

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

EMPLOYMENT DEVELOPMENT DEPARTMENT
AUDITORIUM
722 CAPITOL MALL
SACRAMENTO, CALIFORNIA

THURSDAY, JUNE 23, 2011
10:36 A.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

APPEARANCES

COMMISSION MEMBERS

Mr. Gavin Newsom, Lieutenant Governor, Chairperson

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

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

STAFF

Mr. Curtis Fossum, Executive Officer

Ms. Jennifer Lucchesi, Chief Counsel

Mr. John Dye, Staff Counsel

Ms. Jessica Rader, Staff Counsel

Mr. Gregory Scott, Chief, Mineral Resources Management Division

Mr. Drew Simpkin, Public Land Management Specialist

ATTORNEY GENERAL

Ms. Alice Reynolds, Deputy Attorney General

ALSO PRESENT

Mr. Edward Clark

Mr. Lester Denevan

Ms. Leonie Mulvihill, City of Newport Beach

Mr. Warren Truitt, Save the American River Association

Mr. Mike Valentine, California Energy Commission

Mr. David Webb, City of Newport Beach

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Sequoia Avenue, near Tahoe City, Placer
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those portions of the existing fence and all
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PROCEEDINGS

1
2 CHAIRPERSON NEWSOM: All right. We'll get this
3 meeting started. I'll call this meeting of the State
4 Lands Commission to order. All the representatives of the
5 Commission are present. I'm your Lieutenant Governor and
6 Chair of the State Lands Commission, Gavin Newsom. And I
7 am pleased that we have the Deputy Controller and
8 Commissioner alternative, Alan Gordon, who's here, and
9 Pedro Reyes representing the Department of Finance on my
10 respective right and left, your left and your right.

11 And for the benefit of those in the audience, we
12 say these perfunctory comments, the State Lands Commission
13 administers certain property interests owned by the State
14 including mineral interests. Today, we'll hear proposals
15 concerning the leasing and management of these public
16 property interests. That concludes the perfunctory
17 remarks.

18 And we will move to the first item of business,
19 and that's the adoption of the minutes, the Commission's
20 April 28th. We had a special meeting on April 28th. And,
21 Mr. Fossum, just anything you want to add to those minutes
22 or anything from staff perspective? Or if you have
23 nothing to say, we'll just ask for a motion to approve
24 those minutes.

25 EXECUTIVE OFFICER FOSSUM: That would be fine. I

1 have nothing to add.

2 ACTING COMMISSIONER REYES: Move approval of the
3 minutes.

4 ACTING COMMISSIONER GORDON: Second.

5 CHAIRPERSON NEWSOM: Without objection, we'll
6 move those forward. The minutes are now unanimously
7 adopted.

8 Next order of business is the Executive Officer's
9 report. And by the way, I agree with all of you that are
10 polite enough to think it -- or rather polite enough not
11 to say it, but to think these things -- we've got to sort
12 of protect and preserve our environment. So I think we
13 should look to -- I can personally purchase some iPads for
14 the team, but we can --

15 EXECUTIVE OFFICER FOSSUM: Thank you.

16 (Laughter.)

17 CHAIRPERSON NEWSOM: Wait a second. I didn't
18 just say that, did I?

19 (Laughter.)

20 CHAIRPERSON NEWSOM: I was expecting to you go,
21 "Oh, you don't need to".

22 (Laughter.)

23 ACTING COMMISSIONER REYES: Mr. Chair, I have my
24 own, just because I sit on over 40 Boards and Commissions
25 and I find it a lot easier to carry a small iPad, and be

1 able to read when I have free time.

2 CHAIRPERSON NEWSOM: I lost my staff as we walked
3 from the Capitol, who was carrying both of these.

4 (Laughter.)

5 ACTING COMMISSIONER REYES: It is a form of
6 exercise.

7 CHAIRPERSON NEWSOM: This turns out to be the
8 thickest agenda in some time, but that should not
9 necessarily equate to your time being lost with an agenda.
10 Most, of course, on the Consent Calendar. And with that,
11 Mr. Fossum, you have your executive order -- or your
12 Executive Officer's report.

13 EXECUTIVE OFFICER FOSSUM: Thank you, Mr.
14 Chairman. And first of all, I'd like to congratulate you
15 and Mrs. Newsom on the birth of your son.

16 CHAIRPERSON NEWSOM: Very kind of you. Thank
17 you.

18 (Applause.)

19 EXECUTIVE OFFICER FOSSUM: And I'd also like to
20 welcome Alan Gordon, Deputy Controller, to the Commission
21 for his first meeting.

22 ACTING COMMISSIONER GORDON: Thank you.

23 EXECUTIVE OFFICER FOSSUM: Staff has been
24 proceeding with compliance with the Governor -- with
25 Governor Brown's cell phone and vehicle reduction goals.

1 We've also been working on the strategic plan update. And
2 we've had 3 meetings so far, and we're actually having
3 another one as soon as this meeting is over this
4 afternoon. And we hope to be able to report a final
5 version of that at 1 of the next 2 Commission meetings.

6 Interesting you should bring up the binders, we
7 are hoping to implement some changes to both the calendar
8 format, how it's presented to the Commission, as well as
9 making it more accessible on line for those people
10 fortunate enough to have iPads. And we hope to have that
11 available before the next meeting as well.

12 On the alternative Energy front, we've got a
13 couple items to report. One is Item 134 that you'll be
14 hearing later today, the Memorandum of Agreement, on the
15 Desert Renewable Energy Conservation Plan and the
16 Resources Renewable Energy Action Team, that we will be
17 participating with. And we're also working on AB 982,
18 which is Assemblyman Skinner's bill on the Solar Parks
19 Program.

20 On other legislative matters, 2 bills sponsored
21 by the Commission have made it out of the Senate and will
22 be heard in the Assembly this next week. One is SB 152 by
23 Senator Pavley that deals with fair rent for private piers
24 on State property. The other one is SB 595, Senator Wolk,
25 dealing with abandoned vessels removal.

1 Also, advancing are a couple of Assembly bills
2 and one Senate bill that the Commission has voted to
3 support, and they'll be heard next week as well, AB 752,
4 Brownley, on the sea level rise action plan, and AB 935,
5 Huffman, dealing with OSPAF funding for our oil spill
6 prevention program. And finally, Senate Bill 935, which
7 is actually a Committee bill dealing with our ballast
8 water program. So we're pleased that those things are
9 advancing.

10 And 3 bills that the Commission voted to oppose
11 never made it out of the Committee, so we're also happy
12 about that.

13 We've been monitoring, advising a number of
14 other -- and advising on a number of other bills with
15 legislative staff, including tideland grants in San
16 Francisco and -- involving both San Francisco and
17 Pittsburg.

18 We're at a point now with the Bureau of State
19 Audits audit of the Commission's operations -- it was
20 initiated over a year ago -- it's coming to a close.
21 We're having a meeting with them this week, and another
22 one in July. We anticipate the report will be released in
23 August. And we are pleased that we've learned a lot from
24 questions they've asked and issues they've raised. And we
25 believe we've already improved many of our practices based

1 on their inquires.

2 As you mentioned, and as you're quite aware, this
3 is an immense calendar this month. That's the first time
4 in the 73-year history of the Commission that we've had
5 140 items on the agenda. There's only been 5 occasions in
6 all those years, when there's been over 100.

7 I think it's also impressive that of all those
8 items on the agenda, there's 29 different counties being
9 represented of the 58 counties the State has, and 25
10 different waterways that the Commission manages are also
11 involved in that.

12 And before we move on to the Consent agenda, I
13 would like to ask the Chair if we could move the last item
14 on the agenda, Item 140, honoring the Save American River
15 Association be heard immediately after the Consent
16 Calendar.

17 And as far as items on Consent, Item 134 I'm
18 pleased to announce that the property owners at Lake Tahoe
19 who've had a fence blocking public access and use of the
20 lake below the high water mark have agreed to remove it in
21 less than a month, and thereby making Item 13 -- excuse
22 me, 138 unnecessary.

23 CHAIRPERSON NEWSOM: Great.

24 EXECUTIVE OFFICER FOSSUM: One other item that's
25 on the Consent agenda, and that is if the Commission does

1 not remove Item 42 from the agenda, then we would ask that
2 43 be removed, because it is unnecessary to vote on. So I
3 don't believe, at this point, we've had any requests.

4 Kimberly.

5 CHAIRPERSON NEWSOM: We've had -- I do have a
6 request to speak on Item number 42.

7 CHAIRPERSON NEWSOM: Is that only if it comes off
8 the agenda?

9 CHAIRPERSON NEWSOM: Stephen Leshner. Stephen?

10 MR. LESHER: Only if it comes off of the agenda.

11 CHAIRPERSON NEWSOM: Perfect.

12 EXECUTIVE OFFICER FOSSUM: So if the Commission
13 leaves that on the agenda, we would ask that Item 43 be
14 removed.

15 CHAIRPERSON NEWSOM: Be removed, pulled from the
16 Consent?

17 EXECUTIVE OFFICER FOSSUM: That ends my report.

18 CHAIRPERSON NEWSOM: Okay. So just so I
19 understand this, if we don't -- if we don't choose to pull
20 that item, you would like Item 43 to be pulled for
21 discussion?

22 EXECUTIVE OFFICER FOSSUM: Correct.

23 CHAIRPERSON NEWSOM: Well, let's move then to the
24 Consent Calendar --

25 EXECUTIVE OFFICER FOSSUM: I'm sorry not for

1 discussion, but to remove it from the agenda in its
2 entirety, yes.

3 CHAIRPERSON NEWSOM: Just table it. Okay, that
4 was the distinction. All right. And then in that stead,
5 also on the Item 138, you'd like that tabled as well?

