23 Marine Facilities Division. And today I'm going to be
24 presenting an informational item on the development of
25 biofouling management and regulations for vessels

1 operating in California waters.

2 --o0o--

3 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: I do want
4 to say good morning -- good afternoon, Mr. Chair and
5 Commissioners.

6 Before I begin, I wanted to emphasize the purpose
7 of our program as codified by the State Legislature in the
8 Marine Invasive Species Act, and that is "to move the
9 state expeditiously towards elimination of discharge of
10 nonindigenous species into the waters of the state." So
11 because that is the legislatively declared purpose of our
12 program, it is the guiding principle behind all of our
13 arguments.

14 --o0o--

15 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So to
16 start with a bit of background, nonindigenous species are
17 organisms that are transported by humans into areas that
18 they don't naturally or historically occur. And if the
19 conditions are right in these new areas, these organisms
20 can become established and even invasive, and they may
21 start to cause some of the negative impacts that are
22 typically associated with invasive species.

23 These six photographs here are just six examples
24 of the many organisms that are not native to California
25 but have established populations in our waters. All six

1 of these have been associated with biofouling communities
2 and all have negative impacts in California and throughout
3 the U.S.

4 The impacts from invasive species are many, and
5 they can include environmental impacts such as native
6 species displacement and altered food webs; there can be
7 economic impacts such as infrastructure damage, reductions
8 in fishery yields, reductions in tourism, and in reduced
9 tax revenues that are associated with that; and also human
10 health impacts.

11 Overall, a peer review study from 2005 indicated
12 that invasive species are responsible for about
13 \$120 billion in losses and damages each year in the United
14 States.

15 --o0o--

16 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So one of
17 the ways that these nonindigenous species are moved all
18 around the world is through vessel biofouling, which is
19 one of the most important and, arguably, the most
20 important mechanism for introducing nonindigenous species
21 into coastal areas.

22 Biofouling is defined as the attachment or the
23 association of organisms to the submerged or wetted
24 surfaces of a ship. And it had been referred to hull
25 fouling in the past, but it's now evident that the hull is

1 not the only surface of a ship that is susceptible to
2 biofouling. And, in fact, many of the wreckage areas,
3 that we refer to as niche areas, are more susceptible to
4 biofouling than the hull itself. That's because these
5 niche areas are often lacking effective antifouling
6 protection, or they are areas that are sheltered from some
7 of the hydrodynamic forces that are typically associated
8 with the hull.

9 --o0o--

10 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So in
11 addition to the hull, some examples here are bow and stern
12 thrusters, out-of-water support strips, which are areas
13 where the vessel will sit on a support block while it's
14 being dried off and while the rest of the ship is being
15 cleaned and painted with fresh antifouling coatings.
16 Those areas are not protected, and it's when water -- the
17 ship goes back into the water, there is no protection
18 there.

19 Additionally, a sea chest, here in the bottom, are
20 recesses where the vessel will take water on board for a
21 variety of purposes. And there are many others. These
22 are just three examples of some of these niche areas that
23 are more susceptible to biofouling.

24 And when we refer to biofouling, we're not only
25 talking about the organisms that physically attach

1 themselves, like a mussel or a barnacle, but also mobile
2 organisms that live within that 3-dimensional structure.
3 So the example here on the bottom is a small octopus that
4 we found living on the mussels on a ship that had
5 basically been dried off a few years ago.

6 And this middle photo here represents a whole
7 suite of mobile organisms that were pulled from a single
8 sea chest on a vessel in New Zealand a while back.

9 On the bottom right photo is the same photo that
10 you saw on a title slide. And that's another problematic
11 niche area. It's a recess where a cruise ship stabilizer
12 fin will slide into, and, again, this area is often
13 unprotected or underprotected with antifouling coatings or
14 added, additionally, to an area that's sheltered from some
15 of the high velocity water flows. So it is more
16 susceptible. And, basically, I put this picture up on the
17 top to give you an idea of what that looks like when it's
18 fully extended.

19 --o0o--

20 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So the big
21 question is, why do we care about biofouling? And from
22 the shipping industry's perspective, it's important
23 because biofouling on a hull represents surface roughness,
24 and that leads to increased hydrodynamic drag when the
25 vessel is moving through the water. And increased drag

1 leads to increased operate -- fuel consumption and,
2 ultimately, fuel costs as well. So it's in the shipping
3 industry's best financial interest to prevent biofouling
4 on their hulls. Most shipping companies do do a pretty
5 good job of that. Unfortunately, that same financial
6 incentive is not present for most of those niche areas
7 that we're so concerned about.

8 The reason the state of California should be
9 concerned is because, as I said earlier, biofouling is
10 considered to be arguably the most important vector or
11 mechanism for the introduction of nonindigenous species
12 into coastal areas.

13 This table here illustrates that and it summarizes
14 studies from all over the world. If you look at the first
15 row here, you see that biofouling is responsible for about
16 42 and a half percent of all of the established coastal
17 nonindigenous species throughout the entire world, and
18 that value might be as high as 60 percent for us here in
19 California.

20 If you just scan through the rest of it, you will
21 see that biofouling has been implicated as the main vector
22 for the introduction of nonindigenous species in many
23 different countries and many different regions all over
24 the world. So this is obviously a program that needs
25 focused attention.

1 --o0o--

2 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Just this
3 month, our program's sister agency, the California
4 Department of Fish and Game, released their triennial
5 report which details the coastal and port surveys that
6 they are required to conduct under the Marine Invasive
7 Species Act. The 2010 surveys indicated that there are
8 324 established nonindigenous species currently here in
9 California's estuary and marine waters.

10 This includes three new species that were
11 discovered in the San Francisco Bay during these 2010
12 surveys; and they were not there in previous surveys. And
13 these three photographs here are just some examples of
14 what those three new San Francisco Bay species are.
15 There's a polychaete worm here, a red alga, and a
16 caprellid amphipod. And all three of these were likely
17 introduced from biofouling or ballast water.

18 --o0o--

19 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: And just
20 to give you a visual idea of how one of these species
21 could have been brought into San Francisco Bay on the hull
22 of the ship, the caprellid amphipod specifically, we have
23 a video here -- if we could click on the picture on the
24 left -- of a ship that we visited a couple years ago in a
25 dry dock. And you will see hundreds of these caprellid

1 amphipods moving around on the small section of the hull.

2 (Video presentation)

3 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: And this
4 is a small patch of that ship. And if you look to the
5 right, that's the entire ship. It's a very large ship, so
6 it's entirely likely that there were tens to hundreds of
7 thousands of these organisms on a single ship. And
8 because these are mobile organisms, it's also possible
9 that they can literally jump ship if they are introduced
10 into a favorable environment.

11 --o0o--

12 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So in
13 light of the overwhelming evidence of the bioinvasion risk
14 to California from biofouling and the need to protect
15 California's waters, the State Legislature adopted
16 legislation in late 2007, placing a mandate on the
17 Commission to develop and adopt biofouling management
18 regulations.

19 Staff quickly set out to fill key information gaps
20 that would be necessary to inform the development of these
21 regulations. We developed a reporting form that would
22 allow us to collect information directly from the shipping
23 industry about their hull husbandry practices and certain
24 voyage characteristics that are known to influence
25 biofouling accumulation.

1 So, for instance, these pictures show us some
2 examples of the data that we've been collecting --
3 information about the ship's dry docking schedule; the
4 types of antifouling coatings that are being used; the
5 occurrences of in-water cleaning; and the occurrences of
6 extended residency or stationary periods. And these are
7 just a few examples of the many pieces of data that we
8 have been collecting from every ship every year from 2008.

9 At the same time, we continue to fund targeted
10 research that's in depth to complement the hull husbandry
11 dataset and also to answer some of -- give us insight into
12 some of the biological patterns that are associated with
13 biofouling.

14 --o0o--

15 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: All of
16 this information was fed into a technical advisory group
17 process that we started in August of 2010. This was an
18 open and transparent process to share information and
19 inform the development of these regulations.

20 Our intent was to bring together industry,
21 technical, scientific, and regulatory experts to join in
22 the discussion on the current status of biofouling and
23 bioinvasion science; the regulatory requirements and
24 guidance documents that were in development and that
25 currently existed throughout the world, and that includes

1 the development of the International Maritime
2 Organization's biofouling guidelines and regional
3 biofouling management regulations in Australia and New
4 Zealand. And all three of those organizations were active
5 participants in our technical advisory group.

6 We also discussed the current capabilities of
7 antifouling technologies, current vessel practices, and
8 routine maintenance schedules.

9 --o0o--

10 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So this
11 technical advisory group consisted of a number of varied
12 stakeholders that actively participated in these meetings
13 and that provided comments and suggestions on various
14 drafts of these regulations and that were included in the
15 TAG e-mail distribution list. And that includes many
16 shipping industry representatives, including ship owners
17 and trade groups, antifouling coating and system
18 manufacturers and distributors, as well as dry docking and
19 in-water cleaning providers.

20 It also included many world-renowned scientists
21 who specialize in bioinvasions and biofouling in
22 particular, and many of the scientists that we included in
23 this group also authored studies that we relied upon and
24 included in our official document.

25 And we included many government and regulatory

1 bodies from around the world including the State Water
2 Resources Control Board here in California; our
3 counterparts in the states of Oregon, Washington, and
4 Hawaii, and also in Canada; several U.S. federal agencies;
5 and again, the International Maritime Organization, the
6 Australian government, and the New Zealand government.

7 --oOo--

8 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So as I
9 said earlier, we started this TAG process in August of
10 2010, and in the year and a half since then, we've held
11 four formal meetings and have had several informal
12 meetings. During the first two formal meetings, we
13 discussed the current state of the science and the
14 regulatory regimes all around the world.

15 We heard directly from the two co-chairs of the
16 IMO's ballast water and biofouling working group about the
17 ongoing development of IMO's biofouling guidelines. And
18 we took all the information that we learned during those
19 first two meetings and we prepared a first draft of these
20 regulations, and we distinguished that to the group prior
21 to our third meeting. We discussed that first draft and
22 took comments and suggestions during and after that first
23 meeting -- that third meeting, excuse me, and used all
24 that information to create a second draft, which we then
25 sent to the group prior to the fourth meeting. And again,

1 we discussed it at the fourth meeting and accepted
2 comments and suggestions during and after that meeting.

3 That information was fed into a third draft that
4 was then given to the TAG electronically and we accepted
5 electronic comments and suggestions at that point, and
6 created a fourth draft that became the official proposed
7 regulations that we released to the public in September of
8 2011.

9 That officially started the California rulemaking
10 process under the Administrative Procedures Act. Under
11 the Administrative Procedures Act, we set the first
12 comment period at 45 days. However, during that time,
13 staff accommodated several requests from the shipping
14 industry, including one to extend that comment period an
15 additional three weeks to 66 days, and another request to
16 hold a public hearing, and we held that public hearing in
17 Oakland in November.

18 So at the close of that first public comment
19 period, we took all the comments that we received and we
20 reviewed them, considered them, and we made considerable
21 revisions to the first publicly released draft. We
22 released those revised regulations in December,
23 December 30th, and that was after another -- accommodating
24 another request from the shipping industry to delay that
25 by a couple weeks because of the Christmas holiday. We

1 also doubled the required length of the second comment
2 period to 30 days to allow extra time in light of the New
3 Year's holiday, and that comment period will close on this
4 coming Monday.

5 --o0o--

6 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So for the
7 rest of the talk, I wanted to just go over the major
8 provisions of the proposed regulations. First, I wanted
9 to describe what our intent was with these proposals.
10 First, we wanted to build upon the IMO biofouling
11 guidelines, which are now adopted. We wanted to improve
12 upon that voluntary framework that was put in place to
13 ensure that effective biofouling management strategies are
14 adopted for each and every ship that operates here in the
15 state. We wanted to basically encourage shipowners to
16 develop coherent biofouling management strategies that
17 would allow them to maintain consistently clean ships, and
18 that would reduce the likelihood of introducing
19 nonindigenous species into California and every other port
20 that a vessel will visit throughout its cruise.

21 And we felt that this could be accomplished
22 through enforceable, quantifiable regulations that would
23 encourage effective planning for holistic biofouling
24 management, not only the hull, but also those niche areas
25 that there is not currently a financial incentive to

1 maintain in the state.

2 --o0o--

3 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: The major
4 component of these regulations, and the foundation of the
5 proposed regulations, is a strong and effective biofouling
6 management plan. This management plan will detail the
7 vessel-specific management strategy per each ship, and
8 that strategy will vary from ship to ship because of the
9 unique characteristics of each ship.

10 This plan will detail the specific characteristics
11 that influence biofouling accumulation, such as the type,
12 number and location of niche areas, the traveling speed of
13 the vessel, the planned in-service period, the trading
14 route, and a whole suite of other pieces of information
15 that should be used and should be taken into account when
16 a ship owner is deciding upon which types of antifouling
17 coatings and systems to be using on their ship. Also, the
18 information from those antifouling coatings and systems
19 should also be included in this plan.

20 This management plan was seen as the major tool by
21 the international community, and it is a major component
22 of the IMO biofouling guidelines, and it's our
23 understanding that proactive companies are already
24 starting to develop these.

25 ACTING COMMISSIONER REYES: Question.

1 ACTING CHAIRPERSON GORDON: Sure. Mr. Reyes.

2 ACTING COMMISSIONER REYES: So if you go back to
3 that, the strategy and plan will vary by ship -- specific
4 characteristics of the ship, the niche areas, and so
5 forth. So you're -- without going through all the other,
6 you are envisioning different strategies for different
7 types of vessels.

8 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Yeah.
9 Because each ship will have their own unique speed that
10 they travel at, have their own unique amount of time that
11 they sit in port. So a tank vessel is going to be
12 different from a passenger ship, because a passenger ship
13 is in port for maybe eight to 12 hours, versus a tanker
14 might be there for a couple of days. So the type of
15 coatings -- a whole suite of coatings are out there
16 targeted for different operational profiles. So....

17 ACTING COMMISSIONER REYES: So a cruise ship will
18 have different than a cargo.

19 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Oh,
20 definitely.

21 And another point I would like to make is that in
22 the past, vessel owners have used one single antifouling
23 coating for the entire ship, and it may be that it's more
24 appropriate for them to use one coating on the hull and
25 others in different niche areas that are more -- more

1 problematic. That's what I want them to think about.

2 CHIEF COUNSEL LUCCHESI: If I may interrupt. I
3 just wanted to remind those in the audience and the
4 Commissioners that because we are in the middle of the
5 rulemaking process for these regulations, this portion of
6 the meeting and the transcript will be submitted to OAL as
7 part of the rulemaking procedures, and staff will be
8 responding to any comments made by the Commissioners
9 and/or the audience appropriately and in accordance with
10 the APA.

11 ACTING COMMISSIONER REYES: Thank you.

12 --o0o--

13 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: The second
14 portion is the biofouling record book which will
15 complement the vessel-specific management plan and it will
16 document the implementation of that plan, so it will serve
17 as a central location to house details about the
18 installation, application, use, maintenance of these
19 antifouling systems that are used on the ship, and it will
20 document the ship's inspection and maintenance history,
21 including propellor polishing, biofouling evaluations,
22 in-water cleaning, or dry docking operations.

23 All this information in one central location will
24 assist the ship owner and operator of assessing the
25 efficacy of their biofouling management plan and will

1 alarm them if something needs to be done to remediate
2 whatever they see in those inspection reports.

3 It will also assist the Commission staff during
4 inspection as to evaluation compliance with the proposed
5 regulations. And again, this record book was a major
6 component of the IMO biofouling guidelines.

7 --o0o--

8 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: We're also
9 proposing performance standards that would set upper
10 thresholds for allowable biofouling on a vessel's wetted
11 surface. The intent here is twofold: First, to provide
12 protective limits for biofouling accumulation in order to
13 minimize species release. And this -- these limits are in
14 line with the stated purpose of the Marine Invasive
15 Species Program.

16 The second is to provide incentive for proper
17 planning and implementation, including the selection of
18 appropriate antifouling systems.

19 Overall, we would set two performance standards:
20 One would be targeted towards the majority of the vessel's
21 hull, and the other would be targeted towards those more
22 problematic niche areas.

23 --o0o--

24 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: The first
25 standard would require that no more than 1 percent cover

1 of macrofouling exist on the hull of the ship, and
2 macrofouling refers to the visible, large organisms and
3 not necessarily the slime layer that's typically
4 associated with these ships.

5 These two diagrams here are just examples of what
6 1 percent might look like.

7 ACTING CHAIRPERSON GORDON: Does this require
8 ships to be out of the water to be inspected to check
9 what's 1 percent cover?

