

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

SECRETARY OF STATE
AUDITORIUM
1500 11TH STREET
SACRAMENTO, CALIFORNIA 95814
TUESDAY, AUGUST 14, 2012
9:01 A.M.

AND

SHERATON GRAND SACRAMENTO
GARDENIA ROOM
1230 J STREET
SACRAMENTO, CA 95814
MONDAY, AUGUST 20, 2012
9:06 A.M.

TIFFANY C. KRAFT
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 12277

APPEARANCES

COMMISSION MEMBERS

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

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

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

STAFF

Mr. Curtis Fossum, Executive Officer

Mr. Brian Bugsch, Chief, Division of Land Management

Ms. Mary Hays, Division of Land Management

Ms. Grace Kato, Public Land Manager, Division of Land
Management

Mr. Cy Oggins, Chief, Division of Environmental Planning
and Management

Ms. Jennifer Lucchesi, Chief Counsel

Mr. Mark Meier, Assistant Chief Counsel

ATTORNEY GENERAL

Mr. Alan Hager

Ms. Chris Tiedemann

ALSO PRESENT

Mr. Chuck Anders

Mr. Roger Andriola

Ms. Pamela Arment

APPEARANCES CONTINUED

ALSO PRESENT

Ms. Crystal Baker, Coastal Band of Chumash Nation
Mr. Alec Bash
Ms. Rochelle Becker
Mr. John Berge, Pacific Merchant Shipping Association
Mr. Bill Blue
Ms. Elizabeth Brousse
Mr. Braiden Chadwick, Downey Brand
Mr. Jim Chappell, SPUR
Mr. Andrew Christie, Sierra Club
Mr. Andrew Cohen, CRAB
Mr. Harvey Cohen, MLPA Pacific Wildlife Care
Mr. Tim Colen, San Francisco Housing Action Coalition
Mr. Fred Collins, Northern Chumash Tribal Council
Mr. Eli Coplen
Ms. Karen Crowley
Ms. Chris Cummings
Mr. Brett Cunningham
Ms. Mandy Davis
Mr. Giovanni DeGarimore
Ms. Shaye Diveley
Mr. Neal Driscoll, PG&E
Mr. Carl Dudley

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Kenneth Dutra

Mr. Eric Endersby, Harbor Director, Morro Bay

Ms. Lori French

Mr. John Gage

Ms. Karen Garrison, NRDC

Mr. John Geesman, Alliance for Nuclear Responsibility

Ms. Carol Georgi, Surfrider Foundation, Marine Sanctuary Alliance

Mr. David Georgi, Web of Life

Supervisor Bruce Gibson, San Luis Obispo County

Mr. David Gurney, Ocean Protection Coalition

Mr. Eric Greening

Mr. Owen Hackleman

Mr. Steve Hackleman

Mr. Tom Hafer

Mr. Mark Hamerdinger

Ms. Adrienne Harris, Morro Bay National Estuary Program

Ms. Christine Heinrichs

Mr. Richard Higbie, Frank M. Coxe, LLC

Mr. Paul Hobi, Ocean Conservancy

Mr. William James

Ms. Jennifer Jozwiak, Surfrider

Dr. Graham Kent, PG&E

APPEARANCES CONTINUED

ALSO PRESENT

Mr. David Kirk, Port San Luis Fisherman's Association

Mr. Glenn Knowles

Mr. Mark Krausse, PG&E

Mr. Jeff Lind

Ms. Michael Manchak, Economic Vitality Corp

Mr. Bob Marston

Mr. Steve Mathieu

Mr. Steve McGrath, Port San Luis Harbor District

Ms. Lynda Merrill

Mr. David Nelson

Mr. Stuart Nishenko, PG&E

Mr. Aaron Oaks

Mr. Ed Oberweiser, Foundation of Sustainable Living

Ms. Barbara-Jo Osborne

Mr. Henry Pontarelli, Lisa Wise Consulting

Mr. Simon Poulter, PG&E

Mr. Joey Racano, Ocean Outfall Group

Mr. Eric Randolph, Director, Energy Division, CPUC

Ms. Louise Renne

Mr. Tom Roff, Central Coast Joint Cable Fisheries
Committee

Mr. Otto Schmitt

Ms. Tiffany Seitz

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Robert Seitz

Ms. Carolyn Skinder, Paul Michel, Monterey Bay National
Marine Sacntuary

Mr. Noah Smukler, City of Morro Bay

Mr. Brad Snook, Surfrider

Mr. Steve Snyder

Ms. Kathy Staples, Santa Maria County Energy & Economic
Development Coalition

Mr. Scott Stellar

Mr. Jonathan Stern, Port of San Francisco

Mr. Jearl Strickland, PG&E

Mr. Kris Vardas, PG&E

Ms. Amanda Wallner, Sierra Club California

Mr. William Walter, Morro Bay Community Fishermen's
Organization

Mr. Jim Webb

Ms. Margaret Webb, Save the Whales

Ms. Mary Webb, Greenspace

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THE FOLLOWING ITEMS ARE CONSIDERED TO BE
NON-CONTROVERSIAL AND ARE SUBJECT TO CHANGE AT ANY
TIME UP TO THE DATE OF THE MEETING.

LAND MANAGEMENT DIVISION
NORTHERN REGION

C

01 ROSS W. RELLES, JR. AND LYNNE K. RELLES (LESSEES):
Consider revision of rent to Lease No. PRC 8702.1, a
General Lease - Recreational Use, of sovereign land
located in Lake Tahoe, adjacent to 3205 and 3225 West Lake
Boulevard, near Homewood, Placer County; for four mooring
buoys. (PRC 8702.1) (A 4; S 1) (Staff: R. Barham)

C

02 SUNNYSIDE LANE, LLC, A CALIFORNIA LIMITED LIABILITY
COMPANY (LESSEE): Consider the continuation of rent for
Lease No. PRC 3813.1, a General Lease - Recreational Use,
of sovereign land located in Lake Tahoe, adjacent to 2340
Sunnyside Lane, near Tahoe City, Placer County; for a
pier, two boat slips, and two mooring buoys. (PRC 3813.1)
(A 4; S 1) (Staff: R. Barham)

C

03 GIFFORD INVESTMENTS, LTD, A CALIFORNIA LIMITED
PARTNERSHIP (LESSEE); JAMES GOETZ AND ALICIA GOETZ
(APPLICANTS): Consider termination of Lease No. PRC
5609.1, a General Lease - Recreational Use, and an
application for a new General Lease - Recreational Use of
sovereign land located in Lake Tahoe, adjacent to 2330
North Lake Boulevard, near Tahoe City, Placer County; for
an existing pier and two mooring buoys. (PRC 5609.1;
RA#26810) (A 4; S 1) (Staff: R. Barham)

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C

04 DONNER PINES WEST Homeowners' association (LESSEE): Consider revision of rent to Lease No. PRC 7901.1, a General Lease - Recreational and Protective Structure Use, of sovereign land located in Donner Lake, adjacent to 15825 Donner Pass Road, near the town of Truckee, Nevada County; for a floating boat dock, bridge, gazebo, ramp, and bank protection. (PRC 7901.1) (A 3, 4; S 1) (Staff: R. Barham)

C

05 JOHN CHARLES HODGE AND STACEY KEARE, AS TRUSTEES OF THE HODGE/KEARE FAMILY TRUST DATED 11/8/01, AS AMENDED AND RESTATED (APPLICANTS): Consider an application for a new General Lease - Recreational Use of sovereign land located in Lake Tahoe, adjacent to 5340 North Lake Boulevard, near Carnelian Bay, Placer County; for an existing pier, boat lift, and one mooring buoy. (PRC 7167.9; RA# 24309) (A 4; S 1) (Staff: R. Barham)

C

06 DAVID C. BANKS AND JUDITH A. BLASKI-BANKS, TRUSTEES OF THE BANKS FAMILY LIVING TRUST 1/20/2000 (APPLICANTS): Consider an application for a new General Lease - Recreational Use of sovereign land located in Lake Tahoe, adjacent to 8323 Meeks Bay Avenue, near Meeks Bay, El Dorado County; for an existing pier and two mooring buoys. (PRC 8005.9; RA# 24909) (A 4; S 1) (Staff: R. Barham)

C

07 RICHARD LEON WYCHE AND SHARON JOYCE WYCHE, TRUSTEES OF THE WYCHE FAMILY TRUST, DATED MAY 16, 2007 (APPLICANTS): Consider an application for a new General Lease - Recreational Use of sovereign land located in Eagle Lake, adjacent to 509-110 Stone Road, near the city of Susanville, Lassen County; for an existing portable dock on wheels. (PRC 7394.9; RA# 17610) (A 3; S 1) (Staff: R. Barham)

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C

08 ROBERT A. CHURCH, AS TRUSTEE OF THE ROBERT CHURCH LIVING TRUST ESTABLISHED NOVEMBER 22, 1995 AND RICHARD L. CHURCH(APPLICANTS): Consider application for a General Lease - Recreational Use, of sovereign land located in Lake Tahoe, adjacent to 2825 West Lake Boulevard, near Tahoe City, Placer County; for two existing mooring buoys not previously authorized by the Commission. (W 26438; RA# 06910) (A 4; S 1) (Staff: R. Barham)

C

09 ROBERT MANASHI AND NAHRIN MANASHI (LESSEES): Consider termination and acceptance of a Quitclaim Deed for Lease No. PRC 8333.1, a General Lease - Recreational Use, of sovereign land located in Donner Lake, adjacent to 14116 South Shore Drive, near the town of Truckee, Nevada County; for a pier that was not constructed. (PRC 8333.1; RA# 13008) (A 3, 4; S 1) (Staff: R. Barham)

C

10 JOYCE BERGER, AS TRUSTEE OF THE BERGER FAMILY TRUST DATED MARCH 16, 1999 (LESSEE): Consider revision of rent for Lease No. PRC 5382.1, a General Lease - Recreational Use, of sovereign land located in the Sacramento River, adjacent to 1957 Garden Highway, near the city of Sacramento, Sacramento County; for two existing uncovered floating boat docks, nine pilings, ramp, and deck. (PRC 5382.1) (A 5; S 6) (Staff: R. Boggiano)

C

11 RICHARD E. STOWELL (APPLICANT): Consider rescission of approval for Recreational Pier Lease No. PRC 8952.9 and an application for a General Lease - Recreational Use, of sovereign land located in Lake Tahoe, adjacent to 8253 Meeks Bay Avenue, near Meeks Bay, El Dorado County; for an existing pier and one mooring buoy. (PRC 8952.1; RA# 25611) (A 4; S 1) (Staff: R. Boggiano)

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C

12 VICTOR DALLARI, JR. AND SUSAN BOYLES (APPLICANTS): Consider application for a new General Lease - Recreational and Protective Structure Use, of sovereign land located in the Sacramento River, adjacent to 2261 Garden Highway, near the city of Sacramento, Sacramento County; for an existing uncovered floating boat dock, gangway, four pilings, and bank protection previously authorized by the Commission, and an existing boat lift not previously authorized by the Commission. (PRC 7027.1; RA# 28911) (A 5; S 6) (Staff: R. Boggiano)

C

13 FINANCIAL PORTFOLIOS, LTD. (APPLICANT): Consider application for a new General Lease - Recreational Use, of sovereign land located in the Petaluma River, adjacent to 5683 Lakeville Road, near the city of Petaluma, Sonoma County; for an existing uncovered floating boat dock, pier, ramp, and two pilings. (PRC 3696.1; RA# 19711) (A 6; S 3) (Staff: R. Boggiano)

C

14 WESLEY CASWELL AND GEORGIA ANDERSON (APPLICANTS): Consider application for a new General Lease - Recreational and Protective Structure Use, of sovereign land located in the Napa River, adjacent to 1300 Milton Road, near the city of Napa, Napa County; for two existing uncovered floating boat docks, gangway, six pilings, and two two-pile dolphins previously authorized by the Commission, and existing bank protection not previously authorized by the Commission. (PRC 8361.9; RA# 28710) (A 7; S 2) (Staff: R. Boggiano)

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C

15 THOMAS L. JONES AND SHARON M. JONES, TRUSTEES OF THE THOMAS L. JONES AND SHARON M. JONES REVOCABLE TRUST DATED JULY 15, 2003, AND RONALD P. WOOD AND SUSAN D. WOOD, CO-TRUSTEES, OR THEIR SUCCESSORS IN TRUST, UNDER THE WOOD FAMILY TRUST DATED SEPTEMBER 5, 2003 (APPLICANTS): Consider correction of prior authorization of Lease No. PRC 5748.9, a General Lease - Recreational and Protective Structure Use, of sovereign land located in Steamboat Slough, adjacent to 3474 Snug Harbor Drive, near the city of Walnut Grove, Solano County; for an existing floating boat dock, ramp, walkway, and bulkhead previously authorized by the Commission, and existing bank protection not previously authorized by the Commission. (PRC 5748.9) (A 8; S 4) (Staff: R. Boggiano)

C

16 RUSSELL J. GILARDI DBA LAKEVILLE MARINA (LESSEE): Consider the continuation of rent for Lease No. PRC 6168.1, a General Lease - Commercial Use, of sovereign land located in the Petaluma River, adjacent to 5684 Lakeville Highway, near the city of Petaluma, Sonoma County; for the continued operation and maintenance of a commercial marina consisting of three uncovered floating boat docks, walkways, and a launching ramp. (PRC 6168.1) (A 6; S 3) (Staff: R. Boggiano)

C

17 TAHOE YACHT HARBOR, LLC (APPLICANT): Consider acceptance of a Quitclaim Deed for Lease No. PRC 706.1, a General Lease - Commercial Use, and termination of an Agreement and Consent to Encumbrancing of Lease; and consider an application for a new General Lease - Commercial Use and, an Agreement and Consent to Encumbrancing of Lease No. PRC 706.1, a General Lease - Commercial Use, of sovereign land located in Lake Tahoe, Tahoe City, Placer County; for the operation, use, and maintenance of the Tahoe City Marina which includes a public access pier, two breakwaters, three floating docks, two fueling and pump out facilities, 67 boat slips, and a buoy field consisting of 41 mooring buoys and 10 marker buoys; and approval of subleases. (PRC 706.1; RA# 22411) (A 4; S 1) (Staff: R. Boggiano)

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C

18 RIVERBANK HOLDING COMPANY, LLC (LESSEE): Consider application for an amendment and the revision of rent for Lease No. PRC 6427.1, a General Lease - Commercial Use, of sovereign land located in the Sacramento River, adjacent to 1371 Garden Highway, city of Sacramento, Sacramento County; for a commercial marina. (PRC 6427.1) (A 9; S 6) (Staff: V. Caldwell)

C

19 CARL CLAYTON AND VIKI CLAYTON (LESSEES): Consider revision of rent to Lease No. PRC 8710.1, a General Lease - Commercial Use, of sovereign land located in the Sacramento River, adjacent to 36250 Riverview Drive, near the town of Clarksburg, Yolo County; for an existing commercial marina. (PRC 8710.1) (A 8; S 5) (Staff: V. Caldwell)

C

20 JERRY E. PENDLETON AND ELSIE F. PENDLETON, DBA FOUR SEASONS MARINA (LESSEE): Consider authorization for termination of Lease No. PRC 3200.1, a General Lease - Commercial Use, of sovereign land located in the Sacramento River, near the city of West Sacramento, Yolo County, for an existing commercial marina. (PRC 3200.1) (A 8; S 4) (Staff: V Caldwell)

C

21 STUART D. CORVIN, TRUSTEE OF THE STUART D. CORVIN 2003 TRUST DATED JANUARY 23, 2003 (APPLICANT): Consider application for a new General Lease - Recreational Use of sovereign land located in Lake Tahoe, adjacent to 3730 North Lake Boulevard, near Carnelian Bay, Placer County; for an existing pier, boat lift, and two mooring buoys. (PRC 3996.1; RA# 33910) (A 4; S 1) (Staff: C. Hudson)

C

22 GEORGE C. EVERETT, JR. AND ANDREA C. EVERETT, TRUSTEES OF THE EVERETT FAMILY TRUST DATED APRIL 18, 1996 (LESSEES): Consider the continuation of rent for Lease No. PRC 5164.1, a General Lease - Recreational and Protective Structure Use, of sovereign land located in Lake Tahoe, adjacent to 8690 Brockway Vista Avenue, near Kings Beach, for a pier, two mooring buoys, and a breakwater. (PRC 5164.1) (A 4; S 1) (Staff: C. Hudson)

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C

23 NATALIE A. BROWN (LESSEE); AND MICHAEL A. DI GRAZIA, AS TRUSTEE OF THE MICHAEL A. DI GRAZIA REVOCABLE TRUST CREATED ON JULY 19, 2006 (APPLICANT): Consider rescission of approval for Lease No. PRC 4164.1, General Lease - Recreational and Protective Structure Use, and application for a new General Lease - Recreational and Protective Structure Use, of sovereign land located in the Sacramento River, adjacent to 937 Piedmont Drive, near the city of Sacramento, Sacramento County; for an existing uncovered floating boat dock, two wood pilings, gangway, and bank protection. (PRC 4164.1; RA# 06611) (A 9; S 6) (Staff: C. Hudson)

C

24 JOHN S. GLETNE AND NYDIA GLETNE, TRUSTEES, U.D.T. DATED MAY 27, 1992 (APPLICANTS): Consider application for a new General Lease - Recreational Use of sovereign land located in Lake Tahoe, adjacent to 4020 North Lake Boulevard, near Tahoe City, Placer County; for an existing pier, a portion of a boathouse, a portion of a sundeck, railing, and stairs, and two mooring buoys previously authorized by the Commission and a portion of an existing boat lift not previously authorized by the Commission. (PRC 4121.1; RA# 08310) (A 4; S 1) (Staff: C. Hudson)

C

25 JANE C. CRABLE AND RICHARD E. CRABLE, TRUSTEES OF THE JANE C. AND RICHARD E. CRABLE LIVING TRUST (APPLICANTS): Consider application for a new General Lease - Recreational and Protective Structure Use, of sovereign land located in the Sacramento River, adjacent to 2145 Garden Highway, near the city of Sacramento, Sacramento County; for an existing uncovered floating boat dock, four pilings, and ramp previously authorized by the Commission and existing bank protection not previously authorized by the Commission. (PRC 5029.1; RA# 08211) (A 5, 9; S 6) (Staff: N. Lavoie)

C

26 LARRY M. MCCLURE (APPLICANT): Consider application for a new General Lease - Recreational, Protective Structure, and Right-of-Way Use, of sovereign land located in Old River, adjacent to Eucalyptus Island, near Byron, Contra

Costa County; for an existing fishing pier, breakwater structure, and submarine electrical cable previously authorized by the Commission and existing fill and riprap not previously authorized by the Commission. (PRC 6090.1; RA# 09510) (A 15; S 7) (Staff: N. Lavoie)

C

27 COUNTY OF SACRAMENTO (APPLICANT): Consider application for a new General Lease - Public Agency Use, of sovereign land located in Georgiana Slough, adjacent to Assessor's Parcel Numbers 156-0010-053, 146-0180-047, and 146-0180-068, near the city of Walnut Grove, Sacramento County; for an existing bridge with two navigational fenders, control house, submarine cable, telephone and electrical conduits, abandoned water line, and abandoned sewer line. (PRC 2634.9; RA# 07109) (A 15; S 5) (Staff: N. Lavoie)

C

28 GEORGIANA PROPERTIES (APPLICANT): Consider application for a General Lease - Recreational Use, of sovereign land located in Georgiana Slough, adjacent to Assessor's Parcel Number 146-0180-068, near the city of Walnut Grove, Sacramento County; for the reconfiguration of two existing floating boat docks to create a single-use dock, two existing three-piling dolphins, four existing pilings, and reconstruction of a ramp. (PRC 5379.1; RA# 27710) (A 15; S 5) (Staff: N. Lavoie)

C

29 KEVIN P. STEWARD AND LORI A. STEWARD (APPLICANTS): Consider application for a new General Lease - Recreational Use, of sovereign land located in the Sacramento River, adjacent to Assessor's Parcel number 156-0010-063, near the city of Walnut Grove, Sacramento County; for an existing uncovered floating boat dock, gangway, and five pilings. (PRC 8407.1; RA# 04811) (A 15; S 5) (Staff: N. Lavoie)

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C

30 DELTA MARINA YACHT HARBOR, INC. (LESSEE/APPLICANT): Consider termination of Lease No. PRC 3141.1, General Lease - Commercial Use; and an application for a new General Lease - Commercial Use, of sovereign land located in the Sacramento River, adjacent to 120 Marina Drive, near the city of Rio Vista, Solano County; for an existing restaurant, accommodation dock, gangway, ramp, and seven pilings previously authorized by the Commission and an existing fishing pier, three-piling dolphin, two pilings, and bank protection not previously authorized by the Commission. (PRC 3141.1; RA# 26610) (A 8; S 2, 5) (Staff: N. Lavoie)

C

31 CLAIRE A. BLAKE AND JAMES A. RESOR (APPLICANTS): Consider application for a General Lease - Recreational Use, of sovereign land located in the Sacramento River, adjacent to 12163 River Road, near Courtland, Sacramento County; for the construction of an uncovered floating boat dock, walkway, three pilings, and water and electrical conduits. (W 26219; RA# 23906) (A 15; S 5) (Staff: N. Lavoie)

C

32 COUNTY OF SACRAMENTO (APPLICANT): Consider application for a new General Lease - Public Agency Use, of sovereign land located in the American River, adjacent to Assessor's Parcel Numbers 056-0023-013, 069-0010-021, 244-0303-008, and 244-0293-007, between the city of Rancho Cordova and the community of Fair Oaks, Sacramento County; for the Sunrise Boulevard Bridge, an existing six-lane bridge, and a previously authorized but not yet constructed light rail crossing. (PRC 2393.9; RA# 25107) (A 5, 10; S 1, 6) (Staff: N. Lavoie)

C

33 LAWRENCE H. CASSIDY (LESSEE): Consider revision of rent to Lease No. PRC 5381.1, a General Lease - Recreational and Protective Structure Use, of sovereign land located in the Sacramento River, adjacent to 1963 Garden Highway, near the city of Sacramento, Sacramento County; for an uncovered floating boat dock, covered floating boathouse, sundeck, ramp, debris diverter, and bank protection. (PRC 5381.1) (A 5; S 6) (Staff: N. Lavoie)

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C

34 MIRA MONTE MARINA, INC. (LESSEE): Consider authorization of termination of Lease No. PRC 3821.1, a General Lease - Commercial Use for an abandoned commercial marina which includes existing pilings, floating docks, ramp, and any other related facilities located in San Antonio Creek, adjacent to Assessor's Parcel Number 125-160-14 (8934 Redwood Highway), near the city of Novato, Marin County. (PRC 3821.1) (A 6; S 3) (Staff: N. Lavoie, J. Frey)

C

35 STAR HARBOR ASSOCIATION (APPLICANT): Consider application for a new General Lease - Recreational Use, of sovereign land located in Lake Tahoe, adjacent to 2350 Star Harbor Court, near Tahoe City, Placer County; for an existing pier and 15 mooring buoys. (PRC 4694.1; RA# 18110) (A 4; S 1) (Staff: N. Lee)

C

36 THE SURVIVOR'S TRUST UNDER THE GEORGE AND ELSIE KARADANIS REVOCABLE FAMILY TRUST, ROBERT MITCHELL KARADANIS, GEORGE MARTIN KARADANIS AND WILLIAM MATTHEW KARADANIS; AND LISA MALOFF, TRUSTEE OF THE ROBERT M. AND LISA MALOFF TRUST DATED 7/7/03, DBA TIMBER COVE MARINA (LESSEES/ASSIGNORS); URBANA TAHOE TC, LLC (ASSIGNEE): Consider application for the assignment of Lease No. PRC 3981.1, a General Lease - Commercial Use, of sovereign land located in Lake Tahoe, adjacent to 3411 Lake Tahoe Boulevard, city of South Lake Tahoe, El Dorado County; for a commercial marina including an existing pier with restaurant building and retail building, fueling facility, two personal watercraft string lines, 80 mooring buoys, and two channel markers. (PRC 3981.1; RA# 31211) (A 4; S 1) (Staff: N. Lee)

C

37 CITY OF BENICIA (APPLICANT): Consider application for a new Dredging Lease to dredge material from ungranted sovereign land; located at the entrance to the Benicia Marina, Solano County; disposal of dredged material at the U.S. Army Corps of Engineers' designated disposal site SF-9 (Carquinez Strait) and/or other approved U.S. Army Corps of Engineers' approved sites. (PRC 7466.9; RA# 31011) (A 7; S 2) (Staff: D. Oetzel)

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C

38 CITY OF VALLEJO (APPLICANT): Consider application for a new Dredging Lease to dredge material from legislatively granted lands, minerals reserved to the State; located at the Vallejo Municipal Marina in San Francisco Bay, Solano County; disposal of dredged material at the U.S. Army Corps of Engineers' designated disposal site SF-9 (Carquinez Strait) and/or other approved U.S. Army Corps of Engineers' approved sites. (PRC 8482.9; RA# 25811) (A 7; S 2) (Staff: D. Oetzel)

C

39 NARA GARDENS Homeowners' association (APPLICANT): Consider Application for a new General Lease - Recreational Use, of sovereign land located in Corte Madera Creek, adjacent to 823 S. Eliseo Drive, city of Greenbrae, Marin County; for an existing dock, pier, ramp, and anchor arms. (PRC 5459.1; RA# 15411) (A 6; S 3) (Staff: S. Paschall)

C

40 LAKE FOREST UNIT #3, PROPERTY OWNERS ASSOCIATION INCORPORATED (LESSEE): Consider revision of rent to Lease No. PRC 5685.1, a General Lease - Recreational Use, of sovereign land located in Lake Tahoe, adjacent to 3670 North Lake Boulevard, near Carnelian Bay, Placer County; for a pier and 20 mooring buoys. (PRC 5685.1) (A 4; S 1) (Staff: B. Terry)

C

41 SUSAN DIEKMAN, TRUSTEE OF THE NATHAN JOHNSON TRUST; SUSAN DIEKMAN; SALLY D. RYAN, AS TRUSTEE OF THE WIFE'S TRUST UNDER THE RYAN FAMILY TRUST UNDER AGREEMENT DATED JULY 1, 1991, AS AMENDED AND RESTATED; AND RICHARD D. DIEKMAN AND RUTH W. DIEKMAN, CO-TRUSTEES OF THE RICHARD AND RUTH W. DIEKMAN TRUST UAD 9/24/2009 (APPLICANTS): Consider application for a General Lease - Recreational Use, of sovereign land located in Lake Tahoe, adjacent to 845 Stateline Avenue, city of South Lake Tahoe, El Dorado County; for one existing mooring buoy not previously authorized by the Commission. (W 26521; RA# 34510) (A 4; S 1) (Staff: B. Terry)

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C

42 GERALD V. HANSEN AND KERRI A. HANSEN, AS CO-TRUSTEES OF THE GERALD AND KERRI HANSEN FAMILY TRUST CREATED BY THAT CERTAIN TRUST AGREEMENT MADE THE 7TH DAY OF JANUARY 1997 (LESSEES): Consider application for an amendment to Lease No. PRC 3071.9, a Recreational Pier Lease, of sovereign land located in Lake Tahoe, adjacent to 5330 North Lake Boulevard, near Carnelian Bay, Placer County; to amend the authorized improvements to include an after-the-fact installation of an ADA lift and one existing mooring buoy not previously authorized by the Commission. (PRC 3071.9; RA# 06010) (A 4; S 1) (Staff: B. Terry)

C

43 EDWARD GOHL (APPLICANT): Consider correction of prior authorization of Lease No. PRC 3592.1, a General Lease - Recreational Use, of sovereign land located in Lake Tahoe, adjacent to 4760 North Lake Boulevard, near Carnelian Bay, Placer County; to correct the annual rent for an existing pier and one mooring buoy. (PRC 3592.1) (A 4; S 1) (Staff: B. Terry)

C

44 WALSH FAMILY LLC, DBA NORTH TAHOE MARINA, INC. (LESSEE): Consider revision of rent to Lease No. PRC 5856.1, a General Lease - Commercial Use, of sovereign land located in Lake Tahoe, adjacent to 7360 North Lake Boulevard, Tahoe Vista, Placer County; for a commercial marina facility with fueling facility, pump out station, boat ramp, 30 boat slips, 48 mooring buoys, and two marker buoys. (PRC 5856.1) (A 4; S 1) (Staff: B. Terry)

C

45 RONALD C. KISKIS AND NANCY KISKIS (APPLICANTS): Consider application for a General Lease - Recreational Use, of sovereign land located in Lake Tahoe, adjacent to 2622 West Lake Boulevard, near Sunnyside, Placer County; for an existing mooring buoy previously authorized by the Commission under Lease No. 3209.9. (W 26561; RA# 25011) (A 4; S 1) (Staff: B. Terry)

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REMOVED FROM AGENDA

CENTRAL REGION

C

46 FELCOR/CSS HOLDINGS, L.P. (APPLICANT/SUBLESSOR); DJONT OPERATIONS, LLC (SUBLESSEE): Consider termination of Lease Nos. 4689.1, 4690.1, and 4691.1, each a General Lease - Commercial Use; and application for a new General Lease - Commercial Use and endorsement of a sublease, of filled and partially-filled tidelands in the San Francisco Bay, city of Burlingame, San Mateo County; for an existing 10-story hotel, restaurant, lounge, hotel concessions, and public park. (PRC 4691.1; RA# 00811) (A 19; S 8) (Staff: M. Andersen)

C

47 NOBLE YACHT GROUP, INC. (APPLICANT): Consider application for a new General Lease - Recreational and Protective Structure Use, of sovereign land located in the San Joaquin River, at Little Tinsley Island, San Joaquin County; for two existing uncovered floating boat docks, a covered patio dock, dock finger, pilings, two access ramps, timber bulkhead, and bank protection. (PRC 7975.1; RA# 19511) (A 10; S 5) (Staff: V. Caldwell)

C

48 BANK OF THE WEST, SUCCESSOR BY MERGER WITH UNION SAFE DEPOSIT BANK, SUCCESSOR TRUSTEE OF THE VIVIAN CERNA PRINCE TRUST DATED DECEMBER 31, 1982 (APPLICANT): Consider application for a General Lease - Recreational and Protective Structure Use, of sovereign land located in the historic bed of the San Joaquin River, Atherton Cove, adjacent to 13 Atherton Island, city of Stockton, San Joaquin County; for an existing uncovered floating boat dock, two wood pilings, wood landing, ramp, and bank protection not previously authorized by the Commission. (W 26574; RA# 29111) (A 17, 26; S 5) (Staff: V. Caldwell)

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PAGE

C

49 PACIFIC GAS AND ELECTRIC COMPANY (LESSEE): Consider the continuation of rent for Lease No. PRC 8416.1, a General Lease - Right-of-Way Use, of sovereign land located in Burns Cut-off, between Roberts Island and Rough and Ready Island, near the city of Stockton, San Joaquin County; for a natural gas pipeline. (PRC 8416.1) (A 17, 26; S 5) (Staff: V. Caldwell)

C

50 PACIFIC GAS AND ELECTRIC COMPANY (LESSEE): Consider the continuation of rent for Lease No. PRC 8677.1, a General Lease - Right-of-Way Use, of sovereign land located in Old River, Middle River, and Latham Slough, near McDonald Island, Lower Jones Island, Bacon Island, and Palm Tract, near Brentwood, San Joaquin and Contra Costa counties; for a natural gas pipeline. (PRC 8677.1) (A 15; S 5, 7) (Staff: C. Hudson)

C

51 FRANK M COXE, LLC (APPLICANT): Consider application 14 for a new General Lease - Commercial Use, of sovereign land located on and adjacent to San Francisco Bay, for a floating restaurant, parking lot, and public access in the city of Burlingame, San Mateo County. (PRC 5467.1; RA# 13811) (A 19; S 8) (Staff: G. Kato)

C

52 ROGER KELLY (APPLICANT): Consider application for a new General Lease - Recreational Use, of sovereign land located in the Calaveras River, adjacent to 2869 Calariva Drive, near the city of Stockton, San Joaquin County; for an existing floating boathouse, ramp, and four steel pilings. (PRC 8422.1; RA# 30911) (A 26; S 5) (Staff: N. Lavoie)

C

53 CALIFORNIA STATE LANDS COMMISSION (PARTY): Consider authorizing staff to file a Record of Survey for the Reach 2B San Joaquin River Administrative Map. (W 26377) (A 25, 29, 30, 31; S 14, 16) (Staff: S. Lehman)
Exhibit Currently Unavailable

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PAGE

C

54 TESORO REFINING AND MARKETING COMPANY (APPLICANT): Consider application for a new Dredging Lease to dredge material from ungranted sovereign land; located in the Carquinez Strait at the Tesoro Golden Eagle Refinery Avon wharf near the city of Martinez, Contra Costa County; disposal of dredged material at Winter Island and/or other approved U.S. Army Corps of Engineers' approved sites. (PRC 8551.9; RA# 25211) (A 7; S 2) (Staff: D. Oetzel)

C

55 FEDERAL AVIATION ADMINISTRATION (APPLICANT): Consider application for a new General Lease - Public Agency Use, of sovereign land located adjacent to San Francisco Bay, city of Burlingame, San Mateo County; for an existing 60-foot mast tower, antennae, circuit breaker panels, obstruction lights, and wooden H-frame backboard previously authorized by the Commission, and installation of an Omni antenna, panel antenna, LMR600 and CAT5 cables, corresponding electrical units, underground conduit, and 10-foot high chain-link fence. (PRC 8088.9; RA# 01412) (A 19; S 08) (Staff: S. Paschall)

C

56 MONTEREY BAY AQUARIUM RESEARCH INSTITUTE, A NONPROFIT PUBLIC BENEFIT CORPORATION (LESSEE): Consider application for an amendment to Lease No. PRC 8620.9, a General Lease - Right-of-Way Use, of sovereign land located in the Pacific Ocean, near Moss Landing, Monterey County; to amend the lease to allow cable re-surveys every five years. (PRC 8620.9; RA# 26711) (A 7; S 15) (Staff: D. Simpkin)

C

57 STILLWATER YACHT CLUB (LESSEE): Consider the continuation of rent for Lease No. PRC 6764.1, a General Lease - Recreational Use, of sovereign land located in Stillwater Cove, adjacent to the Pebble Beach Golf Course, Monterey County; for the continued use and maintenance of 23 seasonal mooring buoys and three uncovered boat docks. (PRC 6764.1) (A 27; S 15) (Staff: D. Simpkin)

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PAGE

SOUTHERN REGION

C

58 CITY OF SANTA BARBARA (TRUSTEE): Consider approval of a proposed expenditure of public tidelands trust funds, in an amount not to exceed \$400,000 by the City of Santa Barbara for phase IV of the Breakwater Cap Repair Project in Santa Barbara Harbor, on legislatively granted sovereign land in the City of Santa Barbara, Santa Barbara County pursuant to Chapter 193, Statutes of 1975. (G15-01.3; RA# 00312) (A 35; S 19) (Staff: M. Andersen)

C

59 CITY OF REDONDO BEACH (TRUSTEE): Consider approval of a proposed expenditure of public tidelands trust funds, in an amount not to exceed \$440,000 by the City of Redondo Beach for the Galveston Wall Repair Project at King Harbor, adjacent to the Pacific Ocean, on legislatively granted sovereign land in the City of Redondo Beach, Los Angeles County. (G05-07.6; RA# 12511) (A 53, 54; S 25, 28) (Staff: M. Andersen)

C

60 CATALINA ISLAND CAMPS, INC. (APPLICANT): Consider application for a new General Lease - Commercial Use, of sovereign land located in the San Pedro Channel at Howlands Landing, Santa Catalina Island, Los Angeles County; for an existing fixed pier, two gangways, three floating boat dock segments, a seasonal floating swim platform and rope boundary marker, and a mooring stringline previously authorized by the Commission; and one individual mooring not previously authorized by the Commission. (PRC 6455.1; RA# 17410) (A 54; S 27) (Staff: K. Foster)

C

61 LOS CERRITOS WETLANDS AUTHORITY (APPLICANT): Consider application for a General Lease - Public Agency Use, of sovereign land, identified as Assessor's Parcel Numbers 043-160-36, 043-160-45, 043-160-47, and 043-160-53, located in the former bed of the San Gabriel River, city of Seal Beach, Orange County; for clean-up, habitat restoration, and public access in conjunction with the Los Cerritos Wetlands Stewardship Program and the Los Cerritos Wetlands Restoration Project. (W 26482; RA# 32710) (A 67; S 35) (Staff: K. Foster)

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C

62 SOUTHERN CALIFORNIA GAS COMPANY (APPLICANT): Consider application to merge Lease Nos. PRC 1802.1 and PRC 2533.1. into one new General Lease - Right-of-Way Use, of sovereign land located in the bed of the Colorado River, near the city of Needles, San Bernardino County; for four existing natural gas pipelines and a suspension bridge. (PRC 1802.1; RA# 21905) (A 34; S 18) (Staff: C. Hudson)

C

63 AT&T CORP (LESSEE): Consider correction of prior authorization of Lease No. PRC 8204.1, a General Lease - Non-Exclusive Right-of-Way Use, of sovereign lands in the Pacific Ocean, offshore of Montaña de Oro State Beach, San Luis Obispo County; for one fiber-optic cable. (PRC 8204.1) (A 1; S 2) (Staff: G. Kato)

C

64 CALIFORNIA STATE LANDS COMMISSION: Consider the suspension of leasing public trust lands for boat docks in the Colorado River located within the Rio Buena Vista community, and direct staff to conduct an investigation and report on public trust needs in the area, city of Needles, San Bernardino County. (W 26485, W 26493) (A 34; S 18) (Staff: G. Kato)

C

65 CALIFORNIA STATE LANDS COMMISSION AND CALIFORNIA COASTAL COMMISSION (PARTIES): Consider acceptance of one offer to dedicate lateral public access easement over land adjacent to State tidelands in the city of Malibu, 24456 Malibu Road, Los Angeles County. (W 24665) (A 41; S 23) (Staff: S. Nelson)

C

66 CALIFORNIA STATE LANDS COMMISSION AND CALIFORNIA COASTAL COMMISSION (PARTIES): Consider acceptance of one offer to dedicate lateral public access easement over land adjacent to State tidelands in the city of Malibu, 33246 Pacific Coast Highway, Los Angeles County. (W 24665) (A 41; S 23) (Staff: S. Nelson)

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C

67 CALIFORNIA STATE LANDS COMMISSION AND CALIFORNIA COASTAL COMMISSION (PARTIES): Consider acceptance of one offer to dedicate lateral public access easement over land adjacent to State tidelands in the city of Malibu, 24460 Malibu Road, Los Angeles County. (W 24665) (A 41; S 23) (Staff: S. Nelson)

C

68 CALIFORNIA STATE LANDS COMMISSION AND CALIFORNIA COASTAL COMMISSION (PARTIES): Consider acceptance of one offer to dedicate lateral public access easement over land adjacent to State tidelands in the city of Malibu, 20766 and 20770 Pacific Coast Highway, Los Angeles County. (W 24665) (A 41; S 23) (Staff: S. Nelson)

C

69 JOHN D. KUBECK AND NICOLETTE M. KUBECK (APPLICANTS): Consider Rescission of Lease No. PRC 8289.9 and an application for a new General Lease - Protective Structure Use, of sovereign land located in Huntington Harbour, adjacent to 3442 Venture Drive, city of Huntington Beach, Orange County; for existing bulkhead protection. (PRC 8289.9; RA# 00711) (A 67; S 35) (Staff: S. Paschall)

C

70 WILLIAM NEWFIELD, TRUSTEE OF THE WILLIAM AND RUTH NEWFIELD FAMILY TRUST AS AMENDED AND RESTATED FEBRUARY 16, 2006; RODNEY C. HILL AND MICHELLE MAY HILL; FRANCIS E. GOODYEAR AND MARGARET C. GOODYEAR, TRUSTEES OF THE GOODYEAR FAMILY TRUST, AS AMENDED AND COMPLETELY RESTATED DECEMBER 14, 2007; THOMAS MCINALLY AND LYNN T. MCINALLY; ZACHARIA REDA, TRUSTEE OF THE Z.R. TRUST; GEORGE F. SCHOFHAUSER AND JAY ANN SCHOFHAUSER, AS CO-TRUSTEES OF THE GEORGE F. SCHOFHAUSER RESIDENCE TRUST, ESTABLISHED AUGUST 14, 2007, AND THE JAY ANN SCHOFHAUSER RESIDENCE TRUST, ESTABLISHED AUGUST 14, 2007 (LESSEES): Consider amendment of six General Leases - Protective Structure Use, of sovereign land located in Huntington Harbour, city of Huntington Beach, Orange County; to amend the term, insurance, and indemnity provisions of the leases. (PRC Nos. 8298.9, 8291.9, 8290.9, 8293.9, 8294.9, 8297.9) (A 67; S 35) (Staff: S. Paschall)

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C

71 NATHAN CHEN AND JENNIE CHEN, TRUSTEES OF THE NATHAN CHEN FAMILY TRUST (APPLICANTS): Consider Rescission of Lease No. PRC 8237.1 and an application for a new General Lease - Recreational and Protective Structure Use, of sovereign land located in Huntington Harbour, adjacent to 16642 Carousel Lane, city of Huntington Beach, Orange County; for an existing boat dock, access ramp, cantilevered deck, and bulkhead protections. (PRC 8237.1; RA# 11311) (A 67; S 35) (Staff: S. Paschall)

C

72 LAWRENCE C. TISTAERT, TRUSTEE OF THE CHILDRENS TRUST ESTATE OF THE JAMES H. DEWALD AND WANDA E. DEWALD TRUST, DATED AUGUST 13, 1986, AS AMENDED (APPLICANT): Consider application for a new General Lease - Recreational Use, of sovereign land located in Huntington Harbour, adjacent to 17051 Bolero Lane, city of Huntington Beach, Orange County; for an existing boat dock, access ramp, and cantilevered deck. (PRC 3569.1; RA# 36910) (A 67; S 35) (Staff: S. Paschall)

C

73 WILLIAM J. SCHMIT JR. AND MICHELLE SCHMIT (APPLICANTS): Consider application for a new General Lease - Recreational Use, of sovereign land located in Huntington Harbour, adjacent to 16841 Bolero Lane, city of Huntington Beach, Orange County; for an existing boat dock, access ramp, and cantilevered deck. (PRC 3854.1; RA# 09208) (A 67; S 35) (Staff: S. Paschall)

C

74 ROBERT ISAACS AND MICHELE ISAACS, TRUSTEES OF THE ISAACS FAMILY REVOCABLE TRUST DATED JANUARY 31, 1995 (APPLICANTS): Consider Issuance of a General Lease - Recreational Use, of sovereign land located in Huntington Harbour, Adjacent to 16552 Somerset Lane, city of Huntington Beach, Orange County; for existing boat dock, access ramp, and cantilevered deck. (PRC 3167.1; RA: 19111) (A 67; S 35) (Staff: S. Paschall)

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C

75 HUNTINGTON BEACH PROPERTIES, LLC (APPLICANTS): Consider application for a new General Lease - Recreational Use, of sovereign land located in Huntington Harbour, adjacent to 3581 Courtside Circle, city of Huntington Beach, Orange County; for an existing boat dock and access ramp, and reconstruction of a cantilevered deck. (PRC 6073.1; RA# 29311) (A 67; S 35) (Staff: S. Paschall)

C

76 PETER N. HEALY, TRUSTEE OF THE PETER N. HEALY AND RITA L. HEALY FAMILY TRUST DATED FEBRUARY 16, 1983, TRUST "A", AS TO AN UNDIVIDED 50% INTEREST; PETER N. HEALY, TRUSTEE OF THE PETER N. HEALY AND RITA L. HEALY FAMILY TRUST DATED FEBRUARY 16, 1983, TRUST "B", AS TO AN UNDIVIDED 43.54% INTEREST; PETER N. HEALY, TRUSTEE OF THE PETER N. HEALY AND RITA L. HEALY FAMILY TRUST DATED FEBRUARY 16, 1983, TRUST "C", AS TO AN UNDIVIDED 6.46% INTEREST (APPLICANT): Consider application for a new General Lease - Recreational Use, of sovereign land located in Huntington Harbour, adjacent to 16791 Bolero Lane, city of Huntington Beach, Orange County; for an existing boat dock, access ramp, and cantilevered deck. (W 26573; RA# 27711) (A 67; S 35) (Staff: S. Paschall)

C

77 SIMON B. RAYHANABAD AND KELARICE RAYHANABAD, TRUSTEES OF THE RAYHANABAD TRUST ESTABLISHED MARCH 9, 1995 (APPLICANTS): Consider application for a new General Lease - Recreational and Protective Structure Use, of sovereign land located in Huntington Harbour, adjacent to 16591 Carousel Lane, city of Huntington Beach, Orange County; for an existing boat dock, access ramp, cantilevered deck, and bulkhead protection. (PRC 3578.1; RA# 18511) (A 67; S 35) (Staff: S. Paschall)

C

78 IMPERIAL IRRIGATION DISTRICT (APPLICANT): Consider rescission of approval for Lease No. PRC 2344.1, a General Lease - Right-of-Way Use and an application for a new General Lease - Right-of-Way Use, of sovereign land located in the Colorado River, adjacent to the Pilot Knob Substation, near Yuma Arizona, Imperial County; for an existing overhead 161 kV electrical transmission line and a telephone line. (PRC 2344.9; RA# 22108) (A 80; S 40) (Staff: D. Simpkin)

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SCHOOL LANDS

C

79 A-Z FARMS, INC. (LESSEE): Consider the continuation of rent for Lease No. PRC 8668.2, a General Lease - Agricultural Use, of school lands in Section 9, Township 11 South, Range 14 East, SBM, southwest of the unincorporated town of Niland, Imperial County, for agricultural use. (PRC 8668.2) (A 80; S 40) (Staff: J. Porter)

C

80 SOUTHERN CALIFORNIA EDISON COMPANY (LESSEE): Consider the revision of rent for Lease No. PRC 4026.2, a General Lease - Right-of-Way Use, of State school land located in a portion of Section 36, Township 10 North, Range 14 East, SBM, near the unincorporated town of Essex, San Bernardino County; for an existing 115 kV overhead transmission line. (PRC 4026.2) (A 34; S 18) (Staff: C. Hudson)

MINERAL RESOURCES MANAGEMENT

C

81 ENERGYSOURCE, LLC (HIGHEST RESPONSIBLE BIDDER): Consider awarding a State Geothermal Resources Lease to highest responsible bidder for development of certain State sovereign lands, Salton Sea Geothermal Field, Imperial County. (W 40962) (A 80; S 37) (Staff: J. Adams)

C

82 HIGH VALLEY, LLC (APPLICANT): Consider approval of a State Geothermal Resources Prospecting Permit, to provide for drilling of up to six exploratory wells, near The Geysers Geothermal Field, Lake and Mendocino Counties. (W 40934;R 26706) (A 1; S 2) (Staff: N. S. Diunugala)

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C

83 FUGRO PELAGOS, INC., FUGRO WEST, INC., UNITED STATES GEOLOGICAL SURVEY, DAVID EVANS AND ASSOCIATES, INC., ECOSYSTEMS MANAGEMENT ASSOCIATES, INC. (APPLICANTS): Consider approval of Non-Exclusive Geophysical Survey Permits on tide and submerged lands under the jurisdiction of the California State Lands Commission. (PRC 8391, PRC 8392, PRC 8394, PRC 8345, PRC 8536) (A & S: Statewide) (Staff: R. B. Greenwood)

C

84 TERRASOND, LIMITED (APPLICANT): Consider approval of a Non-Exclusive Geophysical Survey Permit on tide and submerged lands under the jurisdiction of the California State Lands Commission. (W 6005.135) (A & S: Statewide) (Staff: R. B. Greenwood)

C

85 KLEINFELDER, INC. (APPLICANT): Consider approval of a Non-Exclusive Geological Survey Permit on sovereign lands in the Smith Canal, San Joaquin County. (W 6005.136) (A 17; S 5) (Staff: R. B. Greenwood)

REMOVED FROM AGENDA

C

86 VENOCO, INC. (APPLICANT): Consider approval of a negotiated subsurface (no surface use) Natural Gas Lease, Sacramento River near Grimes, Colusa and Sutter Counties. (W 40961) (A 2; S 4) (Staff: N. Heda)

C

87 SUMMIT EXPLORATION (CALIFORNIA) LLC (APPLICANT): Consider approval of a negotiated subsurface (no surface use) Natural Gas Lease, Tyler Slough near Walnut Grove, Sacramento County. (W 40964) (A 15; S 5) (Staff: N. Heda)

C

88 SLAWSON EXPLORATION COMPANY, INC. AND SANTA BARBARA RESOURCES, INC. (APPLICANTS): Consider acceptance of the full Quitclaim Deed for Negotiated Subsurface (no surface use) State Oil and Gas Lease No. PRC 7976.1, Nurse Slough, Solano County. (PRC 7976.1) (A 3, 8; S 1) (Staff: N. Heda, M. LeClair)

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C

89 LIVINGSTONE ENERGY INC. (ASSIGNOR) AND ORCHARD PETROLEUM INC. (ASSIGNEE): Consider approval of an assignment of 100 percent of Livingstone Energy Inc.'s 50 percent interest in Oil and Gas Lease No. PRC 8605.1 to Orchard Petroleum Inc., Colusa and Sutter Counties. (PRC 8605.1) (A 2; S 4) (Staff: M. LeClair)

C

90 WESTERN MESQUITE MINES, INC. (APPLICANT): Consider renewal and amendment of a Mineral Extraction Lease on State-owned school land, Chocolate Mountains, Imperial County. (PRC 8039.2) (A 80; S 37) (Staff: V. Perez)

C

91 BAGDAD CHASE, INC. (APPLICANT): Consider approval for an extension and amendment of a mineral prospecting permit for minerals other than oil, gas and geothermal resources on State school lands, San Bernardino County. (PRC 8917.2) (A 34; S 18) (Staff: V. Perez)

MARINE FACILITIES

ADMINISTRATION

LEGAL

C

92 UNITED STATES DEPARTMENT OF AGRICULTURE: Consider Retrocession of Exclusive Legislative Jurisdiction and Establishment of Concurrent Legislative Jurisdiction at 800 Buchanan Street, Albany, California. (W 25991) (A 14; S 10) (Staff: J. Frey)

