

MEETING  
STATE OF CALIFORNIA  
LANDS COMMISSION

EMPLOYMENT DEVELOPMENT DEPARTMENT  
AUDITORIUM  
722 CAPITOL MALL  
SACRAMENTO, CALIFORNIA

THURSDAY, OCTOBER 27, 2011  
10:04 A.M.

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

APPEARANCES

COMMISSION MEMBERS

Mr. Gavin Newsom, Lieutenant Governor, Chairperson,  
represented by Mr. Chris Garland

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

Ms. Michelle Andersen, Granted Lands Representative

Mr. Dave Brown, Chief, Administrative Services

Ms. Mary Hays, Public Land Manager

ATTORNEY GENERAL

Mr. Joe Rusconi, Deputy Attorney General

ALSO PRESENT

Mr. Jon Ballesteros, Port of Oakland

Mr. Cory Briggs, San Diego Navy Broadway Complex Coalition

Mr. Alex Esparza, representing Los Angeles Mayor's Office

Mr. Jim Hirsch, Port of San Diego

Ms. Irene McCormack, Port of San Diego

Mr. Michael Warburton, Public Trust Alliance

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1 clarify. Today, we have two alternates for the  
2 Constitutional officers.

3 ACTING CHAIRPERSON GARLAND: I did not vote.

4 (Laughter.)

5 EXECUTIVE OFFICER FOSSUM: That's fine.

6 I just want the public to know as well that only  
7 two of the commissioners will be able to vote and  
8 participate today because of the requirement that at least  
9 one Constitutional officer be present if all three are to  
10 vote. So with that understanding.

11 ACTING CHAIRPERSON GARLAND: Excellent. Thank  
12 you for that.

13 Next order of business, if you'd like to stay on  
14 the microphone, is the Executive Officer's report from Mr.  
15 Fossum.

16 May we have your report.

17 EXECUTIVE OFFICER FOSSUM: Thank you, Mr. Chair,  
18 commissioners.

19 Pleased to announce that at the last meeting  
20 while we were still awaiting the final outcome of several  
21 bills in the Legislature, that at this time we're able to  
22 announce not only did they pass through the Legislature,  
23 but Governor Brown has signed those bills. So we have  
24 Senate Bill 152 (Pavley), the fair rent bill; Senate Bill  
25 595 from Senator Wolk dealing with abandoned vessels;

1 Assembly Bill 982, Assemblywoman Skinner, whose solar  
2 energy bill will hopefully help us do exchanges with the  
3 Bureau of Land Management for alternative energies in the  
4 desert; and Assembly Bill 1112 from Assemblyman Huffman,  
5 which was able to increase the per barrel tax on -- or fee  
6 on the importation of oil into California. So that that  
7 actually saved us 16 positions in our Oil Spill Prevention  
8 Program. So we're pleased to announce that.

9 The Governor also signed a number of bills  
10 dealing with San Francisco and the Bay Area dealing with  
11 the America's Cup, Hunters Point, Candlestick, and the  
12 Pittsburg grant.

13 And finally I'm pleased to announce that we have  
14 finally received some applications and the exam is in  
15 progress to fill our eight-month vacancy of our  
16 Legislative Liaison position. And we have some very  
17 interesting and qualified candidates, so I'm pleased to  
18 announce that as well.

19 The Controller has asked us to take opportunities  
20 to educate both the public and the Governor's decision  
21 makers on the need for additional resources. And this  
22 week and the next week we've actually been involved in  
23 four different events talking about the audit and the  
24 Commission's programs. So on Monday we did respond to the  
25 Bureau of State Audits and delivered our 60-day response

1 to the Bureau.

2 Tuesday the Little Hoover Commission had a  
3 meeting at which we participated along with the Bureau of  
4 State Audits again and General Services, talking about our  
5 challenges and opportunities there.

6 Today, of course, we're going to be going over  
7 the Audit Action Plan that you requested at our last  
8 meeting.

9 And we have -- and I want to note that we have  
10 placed all of these items on our website for the public to  
11 be able to share in and review in detail both the audit as  
12 well as the responses that have been made.

13 And next Tuesday, the Assembly Budget  
14 Subcommittee will be having another presentation by the  
15 Bureau of State Audits and the Commission staff in  
16 addressing both the audit and the Commission's status in  
17 responding to that audit.

18 I'd also like to announce that -- I'm very  
19 pleased to announce in fact the Commission has received a  
20 commendation from -- a proclamation from the City of  
21 Goleta for dealing with the Hazard Removal Program. And  
22 I'd like to show you that plaque that's been presented by  
23 them. And I'll read it.

24 "Whereas Ellwood Beach and Haskell's Beach  
25 were once the site of extensive oil and gas

1 production; and,

2 "Whereas, the California State Lands  
3 Commission received notice that the Governor of  
4 California released funds and authorized  
5 implementation of the Beach Hazards Removal  
6 Program; and,

7 "Whereas, the California State Lands  
8 Commission sought and obtained all necessary  
9 permits and utilized State funds to remove  
10 several types of hazardous structures, including  
11 piles, sheet piling, H piles, well casings,  
12 abandoned pipeline from Ellwood Beach and  
13 Haskell's Beach; and,

14 "Whereas, the California State Lands  
15 Commission completed authorized work along the  
16 City of Goleta coastline with the intention of  
17 returning to the region including the City of  
18 Goleta to further remove additional beach  
19 hazards.

20 "Now, therefore be it resolved, on this 4th  
21 day of October, 2011, that the City Council of  
22 the City of Goleta does hereby proclaim its  
23 appreciation to the California State Lands  
24 Commission and its employees for protecting the  
25 environment and citizens of Goleta through

1 implementation of the Beach Hazards Removal  
2 Project, thus ensuring the health, safety,  
3 comfort, and quality of life of Goleta residents  
4 and visitors."

5 I would like to say that this is one of several  
6 areas along the Santa Barbara beach where we have had to  
7 go in and deal with removal of hazards that were placed on  
8 those areas long before the Commission ever existed, but  
9 do remain on the beach from prior oil operations and other  
10 activities there. And so we're very pleased that the  
11 Commission is also recognized in that regard.

12 The next item, I'm also pleased to announce that  
13 the Commission staff has been facilitating the Department  
14 of Fish and Game's restoration of the ecological reserve  
15 at Batiquitos Lagoon. There's 524 acres of Public Trust  
16 Lands in that lagoon that we've been involved in restoring  
17 for the last few decades. The dredging projects there  
18 have stalled. And your staff and its expertise in pushing  
19 through contracts, it was agreed by all the players that  
20 we should be doing that. And so next month they'll begin  
21 that dredging project. They're going to remove 118,000  
22 cubic yards of beach-quality sand and put on the adjacent  
23 beaches there.

24 We also want to acknowledge that the funding for  
25 this project came from the Port of Los Angeles and their

1 mitigation for some of the port projects years ago.

2           And, finally, this is one of the highlights of  
3 California's response to trying to create new habitat for  
4 the California Least Tern and Western Snowy Plover, and  
5 it's been very successful in that regard. So we're  
6 pleased to announce that.

7           I also want to acknowledge that on Item 24 on the  
8 consent agenda is the Salt River restoration. This is one  
9 of the largest tidal and wetlands and restoration projects  
10 in the northern part of California that's ever been  
11 attempted. And I also want to acknowledge that Donna  
12 Chambers is here today from the Humboldt County Resource  
13 Conservation District, and she's heading up that effort.  
14 Next year will be the next phase of that, and I think  
15 we'll try and present a presentation to the Commission at  
16 that time.

17           On another note that I think is important for our  
18 economic and energy -- clean energy efforts, the geysers  
19 in northern California, Calpine has just announced that  
20 they're spending \$700 million in expanding the geysers.  
21 It's already the largest geothermal operation in the  
22 world, producing 725 megawatts of clean energy. That is  
23 enough to power the electrical needs of San Francisco.  
24 Unlike other alternative energy projects, this operates 24  
25 hours a day, seven days a week.

1           This is the first new power plant - and there's  
2 going to be two of them - that have been built at the  
3 geysers in 22 Years, so we're really excited about that.  
4 It's going to provide almost another 100 megawatts and 190  
5 jobs -- construction jobs that's using 100 percent  
6 reclaimed water. It hopes to generate \$7 million in  
7 annual property taxes, \$12 million in sales taxes, and \$17  
8 million in expenses for operations annually to the local  
9 economy there. It will also reduce about between 139,000  
10 and 199,000 tons of CO<sub>2</sub> per year, while paying a million  
11 dollars in federal royalty; a million and a half in  
12 private royalties; and, most importantly, a million and a  
13 half dollars in State royalties to the Commission for the  
14 benefit of STRS. It's up for its final vote on November  
15 8th before the Sonoma County Board of Supervisors. So  
16 we're hopeful that that goes forward.

17           And, finally, we have some good news and some bad  
18 news. First the good.

19           I'm pleased to announce that we were able to  
20 convince Don Hermanson to come out of retirement to head  
21 the Commission's Marine Facilities Division. Don  
22 previously spent 15 years in the Coast Guard, 17 years  
23 with the Commission before retiring last year. And we had  
24 a number of excellent candidates for that position. And  
25 Don was agreeable to come back out of retirement to serve

1 us in that role. And I'd like to introduce Don at this  
2 time.

3 If you could stand up.

4 (Applause.)

5 EXECUTIVE OFFICER FOSSUM: And my final statement  
6 is the bad news; and, that is, for the Commission, is that  
7 Gregg Scott, our Chief of the Marine Facilities --  
8 Management Division -- Mineral Management Division - help  
9 me out here - has announced that he will be retiring in  
10 January. And I'm not going to go into it any further  
11 because we'll be giving him a proper bon voyage at our  
12 next meeting.

13 And with that, that ends my Executive Officer's  
14 report.

15 I will add that we have removed three items from  
16 the agenda. Those are C 16, C 21 and C 31. And we'll be  
17 removing from the consent agenda C 35 and putting it on  
18 the regular agenda. We have a number of people who wish  
19 to speak on that, and so we'll provide that during the  
20 regular agenda portion.

21 ACTING CHAIRPERSON GARLAND: I believe we  
22 discussed pulling C 36 as well since we have a speaker.

23 EXECUTIVE OFFICER FOSSUM: Yes, that's correct.

24 Oh, I'm sorry. That's only if it's taken off the  
25 consent agenda, they're prepared to respond to any

1 questions basically. So it's just 35 at this time.

2 ACTING CHAIRPERSON GARLAND: Then we are pulling  
3 just C 35?

4 EXECUTIVE OFFICER FOSSUM: Correct.

5 ACTING CHAIRPERSON GARLAND: All right. The next  
6 item on the agenda is the Consent Calendar.

7 Does anyone in the audience wish to speak to the  
8 Consent Calendar?

9 ACTING COMMISSIONER GORDON: So I'll move the  
10 calendar.

11 ACTING CHAIRPERSON GARLAND: Calendar is moved.  
12 Do I hear a second?

13 ACTING COMMISSIONER REYES: I'll second.  
14 I do have a question on C 10 though.

15 ACTING CHAIRPERSON GARLAND: You want to turn  
16 your mic on.

17 ACTING COMMISSIONER REYES: There we go.

18 EXECUTIVE OFFICER FOSSUM: Yes.

19 ACTING COMMISSIONER REYES: I do have a question  
20 on C 10.

21 Clearly, the --

22 EXECUTIVE OFFICER FOSSUM: Yes, this was -- if I  
23 could introduce this item. This was an item that comes up  
24 regularly for the Commission as a rent review. Every five  
25 years many of our leases are available for the Commission

1 to make decisions on either raising rent, lowering rent,  
2 or maintaining it at the same level.