6 EXECUTIVE OFFICER FOSSUM: Yes.

7 CHAIRPERSON NEWSOM: Okay. So let's first move
8 to the Consent Calendar. And I'll ask if there are any
9 items you'd like removed?

10 ACTING COMMISSIONER GORDON: No.

11 ACTING COMMISSIONER REYES: No.

12 CHAIRPERSON NEWSOM: So we'll -- and then I'll
13 ask the public any items? No one wish to remove any items
14 from the Consent Calendar?

15 We'll see that we'll move forward with the
16 Consent Calendar with 2 amendments that we will remove
17 Item 43. And -- oh, that's it. So let's move forward.
18 Is there a motion to support with Item 43 --

19 ACTING COMMISSIONER GORDON: I move the Consent
20 Calendar.

21 CHAIRPERSON NEWSOM: Moved.

22 Second?

23 ACTING COMMISSIONER REYES: Second.

24 CHAIRPERSON NEWSOM: Without objection, we'll do
25 that. On Item 43, is there a motion to -- well, any

1 public comment on Item 43?

2 None.

3 Is there a motion to table Item 43?

4 ACTING COMMISSIONER GORDON: So moved.

5 ACTING COMMISSIONER REYES: Second.

6 CHAIRPERSON NEWSOM: Without objection.

7 And item -- I'll take this out of order. Item
8 138, was there anyone who came here expressly to speak on
9 Item 138?

10 Anyone wish --

11 EXECUTIVE OFFICER FOSSUM: Yes, Mr. Chair. I'd
12 like to present a short presentation --

13 CHAIRPERSON NEWSOM: Summary.

14 EXECUTIVE OFFICER FOSSUM: -- on that, a summary.

15 And we do have a few gentlemen here who are
16 representing SARA that we would like to --

17 CHAIRPERSON NEWSOM: On 138?

18 EXECUTIVE OFFICER FOSSUM: Oh, I'm sorry, 138.

19 CHAIRPERSON NEWSOM: Anyone wish to speak on 138?

20 So we will look to then, if we could, table Item
21 138?

22 ACTING COMMISSIONER GORDON: So moved.

23 ACTING COMMISSIONER REYES: Second.

24 CHAIRPERSON NEWSOM: Without objection, 138 is
25 tabled. And we will then move out of order the last item.

1 And we will call Item 140, which is considering a
2 resolution acknowledging the 50th anniversary of Save the
3 American River Association.

4 And, Mr. Fossum, I'm sure you have a lot to say
5 on this. And I know a number of people are here
6 appropriately to add their voice as well.

7 EXECUTIVE OFFICER FOSSUM: Yes. Thank you, Mr.
8 Chair. Save the American River Association was formed in
9 1961 as a grass roots organization to protect the American
10 River from encroaching urbanization and other threats.
11 SARA joined forces with the Environmental Defense Fund in
12 1972 to sue the U.S. Bureau of Reclamation and East Bay
13 MUD to prevent diverting substantial flows through the
14 Folsom South Canal, which would have resulted in
15 significant damage to the Lower American River.

16 The Commission and Department of Fish and Game
17 later joined this lawsuit. And in 1990 the case, after 17
18 years in court, was won with a judgment protecting the
19 river from the proposed devastating diversions. It's a
20 great opportunity to thank SARA on their 50th birthday for
21 the many accomplishments they've made in protecting the
22 American River and the American River Parkway, which is
23 fundamental in protecting the river.

24 Public interest groups like SARA provide a
25 fundamental public service in seeking to protect quality

1 of life issues and serve an important role in protecting
2 our environmental treasures.

3 Today, Warren Truitt the President is here. He's
4 joined by Felix Smith and I believe some other members of
5 the Board. And we have a resolution to be signed by the
6 Commission to present to them. So I'd like them to come
7 forward and...

8 CHAIRPERSON NEWSOM: Great, Mr. Truitt. Thank
9 you for being here. And there's a mic over there and
10 right across. You can run across. Thank you.

11 And anyone else that wishes to speak on this
12 item, you can make your way closer to the mic, and we'll
13 go in order.

14 MR. TRUITT: Thank you. I am Warren Truitt,
15 President of the Save the American River Association.

16 CHAIRPERSON NEWSOM: Warren, if you could, just
17 move the mic. Thank you so much.

18 MR. TRUITT: And we did celebrate our 50th
19 anniversary on June 4th. And Mr. Fossum happened to be
20 there on a horse, as part of the equestrian patrol. And
21 they started with this organization 50 years ago, and were
22 a big part of our future and history. And we did it in
23 the rain. And we had about 208 people there. And it was
24 fun.

25 I just wanted to say real quickly what we did 50

1 years ago was create the parkway, help create the parkway,
2 the citizens of Sacramento, and the electeds at the time.
3 And now here we are 50 years later and we're rescuing the
4 parkway, because of funding issues. And so we're doing
5 the same thing in some ways.

6 This is -- I just wanted to show the audience.
7 This is a little piece of paper that was a deed for 1
8 square yard of parkway that people paid a dollar for. You
9 got 1 square yard. And your 1 square yard was wherever
10 you stood at the time, put your hands on your hips and
11 that was your square yard of the day. And we raised
12 enough money to buy the first 7 acres donated to the
13 parkway.

14 So we thank you very much for what you're doing
15 for us today. Thank you.

16 CHAIRPERSON NEWSOM: Appreciate it.

17 MR. TRUITT: This is -- by the way, I wanted to
18 introduce Felix Smith.

19 CHAIRPERSON NEWSOM: Mr. Smith.

20 MR. TRUITT: Felix was here in 1961 on the first
21 ride down the river when the organization was founded.
22 Clyde MacDonald is SARA's Vice President and he recently
23 retired from the Legislature. And Bill Griffith back in
24 the far corner with his hand up back there --

25 CHAIRPERSON NEWSOM: Thank you, Bill.

1 MR. TRUITT: -- was there in the beginning as
2 well. And he's in the film that we created 50 years ago.
3 So I thank them all and all of our predecessors for all
4 that they've done.

5 CHAIRPERSON NEWSOM: That's tremendous. Thank
6 you very much.

7 Mr. Fossum, you have a presentation.

8 EXECUTIVE OFFICER FOSSUM: I'd like to present
9 this resolution from the Commission to the Save the
10 American River Association on the 50th anniversary.
11 Congratulations.

12 MR. TRUITT: Thank you very much.

13 (Applause.)

14 MR. TRUITT: Thank you.

15 CHAIRPERSON NEWSOM: Thank you, Mr. Truitt. And
16 we'll have a signed copy to give to you. That's the
17 unsigned version.

18 MR. TRUITT: Okay.

19 CHAIRPERSON NEWSOM: The signed version is right
20 here. We just have to get someone who knows how to
21 replace those things and put them in.

22 MR. TRUITT: Thank you very much.

23 CHAIRPERSON NEWSOM: Thank you for your
24 leadership and your stewardship. Thank you all very much.

25 Is there anyone else who wished to speak on this

1 item?

2 Seeing none, we'll thank everybody for taking the
3 time to be here. We're grateful. And we'll close public
4 comment on this item.

5 CHIEF COUNSEL LUCCHESI: Mr. Chair?

6 CHAIRPERSON NEWSOM: Jennifer.

7 CHIEF COUNSEL LUCCHESI: May I request that the
8 Chair and the Commission expressly vote on the Consent
9 Calendar. I don't think that was expressly done earlier,
10 just to make sure.

11 CHAIRPERSON NEWSOM: Oh, okay. I thought we did,
12 but God bless. We'll do it again, if we didn't.

13 CHIEF COUNSEL LUCCHESI: Thank you.

14 EXECUTIVE OFFICER FOSSUM: Insurance.

15 CHAIRPERSON NEWSOM: Insurance. Yeah. No.
16 Otherwise, we have 132 items that will be left hanging.

17 (Laughter.)

18 CHAIRPERSON NEWSOM: Is there a motion to approve
19 the Consent Calendar as amended?

20 ACTING COMMISSIONER GORDON: So moved.

21 ACTING COMMISSIONER REYES: Second.

22 CHAIRPERSON NEWSOM: Without objection, that will
23 be --

24 CHIEF COUNSEL LUCCHESI: Thank you.

25 CHAIRPERSON NEWSOM: -- the reinforced action of

1 this body.

2 On Item number 140, we closed public comment.
3 This was not an action -- well, it was an action item,
4 because we want to approve the resolution. Is there a
5 motion to approve the resolution?

6 ACTING COMMISSIONER GORDON: So moved.

7 ACTING COMMISSIONER REYES: Second.

8 CHAIRPERSON NEWSOM: Without objection.

9 We will then move to the regular agenda in order.
10 And I will ask that Item 134, which is a Memorandum of
11 Understanding between the State Lands Commission and other
12 State and federal agencies to participate in California's
13 Renewable Energy Action Team, and Desert Renewable Energy
14 Conservation Plan.

15 We'll take time to hear a presentation from staff
16 and have an opportunity to hear from all of you.

17 Thank you.

18 EXECUTIVE OFFICER FOSSUM: Yes, Mr. Chair. John
19 Dye, our staff counsel, who's been working on this is
20 presenting the item today.

21 CHAIRPERSON NEWSOM: Mr. Dye.

22 STAFF COUNSEL DYE: Good morning, Commissioners.
23 My name is John Dye, staff counsel for the Commission.

24 Staff respectfully requests your consideration of
25 Calendar Item number 134, a Memorandum of Understanding

1 between the California State Lands Commission and the
2 Renewable Energy Action Team for participation in the
3 Desert Renewable Energy Conservation Plan or DRECP.

4 The Renewable Energy Action Team is comprised of
5 2 State and 2 federal agencies, the California Energy
6 Commission, the Department of Fish and Game, the U.S.
7 Bureau of Land Management and the U.S. Fish and Wildlife
8 Service.