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C

93 CITY OF ALAMEDA, CALIFORNIA STATE LANDS COMMISSION (PARTIES): Consider a Compromise Title Settlement Agreement, pursuant to Chapter 734, Statutes of 2000 as amended by Chapter 429, Statutes of 2011, between the State of California, acting by and through the Commission, and the City of Alameda involving certain parcels of land located on the former Naval Air Station (NAS) in the city of Alameda, County of Alameda. The result of the proposed Agreement would be to terminate any and all public trust and sovereign property rights in certain portions of the filled tidelands and submerged lands, confirmation of the public trust and sovereign interests in certain other lands, and acquisition by the City, as trustee of the State, of certain lands on the former NAS to be held as public trust lands. (W 25109; RA# 31111) (A 16; S 9) (Staff: E. Milstein, M. Andersen)

REMOVED FROM AGENDA

C

94 HENRY AND ROBERT WESTBROOK, DBA SHIP ASHORE RESORT (LESSEE/PARTY): Consider authorization for the staff of the California State Lands Commission and/or the Office of the Attorney General to take all steps necessary, including litigation, for trespass, ejection, and removal of existing pilings, two docks, a breakwater, and any other related facilities located in the Smith River, adjacent to Assessor's Parcel Numbers 102-170-03, 102-170-05 and 102-010-35, near the town of Crescent City, Del Norte County; and restoration of the land to its natural condition to the satisfaction of the Commission. (PRC 5284.1) (A 1; S 4) (Staff: B. Terry and J. Frey)

REMOVED FROM AGENDA

V. LEGISLATION AND RESOLUTIONS

C

95 CALIFORNIA STATE LANDS COMMISSION: Consider supporting state legislation striking the sunset on provisions of law relating to the release of sewage into marine waters from large passenger vessels or oceangoing ships. (SB 1360, Simitian) (A & S: Statewide) (Staff: S. Pemberton)

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C

96 CALIFORNIA STATE LANDS COMMISSION: Consider supporting state legislation that would authorize the State Coastal Conservancy to fund and undertake projects related to climate change, giving priority to projects that maximize public benefits. (SB 1066, Lieu) (A & S: Statewide) (Staff: S. Pemberton)

C

97 CALIFORNIA STATE LANDS COMMISSION: Consider supporting state legislation requiring the Commission to prepare a workload analysis to ensure that it is fulfilling its oversight responsibilities over legislatively granted public trust lands, codifying trustee duties in connection with granted lands, and requiring the annual financial statement filed with the Commission to be accompanied by a standardized reporting form developed by the Commission. (AB 2620, Achadjian) (A & S: Statewide) (Staff: S. Pemberton)

C

98 CALIFORNIA STATE LANDS COMMISSION: Consider supporting state legislation that would create civil penalties for cultivating a controlled substance on land within the respective jurisdiction of the State Lands Commission, the Department of Parks and Recreation, the Department of Fish and Game, the Department of Forestry and Fire Protection, a regional park district, the United States Forest Service, or the Bureau of Land Management, or within the respective ownership of a timberland preserve production zone, and would allow law enforcement to stop vehicles transporting agricultural irrigation supplies on a rock or unpaved road on these lands without a warrant. (AB 2284, Chesbro) (A & S: Statewide) (Staff: S. Pemberton)

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C

99 CALIFORNIA STATE LANDS COMMISSION: Consider supporting state legislation that would prohibit stores that have a certain amount of sales or retail floor space from providing single-use carryout bags and would authorize these stores to make recycled paper, compostable, or reusable bags available for purchase by customers. The legislation also sets standards for the definition of "reusable," requires most stores to provide plastic bag recycling collection bins, and creates a reusable bag certification program administered by the Department of Resources Recycling and Recovery. (AB 298, Brownley) (A & S: Statewide) (Staff: S. Pemberton)

C

100 CALIFORNIA STATE LANDS COMMISSION: Consider supporting federal legislation that would enact the Levee Vegetation Review Act of 2012, which would require the United States Army Corp of Engineers' to adopt a regional variance policy for vegetation on levees. (House Bill 5831, Matsui) (A & S: Federal) (Staff: S. Pemberton)

C

101 CALIFORNIA STATE LANDS COMMISSION: Consider supporting federal legislation that would reauthorize the Federal Land Transaction Facilitation Act for several additional years. (H.R. 3365 - Lummis and Heinrich/S. 714 - Bingaman, Wyden and Udall) (A & S: Federal) (Staff: S. Pemberton)

VI. INFORMATIONAL

102 CALIFORNIA STATE LANDS COMMISSION (APPLICANT): Staff Report on the monitoring of possible subsidence, Long Beach Unit, Wilmington Oil Field, Los Angeles County. (W 16001, W 10442) (A 54, 55; S 27, 28) (Staff: R. B. Greenwood)

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VII. REGULAR CALENDAR

103 PORT OF SAN FRANCISCO, CALIFORNIA STATE LANDS
87COMMISSION (PARTIES): Consider a Land Exchange
Agreement between the State of California, acting by
and through the Commission, and the City and County of
San Francisco, acting by and through the Port of San
Francisco, involving certain parcels of land located
within Seawall Lot 351 and the 8 Washington Street
property, city of San Francisco, County of San Francisco.
The result of the proposed Agreement would be to
terminate any and all public trust and sovereign
property rights in approximately .52 acres of filled
tidelands and acquisition by the Port, as trustee,
of approximately .54 acres of certain other lands.
(G 11-01.7; RA# 11911) (A 13; S 3) (Staff: J. Rader, G.
Kato, M. Anderson)

Motion 127
Vote 128

104 PACIFIC GAS & ELECTRIC COMPANY (APPLICANT): 128
Consider certification of a Final Environmental
Impact Report and issuance of a permit to Pacific Gas
and Electric Company for purpose of conducting a
Three-Dimensional (3D) geophysical survey employing
the use of air guns, hydrophones, and geophones off
the coast of San Luis Obispo County. (W 6005.126) (A 33;
S 15) (Staff: R. Greenwood, M. Meier, J. DeLeon)

Public Comment on Item 141
Return to Commission 229
Public Comment on Item 310
Motion and Vote 418
Motion and Vote 419

105 THE STATE LANDS COMMISSION: Consider approval of
the Legislative Report titled "2012 Assessment of the
Efficacy, Availability and Environmental Impacts of
Ballast Water Treatment Systems for Use in California
Waters." (W 9777.234, W 9777.290) (A & S: Statewide)
(Staff: A. Newsom, C. Scianni, D. Hermanson)

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	<u>PAGE</u>
106 RONALD T. VANDERBEEK AND BILLIE J. VANDERBEEK; ROBERT S. MARSTON; AND JOHN BURDETTE GAGE AND LINDA JOAN SCHACHT, CO-TRUSTEES OF THE KALALAU REVOCABLE INTER VIVOS TRUST DATED OCTOBER 4, 1986 (APPLICANTS): Consider application for a General Lease - Recreational Use, of sovereign land located in Lake Tahoe, adjacent to 1620 Sequoia Avenue, Tahoe City, Placer County; for an existing joint-use pier, boathouse, and boat lift not previously authorized by the Commission. (W 26457; RA# 28110) (A 4; S 1) (Staff: M. Hays)	41
107 RONALD T. VANDERBEEK AND BILLIE J. VANDERBEEK (APPLICANTS): Consider application for a General Lease - Recreational Use, of sovereign land located in Lake Tahoe, adjacent to 1620 Sequoia Avenue, Tahoe City, Placer County; for two existing mooring buoys not previously authorized by the Commission. (W 26565; RA# 25911) (A 4; S 1) (Staff: M. Hays)	41
Motion	86
Vote	86

VIII. PUBLIC COMMENT

IX. CLOSED SESSION: AT ANY TIME DURING THE MEETING THE COMMISSION MAY MEET IN A SESSION CLOSED TO THE PUBLIC TO CONSIDER THE FOLLOWING PURSUANT TO GOVERNMENT CODE SECTION 11126:

A. LITIGATION.

THE COMMISSION MAY CONSIDER PENDING AND POSSIBLE LITIGATION PURSUANT TO THE CONFIDENTIALITY OF ATTORNEY-CLIENT COMMUNICATIONS AND PRIVILEGES PROVIDED FOR IN GOVERNMENT CODE SECTION 11126 (e).

1. THE COMMISSION MAY CONSIDER MATTERS THAT FALL UNDER GOVERNMENT CODE SECTION 11126 (e)(2)(A):
State of California, acting by and through the State Lands Commission v. Venoco, Inc.

Seacliff Beach Colony Homeowners' association v. State of California, et al.

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State of California, acting by and through the State Lands Commission v. Singer

State of California, acting by and through the State Lands Commission v. Crockett Marine Services, et al.

Wilson v. City of Huntington Beach, et al.

United States of America v. 32.42 Acres of land, et al.

2. THE COMMISSION MAY CONSIDER MATTERS THAT FALL UNDER GOVERNMENT CODE SECTION 11126 (e)(2)(B) or (2)(C).

B. CONFERENCE WITH REAL PROPERTY NEGOTIATIONS.

THE COMMISSION MAY CONSIDER MATTERS THAT FALL UNDER GOVERNMENT CODE SECTION 11126 (c)(7) - TO PROVIDE DIRECTIONS TO ITS NEGOTIATORS REGARDING PRICE AND TERMS FOR LEASING OF REAL PROPERTY.

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1 thereon.

2 The first item of business will be adoption of
3 the minutes from the Commission's special June 7, 2012,
4 meeting. May I have a motion to approve the minutes?

5 ACTING COMMISSION MEMBER REYES: So moved.

6 COMMISSION MEMBER NEWSOM: Second.

7 ACTING CHAIRPERSON GORDON: All those in favor?

8 (Ayes)

9 ACTING CHAIRPERSON GORDON: Opposed?

10 Minutes are unanimously adopted.

11 Next order of business is the Executive Officer's
12 report by the Executive Director, Mr. Fossum. May we have
13 the report, sir?

14 EXECUTIVE OFFICER FOSSUM: Yes, Mr. Chair,
15 Commissioners. Good morning.

16 We have a number of significant matters to
17 present to the Commission for your consideration this
18 morning, so I'll try to keep my report short.

19 First, on the revenue generation front, I'm very
20 pleased to report for the fiscal year ending January 30th,
21 the Commission's revenues exceeded \$520 million. Over 497
22 million of that was deposited in the State's General Fund.
23 These numbers reflect an increase of over \$100 million
24 from the prior fiscal year.

25 I'm also pleased to report that today's agenda

1 includes two geothermal project applications, one that's
2 in the Geysers and another that's in the Salton Sea.
3 Following up on the Commission's direction, the staff
4 participated in a public workshop with the Tahoe Lakefront
5 Owners Association on June 29 at the Granlibakken
6 Conference Center in Tahoe. Approximately 200 people
7 attended. The Association's Executive Director hosted the
8 workshop and gave a presentation touching on the history
9 of free leases at the lake. Commission staff then made a
10 presentation on the Legislature's direction and the
11 Commission's Lake Tahoe rent methodology for recreational
12 piers and buoys in Lake Tahoe.

13 The Association's Executive Director handed out a
14 set of their recommendations plus contact numbers for each
15 Commissioner and the Executive Officer, as well as a
16 mail-in contribution form entitled, "Call to Action, Pier
17 and Buoy Rent Issue." After the presentations, the
18 Association members were invited to ask questions or make
19 comments. And approximately 17 members addressed the
20 panel.

21 The meeting ended after the question-and-answer
22 period, but many attendees approached staff after with
23 property-specific questions and general comments. Several
24 attendees also thanked the staff for coming and answering
25 their questions.

1 Last year, the Governor signed AB 1112 Huffman's
2 bill. This bill, supported by the Commission, increased
3 funding for the Oil Spill Prevention and Administration
4 Fund by 7.6 million a year for the next three years. This
5 fee increase, combined with the \$1.7 million annual
6 increase on tank vessels, eliminated the \$8.4 million
7 structural deficit in the fund.

8 In regards to that, there are currently two
9 audits associated with the Oil Spill Prevention and
10 Administration Fund. These audits are being conducted by
11 the Bureau of State Audits and the Department of Finance.
12 They will examine the OSPAF fund, related functions at the
13 Department of Fish and Game, and the Commission.

14 A year ago, the Joint Legislative Audit Committee
15 approved an audit of the OSPAF to be conducted by the
16 Bureau of State Audits. The Bureau's report is due to be
17 issued today.

18 The second audit will be conducted by the
19 Department of Finance and will include a fiscal and
20 programmatic review of the OSPAF. We had our first
21 meeting with DOF auditors two weeks ago. Their report is
22 due January 1st.

23 The Oil Spill Prevention and Administration Fund
24 is a major funding source for both the Commission's Marine
25 Facilities Division and the Mineral Resources Management

1 Division. We believe the compliance with the audit's
2 findings are essential in gaining stakeholder and
3 legislative support to extend AB 1112 fee increase beyond
4 its expiration date of December 31st, 2014. Extending the
5 fee increase will enable the Commission to continue its
6 vital oil spill prevention efforts at marine facilities
7 and off-shore platforms.

8 The importance of preventing a disruption to
9 California's petroleum supply chain is evident in the
10 recent Chevron Richmond refinery fire. Marine oil
11 terminals are a similar important link in that chain and
12 requires scrutiny and protection from failure.

13 I do want to call out the important work the
14 Commission boundary staff has been doing on mapping the
15 State's property interests in San Joaquin River. On
16 today's consent calendar, you have an Item Number 53
17 approving administrative maps to reach 2B of the San
18 Joaquin River restoration project for the US Bureau of
19 Reclamation and California Department of Water Resources.
20 The project is a result of a settlement entered into in
21 2006 after 18 years of litigation. The project is to
22 restore water flows to over 60 miles of the San Joaquin
23 River and reintroduce Chinook salmon and other fish
24 populations in the river.

25 The identification of boundaries of State-owned

1 lands and the public trustees will help facilitate the
2 construction of channel modifications and improvements
3 needed for the project. The Commission's boundary staff
4 is the only entity, State, federal, or private that has
5 the historic records, mapping, technical experience, and
6 necessary professional expertise to be able to conduct
7 this important mapping project.

8 Two last staffing matters that I'd like to
9 mention.

10 First, Marina Voskanian has been appointed as the
11 new Chief of the Mineral Resources Management Division.
12 Marina has over 35 years of experience as an engineer
13 involved in the petroleum industry. She's been employed
14 with the State Lands Commission since 1987 and prior to
15 that served for ten years in several engineering and
16 management positions with Exxon, Southern California Gas
17 Company, Aminoil, and Phillips Petroleum.

18 Marina received her graduate degree in petroleum
19 engineering from UCS, and she served as a part-time
20 lecturer at USC and Cal Poly teaching petroleum
21 engineering courses. She has received numerous local,
22 State, national, and international awards and recognition.
23 She will be traveling next month to both Europe and the
24 Middle East to give lectures on new techniques to enhance
25 geothermal production.

1 During her 25 years with the Commission, Marina
2 has spent 21 years in management positions, including over
3 six as Chief of Reservoir Engineering, eleven as Chief of
4 Planning, three as the Assistant Division Chief, and the
5 last six months as Acting Chief.

6 I'd like Marina to stand and be recognized.
7 Thank you, Marina.

8 (Applause)

9 EXECUTIVE OFFICER FOSSUM: Finally, in response
10 to the BSA's audit findings that the Commission was not
11 providing adequate oversight of the public trust lands
12 granted by the Legislature to local governments and
13 identifying the needs to focus additional attention and
14 resources to that effort, the Granted Lands Program has
15 been restructured and placed under Sheri Pemberton as
16 Chief of External Affairs. Sheri will also be the
17 Commission's Information Officer and coordinate requests
18 for information from outside the office. Management of
19 the contents of the Commission's web page will also be her
20 responsibility.

21 Sheri will coordinate the Commission's
22 participation of various Boards and Commissions, including
23 but not limited to the Coastal Commission, San Francisco
24 Bay Conservation Development Commission, Delta Protection
25 Commission, San Joaquin River Conservancy, and the Western

1 States Land Commissioners Association.

2 Sheri will continue to be the Commission's
3 Legislative Liaison responsible for monitoring and
4 coordinating State and federal legislation affecting the
5 Commission, as well as developing resolutions for the
6 Commission's consideration and drafting press releases as
7 needed.

8 Sheri, would you stand?

9 (Applause)

10 EXECUTIVE OFFICER FOSSUM: Since this meeting
11 added a site in San Luis Obispo County to allow additional
12 public participation, I will mention to participants there
13 as well as here that wish to speak on any item, please
14 sign a request to speak slip.

15 I also want to mention that on our consent agenda
16 today, it's split in two since the Department of Finance
17 does not vote on legislative matters. So there will be
18 two votes for consent.

19 That ends my report.

20 COMMISSION MEMBER NEWSOM: Curtis, just to back
21 up to the Granlibakken meeting, what was the take-away?
22 What was the outcome of that engagement with the 200
23 folks?

24 And first of all, thank you for following up on
25 the request. And I look forward to getting specific

1 recommendations. And presumably, those will be
2 forthcoming.

3 EXECUTIVE OFFICER FOSSUM: Yes. I think
4 basically the general consensus of the group was they
5 didn't really like paying rent for use of the State
6 property. But they also had a number of ideas, some of
7 which they expressed previously to the Commission. I
8 think probably their primary concern was the fact that the
9 Commission was charging a rent, even though it's a
10 significantly reduced rent, for areas that are not on the
11 footprint itself of the pier.

12 So a setback area, where generally speaking, they
13 can dock their vessels. Or the way the staff has looked
14 at that is it's not only a use area, but kind of a
15 restricted use area for the public. The public generally
16 is not using that area, not coming right up to a dock.
17 And so when you're boating or swimming or kayaking or
18 whatever on the lake, you would give quite a bit of
19 distance for that. I think that was their primary
20 concern, although they continue to have issues with
21 virtually all of the ways that the Commission has adopted
22 its structure.

23 COMMISSION MEMBER NEWSOM: So what's the next
24 steps? Are you going to come back with recommendations?
25 Are you going to have further discussions and further

1 outreach?

2 EXECUTIVE OFFICER FOSSUM: Internally, we have
3 had discussions already and we haven't come to a final
4 decision as to whether there should be some modifications
5 to that or not. But there has been a lot of discussion
6 in-house as to what makes sense. We can certainly bring
7 some alternatives back to the Commission and try to do
8 that at either the next meeting or the --

9 COMMISSION MEMBER NEWSOM: If you feel it's
10 necessary. If you're confident that what we recommended
11 or what you recommended should continue, I'm just
12 curious -- my point is, there is nothing worse than an
13 exercise of futility. Meaning a promise in promotion of a
14 public meeting but not necessarily any follow-up. And
15 that's why either we get back to folks and say, look,
16 here's why we think you're wrong on points A through Z, or
17 on point Y, we're going to make an adjustment or have a
18 subsequent public hearing on it. That's all I'm looking
19 for.

20 EXECUTIVE OFFICER FOSSUM: And let me say the
21 Commission prior to the change in the law requiring
22 everybody to pay rent in instances where the Commission
23 entered into leases and rent was charged under the prior
24 law, there was this ten foot restricted area and people
25 did pay rent. In fact, they paid 100 percent of the

1 value, the same as they did for the pier.

2 What the staff recommended and what the
3 Commission adopted earlier this year was an actual
4 discount of 50 percent for that use area. But many of the
5 property owners at the lake who have piers on State
6 property don't think it's appropriate to charge anything
7 for that area. But we will get back to you.

8 COMMISSION MEMBER NEWSOM: Yeah. Let us know.
9 Appreciate that you followed up.

10 ACTING CHAIRPERSON GORDON: Next order of
11 business will be adoption of the consent calendar for the
12 land management and mineral resources and legal divisions,
13 Items 01 to 94.

14 ACTING COMMISSION MEMBER REYES: So moved.

15 ACTING CHAIRPERSON GORDON: I call on our
16 Executive Officer Curtis Fossum to indicate which items --

17 EXECUTIVE OFFICER FOSSUM: Excuse me, Mr. Chair.
18 We received a slip on one item. It says, "I wish
19 to speak only if taken off of consent."

20 CHIEF COUNSEL LUCCHESI: I'm not sure if that
21 applicant actually understands what the staff's
22 recommendation is. And I suspect that he may want to
23 speak, even though he might have marked that spot. But
24 we're not sure exactly who he is.

25 ACTING CHAIRPERSON GORDON: Which item?

1 EXECUTIVE OFFICER FOSSUM: Fifty-one, Mr. Higbie.

2 ACTING CHAIRPERSON GORDON: This item is on
3 consent.

4 EXECUTIVE OFFICER FOSSUM: Mr. Chair, if I could.
5 This item is one where the staff is recommending denial of
6 an application. It's one of the few where we actually are
7 doing that. It has to do with a vessel in Burlingame on
8 the water there. It's been known as the Dago Mary's. And
9 so I'm not sure whether Mr. Higbie wishes to speak, but
10 let's give him the opportunity.

11 ACTING CHAIRPERSON GORDON: I'll tell you what.
12 Why don't we do this, if I may. Let's do the consent
13 calendar first. We'll get the items off of consent.
14 We'll pull Item 51 from consent and hear Item 51. When
15 we're done with the consent calendar, we will pull up Item
16 51.

17 There's one other thing I'd like to announce,
18 which is that Items 106 and 107 with regard to the
19 Vanderbeek property at Lake Tahoe, we're going to jump the
20 cue on that and hear that right after we do Item Number 51
21 so we can allow you folks to have the rest of your day
22 rather than sitting here for a very, very lengthy hearing
23 on some fairly contentious issue. I know that's not going
24 to go in five minutes, but we should be able to clear it
25 quickly from the calendar as opposed to three or four

1 hours from now.

2 Let's do consent. Mr. Fossum, can you identify
3 which items on the consent calendar have been removed for
4 the day?

5 EXECUTIVE OFFICER FOSSUM: Yes, Mr. Chair.

6 Items 45, 46, 85, 93, and 94, and now those have
7 been removed from the agenda.

8 Item 51 is being moved to the regular agenda.

9 ACTING CHAIRPERSON GORDON: Is there anyone in
10 the audience who wishes to speak on an item still on the
11 consent calendar?

12 If not, the remaining consent items will be taken
13 up as a group for a single vote.

14 Do I have a motion?

15 COMMISSION MEMBER NEWSOM: So moved.

16 ACTING COMMISSION MEMBER REYES: Second.

17 ACTING CHAIRPERSON GORDON: All those in favor?

18 (Ayes)

19 ACTING CHAIRPERSON GORDON: Consent calendar is
20 unanimously adopted.

21 Next item of business is consent calendar for the
22 Legislation and Resolutions, Items 95 to 101. I will make
23 an announcement the Governor's office traditionally does
24 not vote on these Resolutions, so Mr. Reyes will likely
25 abstain.

1 Do we have a motion to move Items 95 to 101
2 Legislative Resolutions on the consent calendar?

3 COMMISSION MEMBER NEWSOM: Just only through the
4 Chair, just anything staff wants to say on these or
5 anything that you want to highlight? If not -- and don't
6 feel compelled. I just want to give you the opportunity.

7 EXECUTIVE OFFICER FOSSUM: Probably not. We
8 think they're important items or we wouldn't bring them to
9 you. But they are available for the public to --

10 COMMISSION MEMBER NEWSOM: I'm more than happy to
11 move them.

12 ACTING CHAIRPERSON GORDON: Second.

13 Motion and a second.

14 All those in favor?

15 (Ayes)

16 ACTING CHAIRPERSON GORDON: It's adopted.

17 ACTING COMMISSION MEMBER REYES: With one
18 abstention.

19 ACTING CHAIRPERSON GORDON: One abstention.

20 Let's move to Item 51.

21 Staff, please make a presentation.

22 PUBLIC LAND MANAGEMENT SPECIALIST KATO: We do
23 actually have a PowerPoint presentation associated with
24 this. So it's Item Number 51.

25 So good morning, Mr. Chairman and Commissioners.

1 My name is Grace Kato, and I'm a member of the
2 Commission's Land Management Division staff.

3 Calendar Item 51 is the consideration of a denial
4 of an application for a general lease commercial use of
5 filled and unfilled sovereign land located at 410 Airport
6 Boulevard in the City of Burlingame.

7 --o0o--

8 PUBLIC LAND MANAGEMENT SPECIALIST KATO:

9 Beginning in 1971, the Commission has authorized several
10 lease, subleases, and assignments for the floating
11 restaurant at this site. Mr. Lloyd Bodwell, the
12 representative of the current applicant, was involved in
13 the early operations of the floating restaurant here.

14 In 1978, the Commission authorized a lease to
15 Robert M. Sherman for a term of 18 years. The lease
16 authorized the continued mooring of the decommissioned
17 vessel known as the SS General Frank Coxe to be used as a
18 floating restaurant, together with parking facilities to
19 accommodate the restaurant.

20 Over the years, the restaurant operated
21 intermittently through a number of subleases and
22 assignments. In early 2006, Mr. Sherman reportedly sold
23 the vessel to Dago Mary's, a California corporation which
24 then refurbished the vessel.

25 On February 9th, 2006, the Commission authorized

1 the termination of the lease to Mr. Sherman and the
2 issuance of a new lease the Dago Mary's for a term of 25
3 years beginning April 1 of 2006. The restaurant was
4 reportedly closed in December of 2009 by Dago Mary's who
5 has subsequently abandoned the lease premises. Staff has
6 made several unsuccessful attempts to contact the Dago
7 Mary's.

8 On April 6th, 2011, the Commission authorized the
9 termination of the lease, collection of back rent in the
10 amount of \$24,143, and litigation for trespass and
11 ejectment.

12 Next slide.

13 --o0o--

14 PUBLIC LAND MANAGEMENT SPECIALIST KATO: On July
15 13th, 2010, while staff was still trying to contact
16 representatives of the Dago Mary's, Mr. Bothwell contacted
17 staff to request a lease on the same terms and conditions
18 as the Dago Mary's lease. Staff advised Mr. Bothwell of
19 the application process and that there was still an
20 existing lease in place.

21 Over the course of the next 17 months, staff met
22 with Mr. Bothwell several times in person and participated
23 in many phone calls to review his application and the
24 process. Staff reviewed Mr. Bothwell's application on
25 December 8th of 2011.

1 Among other things, the market feasibility study
2 does not indicate how this proposed restaurant operation
3 will be viable, whereas prior restaurants utilizing the
4 same site have failed, nor does it analyze whether there
5 is sufficient capital available to sustain the business
6 during its start-up phase.

7 Also, the study does not analyze the strengths
8 and weakness of competing restaurants in the area in
9 relation to the strengths and weaknesses of the proposed
10 restaurant.

11 Next slide, please.

12 --o0o--

13 PUBLIC LAND MANAGEMENT SPECIALIST KATO:

14 Furthermore, title to the vessel is clouded. It appears
15 there may be other parties, including the wife of the now
16 deceased former owner Mr. Sherman, with either an
17 ownership or financial claim to this vessel. There is
18 currently an active investigation by the California
19 Department of Motor Vehicles that Mr. Bothwell used
20 fraudulent documentation to obtain the DMV ownership
21 paperwork.

22 Staff understands there is also a claim placed
23 with the United States Coast Guard on the ownership of the
24 vessel as well.

25 Next slide, please.

1 the existing trespass action against the vessel, the Dago
2 Mary corporation, and Mr. Bothwell, if he can prove
3 ownership, to have the vessel removed from our State
4 lands.

5 I'm available for any questions.

6 COMMISSION MEMBER NEWSOM: I may have some
7 questions after we hear from Mr. Bothwell. Thanks.

8 ACTING CHAIRPERSON GORDON: The staff
9 recommendation before us is that we deny the lease and
10 move for removal and a quiet title on the vessel; correct?

11 THE WITNESS: Yes.

12 ACTING CHAIRPERSON GORDON: Do we have anybody
13 who wishes to speak in support of the staff
14 recommendation? Anybody?

15 Anyone that would like to speak in opposition,
16 please come to the microphone.

17 Please identify yourself.

18 MR. HIGBIE: Members of the Commission, my name
19 is Richard Higbie. I'm associated with Mr. Bothwell.

20 We'd been associated previously when this vessel
21 had been operated in Oakland very successfully. It was
22 purchased from Mr. Bothwell and moved to the Burlingame
23 location where a succession of owners didn't seem to do as
24 well as they had hoped.

25 From the period of time, Mr. Bothwell has always

1 been the one with title to the vessel with the
2 United States Coast Guard. There has been no claim by
3 anyone that he is not the owner registered. And this is
4 important to Mr. Bothwell. If they're going to force the
5 removal of the vessel, it's going to fall on his
6 shoulders. So he's concerned.

7 Now as to the viability of a restaurant in this
8 location, things are different. There's -- the staff has
9 been concerned about these prior ventures that didn't
10 succeed.

11 Number one, they didn't have the 11 years
12 experience running this restaurant very successfully in
13 Jack London Square that Mr. Bothwell had. So we've got
14 this staff, the management, everything is intact.

15 Now, the staff, Ms. Kato is very concerned about
16 these prior failures, so we re-visited the area. We
17 submitted reports, which are in your file, from very
18 sophisticated reports and showing that it is viable.

19 Then we visited all the neighbors. We found out
20 that immediately across the street that Virgin Airways is
21 putting their headquarters in with 3- or 4,000 employees.
22 Across the way, they're now installing 97,000 square feet
23 of office space within a short block's walk from this
24 area.

25 We checked with the local hotels. The Hyatt

1 Hotel -- the Hyatt Burlingame said they would be anxious
2 to have this sort of a restaurant in the area that's got
3 this kind of drama and this kind of charm. And the City
4 is -- they approved it immediately. They wanted it.
5 There's no problem there. They're asking the supervisors
6 from the area, the county supervisor, they're wondering
7 when it can open and when it can start. This is a
8 revenue-producing operation.

9 Now -- but what I'm most concerned about is that
10 there is no downside to the State to permit this
11 restaurant to reopen. The boat's been thoroughly
12 reconditioned. It's completely outfitted for the job.
13 It's got all of the interior. Everything is in perfect
14 shape. It's ready to open. It could have been opened a
15 year ago, had the staff not been concerned about it
16 failing. And it would be a success if given a chance.

17 Now, the questions about the title, the concern
18 to staff are really not true concerns because the boat has
19 its value because it's there. If anyone is contesting the
20 ownership, they're going to be enhanced by this lease.
21 They're not going to be hurt. So there is no -- there is
22 no logical reason for forcing Mr. Bothwell to move the
23 boat when he's more than happy to pay the State the lease
24 payment that they have been traditionally collecting for
25 the area.

1 The only time they missed the lease payments is
2 when the restaurant hasn't been operating. And that's
3 only because we've been unable to convince the staff that
4 this is a good idea to give one more chance to make this a
5 success. And if there is anybody that can make a success
6 out of anything, it's Mr. Bothwell. He's owned probably
7 40 different bars in his business career, every one a
8 success. And every one sold at a profit and then moved
9 onto another.

10 So we've got the world's best operator of a
11 restaurant on a boat. We've got a boat that's been
12 perfectly restored, ready to start. We've got a new
13 climate in the area with thousands of workmen and
14 thousands of new employees in a City that wants the
15 restaurant.

16 So I think that I've addressed the objections
17 that the staff has. And if there is any questions any of
18 the members had, I would be happy to answer.

19 ACTING CHAIRPERSON GORDON: Mr. Reyes.

20 ACTING COMMISSION MEMBER REYES: You indicate you
21 have support from the City and supervisor in particular.
22 Do you have any of those letters of support with you or
23 has the staff made available?

24 MR. HIGBIE: Yes, we do. We submitted them all
25 to the staff.

1 ACTING COMMISSION MEMBER REYES: We typically get
2 copies of documentation submitted to staff. I do not
3 recall receiving any of that.

4 ACTING CHAIRPERSON GORDON: Ms. Kato, can you
5 come to the microphone, please?

6 PUBLIC LAND MANAGEMENT SPECIALIST KATO: We have
7 received letters from the Chamber of Commerce and from the
8 hotel indicating that they would be in support of proposed
9 operation at the site.

10 However, we've also received a letter from the
11 Permit Department of the City of Burlingame indicating
12 that there are several issues that still need to be
13 resolved before any operation can take place at this site.

14 ACTING CHAIRPERSON GORDON: What are the issues
15 remaining for the Permit Department?

16 PUBLIC LAND MANAGEMENT SPECIALIST KATO: They
17 would be upgrades to the restaurant sprinkler systems,
18 various ADA compliance issues.

19 I have the letter. I didn't bring it up. I was
20 expecting this to be near the end of the meeting today,
21 but I do have a copy of that letter to be able to --

22 MR. HIGBIE: We have the letter from the City of
23 Burlingame approving the use as a restaurant.

24 ACTING COMMISSION MEMBER REYES: I thought I
25 heard support as opposed to approving. There is a

1 distinction there.

2 COMMISSION MEMBER NEWSOM: Could I ask -- so
3 we've got two points of view: Mr. Higbie asserting there
4 is no ownership issue; you're asserting there is.

5 MR. HIGBIE: That's correct.

6 PUBLIC LAND MANAGER KATO: Yes.

7 COMMISSION MEMBER NEWSOM: What's the issue,
8 Curtis.

9 EXECUTIVE OFFICER FOSSUM: Well, as I think the
10 staff report points out, the Commission originally issued
11 a lease 38 years ago for the facility there. There has
12 been a long history. And for some of the time, it did
13 operate well. The vessel is in good condition, from what
14 we understand.

15 But the fact that we can't identify who the
16 actual owner is and these investigations are going on to
17 try to determine who the actual owner of the vessel is, we
18 think it's imprudent for the Commission to move forward
19 with a lease at this time.

20 Certainly, if the items that the Commission staff
21 had requested of the applicant had been brought forward
22 and we were able to analyze those things properly, our
23 recommendation might be different.

24 COMMISSION MEMBER NEWSOM: Yeah.

25 PUBLIC LAND MANAGEMENT SPECIALIST KATO: If I

1 could also make comment. There is a pending or current
2 investigation with DMV as to whether or not fraudulent
3 documents were being utilized to obtain ownership -- or
4 documentation or proof of ownership of the vessel. That
5 is still ongoing at this time. And there has also been a
6 claim made to the U.S. Coast Guard Service.

7 MR. HIGBIE: We've had -- we were contacted by
8 the DMV, presented the fact that this is a Coast Guard
9 registered vessel. It's been registered by the Coast
10 Guard to Mr. Bothwell from the beginning for the last 15,
11 20 years. And they just abandoned any further activity.
12 There's been no forged documents. There's no documents at
13 all. It's just the only documents came from the Coast
14 Guard.

15 ACTING CHAIRPERSON GORDON: Sir, do you
16 acknowledge there is an ongoing investigation as to the
17 title?

18 MR. HIGBIE: I don't believe there is any. They
19 called better part of a year ago and said what's the story
20 on this. And we explained our position and never heard
21 from them again.

22 ACTING CHAIRPERSON GORDON: And I'd like to
23 follow up on a question that Mr. Reyes posed I think got
24 lost a little bit.

25 Your exact wording was you have support for the

1 restaurant from the City as a restaurant. That is very
2 different from support for this project and this owner.
3 Do you have support for this specific owner?

4 MR. HIGBIE: Yes. Mr. Bothwell's here. He made
5 the application with the City. And they approved it as
6 for use as a restaurant for his company. And I don't
7 know -- I've never heard of any defect.

8 MR. BOTHWELL: The letter said it's zoned for a
9 restaurant. And that's in writing and it came from --

10 PUBLIC LAND MANAGEMENT SPECIALIST KATO: Sue
11 Harris with the City of Burlingame, she's on the permit
12 planning compliance issue.

13 MR. BOTHWELL: The thing she wanted done was
14 subject to the lease.

15 COMMISSION MEMBER NEWSOM: Mr. Bothwell, it would
16 be great to hear from you directly.

17 MR. HIGBIE: Mr. Bothwell says the only defect in
18 his application was the fact he didn't yet have the lease.
19 But it's approved for use when he gets the lease.

20 PUBLIC LAND MANAGEMENT SPECIALIST KATO: The area
21 is zoned for the use of a restaurant.

22 ACTING CHAIRPERSON GORDON: Has the Planning
23 Commission signed off on the boat in its current
24 configuration? Or as Mr. Kato and staff have alleged, are
25 there still conditions that need to be met before you

1 could operate?

2 MR. BOTHWELL: They had the Fire Department, the
3 City, everybody on board. We went through everything.
4 They gave me a letter what they wanted me to do. As soon
5 as I get the lease, I can do that. It's just a very
6 minute thing, we have a letter to that effect of what they
7 wanted -- what they wanted. But they just definitely said
8 it's approved for a restaurant.

9 ACTING CHAIRPERSON GORDON: Mr. Reyes.

10 MR. BOTHWELL: They wanted a few things. I had
11 two sprinkler heads I had to put in. The fire
12 department -- and I don't know. A couple of little
13 things. Really nice people. And they say -- they wrote
14 the letter to us let us know the main thing that we can't
15 get started until we have the lease. I mean, that doesn't
16 make a lot of sense.

17 COMMISSION MEMBER NEWSOM: Could I do a quick
18 follow up?

19 I'm very concerned about the ownership ambiguity
20 and frankly not necessarily comfortable until I get some
21 verification as to each other's points of view so we can
22 adjudicate it more fairly.

23 That said -- and Mr. Bothwell, one quick second.
24 The issue of financial feasibility, that was another point
25 of concern. The issue of availability of capital, how was

1 it, from staff's perspective analyzed and determined and
2 justified as a point of concern?

3 PUBLIC LAND MANAGEMENT SPECIALIST KATO: So one
4 of the key components of the feasibility study that we
5 asked for was an analysis of Mr. Bothwell's business plan
6 and whether or not capital reserves would be available for
7 the start-up costs as well as maintaining the restaurant
8 throughout its lease term. Unfortunately, the business
9 plan that was provided in the feasibility study did not
10 provide any analysis whatsoever. It was, this is a good
11 plan.

12 ACTING CHAIRPERSON GORDON: Ms. Kato, what would
13 be the downside for the State? This is a private business
14 that wishes to expend some capital on starting up a
15 business. Recognizing there is very high failure rate on
16 restaurants, that's part of the business, what would be
17 the downside for the State if we granted the lease and
18 six months after we granted the lease, the boat failed,
19 the business went under?

20 EXECUTIVE OFFICER FOSSUM: If I could, Mr. Chair.

21 As I mentioned earlier, the Commission has
22 entered into a lease for this operation there some 38
23 years ago. They stopped paying rent. The operator
24 stopped paying rent back in 2009 and abandoned the vessel.

25 So I think the issue was that there was rent in

1 the amount of nearly over \$24,000 that was due. The
2 Commission at that time in 2011 authorized the ejectment
3 action.

4 We haven't proceeded with that. We've been
5 trying to work with Mr. Bothwell to see whether or not he
6 could provide legitimate business plans so we wouldn't
7 have somebody else walk away from this vessel and be stuck
8 with it. As you know, we have a number of businesses that
9 have entered into leases with the Commission and then have
10 either gone bankrupt or whatever and we're left with
11 facilities on the State's property that need to be
12 remedied.

13 So one alternative certainly here -- I think part
14 of it is he has an application before the Commission. If
15 he's able to bring in this information and verification of
16 ownership, we could certainly keep his file open for
17 purposes of bringing it back to the Commission. But I
18 think our staff recommendation at this time is that it be
19 denied since he has asked to have it brought before you.

20 ACTING CHAIRPERSON GORDON: Is there any thought
21 of asking for a performance bond since there seems -- it
22 seems to be the risk for the State is Mr. Bothwell
23 operates the business for a number of months, pays rent.
24 If the business goes under, during the period when it's
25 under, we don't receive the rent the State is owed and

1 we're out that money.

2 If we asked for a performance bond for a number
3 of years of the rent, would that go toward mitigating the
4 State's potential loss?

5 And Mr. Bothwell, this is really off the top.
6 Would you be interested in obtaining a performance bond if
7 that were a condition for receiving the lease?

8 EXECUTIVE OFFICER FOSSUM: And typically that is
9 what we do. I think under these circumstances maybe what
10 the Commission could consider is to deny it at this time
11 and to give him several months so we don't move forward
12 with the ejectment action until such time.

13 But it's up to the Commission's discretion if
14 they want to give them a few months to try to comply with
15 the missing information on the ownership of the vessel.

16 ACTING CHAIRPERSON GORDON: Mr. Newsom and then
17 Mr. Reyes.

18 MR. HIGBIE: May I respond to that objection?

19 COMMISSION MEMBER NEWSOM: Before I say anything,
20 perhaps, yeah. What is your reflection on a performance
21 bond?

22 But also, I mean, it doesn't look good from my
23 perspective your standing in terms of this issue. It
24 seems to me what we're hearing is some openness on this
25 body to consider giving you an opportunity to come back

1 and deal with these very legitimate issues, at least from
2 my perspective, legitimate issues staff has presented.

3 The issue of ownership remains my dominant issue.
4 I'm hearing two different things. I can't in good
5 conscious as a fiduciary of this Commission move forward
6 until I get clarity on that.

7 The issue of support substantively is an issue.
8 It always should be as it relates to opening of a new
9 business, particularly one with a track record as curious
10 as this one.

11 The issue of a performance bond, I hate that as a
12 restaurant owner myself. I appreciate the recommendation
13 of the Chair and the consideration. And I think it is an
14 interesting thought under these circumstances.

15 But at this moment, unless you have some profound
16 or rather some very compelling evidence to the contrary on
17 ownership, et cetera, seems to me we may be best to reject
18 today's action, but give you the opportunity to
19 subsequently engage in good faith and direct our staff to
20 engage with you in good faith to try to clean up some of
21 these issues. Is that something that under these
22 circumstances would be appealing to you?

23 ACTING CHAIRPERSON GORDON: Sir, before you
24 answer, I'd like to let you know, I would associate myself
25 with the Lieutenant Governor's remarks. Those are two

1 votes to not getting the lease today. So now respond.

2 MR. HIGBIE: Well, not giving a lease today
3 doesn't solve any of the problems.

4 The Department of Homeland Security is the one
5 that registers the title to vessels, and it's registered
6 to Mr. Bothwell. So there is no more way to prove that
7 this is his boat. There is -- nobody's come up with any
8 contrary information or any registration --

9 MR. BOTHWELL: We're registered with the
10 California DMV.

11 MR. HIGBIE: It was registered with the DMV. But
12 now it's registered with the Department of Homeland
13 Security.

14 If there was a way to get more title, we would be
15 happy to produce that. But the only thing we're -- and
16 the next issue is there is no economic reality to force
17 Mr. Bothwell in waiting for several months. Because if
18 anybody owns the boat, he's the only loser.

19 Right now, the boat is in situ. The State's only
20 problem is getting rid of the boat, if it doesn't care to
21 lease -- to make a lease to the boat owner. And that
22 falls on Mr. Bothwell.

23 So there is no advantage to any of the people
24 contesting the ownership. There is no advantage to the
25 City of Burlingame not to let it open and collect the

1 sales tax. There is no advantage to the State of
2 California in not collecting the rent from the operation
3 of the boat. And there's nobody hurt anywhere by letting
4 the boat open. People contesting the ownership have now
5 got a valuable asset to contest. And the State is --
6 rather than getting no income, is getting the rent every
7 month and the --

8 MR. BOTHWELL: And I'm paying the insurance.

9 MR. HIGBIE: And the boat is now insured. So if
10 something happens to it, it doesn't fall on the State of
11 California to get rid of it. So on every objection that
12 you made, there is nobody being harmed. But a delay
13 definitely harms Mr. Bothwell. He's got the whole thing
14 ready to open. Month after month goes by, the insurance
15 is several thousand dollars.

16 MR. BOTHWELL: Two years.

17 MR. HIGBIE: It's been two years now that they
18 tried to get something done. To let some very specious
19 shadowy claims of ownership upon which no one has
20 presented even one document indicating that it's contrary
21 is not a fair way. Let him start. Let him take the loss,
22 not the State and the City and all the people that would
23 have had a job there and the workers on the new projects.
24 Let them take the loss. Why should the --

25 MR. BOTHWELL: Let me explain. Let me have my

1 two cents, okay.

2 I bought this boat in 1955. I was 26 years old.
3 I paid six grand for it. I brought it out and made a barn
4 and restaurant and moved it to Jack London Square.
5 Operated it great. Left there. Built Torrey Pines in La
6 Jolla. Built the Jack London Inn. I've been a busy guy.
7 I'm an old man now.

8 But anyhow I'm telling you, I never ever -- all I
9 made money on that boat. And I turned in these documents
10 to Grace, who's been really nice, and to David Plummer in
11 the first place. And then I had different people handling
12 these papers.

13 I paid also \$15,000 for those feasibility reports
14 from a guy who could sign his name that he really knew all
15 about that stuff. They're asking him to tell me how to
16 run the restaurant business. Okay.

17 But anyhow, you do what you think is right, but I
18 don't get it. I bought the insurance because when I
19 applied for the lease, it said you do that. I gave the
20 \$20,000 for the first month for the lease deposit, 17,000
21 for the -- for what? To investigate me. So I'm just
22 telling you, that's all I have to say.

23 ACTING CHAIRPERSON GORDON: Do you have title
24 insurance on the boat, sir?

25 MR. HIGBIE: What?

1 ACTING CHAIRPERSON GORDON: Do you have title
2 insurance on the boat? Title insurance, have you cleared
3 title? The allegation is you bought the boat in 1955.

4 MR. HIGBIE: Yes, I have that. She has it.

5 ACTING CHAIRPERSON GORDON: Okay.

6 MR. HIGBIE: Over two years they had these
7 things.

8 PUBLIC LAND MANAGEMENT SPECIALIST KATO: We have
9 documentation indicating Mr. Bothwell signed over all
10 right and title to the vessel. There is a lapse of
11 ownership paperwork from that moment where Mr. Bothwell
12 signed over ownership and Mr. Sherman sold the vessel. We
13 do have a clear title from when Mr. Sherman sold the
14 vessel to the Dago Mary Corporation, which is one of the
15 conditions of the DMV investigation that is currently
16 pending.

17 MR. BOTHWELL: No one has ever shown ownership of
18 that vessel besides me.

19 EXECUTIVE OFFICER FOSSUM: Mr. Chair, again, this
20 application was only received in December of last year.
21 It hasn't even been a year.

22 Mr. Bothwell, the Commission was -- the staff did
23 not bring this to the Commission, except for the fact that
24 Mr. Bothwell requested to bring it at the Commission at
25 this time. We were waiting for the additional information

1 that we felt would be necessary to make a recommendation
2 for approval. So he's anxious to get going, as you can
3 tell. We're anxious to make sure it's done right, if it's
4 going to go forward.

5 MR. BOTHWELL: It is important to know -- what's
6 name of that company that's breaking ground and it's --
7 she has the paperwork now. It's a multi --

8 COMMISSION MEMBER NEWSOM: Virgin.

9 Mr. Bothwell, if I may interject to move this
10 along -- and through the Chair, thank you.

11 I'm happy to the extent with my huge staff of
12 three -- they're probably going to walk out -- to
13 interject here. I'm prepared to reject today's action
14 because I'm not comfortable with today's action.

15 But I'm also not comfortable leaving this
16 question of whether or not we are ever going to get to a
17 solution here. We need to be respectful of the work
18 you've done and the money you've invested.

19 I'd love to see this thing operating. I agree
20 with all of the assessments Mr. Higbie made about sales
21 tax and jobs and revenue and energy and all those things.
22 Those are certainly right up our alley. I don't think
23 State Lands wants to get in the way. But we have an
24 obligation to get these questions answered.

25 So, Mr. Chair, I would recommend we reject the

1 item today, with the commitment from staff that we follow
2 up quickly and try to work through these issues. And I
3 will commit my staff to help you in that process to be a
4 conduit and try to bring this back if you feel it's
5 appropriate to bring it back or State Lands feels
6 confident it should be brought back so that we can make a
7 decision.

8 But right now, I can't in good conscious
9 support --

10 MR. BOTHWELL: If we can get a letter saying
11 exactly what they want because that's what they've given
12 you and then --

13 COMMISSION MEMBER NEWSOM: We'll help you with
14 that.

15 MR. BOTHWELL: And it's two months to the next
16 meeting.

17 COMMISSION MEMBER NEWSOM: Trust me. Delay is
18 frustrating to every single person sitting in the room.

19 MR. BOTHWELL: Thank you for your time.

20 EXECUTIVE OFFICER FOSSUM: There is a couple
21 alternatives you can take here. One is --

22 MR. HIBGIE: The only person that would be hurt
23 --

24 ACTING CHAIRPERSON GORDON: Please stop for a
25 second, sir. Let Mr. Fossum finish, and then we'll give

1 you one last shot.

2 EXECUTIVE OFFICER FOSSUM: There is a couple
3 alternatives the Commission could consider.

4 Mr. Bothwell asked to have this brought before
5 the Commission. Staff's recommendation is denial.
6 Another alternative is they could not -- if the Commission
7 decided it wanted to give them more time, they could just
8 not make a motion and a second and it could be continued.
9 We could bring at a subsequent meeting.

10 ACTING COMMISSION MEMBER REYES: I was going to
11 seek clarification. Reject the item means we're not
12 taking staff's recommendation. I'm comfortable not taking
13 any action at the time and giving you more time to work
14 with staff and staff have a chance to go and try to go
15 clear this through. But I think you can see the writing
16 on the wall. At this point, I think the vote would be
17 unanimous if you were to bring it up with no additional
18 information or clarity of what the items that we have
19 before you.

20 EXECUTIVE OFFICER FOSSUM: And staff has been
21 working with Mr. Bothwell and others for a number of years
22 on this, as you can tell. We would like an outside limit
23 on what the Commission might consider a reasonable amount
24 of time for him to comply with the requests.

25 COMMISSION MEMBER NEWSOM: Through the Chair, I

1 don't think we need that much time. How about the next
2 meeting make a decision one way or another?

3 ACTING CHAIRPERSON GORDON: We have a meeting in
4 October. I think we can bring this back at that time.

5 EXECUTIVE OFFICER FOSSUM: October 19.

6 ACTING CHAIRPERSON GORDON: And at least Mr.
7 Bothwell gained the perspective of this office. I would
8 like you to consider a performance bond. I'm not sure
9 whether the other two members would want to go there. But
10 at least for us, the fact that different restaurants have
11 failed at this site and there is a lapse in payment of
12 rent, I think a performance bond would guarantee the State
13 its rent would be a good idea.

14 MR. BOTHWELL: Would advance payment of the rent
15 for three years --

16 ACTING CHAIRPERSON GORDON: That would work. In
17 lieu of a performance bond, yes.

18 PUBLIC LAND MANAGEMENT SPECIALIST KATO: One of
19 our other concerns is the removal of the vessel if, in
20 fact, it is in trespass on State Lands. If a bond were to
21 be considered, we would like it cover the removal of the
22 vessel.