3           The applicant, in this regard, had asked to have  
4 his minimum rents reduced - not the formula for percentage  
5 rents but his minimum rents - because he had suffered less  
6 than minimum rent in his percentages for two of the last  
7 three years. Typically, we would look at if it was  
8 consistently over three years or over five years, then it  
9 didn't qualify. However, we're also looking at raising  
10 his bond and insurance levels. And so we did recommend to  
11 the Commission, and that is on the consent, that we would  
12 lower his minimum by \$1,000. I think he sought a \$5,000  
13 minimum rent. He's actually out of the country. We  
14 encouraged him to send a representative.

15           He also has the opportunity actually to apply to  
16 the Commission obviously to change his contract, if he so  
17 desires. This was the Commission staff's opportunity to  
18 bring to the Commission its recommendation. And if we  
19 don't do it at this time, if it's pulled from the agenda,  
20 then basically we have to wait a year to bring this kind  
21 of issue back to the Commission, or he would have to  
22 apply, and that would typically cost him money to go  
23 through the application process. And he can still do that  
24 regardless of what the Commission does at this meeting.

25           ACTING COMMISSIONER REYES: For my own

1 edification, how long is the process of conversations  
2 between you and the applicant up to this point?

3 EXECUTIVE OFFICER FOSSUM: If I could, I'd like  
4 to have Mary Hays of our Land Management Division speak to  
5 that, because she's been directly involved in it. And it  
6 has been, I believe, at least a year, but I'll let her  
7 answer that question.

8 ACTING COMMISSIONER REYES: Thank you.

9 PUBLIC LAND MANAGER HAYS: We first notified the  
10 lessee in the fall of 2010 was our first contact with him.  
11 And actually we were -- we had calculated rent as of that  
12 date, which would have raised his rent because we were  
13 looking at the past five years.

14 So we gave him the opportunity to wait a year to  
15 see, in fact, if he had had a third year of a downturn.  
16 And his minimum for that third year was actually above his  
17 minimum. So we gave at least a year, and so at the same  
18 time he was still asking to lower his rent.

19 ACTING COMMISSIONER REYES: Okay. Thank you.

20 I'm good.

21 ACTING CHAIRPERSON GARLAND: And just to be  
22 clear. This does not preclude him from requesting another  
23 review at his expense?

24 EXECUTIVE OFFICER FOSSUM: That's correct.

25 ACTING CHAIRPERSON GARLAND: Satisfied?

1           ACTING COMMISSIONER REYES: I'm satisfied. Thank  
2 you.

3           ACTING CHAIRPERSON GARLAND: Any other questions  
4 or folks who'd like to speak on the Consent Calendar?

5           We had a motion --

6           ACTING COMMISSIONER REYES: -- and a second.

7           ACTING CHAIRPERSON GARLAND: -- and a second.

8           All those in favor?

9           (Ayes.)

10          ACTING COMMISSIONER REYES: Two out of three.

11          ACTING CHAIRPERSON GARLAND: All those opposed?

12          The Consent Calendar is adopted.

13          We are going to move now on to the pulled item,  
14 which would be C 35 if you're keeping score.

15          May we have the staff's presentation on that  
16 item.

17          EXECUTIVE OFFICER FOSSUM: Yes, Chair. Speaking  
18 on that item will be Michelle Anderson, our one Granted  
19 Lands Representative for the State of California.

20          ACTING CHAIRPERSON GARLAND: If I might, just  
21 give it a second for the room to clear. Apparently, we  
22 had a bunch of folks here for the Consent Calendar who are  
23 now clearing the room.

24          Thank you for coming. Have a good day.

25          (Laughter.)

1 EXECUTIVE OFFICER FOSSUM: They get an early  
2 lunch.

3 ACTING CHAIRPERSON GARLAND: All right. We  
4 appear to be calmed down now and the room cleared.

5 Thank you.

6 GRANTED LANDS REPRESENTATIVE ANDERSEN: Good  
7 morning, members of the Commission. My name's Michelle  
8 Anderson. I'm the granted lands representative for the  
9 Land Management Division.

10 On July 15th of 2011, staff received an  
11 application from the San Diego Unified Port District for  
12 the construction of a pile-supported concrete mooring  
13 dolphin and a catwalk at the end of the B Street Pier  
14 within the San Diego Bay.

15 As proposed, the mooring structure would extend  
16 170 feet into the bay onto ungranted sovereign land. The  
17 existing pier is located within lands that have been  
18 legislatively granted to the San Diego Unified Port  
19 District.

20 The project site currently operates as a cruise  
21 ship terminal and often accommodates cruise liners that  
22 extend beyond the existing thousand foot pier.

23 As proposed, this project will allow the mooring  
24 lines of longer ships that extend beyond the west end of  
25 the pier to be safely secured to two mooring bollards on

1 the proposed dolphin.

2 Staff is recommending authorization of a 49-year  
3 General Lease - Public Agency Use for the construction of  
4 the concrete mooring dolphin and catwalk.

5 Irene McCormack, Vice President of External  
6 Relations; Mark Taylor, Marine Terminal Superintendent;  
7 and James Hirsch, Land Use Planning Manager with the Port  
8 District are here today to answer any questions.

9 ACTING CHAIRPERSON GARLAND: Thank you for your  
10 presentation.

11 Comments from the Commissioners on this item?

12 Excellent.

13 Moving on to public comments.

14 EXECUTIVE OFFICER FOSSUM: And, Mr. Chair, if I  
15 could. Apparently, we don't have our three-minute timer  
16 today. And so my secretary, Kim Lunetta, will give you a  
17 signal when their time has expired. And you'll be able to  
18 then make your judgment on that.

19 ACTING CHAIRPERSON GARLAND: Excellent. Or we  
20 can set an iPhone, if somebody has one.

21 (Laughter.)

22 ACTING CHAIRPERSON GARLAND: We're just going to  
23 go in the order in which came in. So I've got a Cory  
24 Briggs.

25 If you'd like to step to the microphone. And

1 while we don't have our three-minute timer, I'd ask you to  
2 use your internal clock, if you would.

3 He's here. He's running around the back.

4 And down the stretch he comes.

5 And we will not take this away from your time.

6 (Laughter.)

7 MR. BRIGGS: Can I get a little bit of time to  
8 recover from rushing?

9 ACTING CHAIRPERSON GARLAND: Catch your breath  
10 and then start when you're ready.

11 MR. BRIGGS: Commissioners, thank you for the --  
12 or Alternates, thank you for the opportunity this morning.

13 I'm Cory Briggs. I'm here on behalf of the San  
14 Diego Navy Broadway Complex Coalition. We encourage you  
15 not to approve this lease today until there's been full  
16 compliance with CEQA.

17 Playing before you is a video of the B Street  
18 Pier as it is now. This is the traffic and congestion we  
19 get with the current cruise ships.

20 You're being told that the mooring dolphins and  
21 catwalk are for safety. Not true. I submitted a letter  
22 this morning. The original with the DVD that's playing,  
23 along with all the exhibits, was submitted. You should  
24 have the copies - I also gave three copies - that includes  
25 excerpts of the documents I'm talking about this morning.

1           The Port is not playing straight with the  
2 Commission. The Commission has received the Port's  
3 application, and it says that the purpose is to increase  
4 the size of cruise ships and increase the number of  
5 passengers coming to the terminal. On the video is what  
6 we live with now. There will be increased environmental  
7 impacts. You've got to do a CEQA analysis. My letter  
8 details all of the impacts.

9           One thing you should know is that the Coastal  
10 Commission a couple of years ago approved a 150-foot  
11 mooring dolphin and catwalk for BAE Systems, which also  
12 came before the Commission. The Coastal Commission  
13 imposed conditions of approval because they needed to  
14 mitigate potentially significant environmental impacts due  
15 to shading that affected foraging birds. They didn't have  
16 to impose any conditions because of the loss of public  
17 access, because BAE's pier was already off limits to the  
18 public. B Street is not off limits to the public. People  
19 on the bay concurrently sail up to the pier when there's  
20 no cruise ship there. You're now going to take the 170  
21 feet away.

22           On top of that, we have federal security  
23 regulations that require a 300-foot security zone around  
24 any docked cruise ship. If these ships are longer, the  
25 security zone gets bigger and more of our bay is blocked

1 off. None of these impacts have been analyzed under CEQA.

2 What's more troubling is that the Port took this  
3 to the Coastal Commission and got a coastal development  
4 permit waiver based on a CEQA exemption that the Port gave  
5 itself. This is Exhibit E in the packet that I gave you.  
6 And at the bottom of page one, the top of page two here's  
7 what they said. And you can see stamped received by the  
8 Coastal Commission.

9 "No substantial public impacts to the public  
10 would be anticipated. The project would not attract more  
11 people to the area or enable additional people to use the  
12 area."

13 Based on that lie, the Executive Director of the  
14 Coastal Commission unwittingly approved a waiver of the  
15 Coastal Development Permit. The public was not informed  
16 of any of this until after the fact, until it was a fait  
17 accompli. It wasn't even listed on the Commission's  
18 agenda other than a deputy director's report.

19 But I show you the agenda in your exhibits as  
20 well and you can see there isn't even a link to any  
21 documents. So nobody following the Coastal Commission  
22 would know that the Port has gone there.

23 ACTING CHAIRPERSON GARLAND: Let me stop you  
24 there --

25 MR. BRIGGS: Sure.

1           ACTING CHAIRPERSON GARLAND:  -- for just one  
2 second.

3           The upside to your presentation is it's an  
4 excellent presentation.  The downside is there's actually  
5 a running timer on your video.

6           MR. BRIGGS:  And I'm close to three minutes.

7           ACTING CHAIRPERSON GARLAND:  You've been up for  
8 about three and a half minutes.

9           MR. BRIGGS:  Okay.  So let me just wrap it up and  
10 tell you that if you approve this today, you're basically  
11 putting the imprimatur on a process that excluded the  
12 public.

13           My client has been involved with the Port for  
14 years trying to work on the redesign of the waterfront.  
15 They're currently redesigning what's known as Phase 2 of  
16 the North Embarcadero Plan, which is where the cruise  
17 ships are.  They're doing the redesign, and now they're  
18 here expanding the terminal with no public input before  
19 the Coastal Commission based on an exemption.

20           If you approve this today, at least get an  
21 indemnity provision in your lease, because we'll sue under  
22 CEQA.  This is not acceptable until there's a full  
23 environmental review, but don't let this agency have to  
24 pay for it.

25           Thank you.

1           ACTING CHAIRPERSON GARLAND: Thank you.

2           Next up is Michael Warburton.

3           MR. WARBURTON: Good morning. I've appeared  
4 before you as Executive Director of the Public Trust  
5 Alliance, which acts to protect public rights in sovereign  
6 lands and resources.

7           I'm here today as a Californian and mostly as a  
8 parent of a 13-year old girl who I want to explain why  
9 things happen the way they do. She's a beneficiary of the  
10 Public Trust. Usually when you have a trustee making an  
11 application for either a lease or construction, the public  
12 benefits are so clear and that they outweigh the public  
13 costs.