9 The purpose of the team is to advance State and
10 federal conservation goals for the desert region of
11 California, while enabling timely permitting of renewable
12 energy projects. In May of 2010, the team agency signed a
13 planning agreement for the DRECP pursuant to the Natural
14 Community Conservation Planning Act.

15 This chapter of the Fish and Game code was
16 designed to promote the preservation of natural ecosystems
17 while enabling appropriate development within the planning
18 area.

19 As shown on this map, the DRECP planning area
20 lies within the blue boundary line. The yellow squares
21 within this area represent roughly 300,000 acres of school
22 lands under the jurisdiction of the Commission. The
23 proposed memorandum would facilitate coordination between
24 the goals of the DRECP and the Commission's management
25 objectives for these school lands.

1 The memorandum would also enable Commission staff
2 to work with a broad spectrum of federal, State, and local
3 agencies as well as stakeholders to develop the DRECP.
4 The memorandum expressly preserves the Commission's
5 jurisdiction over California school lands and does not
6 obligate the Commission to take any action with respect to
7 those lands.

8 In October of 2008, the Commission adopted a
9 resolution supporting the environmentally responsible
10 development of renewable energy on school lands.
11 Engagement with the DRECP process will help accomplish
12 that objective.

13 Staff therefore recommends the Commission
14 authorize the Executive Officer to execute the proposed
15 Memorandum of Understanding.

16 Thank you.

17 CHAIRPERSON NEWSOM: Thank you very much. And
18 thank you for all the good work on this.

19 Without editorializing, let me first ask that
20 members of the public that wish to speak on this item,
21 unless there are questions directly at this moment from
22 Commissioners?

23 Come on up.

24 And I have one speaker's card formally written
25 out by Mike Valentine.

1 Mr. Valentine, you're here. There you are.

2 Please.

3 EXECUTIVE OFFICER FOSSUM: I'd like to
4 acknowledge the fact that Mr. Valentine is a former staff
5 counsel and Assistant Chief Counsel for the Commission, as
6 well as the Chief of the Land Management Division, and
7 subsequently the General Counsel for the Department of
8 Fish and Game. So he doesn't have a lot of experience in
9 this area.

10 (Laughter.)

11 CHAIRPERSON NEWSOM: And we'll disregard the
12 comment and move to --

13 (Laughter.)

14 MR. VALENTINE: I should also disclose that even
15 though Mr. Fossum was there when all those hiring
16 decisions were made, he's not implicated in any of them.

17 (Laughter.)

18 MR. VALENTINE: So his record is clean.

19 CHAIRPERSON NEWSOM: Turn the page.

20 MR. VALENTINE: I'm really here as a
21 representative of the DRECP planning process on behalf of
22 the Energy Commission. And mainly to respond to any
23 questions that you may have. If that would be helpful,
24 I'm happy to respond. If not, I'm happy to sit down and
25 clam up.

1 And obviously, the Energy Commission and the
2 other members of the Renewable Energy Action Team support
3 the proposed action.

4 CHAIRPERSON NEWSOM: Yeah. I mean, is there any
5 opposition whatsoever, could there possibly be to
6 collaboration and coordination?

7 ACTING COMMISSIONER REYES: Mr. Chair, I move the
8 staff's recommendation.

9 ACTING COMMISSIONER GORDON: Second.

10 CHAIRPERSON NEWSOM: Now you're talking. All
11 right. Well, without any other person here that could be
12 upset with the fact they haven't spoken, we'll close
13 public comment.

14 And then we have a motion to support and
15 seconded.

16 Without objection, we'll move this item forward
17 appropriately. Thank you for your good work.

18 The next item on the calendar is Item number 135,
19 which is consider title settlement and land exchange
20 agreement involving parcels within the City of Long Beach.

21 EXECUTIVE OFFICER FOSSUM: Mr. Chair, Staff
22 Counsel Jessica Rader will be presenting this item for the
23 staff.

24 CHAIRPERSON NEWSOM: Ms. Rader.

25 (Thereupon an overhead presentation was

1 Presented as follows.)

2 STAFF COUNSEL RADER: Good morning, Chair,
3 Commissioners. My name is Jessica Rader, Staff Counsel
4 with the Commission.

5 Commission staff respectfully requests your
6 consideration and approval of Calendar Item 135, the title
7 settlement and exchange agreement with the City of Long
8 Beach. The proposed agreement is between the State,
9 acting by and through the State Lands Commission, and the
10 City of Long Beach as a trustee and as an municipality.

11 All land is located within the City of Long
12 Beach. The city council unanimously approved this
13 agreement on Tuesday.

14 The first slide shows the trust termination
15 parcel, which is a 10-acre parcel. And the exchange will
16 terminate the State's sovereign interest on it. In
17 exchange, the State will acquire 3 Public Trust parcels
18 totaling approximately 38 acres located at --

19 --o0o--

20 STAFF COUNSEL RADER: -- Bixby Park, which is
21 shown here, and at the Colorado Lagoon and Marine Stadium
22 Parcels, shown here.

23 --o0o--

24 STAFF COUNSEL RADER: In addition, the city as
25 the trustee will lease the 3 parcels from the Commission,

1 until such time as its legislative grant can be amended to
2 reflect this exchange. Staff believes that the evidence
3 supports the findings necessary to comply with the Public
4 Resource Code, Section 6307, and that this agreement is in
5 the best interests of the State.

6 That concludes my presentation, and I'm available
7 for any questions.

8 CHAIRPERSON NEWSOM: These are the 49-year
9 leases?

10 STAFF COUNSEL RADER: Yes.

11 CHAIRPERSON NEWSOM: Are there any -- please.

12 STAFF COUNSEL RADER: Oh, I was going to say the
13 City is also here.

14 CHAIRPERSON NEWSOM: City of Long Beach is here
15 good.

16 EXECUTIVE OFFICER FOSSUM: And we have one member
17 of the public who wishes to speak. And we have received
18 also letters from one other member of the public who isn't
19 present today that are in your packet.

20 CHAIRPERSON NEWSOM: Okay. Good. If there are
21 no questions directly from the Commission, let me ask, I
22 see Lester -- and I apologize for the pronunciation,
23 Enevan.

24 MR. DENEVAN: Denevan.

25 CHAIRPERSON NEWSOM: Oh, it's D. God Bless.

1 Well, that makes more sense. Please, Mr. Denevan.

2 MR. DENEVAN: Today, the main issue is the
3 resolution of land use in the public tidelands, and in the
4 uplands, including 40 acres of city-owned parks. I have
5 to go back into some of the history of this.

6 But today, it's actually what they're seeking,
7 all parties, is a remedy of problems created 10, 12 years
8 ago. This matter originally went to the City Council. It
9 went to the Coastal Commission, which said we'll approve
10 this shopping center in the form of public beach,
11 conditioned on that the Lands Commission says these uses
12 are permitted by the tideland grants of 1911. This is
13 Public Trust land.

14 A former beach -- I'll pass out 2 copies of the
15 site before somebody -- some people decided a shopping
16 center was better than what we had before.

17 So going back to early 2000 and 2001, and before
18 that a planning process that took about 5 years, I was on
19 a member -- I was a member of one of the planning
20 committees -- I was a member of one of the Planning
21 Commission's appointed members to the Coastal Development
22 Advisory Committee of Long Beach, and all of this very
23 carefully over the years.

24 Finally, a developer came in. They decided to
25 put aside the plan and give the developer, more or less,

1 what he wanted, which is partly in contradiction of the
2 Public Trust, a shopping center on a former beach on land
3 owned by the State of California.

4 So this process went ahead. And I was concerned.
5 And over several years, I came to Sacramento 3 times,
6 talked to your staff twice. I got up and spoke to the
7 entire Lands Commission. And I practically begged the
8 Commission come on down to Long Beach and see what's
9 happening, and get involved.

10 And the Commission looked the other way. The
11 staff recommended the shopping center on the former beach.
12 And the consequences are disastrous.

13 We had a lawsuit. And I was a party to that, the
14 California Earth Corps. We spent a million dollars on
15 attorney fees. It took years and years and years, and
16 went all the way on appeal to the State Supreme Court.
17 They say you can't do it.

18 Now, we have 24 vacant shops down there that they
19 can't use.

20 CHAIRPERSON NEWSOM: And Mr. Denevan, the red
21 light represents the time limit, but you can, if you
22 could, wrap up your comments. I'd be grateful.

23 MR. DENEVAN: Well, you know, this is important,
24 you know. I just --

25 CHAIRPERSON NEWSOM: Just try to be respectful

1 for the 100 people in the room.

2 MR. DENEVAN: I know. And maybe it could be
3 continued to the next time, because -- in any case, the
4 lawsuit was filed, and we won on appeal. And so we have a
5 situation now to remedy.

6 So the remedy is to take 40 acres of city parks,
7 turn it over to the State, and then take the tideland
8 parcel and to give that to the city. And, of course, that
9 probably will -- land that would be available for hotels.
10 It would be available for shopping center, office
11 buildings.

12 So on these parks along the shoreline, they're
13 dedicated in perpetuity for parks. So the question is for
14 the Commission, what will the public gain by transferring
15 this land to the Lands Commission?

16 I'll mention just one example, Bixby Park. You
17 look on your topographic map, and you'll find that Bixby
18 Park is 50 feet above sea level, landward of Ocean
19 Boulevard. Now, what are we gaining?

20 And then finally, I'd like to make the point that
21 the Park Commission of Long Beach, I appeared before them
22 7 days ago, they don't know anything about this project.
23 The Park Director doesn't know. They finally took it to
24 the City Council Tuesday.