23 ACTING CHAIRPERSON GORDON: Sir, take that under
24 advisement.

25 Hopefully, we'll bring this back before the

1 Commission at our October meeting.

2 Thank you, sir.

3 ACTING CHAIRPERSON GORDON: I would now like to
4 move to Item 105 and 106 having to do with a lease at Lake
5 Tahoe.

6 Staff, can you please make the presentation?

7 Excuse me. It's Items 106 and 107.

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

10 MS. HAYS: Good morning, Mr. Chairman and members
11 of the Commission. My name is Mary Hays. I'm a member of
12 the Land Management Division with the Commission. I'm
13 here to present information on calendar Item 106 and 107.

14 The two items before you relate to two separate
15 lease applications for previously unauthorized
16 recreational facilities on State lands and Lake Tahoe
17 adjacent to a single littoral lakefront parcel owned by
18 Ronald and Billie Vanderbeek.

19 Item 106 is an application by the Vanderbeeks and
20 two back shore lot owners, Robert Marston and John Gage
21 and Joan Schacht, to lease State lands for the use and
22 maintenance of an existing joint use pier with the
23 boathouse and boat lift and to keep a sundeck with railing
24 on top of the boathouse and the staircase.

25 This application also includes a request by the

1 two back shore owners to keep two existing mooring buoys
2 they have placed in the lake off-shore of the Vanderbeek's
3 property.

4 --o0o--

5 MS. HAYS: This is a photo of the pier located
6 off-shore of the Vanderbeek's property.

7 Item 107 is a separate application by the
8 Vanderbeeks to retain two existing mooring buoys also off
9 shore of their property. At the request of the
10 Vanderbeeks, two separate leases were requested in order
11 to separate the joint use facilities from individual use
12 by the parties. The pier and all four mooring buoys have
13 occupied State property for many years without the benefit
14 of a lease.

15 --o0o--

16 MS. HAYS: These are just going to be a series of
17 slides of the existing facilities. I'll briefly describe
18 what has occurred in the past and the basis for staff's
19 recommendation.

20 In 2010, while doing a site inspection on a
21 neighboring property, staff became aware that there was a
22 pier at this location and no lease had existed. In
23 addition, an eight-foot high chain-linked fence existed,
24 extending from the Vanderbeeks's property into Lake Tahoe.

25 In September of 2010, staff contacted the

1 property owners, the Vanderbeeks, requesting a lease
2 application for the pier and requested the owners remove
3 the eight-foot high fence that blocked the public trust
4 easement between the high and low waters along the shore
5 line and also encroached onto State lands.

6 Over the next seven months, staff continued to
7 request a lease application and removal of the fence until
8 April 2011 when upon threat of taking a trespass action to
9 the Commission an application an submitted on April 26,
10 2011.

11 In July of that year, Commission boundary staff
12 performed a survey at the site to locate the high water
13 mark and at the fence.

14 Within weeks of the survey, the Vanderbeeks
15 voluntarily removed the fence all the way back to the high
16 watermark.

17 From a search of records, the pier was
18 constructed sometime between 1939 and 1953. The
19 Commission began its leasing practices at Lake Tahoe in
20 the early 1950s. From those early records, staff found
21 1953 correspondence between the Commission and a previous
22 owner, Albert Miller, who we believe may have constructed
23 the pier.

24 At that time, staff contacted Mr. Miller and he
25 refused to go under lease. It's not clear to staff, but

1 subsequently, the Commission records did not have any
2 reference to this pier at that location. It should be
3 noted that at the time the pier was constructed, the only
4 agencies permitting pier structures at Lake Tahoe were the
5 Army Corps. of Engineers and Placer County.

6 We've been unable to determine if either agency
7 issued a permit at that time. It's also unclear when the
8 sundeck was constructed over the top of the boathouse and
9 the stairs added. The Vanderbeeks have been unable to
10 provide staff with any information about when and under
11 what permits the facilities were built.

12 The Tahoe Regional Planning Agency began their
13 permitting program in the 1970s and later adopted
14 ordinances that prohibited new boathouses and expansion of
15 existing boathouses which included additions such as a
16 sundeck.

17 During the application process, staff became
18 aware of a 1975 Declaration of Restrictions which provided
19 an access easement over the Vanderbeeks's lakefront lot
20 known as Area K to access a pier in Lake Tahoe. This
21 agreement set forth use and management of the Area K, the
22 easement, and the joint use pier by the Vanderbeeks and
23 the two back shore owners behind the lakefront parcel.
24 That would be Mr. Marston and Mr. Gage and Ms. Schacht's
25 properties.

1 Under the agreement, the Vanderbeeks retained
2 exclusive use of the boathouse with the sundeck, the
3 stairs, and the boat lift in the boathouse.

4 During this time frame, staff also became aware
5 that there were a total of four mooring buoys on State
6 lands that had never been authorized. Two buoys are owned
7 by the littoral owners, as I said before, the Vanderbeeks.
8 And those two buoys are subject of calendar Item 107. The
9 other two buoys are owned by the two back shore owners.

10 For the past year, staff has met with the parties
11 and their attorneys to bring an understanding to the
12 applicants of what type of lease and terms the Commission
13 staff was prepared to recommend to the Commission
14 regarding the joint use pier and the mooring buoys.

15 Today, staff recommends approval of a lease for
16 the previously unauthorized pier, boathouse, boat lift to
17 the applicants under calendar Item 106. However, there
18 are two lease provisions that the applicants together and
19 individually are opposed to.

20 One provision requires the Vanderbeeks to remove
21 the unauthorized sundeck and railing on the boathouse and
22 the stairs by June 30th, 2012. And the other provision
23 requires the removal of the Marston's buoys and the
24 Gage-Schacht's buoys located off-shore of the Vanderbeeks
25 littoral parcel and the Area K.

1 Further, staff recommends approval of the
2 separate lease to the Vanderbeeks for their two existing
3 mooring buoys located off shore of their property, which
4 is the calendar Item 107.

5 First, I'll speak to the sundeck removal
6 provision. Staff recommends removal of a sundeck,
7 railing, and stairs because it's both private residential
8 use and non-water dependent use of the public's waterway.
9 This recommendation is consistent with the Commission's
10 action in 2009 where the Commission required removal of a
11 sundeck, railing, and stairs from a previously
12 unauthorized joint use pier at Lake Tahoe.

13 You can move forward with the next two photos.

14 --o0o--

15 --o0o--

16 MS. HAYS: This is the pier that the Commission
17 required the sundeck and the stairs to be removed and then
18 the next photo. And this is after the removal of the
19 stairs and the sundeck.

20 For clarification, staff has recommended
21 inclusion of a sundeck and leases where the Commission has
22 previously authorized a lease where the lease file or the
23 exhibits in the agenda item showed evidence of a sundeck,
24 even if it was not expressly described in a prior lease.

25 In an earlier era prior, to the 1990s, Commission

1 leases did not describe in detail the individual
2 components of a pier. So an existing sundeck was in some
3 instances effectively approved by the Commission as part
4 of the approval of the lease.

5 In prior cases where the Commission required the
6 sundeck improvements removed, which included two, there
7 have been no prior lease -- there had been no prior lease
8 or the lessee had built beyond what was approved, and in
9 that case, installed a sundeck with a cabana and a
10 kitchen. In both cases, staff recommended removal and the
11 Commission required the removal.

12 If a sundeck, railing, and stairway were to be
13 proposed today, staff would not recommend approval of such
14 a structure as consistent with the public trust needs at
15 Lake Tahoe. This determination is supported by the fact
16 that the Tahoe Regional Planning Agency who regulates
17 structures in the shore zone does not allow the addition
18 of a sundeck to the top of an existing boathouse.

19 Next photo.

20 --o0o--

21 MS. HAYS: The next photo shows a recent
22 boathouse repair where the owner did add a railing to
23 create a sundeck. TRPA required its removal. The ladder
24 in the photo is not permanent. It's just temporary.

25 The other lease provision requires the removal of

1 the two existing mooring buoys owned by Mr. Marston and
2 the Gage-Schachts that are located off-shore of the
3 Vanderbeeks property.

4 Under TRPA regulations, a littoral owner may
5 qualify for up to two buoys offshore of the littoral
6 parcel. And Vanderbeeks have two existing buoys off shore
7 of their parcel.

8 In 2010, Mr. Marston and the Gage-Schachts
9 applied to TRPA for a permit to keep their buoys, but were
10 denied because they were not littoral owners and were
11 required to remove the buoys. To date, the buoys remain
12 in the lake.

13 Staff would not recommend approval of these buoys
14 to remain, knowing that they could not qualify for or
15 obtain the necessary permits in the future.

16 At the request of the applicant, staff is
17 recommending to include in the lease a provision requiring
18 removal of the two buoys and a one time extension for
19 complete removal of the two buoys to no later than
20 November 24th, 2012, in order to give all of the
21 applicants the opportunity to resolve the issue of
22 littoral status through an agreement that will provide a
23 littoral interest to the two back shore properties.

24 The extension requires all the applicants to
25 either form a homeowners' association, providing littoral

1 status for the three owners and therefore three buoys --
2 one for each member -- or enter into an agreement between
3 all the applicants for use of the two existing buoys under
4 calendar Item 107 by November 24th.

5 In the interim, Mr. Marston and the Gage-Schachts
6 will be required to immediately remove the buoy float and
7 drop the chain to the anchor in order to make the buoys
8 inoperable during this interim.

9 Based on the above, staff recommends the
10 Commission approve the recommendations in calendar Item
11 106 and 107.

12 Staff is available to answer any questions you
13 have. And I believe all the applicants are here.

14 ACTING CHAIRPERSON GORDON: Do we have anybody
15 who wishes to speak in favor of the staff recommendation
16 to remove the two buoys and remove the railing and
17 stairways? Anybody who wants to speak in favor? All
18 right.

19 Since nobody wishes to speak in favor, can we
20 have the opponents of the staff recommendation please come
21 forward to the microphone? One at a time, please. Thank
22 you. Identify yourself, sir.

23 MR. CHADWICK: My name is Braiden Chadwick,
24 Downey Brand, and I represent the Vanderbeeks.

25 Given the long calendar you have today and also

1 the favor that you've granted us with bumping us to the
2 front of the line as it were, I'll try not to belabor any
3 of the points and get straight to it.

4 Essentially, going along with the staff reports,
5 the Vanderbeeks' pier pre-dates World War II by all
6 accounts. And staff concede at least the current
7 facilities have been in place for at least 45 years.
8 That's in your staff report.

9 The pier and the ancillary structures, which is
10 what they're talking about trying to force removal of,
11 which amounts to the staircase and the safety railing.
12 The so-called sundeck is nothing more than the roof of the
13 boathouse. It is a dual purpose. It is not a sundeck as
14 it were. It's just the roof of the boathouse.

15 ACTING CHAIRPERSON GORDON: Do we know what years
16 the railing and stairs were added to the 45-year-old-plus
17 deck?

18 MR. CHADWICK: We do not. What we do know is
19 that my clients, the Vanderbeeks, purchased their property
20 in 1976. As of that date, the current structures, as you
21 see on all the photos, had existed for decades at that
22 point. So it had been there for a very, very long time.

23 Now, back in 2010 when my clients were approached
24 by State Lands Commission staff for getting under lease,
25 they were like many owners of the property on State lands,

1 sometimes they were unaware that they needed to be under
2 lease. They had been previously paying taxes to Placer
3 County on the pier. They had gone to TRPA and the pier
4 pre-dates TRPA's formation, of course. And so once they
5 were approached by State Lands Commission staff in 2010,
6 they worked diligently to resolve issues with the upland
7 owners on various issues, working with Senior Staff
8 Counsel Jim Fry for the State Lands Commission staff to
9 resolve some of those issues as well and then came forward
10 with the application that you have before you right now.

11 So there is no improvement. There is no history
12 of any improvement or any subsequent improvements to the
13 pier itself. It has remained as is, in the same condition
14 since the Vanderbeeks purchased the property in 1976. And
15 there has been no additions. There has been no
16 residential use, as it were, as far as kitchen sinks,
17 beds, fixtures, or anything like that. It's basically a
18 safety railing and staircase that leads to the roof of the
19 boathouse.

20 To cut to the chase here, my clients are very,
21 very happy to sign the lease. They have one issue, and
22 that's with Special Provision 9, which forces the removal
23 of the staircase and the railing. Otherwise, they're
24 happy to sign the lease. They're happy to pay additional
25 rents that are associated with the use of the roof of the

1 boathouse and have no problem with any of that.

2 All they're seeking is removal of Provision 9 of
3 their lease that would otherwise force removal of the
4 stairs and the railing.

5 I would like to very quickly address the 2009
6 action referred to by staff, because it's completely
7 distinguishable from the current situation we have here.

8 First of all, what I'd like to say is the 2009
9 removal dates back to 1969 when the Commission staff
10 actually approached that property owner and asked him to
11 get under lease. That property owner then thumbed their
12 nose at the Commission for over 30 years, refusing to get
13 under lease with the Commission.

14 During those 30 years, that same property owner
15 continued to build and build and build additional
16 improvements over those 30 years while ignoring the
17 Commission's request to get under lease. So what you
18 ended up with at the end of the day was a very large and
19 expanded use from what was originally tried to put under
20 lease in 1969.

21 And the last thing -- I think this is very
22 important that the Commission and staff acknowledge
23 this -- is that the 1969 -- rather the 2009 action they
24 referred to, that had to do with a private recreational
25 pier lease. Now, the Commission is well aware, I know,

1 that private recreational pier leases were free. You did
2 not pay the State any rent under private recreational pier
3 leases. And for that privilege of not paying any rent,
4 you had a very, very restricted use for private
5 recreational pier leases. Specifically, they did not
6 allow for sundecks.

7 What's being proposed for the Vanderbeeks, my
8 clients, today, is not a private recreational pier lease.
9 It is a general lease. A general lease allows things like
10 sundecks, as long as rent is being paid on the
11 improvements. And that, I think, is a very distinguishing
12 portion of this.

13 And the last thing that I'd like to say is that,
14 you know, with the Commission staff and working with the
15 Commission working with staff, Mary and Jim, to get this
16 resolved, I think we resolved all of the issues except for
17 that one, which is Item 9. And I'm happy to answer any
18 questions that the Commission may have on this issue. But
19 we think -- again, distinguishable from the 2009. We're
20 happy to pay rent in the additional area. My clients just
21 want to keep the facilities as they always have been for
22 at the very least the last 45 years.

23 ACTING CHAIRPERSON GORDON: Any comments?

24 COMMISSION MEMBER NEWSOM: General lease allows
25 sundecks, but this is not a sundeck. This is just a

1 railing. I just want to confer. I'm just trying to
2 understand, is this a sundeck from your perspective or
3 not?

4 MR. CHADWICK: I think it's dual purpose. It is
5 the roof of the boathouse. They do use it as a sundeck,
6 that's true. That's why the stairs are there and the
7 railing is there and they do throw a towel down and get a
8 suntan.

9 COMMISSION MEMBER NEWSOM: Curtis, what say you?
10 Seems like a lot of progress has been made.

11 EXECUTIVE OFFICER FOSSUM: Well, I think the
12 staff's position and concern has to do with a couple
13 things.

14 One, the Tahoe Regional Planning Agency has had
15 jurisdiction for 30 some years. There does not issue
16 permits for this type of construction. They have view
17 sheds and so forth they look very carefully at at the
18 lake. When we've had, as Mr. Chadwick said, situations in
19 the past where somebody has not had a lease for a long
20 time -- and the example was the one where -- and he's
21 accurate that the prior owner on the other application
22 where the Commission required the removal had refused to
23 come under lease, this property owner -- other than the
24 time apparently that there was contact made in 1953
25 between the Commission and the prior owner, it seemed to

1 drop off the face of the map as far as our involvement
2 there.

3 They have cooperated ultimately in removing the
4 fence that was blocking public access along the water.
5 But we're concerned about a precedent where people have
6 not obtained permits.

7 One of the things that TRPA does is if anybody
8 can verify that a facility has been on the lake since
9 before their jurisdiction, then they will grandfather
10 things in. So I think if there is some way that the
11 applicant can show that and that TRPA is willing to find
12 this as an existing nonconforming use, that would be a
13 different situation than the one where the Commission
14 previously required the removal of a deck.

15 But given the situation, I think we still stand
16 by our staff report that these kinds of facilities that
17 increase the intensive private use of an area of the
18 public's lake are not appropriate. But it's up to the
19 Commission to decide on each circumstance. Each case is a
20 case by case basis. Each piece of property is unique.

21 One of the things that TRPA is very concerned
22 about is the impact it has to the public for view shed.
23 Obviously, it's not taking any more footprint space if
24 you're putting a railing around it, a boathouse. But they
25 don't even allow boathouses anymore. TRPA does not permit

1 new boathouse or expansions.

2 The conference that was held up in Tahoe
3 yesterday with the Governor and Senator Fineststein
4 exemplifies the fact this is an important area that needs
5 protection. And the Commission has supported that in the
6 past. Sheri Pemberton was up there representing the
7 Commission yesterday with the Resources Secretary.

8 I think the idea is this is a very sensitive
9 area, and we don't want to intensify the uses. We want to
10 allow the public to enjoy the lake and we want the private
11 property owners to have an opportunity to use the lake for
12 their vessels and so forth. But uses that go beyond that
13 we've not been supportive and we wouldn't recommend them
14 to the Commission at this point in time.

15 ACTING CHAIRPERSON GORDON: Mr. Reyes.

16 ACTING COMMISSION MEMBER REYES: I'm struggling
17 with this because, as you point out, it does not increase
18 the footprint. Like in San Francisco where the air space
19 has some sort of value, what we deal with is the impact on
20 the lake and the footprint on the lake and the access by
21 other folks.

22 So if you were to turn -- if you were to look at
23 it and say, well, just the sundeck and it's really just
24 the roof with the railing around it, then the next phase
25 would be why not be able to put my Webber there because I

1 would reduce the risk of having to go down to land to
2 barbecue. And why not run gas lines so I don't have to
3 deal with charcoal which is higher risk than gas and so it
4 could go. That's the concern that I have.

5 I can appreciate where we provided -- we, as the
6 Commission, have provided leases that included some sort
7 of use of the roof in the past, and those leases are what
8 they are. And where folks did not have a lease, we have
9 the opportunity to take a look at it and say, should this
10 include the use of the roof as a sundeck or as the
11 extension of the backyard or not?

12 So it is -- I'm prepared to support the staff's
13 recommendation at this time.

14 EXECUTIVE OFFICER FOSSUM: We do have more
15 speakers that have identified they wish to address the
16 Commission on this.

17 MR. CHADWICK: I do think the other speakers are
18 on the buoy issue as opposed to the dock issues.

19 EXECUTIVE OFFICER FOSSUM: That's a good point
20 Mr. Chadwick brings up. This item is somewhat complex as
21 opposed to the following item, which staff is recommending
22 approval of the lease. And we are recommending approval
23 of the -- all the facilities, other than the railing and
24 the fact that there are additional buoys that are not
25 consistent with TRPA's regulations existing on the lakebed

1 right now. So the other parties may wish to address that
2 issue.

3 ACTING CHAIRPERSON GORDON: Well, just to move
4 this along a little bit so we get a sense of where the
5 Commission is going, I'm going to make a motion right now.
6 Okay.

7 The motion I would like to make is that we reject
8 the staff recommendation to not go forward with the lease.
9 It's a double negative. Let me put it a different way.
10 That we go forward with the lease with the following four
11 conditions:

12 Number one, that it be a general lease.

13 Number two, that additional rent be paid for the
14 railing and stairway so it can be used as a safe sundeck.

15 There be no additional fixtures added. If any
16 additional permanent fixtures were to be added, the lease
17 would be summarily terminated.

18 And four, that the lease indicate this is a
19 nonconforming use that has existed for in excess of 25
20 years.

21 The reason for that is for precedent value to
22 limit the number of folks who might come forward with
23 these issues coming forward. In the case where you have a
24 nonconforming use that has existed for at least 25 years,
25 that in the future the Commission will consider

1 grandfathering that in.

2 I would like to make that as a motion. And we'll
3 see then where the Commission is and we can go forward
4 from there.

5 ACTING COMMISSION MEMBER REYES: Can I seek
6 clarification on one of them?

7 On your additional rent, is the rent not based on
8 the square footage of the --

9 EXECUTIVE OFFICER FOSSUM: The practice that
10 we've been using for -- since we've been -- well, the
11 practice the Commission has used for a number of years is
12 based on a recreational use for docking purposes. And so
13 it's not a higher rent that we have in other areas where
14 it's more of a residential use.

15 For example, in Huntington Harbor where people
16 have built out over the water and a small deck area that's
17 attached to their backyard, which is somewhat similar to
18 this, increasing their ability to have a deck, the
19 Commission has separate formula for charging rent there.
20 It's significantly higher. It's treated more as a
21 residential use than a recreational for docking of boats.
22 The docking of boats rate is significantly lower.

23 And since we haven't been approving these, we
24 haven't yet adopted a new structure for that type of --
25 the staff has been looking into it, but we haven't been

1 bringing any of these to the Commission for approval. So
2 we haven't gotten to that point yet. But we can certainly
3 look at that.

4 But I'd like to seek a clarification as well on a
5 couple things. The nonconforming use, do we expect that
6 that requires some form of proof that's acceptable that it
7 has been there for 25 years?

8 ACTING CHAIRPERSON GORDON: Yes.

9 EXECUTIVE OFFICER FOSSUM: And secondly, when you
10 said if they add any fixtures, the lease would be
11 terminated. That, in fact, is something that the former
12 Lieutenant Governor Garamendi had put into a lease on the
13 Sacramento River. Not that they had to remove it, but
14 their entire lease would cease and they had to remove all
15 facilities.

16 ACTING CHAIRPERSON GORDON: That is exactly what
17 I'm intending in the motion, that upon addition of
18 permanent fixtures the entire lease would be terminated
19 immediately.

20 Mr. Chadwick, on the motion specifically, and any
21 other witnesses specifically on that motion?

22 MR. CHADWICK: No, I don't think so. No, I think
23 that all makes sense. My clients are in accordance with
24 that and happy to incorporate that into the lease and be
25 willing to sign it.

1 EXECUTIVE OFFICER FOSSUM: We would have to come
2 back to the Commission with the rent amount.

3 ACTING CHAIRPERSON GORDON: Exactly. So we have
4 agreement with the lease holders. Do I have a second for
5 that motion?

6 COMMISSION MEMBER NEWSOM: And just before -- be
7 happy to move that. Who are the folks waiting to speak?
8 Do they have anything they want to add to this discussion
9 before we move forward?

10 EXECUTIVE OFFICER FOSSUM: Your Chief Counsel
11 suggests that we with defer the action and come up with an
12 agreed amount at the next meeting for the -- as far as the
13 rent that would be charged for the sundeck.

14 Of course, one of the things we're having to face
15 right now also is the other property owners who are not
16 littoral to the lake, but have this private right with the
17 applicant, the Vanderbeeks, here to use to get to the lake
18 and use their dock. And the issue there is the buoys. So
19 whether you want to take that up separate.

20 ACTING CHAIRPERSON GORDON: I want to split the
21 two issues. Let's deal with this one first.

22 I'm hearing from the Commission that maybe we
23 don't need to take a vote today on this issue.

24 What we need to do is give direction to staff to
25 come up with an agreed-upon amount in the rent with the

1 other terms that we have identified and that the potential
2 lease holders provide adequate proof that the pier with
3 the railing and stairs has existed for more than 25 years.
4 Okay.

5 And I'm seeing them nodding their heads. They
6 believe they have that proof. So I don't -- we need to
7 move along today, so we're not going to vote on this issue
8 today. We will bring it back in hopefully the October
9 meeting, and we'll hopefully have a lease before us that
10 everybody is in agreement on.

11 Is that acceptable to all concerned?

12 EXECUTIVE OFFICER FOSSUM: As to the buoy issue
13 and the recommendation of the Commission, staff on the
14 buoy issue was that the -- until such time as the Schachts
15 and the Gages and the Vanderbeeks enter into some kind of
16 an association -- homeowners' association so they would
17 qualify under TRPA rules for an additional buoy, that the
18 two buoys that are beyond the number that would be
19 permitted, that the buoys be removed and anchors and
20 chains dropped and giving them outside time in which to
21 work with the Vanderbeeks to come up with compliance with
22 TRPA's rules so we're not violating TRPA's rules by giving
23 these.

24 ACTING COMMISSION MEMBER REYES: That would be
25 splitting the issue. So we're trying -- the buoy comes

1 second. So on the first issue, on 106, I think
2 notwithstanding your nonconforming use, the 25 years
3 issue, I suspect other folks will come forward. So I
4 would really like to see staff come up with a generic
5 process for that determination, because I suspect that's
6 sort of what we're looking at now.

7 But with that, I think that putting this off
8 makes sense so that I would like to see what the
9 additional rent is going to be and hopefully this will be
10 a consent item.

11 ACTING CHAIRPERSON GORDON: Vanderbeeks, is there
12 anything you folks would like to add to that or are you
13 content with where we are right here?

14 MR. VANDERBEEK: The pier was like this in '76
15 when we bought it. So that's a lot more than 25 years.

16 ACTING CHAIRPERSON GORDON: Very good. I think
17 we're going to put 106 aside. We will put the issue over
18 until our next hearing.

19 I see counsel is -- Jennifer.

20 CHIEF COUNSEL LUCCHESI: We still have to deal
21 with the buoy section.

22 EXECUTIVE OFFICER FOSSUM: That's a separate buoy
23 issue. I think 107 we could have put on consent, but we
24 wanted the Commission to consider 106 first. There is no
25 objection from anybody for 107.

1 As to 106, in front of the Vanderbeek's property
2 are three buoys. Under TRPA -- four -- excuse me --
3 buoys. And under TRPA's rules, they're only entitled to
4 two. That's what the Commission has been acting
5 consistent with that, so that each individual property
6 owner who is littoral to the lake is entitled two buoys.
7 The Schachts and Gages are not littoral.

8 So technically, they're not entitled to any
9 buoys, except the exception to this rule is that
10 homeowners' association are entitled to one each for
11 property. So if there was a homeowners' association,
12 Vanderbeeks would lose one of their buoys presumably and
13 the total number would be three, as opposed to four.

14 So right now, two of the buoys are -- the staff
15 is recommending approval. And two buoys would have the
16 chains dropped and the floats, until they were able to
17 show later this year, hopefully -- I think it's
18 November -- that they were able to comply with TRPA's
19 rules.

20 ACTING CHAIRPERSON GORDON: Are both of the
21 buoys -- explain to me -- so recommending that two buoys
22 be allowed to stay and both the Vanderbeeks and the other
23 landowners who are not littoral under the staff
24 recommendation would get no buoys until this issue is
25 resolved?

1 EXECUTIVE OFFICER FOSSUM: That's correct. They
2 wouldn't be approved. We would allow them to keep the
3 chain and anchor. If they're able to get their permit --
4 excuse me -- get their compliance with TRPA's rules, we
5 would allow them to re-attach the buoys and recommend
6 Commission approval.

7 ACTING CHAIRPERSON GORDON: I do understand there
8 are a few people who would like to speak to this issue.

9 Mr. Chadwick, are you on this issue or are you
10 done?

11 MR. CHADWICK: The only thing on this issue that
12 I would have, again barring anything that's said later on,
13 is that we have no objection to the other parties keeping
14 their buoys at all. That's why we included them in our
15 application for this lease and support them.

16 If the issue really is getting TRPA to approve
17 the buoys and be okay with all four of them, we see no bar
18 to the Commission approving all four buoys and then
19 letting TRPA sort it out and let them come up with how
20 many buoys their policy allows. So we support them, but
21 have nothing more to say on this issue.

22 ACTING CHAIRPERSON GORDON: Why don't we bring
23 the other witnesses forward so we can get to the bottom of
24 this.

25 MR. GAGE: I'm John Gage.

1 MS. SCHACHT: I'm Linda Schacht.

2 MR. MARSTON: I'm Bob Marston.

3 MR. GAGE: We're the three. As has been
4 described, we're the three upland owners.

5 But the history of this is the land that first
6 had the pier built was one piece of property. It was in
7 1975 divided. Therein lies the problem. And we are in
8 this gap in between TRPA regulations and establishing the
9 State lease.

10 If we could go back in the images to Mary
11 Hays's -- that would do. Go back several more to show you
12 a picture of the dock.

13 There we are. So there it is. That was built
14 pre to World War II. The left side is the boat pier.
15 You've discussed that. That's 100 percent of the
16 Vanderbeeks. The right side is shared by this declaration
17 of restrictions and association, which in 1975 seemed like
18 an association. And it lays out the rules for dividing
19 the taxes and the maintenance amounts.

20 That's how it was when Bob Marston lived there
21 permanently in the early 1980s. He moved there and lived
22 there. He raised his family there.

23 Our view is the four buoys that were there from
24 pre-World War II fall in precisely the spirit of your
25 earlier motion. They were there. Here we are. We would

1 just like to maintain them.

2 And we appreciate the enormous effort of the
3 staff, of Executive Director Fossum, and Mary Hays in
4 helping us reach a status -- with the shadowy status with
5 TRPA not being legally constrained from acting.

6 ACTING CHAIRPERSON GORDON: Staff, is there any
7 dispute that the buoys exist pre-World War II?

8 EXECUTIVE OFFICER FOSSUM: There hasn't been any
9 evidence submitted to us to identify that.

10 There is a series of photographs, the early ones
11 are very difficult to determine anything because of the
12 height the photos were taking from the air.

13 But again, neither TRPA or we have seen any
14 documentation that they complied with TRAP. Because
15 again, TRPA does grandfather buoys in if they have been
16 shown to be there at the time the TRPA was created in the
17 70s. Even if they were there in the 70s, TRPA wouldn't
18 object to it. However --

19 ACTING CHAIRPERSON GORDON: Do you have a hearing
20 scheduled with TRPA?

21 MR. GAGE: There is a document, a document that
22 establishes that association and the shared use of this
23 pier, the ownership of this pier. Says the reason we have
24 this pier is so that the buoys boat -- this is in 1975 --
25 the buoy boats for all the owners can go to their buoys.

1 So it's in the language that establishes the declaration.
2 So there clearly were buoys.

3 ACTING CHAIRPERSON GORDON: Do you have a hearing
4 scheduled before TRPA currently with regard to the status
5 of the buoys?

6 MR. MARSTON: No.

7 ACTING CHAIRPERSON GORDON: What is the status of
8 the application to TRPA for a grandfathering of the buoys?

9 MR. MARSTON: Again, as far as I know -- Mary
10 would have to address this. I think when we turned in an
11 application through an attorney, and I believe it was
12 rejected.

13 MS. HAYS: Yeah. We clarified this with TRPA and
14 we have a copy of the denial letter in our files.

15 ACTING CHAIRPERSON GORDON: What is the date on
16 that, ma'am?

17 MS. HAYS: I believe it was in 2008 or 2009.

18 ACTING CHAIRPERSON GORDON: Oh, was it ever
19 appealed?

20 MS. HAYS: I'm not sure if they even have an
21 appeal process. Because the denial was based on it didn't
22 meet their ordinances. They were denied because they were
23 not a littoral owner.

24 MR. MARSTON: The one point I want to make, the
25 reference to having photographs that show the buoys there

1 in 1974 or '5, when we met with Mary -- and she's been
2 very helpful trying to assist us through this, by the
3 way -- she mentioned there was some photographs from 1952
4 that showed our buoys. And that's in excess -- almost 60
5 years. It just seems to us that if we can't grandfather
6 something in from 60 years -- I guarantee they were in
7 there before the 60 years is when the house was built in
8 the '20s. The guy was kind of a philanthropist apparently
9 and liked to have a lot of people come over and visit him.
10 He had lots of buoys out there, some of which have been
11 removed, I believe.

12 But I have a little PowerPoint I'd like to put on
13 just to go through what we're doing here.

14 I think Mary has done a good job in interpreting
15 the rules and trying to get us to conform with that. But
16 I'm going to try to show that basically the rules require
17 you drive from Point A to Point B in a Chevrolet and we're
18 driving a Ford. If you look at it with that idea, I think
19 you'll understand where I'm coming from. If you can go to
20 the next slide there.

21 --o0o--

22 MR. MARSTON: That is a picture of the properties
23 up at the top, that horizontal box right there. That's
24 the Gage's house.

25 The next lot there is mine. And the one in front

1 the State's convenience. These buoys were not plopped in
2 here in the last few months or the last few years. I
3 think that's part of the goal of the Commission here is to
4 get rid of people that just broke the rules. These have
5 been around before there were rules. I think that we
6 appreciated that was taken into consideration.

7 Next slide.

8 --o0o--

9 MR. MARSTON: Part of the requirement in order to
10 have buoys on the lake is to show that you've maintained
11 them. This is an invoice for my buoy. If you go to the
12 next slide --

13 --o0o--

14 MR. MARSTON: This is an invoice for the Gage's
15 buoy. We have multiple invoices. I didn't bring them
16 along.

17 --o0o--

18 MR. MARSTON: This is our declaration of
19 restrictions that came with the property. This, in
20 essence, is a quasi-association. It has all the
21 components and parts. It lists all the people that are
22 involved in the common areas. It defines the common areas
23 and use of the pier, the buoy boats, and goes through --
24 if you go to the next page.

25 --o0o--

1 MR. MARSTON: I'm not going to read the whole
2 thing. I'll bore you to death.

3 But the first paragraph up there pretty much
4 talks about access and use of the common areas and dock.

5 The third paragraph down talks about the buoy
6 boat in that little section right in there that everybody
7 is to use in order to access the buoys they have off
8 shore.

9 Next page, please.

10 --o0o--

11 MR. MARSTON: Then that top paragraph, it goes
12 through the ownership. You can see the various
13 percentages there. That's been modified some. Lot A no
14 longer has rights, so it's only B, C, D. This is the
15 original document, and I think we're talking about going
16 back in time to discuss this, not just what's current.

17 --o0o--

18 MR. MARSTON: That first paragraph sets parcel D
19 as the administrator, which is also part of an
20 association. You have to have some level of
21 responsibility.

22 The next paragraph there -- let's see. Can you
23 go back a little bit?

24 --o0o--

25 MR. MARSTON: The middle of the paragraph or the

1 middle of the page there, it talks about resolution
2 through legal means, arbitration, et cetera. So again, it
3 has the components of an association and the means to
4 settle disputes.

5 The bottom paragraph sets a time period. The
6 original time period was 30 years. That has subsequently
7 passed. And then it goes on for ten-year periods that
8 automatically renew, unless there is a majority vote to
9 change it. And that has not occurred.

10 The next --

11 --o0o--

12 MR. MARSTON: -- page is just all of the official
13 documentation showing it's all registered and so forth.

14 The next page, please.

15 --o0o--

16 MR. MARSTON: This particular document, which is
17 the Tavern Heights. And it goes from -- geographically,
18 it goes from Sunnyside all the way down to the Fanny
19 Bridge, which incorporates our property in that swath.

20 And this particular document talks about how the
21 area will be used for general leisure and not for
22 commercial venture. And it also -- it doesn't mention
23 anything about having buoy permits or buoy leases.

24 And my point is that there was really nothing we
25 could have done until this came upon us and suddenly

1 decided that we have to comply with regulations that we're
2 so close to meeting, but they can be given some
3 understanding here, I think we can see through it.

4 The next page, please.

5 --o0o--

6 MR. MARSTON: You can keep going.

7 --o0o--

8 MR. MARSTON: Okay. Keep going.

9 --o0o--

10 --o0o--

11 MR. MARSTON: Okay. This is the new
12 modernization and expansion of the Tahoe City Marina. I
13 only bring this up. You can see the existing marina is in
14 the center. It's that square. And to the right is Phase
15 2. And to the left is Phase 1. Here, they add 80 some
16 odd slips. It just seems unbelievably weird to be adding
17 all these boats to the lake and want to get rid of two
18 miserable buoys.

19 Next page, please.

20 --o0o--

21 MR. MARSTON: Mary referenced this earlier, that
22 staff has given us until November 24th to come up with
23 some means of complying with everything.

24 And my point being here today is that we'd like
25 to be able to use what we've got and not have to go into

1 any further restructuring or any other legal means to make
2 this happen.

3 If you can go to the next slide, please.

4 --o0o--

5 MR. MARSTON: So this kind of reiterates
6 everything we've said here.

7 Our buoys have been in existence for a minimum of
8 60 years. Most likely 70, 80 years since the 20s.

9 Two, the existence of the buoys for this time
10 period exceeds the Corps. of Engineers' regulation for
11 grandfathered in before December 18, 1968. I think that's
12 a big deal. The Corps. of Engineers is not some stock
13 outfit.

14 Item three, the current 1975 Declaration of
15 Restrictions are structured much the same as an
16 incorporated association without the incorporation. This
17 document allows for meetings, sharing of property, taxes,
18 maintenance, shared and joint access to common property,
19 as well as rules and guidelines for day-to-day operation.

20 Item four, Marston and Gage pay property taxes
21 and maintenance on the pier.

22 Item five, Marston and Gage have been maintaining
23 the buoys per the specification of the State Land
24 Commission and TRPA.

25 Item six, State Lands Commission has authorized

1 Marston/Gage to keep the buoy bottom weights but remove
2 the floats, drop the chain until the November 24th.

3 And number seven in the 24 years, '88 to '12,
4 that I have lived there and raised my kids, we have not
5 received any information from the State agency stating our
6 buoys were illegal or required specific permits or leases.

7 So our request -- the buoy lease request State
8 Land Commission elect to allow the buoys the continue to
9 exist in their current form Marston/Gage and Marston/Gage
10 pay yearly cost going back some retroactive time period if
11 these things -- even though we aren't claiming we're at
12 fault. But if you want to go back ten years and say we
13 owe you a thousand bucks a year, we'll pay that. You guys
14 get more money and we end up having a couple buoys on the
15 lake.

16 And we'll pay for any added expense it takes for
17 State Lands Commission to put this thing together. If it
18 costs \$5,000 for the people to do this, we aren't asking
19 for anything special. We're just asking for some
20 reasonable level of sanity here, please. That's it.

21 ACTING CHAIRPERSON GORDON: Ms. Lucchesi, you
22 clarify one legal issue?

23 Since TRPA has denied the buoys, what are the
24 legal ramifications of State Lands going forward? I'm not
25 quite following exactly how the two agencies work

1 together. Is it you go form shopping, you get it from one
2 or the other? Is it we have to approve if TRPA doesn't?
3 If TRPA turns down, what are the legal ramifications of
4 those different circumstances?

5 CHIEF COUNSEL LUCCHESI: Our typical lease
6 provisions require that our applicants receive all other
7 necessary permits, regulatory permits from both local,
8 federal, and State agencies. And so if they have a permit
9 denial from TRPA, then they cannot comply with our
10 boilerplate lease provisions. They're in immediate
11 default.

12 ACTING COMMISSION MEMBER REYES: I guess the
13 question on that I have is if TRPA has been known to
14 grandfather, it looks like you're making a compelling case
15 you've been there since before TRPA. Why were you not
16 successful with TRPA? That's where I'm stuck.

17 MR. MARSTON: Why were we not successful? We
18 were not successful because they wanted us to have a
19 formal incorporated association. And what that will do,
20 it impacts the Vanderbeeks because they lose a buoy. And
21 again, we've had all these buoys all this time for 60-plus
22 years and more likely 70 or 80 years. And again,
23 according to the Army Corps. of Engineers, they will allow
24 stuff past '68 roughly.

25 ACTING COMMISSION MEMBER REYES: But what I heard

1 people say was that on the current regulations as the
2 homeowners' association, you each get one. Or the other
3 family just gets their two. You don't get one because of
4 your location.

5 But I also heard that TRPA grandfathers in if you
6 can show they've been there. I'm at a loss why your
7 compelling case was not compelling to TRPA.

8 MR. GAGE: We think there was a pro forma refusal
9 because we were not littoral. So they decided to tighten
10 and say only littoral. And they were not aware that we
11 were an association formed by that declaration of
12 restrictions. It's kind of loose 1975-ish thing.

13 ACTING COMMISSION MEMBER REYES: On the one hand,
14 you say you're an association. On the other hand, you say
15 you don't want to form an association also.

16 MR. GAGE: No. In fact, we have been attempting
17 to form an association. We'd really like to very much so.

18 EXECUTIVE OFFICER FOSSUM: That's why we were
19 prepared to let them keep the chain and anchor out there
20 until November to get that formation put together so they
21 can comply with TRPA's rules and then they would have all
22 four buoys.

23 MR. MARSTON: Our point is we'd like to keep the
24 situation as it is. We'd like to keep our two buoys,
25 allow the Vanderbeeks to have their two buoys. And given

1 the fact these buoys have been there for an incredible
2 period of time, we feel it should be allowed to be
3 grandfathered in.

4 Again, we aren't somebody that just dumped some
5 buoys in here last month or two years ago or five years
6 ago. These things have been there almost -- longer than
7 I've been around. That's enough.

8 EXECUTIVE OFFICER FOSSUM: I don't think staff
9 has any objection to them having them. The question is
10 are we countessing violation of TRPA's rules by giving
11 them a lease at this point in time.

12 ACTING COMMISSION MEMBER REYES: That's my
13 concern there.

14 COMMISSION MEMBER NEWSOM: Is it a substantive
15 legal issue there?

16 EXECUTIVE OFFICER FOSSUM: I think Jennifer
17 described it in that all our leases require compliance
18 with local rules and regulations.

19 TRPA, for some of its plans right now, they're in
20 a hiatus because of litigation that was brought against
21 them. And one of the things that's held up is new permits
22 for buoys. However, you know, this whole sticking thing
23 seems to be around the idea that they cannot get their
24 association together. And whether that takes another
25 six months, another six years or ever, we don't know.

1 But this has been going on for some months
2 already as far as suggesting they get an association
3 together. It's a private thing between these three
4 parties. They have their 1975 agreement restriction
5 covenants, but it doesn't call it out as an association.
6 So TRPA has denied it. Until they change their mind,
7 we're kind of locked into this situation of not trying to
8 do something that would violate TRPA's rules.

9 ACTING CHAIRPERSON GORDON: Where I am right
10 now -- I could probably be convinced by either of the
11 other Commissioners to change my mind -- is that leaving
12 things as they are and leave the buoys exactly as they are
13 for a short period of time, pending an application to
14 TRPA, which will require a formal association to conclude
15 those negotiations is where I'm leaning. But I'm waiting
16 to hear from the other Commissioners as to where they want
17 to go with this.

18 So what staff is recommending is you're able to
19 keep the chain and the anchor, but you have to remove the
20 buoy while the stuff is going forward. The alternative
21 would be to allow the chain and the anchor and the buoy
22 while this thing is going forward. It strikes me as those
23 are the two paths in front of us.

24 COMMISSION MEMBER NEWSOM: Through the Chair, you
25 would still hold to the November date?

1 ACTING CHAIRPERSON GORDON: We have an October
2 meeting; right? Is that -- I think it's in October.

3 EXECUTIVE OFFICER FOSSUM: I think what you're
4 recommending is that the Commission not enforce the
5 requirements that they obtain the permit until that date.
6 And so we would just allow them to keep their buoy during
7 the rest of this season.

8 ACTING CHAIRPERSON GORDON: That would be what
9 I'm considering. I'm not making that recommendation yet.
10 But just to keep the status quo, pending these two
11 conditions and bring this back to us in October.

12 EXECUTIVE OFFICER FOSSUM: And this was before
13 the Commission two months ago when the applicants asked it
14 be put over because some of them couldn't attend. So they
15 have had the benefit of the two months this summer of
16 buoys, but it's the Commission's discretion.

17 COMMISSION MEMBER NEWSOM: I think they deserve,
18 based on the presentation today, the opportunity to see us
19 one more time and work through some of these issues. So I
20 would support that. Removing them at this stage, it's not
21 a big enough deal for me. And it's a huge deal for them.
22 So I would submit support for the Chair's motion.

23 ACTING COMMISSION MEMBER REYES: With some sort
24 of time line.

25 COMMISSION MEMBER NEWSOM: The next --

1 EXECUTIVE OFFICER FOSSUM: One of the things as
2 you've already deferred or are preparing to defer this
3 item to the next meeting so we can establish a rent and --

4 COMMISSION MEMBER NEWSOM: Good point.

5 EXECUTIVE OFFICER FOSSUM: -- we certainly could
6 do likewise to the rest of it we're discussing with the
7 buoys.

8 ACTING CHAIRPERSON GORDON: So let me see if I
9 can summarize. We don't need to take a vote today.
10 But -- and please take this very seriously -- all three of
11 us want this resolved by the October meeting. You need to
12 get yourself a homeowners' association. You need to apply
13 to TRPA by that meeting. And we're going to need proof
14 that application is pending at TRPA. I'm not suspecting
15 they will rule on it by then. We need those conditions to
16 be met. Based on that, all three members of the
17 Commission are willing to let you keep the buoy until that
18 time.

19 ACTING COMMISSION MEMBER REYES: One thing I did
20 hear was that TRPA is not considering permitting right
21 now. So it is a moot point to request they do an
22 application, because TRPA is not going to decide on
23 anything in the short time.

24 So you, in effect, are allowing them to continue
25 with the use without a lease. And that seems to me to be

1 somewhat problematic. I mean, you're basically saying go
2 forth without a lease, although the homeowners are willing
3 to go on the lease and pay in arrears.

4 The issue goes to do you want to approve the
5 lease without the necessary permitting required and when
6 the other regulatory agency in the area, TRPA in this
7 case, has already denied such a permit.

8 EXECUTIVE OFFICER FOSSUM: That's a good point,
9 Commissioner, as I think -- what we understand is that
10 TRPA will not reconsider their prior denial unless an
11 association has been formed. So it's really up to these
12 parties to go to TRPA with an association before the next
13 meeting to be able to comply.

14 ACTING COMMISSION MEMBER REYES: In that case,
15 TRPA is going to give them three, one per family, and not
16 the four.

17 EXECUTIVE OFFICER FOSSUM: Presumably.

18 MR. MARSTON: Can I interject real quick? Is it
19 possible to ask staff to look at our deed of restrictions
20 and see if they can interpret that as the equivalent of an
21 association?

22 EXECUTIVE OFFICER FOSSUM: It's not our
23 restriction. It's TRPA's restriction. The Commission is
24 only trying to comply with regional government
25 restrictions that they have and not do something

1 contradictory to that.

2 We could include it as an association. But
3 unless TRPA does, you haven't gotten what you need.

4 MR. MARSTON: Okay. If we were able to get --
5 it's T-R-P-A; right? I've never heard it called TRPA.
6 I've heard a lot of other things but not that. Anyway --

7 (Laughter)

8 ACTING CHAIRPERSON GORDON: You're on mike.

9 MR. MARSTON: Maybe we can see if we can convince
10 them and get back to you.

11 LAND MANAGEMENT DIVISION CHIEF BUGSCH: Not to
12 add complication to this. But while we have all the
13 parties here, this could kind of go away if the
14 Vanderbeeks would agree to do the association. There
15 is -- just an explanation. They have a neighboring parcel
16 that at the last Commission meeting we approved two buoys.
17 They would get two more buoys with this parcel. So they
18 would have a total of four parcels. If they were to give
19 up one of those buoys and allow that -- and form the
20 association, you'd have -- these two could have their
21 buoys. They would get one less buoy. They would have
22 three buoys among these parcels.

23 That's why these two are enjoined. I didn't know
24 while you had all the things here if you could get the
25 Vanderbeeks to agree to that. And maybe this could all go

1 away.

2 ACTING COMMISSION MEMBER REYES: That is not our
3 fight.

4 ACTING CHAIRPERSON GORDON: I think what we are
5 willing to do is give direction to get a homeowners'
6 association taken care of prior to the October meeting.
7 If that is done, then how the buoys fall after that we
8 will deal with.

9 But the recommendation -- yeah, the
10 recommendation from us is we will deal with this at
11 October. We're not going to kick the can down the road
12 beyond that. Whatever you folks need to do with regard to
13 the buoys by that date, we need to see a homeowners'
14 association.

15 EXECUTIVE OFFICER FOSSUM: Or removal of the two
16 buoys.

17 ACTING CHAIRPERSON GORDON: Or removal of the two
18 buoys.

19 I'm hoping that is the end for this item. Now
20 we're going to move to the far less controversial item
21 which is 103, Pacific Gas and Electric seismic studies off
22 of the Diablo Canyon Nuclear Power Plant.

23 Staff, please come forward on item 103.

24 ACTING COMMISSION MEMBER REYES: What did we
25 decide on 107?

1 ACTING CHAIRPERSON GORDON: Stop one second.

2 We need to take 107 up for a vote. Do we need --
3 is that a consent item? Do we need someone to present on
4 107? No. Okay.

5 ACTING COMMISSION MEMBER REYES: That's basically
6 approving the two buoys for the Vanderbeeks; right?

7 EXECUTIVE OFFICER FOSSUM: That's correct. It
8 would have been on consent, except depending on what
9 happened on this.

10 They will have their two buoys if you approve
11 this. They already have two buoys on an adjacent parcel.
12 As Brian was mentioning, this will give them the four.
13 The question is those other two buoys that don't comply at
14 this point.

15 Staff recommends approval.

16 ACTING COMMISSION MEMBER REYES: So moved.

17 ACTING CHAIRPERSON GORDON: Second?

18 COMMISSION MEMBER NEWSOM: Second.

19 ACTING CHAIRPERSON GORDON: All those in favor?

20 (Ayes)

21 ACTING CHAIRPERSON GORDON: Opposed?

22 Item 107 is approved under unanimous vote.

23 Item 103, PG&E, Diablo Canyon.

24 Staff, please come forward.

25 EXECUTIVE OFFICER FOSSUM: Item 103 is the Port

1 of San Francisco.

2 ACTING CHAIRPERSON GORDON: Oh, yeah. I'm sorry.
3 Let's do Port of San Francisco first. 103.

4 (Whereupon a slide show presentation was made
5 as follows.)

6 CHIEF COUNSEL LUCCHESI: Chair, Commissioners, I
7 will be giving the presentation on this one. I'm just
8 going to give it a second to pull up our PowerPoint.

9 Item 103 asks the Commission to consider a land
10 exchange agreement between the State of California acting
11 by and through the Commission and the City of County of
12 San Francisco acting by and through the port involving
13 certain parcels of land located within Seawall Lot 351 and
14 the 8 Washington Street property.

15 You can see the general project site right there.
16 The Ferry Building as you're looking at the picture is to
17 your left. The project site involving the lands involved
18 in this exchange are highlighted in red.

19 --o0o--

20 CHIEF COUNSEL LUCCHESI: The Commission -- it's
21 important to note the Commission is not being asked to
22 approve any proposed development projects involving this
23 property, only a land exchange pursuant to a 1987 statute.