14           Planning has been going on for San Diego Harbor  
15 for a long time. In 1908 the Nolan Plan -- city plan said  
16 that industrial and maritime uses would be concentrated  
17 south of Broadway, cultural and public access,  
18 recreational activities would be concentrated north.

19           Cruise ship lines are very, very much  
20 a -- they're not a maritime use. They're basically  
21 floating hotels. And I think the Commission has a -- I  
22 mean they're huge. They're walls blocking views, blocking  
23 access with the new security zones. They actually impede  
24 people being able to use the waterfront for views or for  
25 recreation. And what's happening is you have a lull in

1 the cruise ship industry because of the violence in  
2 Mexico, so that far, far fewer boats are actually coming  
3 to San Diego. And you have a study going on that maybe  
4 the 10th Avenue Marine Terminal is a better place to have  
5 cruise ships, which will block public access.

6 So in its present form, what you have is a gift  
7 to a moribund industry and at tremendous public sacrifice  
8 in terms of parks and mitigation. All of this has been  
9 done through exemptions and di minimis declarations. And  
10 yet it's just a qualitative change of what the whole  
11 waterfront will be.

12 The Port of San Diego dissolved its Citizens  
13 Advisory Committee when they seemed to be getting, you  
14 know, dissenting views. The League of Women Voters made a  
15 very, very articulate plea for good government.

16 And the approval of this under exemption is  
17 totally inappropriate. The City of San Diego is already  
18 the only modern metropolis discharging phenomenal amounts  
19 of sewage under a waiver from the Clean Water Act.  
20 Everything is done under waiver, and it's done at great  
21 public cost. And the State Lands Commission should be  
22 acting to protect public rights and public property, which  
23 is being given away in this situation.

24 ACTING CHAIRPERSON GARLAND: Thank you for your  
25 presentation.

1           ACTING COMMISSIONER GORDON: Do we have a  
2 representative from the Coastal Commission here, by any  
3 chance?

4           I will tell you, at this point in time - and I'm  
5 very concerned about the process that went on at the  
6 Coastal Commission and would like someone -- maybe if  
7 State Lands staff is familiar what that was. We have a  
8 fairly serious allegation that this waiver was granted  
9 without public knowledge or opportunity to comment at the  
10 Commission. And I'm very strongly leaning towards  
11 abstaining on the vote, at this point in time, until I  
12 learn a little bit more from the Coastal Commission or  
13 about the process that went on there.

14           Anyone?

15           EXECUTIVE OFFICER FOSSUM: I don't believe we  
16 have anybody from the Coastal Commission, but we do have  
17 representatives from the Port and also our Planning and  
18 Environmental Management Division on the CEQA issue and,  
19 you know, the action that the Coastal Commission took.

20           But, you know, the allegations against the  
21 Coastal Commission, if they failed to comply with the  
22 Coastal Act, for example, then there are remedies there as  
23 well.

24           ACTING CHAIRPERSON GARLAND: All right. As we  
25 try and maybe figure this one out, I'll ask our next

1 speaker to come to the podium.

2 Excuse me if I get this wrong. Irene McCormack.

3 Is that correct?

4 MS. McCORMACK: Yes, sir, that is.

5 ACTING CHAIRPERSON GARLAND: Thank you.

6 MS. McCORMACK: If you would like us to answer  
7 the question about the Coastal Commission and how we  
8 prepared our Coastal Development Permit for the Coastal  
9 Commission and then they asked us just to go for a waiver,  
10 I have our expert here from the Port of San Diego who  
11 worked on that particular issue.

12 If not, that's fine.

13 ACTING COMMISSIONER GORDON: That's not going to  
14 satisfy my answer. As advocates for the Port, I  
15 understand your position fairly well.

16 And I just want to make it really clear, no one  
17 should ascertain that substantively I'm making a decision  
18 as to how I will vote ultimately. What this is about for  
19 me is process --

20 MS. McCORMACK: Correct.

21 ACTING COMMISSIONER GORDON: -- and following the  
22 proper notice requirements giving the public an  
23 opportunity to testify at the Commission. And if that did  
24 not occur, if that wasn't noticed, my inclination would  
25 be -- and I would also like to ask a question to State

1 Lands and the Port - let me then follow with this  
2 question - would be, if we were to put this decision off  
3 until our next meeting when we would have someone from the  
4 Coastal Commission here to testify, what negative impact  
5 would that have on the Port's plans?

6 MS. McCORMACK: Okay. If I might start and then  
7 I can also answer that question as I'm speaking, sir, that  
8 would be great.

9 ACTING COMMISSIONER GORDON: Yes.

10 MS. McCORMACK: Hi. I'm Irene McCormack,  
11 Executive Vice -- I'm a Vice President of External  
12 Relations at the Port of San Diego. And thank you very  
13 much for hearing us today.

14 This is an operational issue for the Port of San  
15 Diego. We did a lot of work on CEQA, and the length of  
16 the pier needs to be lengthened because of the length of  
17 the cruise ships in port. We don't accept any ships at  
18 our port right now over a thousand feet, because we don't  
19 have the capacity. And even if we did accept the cruise  
20 in port, we would never -- ships in port, we would never  
21 have more than 6,000 passengers on that pier at any given  
22 time, no matter what. The acreage of the pier does not  
23 allow us to have anything more.

24 Just so you know, the Port has been in the  
25 business of the cruise industry since the 70s. It is in

1 an ebb right now, cruises, because of the situation in  
2 Mexico along the west coast, has declined. But we do  
3 expect it to get bigger as we go along, I mean to  
4 increase. But that's all -- you know, that has a lot to  
5 do with the condition in Mexico. Really there's only  
6 certain places we can go there.

7           We also -- we have a lot of jobs that come from  
8 the cruise operations there. The longshoremen have about  
9 200 longshore workers who work there and are very  
10 interested in this and have sent a letter to the  
11 Commission just to let you know their support for us as  
12 well.

13           For us this is an operational safety issue. We  
14 need this mooring dolphin in order to tie up cruise ships.  
15 If we don't, a tidal surge, a tsunami, any kind of storm  
16 when a port is -- when a ship is berthed at that pier  
17 could affect the workers who work there. It could become  
18 unsafe. So that's why we pursued this to begin with. We  
19 weren't doing it to increase operations over above what  
20 our capacity are on that pier. We could never have any --  
21 like I said, if there are two cruise ships in port, the  
22 number of passengers has to be less than 6,000 -- 6,000 or  
23 less. So we're not going to get mega-ships there. We're  
24 just going to try to keep this issue to an operational  
25 issue.

1           We did apply to the California Coastal Commission  
2 for a coastal development permit. The Coastal Commission  
3 staff suggested that, based on the work we did of CEQA and  
4 our capacity issues at the pier, that it be a waiver. And  
5 they granted us a waiver instead -- instead of going  
6 through the Coastal Development Permit, as we had asked.

7           So for us, it is a safety issue. It's an  
8 operational must for our cruise industry. Whether or not  
9 the cruise ships stay there for, you know, 20 years or 30  
10 years, moving a cruise ship operation to any other place  
11 in the bay will take a long process to plan it, look at it  
12 and see if it's worthwhile for San Diego.

13           If you have any questions, I welcome to answer  
14 them for you at any time.

15           ACTING CHAIRPERSON GARLAND: I believe there was  
16 one outstanding question from --

17           ACTING COMMISSIONER GORDON: Yeah.

18           So am I to understand that you did not request  
19 the waiver, that the Coastal Commission granted it on  
20 their own behest?

21           MS. McCORMACK: Yes. We went and we were  
22 going to -- we filed a coastal development permit and they  
23 said it was a waiver.

24           MR. BRIGGS: That's not true.

25           ACTING CHAIRPERSON GARLAND: And there was one

1 other question I asked earlier about what the  
2 ramifications of a delay would be if this were not taken  
3 up today.

4 MS. McCORMACK: You know, if we could take it up  
5 within the next month, I think we'd be okay. We're  
6 looking to get this mooring dolphin in place for our  
7 cruise season that starts in 2013, not any time sooner.  
8 So September 2013 is when we'd like to get it in place. I  
9 think a month delay would not be an issue for us right  
10 now.

11 We do have other permits we have to work through  
12 with the Army Corps of Engineers and several others, and  
13 we have to design it as well. So that's what we're  
14 looking at.

15 ACTING COMMISSIONER GORDON: One thing asked --  
16 there's one thing about your testimony that's -- maybe I'm  
17 just being dense here. So you're claiming this is -- your  
18 testimony is that this is about safety for the workers and  
19 for the environment. You've got an existing capacity for  
20 6,000. My understanding of the cruise ship industry is  
21 they are supersizing these boats, that they're getting  
22 bigger. So what you're telling us is that you have an  
23 existing capacity for 6,000 people at one time. I'm  
24 guessing today that means maybe two smaller ships. And  
25 what you're trying to do is design this so you can take

1 one of the larger floating hotels?

2 MS. McCORMACK: Yes, but probably -- we usually  
3 have the smaller ships in San Diego. But we don't know  
4 what the capacity -- you know, what the cruise lines are  
5 going to be building. If you look at what cruise lines  
6 are building now, they're building, you know, 1200-foot  
7 ships that have a capacity for 5,000 passengers on them.  
8 So if a ship like that were to dock in San Diego, we could  
9 only handle one ship at a time. We would never put two  
10 ships there. So we'd never have more than 6,000  
11 passengers on that particular pier because the acreage of  
12 the pier can't handle it. The operations of the pier  
13 couldn't handle putting stores on that ship or taking the  
14 bags off the ship when you have, you know, more than 6,000  
15 passengers.

16 But that isn't typical nowadays and within the  
17 next five years what the Port of San Diego does. Ships  
18 that big usually go to Long Beach or Los Angeles because  
19 of the ability that they have up there and the longer  
20 piers they have up there right now.

21 Some of the ships -- the new ships that the  
22 cruise lines are building, even -- they still have the  
23 same number of passengers, like 2,600, maybe 3,000, but  
24 they're building them because of the amenities on the  
25 ship. They're building them longer and a little bit

1 higher because of what tourists want on the ship. So it's  
2 not necessarily getting bigger in passenger size, but it's  
3 getting bigger in the amenities that are on the ship for  
4 people to enjoy.

5 ACTING COMMISSIONER GORDON: Answers my  
6 questions.

7 ACTING CHAIRPERSON GARLAND: Thank you. Thank  
8 you for taking our questions as well.

9 MS. McCORMACK: Thank you.

10 ACTING CHAIRPERSON GARLAND: We have one final  
11 speaker on this agenda item. It's Jim Hirsch.

12 Jim, thank you for being here.

13 MR. HIRSCH: Thank you, Mr. Chairman,  
14 commissioners.

15 I just want to make a few comments here. Number  
16 one, I do have a copy of the Coastal Development Permit  
17 that was filed with the Coastal Commission with me here  
18 today. I can certainly make that a part of the record.  
19 And it was their own determination to grant the waiver,  
20 not our request.

21 With respect to CEQA, we did issue the  
22 categorical exemption and based it on the fact that there  
23 was a capacity threshold of 6,000 people on the pier. So  
24 the feeling was we were not exacerbating or aggravating  
25 that as long as we were able to stay below that.