25 And so this project is going ahead. And what I

1 ask then is to deny this request for the transfer of
2 property. And, of course, the title questions, the
3 maintenance of Marine Stadium, they can wait. The only
4 reason they want to settle this boundary dispute is if
5 nobody knows where the boundary is, how are you going to
6 transfer ownership?

7 See that's why eventually that has to be
8 addressed. But it is a park, and the idea is leave it in
9 City ownership and leave the downtown parcel under the
10 Lands Commission. You're collecting rent down there, how
11 much rent?

12 How much rent are you giving up on 10 acres of
13 valuable property?

14 CHAIRPERSON NEWSOM: All right, Mr. Denevan.
15 We'll get to those questions. I appreciate your comments,
16 and I appreciate you taking the time to be here today.

17 MR. DENEVAN: Thank you.

18 CHAIRPERSON NEWSOM: Mr. Fossum, do you want to
19 take up -- well, first of all, are there any other public
20 comment? I know the representatives of the City of Long
21 Beach are here as well. We can certainly ask them to
22 answer some of those questions that were posed by Mr.
23 Denevan. Mr. Fossum, any reflection or thoughts in terms
24 of what you've heard?

25 EXECUTIVE OFFICER FOSSUM: Well, I would like to

1 state that the Commission and the staff have been working
2 to try and resolve this problem for over a decade. And
3 Mr. Denevan is right, that ultimately the challenge that
4 they brought was successful, in the sense that they found
5 that the particular code section is written at the time
6 was one in which the Commission and the city had not
7 complied with.

8 However, while on appeal to the Supreme Court,
9 the Legislature amended that code section. It's the one
10 we're using today, and clarified it, because the reading
11 that the Court of Appeal made really didn't make any sense
12 and couldn't comply with it basically.

13 So that part of the story is true. Mr. Denevan
14 has been very active on this, wishing to preserve as much
15 of the area of Long Beach and parks as possible. However,
16 this area, for nearly 100 years, has been used for other
17 purposes, such as the old Pike down there, which was a
18 amusement park, if you want to call that a park, and sat
19 for over 40 years as a vacant lot basically, before the
20 City got a Coastal permit to put in the commercial, retail
21 establishment.

22 When the Commission and the staff found out about
23 it, we did object, but the resolution, at that time, was
24 the City had already entered into leases. And at the
25 direction of the Commission at the time, the staff came up

1 with a exchange. That exchange is not the one before you
2 today. We have what we think is a much better exchange
3 for the public, and will allow wetlands restoration and
4 connections between the Colorado Lagoon and Alamitos Bay.
5 And we're very supportive of this transaction and
6 appreciative of the City and their cooperation on this.

7 As to that bluff park, it's very similar to a
8 park down the block, if you will, that the Commission
9 authorized many years ago, the City of Long Beach, to
10 acquire with tidelands oil revenues because of the
11 benefits to the public of keeping the viewshed from the
12 highway. An individual was going to build a house there,
13 blocking the views.

14 Presumably, the City ultimately could get a
15 zoning change or something of these areas, and it could
16 become residential. If you go to the prior slide --
17 somebody -- I don't know if I can do that.

18 You can see there's houses on both sides. The
19 view and access and the benefit of the public to be able
20 to see those areas and the view from the highway we think
21 is important. There's so many places, like in Malibu,
22 where you can drive for miles without evening seeing the
23 ocean. These are benefits to the public and we strongly
24 support this.

25 ACTING COMMISSIONER GORDON: Mr. Fossum, are

1 there any habitat value in the land that we are giving up?

2 EXECUTIVE OFFICER FOSSUM: Not to my knowledge.
3 The question was whether there was any habitat value in
4 the Pike area? And no, in fact, people don't even tend to
5 go there it appears, not enough to make it commercially
6 viable anyway, at this point.

7 CHAIRPERSON NEWSOM: Very good. Is there anyone
8 else that wishes to speak on this item?

9 Seeing none, we will close public comment. I
10 appreciate the diligence --

11 MR. DENEVAN: Could I just answer briefly?

12 CHAIRPERSON NEWSOM: We break every precedent and
13 protocol at peril. And so I just, in an effort to avoid a
14 perilous situation, I'll respectfully take the time after
15 the meeting, if I may, to hear from you. We've extended
16 your public comment twice as long as we typically do.

17 MR. DENEVAN: Just remember the last time, if
18 you'd listened to me, you would have saved millions of
19 dollars, including for DDR, the City of Long Beach, and
20 the State Lands Commission.

21 CHAIRPERSON NEWSOM: I respect that. Thank you.
22 And again, I appreciate your being here and your diligence
23 and your advocacy.

24 MR. DENEVAN: Mr. Fossum has said this land is
25 almost useless.

1 CHAIRPERSON NEWSOM: Thank you. I appreciate the
2 staff's hard work on this. And I appreciate their
3 analysis, and I support it. And I do think there is a
4 good Public Trust and public good here. And I do think
5 this is an item that we should support. And I appreciate
6 Long Beach and their unanimous support of this item as
7 well.

8 ACTING COMMISSIONER REYES: I concur with the
9 Chair's comments, so I move the item.

10 ACTING COMMISSIONER GORDON: Second.

11 CHAIRPERSON NEWSOM: Without objection, we will
12 move Item 135.

13 And we now are on Item 136, which is to consider
14 the scope of work for the implementation and completion of
15 an environmental protection facility safety audit for the
16 Long Beach unit, something we spent a great deal of time
17 on. We don't need to get back in the particulars today,
18 but I appreciate the staff's hard work on this. And I am
19 respectful for their need to extend a time period. And I
20 think there's a good justification.

21 But with that, let's hear, Mr. Fossum, from you
22 and others to explain why.

23 EXECUTIVE OFFICER FOSSUM: Thank you, Mr. Chair.
24 Chairman and Commissioners, Greg Scott, the
25 Division Chief for the Mineral Resources Management

1 Division will be presenting this item.

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

4 CHAIRPERSON NEWSOM: Great. Mr. Scott.

5 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

6 SCOTT: Good morning, Mr. Chair and Commissioners I'm Greg
7 Scott, Division Chief of the Commission's Mineral
8 Resources Management Division. And I'm presenting Regular
9 Item number 136 for consideration of the scope of work for
10 implementation and completion of an environmental
11 protection and facilities safety audit for the Long Beach
12 Unit Oil Operations in the Wilmington Field.

13 Could I get those slides up, please.

14 I've provided you copies of these slides for your
15 reference.

16 CHAIRPERSON NEWSOM: Yeah, we got it.

17 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

18 SCOTT: Are they up?

19 CHAIRPERSON NEWSOM: There you are.

20 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

21 SCOTT: At its April 28th, 2011 Commission meeting, staff
22 presented the Long Beach Unit 5-year program plan and
23 annual plan for approval. The Commission found the
24 program plan did not contain adequate detail to show
25 absence of significant environmental and safety risk, and

1 therefore ordered the program plan be revised to include
2 an environmental safety audit of the Long Beach unit
3 operations, and that it be completed within 15 months.

4 Staff was directed to return to the Commission
5 within 60 days with a detailed scope of the audit that
6 would include identification and analysis of the unit's
7 environmental and health risks and provide follow-up
8 recommendations to improve the unit operations and the
9 program plan.

10 In addition, the Commission was directed that the
11 safety audit would be conducted in a manner not to impact
12 the net revenues of the State's general fund.

13 --o0o--

14 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

15 SCOTT: This calendar item describes in detail the Mineral
16 Resources Management Division's safety audit program, its
17 objectives, methodologies, and processes that are followed
18 when conducting audits. A scope of audit has been
19 prepared, which is included as Exhibit B to the calendar
20 item, describing the purpose of the audit, a description
21 of the facilities to be audited, and some of the audit
22 categories to be investigated.

23 The facilities will be audited to identify risk,
24 using accepted codes, industry standards, and established
25 practices. And those are listed in Exhibit C, as they

1 apply to the long Beach unit operations.

2 State Lands Commission staff, with the assistance
3 of an electrical consultant, will conduct the entire
4 audit. However, the City of Long Beach and Occidental
5 Petroleum staff have been consulted on the audit scope and
6 they concur with the concept and methodology.

7 CHAIRPERSON NEWSOM: Good.

8 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

9 SCOTT: And the audit duration required staff resources,
10 estimated costs, and funding source are also described in
11 the calendar item, as is the staff's recommendation as to
12 the timing of this audit.

13 --o0o--

14 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

15 SCOTT: To give you a sense of the size, complexity, and
16 range of facilities to be audited, this is a photograph of
17 1 of the 4 offshore islands that makes up the Long Beach
18 unit. This is Island Grissom. All 4 islands are equipped
19 similarly. And the State's audit staff will examine their
20 entire systems, their engineering design, records, and
21 protective equipment, in addition to the 4 islands, an
22 onshore production facility, a storage tank farm, a
23 production processing facility, and a production shipping
24 facility, which will also be included in the audit.

25 --o0o--

1 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

2 SCOTT: The categories to be audited are shown here.

3 These are equipment, function, and integrity, complete

4 electrical component investigation, a technical design

5 evaluation, which checks the design -- engineering design

6 of all the facilities, a complete administrative record

7 review where operating manual, safety plans, spill plans

8 and emergency response plans are examined. And then the

9 final phase of the audit is an assessment of the Long

10 Beach unit safety culture and safety management systems.

11 All 6 audit staff technicians, engineers, and

12 supervisors will participate full time in this audit. The

13 City of Long Beach and Oxy personnel will also participate

14 by providing on-site support, but will not participate in

15 the actual audit process.

16 --o0o--

17 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

18 SCOTT: The audit is estimated to cost one and a quarter

19 million dollars. This covers all 6 MRMD safety audit

20 staff in the field, plus an electrical consultant.