10 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: No. I
11 will get to that in a bit, but there will be regular
12 inspections that can be done in water and that are being
13 done in water right now.

14 ACTING CHAIRPERSON GORDON: And who's doing
15 inspections?

16 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: In-water
17 diving contractors that they hire to clean and they hire
18 to polish propellers and that are hired for biofouling
19 evaluations and inspections.

20 ACTING CHAIRPERSON GORDON: But who -- so they
21 self-report and do we check on the work?

22 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Yeah. So
23 right now, if a ship has their propellor polished, for
24 instance, they will go in and divers will go in, polish
25 the propellor, go around the ship and do a biofouling

1 evaluation, and that will all go into a report with
2 pictures and descriptions. They'll put that into their
3 biofouling record book. And when our inspectors go on
4 board, they will look at that record book, and they are
5 required to have an inspection no more than six months
6 prior to coming into California. So they're doing this --
7 most shipping companies are already doing this every six
8 months, polishing their propellers and getting
9 evaluations.

10 ACTING CHAIRPERSON GORDON: All our inspectors do
11 is look at the data book.

12 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Yes. But
13 if there is a concern, we have the ability to -- we will
14 have the ability to either put an ROV in the water to look
15 and take photos and video, or we can hire diving companies
16 to do that.

17 ACTING CHAIRPERSON GORDON: How many inspectors do
18 we have currently on staff?

19 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Thirteen,
20 I think. Thirteen. Fourteen. Split up between Northern
21 California and Southern California.

22 EXECUTIVE OFFICER FOSSUM: These are our marine
23 facilities inspectors that typically are looking at the
24 oil spill prevention efforts of the marine terminals, but
25 they would be looking at the logbooks as well. So when

1 the ships come in --

2 ACTING CHAIRPERSON GORDON: They are already doing
3 the oil inspections. And they are going to be inspecting
4 how many ships a year with this 13 staff?

5 EXECUTIVE OFFICER FOSSUM: Whether we dive on
6 these ships or not remains to be seen. We may not have
7 staff for that. It just depends.

8 But what's important here is, these are
9 self-reporting. They are to keep the logbooks. They are
10 to come up with the management plans. It's up to the ship
11 owners to do these things. And Chris will get to it a
12 little bit later, but besides the 1 percent, there's other
13 standards that are going to be set before they actually
14 have to take any action. So you will hear more from that
15 in a second.

16 ACTING CHAIRPERSON GORDON: Are these general
17 funds?

18 EXECUTIVE OFFICER FOSSUM: No.

19 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: These are
20 Marine Invasive Species Control Fund.

21 COMMISSIONER NEWSOM: Just out of curiosity -- I'm
22 sure you're going to get to this -- the 1 percent, how
23 does that compare and contrast to international standards
24 or other standards?

25 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Right.

1 Now there are no international standards. The only
2 existing guidelines -- there are no regulations in place
3 yet. They are in development in Australia and New Zealand
4 right now. During the discussions at IMO -- and that is a
5 voluntary guideline -- they -- early on, they talked about
6 setting a standard that would be clean ship. A definition
7 of a clean ship would be no macrofouling at all. Zero
8 percent. That went by the wayside because that was not
9 appropriate for a voluntary guideline to have a standard
10 like that. So that went away. IMO said that they will be
11 evaluating the implementation and the efficacy of the
12 biofouling guidelines and, if necessary, they will try to
13 put in place a convention similar to the Ballast Water
14 Convention that they do.

15 So this standard of 1 percent will allow for a
16 minimal amount of biofouling that occurs from mechanical
17 coating damage, which happens on ships in regular service.
18 That may be from anchor chains rubbing the bulbous bowel
19 or from other tugs fendering next to it. But this will
20 allow that mechanical coating that we put in -- will not
21 allow for widespread coating failure, which may occur if a
22 vessel uses an inappropriate coating or a vessel goes
23 outside of its normal operating profile.

24 I do want to point out that for an average vessel,
25 and average-sized vessel, 1 percent of the wetted surface

1 area is about 180 square yards, and that's a very large
2 surface area and that would represent a large amount of
3 potential biofouling per ship. And so while this isn't as
4 protective as it can be, it was a compromise that we made
5 based on the comments that we received during the first
6 public comment period.

7 --o0o--

8 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: And just
9 as a visual aid, this is a ship that we visited in dry
10 dock a couple of years ago that would have passed that
11 1 percent threshold. It has a biocide-free coating on the
12 top and you can see that there are no macrofouling
13 organisms on the top throughout the majority of the hull.
14 There are some damaged areas, like I talked about earlier,
15 towards the bow of the ship, and the biofouling that
16 occurs there, but overall, the ship would have been under
17 the 1 percent cover, threshold, so there wouldn't have
18 been any complaints.

19 --o0o--

20 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: The second
21 performance standard is targeted at those problematic
22 niche areas, and just to remind you, those niche areas are
23 more susceptible of biofouling due to a variety of reasons
24 including inadequate antifouling protection, variable
25 hydrodynamics, or coating damage, or a combination of

1 these. These niche areas present clear bioinvasion to
2 California and every other coastal area, and that has been
3 repeatedly demonstrated in the scientific literature over
4 the past ten years, including many of the studies that we
5 relied upon and included in our rulemaking docket.

6 The six niche areas that we're targeting with
7 these proposed regulations are sea chests, bow and stern
8 thrusters, stabilizer fins, the out-of-water support
9 strips I talked about earlier, rudders, and propellers.

10 --o0o--

11 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So that
12 second standard is no more than 5 percent macrofouling
13 cover on those six niche areas. And these diagrams here
14 are just to give you an idea of what 5 percent might look
15 like on a ship, but of course they'll vary from ship to
16 ship. We're providing this elevated performance standard
17 here to allow some leeway for these niche areas, because
18 we understand that they can be more susceptible to
19 biofouling and they may be more difficult to manage. But
20 I will ensure that focused attention is placed on these
21 areas where minimal financial incentive currently exists
22 to keep them in a clean state.

23 The other important part to point out is that
24 keeping it at such a low threshold will limit biofouling
25 aggregation and species diversity. You tend to get more

1 species when you have more biofouling in the area.

2 --o0o--

3 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So a
4 vessel -- no. I jumped ahead. Sorry.

5 We've set conditions for the presumption of
6 compliance for sea chests because sea chests are one of
7 many more problematic niche areas both to deal with and
8 it's one of the most -- the scientific literature has
9 pointed out that it is one of the most problematic in
10 terms of a bioinvasion, and they are small areas that are
11 typically loaded with biofouling.

12 ACTING COMMISSIONER REYES: What is a sea chest?

13 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: A sea
14 chest is a recess of the hull that the vessel will take
15 water on board for it to fill their ballast tank, for it
16 to cool their engine, for a variety of purposes. So they
17 are actively pulling water on board and pulling these
18 larvae on board and actively recruiting. So it's an area
19 that is pretty hard to maintain. And because they are
20 hard to maintain and because they are -- it's actively
21 pulling water, it can be dangerous to send divers down to
22 go in and clean, so they are not normally cleaned under
23 most situations. In some cases, they are. But because
24 they are not normally cleaned, if preventive management
25 fails, then post-hoc management is often difficult.

1 But there are existing protective technologies
2 that are in use and have been in use for decades, since
3 the '50s. And 50 percent of the fleet uses these. And
4 these are marine growth prevention systems that are often
5 installed either in a sea chest or further downstream in
6 the sea strainer. And they basically release small doses
7 of each copper or sodium hypochlorite to prevent things
8 from growing there.

9 We know that at least 50 percent of the fleet has
10 these installed on their ships, and we are saying this
11 condition is that if a ship is using one of these, we will
12 consider it complying with the regulation because it does
13 seem to be preventative.

14 --o0o--

15 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: These
16 three photos on the top are the same ones we saw on the
17 previous slide, and those are just examples of sea chests
18 that are not protected with these types of antifouling
19 systems. You can see that they are pretty heavily fouled.

20 And the photos on the bottom are sea chests that
21 are protected with marine growth prevention systems that
22 are actively being used. So this is the type of
23 encouragement that we hope to give to the ship owners.

24 --o0o--

25 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So we

1 talked about this earlier, but a vessel must be compliant
2 with the performance standards at the time of regular
3 inspection for biofouling extent, and we spelled that out
4 with a schedule that was specifically aligned with routine
5 maintenance, but this provision and the schedule were both
6 suggested by shipping industry members of the technical
7 advisory group. And this was also a compromise based on
8 comments that we received after the first comment period.

9 This inspection should take place no longer than
10 six months prior to arrival to California or no longer
11 than 12 months prior if the vessel was recently dried off
12 or it was delivered as a new ship. And if a vessel is
13 found to be out of compliance at the time of inspection,
14 then the biofouling should be removed.

15 And then I do want to say that the schedule that
16 we're pointing out here was aligned with current propeller
17 polishing activities, which occur every six months for
18 most vessels already, and during the propeller polishing,
19 most of the propeller polishing diving providers will do a
20 swim around and prepare a report to evaluate biofouling
21 extent.

22 And because this schedule here allows a ship to
23 come into California possibly more than five months since
24 their last evaluation, we put a provision in there to
25 allow Commission staff to require maintenance if, for

1 instance, a ship comes into California in gross exceedance
2 of those performance standards. So we're defining "gross
3 exceedance" as no more than 5 percent for the hull, where
4 the actual performance standard is 1 percent, or no more
5 than 50 percent cover for the niche areas, where the
6 actual performance standard is 5 percent. And this type
7 of cover should not happen in five months unless something
8 goes terribly wrong -- if the vessel sits for a couple of
9 months in port. So this basically is just so that
10 Commission's hands aren't tied if a ship is evaluated and
11 is confined but then undergoes some sort of practice that
12 would put them in an out-of-compliance position, a grossly
13 out-of-compliance position.

14 --o0o--

15 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: And then
16 the final, major, provision in these regulations is a
17 provision for extended residency vessels. And these are
18 vessels that will sit in one area, stationary, for 90 days
19 or greater, because this is a practice that is associated
20 with heavy biofouling accumulation.

21 And these two photos on the top here are just an
22 extreme example of what can happen when a ship sits for a
23 long period of time. This vessel here sat for seven
24 months, and you can see heavy biofouling on that hull.
25 And then this picture here is the sea floor just below

1 that ship, and this is an area where that organism is not
2 native to it. So the authors of the study showed that
3 this species was transported into this new environment
4 from the ship, and that's the type of thing we're trying
5 to prevent with this provision.

6 This provision will also -- actually, I should
7 jump back. This provision will require inspection if a
8 vessel sits in one area for 90 days, and if cleaning is
9 required, then it needs to be cleaned before it comes to
10 California. This encourages a clean-before-you-go
11 strategy, where a ship that sits in the one area, the
12 organisms that colonize it will be local to that area,
13 will already be in that area, so if they are moving in
14 that area, it shouldn't be a major concern from a
15 biological perspective. And this is the strategy that has
16 been pushed in New Zealand and all around the world.

17 This is also an important provision because of the
18 current global economy. A lot of ships over the past few
19 years have been laid up, waiting for work, in places like
20 Singapore here, where they are just waiting for work, and
21 when the ship gets hired, if this is not managed before it
22 goes into service, it can be a pretty heavy load of
23 biofouling.

24 --o0o--

25 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: A few

1 other provisions that are included is the continuation of
2 the collection of the hull husbandry reporting form, which
3 we have been collecting since 2008. This will allow us to
4 collect valuable data to evaluate vessel practices and the
5 efficacy of our regulations. It will also allow the --
6 excuse me, allow for per vessel risk assessments to
7 prioritize Commission inspections. So we'll send
8 commissioners -- the Commission staff out on inspections
9 based on the most risky ships based on the reporting
10 forms.

11 There's also a provision that clears up
12 uncertainty surrounding propeller cleaning in California.
13 There was concern from several industry members during the
14 first public comment period that a current permit by the
15 State Water Board would ban the practice of propeller
16 polishing unless the Commission took action, because of
17 the language in that permit. So we've added a provision
18 in there to allow the practice to continue because we
19 don't feel that it is a major concern from a biological
20 perspective or from a water quality perspective.

21 We want to point out that propeller cleaning is an
22 important tool for ship owners to improve fuel efficiency.
23 And like I said earlier, this activity is conducted about
24 every six months for most vessels. The other important
25 part is that during this propeller cleaning, like I

1 mentioned earlier, they will do a biofouling evaluation,
2 and that's important for us. We want to be able to have
3 them -- have the capability to conduct their evaluations
4 in California so that they can remain in compliance with
5 our schedule.

6 And finally, there's a component that would allow
7 for an alternative -- petitioning the alternatives. A
8 ship owner can petition an alternative if they feel they
9 have a practice that would fulfill the purpose of the
10 regulations, a better idea, then they can petition the
11 Commission staff, and this section lays out the
12 requirements for how do I go about petitioning the
13 response time before they will get an answer, and how the
14 approval process will go through.

15 --o0o--

16 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: And then
17 next steps. Like I said earlier, we're currently in the
18 midst of that second comment period, and that comment
19 period will close next Monday, on January 30th. We will
20 continue at that point. We will look at those comments
21 that we received and we will evaluate them and we will
22 continue to operate under the provisions of the
23 Administrative Procedures Act.

24 This will ensure active participation by all
25 stakeholders and will ensure that our actions are open and

1 transparent. When they are ready, we will bring the
2 proposed regulations back before the Commission for final
3 approval, and although it's not required, we are planning
4 on preparing a guidance document to put guidance out there
5 on how a vessel could develop vessel-specific management
6 strategies, give ideas, and provide examples of the
7 management plan and record books so that they have
8 templates to work off of.

9 --o0o--

10 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: And then
11 finally, the last part of my presentation, I wanted to
12 play a small statement from the -- from Dr. Ian Davidson,
13 who was the principal scientist for most of the
14 Commission-funded studies over the past few years. Just
15 to give a little bit of background into the science that
16 fed into these regulations.

17 So can you push play?

18 (Video presentation)

19 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Just the
20 last slide, I just want to remind Commissioners that we
21 had five letters that were sent in support and I just want
22 to say their names and their affiliations for the record:
23 William Aila, the chairperson from Hawaii's Department of
24 Land and Natural Resources; Harry Coulombe, the marine
25 division manager at Far West Corrosion Control Company;

1 Dr. Oliver Floerl, a scientist with New Zealand's National
2 Institute of Water and Atmospheric Research; Dr. Ashley
3 Coutts, the managing director of Biofouling Solutions in
4 Tasmania; and Dr. Naomi Parker, the science policy manager
5 at MAF Biosecurity New Zealand and one of the two
6 co-chairs of the IMO ballast water and biofouling
7 workgroup.

8 --o0o--

9 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: And that
10 ends it. I would be happy to answer any questions.

11 ACTING CHAIRPERSON GORDON: When would these --
12 when would these regulations take effect if they were
13 passed on the schedule that we have right now?

14 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: We have
15 stated that it would go into effect on January 1st, 2014.
16 However, the performance standards would not go into
17 effect until a vessel comes out of their first dry dock
18 after 2014, so it's possible that a ship that goes into
19 dry dock in 2013 won't have to comply with the performance
20 standards until potentially 2018.

21 ACTING CHAIRPERSON GORDON: What about the data
22 gathering? When would that start under the regime you are
23 currently proposing?

24 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: January 1,
25 2014. But we're currently collecting those data and we're

1 planning on using the same reporting form, so we're
2 currently collecting and we have been collecting since
3 2008.

4 ACTING CHAIRPERSON GORDON: The dry -- I don't
5 know the word you used, "stochastic." Stochastic ships
6 are the ones that are in dry dock, not the ones being --

7 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: No. Those
8 are the ones that their travel patterns are not
9 predictable, it's stochastic. So it's also for those
10 ships that I referred to as laid up or they are sitting in
11 one stationary position for a long period of time. So
12 those are the ones that Ian was talking about are
13 considered to be extremely risky from a biological --

14 ACTING CHAIRPERSON GORDON: Yeah.

15 ACTING COMMISSIONER REYES: You know, I would like
16 to hear from the members of the public and the industry.
17 I would like to hear from the industry and other affected
18 parties and see what they have to say.

19 ACTING CHAIRPERSON GORDON: Okay. Let's start --
20 we have a whole list of folks who wish to speak. Why
21 don't we start with those who are supporting the
22 regulations as written. It's hard for me to tell from
23 here. Do we have any folks here who wish to speak in
24 support of the regulations as written? Will you come
25 forward, please?

1 And I -- this is for everyone who is testifying.
2 There will be some leeway given, but please try to keep
3 your comments to approximately three minutes.