1           With respect to the public process, one of my  
2 functions at the Port for the past six months has been as  
3 the project manager of the North Embarcadero Port Master  
4 Plan Amendment. And within that area is the B Street  
5 Pier, and it's certainly been a focus of discussion.

6           And what I am reading in the letters that you  
7 received is that the individuals, two of whom indicated -  
8 and they were - members of the Citizens Advisory  
9 Committee, that they were totally in the dark. They had  
10 no idea this was going on, and further that there had been  
11 no discussion. I actually have the minutes of the meeting  
12 of July 8th, which was our eighth meeting, with me. I can  
13 certainly make that a part of the record. They're minutes  
14 taken by two different sources. And in those minutes it's  
15 clear that there was a discussion, a brief discussion  
16 albeit, but nevertheless it was bandied about, that there  
17 was a mooring dolphin that had been approved by the  
18 Coastal Commission a month before, June 15th. So this is  
19 now July 20th.

20           And one of the writers to you, Diane -- and this  
21 is Diane Coombs, who indicated she was totally in the  
22 dark, actually suggested at that meeting that perhaps  
23 given that the Broadway Pier, which has been certainly a  
24 subject of controversy, since that pavilion and pier is  
25 now operational, that we make lemons out of lemonade, as

1 she put it, and say that that is our primary pier from now  
2 on, and why don't we move this mooring dolphin to that  
3 location. So I really can't understand, for the life of  
4 me, how someone can say they had no idea about it when  
5 they were, in fact, suggesting that perhaps we put it in  
6 an alternate location. Clearly she knew about it.  
7 Clearly it was a subject of discussion.

8 So that concludes my response, unless you -- do  
9 you have any further questions?

10 ACTING CHAIRPERSON GARLAND: Questions from the  
11 commissioners?

12 Thank you for your presentation.

13 MR. HIRSCH: Thank you very much.

14 MR. BRIGGS: Can I please have 30 seconds -- just  
15 30 seconds?

16 ACTING CHAIRPERSON GARLAND: We have a process  
17 and you've already spoken once to -- to an extended  
18 time period.

19 MR. BRIGGS: I understand. But they're not  
20 telling you straight.

21 ACTING CHAIRPERSON GARLAND: So I'm going to ask  
22 you to --

23 MR. BRIGGS: Just keep in mind that the July 8th  
24 meeting was after the June Coastal Commission meeting when  
25 this happened. It was disclosed after the fact. And

1 please just look at Exhibit C, which is the Port's  
2 application here. There's no mention of safety or  
3 security anywhere.

4 Thank you.

5 ACTING CHAIRPERSON GARLAND: Thank you.

6 ACTING COMMISSIONER GORDON: Curtis, when is our  
7 December meeting? I know we've moved it around all over  
8 the place. When is our next meeting scheduled for at this  
9 point?

10 ACTING COMMISSIONER REYES: It's a rolling date  
11 at this time.

12 EXECUTIVE OFFICER FOSSUM: It's posted as being  
13 December 22nd on our website. That's when the Commission  
14 chose earlier in the year to set that date. But it's my  
15 understanding that we won't have a quorum for that date,  
16 so we're searching to find alternative dates either  
17 earlier in December or in the early part of January.

18 ACTING COMMISSIONER GORDON: This is my  
19 inclination at this point in time, speaking only for  
20 myself and, frankly, having not had an opportunity to  
21 discuss this with the Controller yet: I think the  
22 allegations over what the Coastal Commission did or didn't  
23 do are significant. I'm not looking to give the opponents  
24 of this project two bites at the apple, meaning Coastal  
25 Commission and State Lands Commission, and looking to

1 avoid litigation. So my inclination, at this point in  
2 time, is to abstain if there's a vote. But I would make a  
3 motion to put this decision over until our next meeting,  
4 as the Port has testified that there would not be negative  
5 impacts to them, put this over until our December meeting,  
6 have an opportunity to talk with the Coastal Commission in  
7 the meantime, bring them in, if necessary, if we're not  
8 satisfied to put them on the record as to what happened at  
9 their July meeting, and vote after hearing from the  
10 Coastal Commission.

11 ACTING CHAIRPERSON GARLAND: Well, the motion  
12 would take precedence.

13 So we've got a motion from the Controller's  
14 representative.

15 Does it have a second?

16 ACTING COMMISSIONER REYES: I guess, as I'm  
17 listening to the debate and the issue being brought forth,  
18 as long as this does not have an impact on the development  
19 if they were to move forward. If this has a negative  
20 impact or limits the ability for the Port to move forward,  
21 that causes me concern, because I'm ready to support the  
22 staff's recommendation right now. I think that the  
23 expansion of the pier by an additional 57 yards, 56 1/2  
24 yards out, while it does impact the waterways and so  
25 forth, the fact of the matter is ships are getting bigger,

1 therefore more amenities, not necessarily for more people.  
2 The very big ships actually end up going to cargo areas in  
3 some cases, which in my opinion also creates other health  
4 issues, problem issues in terms of the safety of the  
5 passengers, because they're now dealing with forklifts and  
6 trucks.

7           And the picture that I saw is not uncommon on any  
8 of the ports I've ever been to where I've taken a cruise  
9 ship - Tampa, Puerto Rico, you name it - the same issue  
10 comes up.

11           The day of departure and arrival you've got twice  
12 the volume of the ship being processed at the same time  
13 within a short period of time anyway.

14           But I'm looking at the folks in the back. And if  
15 this is extended for another month or month and a half, it  
16 has no detrimental impact on the project. And I'm hearing  
17 the yes.

18           So I will second the motion then to postpone, if  
19 staff also tells me it does not create an issue.

20           EXECUTIVE OFFICER FOSSUM: We've been informed by  
21 the Port as well that they don't believe a one-meeting  
22 delay will significantly interfere with the project.

23           ACTING COMMISSIONER REYES: Okay. Well, in that  
24 case, I will second the motion for the delay.

25           ACTING CHAIRPERSON GARLAND: All right. We have

1 a motion and a second to pull this item and table it until  
2 the next meeting of the Commission.

3 All those in favor?

4 (Ayes.)

5 ACTING CHAIRPERSON GARLAND: Opposed?

6 The item is put over until the December meeting  
7 of the Commission.

8 Thank you to both sides for your presentation and  
9 for being here today. We appreciate it very much.

10 Moving on now to -- we haven't pulled 36, so  
11 that's not happening.

12 We're now on to the regular items. And that  
13 begins with Item No. 54, the Commission staff's Audit  
14 Action Plan.

15 And while the room clears again, we'll take a  
16 brief -- a second here to let the commotion die down, and  
17 then ask the staff to make its presentation.

18 Whenever you're ready. Thank you.

19 (Thereupon an overhead presentation was

20 Presented as follows.)

21 EXECUTIVE OFFICER FOSSUM: Let me just say that  
22 this informational item to the Commission in response to  
23 its last request is one that we've put a lot of time and  
24 effort into. And Dave Brown, who is our Chief of the  
25 Administrative Staff, will present this. And additional

1 staff are available to answer any questions the Commission  
2 may have.

3 ADMINISTRATIVE SERVICES CHIEF BROWN: Good  
4 morning, Mr. Chairman and commissioners. My name is Dave  
5 Brown and I am the Chief of the Administrative Services  
6 Division of the State Lands Commission and will be  
7 presenting staff's Audit Action Plan in response to the  
8 Bureau of State Audits Report 2010-125.

9 The Commission directed staff, at its September  
10 1st meeting, to prepare a plan to address the findings by  
11 the Bureau regarding the Commission's management of leases  
12 of State property. Their report describes areas where  
13 auditors noted a failure of staff to perform certain  
14 duties or to pursue certain debts or lessees.

15 Staff has reviewed the findings and, as reported  
16 previously, found most to be reasonably accurate if not  
17 somewhat sensationalized and without perspective of the  
18 Commission's overall responsibilities and accomplishments.

19 Many of the findings revealed process breakdowns  
20 or an inability to maintain certain responsibilities due  
21 to staffing limitations.

22 --o0o--

23 ADMINISTRATIVE SERVICES CHIEF BROWN: As I  
24 reported to the Commission back in February of this year,  
25 the Commission's General Fund is supported -- General-Fund

1 supported positions have been eroding for the past 20  
2 years. In 1990, the Commission had 242 positions  
3 supported by the General Fund. The current budget has  
4 only 62. This is a 74 percent reduction over that period.

5           These core General Fund positions are those that  
6 perform lease compliance and trespass enforcements,  
7 appraisals and rent reviews, oil and gas reservoir  
8 analysis and production engineering, royalty accounting  
9 and financial auditing, hazard removal and litigation  
10 support.

11           They are also responsible for much of the Granted  
12 Lands Trust Management Program; all activities that are  
13 vital to the effective management of the Public Trust  
14 assets and entrusted to the Commission's care and, not  
15 coincidentally, those for which the Commission is now  
16 being criticized for not performing effectively.

17           Nonetheless, over the same period, through  
18 careful prioritization of activities to maintain its  
19 income stream, the Commission has continued to earn  
20 revenues of over \$3.8 billion. In spite of this record of  
21 generating substantial non-tax revenue income, the  
22 Commission has never been considered a revenue-producing  
23 agency for the purpose of being exempted from  
24 across-the-board budget cuts.

25           As I also noted in February, the General Fund

1 portion of the Commission's budget has been suffering from  
2 death by a thousand cuts, none alone that would be fatal  
3 but over time have been debilitating to many of the  
4 General Fund activities.

5           The Commission has received additional positions  
6 from other funding sources for new regulatory programs  
7 regarding oil spill prevention and marine invasive species  
8 programs, and has also relied much more heavily on  
9 reimbursements from project applicants to cover staffing.

10                   --o0o--

11           ADMINISTRATIVE SERVICES CHIEF BROWN:

12           Commission staff still numbers just over 200.  
13 But because of the limitations dictated by funding  
14 sources, these other positions must be devoted only to  
15 those programs that are not available to address the  
16 issues pointed out in the Bureau's report.

17           The little blue portion there is the General  
18 Fund. The other colors are other funding sources that  
19 must be devoted to those program activities.

20           The Bureau acknowledged this staffing issue in  
21 Chapter 3 of the report, and I quote: "Significant  
22 reductions in staff have hindered the Commission's ability  
23 to conduct activities necessary to ensure that the State  
24 receives appropriate revenues and that lessees comply with  
25 lease terms."

1           Repeated requests to prior administrations for  
2 staffing have gone unheeded. Several past budget requests  
3 have been submitted directly addressing those deficiencies  
4 that have now been identified in the Bureau's audit  
5 findings. The Commission staff also identified this loss  
6 of staffing as a major risk in its 2009 biennial Financial  
7 Integrity and State Manager's Accountability Act, or  
8 FISMA, report in regards to both erosion of the General  
9 Fund positions and the depletion of staff in the audit  
10 program.

11           The Bureau's report makes several recommendations  
12 for correcting deficiencies noted and improving processes  
13 and procedures. However, such procedural and process  
14 improvement recommendations can only impact the  
15 deficiencies noted to the extent that adequate staff  
16 resources are available to implement and carry out the  
17 work. The simple fact is that a program cannot sustain  
18 staff reductions on a scale experienced by the Commission  
19 with the expectation that there will be no adverse impact  
20 on activities to carry out those program responsibilities.