21 The State's audit staff is presently funded from

22 the Oil Spill Prevention Administration Fund, which will

23 be the source of funds for the auditors for the time they

24 spend in the Long Beach unit.

25 As a result, there will not be an impact to the

1 State general fund. Any findings that need to be
2 corrected as they apply to maintenance and repair will be
3 made at unit cost, however.

4 --o0o--

5 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

6 SCOTT: The Long Beach unit receives considerable
7 oversight and review at the present time, as can be seen
8 from the agency and control jurisdiction shown here. The
9 plan safety audit will assure that adequate protections
10 are in place to enable continued safety unit operations.

11 --o0o--

12 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

13 SCOTT: Because the Long Beach unit audit will be lengthy,
14 the State's present offshore platform and facility audit
15 program will be considerably delayed by approximately 15
16 months.

17 The table on this slide shows the State lease
18 facilities currently planned for auditing and their
19 respective schedules. These facilities undergo audits
20 every 5 years. Platform Holly, which is located offshore
21 Santa Barbara and is next on the schedule, was last
22 audited in 2006. And MRMD staff believes that delaying
23 the start of the Long Beach unit audit till after Platform
24 Holly is audited would be a prudent scheduling option.

25 Considering seasonal weather factors, Platform

1 Holly can be audited during the upcoming summer months
2 before inclement weather conditions occur making for safer
3 conditions for the audit personnel.

4 --o0o--

5 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

6 SCOTT: This last slide is staff's recommendation. Staff
7 recommends, therefore, that Platform Holly be audited
8 first, this summer, as originally scheduled, then followed
9 by the Long Beach unit, which would result in only a
10 5-month delay in the Long Beach unit audit.

11 That concludes my presentation. Thank you very
12 much.

13 CHAIRPERSON NEWSOM: In terms of the Rincon
14 Island and Rincon offshore, when -- do we have dates the
15 last time those were audited?

16 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

17 SCOTT: Yes, we do. We have completed Rincon Island audit
18 twice since we've begun the audit program. I don't have
19 the exact month that was completed.

20 CHAIRPERSON NEWSOM: Just, I guess --

21 EXECUTIVE OFFICER FOSSUM: Mr. Chair, if I could
22 interject. Rincon is not producing oil at this point. It
23 is shut down. And --

24 CHAIRPERSON NEWSOM: So the consequences -- I
25 guess I'm arguing the consequences of a delay they're not

1 as significant.

2 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

3 SCOTT: They're not significant. However, by the time we
4 complete the Long Beach unit audit and the Platform Holly
5 audit, we expect Rincon Island to be up and producing
6 again.

7 CHAIRPERSON NEWSOM: By that time?

8 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

9 SCOTT: Yeah.

10 CHAIRPERSON NEWSOM: And then the others would --
11 along the same thread.

12 EXECUTIVE OFFICER FOSSUM: It ends up being about
13 a 6-year -- for this particular schedule, a 6-year delay,
14 rather than the 5-year that normal routine audits that we
15 do for each of these leases that the State has issued.

16 CHAIRPERSON NEWSOM: And in the past, those --
17 the routine leases have been fairly perfunctory in terms
18 of the findings, or have you found sort of significant red
19 zones? I mean, and I know in auditing parlance, there's
20 always significant findings that from the public's
21 perspective may not be as significant as are asserted.
22 But what is your general assessment?

23 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

24 SCOTT: As I mentioned, we have done -- we have done
25 repeat audits on every facility now twice. The first

1 audit was our initial review of those facilities to the
2 degree and comprehensiveness that this audit program has.
3 During the initial audit, we did find a significant number
4 of, we call them, action items.

5 Those action items are categorized into 3
6 priority rankings, number one, being the most severe. We
7 found very few number one items in everyone of the
8 facilities.

9 We found a series of less severe deficiencies in
10 some of the other categories. In the repeat sequence, we
11 found a significant diminishment in the number of items
12 that were identified. So we expect that -- and that is
13 really one of the values of this audit program is to
14 identify those items, and let those deficiencies be
15 remedied. And hopefully the remedies will continue for a
16 long period of time.

17 CHAIRPERSON NEWSOM: Of course. Is there anyone
18 that wishes to speak on this item?

19 We'll close public comment.

20 Are there any questions?

21 ACTING COMMISSIONER REYES: Mr. Chair, I just
22 want to thank the staff for the work and for finding an
23 alternative funding source for this activity. At the last
24 meeting we discussed this issue at length. And one of the
25 concerns I had raised was the potential impact on the

1 general fund. So I want to thank staff for being creative
2 and looking for alternative funding sources.

3 CHAIRPERSON NEWSOM: And let me thank you for
4 your guidance and direction along those lines. It was
5 very helpful. And I want to commend staff as well. And I
6 certainly appreciate Platform Holly the argument to push
7 this back a little bit. And again thank you for your
8 responsiveness to the Commission. And we certainly look
9 forward to supporting this.

10 Is there a motion to support the report?

11 ACTING COMMISSIONER GORDON: I move the item.

12 ACTING COMMISSIONER REYES: Second.

13 CHAIRPERSON NEWSOM: Without objection.

14 We will then move on to the next item on our
15 agenda, which is Item 137. It's requesting the Department
16 of Interior and the U.S. Department of Justice to jointly
17 petition the Supreme Court, the U.S. Supreme Court, to
18 permanently establish an agreed offshore boundary between
19 the United States and our great State of California.

20 What say you on this matter?

21 STAFF COUNSEL RADER: Well, you took over most of
22 my presentation.

23 (Laughter.)

24 CHAIRPERSON NEWSOM: That was pretty much it.

25 STAFF COUNSEL RADER: So I'll be brief.

1 ACTING COMMISSIONER REYES: Let me finish it up
2 then, because she did such a great write-up, I'd like to
3 move staff's recommendation,

4 (Laughter.)

5 STAFF COUNSEL RADER: Works for me.

6 CHAIRPERSON NEWSOM: It works for me.

7 STAFF COUNSEL RADER: The only thing -- since you
8 have introduced my item for me, the only thing I would
9 like to highlight is that the Commission staff has been
10 working with the staff of MMS, which is now BOEMRE, off
11 and on, and sometimes cooperatively and sometimes not,
12 since 1955. And we finally completed the location of the
13 boundary in 2009.

14 CHAIRPERSON NEWSOM: Wow.

15 ACTING COMMISSIONER REYES: But you've not been
16 involved that long though?

17 STAFF COUNSEL RADER: No.

18 (Laughter.)

19 EXECUTIVE OFFICER FOSSUM: I would like to add
20 that, in fact, I spoke to the executive director of the
21 Oregon State Lands Commission yesterday, just to assuage
22 any fears that we were taking over Oregon as part of this
23 attempt. And they're also interested in doing the same
24 thing we're doing here, as well as the State of
25 Washington. So we're hoping the west coast is going to be

1 able to be successful with the United States in fixing
2 this line.

3 ACTING COMMISSIONER GORDON: How much is this
4 going to cost to litigate -- to petition the Supreme
5 Court?

6 STAFF COUNSEL RADER: Last we had talked with the
7 Attorney General's office, it was going to be done kind of
8 as a pro bono basis.

9 ACTING COMMISSIONER GORDON: Okay.

10 STAFF COUNSEL RADER: The people that worked on
11 it are very passionate about it and would really like to
12 see it done, so there's a lot of volunteer work.

13 EXECUTIVE OFFICER FOSSUM: Other states have
14 conducted this, so there is a -- Louisiana and Texas have
15 partied on this. So we have been in litigation with the
16 United States for -- maybe since the 1930s, certainly the
17 early forties, on the offshore boundary and those issues.
18 The oil that we're bringing in from Long Beach, for
19 example, all that oil, the U.S. Supreme Court ruled that
20 it was federal property back in the 1940s. And it was
21 only after going to Congress that that was corrected.

22 So this is a long-term effort on behalf of the
23 State. And we hope that it will be successful to resolve
24 it once and for all.

25 CHAIRPERSON NEWSOM: Yeah. Excellent. Does

1 anyone wish to speak to this item?

2 Seeing none, we will close public comment.

3 Is there a motion to move this forward?

4 ACTING COMMISSIONER GORDON: Move it.

5 ACTING COMMISSIONER REYES: Second.

6 CHAIRPERSON NEWSOM: Without objection. Thank
7 you very much.

8 Next item is Item 139. It's to consider an
9 application for a new general lease of sovereign land
10 located on Huntington Harbor.

11 Mr. Fossum.

12 EXECUTIVE OFFICER FOSSUM: Drew Simpkin from your
13 Land Management Division will be presenting this item.

14 CHAIRPERSON NEWSOM: And I have one public
15 comment request. And anyone else, again, who wishes to
16 speak on this, you can fill out a form, if you'd like.
17 Otherwise, we'll ask you to make your way towards the
18 microphone after our presentation.

19 PUBLIC LAND MANAGEMENT SPECIALIST SIMPKIN: Good
20 morning, Mr. Chair, members of the Commission. My name is
21 Drew Simpkin and I'm a Public Lands Management Specialist
22 with the Commission's Land Management Division. And I'm
23 here to present the information on calendar Item number
24 139.

25 This item asks the Commission to authorize a

1 general lease recreational use for Mr. Edward Clark's boat
2 dock, boat lift, access ramp and cantilever deck and to
3 deny approval for the existing, but unauthorized hot tub,
4 gazebo, and tiki bar currently located on State-owned
5 sovereign lands in Huntington Harbor, Huntington Beach.

6 Could I please get those slides up.

7 As background, the State of California acquired
8 fee ownership of the harbor's Main and Midway Channels in
9 1961, as a result of the land exchange between the
10 Commission and the Huntington Harbor Corporation.

11 Could I get that slide up, please.

12 (Thereupon an overhead presentation was
13 Presented as follows.)