4 MS. BLODGETT: Hello. My name is Abigail Blodgett
5 and I'm here representing San Francisco Baykeeper, which
6 is a nonprofit organization that aims to protect water
7 quality in the Bay Area.

8 Baykeeper is generally very supportive of these
9 draft regulations and we hope that the commissioners will
10 be supportive as well. In particular, we commend the
11 State Lands Commission for including measurable
12 performance standards and also for following the IMO
13 guidelines for biofouling management.

14 However, I would like to make a few comments about
15 how the regulations could be improved to better protect
16 water quality in California waters.

17 Again, we are concerned that there's a section
18 prohibiting gross exceedances of the performance
19 standards. And I think that this provision is faulty
20 because it will allow vessels to enter California waters
21 with up to 15 percent of their niche areas covered with
22 macrofouling. From my plain understanding of this
23 regulation, it seems like this provision contradicts the
24 main performance standard that limits macrofouling to
25 5 percent on niche areas.

1 Another comment is that we very much thank the
2 Commission for requiring vessels to prepare a detailed
3 biofouling management plans and record books. But these
4 documents should be made available to the public to ensure
5 that there's adequate transparency of vessel operations.
6 For example, to show that this is a feasible process, the
7 State Water Resources Control Board recently decided to
8 require all permittees under the statewide general permit
9 for pesticide discharges to electronically file their
10 notice of intent and pesticide action plans, and all of
11 these notices of intent and pesticide action plans are on
12 the state board's website. We would like the Commission
13 to require something similar.

14 Finally, we're concerned that the draft regulation
15 allows vessels to clean their contaminated ships in water
16 way too often. Any vessel that's allowed to clean their
17 ships in the San Francisco Bay will be releasing invasive
18 species into a waterway that is already impaired under
19 section 303(d) of the Clean Water Act for exotic species.
20 The EPA's vessel general permit expressly states that
21 cleaning should occur on dry land whenever possible, so
22 the Commission's draft biofouling regulation should
23 require the same.

24 That's the end of my comment.

25 ACTING CHAIRPERSON GORDON: Thank you.

1 Next in support?

2 MR. PHILLIPS: Good afternoon. I'm David
3 Phillips. I represent a company called Hydrex, and we,
4 among other things, have a system for a nontoxic system
5 for coating hulls and keeping them clean. And we -- I
6 would like to say, we're very impressed that California is
7 pretty much leading the way with the regulations that are
8 being introduced, and it definitely needs to be done.

9 I do feel -- I wasn't involved in the TAG groups,
10 unfortunately. I do feel that the response to public
11 comment or industry comment has led to unnecessary
12 compromise. I don't know the science of it exactly -- I'm
13 not a scientist -- but it seems that 26 square yards, of
14 whatever it is, of macrofouling is a pretty good risk of
15 introducing some invasive species. So if the purpose of
16 the legislation is to eliminate the introduction of
17 hull-borne invasive species into California, why not
18 eliminate it?

19 There is a very practical, cost effective,
20 economical way -- which I don't know that I have time to
21 go into now, and I probably don't, in three minutes, for
22 sure -- to completely eliminate macrofouling on the hull
23 and in the niche areas. There is a system. It's out
24 there. It's being used by the Disney cruise line. It's
25 being, right now, applied to the space launch Odyssey.

1 There are a number of cargo vessels that use it. It's in
2 use. It's proven, and it works.

3 The beauty of the system of keeping the hull and
4 the niche areas free of macrofouling is that the ship
5 owner and operator saves between 5 and 25 percent of his
6 fuel, which is a huge cost, way, way, way surpasses the
7 cost of maintaining a ship. So, and at the same time, you
8 reduce greenhouse gas emissions by cutting down the fuel
9 use. So everybody wins. It's a nontoxic solution.

10 ACTING CHAIRPERSON GORDON: How many companies
11 make this particular system?

12 MR. PHILLIPS: I would say there are probably two
13 or three that make it right now. It's -- basically what
14 it is, is it's a hard coating, it's nontoxic, and it can
15 be cleaned. Those are the things that are important. You
16 can't really clean toxic antifouling coatings because you
17 create a pulse discharge of biocides and you damage the
18 coating. You can't really clean silicone-type coatings
19 beyond microfouling. You can keep them at a microfouling
20 state, but as soon as you get into removing barnacles and
21 stuff like that, you are going to pull off the coating.
22 You are going to damage it. Then you have to up your
23 numbers to the 5 percent and so on.

24 Basically I guess my message is, we're totally in
25 favor. I'm talking to Washington state as well. They are

1 very interested in the progress. I think California is
2 leading the way. Australia and New Zealand is right up
3 there. But I don't think the compromise is unnecessary
4 [verbatim]. I think what's happened is, information has
5 been introduced which is not fully accurate and that's
6 resulted in some compromises that I don't think need to be
7 made. If you are going to eliminate the threat of
8 invasive species, then eliminate the threat of invasive
9 species.

10 One more comment on propeller polishing. It's
11 absolutely 5 percent of your fuel cost is keeping your
12 propeller clean. If you clean it frequently, you don't
13 have to get into the abrasive grinding that is done,
14 called polishing. You can actually keep it clean by
15 frequent, quick, brushing, abrasive brushing, and that
16 will, again, prevent the elimination -- the emission of
17 copper and other chemicals into the water, greatly reduce
18 it. And so we're completely in favor of that as well.

19 ACTING CHAIRPERSON GORDON: Let me -- I'm in a
20 difficult place. I'm going to put on my lawyer hat for
21 one second.

22 MR. PHILLIPS: Yes.

23 ACTING CHAIRPERSON GORDON: You said, it sounds
24 like you have built a better mousetrap. Tell me what the
25 industry is going to say when they come up as to, if this

1 stuff works at a hundred percent level, nontoxic,
2 decreases hull drag, why are they going to say they are
3 not using it? And if there's only one company -- if
4 there's several companies that are making it, so it's not
5 a sole source contractor, why wouldn't every ship builder
6 in the world come and use this stuff?

7 MR. PHILLIPS: I think they will. I think it's a
8 matter of it becoming a cultural lag, of we've always done
9 it this way and it's too much of a hassle to blast our
10 hull down to remove all the paint. It's hard to get
11 sand -- you know, to get good blasting done, and basically
12 it's because we've always done it that way and because the
13 industry is, at the moment, operating on a basis that uses
14 poison as a way of keeping fouling down. It's done it for
15 years. Ninety-plus percent of the ships on the water are
16 using it. However, those very biocides that are using are
17 coming under increasing scrutiny, including in California.

18 So you are now going to have to clean these
19 vessels and you are just going to be just distributing
20 biocides into the water. I'm getting off the question.
21 Sorry.

22 They are going to say, we will use it, as soon as
23 they actually get a chance to see it in action. They talk
24 to the people that are using it. I mean, every new build
25 that's put out by the Disney cruise line is coated with

1 this -- with a hard coating. They don't use antifouling
2 anymore. And they issue savings in fuel statements of
3 10 percent and up. So I think they will.

4 ACTING CHAIRPERSON GORDON: Thank you.

5 Any other supporters of the proposed regulations?

6 MR. PHILLIPS: Thank you.

7 ACTING CHAIRPERSON GORDON: Thank you very much,
8 sir.

9 MS. McDOWELL: Hello. I'm Karen McDowell. I
10 represent the San Francisco Estuary Partnership, which is
11 part of the National Estuary Program.

12 San Francisco Estuary is known as one of the most
13 invaded systems in the world, and scientists have
14 described the estuary as an important hub for marine
15 invasive species for the entire western North America.
16 Because of this, our program has been involved in
17 developing policies for aquatic invasive species for many
18 years. I personally have been involved since 1999. We
19 were included as one of the members on the State Lands
20 Commission's technical advisory group on vessel
21 biofouling. I would like to commend the staff for
22 convening a very open process. They had strong
23 stakeholder participation, and they also involved some of
24 the world's leading scientists on this issue.

25 Our program is very supportive of the proposed

1 regulations, and, in particular, we support the provisions
2 which address the niche areas, which have been noted as
3 being high risk areas, and also the vessels that have had
4 extended residency periods, which are also high risk
5 vessels.

6 We think that implementation of these regulations
7 will help stem the tide of invasive species into
8 California and into western North America.

9 Thank you.

10 ACTING CHAIRPERSON GORDON: Thank you.

11 Any other supporters of the regulations as
12 drafted?

13 We will start with opponents. Why don't you come
14 forward. I got Ms. Silva, Mr. Berge, Mr. Mendes,
15 Mr. Peterson, in no particular order. You folks can....

16 MR. PETERSON: Chris Peterson, vice president of
17 operations of Crowley Maritime Corporation.

18 First, let me say, there's no box to say pretty
19 much okay, got a couple of issues.

20 ACTING CHAIRPERSON GORDON: In the middle
21 somewhere.

22 MR. PETERSON: So I don't want to be the guy
23 that's in favor, basically, of invasive species. In
24 general, we do, we support the regulations of invasive
25 species coming into California, in fact, globally.

1 Crowley, we've been in business since 1892, started in San
2 Francisco Bay. We have very, very strong ties to the
3 state of California.

4 As the presentation was given -- continual
5 references made to ships, and the one market that was left
6 out was the very vital tug and barge industry that applies
7 to the coastal states of particularly California,
8 Washington, Oregon, Hawaii and Alaska, the Northwestern
9 states.

10 Reference was made to the regulations would not
11 affect the economics of cleaning hulls and whatnot because
12 we polish propellers anyways. Well, barges don't have
13 propellers. So our normal dry dock cycle, for example, is
14 every -- twice in every five years. Roughly every two,
15 two and a half years. Hulls are cleaned. All these
16 precautions are made. Every effort to provide -- put on
17 the best available technology for coatings.

18 But the standard, the performance standard, that's
19 being put forth in the current regulation is almost
20 unachievable for a barge. Particularly, San Francisco
21 Bay, a diving inspection will not reveal the percentage of
22 hull fouling usually. Finding a clear day to do a good
23 hull survey in San Francisco Bay is almost impossible.

24 So our request is really that staff and State
25 Lands continue to work specifically with tug and barge

1 industry through American Waterways Operators to ensure
2 that we're implementing these standards that can work as a
3 whole for that industry.

4 The standards, I know, was put forth as a catchall
5 to cover all vessels over 300 tons, but there's a certain
6 segment of vessels there that don't really fit in well.
7 So if we can continue to look at the performance standards
8 and how that might apply to barges and the tugs --
9 associated tugs towing them. That's what we would
10 request.

11 ACTING CHAIRPERSON GORDON: Do tugs and barges
12 travel in international waters?

13 MR. PETERSON: They do. So there are, again,
14 cases -- if coming from Korea, for instance, protected
15 land, we fully understand that, yes, there's an issue with
16 that. And invasive species coming from the Far East are
17 different than invasive species potentially coming from
18 San Francisco Bay to Southern California. So that's
19 really our point around that is, the coastal trades
20 weren't really addressed in this regulation adequately.

21 Most of it, again, we're all in favor of the
22 recordkeeping, the reporting, most of the other IMO type
23 of regulations that are in here. Just a few performance
24 standards issues that we would like to take a look at.

25 ACTING CHAIRPERSON GORDON: Thank you, sir. Any

1 questions?

2 Next.

3 MR. BERGE: Thank you, Mr. Chairman and
4 Commissioners. My name is John Berge. I'm the vice
5 president with the Pacific Merchant Shipping Association,
6 and we represent shipping lines calling in California's
7 ports.

8 I should point out, our organization has supported
9 the State's Marine Invasive Species Program since its
10 inception, and we also included support to the authorizing
11 legislation, AB 740 in 2007, granting authority to
12 regulate biofouling. We do appreciate the effort that
13 staff has made in addressing some of the comments
14 submitted to the first draft of this rule, but
15 unfortunately we still find that the new iteration is
16 fundamentally flawed in certain respects.

17 The proposed rule correctly seeks to minimize the
18 risk of invasive species introduction from fouling of high
19 risk vessels, such as those that have been laid idle for
20 extended periods. But it also seeks to impose a
21 one-size-fits-all scheme on low risk active vessels that
22 we believe is contrary to the adoption of best available
23 technology as demanded by the governing statute and will
24 also result in several unintended consequences, not the
25 least of which include reduced coating effectiveness and

1 life span, which the other gentleman here just referred
2 to; a consequent increase in the degree and incidence of
3 fouling; and we believe unnecessary expense to industry
4 with results that are contrary to both of our shared
5 goals.

6 Advances in coating technologies are moving the
7 industry towards performing minimal in-water cleaning, as
8 the process itself diminishes the effectiveness and
9 lifespan of the coatings. And I would like to point out,
10 it is the in-water cleanings that is our issue.

11 Obviously, when the ship is in dry dock -- and you saw
12 those pictures -- they should be cleaning to the greatest
13 extent possible. There's no controversy whatsoever there.

14 But as drafted, the six-month inspection schedule,
15 coupled with the performance standard, would demand a de
16 facto six-month cleaning, which is contrary to the
17 recommendations by the coating's manufacturers, rather
18 than drive the industry to use better coatings, the rule
19 of greater perverse incentive to switch to the cheapest
20 coatings, since they will be degraded through that
21 process.

22 The rule also proposes numeric performance
23 standards through percentage fouling cover that are
24 infeasible as a practical matter to apply and document in
25 real life in-water cleaning operations. You just see a

1 little snapshot at a time in low visibility water. And to
2 just estimate what 1 percent would be versus 2 percent,
3 you know, we find is infeasible.

4 Furthermore, the overall requirements for in-water
5 cleaning of niche areas still remain infeasible and unsafe
6 in many real world situations as well, just in terms of
7 getting to those particular locations, such as the sea
8 chests, the hull, the bowel thruster, things of that
9 nature. And, in fact, it's also important to understand
10 that there are fewer and fewer options around the world to
11 perform in-water cleaning, as many major ports have
12 adopted bans or restrictions. And the representative from
13 Baykeeper suggested that we be careful about even cleaning
14 in California ports as well. So that's a concern.

15 So as I mentioned, we believe that the focus
16 should be on high-risk vessels and the employment of
17 biofoul management and the associated recordkeeping as
18 outlined in the regulation, which is at least consistent
19 with industry practices. However, those provisions of the
20 rule that establish arbitrary one-size-fits-all cleaning
21 requirements, we believe, are extremely problematic for
22 the reasons stated and should not be adopted.

23 ACTING COMMISSIONER REYES: What are your thoughts
24 about the technology that's being used by Disney ships?

25 MR. BERGE: It's interesting. I don't really know

1 that much about it. I did recently read a press release
2 or a news document of some sort a few weeks ago,
3 interestingly. And my understanding is that the idea is
4 because it's a nontoxic hard coating that you can
5 essentially scrape off during the cleaning, you don't have
6 to worry about the implications of it degrading the
7 coating's effectiveness, per se. But my understanding is
8 also that, essentially, for that to work, you would have
9 to clean it almost in every port you call for it to be
10 effective, and you couldn't just wait for, for instance,
11 six months to then clean it again. Such a scenario I see
12 could work worldwide, provided that every port in the
13 world adopt such a requirement. Otherwise, I think what
14 you would find out is you would just be cleaning off the
15 various hull fouling from other ports in the world that
16 don't require such things.

17 ACTING COMMISSIONER REYES: Thank you.

18 ACTING CHAIRPERSON GORDON: Mr. Berge, I know you
19 folks have all been working together and you are
20 probably -- you are all getting to a place where
21 compromises have been made and we're not reaching an
22 agreement yet.

23 You seem to have agreement on the high risk
24 vehicles. I understand those are the ones that have been
25 in dry dock and the ones that are in port and not going

1 anywhere for a while. Define "high-risk vehicles" for me.
2 You used that term to begin with.

3 MR. BERGE: Well, I would defer to the rulemaking,
4 which was essentially vessels that have been stationary,
5 or in one place, for 90 days or more. We think that's
6 appropriate, although I could point out that I think
7 there's a concern with the tug and barge people. When you
8 define a vessel being in a port for 90 days, I think the
9 intent of the Commission was to refer to those ships that
10 have been laid up. And I believe Mr. Scianni made comment
11 about that as well. But for tug and barge, for instance,
12 they could be in Seattle for six months in continuous
13 operation. And that might fall into that category.

14 But yes, in general, I would say we are in
15 agreement that vessels that have been laid up, the
16 so-called stochastic events, are high risk and should be
17 addressed accordingly.

18 ACTING CHAIRPERSON GORDON: All right. So we've
19 got -- let's kind of bifurcate this thing into two
20 categories. So we've got stochastic vessels that
21 everybody agrees are high risk.