24 One thing before I get into the details of the
25 exchange that I do want to clear up is that there have

1 been numerous questions and issues raised relating to a
2 conflict of interest on all three Commissioners and
3 offices that you serve in. And based on advise and
4 consultation with the Attorney General's office, we do not
5 believe that any conflict exists for the Commission to
6 consider this land exchange.

7 Also, I want to correct one mistake in the staff
8 report, specifically on page 3, the first full paragraph.
9 The developer has proposed to develop a subsurface parking
10 facility that includes no less than 175 spaces and no more
11 than 200 spaces, not 255, to be available to the public.

12 --o0o--

13 CHIEF COUNSEL LUCCHESI: The trust termination
14 parcels include portions of Seawall Lot 351 and are
15 approximately .53 acres in size. The trust termination
16 parcels on the side are highlighted in green.

17 Pursuant to an 1878 statute, these trusts
18 termination parcels were filled as a result of the
19 construction of the new seawall for harbor development.

20 The trust parcels, which are approximately .65
21 acres in size, includes lands that were quit-claimed free
22 of any trust interest in 1962 by the State to the
23 Redevelopment Agency of the City and County of
24 San Francisco pursuant to a 1959 statute. Those trust
25 parcels are highlighted in yellow on the slide.

1 Through a number of different conveyances, the
2 trust parcels were ultimately acquired by the Golden Gate
3 Holding Corporation. Under the proposed agreement, upon
4 receipt of the trust parcels from the developer, the City
5 will convey the trust parcels to the Commission, which
6 will impress the parcels with the public trust before
7 conveying the trust parcels back to the City, subject to
8 the trust. The City will convey the trust determination
9 parcels to the Commission, and the Commission will convey
10 them back to the City free of any public trust interest.

11 --o0o--

12 CHIEF COUNSEL LUCCHESI: San Francisco Waterfront
13 Partners holds an option -- they're the developer -- holds
14 an option to purchase the 8 Washington Street property and
15 is entering into a lease disposition and development
16 agreement and purchase and sale agreement with the port,
17 pursuant to which the developer will convey the trust
18 parcels to the City.

19 The developer proposes to develop the trust
20 termination parcels with predominantly non-trust uses,
21 including condomineums, a tennis and swim club, and a
22 subsurface parking facility.

23 In addition, the developer proposes to improve
24 the trust parcels with entirely trust consistent
25 improvements, including a public park, restaurant, and

1 Francisco Bay by the Embarcadero and constitutes a
2 relatively small portion of lands granted to the City.

3 The trust termination parcel and trust parcel
4 were each appraised at their fair market values by
5 Carnegie Bloom and Partners in December 2011. Staff has
6 reviewed the appraisal and reached an independent
7 conclusion that the monetary value of the trust parcel is
8 greater than the monetary value of the trust termination
9 parcel.

10 The trust termination parcel has been used for
11 decades as a small surface parking lot that, while
12 primarily serving the Ferry Building, is not restricted to
13 just serving the waterfront. Because of the small size
14 and irregular shape, the current use appears to be its
15 highest and best use, which is also an inefficient use of
16 trust property at this particular location.

17 As detailed in the staff report, there will be a
18 temporary loss of parking during the construction of the
19 proposed development. However, there will be alternative
20 off-street parking facilities with the availability to
21 address this temporary loss.

22 As part of the proposed development by the
23 developer, no less than 175 parking spaces of the parking
24 facility will be dedicated to the public for its use.
25 Additionally, the agreement provides as a condition

1 precedent to the close of escrow any development must
2 include a binding obligation to provide new public parking
3 spaces, the number of which equal or exceeds the number of
4 existing spaces at Seawall Lot 351, the trust termination
5 parcel.

6 As such, the trust termination parcels are not
7 necessary or required for the promotion of the trust. For
8 these same reasons and as a result of the small size and
9 irregular shape of the trust termination parcel, the
10 proposed agreement will not cause any substantial
11 interference with trust uses and purposes.

12 In contrast, the trust parcel will be developed
13 into a public park, restaurant, and visitor serving retail
14 facilities, providing open space and direct visual and
15 public access to Pier 7, a public pier which you can see
16 on this picture is that open pier right next to the
17 buildings along the waterfront and San Francisco Bay. The
18 park is there on the right.

19 The trust parcels is -- what will be coming into
20 the parcels, not where the tennis courts are, but to the
21 right. Thank you.

22 Based on the information submitted to the --
23 excuse me.

24 The trust will also obtain numerous additional
25 benefits from the proposed development in exchange, even

1 though these aren't required for the findings the
2 Commission must make, including a one-time payment of \$3
3 million and a transfer fee of one percent on all
4 condominium unit sales after the initial sale. What that
5 means is the trust, the port, will be receiving revenues
6 from the transfer of the condominium sales on trust
7 termination lands, lands they don't own.

8 The port will then lease the trust parcel to the
9 developer on reasonable terms, including \$120,000 per year
10 plus 15 percent gross revenues the developer receives once
11 the improvements are constructed. The developers will
12 also be obligated for maintenance and operation of the
13 trust parcels.

14 Based on the information submitted to the
15 Commission and the information contained in the staff
16 report, this presentation, and the testimony provided to
17 you today, staff recommends that the Commission make the
18 requisite findings detailed in this presentation and the
19 staff report in addition to a finding that the agreement
20 will not create a substantial interference with public
21 rights of navigation and fishing.

22 That concludes my presentation. We're available
23 for any questions.

24 ACTING CHAIRPERSON GORDON: Ms. Lucchesi, I have
25 one question. My understanding is there is a referendum

1 that qualified in the City of San Francisco for November
2 of 2013 on this issue.

3 CHIEF COUNSEL LUCCHESI: That's correct.

4 ACTING CHAIRPERSON GORDON: Can you tell me what
5 the legal ramifications of our actions are today if
6 that -- pending that referendum?

7 CHIEF COUNSEL LUCCHESI: Just to be clear, the
8 referendum is to rescind the City's approvals revolving
9 around the height limitations and of the proposed project.
10 There are no legal obstacles to the Commission's
11 consideration of this exchange agreement at this meeting
12 because of that referendum.

13 It is important to note, however, that the
14 agreement -- should the Commission approve this agreement
15 and it be executed, escrow will not be able to close until
16 those issues are resolved because the developer will not
17 convey the trust parcels to the City to be able to
18 implement this transaction until that happens.

19 ACTING CHAIRPERSON GORDON: I want to see if
20 there is a way we can cut this short. I know this is very
21 contentious. I know the fact a referendum has qualified
22 as a contentious issue shockingly in the City of
23 San Francisco having to do with development.

24 If we were to give Mr. Fossum, the Executive
25 Officer, the authority to execute the transfer -- let me

1 rephrase that.

2 Give him the authority to execute the transfer
3 pending the rejection of the referendum by the people of
4 San Francisco, what would be reactions of the parties
5 involved to that, to the people that are opposing, the
6 people that are supporting?

7 Meaning, my understanding of the reason for going
8 forward today is for speed. So that when the referendum
9 is done, we wouldn't have to come back here again. If the
10 referendum is defeated, we would then allow Mr. Fossum to
11 execute immediately so there wouldn't be any -- there
12 wouldn't be any dalliance. We'd be able to go there.

13 I'd at least like to put that on the table as
14 witnesses come forward to allow the Commission to execute
15 based on whatever happens at the voting booth.

16 CHIEF COUNSEL LUCCHESI: And you may want to hear
17 from both the proponents and the opponents before making
18 any final motions. But we do have some ideas to address
19 that issue.

20 ACTING CHAIRPERSON GORDON: Okay.

21 That said, before we bring up supporters and
22 opponents, any comments from members of the Commission?

23 COMMISSION MEMBER NEWSOM: No. I would love to
24 listen to what everyone has to say.

25 ACTING COMMISSION MEMBER REYES: Likewise.

1 ACTING CHAIRPERSON GORDON: Let's bring up the
2 supporters first. So this will be the people coming
3 forward will support the authority to make the exchange
4 now. Okay. So if you support the project, want us to go
5 ahead and make the exchange today, please come forward.

6 COMMISSION MEMBER NEWSOM: Just through the
7 Chair, as you're coming up, also if you could answer to
8 the extent possible the Chair's question.

9 MR. STERN: Good morning, Commissioners. My name
10 is Jonathan Stern with Port of San Francisco. I'm head of
11 the Waterfront Projects Group there. I'm speaking on
12 behalf of Monique Moyer, the Executive Director of the
13 Port. She is unable to be here today and sends her
14 regrets. We also have a Commission meeting today and she
15 is unable to get away.

16 I do have a letter from her that she sent to the
17 Commissioners. I'll give that to your secretary in a
18 moment.

19 COMMISSION MEMBER NEWSOM: That letter is in
20 support?

21 MR. STERN: The letter is in unequivocal support
22 of the trust transfer agreement in front of you.

23 We've been studying this trust transfer for a
24 very long time. Waterfront Land Use Plan contemplates
25 these properties be realigned, though it doesn't specify

1 how. That's a 1997 broad consensus City document.

2 We believe that this converts this awkward-shaped
3 parking lot, which provides interim use/support of the
4 trust to permanent support trust uses.

5 And we also believe it brings additional trust
6 benefits, specifically the deed restriction that was
7 mentioned before of underground parking on the non-trust
8 land and financial recourse to the non-trust lands. We
9 think those are good additional trust benefits. And we
10 believe -- we think there is dual reasons to support this.

11 Let me address the Chair's comments about
12 supporting this now. A couple of points.

13 One is the original proposal -- first of all, we
14 think because of those benefits, it's not just the trust
15 realignment and this particular agreement allows us to
16 bring other lands to support the trust. They're not
17 technically within the trust.

18 Second of all, I think it's important to note the
19 developers' original proposal had a very similar --
20 materially similar reconfiguration of the trust, but
21 different heights involved of the actual development
22 happens on non-trust lands. We believe that it was
23 potentially possible to go back to.

24 And even more importantly, it doesn't change the
25 trust realignment that's in front of you today. I think

1 the important thing to note is that the trust realignment
2 that we're asking for is important to get -- maximize the
3 trust value and to let the local discussions to move
4 forward, regardless of what happens with the referendum.

5 Finally, I think we understand that because in
6 that view that obviously the State Lands staff cannot move
7 forward with actually executing this trust agreement,
8 penning it until we actually have a project and we have a
9 counterparty, a private land owner that was willing to
10 exchange. And we think that the normal provisions and
11 safeguards the Commission staff has in place should
12 suffice in this. And we're open to those discussions.

13 And I think specifically because there are other
14 resolutions here other than the referendum in front of the
15 City of San Francisco voters that could still be executed
16 and obviate, make this trust exchange valuable.

17 And just want to say that myself and other State
18 Port staff are available for any questions, as our counsel
19 as well.

20 ACTING CHAIRPERSON GORDON: Next witness, please.

21 MR. COLLEN: Good morning, Commissioners. I'm Tim
22 Colen. I'm Executive Director of the San Francisco
23 Housing Action Coalition.

24 We're a fiscal project green built alliance. And
25 our 70-member organizations stand for environmentally

1 sound urban land use choices and more solutions for
2 housing affordability. We supported this project for six
3 years because it embodies our missions and goals.

4 In spite of all the heated and convoluted
5 rhetoric swirling around this issue, what's before you is
6 really a very simple land use choice: Should Seawall Lot
7 351, some of the most valuable public land in northern
8 California, be put to the use that's been described to you
9 or should it be preserved as a surface parking lot.

10 It should be clear that the design and financial
11 benefits to the City of San Francisco are enormous for
12 this proposal. In particular, to us -- of strong interest
13 to us is that it will pay \$11 million to the City to fund
14 housing affordability at a time of collapsing support at
15 the federal, State, and local levels.

16 It's disappointing that the opposition to this
17 project is coming from the good folks at Golden Gateway
18 and Telegraph Hill where aggrieved and oppressed that new
19 housing is being proposed in their neighborhood, one of
20 the most pleasant neighborhoods in San Francisco. They're
21 opposed to any change whatsoever in the adjacent private
22 swimming and tennis club. And in particular, because as
23 you've seen this referendum because of the issue of
24 heights.

25 Of interest to us in the context of the heights

1 is quite important because, as you've seen, this proposal
2 is nestled in and among the tallest buildings on the
3 City's skyline. It's one-half the height of the closest
4 residential building, the 40 year old adjacent Golden
5 Gateway apartment building, and one-quarter the height of
6 the closest commercial building, the Embarcadero Center 4
7 building. That's significant because a lot of the
8 opposition comes from those two sites, those two
9 properties.

10 My purpose in coming here to you today is to ask
11 that you do take action and you do vote to support this.
12 In particular, to support the years of outstanding work
13 done by the planning and port staff, not to mention the
14 votes of both the Port and Planning Commissions, votes of
15 the Board of Supervisors that have taken to support the
16 project. We agree it's in a political context. We don't
17 know the outcome of the referendum. But I think that your
18 taking action today will help this discussion move
19 forward. It gives yet another layer of support to an
20 important project for San Francisco's waterfront. Thank
21 you.

22 ACTING CHAIRPERSON GORDON: Next?

23 Any other people in support of the project?

24 MS. WOODS: Hi. My name is Corinne Woods. I'm a
25 volunteer community member who's worked on the San

1 Francisco waterfront for about 25 years now.

2 I'm also very interested in the highest and best
3 public use of the waterfront. I live on a floating home.
4 So I'm in the public trust and totally get it.

5 The 8 Washington project we've been working on
6 for a long, long time. We went through two years of
7 community meetings with the Planning Department to look at
8 uses for all the public trust parcels in the northern
9 waterfront. It was the Planning Department recommendation
10 based on all of this community input that suggested that
11 the 84-foot height limit could possibly be improved by
12 stepping the project down from the higher buildings behind
13 it to the lowest buildings next to the waterfront.
14 Anybody who doesn't have a window looking out beyond that
15 project probably would support that idea of stepping down
16 to the waterfront.

17 What you get in these tiny little waterfront
18 Seawall lots in the northern waterfront is property that's
19 not big enough to really develop on its own. Particularly
20 if you have public trust considerations, because the uses
21 are so limited in public trust. And so you have an
22 inherent conflict.

23 What this project does with the land swap, with
24 the trust swap, is allow a much better public trust use
25 with the parks and the view carders back up to Jackson and

1 Pacific, while at the same time making an
2 economically-viable project that is of benefit to the port
3 and to the port's maritime trust mission.

4 It's got \$2 billion worth of unfunded capital
5 needs. And a project like this, which is really hard to
6 do anywhere else, really helps to create an opportunity
7 for that.

8 Strongly urge you to move forward. Whatever the
9 referendum does is not really the point. The point is to
10 get a higher and better public trust use on the
11 waterfront. Thank you.

12 ACTING CHAIRPERSON GORDON: Thank you, Ms. Woods.

13 CHIEF COUNSEL LUCCHESI: May I just add one
14 thing?

15 There may be a lot of discussion over the height
16 limitations and that sort of thing. And while that's on a
17 the parcels where the trust is going to be terminated on,
18 I do have a couple of slides that highlight those height
19 limitations in the context of the City and the surrounding
20 buildings. So if that would be helpful for the Commission
21 to see, we can put those up. Just say the word.

22 ACTING CHAIRPERSON GORDON: Mr. Chappell.

23 MR. CHAPPELL: Thank you, Commissioners.

24 My name is Jim Chappell. I'm representing SPUR,
25 the San Francisco Planning and Urban Research Association,

1 a 6,000-family strong citizen's planning organization that
2 has worked on the waterfront for over 75 years.

3 We strongly support the Commission's proposed
4 land exchange involving Seawall Lot 351 and 8 Washington.
5 This project will greatly increase public access to the
6 waterfront, replacing an unsightly surface parking lot
7 with an underground public parking garage, public parks,
8 public walkways, and visitor-serving cafes and retail.

9 We ask that you take action today. The
10 San Francisco Planning Commission, the San Francisco
11 Recreation and Parks Commission, the Port Commission, and
12 the San Francisco Board of Supervisors have all endorsed
13 this project and the land exchange.

14 Today, opponents will be asking you to delay a
15 decision. As your attorney said a few minutes ago, there
16 is no grounds to ask for this delay. A delay is simply
17 the MO of those who wish to prohibit public access, use,
18 and enjoyment of the waterfront.

19 So please approve the land exchange today as
20 recommended by your staff. Thank you.

21 ACTING CHAIRPERSON GORDON: Thank you, sir.

22 Would the opponents please come forward -- oh,
23 I've got one more supporter.

24 MR. BASH: If I were just a little taller, you
25 would have seen me back there.

1 (Laughter)

2 MR. BASH: Members of the Commission, my name is
3 Alec Bash. I'm here as an interested citizen. I'm a
4 former City planner with San Francisco. I worked for the
5 Planning Department 25 years and then at the port for five
6 years. I've been retired for the past ten years, but
7 during that time, have served on the Board of
8 San Francisco's Northeast Waterfront Advisory Group, which
9 is a group of citizens and people representing
10 organizations who help advise the port on the waterfront
11 development.

12 I'm unique on that group on not having a
13 particular portfolio to carry with me, other than my
14 interest in public policy and good planning for the City.
15 And that's why I'm here this morning. I think you have
16 seen from the staff report and the other commentators that
17 there are many public trust values associated with this
18 proposed land exchange. And indeed, for ten of my last 15
19 years working, I worked on issues related to the public
20 trust, first with the Mission Bay project when I was at
21 the ports. And I worked very happily with your staff City
22 attorneys and staff attorneys here on public trust issues.

23 And while I'm not an attorney myself, I believe
24 some elements of this relate to certain common sense
25 things. If you're not doing maritime, if you're not doing

1 navigation maritime commerce boating, one of the key
2 things you want from public trust lands is public access
3 and public enjoyment of the waterfront for the people of
4 the great State of California.

5 As you have seen from the presentations and
6 comments thus far, this project not only replaces and more
7 than replaces all of the automobile parking, it provides
8 bicycle parking as well. It also provides all the public
9 access and activities that anyone would want to see in a
10 major public waterfront such as San Francisco. More
11 parking spaces, more public access, inviting people,
12 making it easy for people to get to the waterfront. This
13 project does all of this.

14 And sure, there is a referendum pending in
15 San Francisco, the height issues. I would note that the
16 City's master plan/general plan for height shows 161 to
17 245 feet for the site. So the idea of having a little
18 higher height to provide a better transition from the
19 downtown and redevelopment properties to the waterfront is
20 not a bad thing and not at all untoward in San Francisco
21 thinking.

22 But I do believe that the best way for you to
23 avoid getting embroiled within San Francisco neighborhood
24 politics, which I'm sure nobody here wants to do, is to go
25 forward with this now and to not put contingencies in

1 place depending upon one thing or the other, but to
2 understand that this is a project that has a price that
3 could survive under the existing height limits for the
4 site, which would be unchanged by the referendum. And
5 this is a project that would be good to be forward with
6 and to have clear public recognition that this is a
7 project that does meet the public trust doctrine and does
8 call for benefits to the people of the State of California
9 and could be moved forward.

10 Thank you for your time.

11 ACTING CHAIRPERSON GORDON: Opponents, Ms. Renne,
12 please come forward.

13 One issue I would like you to address that was
14 raised here for me. Both myself and Mr. Reyes sit on the
15 Tax Credit Allocation Commission, whose job is to
16 authorize below market rate housing throughout California.
17 That's a huge problem in finding locations and money for
18 that in the City of San Francisco. I would be very
19 interested in addressing the \$11 million that's put aside
20 for that purpose. And if this project goes down, what
21 happens to that ability to help us meet that goal in the
22 City and county. Thank you.

23 Ms. Renne.

24 MS. RENNE: Thank you, members of the Commission.

25 First of all, on the question of the referendum,

1 which was raised, I think as my earlier communication to
2 the Commission has stated, legally, the 8 Washington
3 project is in legal limbo. It's very interesting,
4 although the opposition has been painted as very
5 narrow-minded close neighbors or people who have views, in
6 fact, 19,000 signatures were required for the referendum.
7 In fact, 31,000 signatures of people throughout
8 San Francisco were gathered in a 29-day period to
9 establish a referendum for the first time in 20 years. So
10 the painting of this some sort of a narrow vision is
11 absolutely wrong. There are strong reasons, very strong
12 reasons why people who care deeply about San Francisco are
13 opposed to this project.

14 Number two, you asked: Would we be willing if
15 you decide the question today to simply let your Executive
16 Director go forward? I have great respect for your
17 Executive Director, but the answer is no. One of the
18 reasons why it is no is for the reasons that I set forth
19 in my earlier letter as to why I think and as a member of
20 FOGG -- because I'm here in a personal capacity, also as a
21 representative of FOGG -- is that we think there are at
22 least three reasons why there is an insufficient basis to
23 make this kind of an exchange at this time.

24 If you take a look at the communications that
25 have been sent to you, number one, there is no showing in

1 this record that the lands to be exchanged aren't already
2 in the public trust. And under the Milner decision, the
3 9th Circuit Decision, they would be.

4 Number two, there is simply a bald assertion that
5 the lands are of equal value. What stands behind that
6 bald assertion?

7 Number three, the standard by which you must make
8 a decision as to whether or not you can exchange these
9 lands, we believe is one under Supreme Court law, not just
10 simply chapter 810, the uncodified position, which was
11 originally for the South Beach Rincon project. If you
12 take a look at the constitutional requirements under
13 California Supreme Court law, the land -- to remove the
14 public trust has to be of no value relatively useless.
15 This is not the case. There is a long-term lease for
16 parking for the Ferry Building tenants. That lease
17 continues, unless the port breaks it.

18 If you take a look at the environmental impact
19 report, there was an Alternative C where a hotel could be
20 built on the project again within public trust use. And
21 yesterday, there was a further amendment to a study which
22 has been part of the record at least in San Francisco from
23 the Asian Neighborhood Design Study that shows how this
24 land can continue to be used in public trust. There is no
25 way this land can be said to be useless or of no value

1 under required public trust doctrine.

2 And finally, I would be remiss if I did not state
3 as a matter of record that there is a question which we
4 think requires a more formal opinion, and that involves a
5 conflict of interest because of the position that the
6 Controller and the Director of Finance occupied. This is
7 not personal. It's simply a matter of law. And
8 presently, the Office of the Controller and the State
9 Finance Director sit on the CalSTRS Board. In fact, I
10 think you're on the Investment Committee. CalSTRS is a
11 very heavy investor of 8 Washington Street.

12 Now you're being asked as State Lands
13 Commissioners to remove the public trust. Under common
14 law conflict of interest, if not statutory or
15 constitutional issues, we think there is a conflict of
16 interest issue that needs to be formally addressed by the
17 Attorney General.

18 So I would ask as for the record that the
19 communications that have been previously submitted by
20 myself, FOGG, and yesterday with regard to the Asian
21 Development Center, Neighborhood Design Center, be put as
22 formally part of the record, if they are not already.

23 Thank you for your time.

24 ACTING CHAIRPERSON GORDON: Questions, Mr. Reyes.

25 ACTING COMMISSION MEMBER REYES: I would like to

1 address the conflict of interest issue, since I was
2 specifically identified.

3 A. I was not aware of the investment part.

4 B. There is no personal gain, since I just sit
5 on the Board and I sit on the Boards as fiduciary
6 responsibility to the teachers of the State of California.

7 And 3. I do not get involved with the very
8 specific investments on the real estate side. We set
9 policy. And we do not direct staff as to where to invest
10 the resources of the real estate portfolio. Just to
11 clarify.

12 MS. RENNE: With all due respect, our point is
13 that, under the law, that's irrelevant. It's the
14 position.

15 ACTING COMMISSION MEMBER REYES: I just want to
16 go on record --

17 COMMISSION MEMBER NEWSOM: Through the Chair,
18 staff, I know you guys have taken a look at this.

19 CHIEF COUNSEL LUCCHESI: May I add in
20 consultation with the Attorney General's Office and based
21 on advise they have given us and that we concur with, the
22 Legislature has appointed both the Controller and the
23 Director of Finance to the CalSTRS Board and also to the
24 State Lands Commission. And by doing that, they have
25 effectively waived any conflict of interest.

1 COMMISSION MEMBER NEWSOM: So just to
2 underscore --

3 CHIEF COUNSEL LUCCHESI: There is no conflict of
4 interest that exists in either of the Commission offices,
5 the Commissioners, in considering this land exchange.

6 ACTING COMMISSION MEMBER REYES: Thank you.

7 ACTING CHAIRPERSON GORDON: Ms. Diveley.

8 MS. DIVELEY: Hello. My name is Shaye Diveley of
9 Morrison and Forrester. I'm here on behalf of Equity
10 Office Properties, the developer, operator, and lessee of
11 the iconic Ferry Building.

12 As the steward for the Ferry Building, EOP has a
13 strong interest in the economic vitality of the
14 San Francisco waterfront. However, it should not come at
15 the expense of existing public trust uses, particularly
16 the Ferry Building.

17 Thus, on behalf of EOP, we urge the Commission at
18 this time to disprove the exchange. The exchange would
19 extinguish the public trust over Lot 351, the only
20 dedicated parking area for the Ferry Building.

21 As part of the assurances that the City of San
22 Francisco provided to EOP to entice them to redevelop the
23 iconic Ferry Building, Seawall Lot 351 was contractually
24 dedicated for Ferry Building visitor use, a recognized
25 public trust use. However, no provision has been made at

1 this time to contractually guarantee that the Ferry
2 Building's parking rights will be protected during the
3 lifetime of this project, both during construction and
4 afterwards.

5 Because of this, among other reasons, the
6 proposed findings are legally and factually inadequate to
7 support the proposed the exchange. Among the
8 deficiencies, it cannot be shown that Seawall Lot 351 is
9 no longer needed for a public trust use or that the
10 exchange would not interfere with a trust use or purpose.
11 Clearly, Seawall Lot 351 is very much in the public use
12 for the Ferry Building. It's been contractually
13 guaranteed to the Ferry Building for those uses. And
14 there must be assurances in place to protect those rights.

15 I would also like to add there is no CEQA
16 exemption that would apply for this exchange. The
17 Commission is being asked to use an exemption for title
18 and boundary disputes that would bypass any environmental
19 review for this critical part of the project. This is not
20 a title dispute, and the Commission cannot rely upon that
21 narrow exception to bypass CEQA.

22 In close, EOP urges the Commission to refrain
23 from approving the exchange at this time. There's simply
24 too many outstanding issues that must be resolved, not the
25 least of which has already been mentioned is the

1 referendum. There's also two lawsuits in place that have
2 been challenging the project. And there's nothing about
3 this project that is so important to rush a decision that
4 would ignore the public trust uses and the contractual
5 rights of the Ferry Building and the environmental
6 consequences of this project.

7 Thank you very much for your time. I'm happy to
8 answer any questions.

9 ACTING CHAIRPERSON GORDON: Counsel, I do have
10 one question.

11 If you could bifurcate for me parking for the
12 Ferry Building during construction phase and parking long
13 term. If I understand you to say, there is no guarantee
14 that Ferry Building parking will be taken care of. And
15 I'm not sure of the time frame you're talking about.

16 MS. DIVELEY: Commissioner, I'm actually talking
17 about both during construction and after, during once the
18 project is complete.

19 Our existing parking agreement says that parking
20 for the Ferry Building will be the same exact parking that
21 we get now on Seawall Lot 351, including control over the
22 rates, valet services, and the full kind of expansion
23 rights that we would need to fully serve our visitors.

24 Right now, we have no written assurances or
25 otherwise in place that would actually ensure that we have

1 our protections for our visitors to the Ferry Building,
2 during which is expected to be 30 months or perhaps more
3 time to construct this project, or afterwards once this
4 project is complete.

5 ACTING CHAIRPERSON GORDON: Can one of the
6 supporters come up and address this issue specifically?
7 We have businesses the City has invested in. The Ferry
8 Building is a major attraction for the City. If they're
9 going to lose parking at that point, what are the
10 businesses there supposed to do? Address both in the
11 short-term during construction and long term.

12 MR. STERN: Jonathan Stern from the Port of San
13 Francisco.

14 I think I'm going to have to respectfully
15 disagree with the exact interpretation of the
16 representative of EOP as to the agreement between the
17 ports and EOP. That agreement specifically contemplates
18 that 351 in the future, meaning now, would be a subject of
19 development, as does the Waterfront Land Use Plan, as does
20 the parking agreement, and specifies locations under where
21 we can relocate the parking on a temporary basis. That's
22 number one. That's a temporary.

23 And then the parking agreement does talk once
24 there is permanent development on the site -- and talking
25 about the long-term, taking care of the Ferry Building --

1 there is a number of options. There is a number of
2 courses charted out by that parking agreement, the first
3 being -- and the one that this project, as approved,
4 specifically contemplates, is to provide more than 150
5 parking spaces that in their lease they have asserted they
6 need to make their business successful. And we're
7 specifically, as a condition of close in the local
8 approvals, we have, once this project is completed, that
9 on the non-trust parcel -- again an extension of trust
10 uses -- there will be 175 parking spaces that are deeded
11 for public use for the Ferry Building area waterfront.
12 And that's -- we crafted that language specifically
13 because that mirrors the 2001 and 2003 parking agreements
14 between EOP and the port.

15 ACTING CHAIRPERSON GORDON: Ms. Diveley, do you
16 agree that once construction is complete that the lost
17 parking spaces would be taken care of by the new project?

18 MS. DIVELEY: I would respectfully disagree at
19 this point.

20 Again, our main issue is that as many people have
21 already spoke, this project has been going on for years.
22 And the fact I'm here today to still say the Ferry
23 Building has not been taken care of is a source of very
24 big concern for our client. And the fact that there is
25 nothing in place before this Commission to ensure that the

1 public trust use -- the existing public trust use of 351
2 is going to be taken care of in the future. Nothing in
3 writing. Everything has been just promises. But nothing
4 we've actually seen should give this Commission pause and
5 it certainly gives EOP pause.

6 ACTING CHAIRPERSON GORDON: The public trust uses
7 as a parking lot?

8 MS. DIVELEY: Parking to serve the waterfront
9 users of the Ferry Building.

10 ACTING CHAIRPERSON GORDON: Okay. All right.

11 COMMISSION MEMBER NEWSOM: Jennifer, were you
12 going to jump in on that?

13 CHIEF COUNSEL LUCCHESI: I just have a couple of
14 items to point out is that surface parking is not a
15 traditional public trust use, but it is an ancillary use
16 that serves -- that can serve the public trust and the
17 waterfront.

18 And then in addition to that, the proposed
19 project along with the provisions in the exchange
20 agreement before you does ensure that there will be
21 parking at least equal to what is currently being provided
22 at Seawall Lot 351 for the public to visit and access the
23 waterfront.

24 ACTING CHAIRPERSON GORDON: So the real issue
25 then strikes me as interim parking when we lose the spots

1 for the businesses that are currently located in the Ferry
2 Building. How do we propose that be dealt with, with this
3 project? It would be wonderful to have those spots four
4 years from now, but those business could be long gone by
5 then if their customers can't get to them.

6 MR. STERN: As mentioned before, this is a
7 project at this point cannot commence until November of
8 2013.

9 We have been in ongoing discussions about EOP
10 specifically about -- bilateral discussions about
11 temporary relocation.

12 And I should say, we're doing this on top of a
13 very specific formula that was set out in the parking
14 agreement as signed in 2003. And we're trying to go
15 beyond the letter of the law, if you will, of that
16 agreement. And there are proposals back and forth. We
17 have not yet reached resolution and that I wish we had at
18 this point.

19 However, there is a meeting set toMorro to discus
20 one of their specific proposals which we agreed to in
21 concept, if not necessarily in the details, and convincing
22 other regulatory agencies to buy into temporary.

23 COMMISSION MEMBER NEWSOM: And through the Chair,
24 John, isn't the interest of the port to work this out?
25 They're a direct beneficiary of the success of those

1 tenants at the Ferry building; correct?

2 MR. STERN: That's correct. We're very glad that
3 EOP sees themselves as stewards of the Ferry Building. We
4 believe that we're the stewards of the entire waterfront,
5 including the Ferry Building. We've had very successful
6 partnership with them throughout the years and we intend
7 to keep it that way.

8 ACTING CHAIRPERSON GORDON: Is there anyone else
9 to speak on this?

10 Mr. Reyes, do you have any questions?

11 ACTING COMMISSION MEMBER REYES: No. I'm taking
12 it all in.

13 I think the concern for me is the referendum
14 that's out there, the legal referendum issue. And given
15 that this doesn't until November 2013, is there a need to
16 address this before that is addressed? I understand the
17 smoke signal that goes out if the Commission approves this
18 and the fact that we're moving on a faster track if we
19 move this now and allow the Executive Officer to move
20 forward if the referendum fails.

21 Because the same -- you know, the same thought
22 that we had before in terms of the TRPA and that's still
23 pending and I was not comfortable moving forward. I'm
24 sort of in the same boat here. I'm not comfortable moving
25 forward with the referendum out here. But I'm still

1 digesting.

2 COMMISSION MEMBER NEWSOM: If I may, through the
3 Chair, speak briefly to that. And I'll do it not
4 providing a subjective analysis as to the referendum.

5 I want to ask again, what specifically does a
6 referendum have to do with the issue of land exchange?

7 CHIEF COUNSEL LUCCHESI: Nothing, legally. So
8 the referendum is specifically on an ordinance resolution
9 that the City passed dealing with the expansion of the
10 height limits to facilitate this proposed project.

11 And I want to assure the Commission that this
12 transaction will not be able to close until the developer
13 receives the trust parcels that they then can convey to
14 the trust. And the developer will not do that until they
15 have obtained all the necessary entitlements, including
16 that the referendum issue has been resolved.

17 And we can add further clarification one
18 alternative to the proposal that the Chair made was we
19 could add a very express condition to the close of escrow
20 that escrow cannot close until all final zoning -- all
21 final City approvals relating to the zoning amendments,
22 which was what the height limitations deal with, including
23 that there are no outstanding referendum or litigation
24 regarding this project site. And we can make the
25 agreement very clear that it cannot close escrow until

1 that happens, until those issues are resolved.

2 ACTING CHAIRPERSON GORDON: Mr. Reyes.

3 ACTING COMMISSION MEMBER REYES: Absent that
4 clarification though, I mean, all that is is
5 clarification. Because if we approve the transfer now and
6 the referendum were to be successful, then, in fact, we
7 would not be in a position to allow for the public use of
8 those properties because the project would not take place
9 and therefore the decision of the Commission would be
10 moot.

11 CHIEF COUNSEL LUCCHESI: That's correct, unless
12 the project is resubmitted to the City for approval
13 without any sub -- where there is no substantial changes
14 to the exchange agreement.

15 Remember, this exchange agreement only deals with
16 the underlying land and it's not approving any proposed
17 specific development.

18 The findings that the Commission would have to
19 make under the circumstances are really focused on the
20 trust termination parcels and finding that they are no
21 longer needed or required for the promotion of trust
22 purposes and also equal or greater value, that sort of
23 thing. That is not dependant on the proposed development
24 at hand.

25 The one caveat I do want to say -- and this is a

1 term in the agreement is that any -- the Seawall Lot, the
2 trust termination parcels, do provide parking that
3 services the Ferry Building. And that is important to
4 staff of the Commission and I believe the Commission. So
5 we have conditioned closing of this agreement that there
6 is a binding obligation to provide equal or greater number
7 of parking spaces on this site in any proposed
8 development, whether it's the specific development
9 proposed for this site right now or a future one.

10 ACTING CHAIRPERSON GORDON: Ms. Renne, former
11 City attorney, Ms. Renne made a statement in her
12 presentation that we have no proof that the exchange is of
13 equal value. What evaluation has been done by Commission
14 staff on that issue?

15 CHIEF COUNSEL LUCCHESI: Yes. There was an
16 appraisal conducted on each the trust parcel and the trust
17 termination parcel by a private company, Carnigie and
18 Bloom. We received a copy of that appraisal and conducted
19 our own independent analysis of that by our appraiser and
20 Assistant Chief of Land Management Division, Collin
21 Conner. And we concluded that the values assessed in that
22 appraisal were accurate and that the trust termination
23 parcel is valued less than what the trust is receiving.
24 So the finding can be made. Those documents are in our
25 files and in the record for this decision.

1 ACTING CHAIRPERSON GORDON: Ms. Renne, can you
2 please address that statement? I'd like to hear your
3 response.

4 MS. RENNE: Yes, Commissioner Chiang, on that
5 issue, our point is we're aware that there was an
6 appraisal report that the developer paid for and submitted
7 to the port. Our position is that this record is devoid
8 of any substantive evidence that the appraisal of the
9 property was sufficiently evaluated for fair market value.

10 May I also just address one question on the
11 referendum? And if you take a look at the San -- it is
12 true, the referendum is addressed to the height limit of
13 the project. I mean, the height limit is going to be
14 higher than the Embarcadero freeway was. But the
15 charter -- San Francisco charter says that once a
16 referendum has been certified, the ordinance is suspended.
17 In effect, 8 Washington cannot go forward without this
18 height ordinance. So it's in legal limbo.

19 As a matter of fact, there is substantial
20 question as to how much work the port as a component of
21 the City and County of San Francisco can actually do on
22 this project while it is in limbo. But that's a separate
23 issue for San Francisco.

24 But my point is, if you don't have a legally
25 valid project before you, which you do not have right now,

1 how can you go ahead and exchange land? That's the
2 question.

3 ACTING CHAIRPERSON GORDON: You raised one other
4 issue before which we have not addressed, which I think it
5 was your first point. There's no showing of the exchange
6 lands are not already in the public trust. Can you
7 elaborate on that a little bit?

8 MS. RENNE: Yes. I'm the first to admit I'm not
9 a public trust expert, but I'm learning. And if you take
10 a look at the Milner decision in particular -- and
11 although it's a 9th circuit decision, I know it's been
12 used by the State Lands Commission on other instances.

13 And if you take a look at that decision, that
14 decision says the public trust land runs -- and as my
15 letter says -- to all of the properties which would be
16 similar to what Seawall Lot 351 is. I'm unaware of any
17 showing in this record that would review the lands to be
18 exchanged under the Milner decision and under previous why
19 it isn't in public trust. It's all in the same area. Why
20 isn't it in public trust?

21 ACTING CHAIRPERSON GORDON: So your argument is
22 that the land that we would receive in the exchange is
23 land that the State already owns?

24 MS. RENNE: Yes. Already in the public -- not
25 owned. Already in the public trust.

1 ACTING CHAIRPERSON GORDON: So essentially we're
2 receiving nothing of value that we don't already have
3 control over?

4 MS. RENNE: Correct. Correct. And under Milner
5 as governing.

6 COMMISSION MEMBER NEWSOM: May the Chair --

7 EXECUTIVE DIRECTOR FOSSUM: Mr. Chair, if I could
8 address some of the issues.

9 One of them is the area involved in the exchange
10 that isn't perfectly within Seawall Lot 351 was the trust
11 was terminated in 1959 by the Legislature on that parcel,
12 as Jennifer previously mentioned.

13 As to the Milner case, we love the case. The
14 difference here is that in the Milner case, it was dealing
15 with a trespasser who took advantage of the trespass to
16 prevent natural changes to the shoreline, and that the 9th
17 circuit in that case basically said that trespasser isn't
18 entitled to what would otherwise have been the adjacent
19 owner of the tidelands in Washington state.

20 So I think there is a clear difference here that
21 these lands were filled and reclaimed as part of a
22 comprehensive harbor development scheme. And that's one
23 of the findings that the Supreme Court has previously made
24 in those kind of issues. And because it's been filled and
25 reclaimed as part of that harbor development, it is within

1 the categories of lands that the courts have found may be
2 exchanged.

3 ACTING CHAIRPERSON GORDON: All right.

4 COMMISSION MEMBER NEWSOM: So just I don't know
5 why I'm surprised only a few folks showed up. Is there
6 Legitimately no one else here to speak? I just want to be
7 fair to all voices before I express my point of view.

8 You know, let me speak on behalf of San Francisco
9 because I feel like I have the right to. I think I served
10 the City close to 16 years, President of the Parking and
11 Traffic Commission that knows a thing or two about this
12 area; member of the Board of Supervisors, and a two-term
13 Mayor. This has gone through every single City entity and
14 has been approved. Recreation, Parks Commission, Port
15 Commission, Planning Commission, and the Board of
16 Supervisors, supported by the current Mayor, the previous
17 Mayor, and the Mayor before that. We're at a certain
18 point where we have to call the question.

19 We delayed this for various reasons. A few
20 months ago, we were going to have this discussion. I just
21 think at a certain point out of respect for the work that
22 has been done in the City and respecting the inevitably --
23 and I know a thing or two and the Chair I think does as
24 well in just his preamble about San Francisco politics of
25 people coming late in the game with referendum and folks

1 that may have particular issues with surrounding
2 properties and points of view. There is going to be some
3 last-minute efforts to derail this.

4 But the question we're being asked very
5 specifically is a question that with respect to what has
6 been presented is not necessarily relevant to the issue of
7 the land exchange. It's a height issue. It an issue
8 associated with a couples lawsuits. These are ancillary
9 issues that are important -- understandably important, but
10 not to the question we're being asked to answer here
11 today.

12 The staff has made it crystal clear their support
13 of this recommendation and moving this project forward. I
14 think the issues of conflict have been appropriately
15 addressed.

16 And let me say just for full disclosure, I have
17 extraordinary respect for Louise Renne. She was chosen by
18 me to be my Transition Chair when I became Mayor of San
19 Francisco and chosen because of her outstanding service to
20 the City, the City Attorney, one of the finest attorneys
21 the City has ever had, to be on the Police Commission. I
22 have extraordinary respect for Louise Renne. I just
23 disagree with her on this EOP.

24 I have great, great respect for the incredible
25 work they've done to improve San Francisco and long worked

1 and collaborated with them and enjoyed support for full
2 disclosure.

3 So I would say this with admiration to those I
4 disagree with, that I disagree with you. And I think it's
5 time for us to move this forward, let the politics of
6 San Francisco play out. But be respectful to the policy
7 makers of San Francisco that have long adjudicated the
8 merits of this and want to move this project forward.

9 ACTING CHAIRPERSON GORDON: Do we have a motion?

10 COMMISSION MEMBER NEWSOM: I would move that we
11 recommend support staff's recommendation.

12 ACTING CHAIRPERSON GORDON: I'll second that
13 motion.

14 Mr. Reyes, do you have anything you'd like to
15 add?

16 ACTING COMMISSION MEMBER REYES: No. I think I'm
17 a little concerned about some of the issues that are out
18 there on this. And for that reason, I'll be abstaining on
19 this motion, with all due respect to all parties.

20 ACTING CHAIRPERSON GORDON: All right. I feel
21 like I'm in a difficult spot right here, mainly because of
22 the allegation that the Controller's Office has a
23 conflict.

24 Staff counsel to State Lands seems to believe
25 that conflict doesn't exist. The fact is that if we

1 approve the exchange, nothing is going to happen until the
2 referendum is decided, is my understanding; is that
3 accurate?

4 EXECUTIVE DIRECTOR FOSSUM: The current
5 recommendation to the Commission is to authorize the
6 execution, acknowledgement of, and recordation of the
7 agreement.

8 However, that could be modified to require that
9 escrow doesn't close until the referendum is satisfied or
10 could be modified to not authorize the execution until the
11 referendum is resolved. Those are two options.

12 COMMISSION MEMBER NEWSOM: I humbly submit it
13 just plays into the concerns I just expressed and I
14 certainly wouldn't support that. I support the
15 recommendation of staff and the clarity which that
16 recommendation moves our obligations forward.

17 ACTING CHAIRPERSON GORDON: I'm going to call the
18 question with regard to the motion to support the staff
19 resolution to conclude the exchange now. All those in
20 favor?

21 (Ayes)

22 ACTING CHAIRPERSON GORDON: Motion passes two to
23 zero with one abstention. Thank you.

24 EXECUTIVE DIRECTOR FOSSUM: Does the Chair wish
25 to have a short break?

1 ACTING CHAIRPERSON GORDON: Yes. We're going to
2 break for about five minutes please, but please keep on
3 schedule. Okay. Thank you.

4 (Whereupon a recess was taken.)

5 ACTING CHAIRPERSON GORDON: Call the State Lands
6 Commission back to order.

7 This is Item 104, which is to consider
8 certification of Environmental Impact Report and issuance
9 of a permit to the Pacific Gas and Electric Company for
10 purposes of conducting a three-dimensional geophysical
11 survey off the coast of San Luis Obispo County.

12 Staff presentation, please.

13 I also welcome all of the folks who are listening
14 to this by remote web in Morro Bay, San Luis Obispo
15 County. Welcome all you folks.

16 EXECUTIVE OFFICER FOSSUM: Commissioners, Cy
17 Oggins, who is the Chief of our Division of Environmental
18 Planning and Management, will be giving our presentation
19 for the staff.

20 (Thereupon an overhead presentation was
21 presented as follows.)

22 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

23 CHIEF OGGINS: Good morning, Chairman, Commissioners.

24 Item 104 is an application by Pacific Gas and
25 Electric Company, or PG&E, for a geophysical survey permit

1 to conduct high-energy surveys using air guns of fault
2 zones near the Diablo Canyon Nuclear Power Plant in San
3 Luis Obispo County.

4 This morning, I will provide a brief history of
5 the proposed project, summarize key components of PG&E's
6 project description, highlight elements of the project
7 Environmental Impact Report, and present to the Commission
8 staff's recommendations.

9 --o0o--

10 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT
11 CHIEF OGGINS: This application has a multi-year history.

12 In 2006, then Governor Schwarzenegger signed
13 Assembly Bill 1632, which requires to California Energy
14 Commission to determine the potential vulnerability of the
15 Diablo Canyon Nuclear Power Plant to a major disruption
16 from a major seismic event.

17 In 2008, the U.S. geological survey and PG&E
18 discovered the Shoreline fault approximately one kilometer
19 or .6 miles offshore of Diablo Canyon.

20 Also, in 2008, the Energy Commission recommended
21 the use of a three-dimensional seismic survey to study
22 faults near the power plant.

23 In 2009, the Energy Commission and Public
24 Utilities Commission directed PG&E to conduct the survey.

25 In 2010, Fukushima Daiichi Nuclear Power Plant

1 was damaged by a post-earthquake tsunami in Japan.

2 2011, PG&E submitted its application to the
3 Commission and its Environmental Impact Report, which was
4 then released in 2012.

5 --o0o--

6 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

7 CHIEF OGGINS: In preparing the EIR, Commission staff has
8 conducted -- has received oral written comments and held
9 several public meetings in San Luis Obispo County and
10 consulted with multiple local, State, and federal
11 agencies, including members of an Independent Peer Review
12 Panel which is established by the Public Utilities
13 Commission and consists of members of the California
14 Seismic Safety Commission, the Energy Commission, and
15 Public Utilities Commission, San Luis Obispo County, and
16 with contact support from the geological survey.

17 --o0o--

18 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

19 CHIEF OGGINS: Many of the agencies consulted have some
20 form of permit or other approval over elements of the
21 project. As lead agency under the California
22 Environmental Quality Act, or CEQA, the Commission is
23 required to take the first action. Should the Commission
24 approve the project, PG&E must obtain all necessary
25 approvals in order for the project to lawfully proceed,

1 which gets us to the project as proposed would occur along
2 a long stretch of San Luis Obispo County coast, which is
3 marked by the blue outline. The project would occur --

4 ACTING CHAIRPERSON GORDON: Mr. Oggins, could you
5 stop for a second? Mr. Reyes has a question.

6 ACTING COMMISSION MEMBER REYES: Can you go back
7 to the prior slide?

8 Given the number of agencies involved in the
9 approval, what is the project time line for all this, if
10 it were all to be approved.

11 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT
12 CHIEF OGGINS: PG&E would like to begin in
13 September/October 2012. This is August, so a few months.

14 COMMISSION MEMBER NEWSOM: Thank you.

15 --o0o--

16 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT
17 CHIEF OGGINS: As mentioned before, the project would
18 occur within that blue outline, outlined on the map, would
19 occur in both marine waters and on land outside the
20 Commission's jurisdiction.

21 As CEQA lead agency, the Commission must analyze
22 the project as a whole, including the areas outside its
23 jurisdiction.

24 Major fault zones within the proposed survey area
25 include the Shoreline fault, which as I mentioned was

1 discovered in 2008, the Hosgri fault which runs
2 north/south along the entire footprint, and the Los Osos
3 fault which runs approximately perpendicular to the Hosgri
4 fault and may intersect the Shoreline and Hosgri faults
5 approximately in the middle of northwest of Diablo Canyon.

6 --o0o--

7 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

8 CHIEF OGGINS: PG&E's project objectives are to obtain
9 high-resolution seismic imaging of faults in four zones
10 within the study area. Survey data will be collected by
11 multiple along east track lines. The seismic survey will
12 shoot off air guns to obtain the seismic imaging data that
13 will occur in four zones.

14 --o0o--

15 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

16 CHIEF OGGINS: Zone three covers Hosgri fault zone. Zone
17 four covers both the Hosgri and Los Osos fault zones.
18 Zone two -- and these are running north to south. And
19 zone one is the closest to shore.

20 The majority of the study area lies in federal
21 waters, not in State waters. As you can see from that
22 orange line which represents the three nautical mile
23 limit.

24 Also important to note is the presence of two
25 marine-protected areas, next slide --

1 --o0o--

2 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

3 CHIEF OGGINS: -- to the north and the Point Buchon marine
4 protected area in the central area.

5 The three faults, Hosgri, Shoreline, and Los
6 Osos, may intersect deep beneath the sea floor in that
7 area.

8 Next slide.

9 --o0o--

10 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

11 CHIEF OGGINS: PG&E proposes to use a survey vessel, the
12 Marcus C. Langseth, acoustic-pulsing generating air guns
13 which would fire every 15 to 20 seconds at intervals of
14 every 100 to 170 feet for a total discharge volume of 3300
15 cubic inches, which is about 200 to 250 decibels total.

16 The projects includes on-shore sound sources and
17 hydrophones and geophones to record sound and 29 applicant
18 proposed measures to reduce or avoid impacts. And those
19 measures would become enforceable provisions of any permit
20 if the Commission chooses to issue one.

21 Next slide, please.

22 --o0o--

23 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

24 CHIEF OGGINS: PG&E also proposes to conduct the survey 24
25 hours a days, seven days a week, starting in September

1 2012. That would include mobilization, deployment, 41
2 days of air gun operations as proposed, refueling, and
3 demobilization, for a total of 82 days.

4 Next slide.

5 --o0o--

6 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

7 CHIEF OGGINS: Significant and unavoidable impacts to the
8 project that were identified in the project EIR include
9 air emissions due to survey vessels, noise impacts to
10 marine mammals, impacts to the marine protected area, as I
11 mentioned earlier, and impacts to commercial and
12 recreational fishing.

13 I will briefly introduce these impacts and
14 propose mitigation measures or applicant proposed measures
15 to reduce or avoid impacts.