14 PUBLIC LAND MANAGEMENT SPECIALIST SIMPKIN:

15 Projects, including new development or maintenance of
16 existing facilities extending into these channels beyond
17 the bulkhead or seawall line require obtaining a lease
18 from the Commission. Mr. Clark's upland property is
19 located along the Main Channel of Huntington Harbor.

20 Previous leases dating from 1968 have authorized
21 the use of the subject property solely for a boat dock.
22 On September 19th, 2000, the Commission authorized a
23 recreational pier lease to the previous property owner for
24 the use and maintenance of an existing boat dock.

25 This lease expired on August 31st, 2010. On

1 September 5th, 2001, the property was deeded to Edward
2 Clark. Staff was unaware that a change of ownership had
3 occurred until the lease renewable process had started.
4 On July 23rd, 2010 staff notified Mr. Clark that his
5 property had an associated 10-year recreational pier lease
6 with the Commission, and that as the new owner, he would
7 be required to submit an application for the continued use
8 and maintenance of his boat dock.

9 On January 31st, 2011, Commission staff received
10 a lease application from Mr. Clark for his boat dock and
11 cantilever deck adjacent to his property. At this time,
12 staff became aware of the hot tub, gazebo, and tiki bar
13 located on the boat dock.

14 --o0o--

15 PUBLIC LAND MANAGEMENT SPECIALIST SIMPKIN: You
16 can see the gazebo and hot tub on the far left. On
17 February 3rd, 2011, Commission staff sent notification to
18 Mr. Clark informing him that the hot tub, gazebo, and tiki
19 bar are not used for the docking and mooring of boats and
20 are therefore considered unauthorized improvements.

21 Commission staff informed Mr. Clark that the hot
22 tub, gazebo, and tiki bar would need to be removed. Upon
23 staff's -- upon receipt of staff's letter, Mr. Clark
24 contacted staff to request approval to maintain the hot
25 tub, gazebo, and tiki bar. Staff explained that the

1 authority to approve such a use could not be approved at a
2 staff level.

3 On May 4th, 2011, the Executive Officer sent Mr.
4 Clark notification that the request for maintaining the
5 hot tub, gazebo, and tiki bar in the lease could be
6 requested, but that staff would recommend denial of the
7 improvements in the staff report to the Commission.

8 On May 31st, 2011, Mr. Clark submitted an Email
9 to staff and the Commissioners asking for their support
10 and approval of the hot tub, gazebo, and tiki bar.

11 Staff has also learned that in July 2002, Mr.
12 Clark received a permit from the Public Works Department
13 of the City of Huntington Beach to add new piling and
14 finger deck to the existing pier, resulting in the current
15 V-shaped configuration.

16 However, the City could find no permits or
17 approvals in their database for the hot tub and gazebo or
18 the water and electrical services to the hot tub.

19 At this time, staff recommends approval of the
20 existing boat dock and access ramp, retention of the boat
21 lift and cantilever deck, and denial of the existing
22 gazebo, hot tub, and tiki bar.

23 Furthermore, staff is recommending that the
24 Commission authorize the staff and the Attorney General's
25 office to take all action necessary and appropriate,

1 including litigation, to remove the unauthorized
2 facilities. Staff is available to answer any questions
3 you may have.

4 CHAIRPERSON NEWSOM: So fundamentally, you're
5 alleging someone did something without permission and
6 authorization and that's simply why you want to remedy and
7 fix it. Is that it?

8 PUBLIC LAND MANAGEMENT SPECIALIST SIMPKIN:
9 Correct.

10 CHAIRPERSON NEWSOM: Does that sum it up? And
11 that even without local authorization as it relates to all
12 levee permits, et cetera.

13 EXECUTIVE OFFICER FOSSUM: Excuse me, Mr. Chair.
14 The Commission, you know, has control over these public
15 lands, and generally is fairly solicitous when people want
16 to put docks out in front of their property to be able to
17 moor a boat. And so we routinely do approve those things.
18 When they start trying to convert these areas, that are
19 public property, into uses not associated with a docking
20 of a boat, then they're really converting public property
21 into a very exclusive private use that we believe is
22 inconsistent with the responsibilities that we have.

23 So in this instance, we have an opportunity to
24 make sure that this kind of thing isn't going to happen
25 and proliferate where people just go out and do actions

1 that aren't authorized, that they not even get a local
2 permit for it, but certainly not even comply with any
3 existing leases that exist from the Commission.

4 It's a problem that we have, not only in
5 Huntington Harbor, but it exists other places. And so
6 we're trying to be consistent, whether it's at Lake Tahoe
7 or the Sacramento River and Delta, or southern California.

8 CHAIRPERSON NEWSOM: Very good.

9 ACTING COMMISSIONER REYES: How is this different
10 from the sun deck that was approved in Item 109?

11 EXECUTIVE OFFICER FOSSUM: There are a number of
12 facilities that in the past the Commission has approved,
13 whether giving them due consideration or not, whether the
14 staff was aware at the time, and whether or not those
15 things were considered to be interference. Some of
16 them -- for example, at Lake Tahoe there are some sun
17 decks that have been in existence for many decades, and
18 it's been the position of the staff in recommending
19 allowing those to remain.

20 That if those -- I'll call them nonconforming
21 uses -- are ever damaged or need to be repaired and over
22 50 percent of the value of that would go into the new
23 improvement, that they would have to remove it in its
24 entirety. So, in essence, those have been grandfathered
25 because of prior Commission action.

1 Here you have no Commission action authorizing
2 this type of use in the past. We do not recommend any new
3 facilities like that, but where they have been
4 grandfathered back in the sixties or seventies or earlier
5 times, we have not requested the Commission to have those
6 removed. They do pay rent for them, but we do not ask
7 them to be removed. But that's the Commission's
8 prerogative, they could require that they be removed.

9 ACTING COMMISSIONER REYES: Thank you.

10 CHAIRPERSON NEWSOM: I appreciate it. I think,
11 Mr. Clark, you're here.

12 MR. CLARK: Yes, sir.

13 CHAIRPERSON NEWSOM: Obviously, you'll have a
14 strong point of view that you wish to share.

15 MR. CLARK: Good morning, gentlemen, Mr. Chair
16 and Commission. My name is Ed Clark. I live at 17061
17 Bolero Lane in Huntington Beach.

18 I was brought aware of this lease when I was
19 notified by the State Lands Commission. I was not aware
20 when I purchased the property that I had this. I did pull
21 a permit with a local contractor to do the -- to add to
22 the dock space, in which I was under the impression, until
23 just now, that the gazebo -- this was all part of the
24 plan, so I thought it was permitted through the City of
25 Huntington Beach.

1 These facilities were installed back in 2003.
2 There has never been a complaint by a neighbor. I've got
3 a document signed by my neighbor that would be the most
4 affected where the gazebo is. There's absolutely no
5 issue. There's not an environmental impact. I understand
6 the position of the Commission. I understand the folks
7 that have been involved. They've been good to work with.
8 I understand that they don't have the authority to make
9 the decision to authorize continuance of the facilities.
10 I understand that comes from you folks.

11 I don't -- I've talked with everybody up the
12 chain of command in the State Lands Commission, and I
13 haven't heard any negative impact from anybody offering,
14 other than the fact that it wasn't supposed to get done.
15 So I'm here to ask you for your consideration. I'm happy
16 to work with whoever I need to for whatever language we
17 need to satisfy the State.

18 If there's ever a problem whatsoever, this is --
19 there surely is not an environmental impact. This is not
20 a public safety issue. There's no cost to the State. In
21 fact, there's a disadvantage if the facilities are
22 removed, because my home has become a bit of a landmark,
23 in that all the commercial tours that go through
24 Huntington Harbor at Christmas time, my home is a landmark
25 to come show tourists. There's not a day go by where

1 people don't bring their kids and grandkids by to see the
2 pirates. I've got pirates and cannons and all kinds of
3 stuff out there. It's actually quite a fun place.

4 But if there's a way to include the facilities.
5 And I'm happy if there's ever an issue down the road where
6 it becomes an issue for the State where say somebody else
7 is trying to use that as a leverage to get facilities, put
8 it -- make it a conditional use permit.

9 I just think there's got to be a way. It's been
10 up there for 8 years without a complaint. It's never been
11 an issue. And like I said, I had no idea I even had a
12 lease. My neighbor right next to me doesn't have a lease
13 with the State Lands, because apparently the dividing line
14 from the Main Channel and the side harbor is between our 2
15 homes.

16 So I would appreciate any consideration you guys
17 can give. Obviously, there's a lot to be lost here from
18 an entertainment standpoint in the harbor from everybody
19 involved if we're asked to remove the facilities.

20 I'll share with you, obviously if I can't get
21 this approved by you guys, I'll remove the facilities.
22 That's not going to be an issue. There's not going to be
23 litigation required. But, you know, I'm just here to ask
24 for your help and ask if you can work with these guys and
25 help us come up with language that satisfies everybody.

1 CHAIRPERSON NEWSOM: All right. Mr. Clark, I
2 appreciate your reasonable tone and tenor. And, you know,
3 often times that's not the case. So I do -- you know,
4 it's -- well, are there any comments or questions?

5 ACTING COMMISSIONER GORDON: Mr. Clark, when you
6 purchased the property, did you do a title search?

7 MR. CLARK: Yes. As a matter of fact, I did.
8 I'm sure -- you know, if it was in my documents, way back
9 then, you're going to laugh because I own a title
10 insurance company.

11 (Laughter.)

12 MR. CLARK: I didn't back then. But I'm sure if
13 I were to research the documents, they're probably there.
14 I just was not aware of them.