21           As such, as a first priority in response to the  
22 audit, staff is prepared and forwarded requests for  
23 additional staffing for consideration. These requests  
24 reflect the most urgent needs to address the areas of  
25 auditing and royalty accounting, lease compliance and



1 for a number of years. Each is being examined for other  
2 compliance issues, in addition to nonpayment, and will be  
3 addressed until resolved subject to the availability of  
4 staff.

5 For future delinquent or noncompliant leases, a  
6 procedure is under development to address coordination  
7 between divisions. A management group, including division  
8 chiefs and the Chief Counsel, will meet no less than  
9 quarterly to prioritize those leases, failing compliance,  
10 for additional action steps, up to and including  
11 litigation. This procedure is expected to be in place  
12 November 1st.

13 Staff is also pursuing other remedies, including  
14 participation in the State Intercept Program as well as  
15 collection agencies.

16 For general compliance issues, staff is  
17 investigating options such as penalties for failure to  
18 comply with insurance and bonding requirements, or  
19 possible punitive measures for unauthorized structures or  
20 activities on the leasehold.

21 Holdovers. As noted in the Bureau's report,  
22 procedures to reduce the number of leases in holdover were  
23 directed to the Commission staff in November of 2010. In  
24 March 2011, staff finalized the language for holdover  
25 notification letters for both significant and routine

1 leases as laid out in the holdover reduction procedure.  
2 Finalized language with formalized practice, including a  
3 two-year lease renewal notification in the leases and  
4 finalized holdover checklists which identifies the steps  
5 for time frames, have been issued to staff.

6 LMD management also continues to hold monthly  
7 meetings to discuss the status of holdovers and those  
8 leases assigned to contingent receivables.

9 As of today, 24 of the 32 leases that were in  
10 holdover have been resolved, with only eight remaining  
11 with a value of over \$10,000 a year each -- or in total.

12 Of those remaining, one, GP Gypsum, was on  
13 today's agenda, one involves a toxics site that will  
14 remain in holdover until remediation is complete, one is  
15 in non-operational caretaker status, and three are  
16 scheduled for the Commission action in the first half of  
17 2012.

18 The remaining two will be renewed upon completion  
19 of environmental documentation but have already had their  
20 rent updated and their payments are current.

21 Rent reviews. Commission staff has continued to  
22 develop and refine its rent review process. In late 2010,  
23 leases due for rent review began being pulled once -- or  
24 one year in advance as opposed to nine months.

25 In April 2011, the rent review checklist which

1 identified steps and time frames for staff to adhere to  
2 was updated, and these changes have been effective in  
3 helping staff complete rent reviews in a timely fashion.

4 Staff continues to also move forward with  
5 expanded use of the Consumer Price Index in applying  
6 automatic annual rent revisions. Staff will be  
7 recommending to the Commission the expanded use of CPI in  
8 the most high-value commercial use, industrial use, and  
9 right-of-way use leases, and is also exploring the use of  
10 CPI in lower-value leases to assist in streamlining the  
11 rent review process.

12 Staff has also updated and consolidated the San  
13 Francisco and Marin County benchmarks and is progressing  
14 on scheduled periodic updates of benchmarks throughout the  
15 State.

16 Audit cycles for leases. Over the past several  
17 years, due to significant reduction in auditor positions,  
18 staff has not been able to implement an audit schedule or  
19 plan. Instead, most of the staff's efforts have been  
20 focused on auditing leases with identified problems and  
21 royalty payments or in response to assignments or other  
22 changes requested by lessees.

23 As a result of the Bureau's report, Commission  
24 staff has developed a proposed audit schedule. The audit  
25 schedule places oil and gas, mineral and geothermal

1 dredging leases on a rotating audit schedule based on the  
2 following criteria:

3 --o0o--

4 ADMINISTRATIVE SERVICES CHIEF BROWN: Mandated  
5 through regulation; revenue generated from the lease, the  
6 amount of revenue; date and findings of the last audit;  
7 applicable statutes of limitation; identified issues in  
8 royalty payments; lease assignments; notification by  
9 lessee of pending changes; and then, lastly, commercial  
10 and surface leases.

11 As you can see on the slide here, as a result  
12 this go-forward plan. This slide contrasts what will be  
13 possible with existing staff versus those if additional  
14 staff is made available. Without new staffing it is  
15 likely that the program will continue to be reactive based  
16 on identified problems.

17 --o0o--

18 ADMINISTRATIVE SERVICES CHIEF BROWN: Oversight  
19 of statutory trust grants. The Bureau's report stated,  
20 and I quote, "The Commission should establish a monitoring  
21 program to ensure that the funds generated from granted  
22 lands are expended in accordance with the Public Trust."

23 Staff agrees with the report's recommendation.

24 However, there is currently only one staff  
25 position dedicated to overseeing the management of these

1 lands, by approximately 85 local government trustees  
2 pursuant to over 300 statutes. Commission staff has had  
3 to take a reactive approach to carrying out its  
4 responsibilities by responding to allegations of improper  
5 use of lands and funds rather than proactively identifying  
6 and preventing misuse through periodic monitoring.

7 Even in this reactive environment, Commission  
8 staff has not been able to investigate all allegations.  
9 As described previously, staff has submitted a request to  
10 restore the program, which will include implementing a  
11 monitoring program and developing and maintaining a close  
12 relationship with trustees.

13 Lease database. Action has been taken to improve  
14 the accuracy and reliability of the data in the ALID  
15 system. Staff has been instructed to complete entry of  
16 all Commission actions into the system within 30 days of  
17 meetings, and with a follow-up to ensure that they're  
18 there by 60 days.

19 All income-producing leases have been verified  
20 for data elements relating to rent amounts, rent review  
21 dates, lease term, lease expiration dates, and so on.  
22 Non-income leases will be verified upon availability of  
23 staff to do so.

24 A programmer has been assigned to work with LMD  
25 management to develop management reports and ad hoc

1 reporting capability that will allow ready access to data  
2 in a form and format that will be useful in decision  
3 making.

4           In addition to this, investigations have begun  
5 into the availability of off-the-shelf lease/asset  
6 management software packages, either commercially  
7 available or from other governmental agencies, as  
8 suggested in the report, that could be providing more  
9 extensive and flexible reporting capabilities.

10           Particularly intriguing right now are cloud  
11 solutions. There's some software-as-a-service offerings  
12 out that would require minimal development time and  
13 tremendous flexibility and are currently being used in  
14 educational institutions and some local governments. Such  
15 software-as-a-service systems provide web access and may  
16 provide public transparency as well as operational  
17 effectiveness.

18           Legislative and regulation change.

19           ACTING COMMISSIONER REYES: Dave, I apologize --

20           ADMINISTRATIVE SERVICES CHIEF BROWN: Yes, sir.

21           ACTING COMMISSIONER REYES: -- apologize for the  
22 interruption.

23           You talked about software that other State  
24 agencies would use. What other State agencies would be in  
25 our position?

1 ADMINISTRATIVE SERVICES CHIEF BROWN: Department  
2 of General Services. That was one of the suggestions that  
3 the Bureau --

4 ACTING COMMISSIONER REYES: Right, I notice that.  
5 But I think they're kind of at the other end, you know.  
6 They're kind of -- they're --

7 ADMINISTRATIVE SERVICES CHIEF BROWN: I would  
8 agree with you. However --

9 ACTING COMMISSIONER REYES: They're kind of the  
10 tenants, not the landlords.

11 (Laughter.)

12 ACTING COMMISSIONER REYES: Yeah. Just kind of  
13 an observation. I mean I can see like Forestry or  
14 something -- I don't know. I'm just trying to think of --

15 ADMINISTRATIVE SERVICES CHIEF BROWN: I kind of  
16 chuckled at that.

17 ACTING COMMISSIONER REYES: Well, I laughed, but  
18 okay.

19 (Laughter.)

20 ACTING COMMISSIONER REYES: That's why I want to  
21 bring it up.

22 (Laughter.)

23 ADMINISTRATIVE SERVICES CHIEF BROWN: Thank you.

24 EXECUTIVE OFFICER FOSSUM: We're also approaching  
25 the Bureau of Land Management, that does have more

1 similar activities than us as well.

2 ADMINISTRATIVE SERVICES CHIEF BROWN: As well,  
3 but they have far few -- I think they only have like 300  
4 leases. And we're upward around 4,000.

5 ACTING COMMISSIONER REYES: Thank you.

6 ADMINISTRATIVE SERVICES CHIEF BROWN: Legislation  
7 and regulation changes. Commission staff is also  
8 currently exploring and analyzing potential legislative  
9 and regulation changes as appropriate to give Commission  
10 and its staff ample authority to implement some of the  
11 activities proposed above.

12 One is to update the Commission's regulations,  
13 Title 2 of the California Code of Regulations regarding  
14 rents. We also are going to be looking into imposition of  
15 a lease management fee for surface leases.

16 We do need -- one of the suggestions by the  
17 auditor was participation in the State Intercept Program.  
18 However, in order to do so, we need to collect Social  
19 Security numbers. We currently have a legal opinion back  
20 from the 80s that says we don't have that kind of  
21 authority. And we are -- counsel is looking at that  
22 again, and we may need to get some legislation.

23 Yes, sir.

24 ACTING COMMISSIONER GORDON: What is the State  
25 Intercept Program?

1 ADMINISTRATIVE SERVICES CHIEF BROWN: That is  
2 over at Franchise Tax Board, that you provide a social  
3 security number and they will intercept any tax refunds,  
4 lottery winnings, and everything else. It's any refund  
5 coming back from the State. And they're trying to expand  
6 it as well. So any money going back to the public from  
7 the State, other State agencies are canvassed to see if  
8 that individual owes any money. The Child Support  
9 Services is one of the big users.

10 And use of private collection agencies.

11 You learned something today.

12 The use of --

13 ACTING COMMISSIONER REYES: Actually, we're also  
14 going to expand it to some of the financing authorities  
15 where the State money's involved. And part of the  
16 agreement would be that the entities that are depending on  
17 State resources, we would provide that as one of the  
18 options for payment.

19 ADMINISTRATIVE SERVICES CHIEF BROWN: Okay. And  
20 also we may need some legislation for the use of private  
21 collection agencies. In our discussions with -- we have  
22 spoken to Franchise Tax on that. And one of the things  
23 they cautioned us on is to make sure we have the authority  
24 to be able to turn that kind of private information over  
25 to the collection agency. They have the specific statute

1 to do so. And we're investigating what we would need to  
2 do the same.

3 We're also looking into penalties for failure to  
4 secure required insurance or to meet other lease  
5 conditions. This is kind of a complicated one, and I  
6 don't know where that will go. But also administrative  
7 remedies for trespass actions.

8 In conclusion, even in the face of these  
9 continual staff reductions, as described throughout the  
10 Action Plan, Commission staff has continued to seek  
11 opportunities to generate revenue for the State for the  
12 private or commercial use of State property.

13 For example, this past legislative session was  
14 very successful, given staff's resources. Three bills,  
15 two of which were sponsored by the Commission, and the  
16 other supported by the Commission. One was SB 152, which  
17 will bring all of the recreational piers into  
18 revenue-producing status, with which there are about a  
19 thousand of those. AB 595 by Wolk on abandoned vessels,  
20 which reduces the pain that we have to go through to  
21 remove an abandoned vessel. And then AB 982, which was by  
22 Skinner, is a renewable energy program out in the --  
23 negotiating with BLM that Curtis mentioned earlier.

