

COMMISSION MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

DEPARTMENT OF HEALTH SERVICES
1500 CAPITOL AVENUE
SACRAMENTO, CALIFORNIA

TUESDAY, MARCH 25, 2008

10:00 A.M.

TIFFANY KRAFT, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 12277

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. John Chiang, State Controller, Chairperson

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

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

STAFF

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

Ms. Barbara Dugal, Chief, Land Management Division

Mr. Curtis L. Fossum, Senior Counsel

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

Mr. Matt Rodriguez, Attorney General's Office

Mr. Paul Thayer, Executive Officer

ALSO PRESENT

Mr. John Asuncion, Blue Whale Sailing School

Mr. Robert Lowes

Ms. Micaela Van Dine, Reysner Law Office

Mr. Michael Wall, NRDC

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

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1 PROCEEDINGS

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

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

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

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

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

16 May I have a motion to approve the minutes?

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

19 ACTING COMMISSIONER BUGSCH: Second.

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

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

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

25 The Executive Officer's report this morning is

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

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

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

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

25 The affect though is to cause the destruction in

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

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

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

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

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

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

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

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

25 Concurrently, the State Lands Commission staff at

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

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

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

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

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

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

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

1 coordination between the two agencies.

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

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

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

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

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

11 CHAIRPERSON CHIANG: Are there comments or
12 comments?

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

16 EXECUTIVE OFFICER THAYER: Correct.

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

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

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

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

7 EXECUTIVE OFFICER THAYER: Yes.

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

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

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

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

1 some conclusion.

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

5 EXECUTIVE OFFICER THAYER: That's correct.

6 ACTING COMMISSIONER SHEEHAN: Thanks

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

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

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

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

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

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

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

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

17 EXECUTIVE OFFICER THAYER: Yes, sir.

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

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

1 CHAIRPERSON CHIANG: Thank you.

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

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

8 Is there a motion?

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

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

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

16 (Ayes)

17 CHAIRPERSON CHIANG: All those opposed?

18 Without opposition, the motion passes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 CHAIRPERSON CHIANG: Thank you very kindly.

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

18 CHAIRPERSON CHIANG: Okay. Next speaker, please.

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

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

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

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

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

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

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

3 CHAIRPERSON CHIANG: Thank you very much.

4 Any questions or comments?

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

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

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

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

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

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

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

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

1 made on this.

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

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

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

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

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

25 ACTING COMMISSIONER BUGSCH: I would prefer to

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

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

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

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

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

15 CHAIRPERSON CHIANG: Is that a motion?

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

18 ACTING COMMISSIONER SHEEHAN: I'll second.

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

21 All those in favor say aye.

22 (Ayes)

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

25 EXECUTIVE OFFICER THAYER: The next item, Mr.

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

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

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

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

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

1 acceptable to staff.

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

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

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

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

25 CHAIRPERSON CHIANG: Thank you. Any questions or

1 comments?

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

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

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

14 CHAIRPERSON CHIANG: Questions or comments?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 CHAIRPERSON CHIANG: Thank you very much.

23 Questions or comments?

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the slough.

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

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

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

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

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

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

8 SENIOR COUNSEL FOSSUM: Absolutely.

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

11 SENIOR COUNSEL FOSSUM: Almost daily.

12 ACTING COMMISSIONER SHEEHAN: Okay.

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

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

25 The other question is if they do not get a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And then what other options do we have in terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 ACTING COMMISSIONER SHEEHAN: Because certainly,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 Thank you very much.

11 CHAIRPERSON CHIANG: Thank you.

12 Is there a motion?

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

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

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

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

22 ACTING COMMISSIONER BUGSCH: Second

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

25 (Ayes)

1 CHAIRPERSON CHIANG: None opposed. Motion
2 passes.

3 Next item, please.

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

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

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

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

1 federal agencies were also invited.

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

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

7 CHAIRPERSON CHIANG: Thank you very much.

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

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

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

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

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

25 At one point, the original fleet contained over

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

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

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

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

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

25 Staff understands that the NOAA study is in the

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

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

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

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

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

22 LAND MANAGEMENT DIVISION CHIEF DUGAL: 1995.

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

25 LAND MANAGEMENT DIVISION CHIEF DUGAL:

1 Twenty-five years.

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

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

10 ACTING COMMISSIONER SHEEHAN: A cure.

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

14 ACTING COMMISSIONER SHEEHAN: That addresses
15 that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 CHAIRPERSON CHIANG: Thank you, Bruce.

18 We have Michael Wall.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Now, our lawsuit is brought under the citizens

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

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

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

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

1 for the opportunity to speak.

2 CHAIRPERSON CHIANG: Thank you very much.

3 Comments?

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

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

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

1 to move sometimes can be more difficult.

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

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

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

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

4 ACTING COMMISSIONER BUGSCH: That's fine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 ACTING COMMISSIONER BUGSCH: Are they saying we

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

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

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

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

10 ACTING COMMISSIONER BUGSCH: Interesting.

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

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

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

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

6 CHAIRPERSON CHIANG: Very good.

7 Questions or comments?

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

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

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

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

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

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

1 of the federal government on this one.

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

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

6 (Ayes)

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

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

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

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CERTIFICATE OF REPORTER

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

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

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

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

TIFFANY C. KRAFT, CSR, RPR
Certified Shorthand Reporter
License No. 12277