22 And are you in agreement that the protocol that
23 they are proposing in the regulations as drafted is
24 acceptable for those vessels?

25 MR. BERGE: Yes, we believe that that's

1 acceptable. We think there's some problems in terms of
2 still defining the 1 percent, but, nonetheless, I think
3 that's -- the problem is so huge that we have to do
4 something about those particular vessels.

5 ACTING CHAIRPERSON GORDON: Okay. So I'm trying
6 to kind of break it down to where our disagreement is. So
7 on the stochastic vessels, we have agreement. Your
8 industry is acceptable on the 1 percent on the vessels.

9 MR. BERGE: We would be able to live with that, I
10 believe.

11 ACTING CHAIRPERSON GORDON: Does that also include
12 the niche problems on those vehicles?

13 MR. BERGE: We believe that the vessels that have
14 been laid up should be cleaned. Really, they should be
15 cleaned at the location they have been laid up at so that
16 they don't transfer the --

17 ACTING CHAIRPERSON GORDON: I see staff shaking
18 his head, so we're in agreement there too.

19 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Yes.

20 ACTING CHAIRPERSON GORDON: Yes. All right.

21 On the data collection, on the continual
22 monitoring of the data and the inspections, are you
23 agreeable with the protocol that they have proposed on
24 that?

25 MR. BERGE: I would actually like to commend the

1 staff in really working hard to align those protocols as
2 close as possible with those guidelines adopted by the
3 IMO, which obviously, being in an international industry,
4 are important to us.

5 I believe there are -- and I can't talk to
6 specifics right now. There might be one or two minor
7 points that some people might have disagreement with. But
8 I think that's something that can be worked out through
9 the Administrative Procedures Act process.

10 ACTING CHAIRPERSON GORDON: So what we've got left
11 then are the nonstochastic vessels, which your industry
12 believes the 1 percent standard and the 5 percent standard
13 would -- with inspections every six months on those
14 vessels, would lead the industry to actually go in a
15 direction that we don't want because the inspections and
16 the cleaning are going to damage the coatings that are
17 being used as a result. If I'm following what you said,
18 you would then use -- you are not going to want to use
19 expensive coatings because they are going to have to be
20 redone every six months, you are going to inspect and
21 treat, and, therefore, the implication would be that you
22 would go towards cheaper, probably more toxic, coatings.
23 Is that what I am understanding your testimony to be?

24 MR. BERGE: Well, I would certainly argue that the
25 incentive would be there to move towards that direction.

1 I can't necessarily speak that every vessel would do that.
2 But that's our concern.

3 ACTING CHAIRPERSON GORDON: And let me also
4 understand what the specific objection is to the
5 1 percent. Is that -- if the standard is 1 percent and
6 inspectors are going to have to go down -- as I
7 understand, these boats are going to be in the water.
8 Your belief is that you can't accurately determine whether
9 it's 1 percent, 2 percent, 5 percent, with divers in the
10 water. And, therefore, you are going to be required to
11 pull these ships out of the water at a more regular basis,
12 which will both be more -- well, the thing is, it will be
13 very expensive because these ships are going to be out of
14 commission while you are doing that, would probably be
15 your main concern; right? Am I summarizing this?

16 MR. BERGE: Yeah. I would say that with 1 percent
17 and, you know, as I mentioned, you got a little snapshot
18 of a 1,200-foot, 3 football-length, 3
19 football-field-length, vessel, I think any ship owner
20 would basically assume 1 percent is 0 percent, because
21 there's no way to tell whether you're 1 percent or
22 3 percent. So you would just have to essentially clean
23 every time you do an inspection.

24 And I should point out that some of our members,
25 who met with the Commission and who I think even the

1 Commission would agree, probably operate the cleanest
2 regularly calling vessels in the world and have the best
3 management practices, believe that -- they have told us
4 that they believe they would not be able to meet those
5 performance standards, as listed right now.

6 ACTING CHAIRPERSON GORDON: These standards aren't
7 coming into effect until 2014. We've got two years
8 between now and then.

9 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: The first
10 dry dock after 2014.

11 ACTING CHAIRPERSON GORDON: But basically two
12 years.

13 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Two to
14 seven years. Because the ships go into dry dock every
15 five years. Sure. So the standards wouldn't go into
16 effect until the vessel's first dry dock after 2014. So
17 it could be that the vessel doesn't go into dry dock until
18 2018.

19 ACTING CHAIRPERSON GORDON: All right. Let me try
20 something here. If we were to move forward with these
21 stochastic vessels as proposed, if we were to move forward
22 with the data collection as proposed, separate out the
23 other vessels, and give you guys six months, nine months,
24 to go back to the -- is there benefit for you guys sitting
25 down for another six months and trying to work this out?

1 Or have we truly gotten to a point -- everybody wants to
2 talk about compromise. But there's a place where
3 everybody has got their positions hardened, there's
4 nowhere to go, we got A and we got B, we got to choose
5 between the two of them. I mean, would six months or nine
6 months on that issue get us anywhere?

7 MR. BERGE: May I comment, to start?

8 ACTING CHAIRPERSON GORDON: Sure.

9 MR. BERGE: We did participate in the TAG process,
10 and it is a good process. I would point out that some of
11 the things kind of came in the written draft rule that
12 were somewhat of a surprise to some of us in the TAG, but
13 I will leave that as it stands.

14 Nonetheless, it's understandable that you have a
15 few people from the industry who might show up at these
16 things, but when you suddenly publish a proposed
17 rulemaking, a formal proposed rulemaking, suddenly the
18 eyes of the world focus on you. And I think since that
19 time, we've gotten a lot more input from a lot more
20 sectors of the industry who have raised some concerns, but
21 who have also said that they think there are better ways
22 to do this. So I personally believe there is value to
23 continuing to work with the Commission and getting a more
24 comprehensive rulemaking for those particular vessels.

25 ACTING CHAIRPERSON GORDON: Without pushing back

1 the 2014 date at all.

2 MR. BERGE: We would like -- obviously, we would
3 like to take whatever amount of time it needs to get it
4 done. But again, I will leave that to the commissioners
5 to decide what's wisest.

6 ACTING COMMISSIONER REYES: I guess I'm trying to
7 understand your questions and where you are going with
8 this. It seems to me that we are part of the regulatory
9 process right now and this is where we get input from the
10 public; the public gets a chance to tell us what they
11 view. Staff hasn't finalized those because you need to
12 respond to that. And so before I start bifurcating rules
13 or regulations, I would like to see what the final process
14 is, and then we sit and say, you know, I sort of -- with
15 all due respect with staff, I disagree with point A and
16 point 7 because X, Y, and Z. I'm sort of perplexed in
17 terms of where we're going with our questions.

18 I'd rather hear from the folks now. We will get
19 writing. I know you and I will meet with folks in the
20 next few weeks and continue to meet to try to understand
21 better what the issues are. I find this very informative
22 so I appreciate that, both from the staff. I've read the
23 documents. But it's always, when you have pictures and
24 diagrams, for me, I get a better sense of what we're
25 talking about.

1 And so I kind of like to have the process evolve,
2 I guess, is sort of my perspective and see where it lands.
3 I mean, they are still going to have to respond to some of
4 these issues and in their response, they may have to amend
5 their proposal. We don't know that yet. So before we
6 have something before us, I would rather have input,
7 understand, and reserve our -- as the board, our right or
8 obligation or responsibility to hone things, move things,
9 approve things, whatever we need to do.

10 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Can I make
11 a statement?

12 I think it's important to recognize that
13 throughout the whole process, we nor the scientific
14 literature made reference to low-risk vessels. Our
15 understanding from the science is that, sure, stochastic
16 vessels are very high risk, but that's also a very small
17 portion of the fleet and that niche areas are -- the
18 punchline in most of the science over the past ten years
19 is that niche areas are big problems, and they need
20 attention. And considering that we're pushing the
21 stochastic vessels, which are about 2 percent of
22 California's fleet right now, as defined with the 90-day
23 period. And when we're talking about these very risky
24 niche areas on 98 percent of the fleet, it is a big issue
25 and it's something that we as staff and the scientific

1 community do see as a big problem and needs to be
2 addressed.

3 One other thing. The intent of the regulations is
4 not to require more cleaning. That's not what we're
5 looking for. We're trying to change mindsets so that more
6 planning beforehand, before the vessel goes into dry dock,
7 look at the different coatings. Mr. Phillips talked about
8 one type of coating. There are tons of coatings out there
9 that are targeted for specific vessels and that funding --
10 we're trying to encourage better planning so that --

11 ACTING COMMISSIONER REYES: But I mean, in all
12 fairness, the regulation may require more cleaning.

13 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: It may.

14 ACTING COMMISSIONER REYES: Right.

15 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: If the
16 coating fails.

17 ACTING COMMISSIONER REYES: Yeah. So let me go
18 back to Counsel. Am I correct in my assertion that we
19 still have the ability to amend or to go -- just the
20 process.

21 EXECUTIVE OFFICER FOSSUM: This is informational
22 only and, again, the comment period has not closed yet.
23 It won't until next week. Once the staff gets all the
24 comments, including the ones from --

25 ACTING COMMISSIONER REYES: You will address these

1 comments.

2 EXECUTIVE OFFICER FOSSUM: -- today, we will have
3 a response to those, and it may be that we change the
4 rules and submit them again in proposed regulations, or it
5 may be, at that point, we put together a package to bring
6 back to the Commission at which time then the Commission
7 can decide or send back for additional modifications.

8 We still do have three more people who want to
9 speak on this item.

10 ACTING COMMISSIONER REYES: Thank you.

11 ACTING CHAIRPERSON GORDON: Next speaker, please.

12 MR. MENDES: Good afternoon. My name is Jonathan
13 Mendes. I represent Harley Marine Services, a tug and
14 barge company.

15 ACTING COMMISSIONER REYES: With all due respect,
16 this is about the only time Finance is going to have the
17 gavel. So move over.

18 MR. MENDES: Yeah. My name is Jonathan Mendes on
19 behalf of Harley Marine Services in the American Waterways
20 Operators. My intent here is to actually echo
21 Mr. Peterson's comments regarding our concern as barge
22 operators, that there's a sense of unfairness and,
23 naturally, with the regulation, where we're kind of taking
24 the short end of the stick.

25 We -- typically, as we fall under the high risk by

1 definition, we actually are a very low risk by trait. So
2 we do see the necessity for, you know, the biofouling
3 control. However, if this were to go to print as is
4 today, it would significantly impact the barge operators
5 in which we do operate the coast of California and we have
6 a significant impact on the local economy as well.

7 The expense of meeting these standards as a
8 extended residency candidate, we would see some
9 significant negative impact to our, you know, operations,
10 financially. So I think it's important.

11 And as you highlighted, we do have an opportunity
12 to still go back and look at this to make sure we do get
13 consideration for, not just a blanket, you know, one all
14 be all for extended residency. We would like that to have
15 strong consideration for the barge industry.

16 You know, typically, our operations, I may have a
17 barge here in San Francisco Bay for three months, but it's
18 going to go to L.A. for a week. Or it may even touch
19 Anacortes or Portland for three or four days and come
20 back. So as you can see, there is some impact that we
21 would see and we would like consideration on that.

22 And that's pretty much it.

23 ACTING COMMISSIONER REYES: Thank you.

24 MR. MENDES: Thank you.

25 MS. SILVA: Good afternoon. Lauren Silva, and I

1 am representing the American Coatings Association, ACA.
2 ACA represents paints, coatings, and antifouling coating
3 manufacturers and suppliers throughout the world, and we
4 would just go ahead and agree with PMSA's previous
5 comments, but will go into more specifics.

6 ACA's members are committed to providing the
7 shipping industry with state-of-the-art products that
8 prevent fouling on shipping, hulls, and niche areas,
9 thereby reducing the potential for translocation of
10 invasive species. These coatings are also designed to
11 significantly reduce the need for expensive cleaning to
12 maintain the coating's effectiveness.

13 But rather than promoting the latest coatings and
14 best management practices for those coatings, this
15 regulation seems to be based on arbitrary claim to and
16 gross exceedance standards, and that is exactly the reason
17 for our concern with the latest iteration of the
18 regulations.

19 The regulation requires inspection every six
20 months that when combined with the requirement to meet the
21 numeric percentage clean-to standards, will most likely
22 require comprehensive hull cleaning at least every six
23 months depending on the ship's schedule in California.

24 The results: Such frequent cleaning would remove
25 the active coating ingredients of the best available

1 coatings, resulting in a decrease of the projected
2 lifetime of the coatings system and more fouling, rather
3 than less. Through the TAG process, industry has in the
4 past been able to work successfully with staff to develop
5 mutually agreeable legislation regulations. We appreciate
6 the changes made to the revised regulations to reconcile
7 the biofouling recordkeeping and plans with IMO guidelines
8 and to expand the timeline of implementation to 2014.

9 However, it is not realistic to expect vessels the
10 size of cruise ships, cargo ships, and tankers to
11 guarantee that their ship meets a 1 percent macrofouling
12 standard. On vessels of this enormous size, this
13 regulation will require the responsibility officer to
14 guarantee that there is virtually no fouling. And it's
15 unclear how the State Lands inspectors will determine that
16 such a de minimis amount of fouling is even present.

17 ACA believes that it's unfeasible to meet or
18 enforce a standard. But, unfortunately, the surest option
19 for ships trying to meet the letter of law appears to be
20 to overclean and decrease the projected lifetime of the
21 coating systems. ACA wants to be clear on this point.
22 These coatings dissolve away over time in a controlled
23 fashion and are very effective against biofouling. If
24 cleaning is performed too frequently, the coating's life
25 will be shortened and effectiveness compromised, actually

1 promoting biofouling.

2 We urge the State Lands Commission staff to
3 bifurcate this rule, taking time, as mentioned, to
4 appropriate best management practices and best available
5 technology for hulls in niche areas.

6 We aren't saying no regulation. We just believe
7 that we can truly provide a reasonable, enforceable
8 regulation using best available technology and practices
9 prior to staff's own deadline of 2014.

10 Thank you for the opportunity to comment and
11 provide industry's perspective on this important
12 rulemaking, and we look forward to working with everybody.

13 MR. GREGORY: Good afternoon, at this point. My
14 name is Robert Gregory. I work for Foss Maritime Company.
15 It's a tug and barge company that has offices in
16 California and throughout the country.

17 I'm going to echo some of the points brought up
18 previously. With our barge operations locally, our barges
19 move every day. They are not in labor status, but under
20 the current regs they would be defined as such.

21 And just a couple points. I want to echo every
22 point that came up, but we don't believe we could discern
23 the 1 to 5 percent. So as -- our judgment would say every
24 time you did an inspection, you were probably in need of a
25 cleaning, just because -- our barges are a lot smaller

1 than the ships that Mr. Berge was talking about, and, you
2 know, if you've ever seen a film of an inspection in San
3 Francisco Bay, it's pretty hard to tell what you are
4 looking at when you are looking at a vessel, and, you
5 know, unless we have experience, rely on the driver's
6 opinion, our opinion is always going to be to clean or to
7 dry dock.

8 And that was one of my other points I wanted to
9 bring up is, right now we're currently on, with most of
10 our barges, either a two-and-a-half- or five-year dry
11 docking schedule. And it's currently hard to get on the
12 dry docking schedule as is. So if we increase the number
13 of cleanings and dry dockings that vessels have to do up
14 and down, within the country and out of the country -- you
15 know, U.S. ships have to prefer to dry docking in-state
16 because of Jones Act rules -- we're going to need some
17 more dry docks with a lot of additional costs to the ship
18 owners.

19 So I thank you for your time.

20 ACTING CHAIRPERSON GORDON: Have staff up one more
21 time. I have a couple questions that are going to perplex
22 me going forward. And I will confess to the -- I haven't
23 read the regulations.

24 So what is the -- what is the penalty should a
25 ship certify that they are 1 percent and it turns out that

1 they are 2 percent?

2 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So --
3 well, the reporting form that they will put into their
4 record book will spell that out, will spell out the 1
5 percent cover. I want to say that the percentage cover is
6 a metric that is used -- has been used for a long time by
7 scientists and by diving contractors. It is -- apparently
8 many of the reporting -- the inspection reports that we do
9 see have percentage cover already. So it is something
10 that is being evaluated by contractors.

11 The penalty would be a similar penalty -- a
12 similar penalty to what would be incurred with a violation
13 of the ballast water rule, because it's all within the
14 Marine Invasive Species Act. It would be --

15 ACTING CHAIRPERSON GORDON: What kind of dollars
16 are we talking about?

17 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: It's
18 27,500. Up to 27,500 per violation.