16 Next slide, please.

17 --o0o--

18 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

19 CHIEF OGGINS: Project emissions from survey vessels would
20 likely exceed San Luis Obispo County Air Pollution Control
21 District thresholds.

22 Next slide.

23 --o0o--

24 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

25 CHIEF OGGINS: Mitigation measures include implementing a

1 project-specific emissions reduction program and applying
2 numerous mitigation measures and best available control
3 technology.

4 However -- next slide.

5 --o0o--

6 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

7 CHIEF OGGINS: The impact remains significant and
8 unavoidable, regardless of the implementation of the
9 mitigation measures.

10 Next slide.

11 --o0o--

12 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

13 CHIEF OGGINS: Impacts to marine mammals include injury or
14 mortality from noise affects of resident harbor porpoises,
15 migratory whales and southern sea otters. However,
16 impacts to fish and invertebrates were determined to be
17 less than significant.

18 --o0o--

19 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

20 CHIEF OGGINS: Mitigation measures include implementing
21 PG&E's project marine wildlife contingency plan,
22 conducting numerous surveys before the project begins, as
23 well as aerial surveys and scout boats to detect marine
24 mammals in the survey area, adaptive management, which
25 would include agency input if multiple shut-downs occurred

1 due to the presence of marine mammals and the --

2 --o0o--

3 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

4 CHIEF OGGINS: -- use of marine mammal observers on both
5 the survey vessel and scout boats. Those observers will
6 be required to have considerable experience siting marine
7 species and mammals and using passive acoustic monitoring
8 during the nighttime hours. A minimum of three marine
9 mammal observers be will assigned with two on watch at
10 each time. However, impacts would still remain
11 significant and unavoidable.

12 --o0o--

13 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

14 CHIEF OGGINS: Impacts may result in take of marine
15 species in the marine-prohibited areas, which is
16 prohibited without Fish and Game approval and mitigation
17 measures -- next slide --

18 --o0o--

19 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

20 CHIEF OGGINS: -- would be similar to the ones from marine
21 biology. However, again the impacts would remain
22 significant and unavoidable.

23 Next slide.

24 --o0o--

25 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

1 CHIEF OGGINS: Lastly, fishing conflicts. The proposed
2 project would preclude fishing for all or most of the fall
3 2012 fishing seasons. It's plural because there are
4 multiple seasons affected. But also potentially reduce
5 catch rate during and immediately after the seismic
6 survey.

7 --o0o--

8 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

9 CHIEF OGGINS: Mitigation measures include developing and
10 implementing a communication plan and implementing a fish
11 avoidance and catch study. However -- next slide.

12 --o0o--

13 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

14 CHIEF OGGINS: The impact would remain significant and
15 unavoidable.

16 --o0o--

17 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

18 CHIEF OGGINS: Next slide.

19 CEQA requires an EIR not only identify the
20 measures -- feasible mitigation measures to avoid or
21 reduce impacts, but also to identify a range of reasonable
22 alternatives to the project that could avoid or reduce
23 impacts. The EIR analyzed the potential impacts of the
24 three alternatives and the no-project alternative. The
25 no-project alternative is obviously the Commission or

1 other agency do not approve the project.

2 We also evaluated a phased alternative where PG&E
3 would conduct part of the survey in the first year
4 followed by a delay in conducting the survey in the second
5 year.

6 Three-zone alternative which eliminates the
7 marine protected areas to the north and an original survey
8 proposal which would be two large zones.

9 Next slide.

10 --o0o--

11 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

12 CHIEF OGGINS: Only the no-project alternative had
13 negligible project impacts. And while none of the other
14 project alternatives reduce one or more impacts to less
15 than significant, the three-loop alternative was
16 determined to be the environmentally superior alternative
17 because it had fewer impacts than the others.

18 Next slide.

19 --o0o--

20 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

21 CHIEF OGGINS: Looking at the proposed project versus the
22 environmentally superior alternative -- next slide.

23 --o0o--

24 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

25 CHIEF OGGINS: You would reduce the northern zone. You

1 would also have 34 days of air guns firing versus 34; no
2 re-fueling. The total project length would be reduced by
3 two weeks. And there would be no impacts in the northern
4 MPAs as much.

5 --o0o--

6 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT
7 CHIEF OGGINS: Brings us to our recommended Commission
8 actions.

9 In short, staff believes that the extreme and
10 far-reaching consequences to both the regional economy and
11 the environment that could result from a major failure at
12 Diablo Canyon and the possibility that new data about
13 potential earth movement from seismic events -- that new
14 data could lead to improvements to the plant safety, must
15 be considered sufficient to override the clear concerns
16 about the environmental impacts that would result from the
17 collection of these data.

18 Therefore, we recommend that Commission certify
19 the Environmental Impact Report, adopt the mitigation
20 monitoring program, adopt the CEQA findings and Statement
21 of Overriding Considerations in Exhibits E and F; four,
22 the alternative 3-D three-loop configuration; and approve
23 the geophysical survey permit.

24 This concludes the staff presentation. And I'm
25 available and Commission staff is available for questions.

1 Thank you.

2 ACTING CHAIRPERSON GORDON: I think we're going
3 to move -- at this point there are no questions from the
4 Commission. I'm going to move with supporters of the PG&E
5 proposal, leading with Mark Krausse, Director of Agency
6 Relations with Pacific Gas and Electric.

7 Mr. Krausse.

8 MR. KRAUSSE: Good afternoon. I tempted fate in
9 my prepared remarks with good morning. I think we're
10 close enough.

11 Good afternoon, Commissioners. Mark Krausse on
12 behalf of PG&E.

13 Mr. Oggins has taken away much of my introductory
14 comments about the process that brought us here. You
15 understand the CEC by recommendation of under legislation
16 sponsored by Senator Blakeslee's pushed us to look at
17 this, something we had already been considering. We were
18 looking at 2D. A company talked with the State Lands
19 Commission staff as early as 2009 to find out the process
20 for permitting in parallel with working through the PUC
21 for approval at that Commission. And we've been working
22 actively with Commission staff since last year on the
23 development of the EIR that you have before you.

24 And the part that Mr. Oggins didn't take away
25 from my presentation is we really have to say thank you

1 for the quantum of work, the availability in terms of
2 public meetings and other meetings that Commission staff
3 put into this and frankly putting candid questions to us
4 about the process.

5 As I think you saw there, the independent -- and
6 I want to touch on a few points -- about five points that
7 have come into the public debate on this permit and
8 process.

9 First of those is peer review. You've heard
10 arguments that this study plan itself should be peer
11 reviewed. It has been peer reviewed. And everybody ought
12 to know the whole process in coming up with the study plan
13 involved folks from the University of Nevada Reno, from
14 Scripps Oceanography -- this is our internal process --
15 from Fugro and others involved in oil exploration and sort
16 of what some argue is the state-of-the-art technology
17 here. All of that to come to our proposal, our first
18 proposed study plan, and then the independent peer review
19 panel or the PUC convened. They've looked at this.
20 That's all the State's seismic experts and others outside
21 the state of California and given recommendations for how
22 it should be improved.

23 So peer review has happened. It will continue to
24 happen. IPRP is charged under the PUC's decision with --
25 we've already presented them I think with presentations on

1 the plan four or five times. They've made two written
2 rounds of written comments and we're awaiting a third. I
3 think it's adequately peer reviewed, is our position.

4 The next issue would be monitoring. And I think
5 you saw the list of agencies. It isn't as if we're coming
6 to you first and then we have to go through approval of
7 all those other agencies. We've been actively involved
8 with State and federal permitting and local throughout
9 this process. And I just want to touch on a bit of the
10 plan.

11 Related monitoring programs include a detailed
12 marine and wildlife contingency plan, a sea otter
13 monitoring plan, a harbor porpoise monitoring plan,
14 remotely operated vehicle surveys, participation in the
15 California Collaborative Fisheries Research Program out of
16 Cal Poly that's working with Fish and Game and Moss
17 Landing marine labs and others.

18 And then on monitoring, we're going to be doing
19 additional work with the Ocean Science Trust and the
20 California Department of Fish and Game and the Fish and
21 Game Commission to see what additional things we need to
22 do. We're doing obviously everything in the EIR, but
23 there may be additional monitoring steps that are
24 necessary.

25 Moving to compensation -- and this permit

1 requires us to compensate those who realize the loss as a
2 result of our work. We've been negotiating with the
3 fishermen in the area. We've had about six meetings with
4 both Morro Bay fishermen and San Luis Bay fishermen. I
5 can't tell you we've gotten to an agreement. We continue
6 to do that. We have a date set a week or two off.

7 If that process breaks down and we aren't able to
8 reach agreement, PG&E has a very fulsome claims process
9 for anyone who can prove damages. We pay claims. And at
10 the request of Commissioner Gordon, we're appending to
11 that process a private arbitration process. If somebody
12 feels they haven't been adequately compensated through
13 that regular PG&E claims process -- this is allowing that
14 we don't reach agreement with the bulk of the fishermen,
15 then they can say, "Look, I don't think you dealt with me
16 fairly," and we can go to a private arbitrator we will pay
17 for. That's on monitoring and mitigation.

18 With regard to our selection of technology, I
19 think the suggestion has been that this is academic, that
20 the approach we've taken is an academic approach and the
21 oil exploration industry, in particular, has the best
22 technology around how to do this. We've certainly drawn
23 from both. But I think the important take-away here is
24 PG&E selected the vessel that it selected and the process
25 that it selected based on the topography, based on what

1 we're having to survey. So oil exploration equipment
2 that's used in the Gulf Coast or in South America in deep
3 waters just isn't appropriate for the off-shore area off
4 Diablo Canyon.

5 And we were talking to some folks today I think
6 the claim was from some of our team you'll hear from
7 later, they say that the tension of some of those
8 streamers are under such tension that if one of those
9 cables were to snap because you've hung up on the ocean
10 bottom, it could go through the hull of the ship. That's
11 the kind of pressure you have on those cables. So I mean
12 just -- they'll speak to some of those safety issues.
13 But --

14 ACTING CHAIRPERSON GORDON: Could you describe
15 the ship that PG&E has chosen to do the work, please?

16 MR. KRAUSSE: I don't think we had it in this
17 slide. There is a roughly 240-foot -- the Marcus Langseth
18 is a former oil exploration vessel that has been
19 repurposed by Columbia University for this type of work.
20 And while it looks huge, this is the kind of life
21 instrument that allows us to get near shore.

22 As was mentioned earlier, the Shoreline fault
23 that was more recently discovered, that requires that we
24 look at the areas very close to shore. This allows us to
25 do that in a way the larger oil exploration ships would

1 not.

2 The only other issue I think that we've heard
3 besides the selection technology is that we split this
4 work into two seasons. You heard Mr. Oggins mention that
5 in terms of alternatives. If you saw the breakdown of the
6 columns there, there is actually in some ways higher
7 impact from that. It may reduce impact in some areas, but
8 it increases the likelihood because you're having to
9 mobilize and demobilize twice. It increases the
10 likelihood of strikes and increases the impact on
11 fishermen. We believe that's the appropriate alternative
12 here.

13 And finally, I'm joined here today by Dr. Stuart
14 Nishenko, our seismologist; our Director of Nuclear
15 Projects, Jearl Strickland, and those two to answer any
16 questions on the seismic survey. We have Simon Poulter
17 from Padres and Associates and Chris from our
18 Environmental Management Team to answer any questions on
19 potential impacts and monitoring practices. And then
20 professors Neal Driscoll of Scripps Oceanography and Dr.
21 Graham Kent of the University of Nevada Reno are also
22 available to answer questions about the technologies.

23 So I'll leave that up to you whether you want to
24 ask additional questions now or if they come up in the
25 course of public comment.

1 ACTING CHAIRPERSON GORDON: I just want to
2 clarify one thing. Is PG&E in support of the alternative
3 3B that the Commission has identified as the best
4 alternative?

5 MR. KRAUSSE: We are. Through the peer review
6 process, the IPRP recommended it. There are some targets
7 we would have liked to have gotten to with that area, but
8 I think if I understand it correctly, the argument is
9 assume the worst-case scenario and you're still within the
10 plant's design basis.

11 ACTING CHAIRPERSON GORDON: So with that in mind,
12 the issue before us is alternative 3B, which is the staff
13 recommended most viable alternative. With that, do we
14 need any of the other PG&E supporters to come forward?
15 Mark are --

16 MR. KRAUSSE: I would suggest they do that and
17 reply to other comments.

18 ACTING CHAIRPERSON GORDON: Then Mr. Cesar Diaz.
19 Is Cesar with us?

20 EXECUTIVE OFFICER FOSSUM: Mr. Chair, we do have
21 Supervisor Strickland here if you want to take any elected
22 officials first.

23 ACTING CHAIRPERSON GORDON: Mr. Gibson is in
24 opposition I believe.

25 I have Cesar Diaz here wishing to speak in

1 support, and I don't see Cesar in the audience.

2 We should take supporters in Morro Bay now before
3 we go to opponents. So those of you in Morro Bay who
4 would like to support the PG&E EIR supported by PG&E,
5 which is alternative 3B as you identified, can you please
6 come forward and identify yourself for the record. And
7 you're on.

8 MR. GILLIES: Okay. We have three people in
9 support: Jeff Lind and then Mike Cannon and then Carl
10 Dudley.

11 MR. LIND: My name is Jeff Lind. I'm a 23-year
12 resident of San Luis Obispo, and I'm very thankful for the
13 opportunity.

14 Good morning. Thank you for letting me address
15 the State Lands Commission.

16 Public safety is at the forefront of everyone's
17 mind, as well as clean, affordable energy that enriches
18 all of our lives. We live in California, the sunshine and
19 the earthquake state. And that's why I'm glad PG&E is
20 taking a proactive approach to ensure the safety of all
21 the people of the central coast by conducting the seismic
22 survey for Diablo Canyon Public Power Plant. Seismic
23 surveys take away the fear of the unknown and reassure us
24 all that PG&E will continue to provide us with affordable
25 energy in a safe environment.

1 I urge the State Lands Commission to adopt the
2 Final Environmental Impact Report and approve the permit
3 for Diablo Canyon Power Plant in the interest of public
4 safety as quickly as possible. Thank you.

5 MR. DUDLEY: Good afternoon, Commissioners.

6 My name is Carl Dudley. I'm a resident of San
7 Luis Obispo County and a businessman that is dependent on
8 the successes of small, medium, and local businesses
9 within the county.

10 I believe PG&E and Diablo Canyon, in particular,
11 have been good stewards of the land and sea. The
12 company's employees have also been good neighbors and are
13 very involved in the local communities.

14 While the seismic survey is an inconvenience to
15 humans, mammals, and other sea life, I believe the safety
16 of all of us are paramount and the proposed project will
17 help with the long-term planning of the safe and sound
18 continued operation of the power plant for years to come.

19 As we all know, we live in a litigious society.
20 This means that the plan doesn't go as outlined, there are
21 avenues to rectify the issue. PG&E has a vested interest
22 to not only perform the testing quickly and properly, but
23 to quickly resolve any and all issues in a very timely and
24 fair manner.

25 During the Diablo Canyon renewal process, I

1 believe that public relations and good will are keystone
2 to these efforts. While there is discussion about the
3 size of the survey ship, I believe if the smaller ship
4 gets closer to shore, than I'm for using the smaller
5 equipment.

6 I encourage you to approve your staff's
7 recommendation. Thank you.

8 MR. GILLIES: Thank you.

9 Mike Cannon left the meeting and he won't be
10 speaking. But we have Kathy Staples and Chuck Anders.

11 MS. STAPLES: Commissioner Chiang, it's Kathy
12 Staples. I'm the Executive Director for the Santa Barbara
13 County Energy and Economic Development Coalition. I'm
14 also a registered intervenor for the California Public
15 Utilities Commission.

16 And I'm here today to support the concept of
17 looking at the seismic studies needed to keep central
18 California safe. I'm a neighbor, was here from the
19 beginning when Diablo Canyon started to be built. I
20 raised my children here. And I am deeply involved in the
21 community in all forms of issues, including the economic
22 impact that comes upon our community.

23 In reading your staff report, which is
24 extensive -- congratulations to you on the wonderful work
25 that your staff has done -- I see that in your statement

1 of findings you find that your staff has worked alongside
2 of the California Environmental Quality staff to meet
3 their standards for what needs to be done here and that
4 they have indicated that there is no other alternative
5 that is reasonable and that the intention of this survey
6 that PG&E intends to do makes all of us safe, gives an
7 opportunity for all of us to understand where those
8 earthquake faults are and for PG&E to prepare for any
9 eventual things in the future.

10 So therefore, I see it as an important
11 opportunity to keep everybody on the central coast of
12 California safe. I would ask you to do this and consider
13 it strongly based on an environmental issue. The Snowey
14 Plover mates and hatches in the spring of the year. So
15 this time at the end of the year is very important. It's
16 not accidental. It's not casual. September to the end of
17 the year is the time that this report should be done so
18 that it doesn't affect any more mammals and/or fish and/or
19 other living beings. And to get these results completed
20 in a way that you can see that your staff has been
21 diligent in looking at what was necessary to accomplish
22 this goal, you have my complete support. And I thank you
23 for your attention.

24 ACTING CHAIRPERSON GORDON: Are there any other
25 spokesperson in support in Morro Bay?

1 MR. GILLIES: Yeah, we have one more, Chuck
2 Anders.

3 MR. ANDERS: Good afternoon. My name is Chuck
4 Anders, and I'm a resident of 15 years in San Luis Obispo
5 County. And also in my past, I've actually been Director
6 of the Arizona State Department of Environmental Quality,
7 previously at that time the Division of Environmental
8 Health Services. So I understand the difficulty in making
9 tough decisions that affect future safety and also the
10 environment.

11 In my experience in making those types of
12 decisions, the key is a good process. And I've observed
13 in this situation a very good process where everyone has
14 had the opportunity to participate, to express themselves
15 fully, and to have different opinions fully examined and
16 understood.

17 Given the circumstances that we have an operating
18 facility, we have a potential for a catastrophic event and
19 the opportunity to learn more and provide piece of mind to
20 all of the residents. It makes sense as far as I'm
21 concerned to move forward with approval of the EIS so that
22 the seismic study can be conducted as quickly as possible
23 and the community can have a higher sense of satisfaction
24 that we're living in a safe community, and which I hope
25 will be proven.

1 So I strongly support and encourage the
2 Commission to approve the EIS. Thank you.

3 ACTING CHAIRPERSON GORDON: Is that the last
4 supporter in Morro Bay?

5 Did Mr. Diaz make it? There are more supporters
6 here in Sacramento.

7 EXECUTIVE OFFICER FOSSUM: Supervisor Gibson
8 wishes to speak in qualified support.

9 ACTING CHAIRPERSON GORDON: So we have the middle
10 of the road position before we get the opposition.

11 SUPERVISOR GIBSON: You just can't use "Shades of
12 Gray" anymore because of the book. It really blew that
13 phrase. I'm sorry.

14 I'm Bruce Gibson, the 2nd District Supervisor for
15 the County of San Luis Obispo. I'd also be interested in
16 discussing with Mr. Strickland whether he wants to change
17 jobs with me. That would be a toss-up perhaps in this.

18 I'd like to first thank State Lands Commission
19 staff who's been extraordinarily thorough and accessible
20 and thank the Commission and AGP for arranging the remote
21 hook-up in Morro Bay so that many of the residents of San
22 Luis Obispo County are spared the heat of the central
23 valley at this time.

24 I do rise in qualified support of this. Our
25 Board's formal position is contained in a letter that's in

1 your record. It was a letter past unanimously last week
2 and delivered shortly after its passage last Tuesday.

3 Our Board of Supervisors believes that it is
4 fundamentally important to do these surveys, but it's most
5 important to do them right. And since I'm the individual
6 who's raised many of the technical issues that Mr. Krausse
7 alluded to, I would be happy to debate those issues at
8 whatever level of detail now or later. You know, it's not
9 my intent to engage a graduate seminar in reflection
10 seismology, as interesting as that may be.

11 In deciding whether to issue the permit for this
12 survey, our Board believes there are basically three sets
13 of issues that you will have to wrestle with here. And
14 this afternoon, you're going to hear quite a lot about
15 potential environmental and economic impacts that would be
16 caused by these surveys. Those are real. And our Board
17 letter does speak to those issues and how we think they
18 should be handled.

19 I'll limit my comments right now to the third set
20 of issues, which are basically the technical issues of
21 survey technique within the footprint that has been
22 identified. And let's work for the moment with the
23 modified footprint of 3B.

24 I think we all agree that it's a given that
25 everyone, whether they're a resident of San Luis Obispo

1 County or not, deserves a survey that is conducted at the
2 state-of-the-art. And we deserve the use of the best
3 available technology in pursuit of the best science.

4 And as I believe your Commission knows, I am a
5 member of the Independent Peer Review Panel, IPRP. I hold
6 a doctorate in geophysics. And I had a previous life a
7 research career in seismic reflection imaging techniques.

8 Now, the IPRP has been reviewing the survey
9 design. I've been most actively involved in that over the
10 course of this year. We have as an IPRP commented on the
11 footprint. But this has not been peer reviewed by the
12 IPRP as to the details of the survey technique within the
13 footprint.

14 These are issues that I first raised with PG&E in
15 January of this year. And through a series of steps and a
16 certain amount of cumbersome process, the IPRP has not had
17 a chance to weigh in with the peer review.

18 Our Board letter includes a detailed technical
19 appendix, an exchange of letters between myself and PG&E
20 and a third attachment that shows issues that I believe at
21 this point and our Board believes at this point are
22 unresolved. I won't go into many of the details here.
23 Certainly happy to be available for your questions and
24 give you further information.

25 But for instance, on the matter of shallow water,

1 as to whether a boat of one sort or another can get in and
2 out of there, the assertions made by PG&E simply have not
3 been demonstrated. And again, we can talk about that in
4 more detail.

5 At the bottom line, I do believe that there is a
6 possibility that using an industrial state-of-the-art boat
7 and the associated technology could significantly cut the
8 survey time in the water and could produce a better
9 seismic image and more information about earth structure
10 in this particular part of the world.

11 Those two issues -- the first issue, in
12 particular, speaks directly to the environmental impact.
13 Less time in the water. Less environmental impact. And
14 we can talk again about how that might come to be.

15 Our Board's position is that the details of this
16 survey design should be subjected to independent
17 third-party review by industry qualified experts. I would
18 again point out as Mr. Krausse references are to companies
19 and individuals that are part of this project connected
20 with the proposal by PG&E.

21 And I would characterize PG&E's assertions at
22 this point is that the proposed survey is good enough for
23 the job at hand. And I submit that the residents of San
24 Luis Obispo County and residents of the state of
25 California deserve the best possible survey. And this

1 independent review is the means of assessing whatever gap,
2 if any, exists between those two concepts.

3 Clearly, gentlemen, the stakes here are high.
4 The lesson of Fukushima is that we must take extraordinary
5 efforts to reassess everything. We think we know about
6 seismic hazard to a nuclear power plant. Again, I'm
7 available for your questions and in a more detailed
8 discussion about the specific issues of interest to you.

9 Thank you.

10 ACTING CHAIRPERSON GORDON: I'd call Ms. Becker
11 forward.

12 MR. GEESMAN: Thank you, Mr. Gordon and members
13 of the Commission.

14 My name is John Geesman. I'm appearing today on
15 behalf of the Alliance for Nuclear Responsibility.

16 Our position is perhaps a bit more nuanced than
17 even Dr. Gibson. We are in support of the studies. I
18 want to make that emphatically clear. My client has been
19 associated with this project since Senator Blakeslee first
20 introduced his legislation. Worked quite closely with the
21 California Energy Commission, on which I served, as the
22 Energy Commission took up implementing AB 1632. Has
23 participated in the Public Utilities Commission proceeding
24 whereby PG&E is seeking \$64 million of customer funds to
25 pay for the studies.

1 My client has no doubt about the importance of
2 these surveys. Some 50 years ago, Public Utilities
3 Commission and your predecessors, the State Lands
4 Commission, considered this a suitable site for a nuclear
5 power plant on the Pacific Rim of fire where the USGS says
6 90 percent of all earthquakes in the world take place.

7 You ought to adopt an appropriate level of
8 humility for those decisions. Frankly, they just didn't
9 know any better. But we've learned a lot about seismicity
10 since the building permit was first applied for for this
11 plan, and we can learn a lot more through these studies.
12 That's why my client quite strongly supports the notion of
13 going forward with the enhanced 3D survey technique.

14 My client's position is that it is not right
15 today for you to make that decision. The reason for that
16 is the Public Utilities Commission still has important
17 information in front of it to determine the appropriate
18 scope of the surveys.

19 My client sponsored the expert testimony of Dr.
20 Douglas Hamilton of the PUC proceeding. Who is Dr.
21 Hamilton? He's a Ph.D. Geologist from Stanford University
22 who for nearly 20 years was a part of the PG&E
23 geotechnical licensing team for the original license
24 Diablo Canyon. In the wake of Fukushima, he came forward
25 to us, something of a seismic Daniel Elsburg and said, you

1 know, there was some things that we didn't adequately
2 consider. And the recently discovered Shoreline fault
3 data reinforces his conviction that important seismic
4 information was overlooked or underplayed at the time of
5 the original licensing and could greatly benefit from
6 exposure to the 3D seismic enhanced studies. His view is
7 that the Diablo Cove fault, which goes directly under the
8 reactor, is the most serious seismic threat to the
9 facility and that important enhancements of the 3D surveys
10 could determine what magnitude of risk that fault, indeed,
11 poses.

12 What was PG&E's reaction? Well, initially, they
13 moved to strike his testimony as irrelevant to the
14 proceeding. PUC didn't allow that.

15 Then they asked for a delay in the proceedings so
16 they could evaluate his testimony. When their testimony
17 came back, they determined that, well, he actually had
18 some pretty good ideas they had planned to investigate all
19 along. And you'll see on the material that I have
20 provided to you, which is from the public comments to your
21 draft EIR, the cross-examination of PG&E's witness Dr.
22 Stuart Nishenko in which he agrees that their studies will
23 take into account Dr. Hamilton's concerns. We posed that
24 to your staff after the PUC hearings. Your staff
25 indicated it does not have the authority to direct PG&E to

1 study those areas.

2 Okay. There is no question that the Public
3 Utilities Commission does. And you ought to defer your
4 decision until the PUC process is over, which should be
5 later this fall.

6 Now what are the consequences of delay? Well,
7 you would have a chance to take into account the peer
8 review suggested by Dr. Gibson. PG&E tried to rush this
9 process because of concern the ship would not be available
10 next year.

11 If you look at the National Science Foundation's
12 environmental assessment of Southern California Edison's
13 project, they intend to use the same ship. And that ship
14 is going to be available not just this year, but it will
15 be available next year. Edison plans to use it on the
16 coast of California to review its project next fall. It's
17 my client's position that the prudent choice today, hold
18 off. Wait until the Public Utilities Commission has had a
19 chance to decide. Let's see if they direct PG&E to study
20 Dr. Hamilton's concerns. Let's see if PG&E of its own
21 initiative chooses to stand with its word under oath PUC
22 testimony, that it will incorporate his concerns.

23 I thank you very much for your time and of the
24 excellent work of your staff.

25 ACTING CHAIRPERSON GORDON: Ms. Becker.

1 MS. BECKER: Good afternoon. My name is Rochelle
2 Becker. I'm the Executive Director of the Alliance for
3 Nuclear Responsibility.

4 I have been working on issues surrounding Diablo
5 Canyon for over 40 years. Thirty years, I tried to work
6 within the NRC framework hoping that the NRC would finally
7 do its job. And when they put in the dry cast storage at
8 Diablo Canyon, there were two issues that were raised.
9 One was security. Our hearings were 9/11/02. And the
10 other one was updated seismic studies. The Nuclear
11 Regulatory Commission turned us down on both issues.

12 The Mothers for Peace had to raise \$100,000 and
13 took the NRC to court and won. But they had no money to
14 take the NRC to court on seismic issues.

15 It was then in 2004 that I left a group that I
16 thought very highly of, but who didn't want to look at the
17 State and what the State's jurisdiction was. They wanted
18 to stay with the NRC, which is in charge of safety. And
19 the State of California is in charge of our economics and
20 the reliability of our energy source.

21 It is your turn to trust but verify. When we
22 didn't do that during construction, we ended up with \$4
23 billion in cost overruns and years and years of delays.

24 We are not trying to stop anything. But post
25 9/11, post Fukushima, post a new discovery of a Shoreline

1 fault that obviously didn't just pop up -- and PG&E has
2 been doing seismic studies for quite some time and the
3 USGS found the Shoreline fault -- it's time for other eyes
4 to look at this. PG&E said they would include Dr.
5 Hamilton's scope under oath at the Public Utilities
6 Commission. We have been before the Energy Commission,
7 the Coastal Commission, the Public Utilities Commission,
8 the Water Board, the State Lands Commission, the
9 Legislature. We often are the only conduit between your
10 sister agencies. We don't see anyone -- if there are from
11 the PUC, raise your hand here. They're going to make a
12 \$64 million decision somewhat based on your decision.
13 They're not here to listen.

14 PG&E cannot be trusted to do this work without
15 looking over their shoulders. It doesn't mean that
16 they're bad people. They're people who want to get the
17 study done quickly and move on to license renewal, operate
18 that plant for another 20 years.

19 They have also filed for a license renewal
20 amendment for their seismic design basis with the Nuclear
21 Regulatory Commission. And that's in limbo. There are
22 many things in limbo. And it would be very difficult for
23 this agency to say we don't have the authority to do it
24 and then go ahead and pass an EIR and EIS that goes
25 forward.

1 I'm a rate payer. I have paid a lot for these
2 nuclear plants. Currently, I'm a rate payer in San Diego
3 as well as San Luis Obispo County. I'm paying for one
4 that's not even operating.

5 This State needs to look carefully at nuclear
6 power. Yes, it provides megawatts. And yes, it provides
7 jobs. So did Fukushima. It now. Thank you.

8 ACTING CHAIRPERSON GORDON: I have a question.
9 Mr. Krausse, I'm not quite sure who the proper person for
10 PG&E is, but I would like someone to respond to the issue
11 of Dr. Hamilton's testimony before the PUC and --

12 MR. NISHENKO: Sure. Thank you, sir.
13 Commissioners, thank you for giving me the opportunity.
14 Is there a specific question --

15 ACTING CHAIRPERSON GORDON: The allegation has
16 been made by several witnesses that Dr. Hamilton gave
17 testimony for the PUC recommending a broader scope than is
18 being considered here. The allegation is that PG&E agreed
19 at that time that they would go forward with the
20 recommendation that Dr. Hamilton, one of your own previous
21 employees had, and that now PG&E is not going -- is not
22 going to do so.

23 MR. NISHENKO: I disagree with that,
24 respectfully. I think we are going beyond the
25 recommendations that Dr. Hamilton made in his testimony

1 last spring in front of the PUC. We are in the process
2 today of beginning an exhaustive high resolution seismic
3 inflection survey both on the PG&E Diablo Canyon plant
4 site and a larger area around the surrounding plant site
5 pursuant to the rules and regulations of the Nuclear
6 Regulatory Commission to specifically address the
7 allegations that Dr. Hamilton made and basically take the
8 attitude that we do not want to leave any stones unturned
9 in this issue because it is so crucial for public safety.
10 So we're doing everything we can to address those issues
11 using the best technology available to us today.

12 ACTING CHAIRPERSON GORDON: Thank you, sir.

13 Next witness, we've got Amanda Wallner, Karen
14 Garrison, and Paul Hobi, here in Sacramento in no
15 particular order. Any of the three wish to come forward.
16 Any of them still here?

17 For purposes of time, could put witnesses please
18 come to the front row so they will be able to come up
19 quickly. Thank you.

20 MS. WALLNER: I'm actually not sure if you called
21 me. My name is Amanda Wallner. I'm here on behalf of
22 Sierra Club California representing our over 150,000
23 members and activists in the state, and more than 2,200
24 members in the affected area.

25 First, I'd like to thank the Commission and staff

1 for making public comment available in Morro Bay today.
2 We've heard from many members who were desperately hoping
3 to have that opportunity.

4 I'd like to ask you at this time to direct staff
5 to analyze other alternatives that we believe may reduce
6 impacts on the local marine environment, specifically some
7 of those that were provided by NRDC and Oceana and the
8 comments, the two-phase alternative that would also remove
9 Section 3 from the survey area, Area 3.

10 We are in no way asserting that additional
11 seismic imaging is unnecessary. We believe that the
12 public deserves to know the actual risk to Diablo Canyon,
13 and the NRC needs to know. And we would -- I would second
14 some of the previous commentors in making sure that we
15 have the best available knowledge when this project goes
16 forward.

17 However, the Commission should not put expediency
18 over the environment if there are better options. The
19 current project will result in significant impacts to
20 marine life, and we think that there are opportunities to
21 reduce those impacts that should be further analyzed.

22 ACTING CHAIRPERSON GORDON: Ms. Garrison.

23 MS. GARRISON: Good afternoon, Commissioners.
24 Karen Garrison from the Natural Resources Defense Council.

25 We certainly understand the need to reassess

1 earthquake risk, but we emphatically can't support the
2 project as currently configured by PG&E because that
3 proposal would cause significant impacts on marine life
4 and habitat. And some of those impacts can be reduced.

5 Specifically, it would have major impacts on the
6 endangered species like blue fin and humpback whale
7 California sea otters, in addition to potential adverse
8 impacts on fish, fishermen, and protected areas. And my
9 colleague, Paul Hobi, from Ocean Conservancy is going to
10 speak more about that.

11 Of greatest concern, however, is the impacts on
12 the small discrete population of Morro Bay harbor
13 porpoise. The Final Environmental Impact Report concludes
14 that permanent hearing loss and other injuries would
15 exceed what that porpoise can sustain annually. Impacts
16 like abandoning habitat at the height of the breeding
17 season could be even more harmful. Harbor porpoises are
18 the marine mammals that's most vulnerable to the impacts
19 of man-made sound and the core range of the Morro Bay
20 population is almost entirely encompassed by this study
21 area.

22 The State Lands Commission plays a critical role
23 as stewards of State resources, ensuring a balance between
24 the use and protection of those resources. This project
25 as proposed doesn't achieve that balance. It could

1 produce significant population level impacts on the
2 porpoises and many other adverse impacts on the marine
3 environment, in return for just a moderate chance of
4 gathering useful data. And that's according to the FEIR.

5 Consistent with your stewardship responsibility,
6 we urge you to incorporate two recommendations into the
7 final project to reduce its impacts and gain more
8 information for future decision making.

9 One, we ask that you adopt alternative 2B, with
10 phasing the study over two years, in addition to
11 alternative 3B proposed by PG&E, and limit the survey
12 duration from mid-November to mid-December, a period of
13 lowest impact on marine life.

14 Second, we ask that you require the
15 implementation of a comprehensive monitoring plan in
16 consultation with the Ocean Science Trust, and my
17 colleague Paul will talk more about that. The operative
18 words are before, during, and after.

19 I'll briefly explain why we make those
20 recommendations. First, restricting the survey from
21 mid-November to mid-December avoids the larval peak
22 periods for most commercial fish, though it doesn't
23 mitigate direct impacts. This time period would shift
24 impacts away from peak breeding season and the critical
25 first few months of nursing for the harbor porpoises. And

1 its a period of low density of endangered whales.

2 It would also allow time between the surveys to
3 assess the impacts on the harbor porpoise population.
4 And it would avoid the gray whale migration and all but
5 the tail end of sea otter breeding season.

6 Phasing the project over two years would allow
7 the project to stay within that window, avoiding all the
8 impacts that I just mentioned. We don't understand based
9 on the available information why a phased study couldn't
10 be done within the same period of days in the water that
11 we'd need for a one-year study. And the assumptions about
12 a phased study having more impacts seem to come back to
13 that idea that we're going to need more days in the water
14 if we move to a two-year study.

15 Also the phased project holds the possibility of
16 avoiding a second year of the survey and half the planned
17 survey days if the methodology proves ineffective.

18 So I have some responses to concerns that have
19 been raised about the phased study, which I can do now or
20 in response to questions. Do them now.

21 One concern is that the total in-water survey
22 duration would be longer. As I just mentioned, I think an
23 example that's been given of why it would have to be
24 lengthened is another sound check verification would be
25 needed in year two. But the FEIR itself says a sound

1 check isn't anticipated for year two.

2 ACTING CHAIRPERSON GORDON: Can we get whoever
3 from PG&E's team will be responding to this up? I'd like
4 to hear this issue explored fully with regard to the
5 additional days if it's phased in over two years.

6 MS. GARRISON: So we are operating on the
7 information on the FEIR.

8 So the second concern is that the vessel being
9 used in year one may not be available in year two. You
10 already heard a bit about that from previous testifiers.
11 The vessel is scheduled for work nearby. We don't have
12 access to the whole schedule, but there doesn't seem to be
13 any reason why it wouldn't be available in year two.

14 Finally, a third concern is that the analysis of
15 the data gotten from the survey could take a whole year,
16 making it hard to meet the Nuclear Regulatory Commission's
17 deadline of 2015.

18 Our question is not how long it might take, but
19 how quickly it could be done. And that question hasn't
20 been answered. We're left with a number of questions.

21 ACTING CHAIRPERSON GORDON: PG&E, can you bring
22 your folks up? I want to hear the response to the issue
23 of it would take more days if you do it over two years as
24 opposed to one year.

25 MR. VARDAS: Good afternoon, Commissioners. My

1 name is Chris Vardas. I'm with the Environmental
2 Management Department for PG&E.

3 PG&E carefully looked at the Phase 2 alternative
4 as described in the EIR and the analysis that was provided
5 in the document before that, as well as we conducted our
6 own analysis.

7 The drawbacks to a phased survey are, first of
8 all, the overall survey duration would be increased. And
9 the reasoning for that is you would have to double or
10 twice you would have to mobilize and demobilize the vessel
11 to the survey area.

12 Secondly, as part of --

13 ACTING CHAIRPERSON GORDON: Stop. I want to
14 understand this fully.

15 So the mobilizing and demobilizing wouldn't be
16 taking place in the area -- when you say mobilize, you
17 mean getting it outfitted to do the work?

18 MR. VARDAS: What I mean is the vessel is not
19 kept in the survey area when it's not conducting the
20 survey. It could be anywhere around the world conducting
21 surveys. So there is time required to get the vessel to
22 the site, and at the end of the survey, time required to
23 have the vessel leave the area.

24 ACTING CHAIRPERSON GORDON: But I want to fully
25 understand this.

1 MR. VARDAS: Let me finish, sir, if you don't
2 mind.

3 So doing so has two adverse consequences.

4 First of all, mobilizing the vessel to the site
5 and demobilizing it requires generation of additional air
6 emissions, which the EIR has identified as a significant
7 unavoidable impact. Nonetheless, we are working with the
8 local air pollution control district on ways to minimize
9 emissions. But nonetheless, it still has a significant
10 impact.

11 Secondly, during the mobilization and
12 demobilization, you still have the issue of potentially
13 encountering marine mammals and the possibility of vessel
14 strikes. We don't intend to impact marine mammals. We
15 have a comprehensive program to minimize impacts or
16 disturbance to marine mammals. Nonetheless, it's an
17 issue.

18 Thirdly, when the ship comes to the area and we
19 begin the seismic survey, there's a lot of preparatory
20 activities that take place. We have to deploy the
21 equipment. As you know, the streamers are very long. It
22 takes a long period of time to get the streamers out of
23 the water. We have to check to make sure they're
24 operating properly. Then we have to do the sound check
25 verification to make sure that the noise emitted from the

1 vessel and the attenuation over distance is consistent
2 with the modeling that's provided in the EIR to make sure
3 the exclusion zones and safety zones that we manage to
4 minimize impacts to marine mammals is consistent with the
5 requirements.

6 There is a possibility of the next year if we
7 phase it over two years that the Langseth vessel may not
8 be available. And if we were to use another survey
9 vessel, the equipment provided by the vessel may not be
10 exactly the same, such that we would have to do more
11 equipment verification and validation procedures. We may
12 have to do another sound check verification process. So
13 all those activities create additional or potential for
14 additional impacts.

15 Another issue that's pointed in the EIR that
16 wasn't really discussed is that there is a possibility
17 that the following year the densities of marine mammals
18 may be higher. It could be less. But it could be higher,
19 such that the potential sonification of marine mammals may
20 be greater the following year.

21 As for monitoring, we have a very comprehensive
22 monitoring program that we developed and we will implement
23 that will include marine wildlife contingency plan which
24 we will carry out during the survey to make sure that we
25 minimize disturbance from marine mammals.

1 Secondly, in coordination with the National
2 Marine Fishery Service, we're developing and implementing
3 a harbor porpoise monitoring program. And that monitoring
4 program was developed by the National Marine Fisheries
5 Service, and they intended to carry out the work and that
6 program will be funded by PG&E.

7 Thirdly, we are working with US Fish and Wildlife
8 Service to implement a sea otter monitoring program. That
9 program has been developed by the US Fish and Wildlife
10 Service in concert with the US Geological Survey. And we
11 actually funded a portion of that survey so they can
12 purchase necessary specific equipment devised for that
13 specific survey.

14 Finally, in regards to fish and other attributes,
15 we are working with Cal Poly, Moss Landing, the local
16 fishermen to augment the existing California Collaborative
17 Fisheries Research Program, which has been going on for
18 six years, to assess and look at the viability of
19 fisheries both within in marine protected areas and
20 outside the marine protected areas and outside the survey
21 area to make sure on a long-term basis we can measure
22 whether there are any changes in the abundance or
23 distribution of fish.

24 Does that answer your question, sir?

25 ACTING CHAIRPERSON GORDON: Most of it.

1 How many additional days, if one were to exclude
2 transport to and from where the ship might be, how many
3 additional days would be included in the phase -- in doing
4 it two phases where you're starting up a second year?

5 MR. VARDAS: I'm going to defer to my colleague
6 Simon Poulter with Padres and Associates to answer that
7 question. Thank you.

8 MR. POULTER: It's a little hard to answer
9 directly. Obviously, if it's the same vessel and sound
10 verification is removed, you would be adding a minimum of
11 two-and-a-half days to deploy the equipment. You've also
12 got associated time lines required to address potential
13 shutdowns associated with other equipment repair and/or
14 shutdowns associated with marine mammals.

15 My basic guess at this point would be that you're
16 looking at adding at least three to four weeks to the
17 total survey time based on both the deployment and the
18 demobilization. This has to be coordinated with the
19 on-shore deployment, which involves deployment of on-shore
20 seismic equipment, plus the inner tidal area where we'll
21 be putting marine geophones, which will also need to be
22 redeployed.

23 So the question cannot be answered directly
24 because the first year would define the second year's
25 survey.

1 But I do want to point out the Langseth as
2 currently scheduled by the National Science Trust is
3 scheduled to be in the Atlantic, in fact, the eastern
4 Atlantic. We're estimating that based on standard transit
5 it would be 45 days to bring it back to California,
6 assuming it goes as it's currently scheduled.

7 ACTING CHAIRPERSON GORDON: As I understand your
8 answer, it would be three to four more weeks of the
9 equipment in the water?

10 MR. POULTER: Beyond just the actual survey time
11 period. That's kind of the time on either end. So you
12 can't just negate that.

13 The Hess guidelines, which is the guiding factor
14 that we use which is a multi-agency process that was
15 developed back in the '80s for seismic programs, calls for
16 sound verification and calls for aerial surveys as part of
17 the protocol, and you have to do those. Those are
18 standard procedures, and we have agreed to do that as part
19 of the survey. So we really cannot shortcut the process
20 just because we're bringing the vessel back in. We can't
21 just re-start up.

22 ACTING CHAIRPERSON GORDON: Thank you, sir.

23 Do you have any questions?

24 COMMISSION MEMBER NEWSOM: Just a little more
25 clarification. Edison will be using the same equipment.

1 You mentioned 45 days. I'm confused now.

2 MR. POULTER: There is a currently a proposal to
3 use the Langseth after PG&E is done. That work is
4 scheduled to occur only in federal waters. That's why
5 you're not seeing that item before you at this point.
6 That work would be scheduled at the latter part of this
7 year. Then the vessel would be moving out of the area.

8 MR. VARDAS: If I may, Commissioners, can I have
9 one more point? So there's -- no? Okay.

10 ACTING CHAIRPERSON GORDON: Mr. Hobi.

11 MR. HOBI: Good afternoon, Commissioners, members
12 of the staff.

13 My name is Paul Hobi. I'm representing Ocean
14 Conservancy. Like NRDC, we support gathering the best
15 possible information about seismic safety around Diablo
16 Canyon, but we also have significant concerns about the
17 likely impacts of this project on the marine environment
18 and on marine life and we cannot support the proposed
19 study plan as is.

20 It seems to me in the testimony of the folks from
21 PG&E that they are sensitive to a number of these
22 concerns. And that is very encouraging. The DEIR and the
23 FEIR have identified significant and unavoidable impacts
24 to marine life, which we'd like to avoid or reduce to the
25 greatest extent possible. So the State Lands Commission

1 should require alternatives 3B and 2B, which will help
2 avoid as much harm as possible while still achieving the
3 project goals and require implementing a comprehensive
4 monitoring plan which will help us understand the effects
5 of the current project.

6 Since PG&E has stated that they will be
7 supporting alternative 3B, I won't spend a lot of time
8 concentrating on that. But suffice it to say we do
9 support that alternative because it leaves out seismic
10 testing in the northern range of the proposed study area
11 and therefore spares the impacts to the Cambria and marine
12 protected areas.

13 I would like to note that the most disconcerting
14 part of this project is that a high energy seismic survey
15 of this size and scope has, to our knowledge, never been
16 done on the California coast. This is a huge project, and
17 we anticipate that it will have significant impacts on
18 fish populations in and around the proposed study area.

19 We do not believe the FEIR's conclusion that the
20 impact on fish would be less than significant. We don't
21 think that that's supported by science. In fact, studies
22 have shown that air gun surveys interrupt breeding and can
23 significantly affect the distribution of some fish species
24 and dramatically depress catch rates of commercial fish
25 well beyond the survey boundaries.

1 ACTING CHAIRPERSON GORDON: Mr. Hobi, can I stop
2 you for a minute?

3 With PG&E setting up a claims process for losses
4 to the fishermen going forward, does that satisfy your
5 concern? It's speculative, I believe, as to what the real
6 impacts of the fish are going to be. So they're going to
7 put money into an escrow account at some point to pay
8 future losses as proved. Does that cover the issue with
9 regard to losses of fishing and loss of fishing revenues?

10 MR. HOBI: I believe it covers the concern with
11 respect to the fisherman, but not necessarily with respect
12 to the fish. And you know, I think our -- my point in
13 highlighting this was that it was a shortcoming of the
14 FEIR to conclude that the impact would be less than
15 significant on fish and on marine life.

16 ACTING CHAIRPERSON GORDON: Does Ocean
17 Conservancy have any recommendations as to how they would
18 lessen the impact on the fish, assuming that you agree
19 that gathering the data is important?

20 MR. HOBI: Sure. Well, I think that option 3B
21 does answer some of those concerns with respect to the
22 northern part of the study range. But you know, the fact
23 of the matter is that the impacts to fish will be
24 unavoidable.

25 So that's why it's so important that we implement

1 a strict and rigorous monitoring program to try to
2 determine what exactly the effects of the study will be
3 before, during, and after.

4 So what we really recommend is remote-operated
5 vehicles be down there before, during, and after and
6 divers be down there before and after and probably not
7 during. But we really want to understand the effects of
8 the study will have on the marine environment. And you
9 know, I'm pleased to see that PG&E seems to be sensitive
10 to those concerns.

11 So just to finish up with our concerns for better
12 monitoring of the harbor porpoise, we would specifically
13 like aerial surveys to be flown at 500 to 700 feet per
14 NMFS practice for preserving porpoise. We would like
15 passive acoustic monitoring independent of the source
16 vessel to be employed to detect changes in porpoise
17 distribution. And we'd also like for development of a
18 protocol for monitoring beaches for stranded marine
19 mammals to be done.

20 Currently, the FEIR requires PG&E to report
21 strandings but does not provide any clear way for
22 comprehensive monitoring of those areas.

23 So like Dr. Strickland, we want the best possible
24 study to be done, but we also want the best possible
25 monitoring in order to understand the effects of the

1 survey.

2 ACTING CHAIRPERSON GORDON: Thank you.

3 We're going to turn I believe -- is there anybody
4 else in the room here in Sacramento who wishes to testify
5 at this point? We're going to go --

6 MS. GARRISON: Is it possible for me to respond
7 to a couple things that PG&E folks said?

8 ACTING CHAIRPERSON GORDON: Yes, ma'am, but keep
9 it brief.

10 MS. GARRISON: Most of what I heard was about
11 additional time in the water not making noise, but
12 deploying and undeploying, whatever you call it.

13 I just want to note that the chance that would
14 result additional strikes of marine mammals I think is
15 specious, because the whole idea of the phasing program is
16 to restrict the project to times when marine mammals are
17 at their lowest densities already. So we would be inside
18 that low density period in the phased approach. We would
19 be outside of it in the one-year approach with the much
20 greater risk of strikes because of the density in the
21 water.

22 In response to your question about ways to reduce
23 impacts on fish, I would just reiterate that the phased
24 approach would also minimize impacts on larvae, which
25 helps in terms of long reach health of fisheries even

1 though we can't reduce takes of adults. Thanks.

2 ACTING CHAIRPERSON GORDON: Mr. Geesman, I take
3 it you're coming forward with a response.

4 MR. GEESMAN: And a very brief one, Mr. Gordon.

5 The environmental assessment published by the
6 National Science Foundation within the last month on the
7 Edison project make very clear that the ship will come
8 back for a second year to the California coast in the
9 Edison project, if Edison goes forward with 3D studies.

10 ACTING CHAIRPERSON GORDON: Thank you.

11 I'm seeing some responses from PG&E to that. Is
12 that what I'm believing? Quickly. We have a lot of folks
13 in Morro Bay who have been waiting patiently to testify.

14 MR. STRICKLAND: I'm Jearl Strickland, the
15 Director of Projects Nuclear for Diablo Canyon.

16 What I want to offer up is if you're interested
17 in having the research scientists that are actually
18 involved in doing our peer review and then will be with us
19 on the vessel to be able to validate data collection, data
20 interpretation, and so forth, if you have specific
21 questions that you would like to have answered by them, we
22 have them here available for you.