24 These bills together will assist the Commission  
25 in generating additional revenue to the State, while also

1 assisting the Commission in cleaning up the State's  
2 waterway and streamlining the process for removing  
3 abandoned vessels.

4           As expressed in response to the Bureau's report,  
5 Commission staff does appreciate the recommendations  
6 detailed by the Bureau. And most of the recommendations  
7 are practical and achievable. And if the Commission is  
8 provided with sufficient resources to retain some staff,  
9 we feel we can get it done.

10           Thank you. That's the end of my presentation.

11           EXECUTIVE OFFICER FOSSUM: One thing I would like  
12 to add on that is that, as I mentioned earlier, our  
13 website does have these documents. And in particular the  
14 State Auditor requested that we provide documentation of  
15 the efforts the Commission had already put together to  
16 remedy the shortcomings that they had identified. And so  
17 in the response -- the 60-day response that we provided  
18 them on Monday, we provided 16 sets of documents to them,  
19 11 of which are available for public review - they're on  
20 our website, posted prominently on the front page - and  
21 access to that.

22           Five of them, however, were confidential and  
23 remain not available for public review.

24           But we provided all that documentation. We think  
25 it's very important to show the process, that Dave

1 mentioned, that will expedite our ability to keep on top  
2 of these issues and not let them miss deadlines and so  
3 forth.

4           ACTING CHAIRPERSON GARLAND: Thank you.

5           Any questions or comments from the Commission?

6           ACTING COMMISSIONER GORDON: I have two issues  
7 that I don't think concern me but I'm interested in and I  
8 didn't see addressed.

9           One is the insurance requirements. And when I  
10 first started six months ago-ish, I looked at this and  
11 said there didn't seem to be any standardized rules for  
12 determining what insurance would be required and what  
13 would happen if it weren't provided. And I would put the  
14 exact same question with regard to bonding requirements,  
15 how we make those determinations. And I didn't see in  
16 this any established procedure for making those  
17 determinations.

18           EXECUTIVE OFFICER FOSSUM: And that's correct.  
19 It wasn't brought out specifically in any real fashion by  
20 the audit. But it is a problem. And we do look on a  
21 case-by-case basis at each individual facility that would  
22 occupy State property.

23           One of the things we did, we did talk to  
24 Department of General Services and had a meeting with  
25 their experts on insurance, and they provided us some

1 insight on that. One of the things we had been hearing  
2 from many tenants is the requirement the Commission has  
3 put into its leases that if there -- if the insurance  
4 certificate is going to expire, that we get 30-days notice  
5 at a minimum. I think it's 30, or 30 or 60. And the  
6 industry has stopped being willing to do that. It's  
7 paperwork for them or something. And so it's a dilemma  
8 for our lessees to be able to do it. But it seems like  
9 it's really kind of a passing-the-buck thing that the  
10 insurance company has done by its unwillingness to say  
11 that it's canceling the insurance in providing the covered  
12 insured, such as the State, notice of that so that we can  
13 follow up on it.

14 So it's a bit of a dilemma there. We are  
15 struggling with how to put that back on our lessee. But  
16 it's something that came out in our discussions with the  
17 Department of General Services in that.

18 What we have looked at is the minimums in the  
19 past. And we look at what's going on in the real world  
20 out there as far as the kind of insurance coverage that's  
21 being maintained, whether it's an individual with a  
22 recreational pier or whether it's a marina in an operation  
23 like that. And certainly with the oil companies operating  
24 either marine terminals or operations, I'm very happy to  
25 say a couple of the things that Dave touched on, this

1 assignment -- the assignments that you approved earlier  
2 today dealing with Aera's assignment to Occidental  
3 Petroleum with the leases down in southern California,  
4 we've raised the bond amounts there, and the insurance  
5 went from \$250,000 I believe to -- excuse me -- 250 to \$30  
6 million.

7           So we looked very carefully at that. Obviously,  
8 we know that those kind of operations have a significant  
9 potential for liability, and so we want as much coverage  
10 as possible.

11           On top of the insurance, we have indemnity and  
12 hold-harmless provisions, so that if there is any types of  
13 liability that's assigned in a lawsuit, that not only have  
14 we got the insurance to go for first, but the backup is  
15 the company's assets.

16           Bonding is probably even more problematic to some  
17 degree, because even though we can get significant bonds  
18 by some of the major industrial users and commercial  
19 users, if we start looking at some of the smaller users of  
20 State property, bonds become almost prohibitive for them  
21 and it's a real dilemma for us.

22           The bonds historically have been fairly low, and  
23 the Commission is using a bond -- for example, one of the  
24 criticisms we had on the lease in the Carquinez area - we  
25 are collecting a bond for some of the past rent there -

1 but to be able to remove facilities that have been in  
2 place and the value and the costs of removal of facilities  
3 if somebody abandons them, it's very difficult for us to  
4 get a bond that's high enough to accommodate that. And so  
5 there are some real policy questions about, even an  
6 operation that's doing a good job, whether you can put  
7 them out of business by requiring too high of a bond.

8           So it's a balancing act that we look at. And I  
9 don't know that there's any easy solutions to it.

10           ACTING COMMISSIONER GORDON: I guess what I'm  
11 interested in, at this point, are -- and maybe it can only  
12 be done with a regulatory package, because -- my fear is  
13 when you make that judgment call, that if you do get to a  
14 point where you decide you need to withdraw -- to not  
15 renew for failure to procure insurance, for insurance  
16 lapsing for non-bonding, that one of the allegations in  
17 the lawsuit is going to be, you know, that there are no  
18 regulations, there's no set procedure that this is  
19 arbitrary and capricious and you're singling out this  
20 particular lessee.

21           I'm also interested, frankly, from a  
22 going-forward basis, I think right now the Commission,  
23 from what I can see - and I'm thinking back to the last  
24 meeting where we had a lot of testimony over a lease with  
25 a fairly small operator - where I see you're somewhat in a

1 Catch-22, where you have a situation where you have a  
2 non-performance; however, should you withdraw the lease,  
3 the negative impacts of abandoning the site and the  
4 cleanup costs from the previous action really put you in a  
5 situation where you can't make the right decision -- well,  
6 you make the right decision by kind of letting them go on  
7 even though you know really as you've looked at it that  
8 they don't have the financial capacity to operate.

9           And from a going-forward basis, it strikes me --  
10 we can't remedy these past situations at some level, but  
11 we can develop standards so that for future leases a) we  
12 can avoid future lawsuits where you -- and make it easier  
13 for you to make that decision, and b) that you really can  
14 have a closer scrutiny of who you are -- who you are  
15 granting leases to based on long-term financial capacity  
16 to operate so we don't get ourselves in these Catch-22  
17 situations.

18           ACTING COMMISSIONER REYES: But it seems to me  
19 that we can do it ongoing -- on an annual basis even  
20 though those preexisting leases though. I mean, we did  
21 Item C 10 today with the marina, and part of it was that.  
22 So we can --

23           EXECUTIVE OFFICER FOSSUM: Yes. And, in fact,  
24 one of the things we talked about the five-year rent  
25 review and how important that is. I think the majority of

1 our leases, at least in recent years, that have that  
2 five-year rent review provision also allows to look at  
3 insurance and bonding to make sure those are up to date.  
4 So it's not just a rent review. It's looking at those  
5 additional protections for the State.

6 But let me say, as far as bringing up the fact  
7 trying to standardize regulations is extremely difficult  
8 because every piece of property is somewhat unique. You  
9 may have situations where neighbors have very similar  
10 situations, and in those instances one would expect that  
11 they would be treated equally. But one marina that has  
12 ten slips and another one that has a thousand slips, you  
13 have to look at the economics of that and the costs and  
14 everything else associated with it, the potential  
15 liability and everything else. So it's your staff's  
16 responsibility to bring to the Commission those kind of  
17 things that we believe are in the best interests of the  
18 State.

19 And certainly it's a matter of negotiating with  
20 the property owner, or the applicant, the lessee as well,  
21 as to his particular situation. And just as with the oil  
22 companies and when major oil companies started leaving  
23 California and small companies were coming in, we were  
24 extremely concerned about those companies being -- not  
25 only being able to perform because of lack of experience,

1 but their assets that were available if there was, you  
2 know, some kind of an event that would raise liability for  
3 the State.

4           So we look very carefully at those situations  
5 when we have the opportunity to do so. But it's difficult  
6 to actually adopt a regulation that tries to categorize  
7 these thousands of different leases we have when some are  
8 very small and others are larger. And so we try and look  
9 at each one individually and apply like standards to them.  
10 But those standards are one that are constantly changing  
11 the marketplace and everywhere else. And if you adopt a  
12 regulation, it could be obsolete in what's going on in the  
13 world within months, or the location could be changed.

14           And so we're not regulating these people. What  
15 we're doing is negotiating with them the use of State  
16 property in a way that we believe protects the State's  
17 interest. And that's we believe the staff and  
18 Commission's role.

19           ACTING COMMISSIONER GORDON: I'm going to push  
20 back just a little bit.

21           In a previous life I was with Department of  
22 Toxics. And they have to lease hazardous waste transfer  
23 facilities. And they fit almost the same category. You  
24 have one in south central Los Angeles going to be very  
25 different than one in the Central Valley versus going to

1 be very different than one sitting on San Francisco Bay.  
2 And yet they have developed standards and procedures that  
3 if one were to attempt to create a new facility anywhere  
4 in California, there would be a process and a bonding  
5 procedure and an insurance regulatory environment that the  
6 staff can look to to determine what's a proper amount. It  
7 has saved the State, fair to say, hundreds of millions of  
8 dollars over the years as some of these facilities have  
9 gone out of business and the bonding capacity in  
10 particular allowed the State to close them down when it  
11 was necessary and to recover -- and to clean up the sites.

12 I don't see that as all that different than one  
13 of your marine terminals and things where you've got --  
14 you've got fuel tanks and the like, and it makes it --  
15 you're going to have -- if someone can't pay the rent, if  
16 they don't have insurance, and you can't close them down  
17 because we don't have the ability to clean them up, you're  
18 somewhat in a bind and your legal staff is a toothless  
19 tiger. They know you can't close them down and they're  
20 going to keep operating.

21 EXECUTIVE OFFICER FOSSUM: That's a good point  
22 because you brought up marine terminals. And I would add  
23 to that our offshore oil facilities and things like that.  
24 Unfortunately, the Legislature has given us the ability to  
25 regulate those functions. It's not strictly a land

1 management aspect in leasing to them. But in those  
2 instances the Commission has adopted regulations that do  
3 protect in those areas and set standards. And we are  
4 always looking at upgrading those standards for protection  
5 of the environment, both offshore on our oil facilities as  
6 well as the marine terminals.

7           So while we were locked in -- some of these  
8 leases we have, offshore oil leases, are from the 1940s,  
9 so you can imagine there's very little protections  
10 specifically in those lease agreements.

11           However, when there's been assignments, we've  
12 taken the opportunity, like we did today, in the  
13 assignment between Aera and Oxy to actually upgrade our  
14 contracts with them and improve our ability to protect  
15 bonding insurance and other things. But we have a  
16 regulatory scheme that does deal with oil spill  
17 prevention. And so in that function, the Commission does  
18 set regulations. We have extensive regulations that do  
19 set standards for each of them because they are consistent  
20 type of operations.