19 ACTING CHAIRPERSON GORDON: Per violation. Per
20 event or is it per -- how does that calculate?

21 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: The way
22 it's written is it's per violation and each day -- each
23 subsequent day of a violation counts as its own violation
24 too.

25 ACTING CHAIRPERSON GORDON: So each day in

1 California waters --

2 STAFF ENVIRONMENTAL SCIENTIST SCIANNI:

3 Potentially --

4 ACTING CHAIRPERSON GORDON: -- exceeding the
5 1 percent would be \$27,000?

6 STAFF ENVIRONMENTAL SCIENTIST SCIANNI:

7 Potentially, but I think throughout the life of our
8 program, our approach has always been to work with the
9 industry and try to educate and not necessarily go out and
10 fine people. So definitely, it would be a working-with
11 scenario to try to get them to understand that they may
12 need better planning next time they go into dry dock. So
13 it's not necessarily that we will go out and hand out
14 fines from day one.

15 ACTING CHAIRPERSON GORDON: But look at San
16 Francisco Bay, as the example that I've used. I mean, I
17 suspect that the clarity of the water is -- you are not
18 going to see very far. So the diver goes down. They have
19 contracted with a company who's qualified to do this. The
20 diver goes down, looks over the hull, can't see the hull,
21 and particularly with the niche areas, I suspect it's
22 going to be very difficult to get inside there and see,
23 particularly if you have got murky water. So what is this
24 report going to tell us when they look at this thing?

25 EXECUTIVE OFFICER FOSSUM: Mr. Chair, if I could,

1 and clarify it if this is wrong, Chris. But they are
2 going to need to inspect their ships every six months.
3 They don't have to inspect it every time they come into
4 California. If they have done it within the six months
5 and at the time the inspection was done, they had the
6 1 percent, then if they come into California and it turns
7 out they have got 4 percent, they are still not out of
8 compliance.

9 ACTING CHAIRPERSON GORDON: So you are in the
10 harbor in Singapore, all right, which is -- you have got a
11 storm that's come through and it's fairly murky and you've
12 contracted with someone. You have gone underneath this
13 massive vehicle and inspected it. I mean, are we going to
14 send an inspector to Singapore to check that the
15 company --

16 EXECUTIVE OFFICER FOSSUM: No. No. Companies
17 will be contracting and hiring people either for their
18 companies themselves or with contractors who will do these
19 inspections. They are doing them now because they need to
20 inspect them to see whether they need to actually clean
21 the hulls for themselves. And they do this polishing
22 periodically, every six months. So there's divers down
23 there already. They are looking at these vessels. They
24 are going to be reporting that to the owner. They are
25 going to put it in the logbook. And then if there's more

1 than 1 percent, they should be cleaning it. If they have
2 now done that and within the next six months, they are
3 clear, unless they come into California and they have
4 5 percent more.

5 ACTING CHAIRPERSON GORDON: I'm going to play
6 devil's advocate for one second here. So I am in -- let's
7 use Singapore as an example. So the company who does the
8 inspection are going to be in Singapore. You are going to
9 essentially rely on the inspection that they do in
10 Singapore. Correct?

11 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Yes. But
12 the inspection report will have either still photos or a
13 video of a closed circuit television that they already
14 include in their reports. There will be video evidence or
15 still photograph that's included.

16 ACTING CHAIRPERSON GORDON: All right.

17 EXECUTIVE OFFICER FOSSUM: They are already doing.
18 It's just following on current practices. And that's why
19 we tried to draft these regulations to reflect what's
20 actually going on in the industry, but to set some
21 standards that they would be encouraged to meet those
22 standards in a way so that even if they violate the
23 1 percent when they come into California, it's because six
24 months ago they did this survey and concluded that it was
25 1 percent or less on their vessel. They come into

1 California in two months and there's 4 percent, they are
2 still not violating the standards. But the next time they
3 come into California, if it's still within the six months,
4 and it's still 4 percent, they are still not violating it.
5 It's not a fast and firm 1 percent all the time. And
6 that's one reason we're getting criticism from some of the
7 environmental groups is that we're, in fact, giving some
8 leeway on those standards, but we're trying to be as
9 practical as we can with the shipping industry and going
10 with their six-month standard that they use for inspecting
11 these vessels and cleaning the props and so forth.

12 ACTING COMMISSIONER REYES: I thought I had it.

13 (Laughter.)

14 ACTING COMMISSIONER REYES: Let me make sure I get
15 this. The inspection will occur practically anywhere in
16 the world. It will happen in San Francisco; it will
17 happen in San Diego; it can in Portland; it can happen in
18 Hawaii or Singapore. As long as it happens within six
19 months, within the six months they come to California.
20 Now, our staff is going to look at the recordkeeping. Did
21 they in fact have an inspection occur, and did it show
22 under the 1 percent criteria? And to the extent that
23 there's pictures, there's -- everything's fine, then
24 everything's copasetic. But if our staff goes and looks
25 at this report and says, oh, yes, it's picture perfect,

1 and you have crabs all over the hull and seaweed growing
2 up the water intake or the wings of the vessel, whatever
3 they are called, stabilizers, then that's where you are
4 using your own staff to look at it and say --

5 EXECUTIVE OFFICER FOSSUM: Potentially, certainly.
6 And I think Chris showed the one slide or the combination
7 of slides where there were several indications on the hull
8 of biofouling --

9 ACTING COMMISSIONER REYES: Right.

10 EXECUTIVE OFFICER FOSSUM: -- but it was less than
11 1 percent. So they weren't even in the gross exceedance;
12 they weren't even in the minor exceedance on that vessel.
13 If it had been three times as much on the vessel as was
14 shown -- it would have to be more than three times because
15 that was less than 1 percent. Then they would have --
16 what's the next step after that, Chris? They are fined at
17 that point?

18 ACTING COMMISSIONER REYES: My point being that,
19 by and large, we will rely on the recordkeeping to do
20 this.

21 STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Yes.

22 ACTING COMMISSIONER REYES: And it's in those
23 scenarios where things don't look right, that then our
24 staff will then do the actual inspection on site.

25 ACTING CHAIRPERSON GORDON: It's like any other

1 law. The police are out there. They don't catch everyone
2 who runs red lights, but if you happen to be one who did
3 and you violated the law, then you will be caught.

4 But right now we have -- we talked about the
5 inspectors we have. None of them are divers. Chris is
6 the only diver we have on staff. And we're not intending
7 to send him down at this point.

8 (Laughter.)

9 EXECUTIVE OFFICER FOSSUM: So we're --

10 ACTING COMMISSIONER REYES: You mean by our own
11 staff, somebody we hire to send?

12 EXECUTIVE OFFICER FOSSUM: We think that 99
13 percent of the companies out there doing this are going to
14 be law-abiding citizens. They're going to follow the
15 rules and there's not going to be a problem. Yes, it's
16 going to be more requirements for them because they are
17 going to have to be thorough in their inspections.
18 They're not just going to be looking for fraud. But a
19 good company are probably already complying with us. Some
20 companies think they may not be able to comply with that.
21 And again, if they have done this inspection and they have
22 got it down to 1 percent, then even if they come into
23 California, again, with 5 percent on their hull and
24 15 percent in the niche areas, that's only when they are
25 in violation, if they've done their inspections within six

1 months and documented it.

2 ACTING COMMISSIONER REYES: The issue is trying to
3 reach the 1 percent. That's where the difficulty -- going
4 to have an impact on the industry.

5 EXECUTIVE OFFICER FOSSUM: These are -- this is
6 new things here. As Chris says, they already do the
7 statistical analysis, but this is the first time we've had
8 regulations like this. And frankly, it was interesting --
9 I don't know if it was in "The Bee" or online, but I just
10 saw a similar slide to the one that was showing about
11 Singapore, about all the new vessels, new, brand new,
12 vessels, that are sitting overseas. It might have been in
13 "The Bee" this morning. And there are hundreds of them
14 and they are overbuilt. And so the industry has got a lot
15 of problems, economic problems, right now.

16 And but be that as it may, we've got problems with
17 them bringing in these invasive species that are causing
18 billions of dollars of impact on the national economy.
19 And California just today, again, announced new
20 regulations on car emissions, and we're way ahead of the
21 rest of the country and the world. And that's what we do.
22 We try and protect the environment here.

23 ACTING COMMISSIONER REYES: I'm not going to make
24 any judgment. I'm trying to understand.

25 ACTING CHAIRPERSON GORDON: I'm trying to

1 understand this too. My concern is kind of -- we
2 stipulated that stopping as many of these organisms from
3 entering in California is the goal. And my worry is --
4 and all it is at this point is a worry -- is that I'm not
5 sure -- I'm not positive this approach works. I mean, is
6 this the most effective way to do this, is my biggest
7 concern. And what I keep hearing from the industry is
8 that, first of all, we're worried about, frankly, that we
9 don't have enough staff to do what we need to do, that
10 we're going to be depending on lots of out-of-state and
11 out-of-country reporting that would be -- I'm not sure how
12 reliable it's going to be. So we're going to have on
13 paper this nice regulatory regime that if we inspect one
14 out of a hundred ships and these folks are getting
15 certifications in ports of call all over the world, are we
16 accomplishing what it is we're trying to accomplish, is my
17 biggest concern? Is this the direction to get there, as
18 we....

19 EXECUTIVE OFFICER FOSSUM: Well, again, I'm going
20 to analogize with traffic. I would almost warrant that
21 everybody who drove here today broke some law on the way
22 here. They failed to signal. They failed to be -- they
23 went 56 miles an hour or something in another zone. They
24 did a rolling stop. You know, it's very likely that there
25 will be people who violate it, but if you don't have the

1 rules, there are no rules, and nobody's going to comply.
2 And so ours is trying to set a goal that we think is a
3 practical one, and we know that most of the shipping
4 companies, again, are very reliable, so we expect they
5 will be able to meet those goals but we have to be looking
6 out for the scofflaws too. And without any rules, that's
7 where you are.

8 ACTING CHAIRPERSON GORDON: Any more witnesses?
9 Staff, thank you very much for your very informative --
10 thank you to all the witnesses. I think we're going to
11 move on to -- there isn't any action we need to take on
12 this one.

13 EXECUTIVE OFFICER FOSSUM: We have two more items,
14 Mr. Chair. We have one that is dealing with the Russian
15 River and the other one is Item 81, which is Bruno's and
16 they would like to address the Commission on the --

17 ACTING CHAIRPERSON GORDON: Let's do Item 81 right
18 now. I think we've already voted on this. We have
19 witnesses who would like to testify.

20 EXECUTIVE OFFICER FOSSUM: Actually, we brought
21 that -- we took that off the agenda.

22 ACTING CHAIRPERSON GORDON: Oh, we took that one
23 off. Okay.

24 Come forward, please, staff.

25 STAFF COUNSEL FREY: My name is Jim Frey, staff

1 counsel for the Commission.

2 We originally brought Bruno's Yacht Harbor to your
3 attention last September. The staff found the marina in
4 default on various provisions of the lease. You ratified
5 those defaults and you approved the termination of the
6 lease subject to the rights of Bruno's lender to cure the
7 defaults within 60 days. You also gave the Executive
8 Officer his discretion an additional 60 days to extend the
9 time to cure the defaults.

10 All of those defaults, except one pertaining to
11 the access ridge and its good repair and safe condition,
12 have been cured. During the summer, Bruno's hired an
13 engineer to design repairs for the bridge. The repairs
14 were made. We had asked for a certificate of getting the
15 bridge in a safe condition. We received a very brief note
16 from the engineer saying that the repairs have been done
17 according to his instructions. There was no data backing
18 up the repairs and there's no certification of safety. So
19 we renewed our request for a new inspection.

20 The lender stepped forward and initiated the
21 process, and between the lender, Bruno's, they hired
22 Duarte Warranty Engineering Company in December to do
23 another inspection.

24 And in the end, in the long run, Duarte did two
25 inspections, one at the request of Bruno's and one at the

1 request of the Commission. We met with Bruno's and the
2 engineer after the first inspection, had some discussions,
3 and we asked for the second inspection, which was done.

4 I've summarized -- I've listed all the problem
5 areas that the engineer found and his recommendations in
6 the calendar item, but I can summarize them for you rather
7 briefly:

8 In the bridge's current condition, and without
9 further repair, the bridge's load limit should be
10 restricted to vehicles weighing less than 6 tons and
11 traffic on the bridge should be limited to 3 miles per
12 hour;

13 There were missing or deteriorated stringers,
14 wheel curves, guardrail connections, blocking at the vents
15 and deck planks;

16 Cross-bracing was found to be in poor condition
17 and a pile cap was rolled;

18 Decking was not fastened to the stringers in some
19 instances;

20 And there's dry rot on a number of the -- on the
21 interior of a number of bridge pilings.

22 ACTING COMMISSIONER REYES: Excuse me. What's a
23 stringer?

24 STAFF COUNSEL FREY: Duarte is here. I will ask
25 him to explain that to you.

1 MR. ADESOKAN: It's essentially a string that goes
2 across the width of the bridge, under.

3 EXECUTIVE OFFICER FOSSUM: If I can just
4 summarize, and you certainly can ask more detailed
5 questions here. But basically what happened is the
6 engineer that was hired came up with a number of
7 recommendations as to repairing the bridge that they
8 thought would make it safe for the time being, along with
9 a couple of recommendations on the need for future
10 inspections.

11 Staff has agreed to recommend that the lease be
12 reinstated and give the lessee until the end of July to
13 complete the repairs but to also amend the lease to
14 require that they do these repairs and inspection, and
15 that's the substance of your recommendation.

16 STAFF COUNSEL FREY: And also, we've asked that
17 the inspection be done on a two- and four-year cycle after
18 the current repairs are completed.

19 EXECUTIVE OFFICER FOSSUM: Which was the same as
20 the recommendation by the engineer.

21 STAFF COUNSEL FREY: Correct.

22 Bruno's disagrees with our recommendation and
23 Mr. Jack Diepenbrock is here to address you on that and he
24 has, I believe, a counterproposal for us for your
25 consideration.

1 ACTING CHAIRPERSON GORDON: Come forward, sir --
2 Counsel.

3 MR. DIEPENBROCK: May it please the Commission, my
4 name is Jack Diepenbrock. I'm a lawyer with Diepenbrock
5 Elkin in Sacramento. I work in government permitting
6 issues, real estate, and real estate financing. I get a
7 lot of assistance from my partners.

8 Contrary to what Mr. Frey said, and,
9 unfortunately, through no immediate fault of either party,
10 we've been very slow in getting to issues and careful
11 negotiation as to the recommendations. Indeed, we just
12 got the proposed amendment on Tuesday, which I promptly
13 forwarded to my client, Mr. Snodderly, who's a neat guy,
14 who has operated this marina for a lot of years. But
15 unfortunately, he had the flu. We tried to talk on the
16 telephone last night and earlier this morning and talk
17 further, and I've had two conversations with Mr. Frey and
18 one very brief exchange with Mr. Fossum.

19 In short, while there are things in the report
20 that we don't necessarily agree with -- some of the
21 sequencing seems a bit off to us -- we are in agreement to
22 do all of the work that has been recommended by Mr. Duarte
23 and to do it by a specified deadline of July 31.

24 We have provided a report to Commission staff. We
25 have issued an RFP for contractors to do the work. We're

1 providing working drawings to them, so that we will know
2 precisely what they are supposed to do, so they can sign
3 off downstream -- or the engineer can sign off that
4 everything's been done to his satisfaction.

5 We have four or five contractors on the bid list,
6 two of whom are diligently working on their proposals.
7 One of those is CC Myers. This is a small item compared
8 to everything else that you have been talking about today.
9 We are doing our best to provide to our patrons and our
10 visitors a safe bridge. And I want to say about the
11 contract winning bidder for -- with a specified time for
12 completion of the work and for a cost that makes sense.
13 As I will say later, however, it's necessary that money be
14 borrowed in order to pay for the forthcoming work as well
15 as some of the work that was done last fall, that was
16 mentioned by Mr. Frey.

17 We're also prepared to do a lease amendment and
18 expect the obligations going forward for further
19 inspections on a two-year cycle for the pilings and a
20 four-year cycle for the bridge as a whole. I should have
21 said that on completion of the work to be done by July 31,
22 we expect them to be able to file with the Commission the
23 report of Duarte Engineering to the effect that the
24 repairs have been completed satisfactorily and having been
25 accomplished the bridge is structurally sound for its

1 intended purposes. That is, vehicles and pedestrian
2 access up to a 20-ton limitation.