15 CHAIRPERSON NEWSOM: All right. Just before we
16 move on. Any other public comment on this?

17 We'll close public comment.

18 So Mr. Fossum, you know, I mean your concern is
19 precedent. Your concern is if we march down this path
20 here, we'll have more difficult time in the future if
21 others find themselves in the same situation or say, "Hey,
22 wait a second. You know, you were accommodating to him,
23 but not me. That's outrageous and unfair. My hot tub is
24 smaller or my version of this unauthorized use is even
25 more modest than that. And there seems to be a point of

1 fairness there. Is that the spirit of the concern here?

2 EXECUTIVE OFFICER FOSSUM: It certainly is. Your
3 predecessor in the office was very concerned with people
4 who got leases from the Commission for a particular type
5 of use and then built something much different,
6 unauthorized use, and the idea that it's easier to ask
7 forgiveness than permission.

8 We don't recommend permitting any of these type
9 of uses to anybody else. And as a matter of fairness, if
10 somebody builds it illegally, we don't think that that
11 justifies giving them a pass.

12 CHAIRPERSON NEWSOM: Yeah. Fair enough.

13 ACTING COMMISSIONER REYES: I'm going to have to
14 support staff's recommendation on this. I think that set
15 a precedent. For me, it's come forward, ask for it, and
16 then we'll say yes or no and then move forward. If folks
17 go out there and invest their money and do whatever they
18 do with the hope and a prayer that the governing body will
19 take a different action later, that's the risk they take.

20 And, at this point, unfortunately from my
21 perspective, the risk did not payoff. So I'm going to
22 move staff's recommendation.

23 ACTING COMMISSIONER GORDON: I'm going to second,
24 Mr. Clark. I'm in the same place. I have some sympathies
25 for your situation. However, the -- it's really the same

1 circumstance, if we start allowing folks -- it would be
2 nice if -- you know, I understand that none of your
3 neighbors have complained, but they're not the ones who
4 are responsible for enforcing the State's interests.

5 It would be nice if we had enough staff at State
6 Lands to patrol the coast, so as nonconforming uses came
7 in, 8 years wouldn't go by before somebody discovered it.
8 Unfortunately, that's not the case. I don't see it
9 happening any time in the near future. So that this
10 doesn't come up until someone raises these issues or a new
11 lease is requested.

12 So I just think it's a really bad precedent. I
13 discussed it with the Controller and that's -- he's going
14 to back up the staff recommendation as well.

15 CHAIRPERSON NEWSOM: And I'll associate myself
16 with the comments that were made and support the staff as
17 well. And again, in the spirit of my appreciation for the
18 spirit that you have brought in terms of this dialogue,
19 and your -- I'm grateful. I understand your circumstance,
20 but I think it would be inappropriate for us to allow this
21 exemption. I don't want to see the pirates and cannons
22 necessarily appropriately going away during the holidays,
23 so don't take all the fun out, but I will certainly
24 support the motion and that was seconded, and we will
25 unanimously support staff's recommendation.

1 But thank you for coming up, Mr. Clark. I
2 appreciate it.

3 MR. CLARK: All right.

4 CHAIRPERSON NEWSOM: I believe that may be the
5 last item on today's agenda.

6 EXECUTIVE OFFICER FOSSUM: I believe it is too,
7 unless there is -- I believe there is a couple people who
8 wanted to -- have put in requests to speak during the
9 public comment period representing the City of Newport
10 Beach.

11 CHAIRPERSON NEWSOM: I have 2 names here. David
12 Webb. David, are you 1 of the 2 that wish to speak?

13 And I have Leonie Mulvihill. I apologize. I can
14 barely read my own writing, let alone others. But anyone
15 who wishes to speak, please come on up to the mic.

16 MR. WEBB: Thank you. If I could get a -- I have
17 a short PowerPoint I'd like to just have pulled up.

18 CHAIRPERSON NEWSOM: Have we got that?

19 MR. WEBB: Thank you, Commissioners. Appreciate
20 the time today. We just wanted to come and fly up here
21 today to bring an issue to your attention. Hopefully, we
22 can come to some resolution. We've been working along
23 with State staff. They've been very appropriate in
24 helping us with this, but I think we've come to an impasse
25 on an area and may need your assistance on this. And what

1 we're really looking for is to come to resolution and get
2 this on your August agenda. You'll be down south. We'd
3 like to have this issue heard and resolved.

4 I'm going to introduce the issue just a little,
5 and then I'm going to introduce Leonie Mulvihill. She's
6 our Assistant City Attorney and she'll go through the
7 issue in a little more detail, and we'll be out of your
8 way.

9 CHAIRPERSON NEWSOM: Leonie's last name again?

10 MR. WEBB: Mulvihill.

11 CHAIRPERSON NEWSOM: Mulvihill.

12 ACTING COMMISSIONER GORDON: So what is your
13 position, I'm sorry?

14 MR. WEBB: I'm the city engineer, Deputy Public
15 Works Director for the City.

16 (Thereupon an overhead presentation was
17 Presented as follows.)

18 MR. WEBB: I've got a pair of location maps just
19 for those who don't know Newport Beach. I'm going to
20 point to this one here and you guys have it over there.
21 John Wayne Airport is up in the far corner up there. We
22 have the City of Costa Mesa on the upper side of this map.
23 That's the neighbor to the north of us. And then the City
24 of Newport Beach surrounds Newport Harbor and the upper
25 Newport Bay.

1 The project site is down on the Newport
2 peninsula.

3 Next slide, please.

4 --o0o--

5 MR. WEBB: Or actually I have it here somewhere.
6 There it is.

7 The project we're talking about today is Marina
8 Park. The City has started in 2007. We'd like to be
9 building a new park. This area right here between 19th
10 street, Balboa Boulevard, and 15th street is on the
11 bayward side of the peninsula. It's an area mostly owned
12 by the City, and it currently has uses of a mobile home
13 park on it. There's a Girl Scout house, a community
14 center, existing park, some other facilities on there.
15 And it's rather old. And we really want to rejuvenate
16 this and turn it into a wonderful public asset.

17 We're looking to spend \$30 million on this
18 project.

19 Can I get the slides back up, please?

20 We're looking to spend \$30 million. We have that
21 money ready to go. We've processed this project through.
22 We have an Environmental Impact Report on file. It's
23 already been certified. We've got our 401, 404 permits.
24 We're going through the Coastal Commission, but we have a
25 current problem. We have a boundary issue on this.

1 Can I have the next slide, please.

2 --o0o--

3 MR. WEBB: This is a -- the next slide will show
4 you a picture of what we're proposing to do in this area.
5 And you'll see where the mobile home park is, the park
6 here, the current beach.

7 CHAIRPERSON NEWSOM: Are you guys able to --
8 let's try to click next slide. There we are.

9 Yes. This is what we're envisioning to build on
10 that, if it comes up. Basically, it's a new community
11 center.

12 CHAIRPERSON NEWSOM: We'll get 2 ahead, if we
13 could.

14 Next.

15 MR. WEBB: There you go. Thank you. Oops.

16 CHAIRPERSON NEWSOM: One back.

17 MR. WEBB: The park we're building here basically
18 has a new community center, a sailing center which we'll
19 be working with the regional area, and also UC Irvine
20 would like to have an operation going out of there. We
21 propose to build a new marina in the area. That's going
22 to be a visitor's serving marina for folks who transient
23 up and down the coast, a place to park and reside.

24 We're going to build a new Girl Scout house.
25 There's a current one existing over here now. We'll build

1 a new one here. Parking facilities. A playground on the
2 sandy area. Redo an existing restroom over here, and put
3 beach parking in and then open park area on this.

4 That's pretty much the project we're trying to
5 move forward. As I said, we have most of the permits. We
6 are actually at -- next slide, please.

7 --o0o--

8 MR. WEBB: We've actually applied for a Coastal
9 permit and we've -- at the point now that the Coastal
10 Commission said we can't go any further unless we resolve
11 the State Lands issues. So we really need some assistance
12 with you maybe hopefully moving that forward.

13 That issue I'm going to let Leonie go into a
14 little more detail on.

15 CHAIRPERSON NEWSOM: Great.

16 MS. MULVIHILL: Can we have the next slide,
17 please.

18 --o0o--

19 CHAIRPERSON NEWSOM: One more. Thanks, guys.

20 MS. MULVIHILL: Well, actually I do want to point
21 out this is a letter from the Coastal Commission. Our
22 application is complete, except for the notification from
23 the State Lands Commission that our title boundary issue
24 has been resolved.

25 By way of history, next slide, please.

1 --o0o--

2 MS. MULVIHILL: We have been working with staff
3 for the past year. I appreciate Mr. Fossum, as well as
4 his entire staff. They've been most helpful. And I do
5 think that given the proposed project, what's
6 contemplated, everybody can agree, this is a great use of
7 the tidelands as far as removing a mobile home park and
8 putting in some uses that are absolutely consistent with
9 the Tidelands Trust.

10 With that in mind, what we have right here, and
11 what this map will show you, is a number of lines. One of
12 these lines we believe is the existing tidelands boundary.
13 It will see that the most bayward line, which is the
14 bulkhead line, is on either side of this particular
15 project, has been deemed by the superior court and is
16 ratified by the Legislature to be the current mean high
17 tide line, the tideland boundary.

18 We have a white hole on our project, in that we
19 don't have any such superior court decree. So it is part
20 of our settlement titlement -- title settlement agreement,
21 we will be establishing what is the appropriate tidelands
22 boundary.

23 We believe that the bulkhead line is the
24 appropriate line. State Lands Commission staff has
25 researched, looked at their historical documents, and they

1 are the most bayward possible line, which is from 1912,
2 and/or a, what we call, Finley meander line, which is
3 slightly in between.