21           But we have struggled with this for generations  
22 as to how do you try and treat everybody fairly when all  
23 their circumstances are so divergent. When it comes to,  
24 you know -- and when you have small leases like  
25 agricultural leases, we have so many different -- a

1 variety of leases, it's difficult to set a standard that  
2 works forever and is consistent with all those, because  
3 every piece of property that you're leasing is different  
4 than a facility that you're regulating.

5           But we will certainly -- we strive to keep  
6 consistency in that regard and to bring what we believe  
7 is -- but we encourage the Commissioners to ask us these  
8 questions, and we'll look at it further as to whether or  
9 not those kind of things are appropriate.

10           For example, the criticism we took on the  
11 pipelines for saying that our regulations were obsolete as  
12 to the amount of rent we were charging for rights of way  
13 on pipelines. Well, the answer that the staff had was  
14 that those are obsolete and we haven't used them for  
15 decades. But we have alternatives, and we always look at  
16 the highest and best revenue generating for the State.  
17 And so an appraisal would be done in those instances,  
18 which would generate significantly more revenue.

19           So those regulations do exist. But just as every  
20 appraisal for every piece of property is going to give you  
21 a different number, those situations as to the kind of  
22 facility you're leasing is going to be different. So the  
23 insurance amounts, the bonding amounts, if they're the  
24 same facility in the same location -- typical location,  
25 then they would be consistent.

1           But from one end of the state to the other and  
2 the desert to the ocean, we have a lot of variety of  
3 things and it's difficult to categorize all of them into a  
4 single type of category.

5           One of the things that we tell the Commission and  
6 tell the public is the Commission has extreme discretion  
7 in the management of its lands; that the decision makers  
8 for the State of California, the Commissioners, ultimately  
9 have broad discretion in the management of its lands and  
10 the leasing of those lands. So you're not tied -- if you  
11 believe, and based upon the facts before you, that we're  
12 not asking for enough insurance or anything else, that can  
13 be changed. It's not cut in a particular regulation. You  
14 may say, "We should have three times that much", and it's  
15 your prerogative in that regard. Your staff is who tries  
16 to bring that information to you in a detailed manner so  
17 that there will be -- but you can always question it, as  
18 do the property -- the people who are applying for these  
19 leases of State property.

20           ACTING COMMISSIONER REYES: I think what I heard  
21 was looking for uniformity and consistency, not that we  
22 don't lack authority, but is provide for it fair and  
23 equitable, that, you know -- and I understand your point.  
24 Clearly, I -- even a ten-vessel marina in Tahoe is going  
25 to be different than the one here in Sacramento. It's

1 going to be different than the one in Newport. I get  
2 that.

3 But I think what we're getting -- what I'm  
4 understanding from your point at least, and I concur with  
5 that if I understood it correctly, is that it would be  
6 fair and uniform to the degree possible. If you have --  
7 and I'm just going to make this up. If you have, you  
8 know, X company -- oil company paying 30 million insurance  
9 and you have a small mom-and-pop marina paying \$3 million  
10 insurance, something's wrong, you know. But that's kind  
11 of what --

12 EXECUTIVE OFFICER FOSSUM: Exactly.

13 ACTING COMMISSIONER REYES: -- I'm hearing you  
14 say.

15 But, no, you continue to look at it, continue to  
16 look for fairness. And, you know, there is broad  
17 authority, but it is not to look to exceed or to just look  
18 and try to get revenues; trying to be fair and uniform as  
19 much as we can.

20 EXECUTIVE OFFICER FOSSUM: Yes. And I would say  
21 on our rent, for example, for the most part, when we don't  
22 do an individual appraisal, we have benchmarks for various  
23 regions, so everybody's treated similarly in those  
24 regions.

25 When Senator Pavley carried SB 152, one of the

1 things that the property owners who would be affected by  
2 that bill, through their representative, brought for us  
3 was that they wanted to make sure that that was in the  
4 bill, that we would look specifically at the values in the  
5 areas; so that when you're dealing with Lake Tahoe, it's  
6 different than Huntington Harbor or the Delta.

7           And so those benchmarks we have are standardized.  
8 Now, they're not put into regulations because we try and  
9 review them periodically and bring them up-to-date. But  
10 they do exist and that's what we use across the board for  
11 those type of facilities.

12           ACTING COMMISSIONER GORDON: Curtis, one of the  
13 things I am looking for -- and I'm fully sympathetic with  
14 your lack of staffing and trying to help. You know, as  
15 I've told you before, I'm looking at kind of a two-prong:  
16 Number 1, help any way we can to get you the staff you  
17 need to do your job; but, number 2, preparing the  
18 eventuality that, you know, what are we going to do if we  
19 don't -- you know, if you don't get any more staff.

20           And it strikes me on things like the insurance  
21 and the bonding -- you know, show how old I am going back  
22 to the days in a law firm where you had a tickler system,  
23 you know, where -- you really didn't have to think that  
24 much. I mean, we didn't even have computers. It was, you  
25 know, when a case was first filed, you put on the calendar

1 when the -- you know, when the 60-day response was going  
2 to be, when the interrogatories, when the deposition. And  
3 the law firm had an entire master calendar for all those  
4 things.

5           Now, computers and software obviously make that  
6 significantly simpler. But to say that, you know, look,  
7 the insurance company doesn't want to tell us when they're  
8 sending out 30-days notice; the lessees, they don't do it,  
9 so we're in a bind; I don't think that's really  
10 acceptable. I mean I think going forward that to assign a  
11 staff person to get these leases into a data -- get the  
12 insurance and the bonding into a database, so that you  
13 don't have to rely on the insurance companies or the  
14 lessees to tell you, that sometimes just pops up -- you  
15 know, it pops up on a screen that says, you know, lease  
16 X -- insurance on lease X is running in 30 days on --

17           EXECUTIVE OFFICER FOSSUM: Excuse me,  
18 Commissioner. But it's not that the insurance is  
19 expiring. It's that they may have terminated it without  
20 telling us.

21           ACTING CHAIRPERSON GARLAND: It's not the issue  
22 of the insurance here, Curtis. I think what -- and I'm  
23 going to jump in here because this was something that I  
24 was concerned about and actually happy to hear in the  
25 report, is that -- and to hear the comparison of 400

1 issues versus 4,000 issues in a database, let me just ease  
2 your mind. 4,000 entries in a database is really not that  
3 big. In fact, it's minuscule compared to what databases  
4 can handle these days.

5 And the fact that the tickler system which  
6 started with a master calendar that some poor person had  
7 to keep by hand is now as easy as adding a task with a due  
8 date in things such as Microsoft Office or any other of  
9 these Cloud systems. I'm happy to hear you say that.

10 Our office has been one of the first to move to  
11 the Cloud in our storage needs in the Lieutenant  
12 Governor's office. The idea that, you know, it's  
13 difficult to track things in a world where databases of  
14 millions, if not billions, of data points are now stored  
15 is -- frankly is a weak argument and will continue to be a  
16 burr in my saddle should we not hear of some major  
17 improvements being made at the Commission for those  
18 specific things. It was a major part of the Auditor's  
19 report, it is a major concern. This is 2011. There is no  
20 reason why we shouldn't have a legitimate database system  
21 that tickles you on a lease review or insurance or bonding  
22 or anything that can be automated that will alleviate some  
23 of the concerns you have about your staff.

24 And while I appreciate the decline in the staff,  
25 and it's terrible and we should all be working to increase

1 that, this is not a symptom specific to the Lands  
2 Commission. Everyone is doing more with less.

3 EXECUTIVE OFFICER FOSSUM: Absolutely.

4 ACTING CHAIRPERSON GARLAND: So to continue to  
5 say it's because we don't have staff, when we've seen a  
6 consistent decline over the years, and to see that we  
7 haven't taken the opportunities to find those efficiencies  
8 that a database system would give you is going to stop  
9 sounding like a reason and start sounding like an excuse.  
10 And excuses moving forward are going to be unacceptable.

11 EXECUTIVE OFFICER FOSSUM: I totally agree. I  
12 think that -- and our responses to the BSA certainly  
13 documented the approaches that we have taken. And, in  
14 fact, earlier this year, most of those database issues  
15 were all resolved. So it's not the database that we find  
16 is the problem, unless you're talking about how to track a  
17 bond that expires if it's not supposed to expire, but they  
18 stop making their payments on it, how do we -- how are we  
19 notified of that or how do we know it if they've canceled  
20 their insurance policy and how does the Commission keep  
21 track of those things? It's in our database that it's  
22 there, but if the company cancels it and doesn't tell us,  
23 then we don't know.

24 ACTING COMMISSIONER GORDON: Do you have a clause  
25 in the lease that requires the lessee to provide you that

1 information?

2 EXECUTIVE OFFICER FOSSUM: Yes. And now they're  
3 telling us that they can't comply with that because their  
4 insurance industry is no longer willing to do that. And  
5 so we're trying to figure out a new way to be able to  
6 comply with that view. Penalize the lessee if -- you put  
7 the obligation on him rather than his contractor --

8 ACTING COMMISSIONER GORDON: Let me stop you for  
9 a second.

10 The contract is between the State Lands  
11 Commission and the lessee?

12 EXECUTIVE OFFICER FOSSUM: Correct.

13 ACTING COMMISSIONER GORDON: Is the lessee's  
14 response, at this point in time, that these -- that the  
15 insurance or the bonding is being canceled without notice?

16 EXECUTIVE OFFICER FOSSUM: There's a provision  
17 that says that you will provide us a certificate of your  
18 insurance that also indicates that there's a 30-day  
19 cancellation and notification clause to the Commission  
20 staff that this insurance coverage is being canceled.

21 They're telling us now that the insurance company  
22 is no longer willing to send a notice that they're  
23 canceling the insurance. And so we can put it on the  
24 lessee and say, "It's your obligation to let us know this  
25 is being canceled." But if they don't comply... Whereas,

1 a company typically would comply with those kind of  
2 obligations because it's routine and they have it in their  
3 database that they're canceling and they have the  
4 addresses and everything. A lessee who may find out he's  
5 canceling may just, "Oh, I forgot to let you know."

6 So it's a complication that because of insurance  
7 company's unwillingness to keep in their database the kind  
8 of information that we've asked them to do to send these  
9 notices out -- and again General Services told this - this  
10 is endemic now in the industry - that most companies are  
11 going in that direction that they're unwilling to send  
12 those notices, that we're going to have to scramble to  
13 figure out, do we not only require the lessee, but what if  
14 he fails? I mean, what's the penalty for somebody who  
15 fails to comply with these things?

16 So as Dave mentioned, that's another area we're  
17 looking at, is how to incentivize our tenants to comply  
18 with their lease provisions and, you know, make them do  
19 it? I mean, do you just cancel their insurance because --  
20 or cancel their lease because they didn't cover insurance  
21 or do you build some other incentive in there to -- do you  
22 raise their rent? I don't know. It's --

23 ACTING COMMISSIONER GORDON: Let me ask, so I'm  
24 assuming that these insurance products are regulated by  
25 the Department of Insurance?

1 EXECUTIVE OFFICER FOSSUM: I would expect they  
2 are.

3 ACTING COMMISSIONER GORDON: Has anyone gone to  
4 the Department and determined that these carriers shall or  
5 shall not be licensed to sell their products in California  
6 if they're not willing to provide notice to the State that  
7 they are canceling policies?