3 Our issue, as we have it now, is not really what
4 we're agreeing to do but how that agreement is to be
5 documented. Mr. Frey says the staff seeks an amendment of
6 the lease that would cover both the immediate repair work
7 and, second, the commitment for future inspections and to
8 do an addition to the inspections the work that is
9 recommended to be done. We've got some language. I think
10 that Mr. Frey and I are pretty close to an understanding
11 as to what those provisions would look like, but not in
12 respect to the documentation.

13 The lease amendment is fine as to the future
14 obligations. However, we do need to get financing. The
15 inclusion of these two reports by Duarte and all of this
16 stuff that is sought to be included by way of amendment to
17 the lease is going to clutter up the lease beyond belief
18 and confuse the likely lenders and who we will be going
19 for, for money. And that's not only my belief, but I
20 checked with my partners in my office and we do special
21 real estate transactions and project financing, and we're
22 very worried about that, the impact, of an inclusion
23 including that repair work so of course with all these
24 findings with respect to recommendations as to things that
25 ought to be done.

1 ACTING CHAIRPERSON GORDON: My understanding is
2 that the dispute at this point is, Counsel for the
3 Commission believes these -- that these conditional
4 conditions need to be part of the lease, and your argument
5 is that if they are part of the lease, the financing to
6 get the work done won't come through?

7 MR. DIEPENBROCK: That's true in part. It's not
8 true that we don't see that the requirement of periodic
9 inspection and repair work will muddy the lease such as to
10 make it unhappy for a lender who typically looks for a
11 nice clean lease without a lot of unanswered questions.

12 We think the issue of the immediate repairs,
13 that's going to be resolved and done by the 31st of July.
14 The lease will go on till 2020. And we've had a lot of
15 discussions with a lot of people with financing with
16 respect to that lease. We don't think that post-July 31,
17 those provisions for immediate repair will have any
18 further relevance because the work will have been done and
19 certified, or we will be out on the street.

20 And we suggest instead, what we think should be a
21 satisfactory substitute, that Bruno's and the general
22 contractor execute a contract calling for a price and
23 calling for a time of completion and that the contractor
24 place with us and with the Commission a performance bond.
25 That work will, in fact, be done.

1 ACTING CHAIRPERSON GORDON: Mr. Frey, can you
2 respond to that counterproposal, please?

3 EXECUTIVE OFFICER FOSSUM: If I could, Mr. Chair,
4 I think our concern here is that we are relying on their
5 engineer's analysis of the bridge and that -- it was a
6 very detailed analysis in that it found a number of issues
7 that they thought were not requiring immediate repair --
8 dry rot in the piles and whatnot. So we're relying on
9 that engineer's report. But that engineer's report, in
10 addition to the immediate type of repairs needed, also
11 indicated that because of those conditions on the bridge,
12 there would need to be inspections every two years or he
13 would recommend inspections every two years. And given
14 that the safety of the public and those using this bridge
15 are of utmost concern to us, that's why we want it in the
16 lease.

17 And I understand the concept of having a bond out
18 there for repair, but, you know, if the bond is not needed
19 to be called, that would be great because the inspection
20 is finding that it needs to be repaired. We're certainly
21 willing to look at a bond as well, but the idea of not
22 cluttering up the lease by not having covenants in there
23 that we can require inspections isn't something I was
24 prepared to recommend.

25 ACTING CHAIRPERSON GORDON: Mr. Diepenbrock, is it

1 possible -- it's been a long time since I've looked at
2 real estate law. But is it possible there could be some
3 type of secondary document that the lenders would need to
4 see that would be a contract to go into the issue raised
5 by Mr. Fossum?

6 MR. DIEPENBROCK: We have proposed that very
7 thing, but I know that Mr. Fossum had only about
8 30 seconds to hear my proposal during a recess, which was
9 that we are, in fact, okay with an amendment to the lease
10 that will address the issues of the future inspections and
11 the future repair work.

12 ACTING CHAIRPERSON GORDON: We just need --

13 MR. DIEPENBROCK: We would like to delete the
14 other stuff -- here's the report, for instance; that's one
15 of two reports from Duarte. And we just think that that's
16 going to turn off the loan officer.

17 EXECUTIVE OFFICER FOSSUM: We are certainly
18 prepared to reassess if we think that the situation is
19 changed by the time that they complete the bridge work
20 near the end of July. We have a Commission meeting late
21 in July. I believe the last Thursday, if I'm not
22 mistaken. And if by that time they are -- they have come
23 up with different terms that they think are necessary for
24 lending purposes, we certainly would be willing to look at
25 the condition of the bridge at that time and see if

1 there's any changes in circumstances. Right now we're
2 relying on the engineer's report and we need to....

3 ACTING CHAIRPERSON GORDON: What I am hearing is,
4 he's willing to contract for the ongoing inspections
5 exactly as you are requesting. Is that correct? Just in
6 a separate contract from the lease.

7 MR. DIEPENBROCK: No. That will be in the lease.
8 Excuse me. I didn't make that sufficiently clear.

9 I'm saying that we're quite prepared to do an
10 amendment of the lease that will speak to the obligation
11 of the other tenant to cause these periodic inspections to
12 be made going forward, the first one of which would be two
13 years to look further at the pilings to see how much the
14 dry rot has impacted their load bearing capability and do
15 the work. And the second is, after four years, on the
16 four-year cycle --

17 ACTING CHAIRPERSON GORDON: What is it you -- what
18 is it you don't want in the lease hold that you believe
19 confuses the lease for the lenders?

20 MR. DIEPENBROCK: What I don't want is the first
21 part of the recommendation given in the staff report that
22 states -- and I believe there's no question about the
23 State's position as it is now, that they want the lease
24 amendment to include the immediate repair work that, as I
25 say, will be done on the 31st of July and will be subject

1 to the performance bond. That would be a side agreement,
2 if you will, that there's no need for the lender to have
3 it unless they ask. If they ask, they ask. But as of
4 now, most loan officers are going to say, well, gee, we've
5 got to hire our own engineer now to make sure that all
6 this -- these things have been cured and so on and so on.
7 Whereas, by the 31st that that will happen and be
8 certified by the engineer. As I say, we will be out of
9 that. We don't think that's an unreasonable request.
10 Excuse me, I don't want to negotiate.

11 EXECUTIVE OFFICER FOSSUM: No. And we understand
12 the concern in trying to find somebody to lend you money
13 if they think there's a problem with the lease. But there
14 is a problem with the lease. And for us to not have
15 enforceable conditions in there about the repair and amend
16 the lease to require that seems to me to do a disservice
17 not only to the public, the state, but to anybody who
18 would want to lend on that so that it would be a matter of
19 record.

20 ACTING CHAIRPERSON GORDON: Let me restate this.
21 You are proposing to have the work done --

22 MR. DIEPENBROCK: Yes, sir.

23 ACTING CHAIRPERSON GORDON: -- inspected,
24 finished, before you sign the lease? And you don't
25 want --

1 MR. DIEPENBROCK: No. No. No. There already is
2 a lease in place. We're talking about an amendment.

3 EXECUTIVE OFFICER FOSSUM: Actually, there is no
4 lease in place because the lease lapsed as of the 120
5 days. So what we have recommended is allowing the
6 Commission to reinstate their lease. They are actually
7 technically in trespass right now. But to do that upon an
8 amendment and to allow that amendment therefore to be a
9 binding obligation on the part of the lessee to finish the
10 repairs and do the inspections, it's that simple.

11 MR. DIEPENBROCK: I don't want to be contentious,
12 but we're not trespassing until the cartel tells us we're
13 out of there. But anyway, I'm not trying to do that.

14 What I am really suggesting at the end of the day
15 that might make sense for you, and I would hope for
16 Mr. Fossum and Mr. Frey, is that we extend our cure period
17 for a mutually agreeable period of time, 30 to 60 days,
18 and get this resolved and get our contract made and meet
19 with a lender -- excuse me, not with a lender, with a
20 contractor, and do some preliminary explorations with the
21 lender. We're talking about over a hundred thousand
22 dollars of work when it's all said and done. And this is
23 a small business. This is a very small business, and
24 we're in tough economic times.

25 ACTING COMMISSIONER REYES: So let me make sure I

1 understand now, because I've heard a lot of stuff and I
2 have a tendency to try to track it all and then get
3 confused with the details.

4 But right now, you're saying you don't have a
5 lease, and we're willing to give you a lease or renew the
6 lease with an amendment that says you will do this
7 construction, this mitigation or retrofit, by July, and
8 then you also agree for regular periodic inspections
9 moving forward. And that's what staff has recommended.

10 Your position is, you muddy the waters by
11 requiring that the construction or the retrofit occur
12 before July, even though you are willing to sign something
13 on the side that this construction or retrofit will occur
14 and you will even go as far as posting a bond for that.
15 But you don't want the lease to include that because
16 lenders will consider this to be a muddy lease. But if I
17 understand correctly, you don't really have a lease to
18 take to a lender at this point that's a valid lease,
19 anyway. Did I misunderstand? Am I on the right track,
20 Counselors? I want one of my counselors to tell me where
21 I am missing the boat.

22 CHIEF COUNSEL LUCCHESI: In October of last year,
23 the Commission terminated the lease but gave 60 days with
24 an extension to 120 days at the discretion of the
25 executive officer to cure those defaults. Those defaults

1 have not been cured. The repair of the bridge is
2 outstanding still. And so right now, there is no
3 effective lease.

4 ACTING COMMISSIONER REYES: So it seems to me,
5 Counselor, that you are better off with a lease that has
6 provisions to get a loan than no lease at all to go get a
7 loan.

8 MR. DIEPENBROCK: I'm simply saying that we need
9 to divide the documents. I'm trying to say to you that
10 we're quite ready to do a lease amendment and do it
11 immediately to the effect that we will do these future
12 inspections. And I'm willing to say that and commit what
13 my client is authorizing me to commit and that he's
14 prepared to provide a document apart from the lease which
15 will require that these repairs be accomplished by the
16 stated date of July 31. That's what I am trying to say to
17 you. And I think that that answers the Commission's need
18 for security that the work, the immediate work, will, in
19 fact, be done. As I've indicated, we've hired the most --
20 or expect to hire, I should say -- the most reputable
21 bridge contractor on this side of the Rockies to do the
22 work. So we ask only that we deal with the form and not
23 the substance. We have an obligation clearly set forth,
24 secured by a performance bond, that the repairs will, in
25 fact, be accomplished according to the recommendations by

1 the engineer.

2 I don't know what could be more fair than that.

3 ACTING CHAIRPERSON GORDON: Let me restate and
4 make sure I understand now.

5 You would like two separate contracts. One, the
6 lease, the terms of the lease, plus ongoing inspections.
7 Okay. Second contract for the repairs. Repairs will be
8 done by July 31st with a performance bond that they would
9 be done by July 31st. They would be done by CC Myers.

10 MR. DIEPENBROCK: He's one possible bidder. My
11 hope is he will be successful because I know his company.

12 ACTING CHAIRPERSON GORDON: Mr. Fossum, tell me
13 why that doesn't work. Logically it sounds like it works,
14 for me.

15 ACTING COMMISSIONER REYES: But failure to perform
16 that, you still have a lease moving forward, and now it's
17 up to us or to staff to go pursue that ratification. Why
18 do we want to be in the bidding process? I'm sorry. That
19 question was to you, sir.

20 EXECUTIVE OFFICER FOSSUM: I think that's right,
21 Commissioner. Suppose it is a hundred thousand dollar
22 bond and they believe that the repair works will not
23 exceed that. I haven't seen any estimates at all, so I
24 really don't know.

25 MR. DIEPENBROCK: We have none to give you.

1 EXECUTIVE OFFICER FOSSUM: So it could exceed a
2 hundred thousand dollars. If it's a hundred thousand
3 dollar bond, they have a lease, they market it, they fail
4 to repair the bridge in time, we have and -- we have a
5 bond now that really requires that we then go and repair
6 that bridge. If that's -- you know, the Commission can
7 decide what it wants in that regard.

8 I understand the marketing restrictions that it
9 may give to a lender if they see something like they have
10 an obligation to repair something like July 31st, why
11 would I want to buy that house if it needs a roof on it?
12 Some lenders may. Certainly, we know what the lending
13 market looks like now and there's a lot of property out
14 there that has problems, and so they may be reluctant to
15 actually lend money on something like that.

16 That's -- but I don't know whether -- it's
17 something that I don't feel very comfortable with for a
18 couple of reasons: One, having it in an actual lease
19 that's enforceable against them, and secondarily, because
20 we recorded the lease amendment, it would be a matter of
21 record and so wouldn't lead anybody on. So it's in the
22 State's best interest to then take a bond in lieu of a
23 covenant lease. And that's the Commission's decision, but
24 it's my recommendation that the lease be amended.

25 Again, we can come back to the Commission at a

1 later time if we look at that bond that's being offered
2 and believe that it's a legitimate alternative, but it was
3 brought to me this morning, and, at this point, I'm
4 unwilling to recommend that. But it's your call.

5 ACTING COMMISSIONER REYES: Mr. Chair, I'm willing
6 to, at this point, move with the staff's recommendation as
7 stated and then give executive officer the flexibility to
8 take a second look at that offer to see what it does. And
9 it does, in fact, protect the interest. We're in the
10 business of protecting the public trust. We're not in the
11 business of going out there and building and making --
12 taking bids from people and doing RFPs. That's not what
13 we do. That's not our forte nor should it be our
14 business, with some limited exceptions.

15 So I would rather go now with the staff's
16 recommendation, and to the extent that they have a strong
17 case, which they feel, then -- and they can come up with
18 those provisions that will provide for the modifications,
19 the retrofits that are necessary to make this a safe
20 project, then I guess that's kind of where I am, Mr.
21 Chairman.

22 ACTING CHAIRPERSON GORDON: I think I'm in the
23 same place, actually, with the direction to staff. You
24 raised an interesting point, which is the sufficiency of
25 the bond. If the bond were sufficient to cover the

1 State's interest here -- we've had this conversation
2 before. We have a small business person with potentially
3 large liability on this lease. I would like -- we've
4 gotten this far towards trying to get this thing as a
5 viable, going, operation for the State without problems.
6 If the bond is sufficient to cover the State's interests,
7 I'm very interested in exploring what Mr. Diepenbrock has
8 explored. If it's not, then I don't think we have any
9 option.

10 MR. DIEPENBROCK: Let me add for whatever comfort
11 it may be. We do have a million dollar liability
12 insurance policy as to which the State is an additional
13 insured in case there should be some mishap out there.

14 I think what I would like to see you do, if you
15 would, is to set a timeline for us to meet and confer and
16 see if I can persuade Mr. Fossum that what I am proposing
17 is okay or for him to convince me that his is the better
18 course. I would suggest we have -- you have another
19 Commission meeting in March.

20 ACTING CHAIRPERSON GORDON: I'm going to have you
21 work with Mr. Fossum fairly extensively. I don't think we
22 have to do anything formal. I think if you make a request
23 to him to meet and confer at the earliest possible date, I
24 am absolutely confident he will meet with you in the next
25 24 to 48 hours. That's always been my experience.

1 EXECUTIVE OFFICER FOSSUM: I'm going on vacation.

2 (Laughter.)

3 EXECUTIVE OFFICER FOSSUM: But the staff will be
4 happy to meet with him and look at a few -- go over the
5 details of this proposal, and I would be certainly willing
6 to bring it back to the Commission at the next meeting.

7 ACTING COMMISSIONER REYES: Bring it back to the
8 Commission --

9 EXECUTIVE OFFICER FOSSUM: Unless you are
10 suggesting that I have the authority to accept the bond in
11 lieu of a lease covenant. I believe they should sign the
12 lease at this point.

13 ACTING COMMISSIONER REYES: I think the lease
14 should be signed now. That should be a done deal.

15 EXECUTIVE OFFICER FOSSUM: And I will be happy to
16 bring back their alternative and our recommendation on
17 that alternative.

18 ACTING COMMISSIONER REYES: At the next meeting.
19 And to the extent that, yeah, there is something that
20 really makes sense that requires us to then revise the
21 lease at that point, we can do that at the next meeting.

22 EXECUTIVE OFFICER FOSSUM: We want it to make
23 sense.

24 ACTING COMMISSIONER REYES: Okay. So that was my
25 motion.

1 ACTING CHAIRPERSON GORDON: I will second.

2 All those in favor?

3 (Ayes.)

4 EXECUTIVE OFFICER FOSSUM: Excuse me. We have one
5 more speaker slip on that. Mr. Snodderly also has
6 indicated a request to speak.

7 ACTING CHAIRPERSON GORDON: Come forward, sir.

8 MR. SNODDERLY: Good afternoon, gentlemen. My
9 name is David Snodderly and I signed a lease in 1985, so I
10 challenge anybody in the room who's been here since 1985
11 on one of these leases to stand up and raise your hand.
12 There aren't any.