23 ACTING CHAIRPERSON GORDON: I'd also like to make
24 one thing clear, at least from my perspective at this
25 point in time. As everyone comes forward, it seems PG&E

1 has done a fair amount with regard to monitoring of marine
2 mammals, et cetera. We are talking about here as we add
3 additional layers of protection is rate payer money. This
4 is not coming out of the pockets of the CEO or PG&E
5 stockholders. This is money that PUC is going to dedicate
6 out of rate payer funds. So that is a concern. The
7 people in the PG&E service area are going to pay for all
8 this. We want them to pay for what's necessary and gets
9 the best data and allows decisions going forward.

10 So with that, unless the other Commissioners have
11 any questions, I would like to turn to folks in Morro Bay
12 for their testimony. Thank you for waiting patiently.
13 Let's go forward down there.

14 MR. GILLIES: We have four general speakers:
15 Eric Endersby, Michael Manchak, Steve McGrath, and Tiffani
16 Seitz.

17 ACTING CHAIRPERSON GORDON: I would also like if
18 you would please stay within the three minutes. If you
19 would do the best possible. The light is in front of you
20 green, yellow, red. Go forward.

21 MR. ENDERSBY: My name is Eric Endersby, the
22 Director of the City of Morro Bay. I appreciate --
23 (Inaudible)

24 ACTING CHAIRPERSON GORDON: Start all over again.

25 MR. ENDERSBY: I'm Eric Endersby. I'm the

1 Director of the City of Morro Bay.

2 Appreciate that you've made this meeting room
3 available here. It's a big help for all of us, from the
4 fishermen to the local constituents here in the county.

5 Good afternoon, Commissioners.

6 A lot of stuff has already been spoken in terms
7 of the environmental effects. I'll try not to duplicate a
8 lot of things that have been said. A lot of our interests
9 are obviously with the commercial fishermen in our harbor.
10 We are a very commercial and recreational fishing
11 dependent town. We've seen a lot of impacts to our
12 commercial fisherman and our recreational fishermen in the
13 recent years. And it seems like we've bottomed out and
14 things are starting to do better and turn around in that
15 regard. So we're very concerned about what these studies
16 and what the impacts of this project may have on our
17 fishermen, on both commercial and recreational.

18 Most of the socioeconomic effects, the effects on
19 our fishermen and the port, under CEQA understandably are
20 not mitigated. I think they're categorically considered
21 less than significant. As such, they're not mitigated.
22 However, I would make the point that there is two very
23 well-known things that occur in traditional fishery
24 management. And one of them is called displacement and
25 one of them is called concentration of effort.

1 This project will displace fishermen. It will
2 drive them to other areas. But to what degree that may
3 be, may be up in air and up for argument. But especially
4 with commercial fishermen, they can't just stop fishing
5 while this occurs. If in fact things do start slowing
6 down or the fish disappear or the fish are killed, they
7 have to go make a living somewhere and they're going to go
8 do it somewhere else.

9 So the caveat in the DEIR or the Final Impact
10 Report that says less than significant, the socioeconomic,
11 these fishermen are going to be displaced. They are going
12 to go elsewhere and are going to have an effect on other
13 environments because the efforts are going to be
14 concentrated in other areas because of this. I think that
15 needs to be brought into consideration.

16 Independent science review as the last speaker
17 said of the science that says that the impacts on the
18 fisheries and the fish, the larvae, the eggs and such is
19 less than significant I think that is not correct. I
20 believe we need independent science review of that and of
21 those effects and short- and long-term monitoring of those
22 effects, both building on some of Cal Poly's efforts that
23 have been done in the last six years and on into the
24 future, you know, and not just in the study area but
25 outside the study area. These seismic testing noises are

1 going to go way beyond that race track footprint. So we
2 need to look outside the footprint as well.

3 And as the State Lands Commission you know, the
4 City of Morro Bay sits on State tidelands. We are bound
5 by the public trust document. While CEQA may not require
6 consideration of those socioeconomic inputs, you as the
7 Commission, you should, because you are the landlords,
8 those effects are going to be felt by the City. They are
9 going to be felt by the public with our commercial and
10 recreational fisheries and tourism. Those effects will be
11 felt. And as our landlords, we're public trust agency
12 managing those lands for your -- at your behest, at
13 your -- State Lands Commission's owning of those lands.
14 So I hope that you do take those effects into
15 consideration.

16 Again, hope that -- I appreciate that you put
17 this meeting together here. This is a great opportunity.
18 And I'll turn it over to some of my colleagues, a little
19 more learned colleagues in the fisheries world that may
20 have some other things to say. Thank you.

21 ACTING CHAIRPERSON GORDON: Thank you, sir.

22 MR. GILLIES: Steve McGrath.

23 MR. MC GRATH: Thank you, Commissioners, and
24 Eric. And thanks to the Commission and staff for making
25 this meeting room available and possible.

1 My name is Steve McGrath. I'm the Port Manager
2 at the Ports and Harbor District. The Harbor Commission
3 has discussed this matter on several occasions and has
4 expressed a great concern about many aspects of this
5 project, while recognizing the requirement and, if
6 necessary, the preference for alternative 3B.

7 I appreciate the clarifications in the Final EIR
8 and the nature of boating and fishing exclusions being
9 limited to active areas rather than the entire project
10 area.

11 In light of the recent release of the draft
12 environmental assessment by the National Science
13 Foundation that shows a 160 decibel safety zone that
14 extends to the beaches of San Luis Obispo Bay, the
15 potential impacts on the communities on and uses of the
16 bay is insufficiently addressed. The effect of 160
17 decibel sounds on humans underwater should be examined.

18 Finally, I ask that long-monitoring not be an
19 allowable mitigation under CEQA. It seems short-sighted
20 to limit a review of environmental consequences to those
21 impacts that occur in the immediate time frame of the
22 project when the potential exists for significant and
23 long-term environmental impacts, especially on fish, which
24 the EIR deems inexplicitly less than significant.

25 The EIR states that socioeconomic impacts are not

1 significant. The word "significant" is not defined.
2 While I understand that PG&E and representatives of the
3 fishing community have discussed economic mitigation, the
4 ripple effect of this project throughout the local
5 community must be addressed and mitigated. A
6 communication plan is not sufficient mitigation.

7 The Final EIR graphically illustrates the decline
8 in commercial fish land on the central coast. The EIR
9 also states that the noted resurgence, which the project
10 could jeopardize, is not distributed equally between the
11 two ports.

12 In Morro Bay, landings declined almost 80 percent
13 from high to the low points. But in Port San Luis,
14 landings declined 94 percent over three years -- 94
15 percent. It's difficult to imagine how hard it can be to
16 return from such a precipitous decline. And yet, the Port
17 San Luis has rebounded approximately 180 percent.

18 Additionally, it's worth noting that the vessel
19 value per pound of landings in Port San Luis is
20 consistently higher than in Morro Bay due to predominance
21 of the live fish industry. Adding stress to this nascent
22 recovery has potentially significant impacts.

23 In summary, there remain significant concerns
24 about:

25 One, the impacts of in-water recreational uses of

1 the ocean within the 160 decibel zone as defined in the
2 draft environmental assessment from National Science
3 Foundation.

4 Two, long-term impacts to the marine resources
5 and how these will be measured and mitigated.

6 And three, the significant short and long-term
7 socioeconomic impacts on affected individuals and
8 communities and the adequacy of financial mitigation
9 within those communities.

10 Thank you.

11 ACTING CHAIRPERSON GORDON: Next witness, please.

12 MR. GILLIES: Do we have Tiffani Seitz? Okay.
13 That is it for -- if she returns, she can come up at that
14 point. That's it for the general commentors.

15 ACTING CHAIRPERSON GORDON: What is the will of
16 the Commission? Questions?

17 EXECUTIVE OFFICER FOSSUM: There are a number of
18 people wishing to speak in opposition. I think there's
19 20.

20 ACTING CHAIRPERSON GORDON: Oh, I thought that's
21 what we --

22 EXECUTIVE OFFICER FOSSUM: Those were considered
23 general.

24 ACTING CHAIRPERSON GORDON: So there's 20 more
25 people who wish to testify. Okay. Let's start. From

1 Morro Bay?

2 EXECUTIVE OFFICER FOSSUM: Correct.

3 ACTING CHAIRPERSON GORDON: Let's start coming
4 forward, if you could line up.

5 I would request with your testimony that you stay
6 within two minutes and please don't repeat, if you can,
7 the testimony of prior witnesses. If you just wish to
8 associate yourself with the comments, that would be
9 wonderful, but try to make unique points that would be of
10 value to the Commission. Thank you.

11 MR. GILLIES: Noah Smukler, Fred Collins, Crystal
12 Baker, and David Kirk.

13 MR. SMUKLER: Good morning. I think it is still
14 morning. Thank you for hearing my comments.

15 I'm Noah Smukler, a member of the Morro Bay City
16 Council and speaking today mostly to review the letters
17 that we've submitted to your body over the course of the
18 last couple of months. Thank you for hearing these
19 comments.

20 Our letter is included in the report on page 165,
21 if you'd like to refer to that at any point. But I
22 believe our concerns from the City Council representative
23 of what we've heard from our community, both the fishing
24 and environmental interests, and we certainly think that
25 this deserves more time to review. It's going to be the

1 points of my comments today.

2 As you know, we live in a very unique and special
3 area here on the central coast, and one that is known for
4 its natural beauty, a place that people have traveled to
5 from around the world to appreciate, and one that has a
6 strong fishing heritage. And we're making our comments
7 from the City's side because we see some direct threats to
8 that tradition here in the current proposal.

9 We realize that our economy is directly connected
10 to the health of our ecosystem and environment, and we
11 have been making strong investments in our environment to
12 help make sure that as we transition into the future that
13 we're able to depend on the healthy ecosystem.

14 An example of this is our recent and
15 well-documented transition to sustainable fishing
16 techniques, which is not only showing an improvement in
17 our -- in the ecosystem, but the landings and the value of
18 those landings at our local docks.

19 We've also doubled down on our investment in
20 ecotourism and trying to establish ourselves as a place
21 that takes care of the environment and has a strong
22 concern for the environment.

23 So some of our key concerns that we have with
24 this with the current proposal is throughout the report,
25 there are a number of significant and unavoidable

1 biological impacts that are noted, and it seems those are
2 basically dismissed. We have concerns about those. There
3 really has not been adequate analysis of these biological
4 impacts and also the economic impacts.

5 Personally, I think the Slocia (phonetic) letter
6 that's also included in their comments sum this up very
7 well and that's of concern.

8 And overall, we've heard strong negative feedback
9 about the public input process, both from our commercial
10 fishing association, as well as just individuals that are
11 out there trying to get information about this mammoth
12 proposal and really coming up short.

13 We've also heard that PG&E has not been as
14 accessible as they need to be for the stakeholders that
15 this project is going to effect. So that's something that
16 we think needs to be improved.

17 And overall, again, we have seen what appears to
18 be an undervaluing of our landings and then further the
19 economic impacts that this potential project could have
20 throughout our economy, not just on fishing, but on the
21 hotel, restaurant, retail industries, and basically the
22 livelihoods of people that live and depend on Morro Bay's
23 economy.

24 So overall, we think that it's important that you
25 take some time here. This is a project that's going to

1 last generations in the future and the impacts of this.
2 So we ask that you take some time and evaluate these
3 concerns that have been raised, which we think are
4 legitimate. Thank you.

5 MR. COLLINS: Fred Collins, Tribal Administrator,
6 Northern Chumash Tribal Council.

7 Thank you, Commissioners, for providing this
8 venue for us to speak today.

9 I'm a descendant and resident here in San Luis
10 Obispo County for over 10,000 years. I'm talking about
11 10,000 years the Chumash people have lived here along this
12 coast line. And we are very deeply connected to the land
13 issues and the ocean issues along our coast line.

14 The ocean is part of our connectivity to mother
15 earth. And the association with the animals and animal
16 nations within the ocean are extremely important to us.

17 And we've established in the last few years
18 marine protection areas. And these areas -- and in this
19 negotiations and in the process, Fish and Game and
20 Wildlife and everybody saw how important it is for the
21 Native American communities to have input into this
22 process.

23 The marine protection areas that will be impacted
24 here, there's three of them along our coast that are very
25 important to us. And we feel that the impacts that will

1 be taking place on these -- along the whole coast, not
2 just in these areas, are extremely detrimental to the fish
3 and the mammals that inhabit this area. And we are
4 extremely concerned about the lack of input that the
5 Native American communities had in this process.

6 In the spirituality of this process, the Native
7 Americans are connected to the animals and the land off
8 the coast. 10,000 years ago, the ocean was 300 feet lower
9 and all of my ancestors lived out there where all of this
10 testing is going to be going on. We have cultural
11 resources. We have villages. We have things some
12 spiritual places that are extremely important to us that
13 haven't been taken into consideration.

14 The anchoring of these large vessels over
15 cultural resource sites could damage irreparably the
16 Native American sacred sites there. And in most of these
17 reports, none of the considerations of the Native American
18 community has been brought forward. I really believe that
19 the cultural resources is an extreme and important issue,
20 and we feel that we have not been -- had input into this
21 process.

22 You know, in D16 on the process, the nesting
23 birds, we have paragon falcons that nest along the shore
24 lines, steelhead come up the creeks. And you know, during
25 this testing period, I think that, you know, we won't see

1 any steelhead coming up our creeks.

2 The aerial surveys need to be done on a
3 continuous basis, looking for mammals and things that are
4 important.

5 You know the sacred sites have not been addressed
6 in this at all. And we really see this is as what is the
7 hurry here. We know there are things that need to be done
8 to protect the public interest. But also we need to
9 protect the interest of the wildlife and animals. It's so
10 important to Native Americans and our culture and sacred
11 sites.

12 So please take the time and do this right. And
13 you know, our Supervisor Bruce Gibson said do it right.
14 Do it right with considerations of all the people
15 involved, and the stakeholders are the Chumash, and we are
16 very involved. Thank you very much.

17 MS. BAKER: Hello. My name is Crystal Baker, and
18 I'm a member of the Coastal Band of the Chumash nation.
19 I'm one of the members of 2,000 that are direct
20 descendents that live here on the coast of California for
21 over 10,000 years, as what Fred has said.

22 I'm here to ask the Commissioners not to approve
23 the permit to perform a high energy 3D geophysical survey
24 process due to the impact on the marine life. The
25 ecological system is one of our traditional and spiritual

1 belief connection, as Fred said.

2 This process will also have a negative impact on
3 our archeological and sacred sites, as well as our
4 traditional takes of marine species.

5 If the permit is approved, the use of the process
6 would be against the United Nation's declaration on the
7 rights of an indigenous peoples that was endorsed by the
8 San Luis Obispo County and was promoted by President
9 Obama. It would be against Article 11, the indigenous
10 peoples have the right to practice and revitalize their
11 cultural traditions and customs.

12 It would be against Article 24, that indigenous
13 people have the right to their traditional medicines and
14 to maintain their health practices, including the
15 conservation of their vital medical plants, animals, and
16 minerals.

17 It would also be against Article 25, that
18 indigenous peoples have the right to maintain and
19 strengthen their distinctive spiritual relationship with
20 their traditional owned or otherwise occupied in-use
21 lands, territories, waters, and coastal seas and other
22 resources to uphold the responsibilities to future
23 generations in this regard.

24 Thank you for listening.

25 MR. GILLIES: David Kirk, Andrew Christie, Mark

1 Hamerdinger, and Joey Racano.

2 And if you could please line up in the back of
3 the room when your name is called. Thank you.

4 Is David Kirk here?

5 MR. CHRISTIE: Good afternoon, Commissioners.

6 My name is Andrew Christie. I'm the Director of
7 the San Luis Obispo Chapter of the Sierra Club speaking on
8 behalf of the Sierra members in San Luis Obispo County.
9 We appreciate the extension of this hearing today to our
10 community and the effort the Commission has put into the
11 EIR in consideration of the survey permits.

12 The Sierra Club, concerned local residents,
13 elected officials, and State regulators have been urging
14 such surveys for the last several years because it would
15 be unacceptable for PG&E to submit an application for
16 license renewal without detailed data on the seismic
17 testing and magnitude of potential earthquakes in the
18 vicinity of the Diablo Canyon Nuclear Power Plant.

19 That said, your analysis impacts of the project
20 on the marine biological resources and project
21 alternatives needs revision.

22 The EIR concludes that there will be a less than
23 significant impact on fish and invertebrates, despite
24 citation of study showing there will be impacts on fish
25 and invertebrate disrupting egg protection and breeding

1 behavior. The EIR invariably opts for a best case
2 scenario, basing its conclusion of no population level
3 impacts on the results of less conclusive studies as
4 though the existence of ambiguity and one study trumps the
5 unambiguous findings of another.

6 In rejecting the alternative of a two-year
7 survey, the EIR maintains that this would simply add to
8 the project's impacts and appears to miss the point made
9 by commentators regarding adaptive management.

10 Specifically, "the results of the year-one survey.
11 Depending on those results, the survey proposed for year
12 two could be reduced or eliminated and up to 50 percent of
13 total impact on wildlife and fisheries avoided entirely."

14 Weigh this against PG&E's testimony today that
15 doing this would be inconvenient.

16 The Final EIR contention and its analysis of
17 cumulative impacts need not include the seismic survey
18 plan for the San Onofre Nuclear Generating Station,
19 because it's too far away, is contradicted by the National
20 Science Foundation's environmental assessment, which
21 includes the Southern California survey, and the analysis
22 of cumulative impacts on marine resources in the central
23 coastal project area. The EIR must do the same.

24 Thank you.

25 MR. HAMERDINGER: My name is Mark Hamerdinger.

1 I'm a commercial fisherman out of Morro Bay.

2 I came here in 2007 when a friend called me up
3 and he said, "They're catching a lot of sable fish in
4 Morro Bay. So better get your butt down here."

5 I arrived in Morro Bay to find that a lot of
6 other boats had arrived here also to catch these fish.
7 Since I've been here 2007, I've gone out. I laid out my
8 traps right in their race track right here, straight out
9 from Morro Bay. They're right out there right now
10 catching fish.

11 And like I said, I wasn't the only one that
12 arrived here in town. Since then, there's been a couple
13 other fisheries that started up, the hag fishery as a lot
14 of people know them. There is a lot of money that's being
15 generated that's -- into this town that's not accounted
16 for in an EIR. They say it's on the down cline. Well,
17 I've seen it gone up.

18 We started having the squid boats started
19 unloading here and bringing a lot of money into this town.
20 So I just -- but my question is, is I don't understand all
21 this whole thing, because it seems to me that it is
22 probabilistic -- probabilistic means probably will,
23 probably is very realistic that they will have an
24 earthquake, some significant earthquake out here, and they
25 are -- it will happen.

1 And so why do they need these studies? I mean,
2 let's go ahead and let's not kill all the fish. Let's
3 just shut down that power plant. And they don't need
4 these studies. What are the repercussions of doing this
5 plant -- this killing all these fish. You know, like, I
6 go extinct, okay, well, no big deal. Okay, I'll just move
7 onto the next existence. Okay.

8 But you know, if you approve this plan, I have
9 pity on your souls. So because you might be moving on,
10 too. You know, and you might have to worry about the
11 world after, you know, this next reality. You know, I
12 mean, one day you're going to wake up and find out this
13 was just a dream, you know. And you might -- so anyway,
14 what I'm saying is don't let them -- don't vote to do this
15 plan. Just say, hey, you don't need to do this thing.
16 Let's plan on worst-case scenario that there is going to
17 be a bigger earthquake, because there will.

18 And you know, so anyway, I urge the Commission to
19 vote no. Thank you.

20 MR. GILLIES: After Joey is Mary Webb, Brad
21 Snook, William Walter, and Giovanni DeGarimore.

22 MR. RACANO: Joey Racano with the California
23 Ocean Outfall Group. We work statewide on ocean issues.

24 Right now, I'd like to start by talking about
25 shifting base lines. The ocean isn't what it used to be.

1 That's why we created the Marine Life Protection Act to
2 make a series of marine protected areas up and down the
3 coast with the hopes of our State Marine Reserves, which
4 were the best of the best, having the spill-over effect to
5 bring the oceans back to a natural state of health and
6 abundance.

7 One of the things that looks like this seismic
8 testing would do is destroy the recently anointed Point
9 Buchon State Reserve. That is out of the question, and I
10 urge that you -- first of all, I'd say let's go with the
11 no-testing option. We know enough about the Diablo
12 Nuclear Power Plant to take it down. The shifted base
13 line I'm talking about is why are we talking about an
14 academia boat or an oil company boat doing this
15 destruction to our marine mammals. What we should be
16 talking about is when do we dismantle and remove the power
17 plant so now we can start using our science. Instead of
18 on how long is everything going to stay dead, we should do
19 science to figure out what we're going to do with the
20 nuclear waste they're generating and they don't have
21 anything to do with that's going to be dangerous a million
22 years from now.

23 I would also like to bring an important point
24 before the Commission. That is that there is a Memorandum
25 of Understanding that has been signed by the Navy, NOAA,

1 the State Water Board, State Parks. The State Lands
2 Commission needs to be a signator to this Memorandum of
3 Understanding to work together with your federal and State
4 sister agencies to implement the Marine Life Protection
5 Act together so that we can work in tandem to bring our
6 oceans back to health and abundance.

7 I would caution everyone against the dangers of
8 having an oil boat company out there looking for oil on
9 the backs of our whales. I don't think that's a good idea
10 as Mr. Gibson is suggesting.

11 And I would also conclude by saying -- I would
12 conclude by saying that from what I'm hearing at the State
13 Fish and Game Commission level, the destruction is going
14 to be pretty tall. And I have no reason to doubt that.
15 Take down the plant. Never mind the seismic studies. And
16 I thank you for your hard work.

17 MS. WEBB: Good afternoon, Commissioners. Thank
18 you so much for broadcasting this meeting in Morro Bay.

19 I'm Mary Webb, Vice President of Green Space, the
20 Cambria Land Trust founded in 1988. We believe the north
21 coast is a national treasure. We support policies and
22 programs and advocate for programs that protect and
23 preserve our watersheds, the Monterey pine forest, and
24 have just added marine resources to our charter, because
25 there is a connection between land and sea.

1 Specifically, this seismic study area includes
2 our newly established marine protected areas, Point Buchon
3 Marine Conservation Area and Reserve, White Rock Cambria
4 Conservation Area and Cambria State Marine Park. The
5 take, which is -- they use the word "take." This means
6 the killing, harming, or removing of marine resources is
7 explicitly prohibited within State Marine Reserves under
8 the Marine Life Protection Act. This proposed study
9 describes significant and unavoidable impacts and take to
10 whales, fish, dolphins, porpoises, turtles, sea otters,
11 mammals and other protected species and habitats.

12 In fact, there's so many impacts, the list of
13 agencies includes the California Coastal Commission that
14 needs to approve this, California Department of Parks and
15 Rec, California Department of Transportation, the Water
16 Quality Control Board, State Historic Preservation Office,
17 the NOAA, National Oceanic and Atmospheric Administration,
18 as well as the Army Corps, Coast Guard, Fish and Wildlife
19 Service. That leaves us with the Department of Fish and
20 Game.

21 I don't know if you are aware of the fact there
22 was a meeting last Thursday, August 9th, with the
23 Department of Fish and Game in which Mr. Vardis presented
24 his Environmental Report to the Fish and Game Commission.
25 He was basically interrupted at the very beginning of it

1 by Commissioner Rogers who was quite alarmed by what he
2 said there was no -- there would be insignificant impacts
3 to fish and invertebrates. Dr. Dean Went, when he spoke
4 at that meeting, stated there were no long-term peer
5 reviewed studies that showed that. So the science is
6 inadequate.

7 I didn't know if you know about that Fish and
8 Game hearing, but three of the Commissioners wanted to
9 explore the science so much so that they requested an
10 additional meeting and wanted to make themselves available
11 to do that in September, which is not a normal meeting
12 date for them.

13 Long story short, hundreds of stakeholders were
14 involved in the Marine Life Protection Act. And Green
15 Space was one of the ones that actually went and helped to
16 support that process. These areas were designed
17 specifically with certain boundaries and geographical
18 locations to protect certain species from marine reserve
19 to marine reserve. And there's supposed to be
20 interconnectivity between those reserves. So even if you
21 take Cambria off the map, it still will affect the
22 reserves below us.

23 We are not just concerned about Cambria. We're
24 concerned about Port San Luis and Morro Bay and the north
25 coast. We can associate ourselves with the comments of

1 NRDC and Ocean Conservancy, but there seems to be too many
2 unknowns to approve a permit at this time.

3 Anyway, if you do have to approve a permit
4 though, it would be Option 2B and Option 3B is the only
5 way to go. But I don't even really consider that very
6 much of an environmental alternative. Thank you.

7 MR. SNOOK: Thank you, Commissioners, for taking
8 my comments today. My name is Brad Snook from the San
9 Luis Obispo County of the Surfrider Foundation. Thank you
10 for the opportunity to video link to the meeting in
11 Sacramento.

12 Bottom line, Surfrider opposes the seismic study
13 in our county. Surfrider Foundation is a nonprofit
14 organization dedicated to the protection of the world's
15 ocean, beaches, and waves through a powerful network of
16 activists.

17 Surfrider's concerned about the impacts to ocean
18 users. The central coast area between Cayucos and Oceano
19 is very popular for its beaches. Steve McGrath from the
20 Port San Luis Harbor Commission mentioned earlier he's
21 concerned about the health of swimmers during the study
22 time. The seismic testing reaching the coast above 155
23 decibels has been known to cause seizures in Navy divers
24 according to the study.

25 A significant risk is taken beyond the

1 recommendations from the draft EIR that the surf shops and
2 dive shops post times for the study.

3 We also ask that the hotels alert their guests
4 that the study is happening during certain times so they
5 can plan their travels accordingly.

6 We also have concerns about the once-through
7 cooling system and the feedbacks with the ocean cooling
8 and the seismic testing blasts. Those environmental
9 impacts should be studied. The EIR takes a linear
10 approach to the effects of this study when the food web is
11 non-linear entity and many feedbacks occur in the food
12 web.

13 Surfrider Foundation respectfully requests that
14 you adopt a no-project alternative as the environmentally
15 preferred alternative. We cannot afford to put our coast
16 line and marine life at risk for what could be considered
17 inconclusive testing. Thank you for your time.

18 MR. WALTER: My name is William Walter, and I'm
19 here representing the Morro Bay Commercial Fishermen's
20 Organization. We sent some correspondence via fax last
21 evening. I won't go into those points because the best
22 representatives of the commercial fishing industry are the
23 fishermen. Unfortunately, they're out working as they
24 need to do. So, so many that would want to be here of 120
25 members can't be here. But listen to the fishermen that

1 are here because they are the experts, they live it, and
2 they know it.

3 Let me just emphasize a few points because so
4 much has been said.

5 Number one, we need to realize this Final EIR has
6 really only been out there for comment and response and
7 analysis for approximately two weeks, not enough time.
8 You saw the time line for these studies of these projects
9 and when they were initiated. That's not enough time,
10 particularly when people are working and they don't have
11 an opportunity to review it. They may not have Internet
12 access. And it's unfair to the public, and it's unfair to
13 probably you, as Commission members, to try to read it
14 within that time frame.

15 Number two, most of the exhibits that you're
16 being asked to adopt were not online until the 7th or the
17 8th. I'm not exactly certain which date. Those are
18 critical action points. Those are critical things that
19 need to be looked at and analyzed and fully commented
20 upon. And to rush it within those limits I don't think is
21 legal. I don't think it's fair.

22 Next point: PG&E indicated that there would be
23 monitoring and mentioned Cal Poly. That is important.
24 But mitigation only works when it's required. I don't see
25 the requirements in the findings for the long-term fishery

1 impact.

2 Number two, PG&E mentioned that mitigation or
3 compensation would be required. I don't see that. The
4 only thing that's in there is on page 4, third-party
5 damage claims, permittee shall make a good faith effort to
6 resolve all good faith claims brought for damages
7 resulting from the permittee's geophysical activities.
8 That's so lawfully it's an unenforceable condition. We
9 propose before, after, and during mitigation of biological
10 resources in our comment letter. That's what should be
11 done.

12 And this thing needs to be recirculated. There's
13 new information in it, new studies. That's important.
14 And as a matter of law, you should do so.

15 Last, socioeconomic impacts have impacts on the
16 land. Morro Bay becomes a ghost town. That is a
17 significant impact upon the environment. Needs to be
18 studied. Don't take action.

19 MR. GILLIES: Mr. Giovanni and then Jim Webb,
20 Lori French, and then Jennifer Jozwiak.

21 MR. DE GARIMORE: Good afternoon. My name is
22 Giovanni DeGarimore. I'm a third generation citizen here.

23 My father started Central Coast Seafoods in 1973,
24 one of the largest wholesale fish companies on the central
25 coast. Me and two of my brothers currently operate fish

1 industry businesses here locally, and we depend highly on
2 the commercial catch.

3 I'm very concerned with this EIR. It doesn't
4 seem to spell out any long-term mitigation for shore-side
5 services or infrastructure. I believe that should be
6 required in this report and it's just not. The EIR does
7 not quantify or assess these effects. It doesn't identify
8 any mitigation or compensation. That doesn't seem right
9 to me.

10 I heard a lot of slick talking at the beginning
11 of this hearing from people that sounded a lot like
12 politicians, but I'm going to back it up and be real
13 simple. Something stinks here. I'm going to look at the
14 big picture and say it just doesn't sound right. The
15 taking, whether you call it catching or killing or
16 whatever you're doing, of fish, of baby sea otters, of
17 whales, of turtles, of fishermen is not right. You're
18 going to be killing our community. You're going to be
19 killing our resources. And it's not something I support.

20 I'm not anti-nuclear, but I'm anti-killing of our
21 resources and killing of our fishing industry. It's not
22 right. Let's not shove it through.

23 I'm working on a project right now through the
24 Coastal Commission. Sadly, it's taken me two years to get
25 through a process to put in a dock for fishing boats to

1 dock in front of my fish market. Two years. And yet,
2 this is going to get ramrodded through in two months.

3 I just learned of this project last year. How
4 could you possibly get through all these agencies? It's
5 taken me years to get through to put a dock in. Yet,
6 you're going to be shooting 300-inch cannons to the tune
7 of 250 decibels. 235 decibels has been shown in Navel
8 studies to make jelly out of dolphins' brains, to cause
9 hemorrhaging in whales. We're talking about baby sea
10 otters. We're talking about whales. We're talking about
11 fishermen. We're talking about people. Let's not ram
12 this through. Let's step back and think about it. Let's
13 think about what's good for the people and the
14 environment. Thank you.

15 MR. WEBB: Good afternoon. My name is Jim Webb.
16 I'm a resident of Cambria, a recreational fisherman. And
17 I'd just like to pose to you a common sense approach to
18 reading of Appendix K, the Tennera report on fish
19 mortality.

20 When I go out fishing, I catch usually ten
21 rockfish on a good day. Sometimes, like the other day, I
22 caught a couple Bocaccio. When I realized that one
23 Bocaccio -- let's say 50 centimeter or bigger Bocaccio can
24 produce 800,000 larva in a year and I had two of them, I
25 realized I eliminated maybe a million, 600,000 larva by

1 that catch. And then there were eight other fish that I
2 also removed. So I probably removed the potential for
3 millions of larva just by going out and catching a limit
4 of fish.

5 But when I read the Tenera report on this project
6 and they told me that 3.73 million larva would be killed
7 throughout the entire project, I found that ludicrous. I
8 found that absolutely unbelievable.

9 For example, one yelloweye rockfish at maturity
10 can produce 2,700,000 larva. They indicated in their
11 report that only one million larva in the Point Buchon MPA
12 would be killed. That's less than one fish is going to be
13 killed as a result of this process. I think that's
14 ludicrous.

15 Secondly, the startle reflex that fish show when
16 exposed to high noise is something that also creates
17 mortality. When a fish is displaced from its usual
18 habitat, it becomes preyed upon by other fish. We see
19 this all the time when we're fishing when we haul up a
20 small gopher cod or something from the bottom of the ocean
21 and a big ling cod comes up and eats it. That mortality
22 has not been quantified and not included in their
23 assessment.

24 Finally, I would say this, that we monitor the
25 hell out of the Diablo Canyon, and it has yet to return

1 one fish to the ocean. So I would just say monitoring is
2 not enough. Thank you very much.

3 MS. FRENCH: Hello. My name is Lori French. I'm
4 the wife of a second generation fisherman. And I would
5 like to reiterate that a lot of guys right now are off the
6 coast between here and Canada, and they're not available
7 to make their comments. I'm making comments for my
8 husband and my brother-in-law.

9 Common sense dictates that 250 decibels of sound
10 will destroy -- emphasis on destroy -- anything in the
11 path of the sound waves travel.

12 And according the PG&E's paperwork, PG&E gets a
13 permit to catch and experiment on 82 sea otters. Really?
14 If we did that, we go to jail. Prison. No questions
15 asked.

16 The same goes with commercial fishermen fishing
17 in an MLPA. PG&E gets to play there. We go to jail.

18 Four families depend on our boat, the partnership
19 between my husband and my brother. In addition, three of
20 our boys are depending on our boat to put themselves
21 through college. I'd hate to see that interrupted.

22 We, as a family, do not want to see this seismic
23 survey go through. We do not feel that PG&E has truly
24 shown an interest in protecting our ocean and our
25 livelihood and that of our infrastructures.

1 If this goes through, there needs to be serious
2 compensation for all entities affected. Long-term
3 monitoring at the end of this -- long-term monitoring at
4 the end of the -- I cannot read my own writing.

5 Long-term monitoring of our ecosystem, we're
6 talking not weeks and months, but years. We feel that our
7 livelihood will be affected for years. Emphasis years.
8 We are not opposed to making Diablo Canyon plant safe. We
9 live right next to the thing. But PG&E has been a bully
10 in this case. They really haven't responded to commercial
11 fishermen addressing our concerns about the short,
12 long-term and very, very long-term of our oceans. Thank
13 you.

14 MR. GILLIES: After Jennifer will be Scott
15 Stellar, Otto Schmitt, and Eric Greening.

16 MS. JOZWIAK: Thank you, Commission, for
17 listening to my comments today.

18 My name is Jennifer Jozwiak from Nipomo,
19 California. I'm the secretary for the San Luis Obispo
20 chapter of Surfrider Foundation. I'm also a concerned
21 citizen, avid beach-goer and recreational surfer.

22 I'm here today to express my dismay about the
23 proposed testing in our local waters. Imagine, for just a
24 moment that you are sitting on a surfboard just off the
25 shore in a lush golden kelp bed waiting for a crystal

1 clear wave to rise up as it hits the reef. As you wait,
2 you notice a sea otter rolling around in the kelp urgently
3 cracking open a purple urchin on its tummy; a pod of
4 slender dolphins swims nearby, playfully jumping out of
5 the water as they cruise the shore line.

6 All of a sudden, you notice a black grebe pop up
7 from the surface of the ocean seemingly from out of
8 nowhere. And then lazily a juvenile sealion swims by
9 eyeing you curiously as if he wants to play.

10 In the distance, you can see migrating whales
11 spouting huge spray as they journey through our local
12 waters.

13 Commissioners, this scene is a daily occurrence
14 here on the central coast. I'm fortunate enough to
15 experience it.

16 Seismic testing will have a profound and
17 detrimental effect on a marine environment and all the
18 recreation and industry that depend upon it. First, the
19 impacts to our local marine life, as well as the migrating
20 species will be significant. This testing is not worth
21 the risk to the health and continued existence of
22 threatened species, such as our local southern sea otter,
23 whose population has only slowly been rebounding and
24 remains precarious at best. Other migrating wildlife like
25 humpback and gray whales will also see detrimental

1 effects. You know about what will happen to our local
2 fisheries, as many have testified already.

3 But finally there will be significant impacts to
4 recreational users such as divers, boaters, surfers, and
5 swimmers. Even though the Commission has instructed PG&E
6 to prepare a communication plan to warn recreational users
7 when the testing will be done, will PG&E adequately warn
8 the public of the dangers? Are they prepared to close our
9 beaches and local waters? Who will pay for the damage
10 done to our local tourism industry then? In my view, the
11 environmentally superior alternative is no underwater
12 seismic testing. Thank you.

13 MR. STELLAR: Hello. My name is Scott Stellar.
14 I just want to keep this simple.

15 I agree with everything that's come before me,
16 all the people that have spoken before. And I appreciate
17 the opportunity. My thing is, what would the survey
18 actually accomplish? I'm all for a survey, environmental
19 research. But not at this cost.

20 What I'm trying to say with the survey basically
21 show how little the Diablo Canyon would have to do as a
22 result of all that? In other words, right now we have
23 nuclear power plant. If a catastrophe were to happen as
24 you've seen around the world, basically, the survey is not
25 necessary and that we need to do -- need to conclude a

1 worst-case scenario, in other words. We don't need it --
2 in other words, that would show how little that Diablo
3 would need to do. But we need to show that it would have
4 to have a worst-case scenario so we don't need a survey --
5 and I'm getting lost in my thoughts. Really sorry about
6 this, but I want to support what was before me and thank
7 you very much.

8 MR. SCHMITT: Good afternoon. My name is Otto
9 Schmitt. I'm a private citizen of San Luis Obispo County.

10 On a summer evening in 1966, I was living in
11 Abila Beach in a beach shack opposite a large empty
12 parking lot when an earthquake began. I got out of my
13 front door and observed a two to three foot high wave
14 pattern of asphalt rippling multiple times across said
15 parking lot. It was a 6 point earthquake.

16 Three years later in 1969, I brought this up at
17 the first AEC review hearing for the location of Devil's
18 Canyon. The AEC ignored my comment.

19 The last 49 years, I have walked, swam, dove,
20 fished, abbed, crabbed and sailed along up and down the
21 central coast. Ask any member of the NRC if they ever put
22 ten-tows in the water, let alone 10,000 times going up and
23 down the coast.

24 With your acceptance, alliance, compliance, and
25 collusion and PG&E's rush to this unethical, irrational,

1 devastating decibel debacle, you will support the
2 catastrophic and immediate and long-term negative impact
3 slaughter on the sealife and marine world of San Luis
4 Obispo County and the central coast of California, the
5 west coast of North and South America, the Pacific Ocean,
6 our world. These impacts will be unavoidable and
7 significant.

8 Demonstrate something that the devil has
9 abandoned from the beginning over four decades ago, deny
10 and delay this senseless stampede with this seismic survey
11 to satisfy immediate "superficial" safety for the devil's
12 nuclear waste.

13 200/250 decibels -- can you hear me? Can you
14 hear me? Demonstrate for the future generations after our
15 demise that you did have intelligence, integrity, courage,
16 and mortality. Thank you.

17 MR. GILLIES: After Eric we have Ken Dutra, Susan
18 Harnisch, and Mandy Davis.

19 MR. GREENING: Thank you. I'm Eric Greening, and
20 I agree with all the speakers who believe that you do not
21 have in front of you an EIR that can be certified in its
22 present form.

23 Reality check about decibels; 250 just looks like
24 a number. If you're standing at the end of a runway with
25 a jet taking off a few hundred feet over your head, that's

1 125. 250 is not twice 125, because the decibel scale is
2 logarithmic. It goes up -- every 20 points, you go up ten
3 times an order of magnitude.

4 We've been told there's somehow a fudge factor
5 for sound waves in water, but I've never heard anyone give
6 that fudge factor more than 60 points. So at best, we're
7 talking about something a thousand times louder than
8 standing under a jet taking off at 200 to 300 feet over
9 your head. We are talking about doing that every few
10 seconds for more than a month to all the creatures that
11 live down there. We better have a damn good reason. And
12 we don't. We have no reason to believe that any new
13 information that comes from this will be acted on in a
14 truly precautionary way. The new information we've had to
15 date has not deterred PG&E from operating the plant and
16 seeking relicensing.

17 Relative to the monitoring, I agree with those
18 who say we need more inclusive base line. But beyond
19 that, monitoring is simply assuming it's okay to be the
20 guinea pigs. Where, anywhere in this globe, is there a
21 study that shows that there is no long-term impact from
22 this kind of seismic testing? This is going to kill
23 sealife. It's going to deafen the ones that survive.
24 Once they're deaf, they will have a hard time finding the
25 ones they need to reproduce with. This would echo through

1 generation after generation after generation. And they're
2 intelligent sentient beings out there with brains bigger
3 than ours. For what are we asking them to endure these
4 impacts? Thank you.

5 MS. DAVIS: Thank you, Eric. I could not have
6 said it better.

7 My name is Mandy Davis, and I'm a citizen of
8 Morro Bay. I work as the naturalist guide here, and I
9 also represent the Sea Shepherd Conservation Society on
10 this particular issue.

11 If you ratify the seismic testing, if you allow
12 this to happen, the CSLC will have to adopt a Statement of
13 Overriding Considerations. What considerations will you
14 be overriding? You will be overriding the health and
15 well-being of my community. You will be overriding our
16 right as human beings, as creatures, as stewards of this
17 earth to be able to live in a healthy place, to be able to
18 continue to have the relationships with these creatures,
19 whether or not they are economic or whether or they are
20 recreational. Whether or not they are purely intrinsic,
21 you will be overriding that consideration. And you do not
22 have the right to override that.

23 I noticed within this report, I keep seeing the
24 same darn words over and over and over again. And it just
25 chaps my hide. Those words are "significant and

1 unavoidable." We have heard the significance of the
2 biological data, of the cultural data, of the economic
3 data. Now I want to hear why you think that's so darn
4 unavoidable. You're going to avoid it by not doing the
5 project. It is not necessary. It is avoidable.

6 MR. GILLIES: Susan Harnisch and Chris Cummings,
7 Christine Heinrichs, and Brett Cunningham. Oh, yeah. Go
8 ahead.

9 MS. HARNISCH: Hi. I don't know what to say
10 after that.

11 Really getting a lot said, and that's what needs
12 to happen here and everywhere that we go to everyone
13 because I really feel this issue is larger than all of us.
14 It's a more international issue. And it should have
15 concerns from people in the world that have been doing
16 this type of work recently, like Helen Caldicott and the
17 late Jean Cocteau, who could have some insight into our
18 dilemma here.

19 I was born in San Luis Obispo, and I have had
20 family here since the 1880s. 1850s in business in Paso
21 Robles in Monterey County, San Luis Obispo County. And I
22 speak on their behalf for us all that we have done what we
23 could, myself in my lifetime, concerning this nuclear
24 facility that we tried to support.

25 My father worked for PG&E, not in San Luis, but

1 in California. And I've had times when I was at odds with
2 him as well as members of California's State officials
3 like Governor Jerry Brown and other Governors concerning
4 the facility all along. And I think we'd better take a
5 really, really harder look at this. And I hope that the
6 Committee will take all of this into consideration and
7 help us. Thank you.

8 MR. DUTRA: My name is Ken Dutra. I'm a seventh
9 generation of -- my family is seven generations in San
10 Luis Obispo. We've lived on this coast all our lives.

11 I'd like to jump right into this. Okay. The
12 people lied about Chernobyl. Thousands of people died.
13 There have been lots of defects -- birth defects on the
14 children. Japan lied. Thousands more people died and are
15 going to die.

16 I heard there is a run up north on the albacore.
17 That's a wonderful thing. But the albacore they were
18 catching that had months ago already had radioactivity in
19 them that came down from the Japan incidents. There's
20 just lies upon lies upon lies.

21 And I believe that as the taxpayers and the
22 people that we're going to need to find somebody in
23 Washington that has some spine to step up to the plate and
24 deal with this.

25 And I own property directly behind Diablo Canyon.

1 They got a road that runs across there. They don't care
2 about me. They have permission to use my road. I can't
3 drive down theirs. I just can't believe that they're
4 going to let all this happen, kill all the animals. We're
5 the food in the United States. We plant. We are farmers.
6 We're fishermen.

7 And when that plant goes down, it's not going to
8 be how. It's going to be when it does. They're going to
9 ship all of us over to the other side of I-5. They're
10 going to give you a paper suit and the government is going
11 to bury all your stuff, all your belongings, and they're
12 going to stick us in a concentration fact. That's a fact.
13 Look at what happened. Sorry I get upset over this. This
14 is garbage.

15 MR. GILLIES: Chris Cummings, Christine
16 Heinrichs, Brett Cunningham, and the last speaker is
17 Tiffani Seitz.

18 MS. CUMMINGS: Afternoon. My name is Chris
19 Cummings. I'm a local attorney. I have no specific
20 expertise in the area of law that the Commission is
21 dealing with today, so I'm speaking as a citizen, a member
22 of the public, and a long-time resident.

23 I'm very concerned there has not been education
24 of the public on the issues before the Commission today.
25 I know you may be surprised given the number of people who

1 have come and spoke today, but this is a fairly insular
2 process. Seems to me that there hasn't been a lot of
3 information out there in the public about this project.
4 And I know you would be surprised because it sounds like
5 there are a lot of people here and who are speaking on
6 this, but it was sort of happenstance that I saw the
7 notice of today's meeting in the paper.

8 As an attorney and as a member of the public, I'm
9 more likely to read the EIR for myself. I don't think
10 general members of the public who are busy with their
11 day-to-day lives are really likely to read this document.
12 And even if we do read it, it's sort of difficult to
13 understand. There really hasn't been any simple statement
14 of what this project purports to do.

15 And I think the information that needs to get out
16 there to the public, the information I'm particularly
17 concerned about, is in Section 4.4, Biological Resources,
18 Marine. And within that section it says, "impact marine
19 bio 12," which says "injury or mortality to marine mammals
20 would occur due to noise during seismic survey
21 acquisition."

22 This impact is defined as significant and
23 unavoidable, as you've heard numerous times today. A
24 Level A take is considered the equivalent of biological
25 removal. A biological removal, Commissioners, it sounds

1 like to me we're prepared to kill marine mammals off our
2 coast to accomplish this project.

3 I'm particularly concerned again about the impact
4 on harbor porpoise, which is a resident species and of
5 high density within the project area. These mammals are
6 considered to have high sensitivity to seismic exploration
7 sound.

8 Before this project goes forward, this EIR needs
9 to be explained, needs to be explained in plain language
10 to the public so that the public can decide whether or not
11 they want to consent to or oppose this project.

12 If the effect on the whales, dolphins, seals, sea
13 lions, and especially the harbor porpoise are as I read
14 them, I, for one, oppose this project. But this
15 information needs to get out there. This project needs to
16 be delayed. Thank you.

17 MS. HEINRICHS: Good afternoon. Christine
18 Heinrichs. I am from Cambria, California.

19 I endorse all the things that have been said, all
20 the criticisms that have been leveled against this
21 project. And I stand with my brothers the fishermen and
22 the Chumash neighbors in opposing this further testing.

23 At the Fish and Game hearing the other day,
24 Commissioner Richard Rogers described this as "The end of
25 life as we know it on the coast." They are planning

1 another meeting in September, so I hope you will delay any
2 action on this to get further input from them.

3 The mitigation to fishermen and compensation only
4 addresses the financial issues. There are many more
5 serious issues. As you destroy the ecosystem, it's not
6 going to come back the way it was before. Those changes
7 are forever. Ecosystem damage, these don't belong to the
8 fishermen. They belong to all of us. They belong to the
9 people of the state of California and we hold them in
10 trust for the world. We have a bigger responsibility to
11 care for this.

12 As far as I can tell from the FEIR and from
13 talking to PG&E officials, these data, if they produce
14 anything worthwhile, will not be used to make any
15 modifications to the plant. That's not even on the
16 schedule. They will be used to improve the computer model
17 that they have of the shaking.

18 This seems to me a very limited objective for
19 such a devastating project. Surely, there are other
20 methods. As one of the Fish and Game Commissioners
21 mentioned during a project that was using pile drivers
22 near San Francisco that was killing fish, they forced that
23 project to stop until they developed better technology.

24 I have great faith in the ability of our
25 technology wizards to develop much better technology than

1 blasting the ocean floor with 250 decibel blasts.

2 I also would caution with regard -- we are
3 talking about people have mentioned this is important for
4 affordable energy. This is another \$64 million, and the
5 ticket is still running on this. This is far from
6 affordable energy. We cannot afford this or the testing.
7 Thank you.

8 MR. CUNNINGHAM: Hello. My name is Brad
9 Cunningham. I'm a local commercial fisherman and also a
10 business owner in Morro Bay. I unload seafood on the
11 Embarcadero, and I service the fishing community.

12 And it sounds like a lot of very intelligent
13 people have spoke to the issues at hand here. I think
14 there has been a lot of perspective put on this subject.

15 One of the topics that I'd like to speak to is
16 PG&E being slightly less than forthcoming with the fishing
17 community. They mentioned earlier they had opened an
18 office for fishermen to go to. As being a fisherman
19 who'se fairly well connected, I have never heard of this.

20 And these are the kind of things that seem to
21 crawl under my skin as this project sneaks around and
22 moves forward, these things concern me.

23 But from a fishing perspective and a
24 third-generation commercial fisherman, which I am, I'd
25 like to look at this as long-term impact which there

1 hasn't been a lot of discussion on. And we're not looking
2 at this. But as an immediate impacts, it seems like
3 there's been a little bit of discussion about long term,
4 but very limited.

5 And I think that as a fishing community, as a
6 City, you, Commissioners, should take under advisement
7 that this could have some devastating and long-term
8 impacts to the fishing community and the people of the
9 state of California.

10 I'd also like you to consider the fact that as a
11 business on the Embarcadero in Morro Bay from a
12 socioeconomic standpoint, this will close my doors. I
13 will be out of business. I could not afford to stay in
14 business for two or three months with no activity at my
15 fishing facility, my dock.

16 So I'm not going to use up a bunch of time here.
17 As a matter of fact, I might be the first one to sign off
18 before the red light kicks me off, but that's what I have
19 to say. Didn't make it.

20 MR. GILLIES: After Tiffani, can we have Karen
21 Crowley come up as our last speaker.

22 MS. SEITZ: Hi. My name is Tiffani Seitz.

23 My husband informed me Sunday night I needed to
24 come and speak to you guys. He's out fishing.

25 My husband and I have fishing vessels South Bay,

1 the only local trawler in Morro Bay since 2009.

2 In March 2011, the South Bay underwent a huge
3 financial overhaul and remodeling.

4 In August 2011, we relocated our family from
5 Astoria, Oregon, and started fishing Morro Bay in
6 September under the new IFQ regulations.

7 We came to Morro Bay in an attempt to bring trawl
8 fishing back in a sustainable fashion.

9 In June 2012, Morro Bay received national
10 recognition for its effort to preserve its historical
11 fishing industry. Morro Bay commercial fishermen,
12 organizations, and individuals have made considerable
13 investment, changes to enhance the fishing industry.
14 Morro Bay is selling more ice, fuel, has increased
15 employment on the docks. There's new fishing boats in
16 Morro Bay, equipment, totes, and forklifts. I believe we
17 have expanded the markets in Morro Bay. Morro Bay has a
18 great working waterfront. I'm actually surprised when I
19 see how many people want to get their picture taken with
20 totes of fish.