8 EXECUTIVE OFFICER FOSSUM: We have not done that  
9 to date. But we can certainly talk to General Services  
10 and take that recommendation in hand and make our contacts  
11 with the insurance industry. It seems like it would be a  
12 simple thing for them to do, to let people know when  
13 they're canceling.

14 ACTING COMMISSIONER GORDON: Curtis, I would make  
15 the request that you go directly to the Department  
16 yourself. I mean in order to sell insurance in  
17 California, you need to be licensed by the Department of  
18 Insurance. If these insurance companies are not willing  
19 to comply with basic notice requirements to the State, I  
20 think the Insurance Commissioner would want to know that.  
21 And maybe these companies would have their license pulled,  
22 and we would have carriers selling this type of insurance  
23 who are willing to comply with these basic notice  
24 requirements to make your job possible.

25 EXECUTIVE OFFICER FOSSUM: We'll take that

1 direction and do it directly.

2           ACTING CHAIRPERSON GARLAND: I associate myself  
3 with Alan's comments there.

4           EXECUTIVE OFFICER FOSSUM: Thank you for that  
5 suggestion.

6           ACTING CHAIRPERSON GARLAND: Any other questions  
7 or comments on Item 54?

8           Okay. Thank you to the staff. And I would  
9 encourage, Curtis, in the future to keep us in your  
10 executive report before me -- you know, at each meeting  
11 keep us up to date on where we are in the Action Plan in  
12 the process and the progress that you've made.

13           EXECUTIVE OFFICER FOSSUM: Absolutely. And we'll  
14 try and get back to the strategic plan that we were  
15 starting earlier in the year and see if we can't get that  
16 on track as well.

17           On Item 55 we have at least a couple of  
18 representatives from our major ports here in California.  
19 We're very happy to recommend to the Commission that they  
20 adopt the resolution acknowledging the major impacts that  
21 the ports have provided to the economy of California and  
22 to the quality of life, and then particularly recent years  
23 their acknowledgement of the need to be good neighbors to  
24 their local citizens and deal with air and water quality  
25 and other impacts that the trade has on California.

1           So we have today -- well, we'll be presenting  
2 the -- Michelle Andersen I believe is going to be  
3 presenting the Item 55. But we also have Jon Ballesteros,  
4 who's the Manager of Governmental Affairs from the Port of  
5 Oakland; Alex Esparza, who's the legislative advocate on  
6 behalf of the Port of Los Angeles and Mayor Villaraigosa.

7           ACTING COMMISSIONER REYES: Do we have to take  
8 action to approve this or --

9           EXECUTIVE OFFICER FOSSUM: Yes.

10          ACTING COMMISSIONER REYES: So moved.

11          (Laughter.)

12          ACTING CHAIRPERSON GARLAND: Staff presentation.

13          GRANTED LANDS REPRESENTATIVE ANDERSEN: Again,  
14 good morning, members of the Commission. My name is  
15 Michelle Anderson. I'm the Granted Lands Representative  
16 for the Land Management Division.

17          Today staff is requesting that the Commission  
18 consider the adoption of three resolutions acknowledging  
19 the 100th anniversary of statutory trust grants of State  
20 sovereign lands resulting in the development of the Port  
21 of Los Angeles, the Port of Long Beach, and the Port of  
22 Oakland and their contributions to the economic vitality  
23 of the State and the nation.

24          In 1911, during the Progressive Era of the early  
25 20th Century, the State's sovereign tide and submerged

1 lands were legislatively granted in trust to the cities of  
2 Long Beach, Los Angeles, and Oakland for the development  
3 of commercial ports. Through adoptions of city charters,  
4 portions of these sovereign lands are located within the  
5 ports of Long Beach, Los Angeles, and Oakland and are  
6 managed by their respective board of harbor commissioners  
7 for the benefit of all the people of California.

8 Today, the ports of Long Beach and Los Angeles  
9 are among the top ten in the nation by dollar value of  
10 imports and exports, while the Port of Oakland cargo  
11 volume makes it the fifth busiest container port in the  
12 nation.

13 According to the California Marine Affairs and  
14 Navigation Conference, economic activity that depends on  
15 California ports created approximately 1.1 million jobs in  
16 California, contributed more than 40 billion to the gross  
17 state product, and had an impact of -- or excuse me -- it  
18 had an impact on annual personal income of \$432 billion.

19 Nationwide, more than two million jobs are linked  
20 to California public ports, with California generating  
21 over 40 percent of the federal harbor maintenance tax to  
22 the United States.

23 In addition, international trade is a major force  
24 in California's economy, currently accounting for nearly  
25 25 percent.

1           The Port of Long Beach and the Port of Los  
2 Angeles and Oakland are also ranked as some of the world's  
3 largest trade gateways.

4           On an environmental level these ports have made  
5 significant progress in the stewardship of their Public  
6 Trust grants as evidenced through their clean air, clean  
7 water, and habitat restoration programs.

8           These ports are significant Public Trust assets  
9 and are vital components of the national, state, and local  
10 economies. Therefore, staff recommends the adoption of  
11 these three resolutions as set forth in Item 55  
12 acknowledging the 100th anniversary of statutory trust  
13 grants to the cities of Long Beach, Los Angeles, and  
14 Oakland, and congratulating the ports of Long Beach, Los  
15 Angeles, and Oakland on their contributions to the  
16 economic vitality of the region, state and nation, and  
17 their recent, but significant, progress in efforts to  
18 lessen port-related impacts on the environment.

19           Thank you.

20           ACTING CHAIRPERSON GARLAND: Thank you for your  
21 presentation.

22           Comments from the Commissioners?

23           Actually, I guess I'll start on this one.

24           I just thank the staff again for the  
25 presentation. And at least from my boss's perspective,

1 the Lieutenant Governor, we've seen in our first ten  
2 months in office, putting out an economic agenda and  
3 blueprint for the State, how important the ports are on so  
4 many levels, many of which discussed here this morning.  
5 And at least from our perspective, we want to congratulate  
6 the ports and happy to support this motion for these 100th  
7 anniversary acknowledgments.

8           ACTING COMMISSIONER REYES: I'll echo those  
9 comments.

10           ACTING COMMISSIONER GORDON: I'll associate with  
11 the comments also.

12           ACTING CHAIRPERSON GARLAND: Excellent.  
13 We have a motion to start with from Pedro.  
14 Do we have a second?

15           ACTING COMMISSIONER GORDON: Second.

16           ACTING CHAIRPERSON GARLAND: Motion and a second.  
17 Do we have any public comments?

18           In this case, we'll start with Alex Esparza.

19           Alex, thank you for sitting through the meeting  
20 to get to this point.

21           MR. ESPARZA: Thank you --

22           ACTING CHAIRPERSON GARLAND: And he was awake the  
23 entire time. I just want to point that out.

24           MR. ESPARZA: Thank you, Mr. Chair and members.  
25 Alex Esparza on behalf of Los Angeles Mayor Villaraigosa

1 and the Port of Los Angeles, here in support of Item 55.

2 I would like to share a few statistics that staff  
3 talked about just to kind of go over and demonstrate how  
4 the Port has grown and flourished. We're one of the  
5 nation's busiest seaports, which occupies 7,500 acres of  
6 land and 43 miles of waterfront. Together with the Port  
7 of Long Beach, we have more than 43 percent of the  
8 nation's container commerce.

9 In addition to container cargo, the Port of Los  
10 Angeles also handles close to one million cruise  
11 passengers, half a million autos, and one-third of  
12 California's oil in 2010.

13 The Port of Los Angeles continues to be the  
14 State's largest economic asset, contributing more than \$52  
15 billion in state and local tax revenues.

16 The Port also does really well as far as  
17 providing jobs for the state of California providing over  
18 1.1 million jobs throughout California's -- related to  
19 California's international trade and adding over 58.7  
20 billion in value as far as economic trade value to  
21 California's economy.

22 Much of the success that we've experienced is in  
23 large part due to the partnership that the Port and the  
24 State Lands Commission has had over the last 100 years.  
25 Throughout the years, there's been some serious issues

1 that have been tackled, and always there's been a sound  
2 resolution to a lot of those issues.

3           Moving forward, we want to continue to build upon  
4 the partnership and addressing the challenges that may  
5 arise over the next 100 years.

6           With that said, congratulations on this  
7 significant milestone.

8           Thank you.

9           EXECUTIVE OFFICER FOSSUM: Let me present this to  
10 you at this time. Get back for signatures.

11           MR. ESPARZA: Yes, I appreciate it.

12           ACTING CHAIRPERSON GARLAND: And our next speaker  
13 is -- thank you, Alex. Our next speaker is Jon  
14 Ballesteros from the Port of Oakland.

15           Thank you for being here.

16           MR. BALLESTEROS: Good morning, commissioners.  
17 Thank you. My name is Jon Ballesteros and I am part of  
18 the Governmental Affairs Team with the Port of Oakland.  
19 And on behalf of our Board of Port of Commissioners and  
20 our Executive Director, Omar Benjamin, I am here today to  
21 thank you for your partnership. It is through our work  
22 together that we are able to really serve that vital role  
23 of being the gateway for products in and out of California  
24 and in and out of the United States.

25           When you look at imports, the products that come

1 through the Port of Oakland touch every state in the  
2 union. When you look at exports, it's through our work  
3 together with the staff at the Commission and with the  
4 commissioners that we are able to serve that vital role of  
5 expanding exports. If it's a product that's -- a  
6 manufacturing product in southern California or  
7 agricultural products produced in the Central Valley or  
8 wine and high tech products made here in northern  
9 California, it's through our work that those products are  
10 able to get to their customers throughout the world. And  
11 we are able to generate and support those jobs that those  
12 exports create.

13           So with that, we look forward to continuing our  
14 good work with you and continuing our partnership to  
15 really produce those jobs for our citizens here in  
16 California and throughout the world -- or country.

17           ACTING CHAIRPERSON GARLAND: Thank you, Jon.

18           All right. Formalities out of the way.

19           We've got a motion and a second.

20           Those in favor say aye?

21           (Ayes.)

22           ACTING CHAIRPERSON GARLAND: All opposed?

23           The motion carries.

24           Mr. Fossum.

25           EXECUTIVE OFFICER FOSSUM: Yes.

1           ACTING CHAIRPERSON GARLAND: What is the next  
2 order of business?

3           EXECUTIVE OFFICER FOSSUM: The next is the closed  
4 session.

5           ACTING CHAIRPERSON GARLAND: Your microphone.

6           EXECUTIVE OFFICER FOSSUM: That completes our  
7 open session for today's agenda. And we should be going  
8 into closed session at this time.

9           ACTING CHAIRPERSON GARLAND: Very good.

10           Are there any members of the public that wish to  
11 address the Commission during the public comment period?

12           No.

13           All right. Then we'll now adjourn and go to  
14 closed session.

15           (Thereupon the meeting recessed into  
16 closed session at 11:42 a.m.)

17           (Thereupon the meeting reconvened  
18 in open session at 12:05 p.m.)

19           ACTING CHAIRPERSON GARLAND: Meeting adjourned.

20           (Thereupon the California State Lands Commission  
21 meeting adjourned at 12:05 p.m.)

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