13 We employ three to five people for the past 30
14 years, and we have expanded in order to pursue this issue.
15 But it's been over \$80,000 to -- to the initial repair to
16 the bridge and the subsequent inspection of the entire
17 bridge. And it's money we really didn't have. Owens
18 Financial put it up as our banker because we're kind of in
19 a corner.

20 Now, you might say, gosh, you have all these good
21 hammers to use to get this bad guy to perform. But I will
22 point out to you that the 1995 bridge report, which was
23 furnished to staff, was prepared at our request, because
24 in 1994, having been in a position of owning a marina for
25 10 or 12 years at that time, maybe 15, I don't know,

1 anyway, we owned the bridge and it was decrepit in 1994.
2 So we got an engineer's inventory report.

3 We took that engineer's report, contracted with
4 Emerson Engineering to guide our hand and repair and hire
5 people. We repaired the bridge. We brought the weight
6 limit up from probably a total restriction less than we're
7 talking about now to highway limits as standing. The
8 limit on the bridge now is 12,000 pounds and 3 miles per
9 hour. Mr. Duarte is here today to answer any questions
10 you might have as to the safety of the bridge. I contend
11 that the safety is not an issue on the bridge if you hold
12 the weight to 12,000 pounds and stay under 3 miles an
13 hour. And I think Mr. Duarte would agree with that. He
14 might say, well, you should put up "closed" to keep people
15 away from the curbing because it needs some attention and
16 we can do that. We can do that in the next couple of
17 days.

18 So we could provide you gentlemen with safety
19 because that's of paramount interest from our point of
20 view, for our own clients, and will provide about 175
21 slips for the public over these past 30 years. So we're
22 interested in safety. We're interested -- my God,
23 gentlemen, we agree. You are interested in the same thing
24 we're interested in. You are interested in the
25 performance; we're interested in that too. We performed

1 in '95 and nobody kicked us off. Nobody did that, because
2 we saw the need and we filled the need. We did the job.

3 But nobody seems to recognize that we're trying
4 our best to be a successful small business. And my health
5 has suffered a little bit lately. I wasn't able to
6 respond very quickly to the amendment because I had a
7 stomach condition. So here we are. We just need to know
8 how to document what we agreed on. And what we would like
9 from you is approval to get the first piece of work, which
10 is kind of complicated because it names specific
11 stringers, specific pylons, specific bridge pieces and
12 components that need attention and are drilled and tested
13 further and replaced. That's an ugly piece of work to sit
14 down and try to figure it out and describe it to you.

15 So what we are suggesting is we put that on a
16 separate agreement that says, okay, we'll do that. We'll
17 reinstate the lease. We don't take the position, by the
18 way, that it's been cancelled. But we will put that aside
19 as a nonissue for the moment. And so we will reinstate
20 the lease, give us the -- until July 31, which we agreed
21 to do with staff on January 12th. So give us the right to
22 do that, and that will fall away from the lease to the
23 31st of July, anyway, because that work will be done and
24 it will be all subject to the inspection at two years and
25 four years and two years and four years. And after the

1 eight years, the lease is up.

2 We hope to get Mr. Fossum to see that maybe a new
3 lease is a good thing for both parties. So we want to be
4 good guys and convince you folks of that. That's pretty
5 much it.

6 ACTING CHAIRPERSON GORDON: Counsel, I'm going to
7 ask you a question right now. We had already voted on
8 this measurement. Do we need to go back and rescind the
9 vote or are we --

10 EXECUTIVE OFFICER FOSSUM: There was, but because
11 there has been not --

12 MR. SNODDERLY: Let me speak.

13 EXECUTIVE OFFICER FOSSUM: Yeah. I suggest that
14 you -- I would like to add just a couple of things and
15 that is that we understand from the information provided
16 to us by Mr. Snodderly, that, in fact, 17 years ago, they
17 did repair half the bridge at that time and even the
18 engineering report at that time suggested some additional
19 things to be done. So now what we have is the other half
20 of the bridge primarily, which is where the problems have
21 arisen, and so it's not that the bridge wasn't repaired in
22 1995, as was mentioned today, and we did get one
23 engineering report from them. They didn't think any
24 repairs were needed, but they got one engineer to say the
25 repair work was done and they put in a steel beam, and we

1 didn't find that acceptable. So now we have their
2 engineer's report and all we would like to do is comply
3 with that.

4 ACTING COMMISSIONER REYES: Is there any other
5 public testimony? Yes.

6 MR. ADESOKAN: My name is Ade Adesokan. I'm the
7 activities manager at the marina.

8 What I would like the commissioner to know is that
9 based on the last meeting that we had, we complied with
10 every single request of the Commission at that point in
11 time, including doing the work that was specified on the
12 bridge that was repaired at that time and we have an
13 engineer sign off.

14 Now, subsequently, after the engineer's report was
15 delivered -- or the engineer sign-off was delivered, the
16 State Lands Commission staff found it necessary for
17 additional -- for additional inspections to be done. At
18 that point in time, we did that inspection at a cost of
19 about almost \$15,000, and that was done. We delivered
20 that to the staff, and we've been in talks with them to
21 make sure that all of those things are done and we agreed
22 that the work will be done. So what we're asking from the
23 commissioner at this point in time, because the lease was
24 in place for the last 27 years. All work by that lease
25 was done and it's performed to date, except for the

1 bridge, which was a subsequent request on the Commission
2 to do anything.

3 So if everyone has a car, as an example, and you
4 are driving a car, and you want a total inspection done on
5 that car, the mechanical -- or whoever does the inspection
6 is bound to find something, even though you might be
7 taking your car in for an oil change or a tune up. If
8 after you have got the car tuned up and they ask for a
9 general inspection and they find something is due to be
10 done, then we do it, and we agree to do that.

11 So we're not in terms of disagreeing with the
12 Commission except that what we're asking is that we
13 basically work together to make sure that this is done and
14 that we have the banking available to us to be able to
15 fund the project. And if we get the funding done, then we
16 can do all the work that's required. We've already agreed
17 to do the work.

18 So what I would like from the commissioner is that
19 we get the amendment that says that we need to have the
20 inspection done. In the meantime, leave things as is
21 until the bridge is complete and they are giving the date
22 of July 31st, if I'm not mistaken. So if we've done the
23 work by July 31st, then we signed a lease for 27 years
24 already and it has eight years to go on it. So -- and
25 we've agreed to do the inspection on that bridge two years

1 and four years intervals, then we should be okay.

2 I mean, we have 27 years of history here with that
3 bridge and with no lease amendment or anything of that
4 nature. And there's only eight years left. The burden of
5 having to sign another lease and getting an amendment and
6 all this is just substantial that it would make it almost
7 impossible for us to get financing to get the job done.

8 ACTING COMMISSIONER REYES: Thank you.

9 Mr. Chair, I would like to move that we rescind
10 the prior vote and essentially expunge the record.

11 ACTING CHAIRPERSON GORDON: Second that motion.

12 All those in favor?

13 (Ayes.)

14 ACTING CHAIRPERSON GORDON: The vote is renounced.
15 The previous vote has been rescinded.

16 ACTING COMMISSIONER REYES: Now that we have
17 public testimony and we have the opportunity to hear from
18 folks, I would like to still make that motion, my prior
19 motion, that we go with staff's recommendation at this
20 point and ask staff to work with the parties, and to the
21 extent that this bond idea can actually pan out to staff's
22 satisfaction, that this lease be brought back at the next
23 meeting. But absent that agreement, then the lease would
24 then stand as it is recommended by staff for those two
25 issues.

1 ACTING CHAIRPERSON GORDON: Second that motion.
2 All those in favor?

3 (Ayes.)

4 ACTING CHAIRPERSON GORDON: Two-nothing. The vote
5 is out.

6 EXECUTIVE OFFICER FOSSUM: Mr. Chair, we have one
7 more item -- if we could take a short break.

8 Just to let you know, the public -- the one person
9 for public comment has left so they will not be
10 testifying, so we just have the one item left, No. 90.

11 ACTING CHAIRPERSON GORDON: No. 90. So the two on
12 No. 83 on the Treasure Island, we don't have anybody left?
13 That was taken -- all right. All right.

14 (Break taken in proceedings.)

15 ACTING CHAIRPERSON GORDON: Everybody take their
16 seat. Everybody wake up. It's been a long day.

17 We got one more item. Item No. 90, which is an
18 application for a new general lease of sovereign land
19 located in the Russian River of Sonoma County Water
20 Agency.

21 Can I have the staff presentation, please?

22 PUBLIC LAND MANAGER LEE: Good afternoon. My name
23 is Ninette Lee. I'm a public land manager with the
24 Commission's Land Management Division, and I'm here to
25 present information on the calendar No. 90, and I have a

1 presentation too, with a few slides.

2 (Thereupon an overhead presentation was
3 presented as follows.)

4 PUBLIC LAND MANAGER LEE: This item asks the
5 Commission to authorize a lease between the Commission and
6 the Sonoma County Water Agency for continued breaching,
7 periodic breaching, at the mouth of the Russian River to
8 prevent flooding, and construction and maintenance of an
9 outlet channel to form a freshwater lagoon for fish
10 habitat enhancement and to prevent flooding in the Russian
11 River.

12 The mouth of the Russian River is located at Goat
13 Rock State Beach near the town of Jenner. And here's an
14 aerial photo showing the beach in Jenner.

15 --o0o--

16 PUBLIC LAND MANAGER LEE: The next slide is our
17 site and location map from the calendar item that shows
18 the proposed lease area.

19 The Sonoma County Water Agency has been a lessee
20 of the Commission since 1996 when it took over artificial
21 breaching of the sandbar that forms at the mouth of the
22 river. Prior breaching had been performed by the Sonoma
23 County Public Works Department and private citizens. The
24 Water Agency has been mechanically breaching the sandbar
25 when it closes and water levels threaten low-lying

1 properties. However, when the sandbar is breached,
2 saltwater from the ocean mixes with river water, creating
3 saline conditions in the estuary.

4 --o0o--

5 PUBLIC LAND MANAGER LEE: And here's a photo of a
6 natural open channel.

7 --o0o--

8 PUBLIC LAND MANAGER LEE: And then about one week
9 later, a sandbar formed.

10 In 2008, the National Marine Fisheries Service
11 issued the Russian River Biological Opinion in response to
12 section 7 in consultation with the U.S. Army Corps of
13 Engineers for operation of upstream dams. The Biological
14 Opinion found that both the artificial breaching practices
15 and the upstream dam operations during the low flow season
16 of May 15th through October 15th have significant adverse
17 impacts on the river's estuarine rearing habitat for
18 steelhead, coho salmon, and Chinook salmon by interfering
19 with natural processes that cause a freshwater lagoon to
20 form behind a sandbar.

21 As a result, the Biological Opinion requires the
22 Water Agency to develop and implement a new method of
23 opening the sandbar during the low flow season to create a
24 more productive environment for rearing Pacific salmonids.

25 This new more controlled method of breaching,

1 known as the Russian River Estuary Management Program,
2 would involve establishing a summer freshwater lagoon
3 during the low flow season. The Water Agency would
4 continue current breaching practices for the remainder of
5 the year as needed. Establishment of the summer lagoon is
6 similar to current breaching practices, but the outlet
7 channels would not be excavated as deeply or narrowly. A
8 bulldozer and/or excavator would be used to dredge sand,
9 which would then be placed on the beach adjacent to the
10 channel.

11 Historic breaching practices vary year to year,
12 occurring mainly in the spring, early and late summer, and
13 fall. For the proposed summer lagoon management, the
14 Water Agency may need to open up the mouth of the river up
15 to 22 times per year and perform maintenance once a week.

16 --o0o--

17 PUBLIC LAND MANAGER LEE: And this shows a created
18 outlet channel.

19 --o0o--

20 PUBLIC LAND MANAGER LEE: And this slide shows
21 actual breaching activity.

22 An environmental impact report on the proposed
23 project was prepared and certified by the Water Agency on
24 August 16th, 2011. It identified a number of significant
25 and unavoidable impacts, some of which involve the

1 Commission's public trust responsibilities toward the
2 State's sovereign land.

3 For example, the project may reduce the quality of
4 surfing at Goat Rock State Beach during the summer lagoon
5 management program. It may also reduce the availability
6 of river-side beaches, impair water quality, and create
7 long-term disturbance for the Jenner harbor seal haul-out.

8 --o0o--

9 --o0o--

10 PUBLIC LAND MANAGER LEE: And there's a picture of
11 the beach, and there are some seals in the distance.

12 While the project may impact some public trust
13 uses, it also provides the public trust regional and
14 statewide benefits through improvement of rearing habitat
15 for state and federally threatened and endangered salmonid
16 species. It can also allow the Water Agency to continue
17 to provide water, sanitation services, and flood
18 protection in its district. Commission staff has received
19 letters from several organizations and individuals
20 outlining their concerns with their project's impacts.

21 In addition, a lawsuit was filed by the Russian
22 River Watershed Protection Committee, alleging that the
23 EIR is inadequate under the California Environmental
24 Quality Act and that the Water Agency's decision approving
25 the project should be set aside and certification of the

1 EIR be vacated.

2 The lease before you today contains special
3 provisions that require the Water Agency to submit
4 adaptive estuary and water, rubble, and barrier breach
5 management plan, annual water quality data summary report,
6 and an annual report on the harbor seals' reaction to the
7 proposed activities. In addition, the provision states
8 that the lease will terminate if the EIR is ruled invalid.

9 The Water Agency has requested a term that would
10 meet the Biological Opinion stipulations to implement the
11 project through 2023. However, given uncertainties in the
12 necessary frequency of a outlet channel construction and
13 exact environmental reactions to lagoon management, the
14 Water Agency is using an adaptive management approach to
15 accomplish the project.

16 Considering this approach and the potential for
17 project modifications, Commission staff recommends
18 authorization of a lease providing for three periods of
19 summer lagoon management. Staff believes this term would
20 provide sufficient experience and information to determine
21 the project's success and the ability to incorporate any
22 modifications into a new lease.

23 Jessica Martini-Lamb, principal environmental
24 specialist at the Sonoma County Water Agency, is here to
25 provide you with a brief presentation on the project.

1 Commission staff as well as the Water Agency staff are
2 available to answer any questions you may have, and there
3 are also two people here wishing to present their concerns
4 regarding the project.

5 Thank you.

6 ACTING CHAIRPERSON GORDON: This has been a long
7 day. Can you be brief, please.

8 MS. MARTINI-LAMB: I will try to be brief.
9 Ninette did a fantastic job of summarizing where we are
10 with the project right now. Thank you very much.

11 (Thereupon an overhead presentation was
12 presented as follows.)

13 MS. MARTINI-LAMB: I'm Jessica Martini-Lamb,
14 principal environmental specialist with the Sonoma County
15 Water Agency.

16 --o0o--

17 MS. MARTINI-LAMB: And as Ninette mentioned, the
18 purpose of the estuary management project is to adaptively
19 manage the Russian River Estuary to enhance rearing
20 habitat for endangered salmon while at the same time
21 continuing to minimize flood risk to low-lying properties
22 along the Russian River Estuary.

23 And I would like to briefly provide some
24 background on how we got to this project and the steps
25 that the Water Agency is taking to manage the estuary for

1 this purpose.

2 --o0o--

3 MS. MARTINI-LAMB: As Ninette mentioned, since the
4 1950s, the barrier beach that forms at the mouth of the
5 Russian River has been breached. The Water Agency took
6 over this responsibility in the mid 1990s, and soon after,
7 steelhead, coho salmon, and Chinook salmon were listed
8 under the Endangered Species Act. Coho salmon are also
9 listed under the California Endangered Species Act.

10 And the Water Agency entered into a Section 7
11 consultation with the U.S. Army Corps of Engineers and the
12 National Marine Fishery Service, in which they evaluated
13 the Water Agency's and the Corps's operations within the
14 watershed.

15 Following over a decade of consultation and
16 issuing the Russian River Biological Opinion in 2008,
17 California Department of Fish and Game issued a
18 consistency determination in 2009. And the Biological
19 Opinion directed the Water Agency to modify our breaching
20 practices from mid May to mid October in order to enhance
21 rearing habitat for endangered juvenile salmon while
22 continuing to minimize the flood risk.

23 As you can see from this picture, when the barrier
24 beach forms and encloses the river mouth, the resulting
25 water backwaters as water surface elevations increase.

1 When the estuary is tidal and open, the tides extend up to
2 Duncans Mills. When it closes, it essentially doubles the
3 length of the lagoon.