21 I believe that July 2012 EIR doesn't do Morro Bay
22 justice. Its data is based on 2001/2010.

23 In 2011, Morro Bay commercial fishermen generated
24 over more than \$7. million in earnings from 4.4 million in
25 2010. That is a 69 percent increase. And I wouldn't be

1 surprised if 2012 numbers were even better.

2 MR. GILLIES: We have Karen Crowley and one more
3 came up, Steve Mathieu.

4 MS. CROWLEY: Hi. My name is Karen Crowley. I'm
5 a firm believer in living in integrity. I wasn't going to
6 say anything, but nobody has mentioned the numbers of
7 sealife that are going to wash up on the shore.

8 I take my kid to the beach all the time. What am
9 I going to say to my kids? How am I going to explain this
10 to them? And I ask the Commissioners, how would you
11 explain it to your own kids? When you do give them that
12 explanation, is it going to be within your integrity? Is
13 that how you want to live your life? Is that going to be
14 in alignment with love?

15 I mean really this is what it comes down to.
16 Every decision you make should be based on love. And I
17 know that's probably a little woo-woo or fluffy, but it's
18 true. And this decision would not be based on love.
19 Thank you.

20 MR. MATHIEU: Steve Mathieu, Morro Bay resident
21 and business owner. And for 30 years, I swore off the
22 podium years ago when I got to the other side.

23 But there is an elephant in the room for me and I
24 think a number of other people that hasn't been answered.
25 And maybe it is in the EIR. I haven't read it. But what

1 kind of assurances are we getting from PG&E that this
2 action won't cause an earthquake or advance us to an
3 earlier earthquake because of the seismic shift that this
4 may cause?

5 So that's my two questions and I'd like to get
6 some answers from PG&E. So there you have in it in
7 brevity. Thank you.

8 MR. GILLES: That's it for the speakers in Morro
9 Bay.

10 ACTING CHAIRPERSON GORDON: Let me summarize
11 what's before us today and what's not before us today.

12 And what is not before us today is the wisdom of
13 relicensing Diablo Canyon. I heard many people on the
14 central coast express opposition to that ultimate
15 decision. That is not what's before us today.

16 What is before us today is an Environmental
17 Impact Report on the testing protocol to determine what
18 the hazards are from faults that exist under and around an
19 existing operating nuclear power plant.

20 Probably shouldn't say this, but when I was a law
21 student many years ago, I spent a weekend near Diablo
22 Canyon protesting the construction of the plant. I'm in a
23 very awkward position as I think back on my own integrity
24 as I go forward.

25 We are not determining today whether we can

1 safely dispose of nuclear waste and whether we should
2 continue operating nuclear power plants.

3 But what I do believe is that the people in
4 Fukushima today if they looked back would have wished that
5 significantly more research was done on the risks that
6 that plant provided to their community.

7 The Controller sits on the Ocean Protection
8 Council. And we are very concerned about the marine life
9 protection areas and the impacts of this activity on
10 marine life and fisheries.

11 With regard to fisheries, the Fish and Game
12 Commission has that within their jurisdiction to determine
13 whether this is the least damaging methodology with regard
14 to the fish.

15 With regard to the mammals, while I'm deeply
16 concerned of the impacts on the porpoises, the whales, the
17 sea otters, I haven't heard anybody give me any testimony
18 today that there is a less intrusive way to do it.

19 So the question comes down before us is do we
20 need to go forward with these seismic studies? And does
21 it provide information frankly for those of you who are
22 most concerned about the relicensing of the facility in
23 the future, we need this information so we can make that
24 decision in an intelligent matter. So we can assess the
25 risks of the faults to the communities along the central

1 coast and frankly to the whole state of California. As we
2 found with Fukushima, the impacts are rather wide as with
3 Chernoble also.

4 So the concerns that have been raised today that
5 give me pause are whether PG&E has adequately assessed
6 risks to the on-shore communities who would not seem to
7 have -- whose concerns don't seem to be adequately
8 considered. We developed a process for dealing with
9 losses to the fishermen I'm reasonably comfortable with.

10 The other community that strikes me has not been
11 adequately engaged and it's an issue I wasn't aware of on
12 the coast is the Chumash community and the fact there
13 might be native sites that are off-shore that we haven't
14 assessed.

15 It is important that we understand these risks.
16 Supervisor Gibson, who I have grown to respect greatly
17 over the several times I've spoken to him, has raised
18 technological issues. There seems to be a debate within
19 the scientific community whether the four stream or the
20 ten stream is the proper way to go forward. We have
21 issues raised by Dr. Hamilton at the PUC. This is a very
22 tough call.

23 And I'm going for a moment defer to both of my
24 colleagues to see what motion they might wish to make.

25 ACTING COMMISSION MEMBER REYES: Mr. Chair, you

1 know, there has been some consideration by folks speaking
2 in opposition that the surveys should be skipped and the
3 facility should be retrofitted for the worst-case
4 scenario. And frankly, I don't think that's financially
5 feasible. As a rate payer of PG&E, I don't think it's
6 financially feasible given the costs they've done for
7 seismic retrofitting they've already done. I'm familiar
8 with some of the cost because of my occupation.

9 I think that the financial impact on the
10 community is real. I think the significant and
11 unavoidable impact on the fauna in the area, it's real.
12 But it is unavoidable.

13 I have read more about this issue and have had
14 more meetings on this issue than any issue in my short
15 tenure on this Commission. I've heard input from various
16 parties. And I think I'm at a point where we do need to
17 move forward. We are the lead agency. And there are
18 other regulatory agencies that will consider some of the
19 other issues that have come before us.

20 So with that in mind, I would move staff's
21 recommendation at this time.

22 ACTING CHAIRPERSON GORDON: I'm going to second
23 the motion, and then turn to Mr. Garland, who has replaced
24 Lieutenant Governor. He's the Lieutenant Governor's
25 designee to the Commission, and I will turn it over to him

1 for further questions.

2 ACTING COMMISSIONER GARLAND: Thank you, Mr.
3 Chairman.

4 First, the folks in the room and the people in
5 Morro Bay, the Lieutenant Governor sends his apologies for
6 having to run off to another meeting. Wanted me to make
7 sure that of everyone understood that he appreciates the
8 testimony and shares the concerns on every level about
9 this, and frankly some of the frustration that comes with
10 this that I think Commissioner Gordon has already alluded
11 to is the poor decision to place this where it was placed
12 at the time in ignorance.

13 But with that, we can't go back in time and
14 change that decision, nor are we here to debate whether or
15 not this operation should continue. It will continue.

16 The questions that we have frankly go to the
17 Supervisor and PG&E. I'd actually like to ask you both to
18 kind of move towards the microphone because there's going
19 to be a need for some back and forth here on a couple of
20 these questions.

21 Before we get to the technical stuff though, I
22 would like to ask one question about the tribal issues and
23 if someone could just move to the mike and give us some
24 information there.

25 This was new -- like Commissioner Reyes and

1 Commissioner Gordon, we spent an awful lot of time talking
2 about this since January of 2011. And this today was the
3 first time we heard about those concerns. And I'd like to
4 have somebody from PG&E address what they're doing to
5 address the concerns of the Chumash.

6 MR. KRAUSSE: Sure. Commissioner Garland, our
7 first awareness of the Chumash being concerned about the
8 work that we had planned was just last Thursday's NEPA
9 workshop. And so our local folks and others are working
10 with them to see what can be done and what issues they
11 have. But this was --

12 ACTING COMMISSIONER GARLAND: Not to interrupt
13 you, but there was no original consideration given -- when
14 PG&E thought about this, was there no tribal involvement
15 when the reactor was built? Was there no knowledge that
16 there could have been tribal issues here when you were
17 developing this over the last couple of years? Was it
18 just, didn't come to mind? Just overlooked or, you know,
19 legitimately did this just come up in the last couple
20 weeks?

21 MR. KRAUSSE: I think what I can tell you is we
22 treated -- perhaps inappropriately treated the Chumash
23 like all of the other members of the public where we
24 provided public notice. We did advertisements through
25 local television and newspapers and that kind of thing for

1 our workshops. That's with regard to outreach to the
2 Chumash.

3 Dr. Nishenko can inform you as to the fact we
4 have been sensitive in our study plan to the archeological
5 digs in some of the areas.

6 ACTING COMMISSIONER GARLAND: This is a good --

7 MR. KRAUSSE: Perhaps Dr. Strickland -- sorry.

8 ACTING COMMISSIONER GARLAND: This is a good time
9 to jump into the survey design. If you can address this,
10 and then we'll have some additional questions.

11 MR. STRICKLAND: The only other point I wanted to
12 make was for Chumash communication, there is a process
13 under CEQA to where the State Lands Commission as part of
14 the EIR draft development were required to make
15 communications with the local Indian tribes.

16 The only other point I want to make with that, if
17 you look at the proximity of Diablo Canyon the best
18 preserved Chumash site in the state of California is just
19 next to Diablo Canyon on PG&E property. We take our
20 responsibility very serious to protect the ancestral areas
21 of the Chumash.

22 ACTING COMMISSIONER GARLAND: And to the concerns
23 that in the survey development and the design development
24 some of those off-shore potential sites, were they taken
25 into consideration as well?

1 MR. STRICKLAND: Yes.

2 MR. KRAUSSE: One other thing I wanted to point
3 out, we will reach out to them today about this that the
4 reference to anchoring over those sites just won't happen.
5 These ships have to continue moving obviously to do the
6 survey work.

7 ACTING COMMISSIONER GARLAND: We have PG&E's
8 assurance that will not happen?

9 MR. KRAUSSE: Absolutely.

10 ACTING COMMISSIONER GARLAND: We will hold you to
11 that.

12 MR. KRAUSSE: Not only will the anchoring not
13 happen, but the communication to the Chumash will happen.

14 ACTING CHAIRPERSON GORDON: I'd like to clarify
15 one thing. This is a question to State Lands staff.

16 I just understood the first time that we heard
17 from the Chumash peoples was a week ago during a NEPA
18 public meeting. Did State Lands make contact with them
19 during our process?

20 CHIEF COUNSEL LUCCHESI: After release of the NOP
21 for the project for the development of the draft EIR, the
22 Native American Heritage Commission sent us a letter with
23 a number of tribal contacts, including a number for the
24 Chumash tribe. We then added them to our mailing list and
25 informed them when the draft EIR was made public, that

1 sort of thing. And we did not receive any comments.

2 ACTING CHAIRPERSON GORDON: Thank you.

3 MR. KRAUSSE: Apologize. Mr. Vardis just pointed
4 out to me we have been in communication. And they have
5 been supportive of the work of the on-shore component. So
6 this has been new to us they're concerned about the
7 off-shore work.

8 ACTING COMMISSIONER GARLAND: Thank you.

9 Now back to the survey design and the discussion
10 that several of us have had about that.

11 One, for PG&E, is the survey design completed or
12 are there still tweaks/changes being made? Are we
13 actually voting on something today that is immutable?

14 MR. NISHENKO: As you've seen this morning, we
15 are voting an option 3B.

16 ACTING COMMISSIONER GARLAND: I understand that.
17 But what I'm asking you is, as of the last time we spoke,
18 there were still some tweaks being made to the survey
19 design from your end on the technical side, as far as data
20 collection and things of that nature. Is that completed?

21 MR. NISHENKO: Is that completed? As we stand
22 here today, yes.

23 ACTING COMMISSIONER GARLAND: That was a very
24 qualified answer. I'm going to be frank with you, I don't
25 like that.

1 MR. NISHENKO: Well --

2 ACTING COMMISSIONER GARLAND: Either it's a yes
3 or no.

4 MR. NISHENKO: I'm trying to be honest with you.

5 ACTING COMMISSIONER GARLAND: It's a yes or no
6 answer, sir.

7 MR. NISHENKO: Then I'll have to say yes.

8 ACTING COMMISSIONER GARLAND: Thank you.

9 The question of best available technology -- and
10 I want to go back to this for a very specific reason.
11 We're going to get one chance at this. There's no doubt
12 this survey needs to be done. I don't think anybody on
13 this dias would disagree with that. The potential for
14 what could happen if we don't do this and we could have
15 known something far outweighs the concerns that have been
16 raised to this point.

17 But since we're only going to get one crack at
18 this, I want to hear from PG&E and subsequently from
19 Supervisor Gibson a discussion on the best available
20 technology, because as we know, there are some concerns in
21 the scientific community. I share those concerns. I've
22 shared them with PG&E in the past, and I'd like to have an
23 open discussion of some of the things that we talked about
24 in meetings leading up to today, as far as the best
25 available technology versus what we're using since there

1 is a difference. And we've talked about it. And I would
2 like to get that on the record for the other Commissioners
3 as well as the general public.

4 ACTING CHAIRPERSON GORDON: I'd like one
5 variation on that, too, if I may, which is a lot of the
6 concerns we have heard have to do with affects on marine
7 life. And we've talked about the effects with either
8 bifurcating the process or doing it once. What we haven't
9 talked about is if PG&E's chosen methodology with some
10 fairly strong scientific background is to use four
11 steamers at 250 decibels and what we have heard with
12 regard to the other option is ten streamers, is that also
13 at 250 decibels?

14 MR. KRAUSSE: We'll address that.

15 ACTING CHAIRPERSON GORDON: I would like that
16 issue addressed, because whatever arguments there are in
17 favor of the ten, I don't want to deal with whether --
18 what the impacts would be -- I do want to hear what the
19 impact of that would be on the same marine mammals that we
20 discussed.

21 MR. NISHENKO: So do you want to touch on that
22 issue first? I'll refer to my colleague Dr. Kent.

23 DR. KENT: I'm Graham Kent. And I'm Director of
24 Nevada Seismological Laboratory and State Seismologist for
25 Nevada, although we do monitor eastern California as well.

1 I was involved with through NSF the procurement
2 of the Langseth and Chair of the Oversight Committee for a
3 number of years. In fact, just went out on the Langseth
4 off of Washington just last month working in a very
5 environmentally sensitive area.

6 And before I start, I would just say I would only
7 hope that everyone could have been on that vessel to
8 realize the professionalism working with marine mammal
9 observers and how things were shut down to ensure they
10 were not harmed and the least amount of damage possible.

11 Getting back to the little debate we'll have
12 debate we'll have, Dr. Gibson, one of the things we'd like
13 to bring up is we need to use the right tool. For imaging
14 saltwater in the deep gulf, they do certain things. They
15 have the ability to have the efficiencies of having a
16 larger swath of streamers. I'm going to have to get into
17 a little bit of reflection seismology. But I think that's
18 important.

19 Typically, in these 3D surveys, there are two
20 sources the: Air guns you heard of and there'll be
21 flip-flopping back and forth. In the case of the
22 Langseth, there's four streamers. Essentially, what
23 you're doing is getting an eight for one. Instead of
24 having eight streamer and one source, you get to go over
25 the area or spend one-eighth of the time in the water. So

1 by logic, it would assume if we went to twelve streamers
2 with two sources, we could knock down the exposure by
3 1/24th. And we all agree that would be great.

4 Unfortunately, this is in deep water. It's near
5 the shallow bottom that's hard. And everyone that we've
6 talked to in industry would not recommend going with
7 twelve streamers in water depths between about 75 and 25
8 meters.

9 ACTING COMMISSIONER GARLAND: Did you receive any
10 responses to your request for proposals on this that would
11 have gone with the larger streamers?

12 DR. KENT: So for the PG&E process, they did get
13 proposals. They tended to be four or six streamer
14 configurations.

15 ACTING COMMISSIONER GARLAND: Were there any
16 larger than that?

17 DR. KENT: No.

18 MR. NISHENKO: We did get a response from a
19 vendor to bring out a ten streamer ship. But in that
20 response, they also noted severe concerns about the depth
21 of the water. And in fact, their proposal to us was to
22 actually move the target area further off shore so they
23 could avoid the risk that they saw in operating in shallow
24 water.

25 ACTING COMMISSIONER GARLAND: My understanding is

1 the current proposal as it stands now with the current
2 vessel and the current survey design was also -- there was
3 also concerns about moving closer to shore that have been
4 overcome and now we are closer to shore and getting the
5 data we need; is that correct?

6 MR. NISHENKO: That's absolutely correct. And if
7 I can elaborate --

8 ACTING COMMISSIONER GARLAND: Sure.

9 MR. NISHENKO: When we first made this proposal
10 to the IPRP in the wintertime, Dr. Bruce Gibson, of all
11 folks, actually criticized us for conducting the survey in
12 water depth of 50 meters or more. And this was based on
13 my understanding at the time that that was the typical
14 operating depth of these vessels.

15 Upon that criticism, we went back to Columbia
16 University to confirm with them what was their safe
17 operating depth and to really cut it to the bone so we can
18 do this work. That's when they told us they could work in
19 water depths of 25 meters or more.

20 So again, this is part of the peer review process
21 that we have been going through, questions asked and
22 revisions to address those.

23 ACTING COMMISSIONER GARLAND: Did you go back to
24 the proposal -- the proposed vendor for the ten stream and
25 ask if they could get closer to shore?

1 MR. NISHENKO: No, we did not.

2 DR. KENT: And working with processing company
3 Geotrace, I talked to them as well about July 10th or
4 11th. And they as well -- they're going to have to
5 actually make the image, so to speak. And they, again,
6 brought up the second point. The first point is the
7 safety issue. And as you deploy the four streamers out,
8 these lines are under extreme tension. So you don't want
9 to drive the streamers into the ground. It's not only an
10 issue for the hard bottom, but it's also an issue for
11 people in the boat.

12 So from a safety standpoint, the people that I've
13 talked with do not feel comfortable -- I would not sign on
14 personally on a vessel to do that.

15 The second issue -- it may be different from what
16 they do in the oil industry -- is that there is a whole
17 other series of high resolution/low energy looking at the
18 shallow-most section of the faults, trying to understand
19 slip rates, recurrence intervals and whatnot. We need to
20 connect that back to the high energy deeper images.
21 That's not so critical necessarily in the oil industry for
22 a lot of their targets.

23 And in that regard, as I make it a wider and
24 wider swath, all of a sudden I do a poor job at imaging
25 very shallow. So again, everything when you collect data

1 and try to make the best image, it's a trade-off. And so
2 that's why a lot of vendors -- that's why I know Neal and
3 I personally feel that four to six streamer is a sweet
4 spot between spending as little time in the water but
5 actually getting an image from top to bottom that's
6 useful.

7 And again, the source that is suggested for
8 Diablo Canyon happens to be half of what we used in
9 Washington because we had a deeper target. So they're not
10 over-prescribing the source level either here. So we're
11 trying to tailor the actual experimental design for what
12 needs to be imaged here. Because we know there are all
13 these trade-offs. There's nothing perfect. It's not a
14 perfect world. So we have trade-offs.

15 So again, this Langseth was, indeed, the legend
16 from Western Geophysical. It's all industry-grade
17 equipment. The people on there all have worked for
18 Western and Fugro and everybody else.

19 But going to sea is difficult. Right? Under the
20 best circumstances, academic or industry. We all have to
21 be aware of that. It's an environment where safety is
22 first.

23 I do believe that the Langseth is capable of
24 producing the image that we need, the image we need for
25 understanding and updating ground motion.

1 ACTING COMMISSIONER GARLAND: Talk to me about
2 the image we need and the image potentially we could get
3 with better or different equipment and if there is a delta
4 between what we would learn from the -- I don't want to
5 say the better technology, but from other newer or
6 cutting-edge technology. Is there a delta between what we
7 would learn with what we're currently proposing to use and
8 what we could learn should we go with -- if we went with
9 better, newer technology. I don't mean to keep saying
10 better, because that's a value judgment I can't make.

11 DR. KENT: Again, this is where maybe we
12 respectfully disagree with Dr. Gibson in that a lot of --
13 this delta is a delta in kind of exotic-type experiments.
14 It might be shooting with a second ship. It might be
15 having twelve streamers. We talked about that already.
16 But at the end of the day --

17 ACTING COMMISSIONER GARLAND: Or shooting in the
18 right track curve.

19 DR. KENT: At the end of the day, what isn't
20 really spoken about though is that's never the first 3D
21 shoot. That's sometimes the fourth, fifth, and sixth.
22 Sometimes they shoot three or four, whole survey.

23 So we got one chance; right? We don't have any
24 other existing 3D data. We don't have the luxury
25 sometimes of planning like they do in the gulf where they

1 have a whole bunch of data and they're trying to shoot
2 under salt to find some oil field. So it's really a
3 different thing.

4 And I have no problem using the industry-grade
5 equipment on the Langseth with four streamers and two
6 flip-flopping sources to produce the images that we need.
7 Is the Hasbury fault vertical, or does it dip underneath,
8 issues like that, it's more than capable --

9 ACTING COMMISSIONER GARLAND: You have an
10 interesting position, not just as a consultant to PG&E,
11 but you have a public life in which you are a public
12 servant.

13 DR. KENT: Absolutely.

14 ACTING COMMISSIONER GARLAND: I'd like to ask you
15 a question as a public servant. You're willing to put
16 your reputation on that line that this is the best
17 available that we can do?

18 DR. KENT: When I walked in here today,
19 absolutely. That's --

20 ACTING COMMISSIONER GARLAND: Let's let
21 Supervisor Gibson come up and deal with some of these
22 points.

23 MR. STRICKLAND: Can I have just one minute --

24 ACTING COMMISSIONER GARLAND: Is it different
25 than what we discussed?

1 MR. STRICKLAND: Yes.

2 ACTING COMMISSIONER GARLAND: Let's discuss had
3 and then move.

4 SUPERVISOR GIBSON: Flip-flopping sound sources
5 here.

6 Thank you, Commissioners.

7 Let me start, first of all, by making it very
8 clear to you that the issues of academic versus industrial
9 that I have brought up, in those issues, I have never used
10 academic as a pejorative term. Understand that the
11 Langseth is operated by the Lamont-Doherty Earth
12 Observatory from Columbia University, which is a
13 world-class research institution that over 50 years and
14 more has made fundamental contributions to our
15 understanding of the earth. There's no question as to the
16 quality of the work they do.

17 But at the same time, it has forever been the
18 case that the shear imaging capability of the industry has
19 exceeded that of the academic world. And that's been the
20 case 40 years ago. That's the case today. It's like
21 having a Hazel Blood camera or having a brownie point and
22 shoot at one point. I use that only as a means of
23 exaggeration.

24 But the economics effect of the oil industry has
25 caused industrial seismic reflections survey entities to

1 have more sophisticated technology.

2 I can go through a couple of things point by
3 point here. The last time I sat down with PG&E on the
4 technical issues was the 30th of July. And I had an
5 in-depth conversation at that point. They had mentioned
6 to me they were still looking at the nature of the survey
7 and whether tweaks needed to be made to it based on new
8 estimates of seismic velocity and a number of other
9 parameters. If they have, indeed, settled on this being
10 the survey they want to do, that is information that is
11 new to me today.

12 You know, I do appreciate Dr. Nishenko relating a
13 couple of points. One of them is as PG&E brought forward
14 this proposal that the initial proposal for the Langseth
15 was to limit it to water depths of more than 50 meters for
16 the kinds of issues have been talked about. And indeed,
17 after further reflection, if you don't mind the pun, they
18 decided the 25 meters was a safe operating depth.

19 I think it is absolutely important that this
20 question be asked why they didn't go back to the proposal
21 that they received for a ten streamer boat to see what it
22 could do in shallower water.

23 I would point out that among the technological
24 advances of the industry at this point are more
25 sophisticated means of controlling the receiver streamers

1 as they trail behind the boat. The industry has more
2 control over them than, as I understand it, the Landseth's
3 technology to be.

4 What this discussion of the Langseth versus the
5 ten streamer proposal really touches on what I think is
6 important is a piece of the state-of-the-art that's I
7 little more subtle. That is in industry now the
8 state-of-the art in designing a survey is rather different
9 than the way that PG&E and its consultants have gone
10 about.

11 ACTING COMMISSIONER GARLAND: Let me just jump in
12 here and ask you a follow-up question. Are we talking
13 about the difference between my buying this laptop 18
14 months ago and two months later Apple putting out a new
15 laptop and I was already out of date?

16 Are we talking about a real difference here that
17 could give us data that would be valuable that could
18 frankly save lives if we had it?

19 It's one thing to say we look back at a decision
20 to build Diablo Canyon where it is now and we say that was
21 a pretty dumb decision.

22 SUPERVISOR GIBSON: Right.

23 ACTING COMMISSIONER GARLAND: But that was the
24 best available at the time and that was the decision that
25 was made. And you couldn't change that.

1 What I don't want to get caught up in is are we
2 talking about the same as computers here, where the minute
3 you buy them, they're outdated. Or are we legitimately
4 talking about something that could potentially save lives?

5 SUPERVISOR GIBSON: I think that that analogy is
6 not precise. Part of it is that I don't know what the
7 difference between what PG&E is proposing and the best
8 possible survey is.

9 The way I frame this discussion in my own head is
10 back to the point that one of the Commissioners made which
11 is that we have but one shot to be in the water to incur
12 the environmental impacts that a high energy seismic
13 survey is going to incur.

14 I think there are two things that we need to look
15 at. And the easy one to talk about is the number of
16 receivers that a boat carries and how that effects the
17 survey time. If you are to approve this permit, you are
18 going to need to make statements of overriding
19 consideration on unavoidable impacts that can't be fully
20 mitigated. Part of that is saying we have mitigated this
21 impact to the greatest extent possible.

22 And I have proposed I think certainly verbally
23 and also in writing that I think it would not be
24 unreasonable to take a ten streamer configuration and
25 analyze it as a formal alternative project under CEQA.

1 That was not done. The idea came up relatively late in
2 the process. And your Lands Commission was well along in
3 its environmental review.

4 But because there is the potential -- and PG&E
5 acknowledges that in the attachments -- in the second
6 attachment to your letter, they acknowledge that having
7 more streamers could significantly cut the survey time
8 down by possibly half. Possibly more. The reality is we
9 don't know exactly how much reduction in the survey time
10 is possible.

11 And that goes back to my point about how industry
12 at the state-of-the-art now does design surveys. And they
13 start with the idea that we want to figure out where the
14 sources of sound should be and where the receivers of
15 those sounds should be in order to provide the best image
16 of the geologic targets that are at depth.

17 And you know, Dr. Kent is quite correct. They
18 haven't done 3D surveys off this shore. But we have an
19 idea of what those structures are. So starting with our
20 best understanding, the process in the industry now is to
21 model the seismic response in the computer to see what a
22 certain allocation of sources and receivers might be.

23 The second step is then to figure out how are we
24 going to get sources and receivers? Or can we get sources
25 and receivers into those positions which would give the

1 best possible seismic image? And that's a fairly complex
2 process. In it's most expanded form, it involves the
3 actual physical modeling of ships' tracks and receiver
4 tracks and all the physics of things dragging behind
5 boats, a full understanding of the environmental hazards,
6 meaning the obstructions that might limit where we can
7 take these things. And we work back from the ideal of
8 this is how we would do it if we could to what we can do.
9 And that process has not been undertaken. I mean, I have
10 Dr. Kent and others reference --

11 ACTING COMMISSIONER GARLAND: Actually, hold on.
12 That's a pretty big allegation that that process has not
13 been undertaken. And I want to give PG&E on the spot the
14 ability to respond to that.

15 SUPERVISOR GIBSON: Let me clarify exactly what I
16 mean then. They have done what they call an illumination
17 study. It's fairly technical as to how they did it. That
18 illumination study was based on their proposed survey.

19 I'm talking about an idealized survey to start
20 with and we start working back from that. But absolutely
21 they have modeled to an extent.

22 I've also pointed out in the technical back and
23 forth that there are more sophisticated means of doing
24 that modeling that have not been employed. And I would be
25 happy to --

1 ACTING COMMISSIONER GARLAND: And was that
2 mischaracterized or was that clarification enough?

3 MR. NISHENKO: We did do what we call an
4 illumination study. It's what we call a rate tracing
5 study where we look at what we currently know about the
6 geology, where the faults are, what the velocity structure
7 is. We did not use tracks. We actually laid out a grid
8 of points to see, given all possible combinations, where
9 is the best place to actually image? This is one of the
10 key reasons why we have an on-shore and an off-shore
11 component so we get the best imaging and the best offset
12 from these faults so we can record them in the highest
13 fidelity.

14 So a lot of this has been taken into account.
15 Granted, as Dr. Kent previously said, if you go into an
16 area two and three times the 3D survey, you're going to
17 know a lot more. You can do more sophisticated modeling
18 to pinpoint things. But this is the first time we're
19 going in with the 3D survey and what we have from previous
20 eras give us a rough idea, but it's not the same, given
21 the tools that we have at our disposal today.

22 ACTING COMMISSIONER GARLAND: Thank you.

23 MR. DRISCOLL: My name is Neal Driscoll. I'm a
24 professor of geology and geophysics at the Scripps
25 Institute of Oceanography. I'm also the Director of the

1 Geoscience Program.

2 I'd like to take a few minutes and I'll come back
3 to address some of the concerns here. But just go back to
4 the some of the questions that were asked from Morro Bay.

5 What is the data set going to provide us? That's
6 a question we really need to get out in front.

7 The surveys have been what we call nested. They
8 go from high frequency imaging to very surficial
9 sediments, the offsets, how often the faults occur, how
10 much the earth moves in each fault. We build up
11 recurrence intervals. We build up how often faults move
12 in the past, when was the last time it moved, how much did
13 it move.

14 What we're also trying to do is survey the
15 geometry of the fault through what we cause the seismic
16 genics zone, the zone that breaks brittlely like chocolate
17 on a Milky Way bar. We need to understand that geometry
18 because it's critical to ground motion studies.

19 So what Graham Kent tried to explain to you --
20 and I respectfully disagree with Dr. Gibson, we have taken
21 time to make the array, the gun size -- Dr. Kent used
22 6,000 cubic inches off of Cascadia margin because they
23 were trying to survey something deep. We need to survey
24 how the shallow surveys merge with the intermediate and
25 deep. And we have used the smaller sound source.

1 The ram form ships he talks about, the ten-tow
2 streamers have bigger guns. We have optimized this so we
3 minimize impact in the ocean and we target what we want to
4 understand.

5 Also, the data will be open sourced, the raw data
6 and the processed data. We have Geotrace, one of the
7 state-of-the-art industry partners, that have helped
8 design it, will be riding on the ship, are processing some
9 of the data that Graham Kent collected right now that give
10 us insights into QA/QC. I would say we've done our due
11 diligence. Thank you.

12 SUPERVISOR GIBSON: I certainly agree with Dr.
13 Driscoll on the scientific importance.

14 But again, I respectfully disagree on some of the
15 conclusions as to what the industry might be able to do or
16 not do.

17 I don't remember if I brought it up in my
18 comments of a couple minutes ago, but Dr. Kent and others
19 referenced that they had talked to industry and industry
20 couldn't get the more modern, larger streamer boats into
21 shallow water. In fact, I have had contact with industry
22 that indicates under nominal conditions they can bring ten
23 streamers into 25 meters of water, just like the Langseth
24 can bring its four.

25 Now, nominal conditions need to be looked at in

1 terms of obstructions and currents and winds and probable
2 behaviors of streamers. That's the kind of analysis that
3 I think needs to be done to decide how many we can bring
4 in, because again we come right back to the -- right back
5 to the question of environmental impacts.

6 You know, and as to the question of bigger guns,
7 lesser guns, a boat can tow whatever sound source it
8 needs. And I conclude, without having studied it in
9 detail myself, they sized the sound sources, the air guns,
10 correctly to get the information over the section they
11 need. An industry boat would do very much the same thing.

12 I disagree it is simply a matter of deep water
13 surveying under certain kinds of oil reservoir
14 characteristics that drives industry to do the experiment
15 it needs to do.

16 And I disagree that you would necessarily lose
17 the image quality of the shallow section if you towed more
18 streamers. To give you a simple idea that if shallow is a
19 concern, a boat towing ten streamers could simply use the
20 interior four for certain parts of the section of data
21 that they would acquire. And they would be doing just
22 what the Langseth is doing.

23 So there is a lot of -- manipulation is a word,
24 but data processing is probably a more correct term. That
25 really was the essence of the next point in terms of

1 state-of-the-art. There is an integrated process of
2 deciding how the survey is to be conducted and how the
3 data that are acquired there are then processed with an
4 eye toward the ultimate interpretation. What's the
5 product? What is the image? What's the volumes of
6 seismic image that are going to be used to try to make
7 the -- draw the geologic and seismological conclusions
8 that need to be drawn.

9 This is a process that is integrated. There is a
10 full spectrum of that kind of work that's being done with
11 the very close coordination of data processing, as well as
12 acquisition and interpretation. Those are the things that
13 I have not seen, and this is what I think independent
14 review of this process --

15 ACTING COMMISSIONER GARLAND: That brings us to
16 my last major question. I may have more as we discuss
17 this next topic.

18 I heard Dr. Kent several times say he talked to
19 people about whether four and six and the boats and what
20 boats can do what. It sounds like there was a lot of
21 consultation with folks who aren't on this team.

22 One of the criticisms that's been brought to the
23 table and one of the concerns that my office brought up to
24 PG&E very early on in the process was the idea -- and the
25 State Lands Commission staff will probably laugh when I

1 say this -- of a third-party scientific review of the
2 survey. It is a mantra of mine on this Commission.

3 It sounds like you've consulted a whole bunch of
4 people, but have been unwilling to go to an independent
5 third-party verification of the survey design. And I
6 understand you will say that the IPRP was the body that
7 was going to do that, except they have not yet done that.

8 So I would like to hear both sides on this as far
9 as why a third-party independent review hasn't been done.
10 That is not part of PG&E's scientific team, which is what
11 independent means.

12 And then from Dr. Gibson, since you sit on IPRP,
13 why the delay from IPRP in getting their part of this
14 done?

15 MR. STRICKLAND: So I think the best way the
16 start to answer --

17 ACTING COMMISSIONER GARLAND: If you can identify
18 yourself for the --

19 MR. STRICKLAND: I'm Jearl Strickland, the
20 Director of Nuclear Projects for Pacific Gas and Electric.

21 I think the best way to start with the question
22 of peer review is that throughout the process of
23 developing this set of studies, not only for the off-shore
24 component but also the on-shore component, that it's gone
25 through a peer review process. We've had a dedicated

1 science team that has a level of expertise --

2 ACTING COMMISSIONER GARLAND: Let me stop you
3 there. We've now heard this for a third time. You have a
4 dedicated science team that is in the employ of PG&E;
5 correct? It's not an independent team.

6 MR. STRICKLAND: That's correct.

7 ACTING COMMISSIONER GARLAND: So let's stop that
8 and talk about the independent review. Because we
9 understand you have excellent scientists on your team. I
10 will not dispute that at all. They're some of the best in
11 the world.

12 The question is what has the resistance been to
13 going outside of PG&E's circle of experts they employ to
14 have this reviewed independently?

15 MR. STRICKLAND: I think if you look at the
16 charter of the Independent Peer Review Panel, their
17 charter was to perform an independent review of the types
18 of studies that we're performing, the target locations,
19 and in turn, to be able to provide constructive input to
20 Pacific Gas and Electric as to the formation and
21 implementation of these studies, as well as to be able to
22 provide a secondary review of the data that's collected
23 from these studies.

24 So one of the other points I'd like to make is
25 that the concept of open data is very critical to

1 understand in that when you look at the formation of these
2 studies that we've elected to be able to put the data into
3 a format such that it's fully available to the academic
4 community and to the public. And where that becomes very
5 important is that as we move forth with going through the
6 NRC mandated re-evaluation of the seismic hazard for
7 Diablo associated with new orders from the Fukushima event
8 in Japan that that data will be available to the Senior
9 Seismic Hazard Analysis Committee.

10 An interesting point is that my friend, Rochelle
11 Baker had brought up Dr. Hamilton. Dr. Hamilton is an
12 individual that I have a lot of respect for and worked
13 with quite extensively in the '80s. He has been invited
14 to be a participant in the Seismic Hazard Advisory
15 Committee that will take this type of data and look at
16 what is the seismic source and seismic ground motions
17 associated with the outcome of these studies. So it's --

18 ACTING COMMISSIONER GARLAND: If this Commission
19 were to make the independent third-party review not tied
20 to IPRP, since they've been too slow, a condition of
21 moving forward, what would that mean to the project and
22 what would the delay be?

23 MR. STRICKLAND: I think the key that this data
24 will be reviewed as part of the senior seismic hazard
25 analysis --

1 ACTING COMMISSIONER GARLAND: After the fact. We
2 get one shot at this, we'd like to make sure that on the
3 front end we're doing it right.

4 MR. STRICKLAND: I understand.

5 The key point, though, is that we have one shot
6 to be able to use this data as part of the Senior Seismic
7 Hazard Analysis Committee. The NRC has mandated a
8 specific time line for us to be able to factor in all data
9 that's available --

10 ACTING COMMISSIONER GARLAND: What is that time
11 line? Is that the 2015 deadline that we talked about
12 that's actually not really a deadline?

13 MR. STRICKLAND: Yes. March 11th, 2015, is the
14 deadline that's required for us to not only complete the
15 seismic source characterization, but let that feed into a
16 ground motion characterization.

17 ACTING COMMISSIONER GARLAND: Again, not to beat
18 a dead horse here, but we had a conversation and this is
19 the reason why I know we're prolonging this. But there
20 is -- people need to know the conversations that were had
21 before we got to this table so they understand the
22 decision-making process. We had this discussion in my
23 office

24 MR. STRICKLAND: That's correct.

25 ACTING COMMISSIONER GARLAND: With the

1 stakeholders around a conference room table. And we had a
2 pretty heated discussion about this very topic. And my
3 understanding from my notes is that the 2015 deadline that
4 you point to for federal review was not really a deadline.

5 MR. STRICKLAND: It is a hard deadline.

6 ACTING CHAIRPERSON GORDON: Can I ask a question
7 or finish and then I'll --

8 ACTING COMMISSIONER GARLAND: Yes. Go ahead.

9 ACTING CHAIRPERSON GORDON: One of the options
10 that has been presented to mitigate the marine impacts
11 here still going with the four streamers is to bifurcate
12 over two years, 2012-2013. You use the ship, from as I
13 understand, November 15th to December 15th this year,
14 maybe get enough data, maybe not. If not, be contracted
15 for the ship next year when it -- as we understand today,
16 will be in California waters working for Southern
17 California Edison. I'm getting a -- we don't know.

18 MR. NISHENKO: It's their project. Let
19 them speak to it.

20 MR. DRISCOLL: Right now, the National Science
21 Foundation on the schedule for 2013 is a cruise off Iberia
22 in the Atlantic Ocean and another one further north. So
23 the ship has no scheduled return to California or Pacific
24 waters right now. What was referred to was an EA that
25 says that we're performing a 2D experiment or proposing to

1 get permits to do that. And we are moving forward with
2 that. And that 2D data is going to allow us to have exit
3 points or refocusing points. But the 3D data will not be
4 collected if we can't image the faults and basement. So
5 there is an exit point. So there is no guarantee that was
6 miscorrecly read that it says that this is build up to a
7 3D, but if we can't succeed by imaging these faults where
8 they enter basement, there will be no 3D data. And the
9 ship there will be no urge to bring that ship back.

10 ACTING COMMISSIONER GARLAND: Supervisor Gibson,
11 you were part of this conversation. I don't want to leave
12 you out of it, that we had in my office relative to the
13 March 2015 deadline.

14 SUPERVISOR GIBSON: Mr. Garland, it was my
15 recollection -- and I can't remember who brought it up --
16 one of the participants there had the circular from the
17 NRC. It was my recollection there is a target deadline in
18 March of 2015, but that information would be accepted
19 continuously by the NRC. And I think that's consistent
20 with the continuous improvement of knowledge regarding the
21 seismic setting that we've understood from PG&E for quite
22 some time.

23 ACTING CHAIRPERSON GORDON: Chris, I need to stop
24 you right here.

25 I need to make an announcement right now. And

1 greatly apologize. I know these folks sat here all day.
2 We lose this room at the latest at 3:45. And we are going
3 to have to put over Ballast Water until October. They're
4 slightly grimacing. I really apologize. You folks have
5 been more than patient for about six years I believe. But
6 we're not going to finish this issue and get on to another
7 one. And there is an informational item also on West
8 Wilmington Long Beach.

9 EXECUTIVE OFFICER FOSSUM: That's not a voting
10 item. We won't be making a presentation, but we do have
11 one speaker who wishes to speak from Morro Bay I believe
12 at the end of the meeting.

13 ACTING CHAIRPERSON GORDON: From where? I'm
14 sorry.

15 EXECUTIVE OFFICER FOSSUM: From Morro Bay.

16 ACTING CHAIRPERSON GORDON: We have one more
17 Morro Bay speaker.

18 We're going to try to wrap this one maybe in the
19 next half hour. But anything else, we're clearly not
20 going to get to. I apologize.

21 Back to Mr. Garland.

22 ACTING COMMISSIONER GARLAND: So to close out
23 this issue of 2015, while it is PG&E's contention this is
24 a hard deadline, are we not right in recollection of our
25 discussion that while you think it's a hard deadline, the

1 federal folks will continue to receive data past that
2 point, should it be -- should that --

3 MR. DRISCOLL: With my dealings with Edison which
4 are the same hard deadline, I corroborate his statement
5 that 2015 that's a hard deadline and data can still go
6 into assessment after that but not into the NRC?

7 ACTING COMMISSIONER GARLAND: Is that 2015
8 deadline -- go ahead.

9 MR. STRICKLAND: Let me clarify for you. We have
10 the ongoing long-term seismic program that continues to
11 collect data independent of these activities and in turn
12 that if we are not able to perform the surveys this
13 year --

14 ACTING CHAIRPERSON GORDON: Can those of you
15 leaving the room please take conversations outside? We're
16 having trouble hearing the speakers. Thank you.

17 MR. STRICKLAND: If we are not able to perform
18 this set of surveys this year, then that data will not be
19 available for the shack process but will be --

20 ACTING COMMISSIONER GARLAND: What is the
21 consequence of that data not being available for that
22 process?

23 MR. STRICKLAND: The shack process is a detailed
24 process mandated by the NRC to reevaluate the seismic
25 source and associated ground motion.

1 With that, once you've completed that, the NRC
2 takes the next step to have us compare what is this new
3 seismic input to the design basis of the plant. And using
4 that information, they will then determine whether or not
5 we exceed our design basis and whether or not additional
6 modifications or potentially have to be performed to
7 Diablo Canyon.

8 ACTING COMMISSIONER GARLAND: Again I ask what
9 are the ramifications? Is this on the renewal of your --

10 MR. STRICKLAND: No.

11 ACTING COMMISSIONER GARLAND: Is that on the
12 current operation and the current --

13 MR. STRICKLAND: Yes. It's called -- the new
14 orders are 5054(f) for foxtrot. So it's new orders
15 promulgated by the NRC on March 12th of this year that
16 provided the time line and the requirements.

17 Also, that is not only looking at seismic, but
18 taking seismic input data to be able to recharacterize
19 tsunami hazard for the plant, too.

20 ACTING COMMISSIONER GARLAND: This is not a
21 matter of needing or wanting to get data in time for a
22 federal review of your renewal?

23 MR. STRICKLAND: No. This is tied toward the
24 current operating license and continued operation of the
25 plant.

1 ACTING COMMISSIONER GARLAND: Got it. So we got
2 side-tracked there on the --

3 MR. DRISCOLL: Can I say one other thing?

4 In the whole process, we came up and tried to
5 meet with the IPRP so that we -- I feel awkward that you
6 have scientists bantering these points where everyone here
7 is intelligent, but you don't have experience in this. So
8 try you're trying to whether Dr. Gibson is right --

9 ACTING COMMISSIONER GARLAND: That really sounded
10 like a left-handed comment and insult. And frankly, if
11 that's where you're going, we can end this conversation
12 here.

13 MR. DRISCOLL: No. No. No. I'm saying that
14 here we tried to go up and argue this in front of our
15 peers at the IPRP where we could have fruitful discussions
16 of the benefits of the streamer configuration, the guns,
17 all of the systems, and all of the intricacies --

18 ACTING COMMISSIONER GARLAND: What is the
19 resistance to allowing a third-party --

20 MR. DRISCOLL: There is none. I don't believe
21 there is any.

22 ACTING COMMISSIONER GARLAND: You've told us all
23 along this is not something you're able to do.

24 MR. KRAUSSE: Commissioner Garland, I think you
25 were heading down a direction of it would be good to hear

1 from Supervisor Gibson why haven't we heard back since
2 June from IPRP. That is the independent peer review
3 process that PG&E was relying on. So I think that's where
4 we're at.

5 ACTING COMMISSIONER GARLAND: Thank you for
6 getting us back on track.

7 SUPERVISOR GIBSON: Well, the IPRP last met on
8 June 29th. That was a meeting that was scheduled based on
9 the availability of a conference room. And I find a
10 certain irony in hearing the deadline approaching here.
11 And frankly, I am not completely happy. On behalf of my
12 constituents, this is an important issue. And I'm sorry
13 that those are the deadlines that we go apart.

14 I was not able to attend the IPRP meeting of the
15 29th of June. I made that clear to the organizers of the
16 IPRP. I had a standing commitment with a cabinet level
17 State official that I could not break on that matter.

18 But PG&E did present at that within the next week
19 or so. Their presentation material was distributed. The
20 IPRP works under the Bagley-Keene Act. And frankly, that
21 has made our process laborious because for the --

22 ACTING COMMISSIONER GARLAND: You're preaching to
23 the choir on that one.

24 SUPERVISOR GIBSON: -- for technical individuals.
25 There have been comings and goings of IPRP members on

1 vacation. And it is only now that the IPRP has drafted
2 response to what they heard on the 29th and are trying to
3 get a meeting going in the future.

4 ACTING COMMISSIONER GARLAND: So let me ask a
5 couple of key questions here.

6 One: When did the IPRP receive the final survey
7 design for review?

8 SUPERVISOR GIBSON: Well, we had the survey
9 design -- I understand they were presented the survey
10 design on the 29th. As of the 30th a month later, the
11 30th of July, I was still understanding there were
12 possible tweaks. But let's say the basics of the survey
13 design was seen on the 29th.

14 ACTING COMMISSIONER GARLAND: How long would it
15 take the IPRP, in an ideal world, to do the full review
16 and get back to us with your independent review of the
17 survey?

18 SUPERVISOR GIBSON: I think that would be at
19 least 90 to 120 days. And the reason I quote that long a
20 period is because the IPRP is going to have to hire an
21 outside expert. Whereas, I'm qualified to ask questions
22 about survey design. My length out of the field makes it
23 not possible for me to give current answers. We need
24 outside help.

25 ACTING COMMISSIONER GARLAND: I'm not done with

1 this line of questions.

2 But I want to ask PG&E, if we were to go to an
3 outside party for third-party verification, could it be
4 done quicker than IPRP could get it done? IPRP is saying
5 90 to 120 days for their independent review of the survey.
6 If we were to go to an outside third-party, could we get
7 it done quicker than that?

8 MR. KRAUSSE: I think in any event you're pushing
9 it until December of next year because of the number of --
10 I want to give you some context. We have some federal
11 agencies waiting. The reference to PG&E is going to go
12 catch otters and disturb them. That's actually the
13 National Fish and Wildlife Service, US Fish and Wildlife
14 Service. That work there literally -- we were on call
15 last week waiting to hear if this gets approved. They
16 won't want to disturb these critters unless they know it's
17 for good reason, it has been approved.

18 There is a lot of work cued up behind your
19 approval that would push our work off into next year
20 instead.

21 I think staff at the State Lands Commission will
22 back this up. The IPRP approved, gave their comments,
23 consenting and approving to the study plan I believe back
24 in February of this year. So that's -- I think staff will
25 confirm that for you. And the work hasn't changed.

1 There's been discussions as you alluded to with Dr.
2 Nishenko about what might be tweaked. That has not
3 happened.

4 ACTING COMMISSIONER GARLAND: If staff can
5 confirm that statement for us, while, Dr. Gibson, you had
6 some kind of --

7 MR. NISHENKO: Can I follow up on my colleague's
8 comment to third-party review?

9 Dr. Gibson this spring had suggested that we have
10 a third-party review. We accepted that suggestion. We
11 went to Houston, Texas, talked to folks at Western
12 Geophysical who Dr. Gibson identified that independent
13 third-party review. Gave them all of our planning
14 documents, all of our data, explained the project to them.
15 They respectfully declined participating in third-party
16 review. So here we are now months later going around that
17 same bush again.

18 ACTING COMMISSIONER GARLAND: Did you look for
19 another third-party entity to do the review before you
20 walk away?

21 MR. NISHENKO: Western was Bruce's choice.

22 SUPERVISOR GIBSON: That was my understanding
23 that this hearing was going to happen sometime about the
24 time today.

25 I was pushing as hard as we could within the

1 contracting processes of the State and the county to get
2 independent third-party review. I had talked to the
3 technical individuals at Western Geophysical. They were
4 interested in it. I can only quote it as a coincidence or
5 a reporting of the time that the day after PG&E visited
6 them their management decided they weren't interested in
7 doing this.

8 I was forced to go to a Plan B, which results in
9 the letter. I understand the timing has been tight.

10 I want to comment though on the nature of the
11 IPRP review. In its report of April, the IPRP made
12 comment on the footprint of this survey. And your staff
13 has taken a suggestion to eliminate the northern most area
14 of survey. That was a suggestion of the IPRP for reasons
15 that have been explained.

16 In that report of April, it left open the idea
17 that the details of the survey within the footprint needed
18 further review. So the IPRP has been very consistent.
19 IPRP also contributed comments on the draft EIR, which
20 were not so much on specific environmental impacts as
21 given the background of the importance of collecting this
22 data and speaking to the size of the appropriate survey.

23 ACTING COMMISSIONER GARLAND: But to the point
24 Mr. Krausse made the last time he was at the microphone
25 that IPRP signed off on the survey design in February.

1 SUPERVISOR GIBSON: The comment of the IPRP was
2 it looks like this survey is conducted to cover the
3 appropriate geologic targets. There still remains
4 questions of the details of the survey.

5 ACTING CHAIRPERSON GORDON: Let me try to bring
6 this together where we are right now, because I don't
7 think we're even that close to finishing this.

8 These are the options as I see them. And please
9 interrupt me if I'm not there.

10 We can go with 3B as suggested by staff. We have
11 suggestions by numerous parties to go to -- is it 2B -- is
12 that the correct -- where we would do it 30 days this
13 year, get the data, come back next year if needed and do
14 it again.

15 We could punt. We could just vote the whole
16 thing down and say that this survey design doesn't work
17 and go back to the drawing board.

18 There are also issues that -- I had an
19 opportunity to confer with my principal, the Controller,
20 and he is very concerned that the on-shore businesses be
21 considered and whatever loss they might take going
22 forward. And with regard to the native sites in the tidal
23 zone.