4 But in essence, we have a big disagreement as to
5 what the current tideland boundary line is. That's
6 important, because as far as the settlement exchange
7 agreement that we would be asking you to approve, the
8 finding that you must make is that the acquired tidelands
9 are greater and/or equal in monetary value than the
10 released tidelands. That determination will depend on
11 which one of these lines is the current state of affairs.

12 For the next month, we absolutely wish to
13 continue working with staff. We understand staff's
14 position. It is based on precedent. We agree that
15 they -- as to why they are at the most bayward line.
16 However, we don't think that is consistent with case law
17 or historical precedent.

18 We then respectfully request that the Commission
19 direct that this item be placed on the August agenda.
20 Between now and August, we will continue to work with
21 staff, hopefully come up with a settlement exchange
22 agreement that can be placed on the Consent Calendar,
23 because I do agree you guys handle your Consent Calendar
24 better than any legislative body I've seen. We'd like to
25 be there.

1 If we're not, we'd like to be here in August, get
2 a determination from you, so that we can move forward to
3 the Coastal Commission and get this project built.

4 And with that, we appreciate your time this
5 morning.

6 CHAIRPERSON NEWSOM: Thank very much. Thank you
7 for your comments.

8 Anyone else that -- I didn't get any other
9 speaker cards, but if someone was here with a burning
10 issue that they wanted to present.

11 We'll close public comment now formally and ask
12 questions.

13 ACTING COMMISSIONER GORDON: Question. How long
14 has the mobile home park been there?

15 ACTING COMMISSIONER REYES: Closer to you.

16 ACTING COMMISSIONER GORDON: How long has the
17 mobile home park been there?

18 MR. WEBB: The mobile home park has been there
19 roughly since the forties. Before that, it was a city
20 campground. It goes back into the twenties. The title
21 gets a little cloudy beyond that. We have various uses.
22 All kind of been open public though, but the mobile home
23 has been about 60 years.

24 ACTING COMMISSIONER GORDON: How many units are
25 involved?

1 MR. WEBB: I believe 57, if I recall.

2 ACTING COMMISSIONER GORDON: And there's the
3 mobile park homeowner, is this a consensual situation? Is
4 he willing to sell out or vacate?

5 MR. WEBB: Well, we've actually done the work on
6 that. We had a settlement action already determined. And
7 the mobile homes are basically that agreement has been
8 made and we have a 90-day notice we issued to them for
9 vacation as soon as we have our permits.

10 ACTING COMMISSIONER GORDON: And are these low
11 income units or what is the --

12 EXECUTIVE OFFICER FOSSUM: I think they're second
13 homes for the most part. There are a few individuals who
14 actually may have primary residences there. But we've
15 been working on this for about 30 years at the Commission
16 level. And as Don said, this started out as an area --
17 and if we went back a couple slides. I don't know those
18 are still available. I can give a little more background
19 on it for the Commissioners.

20 But this one is fine. Do I have the pointer
21 here?

22 This is the bulkhead line that the Corps of
23 Engineers set in 1917. The line back here was the mean
24 high tide line that the Corps also, I believe, did in
25 1912, so what the Corps of Engineers did in the teens.

1 And about the same time as the City originally received a
2 grant from the Legislature, was it went with -- it had a
3 swamp basically in there. Lower Newport Bay was marshy
4 and swampy. And the idea was let's put a harbor in there.
5 And it's now, I believe, one of the largest recreational
6 harbors in the world maybe for small vessels.

7 At that time, by setting bulkhead lines, they
8 were basically straightening out the natural shorelines so
9 that they could be filled, bulkheaded and so forth. And
10 that's a Corps of Engineers function for navigational
11 purposes. It doesn't affect the title to property.

12 So when the staff of the Commission and the City,
13 and we actually hired a former staff -- or the City hired
14 a former staff member of the Commission to do a study,
15 they looked at all these things. We have detailed reports
16 leading up to the history of this.

17 When it was filled, it was filled -- and
18 initially, the area out in here, I think it was Pacific
19 Electric Company or some railroad had a right of way in
20 the area. They wanted to fill some of that area. And
21 when the dredging and filling was being conducted in
22 there, they gave the City a deed for their property --
23 their waterfront property along that area. So the City
24 owns whatever is above the mean high tide -- the old
25 natural mean high tide line.

1 They also received the dredge spoils from that
2 operation that filled in this area. So as early as the
3 twenties, people were using it as a camp ground. The City
4 owned it, either through the grant or from the -- excuse
5 me, the grant from the railroad or from the Legislature.
6 And so that's the crux of the matter is where was that
7 boundary before it got filled in.

8 We've worked very closely with City staff in the
9 last few years. In fact, the staff of the Commission is
10 the ones that urged the City to remove the residential use
11 of these public lands many, many decades ago. And it's
12 taken them a long time to do it. They've done an
13 excellent job in moving that forward.

14 What they're proposing though is not just
15 waterfront park lands, but as they pointed out a Girl
16 Scout facility here. And the problem -- the most problem
17 that we have with the facility is there's 2 things.
18 There's a water activities facility here, but this is
19 going to be a community -- for community use. So it's
20 really a local benefit rather than a statewide benefit.
21 And it's not associated with the waters.

22 So staff in negotiations -- and we've come fairly
23 close I believe in negotiations -- has come up with a plan
24 to try and work around their facilities that we do not
25 believe are consistent with the Trust, because they don't

1 provide a statewide benefit, but are a local one. And in
2 doing so, we've had to come up with, as Leonie said, an
3 equal value-type assessment, as we did in Queensway.

4 And so we're working on that. The City hasn't
5 agreed, at this point, as to that location. I believe we
6 can be prepared to bring that to the Commission. It may
7 not be on consent because of the position we're in right
8 now.

9 Part of the dilemma is over things like parking,
10 where all of this would be city lands at the end. It
11 would just be what types of uses can you use it for. And
12 if there's revenues generated, which fund does it go into,
13 the harbor fund or the City's general coffers.

14 And so parking, for example, will generate
15 revenue. Part of that would go -- under the discussions
16 we've been making, would go into the harbor fund, part of
17 it would go into the City's fund.

18 It's just a matter of coming up with a plan that
19 will allow their plan to proceed. We're not trying to
20 change their design. We're trying to accommodate that.
21 And it's just a matter of coming to agreement on that.
22 And certainly we can brief the Commissioners on any
23 details if they want to before then.

24 CHAIRPERSON NEWSOM: What's your -- I mean, if
25 not, August or it's still possible? I mean, it just

1 depends on --

2 EXECUTIVE OFFICER FOSSUM: We could have done it
3 today if we'd reached the agreement.

4 CHAIRPERSON NEWSOM: Yeah, so you're still
5 working through that.

6 EXECUTIVE OFFICER FOSSUM: Yeah.

7 CHAIRPERSON NEWSOM: All right. So it's
8 incumbent upon, as we say, both sides to further those
9 discussions.

10 EXECUTIVE OFFICER FOSSUM: Well, let me clarify a
11 few other things. Lower Newport Bay is rather unique in
12 that after these -- this filling and dredging that took
13 place, it is the only place in the United States where
14 Congress set the pierhead lines. We call them Corps
15 pierhead lines.

16 But in essence, rather than the Corps of
17 Engineers, there was enough political wherewithal that
18 Congress actually designed this, probably with some local
19 help at the time, about 1919, I believe, 1917. There has
20 been a lot of legislation -- excuse me, litigation over
21 the boundaries. The litigation tended to reflect the
22 conditions after the dredging and filling had taken place.

23 I won't call them friendly lawsuits, but they
24 reflected the conditions afterwards. We would not
25 participate in an action today that acquiesced to that,

1 because that's not what the law reflects.

2 However, those quiet title actions between upland
3 owners and the City were not only resolved by a trial
4 court, but were subsequently blessed by the Legislature.
5 They're the only ones we know of in the state that had
6 that.

7 That doesn't resolve the problem here. There's
8 been several other places where the City owned the
9 uplands, and only in recent years, the Balboa Bay Club was
10 another one. We had to have special legislation to deal
11 with that one, because residents had been placed on the
12 property. And also in Beacon Bay, where the City owned
13 the upland, and we had to have special legislation to deal
14 with that.

15 So because of the unique situation in Newport
16 Beach, we've had to go to the Legislature to resolve some
17 of these uses, unless we can reach this kind of an
18 agreement. As I've said, I've worked with probably 3
19 generations of City staff on this trying to resolve it,
20 and we're getting close.

21 CHAIRPERSON NEWSOM: Getting close.

22 MS. MULVIHILL: We are very close.

23 (Laughter.)

24 MS. MULVIHILL: And we'd like to be on the August
25 agenda. We absolutely do.

1 CHAIRPERSON NEWSOM: Well, I hope we can
2 accommodate. So we'll do our best.

3 EXECUTIVE OFFICER FOSSUM: Mr. Chair, we'll make
4 every effort to do that.

5 CHAIRPERSON NEWSOM: Look at that.

6 MS. MULVIHILL: Thank you.

7 CHAIRPERSON NEWSOM: What a way to end this open
8 session.

9 MR. WEBB: Thank you for your time.

10 CHAIRPERSON NEWSOM: Thank you both for taking
11 the time. Thanks for the presentation. And we close
12 public comment. This ends the open session of the
13 Commission.

14 We're going to now enter into closed session, so
15 I'd ask that everyone that is here that's not here in an
16 official capacity, as we enter into the closed session, if
17 they could make their way towards the lunch lines.

18 Thank you all for being here.

19 (Thereupon the California State Lands Commission
20 meeting adjourned at 11:51 a.m.)

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CERTIFICATE OF REPORTER

I, JAMES F. PETERS, 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 California State Lands Commission meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California;

That the said proceedings was taken before me, in shorthand writing, and was thereafter transcribed, under my direction, by computer-assisted transcription.

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 27th day of June, 2011.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License No. 10063