4 These increasing water surface elevations pose
5 potential flood risk for low-lying properties along the
6 estuary, but this also recognizes that the increased
7 freshwater depths in the estuary provide an opportunity to
8 enhance rearing habitat.

9 Central and north coast lagoons have been
10 documented to provide habitat conditions that allow
11 juvenile salmonids to thrive and grow prior to migrating
12 out to the ocean. In fact, studies have shown that in
13 some of these lagoons that the juvenile salmon that rear
14 in lagoons comprise a majority of returning adults to
15 watersheds.

16 Enhancing the habitat for these salmon would be
17 accomplished by modifying the breach activity, as Ninette
18 mentioned, and the Water Agency recognizes that this
19 effort may result and impacts the public trust resources
20 and discloses impacts in our Environmental Impact Report.

21 However, public trust resources can also benefit
22 from this project. Coho salmon are one of the most --
23 certainly the most at-risk species in Sonoma County and
24 one of the most at-risk species in the state, and it would
25 allow us to continue providing the protection for flooding

1 for properties along the estuary.

2 By adaptively managing the lagoon and
3 incorporating the lessons that are learned while we're
4 continuing to gather and interpret data, the Water Agency
5 hopes to comply with the Biological Opinion while
6 minimizing the project impacts as much as possible.

7 --o0o--

8 MS. MARTINI-LAMB: Here's a quick slide of this.
9 On the top right, is a picture of the artificial breaching
10 that we do. On the bottom right is a picture of an
11 example of what a lagoon outlet channel might look like.
12 This is actually a naturally formed channel that we would
13 try to replicate. And the picture on the left shows the
14 area along the beach where the work could occur.

15 --o0o--

16 MS. MARTINI-LAMB: The management tools that we're
17 utilizing have been considerable. The Water Agency has
18 put considerable effort into monitoring biological
19 resources and water quality in the estuary. Some of this
20 effort was required by the Biological Opinion. But water
21 quality work and the fisheries stating what the Water
22 Agency has done has been ongoing since 2003, prior to the
23 filing of the Biological Opinion.

24 We do fisheries monitoring in multiple lower river
25 tributaries as well as operating the track of the upstream

1 end of the estuary, resulting in abundance of steelhead
2 utilizing the estuary. We do beach seining basically at
3 every available location from the river mouth to Austin
4 Creek in order to attempt to recapture these salmon and
5 understand their growth rates in the estuary. We are
6 doing sampling of invertebrates and zooplankton as part of
7 an effort to understand the prey that are available in the
8 estuary as it's currently managed and how those prey
9 resources will respond to changes in estuary management
10 and management of the freshwater lagoon.

11 We also do twice monthly baseline pinniped
12 monitoring surveys and do pinniped monitoring surveys
13 along with our beach management actions.

14 And as well for water quality, we maintain native
15 saunas at ten locations along the estuary and in the
16 lagoon to measure water quality constituents and learn
17 more about how water quality will change in the estuary
18 with the change in management. Those changes in water
19 quality will drive how prey, the prey, develop and how the
20 salmon will respond to changes in lagoon management.

21 --o0o--

22 MS. MARTINI-LAMB: We've been working with
23 partners to keep moving the estuary project forward. We
24 maintain open dialogue with our partners and with the
25 public on what we're learning about the estuary. We're

1 working with universities such as UC Davis and Bodega
2 Marine Lab, UC Berkeley, Lawrence Livermore Laboratory,
3 and the University of Washington. We collaborate with
4 local partners on the pinniped monitoring efforts and work
5 with local volunteers.

6 And finally, we maintain regular communication
7 with the public on the outreach -- to outreach and inform
8 them on the progress of the estuary management plan.

9 So I thank you for your time this morning. I was
10 trying to keep it brief here -- or this afternoon. And
11 thank you for the opportunity to present.

12 ACTING COMMISSIONER REYES: Mr. Chair, I know
13 we're short on time here. But in all fairness, I think
14 that as a supporting statement, that lasted more than
15 three minutes, so in all fairness, the opposition should
16 also get -- I have a meeting in Sacramento. The
17 opposition should be afforded the same.

18 If anybody else is speaking in support of this,
19 please hold onto the three minutes. I have no idea who it
20 is, but I just think that -- you know.

21 ACTING CHAIRPERSON GORDON: I agree.

22 Any other support? We have comments to make on
23 the project, yes. I'm going to get my helper here to do
24 the slides. We have a PowerPoint.

25 (Thereupon an overhead presentation was

1 presented as follows.)

2 MS. HIGGINS: Hi. Thank you for this opportunity
3 to comment. I'm Cea Higgins with Sonoma County Surfrider,
4 and we're here to give comment on the construction of the
5 outlet channel in the highly debated possibility of
6 benefit to juvenile steelhead salmon. There are
7 unanswered questions and unfinished studies necessary to
8 determine whether this lease is economically viable or
9 desirable, conducive to public access, or consistent with
10 environmental protection.

11 Because this project has negative impacts to
12 public resources that this Commission is charged with
13 protecting, because it reduces recreational access to the
14 state beach and Russian River, eliminates navigational
15 access from the river to the ocean, negatively impacts
16 fishing and community businesses and the local economy,
17 negatively impacts listed and unlisted wildlife species,
18 and negatively impacts water quality, we suggest a
19 one-year lease is more in keeping with the mandate that's
20 been entrusted to you in the Public Resource Code.

21 I kind of want to pull the camera out a little bit
22 so that you see that this is an entire ecosystem that
23 we're looking at and quite a cherished one for Sonoma
24 County residents. We certainly appreciate and acknowledge
25 the SLC staff for reducing the proposed lease from the

1 original 15 years to three years. However, we would hope
2 that the Commission would act to approve the lease before
3 a period of one year, which would be commensurate with the
4 one-year permit issued by your sister agency, State Parks.
5 State Parks staff recognizes that as an adaptive
6 management plan, changes may be necessary to the outlet
7 channel construction at any time during each annual
8 construction period. They require the flexibility to
9 adapt their permit and its restrictions on an annual
10 basis. So should the State Lands Commission by issuing a
11 one-year lease only.

12 --o0o--

13 MS. HIGGINS: Sonoma County state beaches receive
14 over 3 million visitors a year and the Russian River
15 Estuary is a premier visitor attraction that's located at
16 Goat Rock State Beach. It's the most popular Sonoma beach
17 park. It has the easiest access to the ocean.

18 --o0o--

19 MS. HIGGINS: It's the only beach park with river
20 access for safe wading. It has free parking.

21 The attempts to construct and maintain the outlet
22 channel will require an unknown number of beach closures
23 during the most heavily used times of the year, severely
24 restricting public access each time.

25 All previous attempts at the channel construction

1 have failed. The Water Agency has not been able to
2 estimate the number of days required to successfully make
3 the channel because they don't have a baseline.

4 --o0o--

5 MS. HIGGINS: The lower Russian River of the
6 estuary and the coastal zone is a world class recreation
7 area. The combination of the lower flows and the backflow
8 from a closed mouth will negatively affect boating,
9 surfing, swimming, and, most important, water quality.

10 The estuary is a designated marine protected area.
11 It's included in the State Marine Conservation and
12 Recreation Management Areas. It's also the home to the
13 largest harbor seal colony on the Sonoma coast.

14 --o0o--

15 MS. HIGGINS: The Mitigation Monitoring Plan
16 admits that the IHA does not provide for a long-term
17 harassment or alteration of the habitat conditions that
18 would contribute to the harbor seal abandonment of the
19 Jenner haul-out, and, because of this, NMFS Marine Mammal
20 section has only issued a one-year permit at a time for
21 the last two years.

22 --o0o--

23 MS. HIGGINS: The numerous and respected
24 stakeholders -- I stand here as Surfrider, but there are
25 over 173 pages of comments on this EIR, all supporting a

1 valid solution to salmon restoration, but we have repeated
2 questions on the accuracy of the EIR findings, challenging
3 the conflicts --

4 --o0o--

5 MS. HIGGINS: -- that are listed within the
6 Biological Opinion and the conflicts of the project with
7 California Public Resource Code.

8 These concerns have yet to be addressed except to
9 be deemed significant yet unavoidable in the EIR approval
10 by the board of supervisors, who also happens to be the
11 board of directors for the Water Agency. This buyout
12 identifies the risk as significant disruption and adverse
13 modifications to the habitat of coho. We are talking
14 several different species here, all with different habits.

15 --o0o--

16 MS. HIGGINS: In 2011 with river flows during the
17 management period averaging over 125 cubic feet per second
18 and a river mouth which remained open, the exact opposite
19 conditions recommended in this management plan, coho
20 salmon reached record numbers. Something worth
21 considering.

22 --o0o--

23 MS. HIGGINS: In addition, the buyout outlines the
24 likely effects on water quality. It concludes that the
25 combination of high inflows and breaching practices impact

1 rearing habitat, yet the EIR for the low flow, which is
2 yet to be completed, and the EIR for the out ship channel
3 [verbatim], was separated. One cannot separate a river
4 from a river mouth or attempt to benefit one species at
5 the detriment of others and expect success.

6 The violation of CEQA is currently being litigated
7 by the Russian River Watershed Protection Committee and
8 the results of that litigation should be a part of the
9 review process that can only occur with the lease tenure
10 of one year.

11 The feasibility of alternative methods such as
12 raising structures or removing the bunk or altering the
13 jetty have not been adequately investigated. Current
14 jetty studies will not be completed until 2012 or the end
15 of this year, and approval of a one-year lease would allow
16 reevaluation once those studies were completed.

17 --o0o--

18 MS. HIGGINS: In other inadequately addressed
19 issues is the actual cost of the management plan. Current
20 estimates don't include the unknown costs of construction
21 and maintenance of the outlet channel. No cost benefit
22 analysis has been done on the project or project
23 alternatives or the negative impacts to the local economy.

24 The California Coastal Commission has rejected the
25 Water Agency's request for an amended permit, requiring a

1 new application which does include all this previously
2 questioned and missing information.

3 --o0o--

4 MS. HIGGINS: Marine resources shall be
5 maintained, enhanced and, where feasible, restored.
6 Issuing a one-year lease will improve the opportunity to
7 restore the estuary so that it can be a healthy habitat
8 for all species of marine organisms.

9 Thank you.

10 ACTING CHAIRPERSON GORDON: Staff, can you come
11 back up, please? The procedural objection I'm hearing
12 right now is three years versus one-year lease.

13 PUBLIC LAND MANAGER LEE: Right.

14 ACTING CHAIRPERSON GORDON: Can you tell me what
15 the downside of the state interests are if we went to a
16 one-year instead of three-year lease at this point?

17 PUBLIC LAND MANAGER LEE: That would require the
18 Water Agency to submit another application, actually,
19 right now for a new lease and then they submit filing fees
20 and deposit for....

21 ACTING CHAIRPERSON GORDON: How much would that
22 cost the Water Agency to resubmit?

23 PUBLIC LAND MANAGER LEE: It's an estimated
24 deposit for public agency. It's a \$3,000 deposit to cover
25 the application processing cost.

1 ACTING CHAIRPERSON GORDON: What would the
2 Commission's -- what would your reaction be to a one-year
3 as opposed to a three-year, just as far as what you are
4 trying to accomplish?

5 EXECUTIVE OFFICER FOSSUM: Mr. Chair, if I could,
6 we looked at that, because, as was pointed out, the
7 Department of Parks and Recreation have the State -- they
8 have only identified one year as the period that they
9 would be allowing. However, the Department of Fish and
10 Game gave three years, and so we felt that an agency that
11 was focusing on the need for the study of the salmonids
12 and how it's going to impact it was more appropriate at
13 the time, but it's certainly, again, the Commission's
14 discretion.

15 ACTING COMMISSIONER REYES: I would like to know
16 if there's any other opposition. So we will hear from
17 everybody before we take any action and end up rescinding
18 ourselves again.

19 MS. JELLISON: My name is Norma Jellison, and I
20 live in Bodega Bay on the Sonoma County coast, and I'm
21 also a volunteer with State Parks with the harbor seal
22 colony at the mouth of the Russian River, which you saw
23 some slides on.

24 So I would like to make just a few brief comments
25 to you, very brief. The National Marine Fisheries

1 Biological Opinion forced the Sonoma County Water Agency
2 to develop this estuary management project focusing on one
3 species without really meaningfully considering the
4 negative impacts on many of the other inhabitants and
5 users of the estuary. Harbor seal colony nursery, the
6 Dungeness crab nursery in the river, the boaters, the
7 surfers, and, most importantly, those of us of the public,
8 who use the beach at the Russian River.

9 Any reduction to public access to the state beach
10 and the river -- and we're talking maybe 22 times a year
11 for just the construction period -- we don't know how many
12 times for the maintenance of construction -- would really
13 be another blow to our hard-hit state parks and to our
14 local visitor-based economy. These beach closures and the
15 sustained six-month closure of the mouth of the river,
16 which is the only access to the Pacific Coast from the
17 Russian River for the many, many boaters and fishers and
18 surfers who use this area is really tantamount to a taking
19 of public trust resources from us, the public.

20 So I urge the Commission to be very cautious and
21 very conservative and to consider approving a one-year
22 lease commensurate with the state parks who approved a
23 one-year period because they too were very, very concerned
24 about state park public resource and access for families
25 to the beach and to the river.

1 Thank you very much for your time.

2 ACTING CHAIRPERSON GORDON: Thank you.

3 Mr. Reyes?

4 ACTING COMMISSIONER REYES: The thing is, as I
5 think about this, it seems to me that, given the climate
6 changes that we're seeing, and there's no year that's like
7 the last year, one year kind of does not allow for that
8 longer period of time to look to see what's going on. So
9 I concur that a ten-year proposal would be too long. But
10 frankly, I think I'm comfortable enough with the three
11 years. It's not a permanent lease. Three years is not a
12 very long period of time. And I understand the issues of
13 the -- are you protecting species at the cost of the
14 other, but that's sort of the role of the Environmental
15 Impact Report, and it is being litigated.

16 So I think the recommendation is that we do the
17 three years with the caveat that if the Environmental
18 Impact Report gets thrown out, the lease is void. I think
19 that's a reasonable approach. But Counselor is telling me
20 to think about something.

21 CHIEF COUNSEL LUCCHESI: CEQA provides that in the
22 event there's a challenge to the CEQA document, a
23 responsibility agency, such as the State Lands Commission,
24 is required to proceed as if the CEQA document is valid,
25 unless -- the one exception is if there's a stay issued,

1 and there has not been a stay issued by the court in this
2 case yet. And so the Commission is required to rely on
3 this EIR.

4 ACTING COMMISSIONER REYES: That's CEQA. But to
5 the extent that the loss -- if they prevail in the lawsuit
6 against CEQA, then --

7 CHIEF COUNSEL LUCCHESI: -- the project is not
8 valid.

9 EXECUTIVE OFFICER FOSSUM: The conditions of our
10 lease require permits from all appropriate agencies, and
11 if there's nothing to rely on, then the lease --

12 ACTING COMMISSIONER REYES: Then this issue
13 still --

14 EXECUTIVE OFFICER FOSSUM: We're relying on that
15 CEQA document at this point.

16 ACTING COMMISSIONER REYES: Which is the valid
17 document --

18 EXECUTIVE OFFICER FOSSUM: -- at that point their
19 lease is not valid either.

20 ACTING COMMISSIONER REYES: The lease will also go
21 to the Coastal Commission at the next stop.

22 EXECUTIVE OFFICER FOSSUM: And the Army Corps of
23 Engineers.

24 ACTING COMMISSIONER REYES: Corps of Engineers.
25 So for that reason, I will move staff's

1 recommendation.

2 ACTING CHAIRPERSON GORDON: I will second.

3 All those in favor?

4 (Ayes.)

5 Vote is two to nothing. It is out. Staff's

6 recommendation is approved.

7 Are there any other public comments?

8 Any other item before the Commission?

9 That means the meeting is closed.

10 Thank you.

11 (Thereupon the California State Lands

12 Commission meeting adjourned at 2:52 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, KATHRYN S. SWANK, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California State Lands Commission meeting was
7 reported in shorthand by me, Kathryn S. Swank, a Certified
8 Shorthand Reporter of the State of California;

9 That the said proceedings was taken before me, in
10 shorthand writing, and was thereafter transcribed, under
11 my direction, by computer-assisted transcription.

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

15 IN WITNESS WHEREOF, I have hereunto set my hand
16 this 9th day of February 2012.

17
18
19
20 _____
21 KATHRYN S. SWANK, CSR, RPR
22 Certified Shorthand Reporter
23 License Number 13061
24
25