24 And I don't know if we were to approve 3B whether
25 those can be taken care of. If we go to 3B plus 2B,

1 whether those can be taken care of.

2 We have many issues out here. We have extended
3 the room for a few more minutes. I've just been told we
4 are not going to be kicked out of here at 3:45. We have a
5 little bit more time. I don't want to rush this.

6 The other thing we could do -- and frankly, it is
7 an option that nobody has talked about.

8 Let me ask Counsel, Jennifer, if we were to not
9 reach a decision today and have a special hearing of the
10 Commission, how soon can we do that based on notice
11 requirements under State law? And let's start with that
12 and then I'll --

13 CHIEF COUNSEL LUCCHESI: We need to provide ten
14 days' notice.

15 ACTING CHAIRPERSON GORDON: So if we were not
16 able to answer all these questions today, which is August
17 14th, we could come back on the 24th. And if there is
18 more information out there that would be helpful, we could
19 take it then.

20 CHIEF COUNSEL LUCCHESI: The 25th.

21 ACTING CHAIRPERSON GORDON: Let me put the
22 question then to Mr. Krausse, because we haven't
23 determined yet that we're not going to go with 3B, if we
24 punted -- if we moved it over to the 25th, would that
25 prejudice that particular decision?

1 MR. KRAUSSE: It would I believe certainly
2 prejudice the Coastal Commission's approval on the 12th or
3 13th of next month. It could be one of those that they
4 rely on what you put out, exactly what you have in staff
5 recommendation. But I'm not certain that's a good bet.

6 And further, on your point about the on-shore
7 businesses and frankly anyone who has a valid claim for
8 loss, that would all be handled through the claims
9 process. PG&E's claims process was good, has become much
10 better after San Bruno. That and public safety, two of
11 the very big public wins from a horrible event.

12 ACTING CHAIRPERSON GORDON: Is PG&E willing to
13 submit to a neutral third-party arbitrator selected, say,
14 by the courts in San Luis Obispo -- from a list of
15 arbitrators that the courts in San Luis Obispo County have
16 that would be able to decide all those claims?

17 MR. KRAUSSE: We were going to go with that
18 process as you recommended, if that's what you're
19 describing.

20 ACTING CHAIRPERSON GORDON: Mr. Reyes.

21 ACTING COMMISSION MEMBER REYES: Mr. Chair, we
22 had a long conversation on this. And I have sort of been
23 quiet because a lot of the questions have been asked and
24 answered, questions that I've had asked in one of my
25 several meetings I had with different folks at different

1 times.

2 Just to remind you, we have a motion on the floor
3 and a second. I'd like to amend that motion to recognize
4 the fact that there is that process to memorialize that
5 issue. And so I just want to bring it back and say we do
6 have a motion.

7 EXECUTIVE OFFICER FOSSUM: If I could, Mr. Chair,
8 Commissioners, because we had two alternates for our
9 constitutional office right now, only one of you will be
10 able to vote.

11 And secondly, one of the things that could be
12 done is to bifurcate the action of the Commission today
13 and certify the EIR and then come back to the Commission
14 for any actual permit and its conditions. That way, if
15 you have to change any of the environmental aspects of it,
16 you'll have a shorter period presumably to consider those
17 modifications. And that way, other agencies such as the
18 Coastal Commission could look to the EIR and rely on that
19 document.

20 ACTING CHAIRPERSON GORDON: Could you explain to
21 me a little bit what would be in the permit as opposed to
22 the EIR? I'm not completely clear on that.

23 EXECUTIVE OFFICER FOSSUM: The Commission can add
24 additional permits and conditions in its EIR. The EIR is
25 simply the CEQA document. It covers the federal off-shore

1 area, the on-shore area, as well as the State waters and
2 looks at the impacts in that area.

3 The economics is outside the purview of the EIR,
4 for example. And if the Commission decided subsequently
5 that it wanted to do a different project, different stream
6 or something else that wasn't within the EIR, it's quite
7 possible it could use a shorter type of subsequent EIR or
8 different document.

9 ACTING CHAIRPERSON GORDON: Would it be possible
10 to vote on the EIR today and call a special meeting of the
11 Commission, say, for September 1 or thereabouts to come
12 back and look at other conditions with which to place on
13 it?

14 CHIEF COUNSEL LUCCHESI: Yes.

15 EXECUTIVE OFFICER FOSSUM: And let me clarify.
16 I've been talking with counsel here and this doesn't
17 happen very often. I can only -- and I have a vague
18 recollection that the Commission has done this in the
19 past. And that is rather than having a special meeting,
20 you can adjourn this meeting and follow it at a date
21 certain less than ten days. And the Attorney General's
22 Office is reviewing that section right now for --

23 ACTING COMMISSION MEMBER REYES: We would be
24 recessing this meeting and coming back?

25 EXECUTIVE OFFICER FOSSUM: That's correct.

1 ACTING COMMISSION MEMBER REYES: That is the
2 practice of some other committees as well?

3 EXECUTIVE OFFICER FOSSUM: It's been many decades
4 since we've done it, but I do recall in the past somewhere
5 having done that.

6 ATTORNEY GENERAL HAGER: Provided you give
7 24 hours notice.

8 EXECUTIVE OFFICER FOSSUM: It's Section 11128.5.
9 And that section allows a continuance, but you have to
10 give 24 hours notice of the next time.

11 ACTING COMMISSION MEMBER REYES: I think the
12 issue would be is there anything that we're prepared to
13 approve and any other conditions that we want to apply --
14 go ahead. I should pause.

15 So the question is: Do we approve the
16 Environmental Impact Report and then we come back to
17 impose additional conditions on PG&E?

18 And the interest with that would be so that they
19 can move forward with the other regulatory agencies that
20 need the Environmental Impact Report. And then things
21 like if you want to seek clarification on the
22 socioeconomic impact issues that we already heard about,
23 you also expressed an interest on the issues of the native
24 peoples issues and address those as well. Those can come
25 back in separate and conditionals that can be added. And

1 those can be discussed and developed and adopted the next
2 time we meet.

3 ACTING CHAIRPERSON GORDON: Under those
4 circumstances, would we also be allowed to come back and
5 look at whether the bifurcated two-year process would be
6 more feasible?

7 We have conflicting testimony as to whether the
8 ship would be available next year. If we certified the
9 EIR today, but held the permit in abeyance for a
10 continuation meeting, would we have then eliminated our
11 opportunity to look at that issue?

12 ACTING COMMISSION MEMBER REYES: I think you
13 have, because you're saying 3B is the -- recognizing that
14 environmental impact, unless you can come up with a lesser
15 impact in which case if you could come up with a lesser
16 impact, that's what should be at the table.

17 EXECUTIVE OFFICER FOSSUM: Correct. And our
18 conclusion is that you can.

19 ACTING COMMISSION MEMBER REYES: This is the
20 lesser impact.

21 ASSISTANT CHIEF COUNSEL MEIER: This is Mark
22 Meier, Assistant Chief Counsel for the Commission.

23 If you certified the EIR, you could postpone --
24 look at the permit conditions later. If, for some reason,
25 you were to ultimately approve the staff recommendation or

1 make certain tweaks within that have already been looked
2 at within the EIR, the FEIR as it is now, no additional
3 work would need to be done on the EIR.

4 If, for some reason, in the discussion it was
5 decided to do something a little bit different that may
6 possibly result in some changes in the impacts, then a
7 supplement could be done to the EIR.

8 ACTING COMMISSION MEMBER REYES: But if we go --

9 ASSISTANT CHIEF COUNSEL MEIER: But if you did
10 not do that type of thing, you could impose requirements
11 that could impose or trigger additional changes to
12 significant impacts, that you could approve something that
13 was already analyzed within the EIR. A combination of 2B
14 and 3B could be approved using the existing EIR.

15 ACTING CHAIRPERSON GORDON: So let me then --
16 Pedro, do you have a question?

17 ACTING COMMISSION MEMBER REYES: No. I'm
18 processing.

19 ACTING CHAIRPERSON GORDON: I would put a
20 question to anybody who can answer this. Would it be
21 possible for us to within 10 to 15 days to determine
22 whether the ship would be available next year?

23 MR. KRAUSSE: I think the answer to that is
24 almost certainly yes, we could determine whether it's
25 available. Let me though recast this a little bit.

1 First, with regard to issues of conditions on
2 environmental -- compensation for fishermen or anyone
3 else, I think those are perfectly appropriate for
4 conditions you can apply today. As far as I'm concerned,
5 I don't think PG&E is ready to respond to those.

6 With regard to splitting into two seasons or
7 doing independent peer review or anything that would push
8 us off into next year that miss the shack deadline we're
9 talking about about 2015. I know that sounds like a long
10 ways out. But you have this work this season compiling
11 the data this season, coming up with and analyzing that
12 data -- I'm sorry -- compiling data next year and
13 analyzing that data to determine what it means in terms of
14 ground motion, basically whether or not we're in
15 compliance with the plant's design basis. Our experts are
16 telling us that's what we're working against in terms of
17 the 2015 deadline.

18 ACTING COMMISSIONER GARLAND: Let me ask the
19 question again, because it keeps coming back. What are
20 the consequences of missing the 2015 deadline? Are the
21 feds going to shut you down?

22 MR. KRAUSSE: No. It means the 3D results are
23 not considered in the NRC, that SHAC process, which by the
24 way, includes the gentleman that Rochelle referred to.
25 He's part of the process. You're looking for peer review,

1 I understand it's after the results are in. The naysayers
2 will be involved in that process. We will miss that
3 process with regard to the 3D results, and that will
4 determine whether or not PG&E's plant, the current design
5 basis is robust enough to handle the seismic threat. So
6 this will not be used when it's most needed.

7 ACTING COMMISSIONER GARLAND: What is the
8 consequence of missing the deadline?

9 MR. STRICKLAND: The way the NRC's order has been
10 promulgated is they are setting forth a ten-year cycle
11 that says that under the current orders of 5054 foxtrot,
12 you'll go back and recharacterize the seismic source of
13 ground motion, complete that reevaluation, reevaluate the
14 plant, and then in turn, you don't do a detailed
15 reevaluation of the plant until another ten years.

16 ACTING COMMISSIONER GARLAND: I appreciate all of
17 that. But none of that is the answer to --

18 MR. KRAUSSE: The consequence is NRC will be
19 making a decision based on Diablo Canyon's seismic safety
20 without the data that they need here. They may say it's
21 no problem, go on. You continue to operate, when they had
22 this data, they would have said shut down. Or vice versa.
23 They don't have all the information.

24 ACTING COMMISSIONER GARLAND: So they could shut
25 you down, if you don't have this data?

1 MR. STRICKLAND: If -- no.

2 ACTING COMMISSIONER GARLAND: It's a simple
3 question. Mark said that's a potential. Are you
4 disagreeing with each other?

5 MR. KRAUSSE: He's the expert on NRC licensing.
6 My point is that process for considering where we are on
7 seismic is --

8 ACTING COMMISSIONER GARLAND: Is there a Lands
9 Commission staff here who can speak to this deadline and
10 the consequences that we could be facing? Because this is
11 a real issue to me. And while I appreciate PG&E's
12 position, none of this sounds like real consequences.

13 ASSISTANT CHIEF COUNSEL MEIER: I looked into it.
14 Frankly, it's ancient ruins to me. I don't understand the
15 NRC process entirely.

16 As far as I understand -- I did talk to NRC staff
17 at one point in this whole process, and they assured me
18 they had ongoing oversight. Any time new information is
19 brought in, they would take it into consideration.

20 However, they have a process that they have set
21 up with this new order issued in March. And in light of
22 that order, they would like to have -- they have a
23 deadline for new information.

24 So it's not really a yes or no answer. In light
25 of that order, yes, they have a deadline for new

1 information, but they can take new information and act on
2 it at any time.

3 ACTING COMMISSIONER GARLAND: In these new
4 orders, are there any consequences for missing deadline?

5 ASSISTANT CHIEF COUNSEL MEIER: I didn't see any,
6 but I can't say no.

7 EXECUTIVE OFFICER FOSSUM: All reactor licensees
8 are required to submit a report by that point in time.
9 However, as Mark said, the NRC will have continuing
10 jurisdiction over that to make decisions today or after
11 2015. So it's an ongoing process. They just wanted an
12 update --

13 MR. KRAUSSE: One point I didn't get a chance
14 to --

15 ACTING COMMISSIONER GARLAND: Here's my working
16 assumption is there are no consequences to meeting the
17 2015 deadline. Therefore, we should stop talking about
18 the 2015 deadline.

19 EXECUTIVE OFFICER FOSSUM: I don't have the order
20 in front of us, so that's a good question. We can try to
21 find that out.

22 One of the things we've uncovered in looking --
23 if the Commission adjourns and wants to carry this on, we
24 have to give 48 hours notice to everybody by e-mail, by
25 posting it here, in fact, and putting it on our website as

1 to the time and place. As soon as we can locate a place
2 and time, the Commissioners are available for a meeting 48
3 hours after that.

4 ACTING CHAIRPERSON GORDON: Mr. Fossum, I'm
5 interested in knowing the status of -- having just talked
6 to the Controller, we're very interested in knowing the
7 status of availability of that boat. So you know three,
8 four days down the line -- I'm not looking at -- at least
9 from our office perspective we're not looking at coming
10 back on the 20th of August. We are far more interested in
11 maybe 15 days down the line.

12 Where I'm leaning right now is the certification
13 of the EIR, but holding in abeyance the permit, which as I
14 understand has just been explained, we would then have the
15 option of coming back to a combination of 3B, plus 2B with
16 additional conditions in a time appropriate a few weeks
17 from now.

18 Mr. Garland just left us.

19 Mr. Reyes, where are you right now?

20 ACTING COMMISSION MEMBER REYES: You know, again,
21 about an hour or so ago, I actually made a motion. I've
22 actually read more of this issue than any other issue.
23 I've had many of my questions answered. I've had people
24 pose questions to me that are then forwarded to PG&E or
25 staff. And in some cases, I posed the question to both to

1 make sure that I got the full scope of my answers. And I
2 was satisfied with the answers.

3 It is a difficult process. It is an expensive
4 process. It is a process that has significant negative
5 impact, but as I see it is a necessary process where the
6 Energy Commission suggested that they do it. The Energy
7 Commission, the PUC required them to do it. And State
8 agencies and regulatory agencies and permitting agencies
9 that as a State agency I have to adhere to and salute
10 their requirements.

11 The NRC poses a deadline for submission of
12 information. And I don't think anybody here, other than
13 the NRC, can actually tell us what are the consequences.
14 I mean, to shut down the nuclear power plant is pretty
15 drastic. If the NRC wants to take that action, I think
16 there would be a lot of political people pushing back on
17 that issue and ask that time be provided. I get that
18 part.

19 But as difficult as this first step is -- I think
20 it's a necessary step to move forward. I think there will
21 always be second guessing. There's second guessing now as
22 to whether or not that was the best place to put a nuclear
23 power plant. There was second guessing at the beginning
24 of that process. There was a lot of protest going on. We
25 can sit here and look at what is and infinity. And as

1 somebody who does analysis for a living, we can analyze it
2 to death. And I'll sit with the best of them at it.

3 But I think we need to move forward. And you at
4 one point suggested we bifurcate the issue. Let's
5 bifurcate the issue and have some of your questions
6 answered to your satisfaction.

7 ACTING CHAIRPERSON GORDON: We do have a motion
8 before us. Let's deal with that motion. Maybe that ends
9 things. Maybe not.

10 Yes, we have one more response from PG&E.

11 MR. KRAUSSE: I believe Dr. Kent is available to
12 talk about the boat. And I shot an e-mail to Coastal
13 Commission staff to see if that would work from their
14 perspective.

15 ACTING CHAIRPERSON GORDON: Thank you.

16 DR. KENT: Having sat as the oversight Chair for
17 Langseth and having to deal with NFC, I can tell you we
18 were always frustrated not knowing what NSF would do a
19 year or two out. That's the reality. You can imagine
20 these two scenarios. For example, this doesn't go this
21 year. The SONGS 2D goes. SONGS 2D says there is no need
22 to do a high energy 3D.

23 Then the question is is NSF willing to bring the
24 ship back from the Glacial Marshin (phonetic) which is off
25 of Spain or perhaps there is two 3D surveys. Maybe that

1 makes it more enticing. Maybe you split this up and now
2 they're coming back for one month and they'll probably say
3 no.

4 So I mean, the reality of it is we're not going
5 to find out in the next two weeks. You can envision some
6 scenarios where they probably would. But that's reading
7 the tea leaves a little bit too much, I would say. So
8 there is going to be no kind of steadfast solid answers
9 there.

10 ACTING CHAIRPERSON GORDON: We do have a motion
11 before us. I'm going -- let's call the vote.

12 All those -- well, the motion before us is to --

13 EXECUTIVE OFFICER FOSSUM: Mr. Chair, we received
14 an e-mail from the Coastal staff. They're uncomfortable
15 with the fact they don't believe they'll be able to act at
16 their next meeting. Just a cryptic message, but I thought
17 we would pass that on.

18 ACTING CHAIRPERSON GORDON: Let's deal with this
19 motion first.

20 ACTING COMMISSIONER GARLAND: No. Let's table
21 the motion.

22 ACTING COMMISSION MEMBER REYES: I like to hear
23 what the comment was from the Coastal.

24 ACTING COMMISSIONER GARLAND: Sounded like very
25 cryptic. Sounded like we got the whole comment.

1 ACTING COMMISSION MEMBER REYES: I won't pursue
2 the issue.

3 CHIEF COUNSEL LUCCHESI: They are uncomfortable
4 staying on the current schedule if this item was deferred.
5 They're not sure they can make their next agenda.

6 ACTING CHAIRPERSON GORDON: So again, this is the
7 first step for a domino effect issue.

8 EXECUTIVE OFFICER FOSSUM: As you may recall,
9 there is a myriad of agencies, State, federal, local that
10 will have to act on this. We're the lead agency for CEQA.
11 We are a permitting agency for the actual seismic study
12 over State property. But all these other agencies have a
13 bite at the apple as well.

14 ACTING COMMISSION MEMBER REYES: The same way
15 that we say we're not going to approve a buoy if TRPA
16 doesn't do it, they're saying we are not going to do
17 anything if this Commission doesn't move on it. So I get
18 it. That's the dilemma.

19 ACTING CHAIRPERSON GORDON: Do you wish to
20 withdraw your motion or do you want your motion voted on?

21 ACTING COMMISSION MEMBER REYES: I stand by my
22 motion. I was prepared then. I'm prepared now. I've
23 listened to questions and answers. I don't see a
24 different silver bullet.

25 I don't -- you know, with all due respect to the

1 opposition and the different comments being made by
2 different folks, I just don't see a different -- if we
3 want to move this issue forward, if the will of the
4 Commission is not to have this issue moved forward and see
5 whether or not NRC wants to push the issue or if this is
6 the first step -- there is several regulatory agencies
7 that will be looking at the takings and will be looking.
8 There's a lot of alphabet soup out there that needs to
9 review this.

10 ACTING COMMISSIONER GARLAND: And unfortunately,
11 as the lead agency, we have to be the first one to do
12 that.

13 ACTING COMMISSION MEMBER REYES: Yes.

14 ACTING COMMISSIONER GARLAND: And given the
15 questions that still remain, frankly, and the handling of
16 the local situation, that puts us in a very tough place.

17 Actually, I'd like to ask for a five-minute
18 recess.

19 (Whereupon a recess was taken.)

20 ACTING CHAIRPERSON GORDON: Everybody please take
21 their seat, please.

22 ACTING COMMISSION MEMBER REYES: Mr. Chair, if I
23 may.

24 I had a motion to take staff's recommendation.
25 And we've had conversations back and forth, and I think we

1 were talking over each other. At one point, we talked
2 about staff suggested we can bifurcate the issue, do the
3 Environmental Impact Report certification, and then the
4 permitting, pull it for a separate day.

5 I think that the timing is of the essence for
6 purposes of this thing, at least from my perspective. But
7 to me, it's imperative that we move forward on the
8 Environmental Impact Report, and then we can talk about
9 the permitting. So I'm prepared to withdraw my motion and
10 go back and split the issue.

11 ACTING CHAIRPERSON GORDON: Do you want to make a
12 substitute motion?

13 ACTING COMMISSION MEMBER REYES: Go ahead.

14 ACTING COMMISSIONER GARLAND: Make a substitute
15 motion -- or actually, since it's been withdrawn, I make a
16 motion that we adopt and approve the EIR at this time and
17 return at our earliest convenience, which I believe for
18 the Commissioners is Monday morning, the 20th of this
19 month, to consider the permitting issues and the
20 mitigations and the concerns that we have about the local
21 outreach on this at that time.

22 ACTING COMMISSION MEMBER REYES: And to be clear,
23 all we're doing is then continuing this meeting on Monday.

24 EXECUTIVE OFFICER FOSSUM: We would be
25 adjourning. So the meeting would still be held in

1 abeyance.

2 ACTING COMMISSIONER GARLAND: We would be
3 recessing.

4 EXECUTIVE OFFICER FOSSUM: The code says
5 adjournment. It's basically the same. There's two
6 different -- continuance is a little bit different. This
7 would be an adjournment.

8 The other thing to make clear, CEQA finding,
9 there's four CEQA findings and significant land inventory
10 findings that are separate from the permit authorization
11 in the recommendations.

12 ACTING CHAIRPERSON GORDON: I'd like to add one
13 additional comment to staff, which is that we should make
14 every effort possible to reestablish the link in Morro Bay
15 so that locals will have an opportunity to listen and
16 comment at that point in time. Mr. Fossum looks pained.

17 EXECUTIVE OFFICER FOSSUM: He has a blank stare
18 on his face because that's what's in his head right now.

19 I'm afraid I wasn't listening. I was thinking
20 about what I just said about CEQA, and I'll have to ask
21 you to repeat.

22 ACTING CHAIRPERSON GORDON: Just that we make
23 every effort to establish the link in Morro Bay. I think
24 the people have been more than patient. We have tried to
25 hear them out and take their concerns into account. And

1 we need to do everything we can to allow them to listen
2 and comment as we go forward.

3 EXECUTIVE OFFICER FOSSUM: And to clarify, we'll
4 be doing that. To clarify my statement, for clarification
5 on the motion, would be only to approve the EIR, not the
6 Statements of Override or mitigation measure?

7 ACTING COMMISSION MEMBER REYES: As the maker of
8 the motion, Mr. Garland, I'm looking at page 19 of the
9 write-up. So the recommended action, you have number one
10 is certify the EIR. And then number two is you have the
11 mitigation monitoring program and then the findings made,
12 then overriding consideration. Is there additional things
13 you'd like to add or are you trying to split the four? Or
14 how would you suggest --

15 EXECUTIVE OFFICER FOSSUM: Just number one is all
16 that's necessary at this time.

17 ACTING COMMISSION MEMBER REYES: Number one is
18 all that's necessary.

19 ACTING COMMISSIONER GARLAND: So we will take
20 that clarification. So to make it clear, why don't you
21 restate the motion as it stands?

22 EXECUTIVE OFFICER FOSSUM: Commissioner Reyes has
23 made a motion.

24 ACTING COMMISSION MEMBER REYES: No, Mr. Garland
25 has.

1 EXECUTIVE OFFICER FOSSUM: I'm sorry.

2 It's your motion. Was to certify the EIR as set
3 forth in item one on the staff's recommendations.

4 ACTING COMMISSIONER GARLAND: And continue the
5 meeting --

6 EXECUTIVE OFFICER FOSSUM: That can be a separate
7 motion.

8 ACTING COMMISSIONER GARLAND: Okay. That is the
9 motion.

10 ACTING COMMISSION MEMBER REYES: I will second
11 that.

12 ACTING CHAIRPERSON GORDON: Call the question.
13 All those in favor?

14 (Ayes)

15 ACTING CHAIRPERSON GORDON: The Controller's
16 office is abstaining on this one.

17 Just to clarify for everybody in the audience, if
18 none of the constitutional officers are present, only one
19 can vote. So on this instance, Mr. Garland for the
20 Lieutenant Governor is voting and the Controller is
21 abstaining.

22 ACTING COMMISSIONER GARLAND: And now we need a
23 motion to continue the meeting; correct?

24 EXECUTIVE OFFICER FOSSUM: Correct. We could --
25 yes. We would like to go into closed session.

1 Technically, I suppose we should go into closed session
2 and then adjourn the meeting to Monday morning, and we
3 will be posting it here on our website and e-mailing
4 everybody on the list.

5 ACTING CHAIRPERSON GORDON: I will therefore
6 make --

7 EXECUTIVE OFFICER FOSSUM: We have the one public
8 comment speaker.

9 MR. KRAUSSE: To the extent you want to give us
10 clarity on what we need to do before Monday, I just would
11 ask for that.

12 ACTING CHAIRPERSON GORDON: There isn't clear as
13 mud as we speak?

14 I would like to make a motion that we continue
15 the meeting until Monday, August 20th. Do we have a
16 second to that motion?

17 EXECUTIVE OFFICER FOSSUM: We can wait on closed
18 until then if you'd like as well.

19 ACTING COMMISSION MEMBER REYES: Okay.

20 ACTING CHAIRPERSON GORDON: Say that again.

21 EXECUTIVE OFFICER FOSSUM: The closed session
22 that we're scheduled to -- however, we had one speaker
23 down in Morro Bay who wished to speak on public comment.
24 And he may wish to --

25 ACTING CHAIRPERSON GORDON: Let me just take this

1 vote and then we will return to Morro Bay for a comment.

2 I make a motion that we continue the meeting
3 until Monday, August 20th.

4 ACTING COMMISSION MEMBER REYES: Second.

5 ACTING CHAIRPERSON GORDON: All those in favor?

6 (Ayes)

7 ACTING CHAIRPERSON GORDON: On that vote, the
8 Lieutenant Governor is going to abstain. Controller and
9 Department of Finance voting aye, two to nothing. That
10 motion is passed.

11 EXECUTIVE OFFICER FOSSUM: And now if you'd like
12 to open for public comment from Morro Bay.

13 ACTING CHAIRPERSON GORDON: Public comment for
14 one more individual in Morro Bay. Ken Duke.

15 MR. DUTRA: Yes. I'm Ken Dutra from San Luis
16 Obispo.

17 The State Lands Commission, I received a letter
18 here to speak today, along with the rest of the people
19 here. And I just observing there was over 55 seats in
20 this house. People have been going and coming all day
21 long. And they were here to be heard and give their
22 testimony on what they believed and what was happening and
23 what was going on here.

24 And from what I understood when Mr. Gibson was
25 talking, he made me feel like they had already made up

1 their mind what he wanted to do. And there is a whole
2 Board of Supervisors, and I would believe that they should
3 take this film that they have of everybody speaking and
4 play it before the whole Board of Supervisors.

5 These are the taxpayers. These are the people
6 that you are working for. These are the people that you
7 need to do your job. I didn't see one person here raise
8 their hand and say yes, we want this seismic testing.
9 Nobody here wants it. And you're not listening.

10 I had a couple of months of the seismic testing
11 that they did on land. I let them come onto my property
12 and put the monitors on my land while they shook it. I
13 also after that I took a team of about four or five
14 people. We had 60-pound packs. We hiked into the
15 mountains, back into the property. And there were not any
16 birds, animals. I usually have bears, lions. But the
17 wildlife essentially left the area. I'm assuming this is
18 what's going to happen in the ocean. I would like to see
19 them shut the plant down. That's only my feelings about
20 it.

21 Mr. Gibson on his own, he has other ideas. But
22 like they said, the ship is going to come in and it's only
23 going to be here for a year. But when it leaves, I think
24 Mr. Gibson should be on it. Thank you.

25 ACTING CHAIRPERSON GORDON: I'm not quite sure

1 exactly a response to that.

2 The citizens down in San Luis Obispo County who
3 have listened, I would hope that you would take out of
4 this hearing that there weren't any pre-determined
5 conclusions. We have listened to the testimony that Mr.
6 Gibson has represented his constituents remarkably well.
7 He has been invaluable to us informing the process so that
8 we can understand the issues.

9 As a college professor at U.C. Davis, I know it's
10 very difficult to explain technical scientific issues in
11 language that laymen can understand. And I think Mr.
12 Gibson has done a phenomenal job of doing that.

13 I would hope that the record would show for those
14 who have listened with open ears that we have tried to
15 take in all of this information. There are very
16 conflicting opinions as to what we should do, that there
17 is a risk that has been identified from not having this
18 information. And that, however, there are numerous state
19 agencies, innumerable State and Federal agencies that have
20 to make decisions. And this is the first step in a number
21 of permits that must be received before this goes forward.
22 And that the people in San Luis Obispo have been listened
23 to. The witnesses, we have attempted to the best of our
24 ability to reach a decision that serves the public
25 interest.

1 And with that, we have voted to certify the EIR
2 so the Coastal Commission can do their work and PG&E can
3 go forward. Issues of fisheries take, that can be dealt
4 with by Fish and Game that have the expertise in that
5 area.

6 I should also note that the vast majority of this
7 will take place in federal waters, where we have
8 absolutely no jurisdiction. Federal agencies will deal
9 with that.

10 And with that, unless there are any more comments
11 from any colleagues, I would like to end. I take it back.
12 We are not gathering to a close. We will suspend until
13 next Monday a final determination on the permit issues
14 which we will take up that the time.

15 ACTING COMMISSION MEMBER REYES: Mr. Chair, the
16 issue of the closed session for the Board is still on.
17 We've noticed a closed session for today. And given that
18 we're setting up our meeting for Monday the 20th is sort
19 of ad hoc, most of us -- I will have moved stuff around
20 and would prefer to address the closed session today, if
21 at all possible, rather than wait until the 20th because
22 then that would be eat up more of the day and more things
23 need to be moved around.

24 ACTING CHAIRPERSON GORDON: All three of the
25 Commissioners agree to do that.

1 So with that, I would like the room to empty so
2 we can go into closed session.

3 (Whereupon the Commission recessed into closed
4 session at 4:15 p.m.)

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1 MONDAY, AUGUST 20, 2012, 9:06 A.M.

2 PROCEEDINGS CONTINUED

3 ACTING CHAIRPERSON GORDON: Everybody please take
4 your seats, please.

5 I call the meeting of the California State Lands
6 Commission regular meeting of August 14th, 2012, back to
7 order.

8 All the representative of the Commission are
9 present. I'm Alan Gordon, Deputy for State Controller
10 John Chiang. I'm joined to my right by Chris Garland on
11 behalf of Lieutenant Governor Gavin Newsom, who should be
12 with us shortly. To my left is Pedro Reyes, representing
13 the Department of Finance.

14 First item of business is to continue discussion
15 and testimony of Agenda Item Number 104, which is to
16 consider certification of an EIR and issuance of a permit
17 to Pacific Gas and Electric Company for purposes of
18 conducting a three-dimension geophysical survey off the
19 coast of San Luis Obispo County.

20 This item has already been discussed at some
21 length last Tuesday, including several dozen comments from
22 the public. The Commission has already voted two to
23 nothing to certify the EIR.

24 For the record, so everyone understands, the
25 two-nothing vote is because when none of the elected

1 officials are here, only one of the designees can vote.
2 So we voted two to nothing last Tuesday with Lieutenant
3 Governor's office voting aye and the Controller's office
4 abstaining, which has no reflection on what our position
5 was, as we would have supported the motion on Tuesday as
6 well.

7 Commission is still considering the application
8 for a permit to PG&E today. That is what is before us.
9 And for the record, which we also stated last week, for
10 those of you who, regardless of what position one has on
11 the ultimate relicensing of the Diablo Canyon, that is not
12 before us today.

13 What is before us today is gathering the
14 information with regard to seismic risk at the site.
15 Those who are going to testify, we would ask very strongly
16 that you limit your comments to the specific permit before
17 us having to do with the scientific information we are
18 gathering and the impacts of that specific action on
19 communities in San Luis Obispo County.

20 Mr. Fossum, how shall we proceed?

21 EXECUTIVE OFFICER FOSSUM: Thank you, Mr. Chair,
22 Commissioners, good morning.

23 Last Tuesday, the Commission heard the staff's
24 presentation on Item 104, and as the Chair just mentioned,
25 received testimony from PG&E's representatives and several

1 dozen representatives of the public representing
2 organizations and themselves.

3 The information provided by the testimony at this
4 meeting was in addition to the oral and written
5 information of the CEQA process in June of 2011 with the
6 Notice of Preparation of the EIR. That process included
7 two public and agency scoping meetings in July 2011 in San
8 Luis Obispo and two more public hearings in San Luis
9 Obispo in April on the draft EIR, which was made public in
10 March.

11 Commission members also asked questions last week
12 and commented on the project. In response to input
13 received, staff has looked carefully at the comments and
14 has developed an option the Commission may wish to
15 consider. The EIR considered four alternatives, two of
16 which were PG&E's proposed project and the no-project
17 alternative. The other two alternatives considered were
18 the 2B, which was a two-phase alternative, and the 3B
19 three group alternative, which eliminated the
20 northern-most target zone.

21 The EIR certified by the Commission on Tuesday
22 found the 3D alternative as the environmentally superior
23 alternative of the four considered. Staff has looked at
24 means to potentially lessen several of the impacts
25 identified in the EIR and developed an option that can be

1 summarized as a modification of staff's recommendation,
2 the 3B alternative, to be held over a possible two-year
3 period.

4 This modified timing three-loop configuration
5 option would include shortening the permit period by one
6 month and run from October 15th, 2012 through December 31,
7 2012, with the use of acoustic pulse generating air guns
8 limited to the period of November 1st through December
9 31st.

10 If PG&E is unable to complete the survey within
11 that time period, the permit would allow PG&E to finish
12 its survey in 2013 during the same October through
13 December period and with the same air gun deployment
14 limitations.

15 Based on all the information available, including
16 testimony made by the commercial fishermen, local business
17 owners who depend on them, representatives from NRDC,
18 other concerned citizens and PG&E representatives, staff
19 believes this modified timing three-loop configuration
20 option is a legitimate and legally defensible option
21 allowing PG&E to remain on schedule and budget for
22 performing its seismic survey.

23 In particular, this option addresses some of the
24 economic hardships that concern fishermen and local
25 businesses.

1 Furthermore, the concerns raised by NRDC that
2 minimize impacts to marine and wildlife would be
3 ameliorated to some degree.

4 Because of this restricted time frame of the
5 survey, quarterly air emission exceedances may be lessened
6 for both the proposed project and the Alternative 3B.

7 The modified three-loop configuration option
8 provides incentive to PG&E to complete the survey this
9 year by December 31st to avoid additional cost to its rate
10 payer, but allows additional time in 2013 in the event
11 PG&E is unable to complete the survey due to weather, the
12 presence of marine and mammals or other some delay beyond
13 its control.

14 With that, staff has a Power Point presentation
15 it would like to provide to summarize this visually as
16 well.

17 (Whereupon the following slide presentation was
18 given.)

19 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT
20 CHIEF OGGINS: I'm Cy Oggins, Chief of the Division of
21 Environmental Planning and Management.

22 As you know, Item 104 is Pacific Gas and
23 Electric's application for a geophysical survey permit.

24 This morning, I will briefly review PG&E's
25 project objectives and elements of the Environmental

1 Impact Report that you certified last week, and then
2 identify options for the Commission's consideration.

3 --o0o--

4 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

5 CHIEF OGGINS: PG&E's project objectives are to obtain
6 deep high resolution seismic imaging of faults off-shore
7 of Diablo Canyon, particularly in four zones: Zone three
8 to the north and then moving north to south to zone four,
9 two and one.

10 Most of their project is in State water. Portion
11 of the project is in State waters, but the majority of it
12 is outside the Commission's jurisdiction, either on land
13 or in federal waters. And as proposed, it would effect
14 three marine protected areas.

15 --o0o--

16 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

17 CHIEF OGGINS: The Environmental Impact Report identified
18 significant impacts to air quality, noise impacts to
19 marine mammals, marine protected areas, and commercial and
20 recreational fishing. And all these impacts remain
21 significant after mitigation.

22 --o0o--

23 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

24 CHIEF OGGINS: Again, the Environmental Impact Report
25 identified four alternatives:

1 No-project alternative the Commission does not
2 approve the permit;

3 A phased survey conducted over several years;

4 A three-loop configuration, which was identified
5 as the environmentally superior alternative, in part,
6 because it reduced the survey duration and eliminated the
7 northern-most zone;

8 And the two-loop configuration which consisted of
9 PG&E's original project description.

10 --o0o--

11 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

12 CHIEF OGGINS: The proposed project would occur only in
13 2012. It would begin approximately in October, end in
14 December, affect four marine protected areas, have 41 days
15 of air guns, and total 82 days.

16 The environmentally-superior alternative reduced
17 the number of zones and impacted marine protected areas,
18 reduced the number of days of air guns operation and the
19 total days.

20 --o0o--

21 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

22 CHIEF OGGINS: And as Curtis mentioned, based on testimony
23 received at the Commission meeting last week, we
24 identified another option which Curtis explained.
25 Essentially, the mobilization for this project would begin

1 in October 15th. Air guns could not start before November
2 1st. And the survey would end on December 31st, as did
3 the other options.

4 If PG&E could not survey all the faults due to
5 the weather, equipment problems, presence of marine
6 mammals, their ability to get all the permits in 2012, the
7 survey could continue in 2013, as described by Curtis.

8 --o0o--

9 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

10 CHIEF OGGINS: So today, we would like to recommend that
11 the Commission adopt the mitigation monitoring project,
12 which is Exhibit D, to adopt CEQA findings and a Statement
13 of Override for the environmentally superior alternative,
14 or the modified timing three-loop configuration.

15 We recommend that you approve the geophysical
16 survey permit. And that concludes the staff presentation.
17 I'm available for any questions you may have.

18 ACTING COMMISSIONER REYES: Before you go away,
19 if you could, you've indicated that if PG&E is unable to
20 do -- get all the permits required, then the alternative
21 you're proposing will allow for that because then they
22 could come back in 2013. Does that assume they do nothing
23 in 2012 for obtaining permits?

24 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

25 CHIEF OGGINS: I don't believe that the issue is that they

1 won't be able to get any of their permits this year. I
2 believe it's going to be delayed.

3 For example, we've heard that the Coastal
4 Commission will be acting in October rather than
5 September. So as all of the permits come in later than
6 originally proposed, it could push the window so that they
7 could not start until after October 15th.

8 ACTING COMMISSIONER REYES: So, really, the
9 statement is if they cannot get the permits in a timely
10 fashion, as opposed to if they can't get the permits. To
11 me when you say if they can't get their permits, they can
12 continue to 2013. But if they can't get their permits,
13 they can't do anything in 2012.

14 DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT
15 CHIEF OGGINS: That's correct. I should have used the
16 word "in a timely manner."

17 ACTING COMMISSIONER REYES: That's okay. I'm
18 listening. Thank you.

19 ACTING CHAIRPERSON GORDON: Commissioner Newsom,
20 any comments?

21 COMMISSION MEMBER NEWSON: No. I was briefed
22 extensively and did not hear anything that contradicts
23 that briefing.

24 ACTING CHAIRPERSON GORDON: Okay. I think we
25 will go to public comments at this point.

1 Why don't we have PG&E come forward and respond
2 to a modified proposal at this point in time.

3 MR. KRAUSSE: Mark Krausse on behalf of Pacific
4 Gas and Electric.

5 If I'm only to respond to that and not do a brief
6 presentation, I'll tell you Cy had it right. Our concerns
7 with the federal permits and under the adaptive management
8 process, we believe we would get permits to do the first
9 box and going from there see whether or not our impacts
10 are a problem and we'd have to work into next year or we
11 can get everything finished this year. If you'd like to
12 hear --

13 ACTING CHAIRPERSON GORDON: Mr. Krausse, why
14 don't you give your presentation as to PG&E's perspective
15 at this point in time.

16 MR. KRAUSSE: Thank you, Mr. Chairman.

17 I'd like to begin by thanking you for certifying
18 the EIR and for the presence of mind to delay until today.

19 I don't have any overhead.

20 But the presence of mind to delay until today the
21 decision on the permit and on which alternative is
22 selected. That has given us the opportunity to go back
23 and work with the community and resolve some of the issues
24 that were brought to you that you saw from the remote
25 location. And I can share that with you in a little bit.

1 Also, it's given staff the opportunity to develop
2 this hybrid proposal which I'm not sure I'm able to get
3 through -- I will refer to it as the hybrid proposal
4 because it seemed like a mouthful.

5 First, I want to start off with more of the
6 background and to refresh on why we are here.

7 The Legislature in 2006 and the Governor passed
8 and signed AB 1632 charging the CEC with coming up with
9 recommendations on the vulnerability due to long-term
10 outage of nuclear plants due to earthquake issues and
11 other issues.

12 The CEC came back with recommendations that both
13 the Diablo Canyon facility, PG&E on its behalf, and SONGS
14 with Edison, conduct these 3D high energy surveys. Prior
15 to -- so that was the recommendation. PG&E submitted to
16 PUC an application for cost recovery on that in 2000, and
17 that was approved in the middle of 2010.

18 And then during the pendency of all that, we
19 received letters from the PUC President and from the
20 Coastal Commission saying we had to complete these surveys
21 before we could proceed with any license renewal
22 proceeding at the NRC.

23 We really were in a place of all policy makers
24 making very clear the 3D seismic high-energy surveys were
25 required.

1 We had been looking at other alternatives, 2D, a
2 low-energy 3D and those kinds of things. And then along
3 comes the Fukushima disaster. I don't think any of us can
4 say 2D is good enough or we can take some of these other
5 approaches.

6 So our focus since that time has been along, with
7 your staff, Coastal Commission staff, Fish and Game staff,
8 NMFS, all the agencies -- you saw the list last time all
9 the agencies we have to go through -- our focus has been
10 on really minimizing absolutely the impacts. I'm not
11 going to tell that you we won't have some impacts. As I
12 mentioned last time, this work is being done all over the
13 world -- across the country and all over the world.
14 Unfortunately, there hasn't been good documentation of
15 what those impacts are.

16 So on the one hand, we're mitigating above and
17 beyond. And I'm not saying it's unnecessary. Because of
18 the dearth of information on impacts, we are going to be
19 mitigating.

20 I'll give you a couple of examples. If we come
21 within 1.1 miles of a marine mammal in State water, we
22 will shut down. That's one of the permit conditions that
23 is in several of these alternatives.

24 If that happens four times, on the fourth time,
25 we have to shut down the entire operation and rethink how

1 we're approaching it.

2 There are, as part of the Coastal Commission's
3 adopted high-energy seismic survey protocols from 1996.
4 You do a fly-over survey before and after the seismic work
5 we're doing here. Under your protocols, we're to do that
6 weekly. And under some we developed with NRDC, the
7 Commission and federal regulators, we're also going to do
8 low-altitude flyovers to look for and monitor for harbor
9 porpoise and otters. So we've got a number of
10 protections. That's on the mitigation side. That's just
11 by way of example.

12 On the monitoring side, let me just sum it
13 because I don't want to take too long. We're going to be
14 spending somewhere north of \$6 million on a \$60 million
15 project. I don't mean to be so crass as to put it in
16 dollar figures, but I think that gives you some sense of
17 the work we've done on mitigation and monitoring.

18 With that, I want to touch on the continued push
19 for a look at whether or not we selected the right
20 technology. We believe we have. The PUC has, on the day
21 that you last heard this item, proposed a decision came
22 out from ALJ at the Public Utilities Commission approving
23 the 200-some-odd-thousand-dollars for Supervisor Gibson to
24 be able to do that third-party look.

25 But subsequent, on Friday, you received a letter

1 from the PUC President saying this work should not be
2 delayed. So I mean, that work can go on. They can work
3 in parallel path. They should not -- there shouldn't be
4 any condition on the permit to say we have to wait for
5 that other kind of work. Remember, this has been reviewed
6 by the IPRP time and again.

7 So I think that's basically my presentation. And
8 we urge your approval. We are absolutely supportive of
9 the staff hybrid proposal. We think that on the
10 permitting, we're concerned with NMFS. So that gives us
11 some flexibility.

12 ACTING CHAIRPERSON GORDON: Mr. Krausse, last
13 hearing, there were issues raised by the fishing community
14 and on-shore businesses that will -- they're going to have
15 some losses while the fishing is not -- commercial
16 fishermen are not able to be in the water. And that will
17 have some impact on on-shore businesses. Can you
18 describe -- my understanding is that there's a claims
19 process of some kind that is being set up. Can you
20 describe that for the people particularly that are
21 listening in San Luis Obispo as to how that would work and
22 what they would need to do if they believe they're
23 suffering loss as a result?

24 MR. KRAUSSE: I would say as opposed to set up,
25 it's an ongoing PG&E claims process we have. Somebody

1 gets a spike from a transformer and their pool pump is put
2 out, there is a claims process for compensation, long
3 ongoing process. PG&E has a large staff to handle that.

4 In addition, at your request, Mr. Chairman, we're
5 adding an arbitration process where if a party -- if they
6 don't feel they've been fairly compensated, they can
7 appeal that process through a private arbitrator.

8 We communicated that to each of the businesses
9 that spoke last week, provided a letter to each of them
10 describing the process, giving them a personal contact
11 person, describing the arbitration option, and then also
12 sent that to each of the chambers in the area,
13 understanding if you hear from one of them, there's
14 probably several of them that feel the same way so the
15 chambers can disseminate that process.

16 I want to point out we contacted the two members
17 of the Chumash tribe. We did make contact and have a
18 meeting with Mr. Collins. And he understands what we're
19 doing. We're not anchoring over any sites. We're not
20 anchoring at all. He's agreed to give us feedback on our
21 process as we move forward.

22 The other individual, the woman from the tribe,
23 we do not have Crystal -- we do not have any comment back
24 from here yet, but we e-mailed her the same information.

25 ACTING CHAIRPERSON GORDON: Very good.

1 Also at the hearing last week, Mr. Krausse, there
2 was comment that there was a fairly esteemed scientist,
3 Dr. Hamilton, who had a slightly different perspective on
4 what areas should be surveyed. Has anything been done to
5 take into account the fairly lengthy concerns that he had
6 over the original proposal?

7 MR. KRAUSSE: Absolutely. Both our 2D and 3D
8 on-shore and off-shore work targets some of the area that
9 Dr. Hamilton is concerned with. And I think it's fair to
10 say based on the findings from the areas that are being
11 target, the work would be adjusted. I don't think it's
12 fair to say -- I confirmed with our seismologist the work
13 will be adjusted. It's like anything, if you find
14 something, you have to explore that further. So that work
15 will be expanded if we find that Dr. Hamilton's
16 contentions are valid.

17 ACTING CHAIRPERSON GORDON: One last issue.
18 There was some concern last week about -- and I think you
19 touched on this briefly a moment ago -- but third-party
20 review, scientific peer review of the survey. Can you
21 describe exactly what that third-party process is going to
22 be going forward, if at all?

23 MR. KRAUSSE: Well that actually -- our position
24 is the IPRP in addition to all the outside -- the folks
25 that you heard from from Scripps and UNR, that was our

1 internal peer review. We believe it's independent because
2 we don't believe you can get academics to tell you what
3 you want to hear.

4 But in addition to that, of course, the
5 PUC-sanction-created IRPR, Independent Peer Review Panel,
6 has looked at it numerous times. We put it out last time
7 and said they're supportive of the work we're doing. And
8 I'll let Supervisor Gibson speak for himself.

9 As I understand it, what he would like to do is
10 go out and hire three additional experts to fill a skill
11 set that he perceives the IPRP to be lacking. That's the
12 piece of the recent PUC proposed decision would allow and
13 fund.

14 So my point is that we urge you not to condition
15 the beginning of our work on that. We're frankly done
16 this year, if that's the case. But to allow that to
17 happen in parallel. And we will all look at the results
18 of that and take it into account.

19 ACTING CHAIRPERSON GORDON: Thank you, Mr.
20 Krausse.

21 Any other Commissioners have any questions?

22 Does PG&E have any other additional witnesses
23 they would like to put on at this point?

24 Only if you have additional questions.

25 ACTING CHAIRPERSON GORDON: In that case, I think

1 we will turn to comments from the public. Supervisor
2 Bruce Gibson is the first.

3 SUPERVISOR GIBSON: Thank you, Mr. Chairman,
4 members of the Commission. I'm Bruce Gibson, Second
5 District Supervisor for the County of San Luis Obispo.
6 Pleased to be back before you this morning.

7 I'm going to give to your staff a two-page memo
8 that some of you may have, some of you may not. I won't
9 speak in great detail about it, unless the topic -- the
10 conversation takes us this way. But I would like this for
11 the record.

12 I appreciate the efforts that have gone on since
13 we were last together and to wrestling with some of the
14 very difficult and technical environmental and economic
15 issues that are before us today.

16 I think as I listened to staff's report -- and it
17 was only this morning as I entered the room that I heard
18 the possibility of a second option is I think the
19 advisability or my inclination toward this new option
20 depends on the details of what happens first and the
21 details of what happens next. And I'll try to outline
22 those as I understand them today.

23 In conversations again just this morning with
24 PG&E, they have some ideas as to what parts of the
25 proposed off-shore survey they would undertake in the

1 first year, should they be granted those permits. My
2 understanding based on a short conversation is I think
3 they're identifying the proper ones to go first. But I
4 would first argue that those should be the only ones
5 allowed in the permit to be issued this year. I think the
6 open-endedness of the permit poses a bit of a problem as
7 we look at the questions of getting the best possible
8 survey. But again, I think what they have told me is that
9 the right part of the survey would be going first.

10 The second point is Mr. Krausse referred to
11 allowing third-party review. I would submit that your
12 Commission should require third-party review for any
13 activities that are undertaken past the first year. I
14 think that the information to be gained in a first year
15 study is absolutely critical to understanding some of the
16 more important details of the surveys, and especially as
17 they put off the trickier parts of the survey, the more
18 challenging parts of the survey, we need to understand
19 those things. And we can talk a little bit about that.

20 First of all, as I said, you use the results of
21 any first-year shooting. You look at the carefully at the
22 boxes, which are technical-issue oriented in a different
23 way than the first box that they proposed to do.

24 And most importantly, you look very carefully at
25 the survey as it's constructed over the Shoreline fault.

1 That is the part where PG&E was proposing to put receivers
2 on the sea floor and use sources both on land and off
3 shore. That is a very important target. The IPRP has
4 commented so. It is also particularly challenging area in
5 which to get good seismic data and get data that's going
6 to merge with their on-shore and off-shore. That requires
7 a lot of thought and I think third-party review of that --

8 ACTING CHAIRPERSON GORDON: Dr. Gibson, can I
9 stop you right there?

10 Mr. Krausse, can you come being back up, please?
11 Can you respond to the request that the permit be
12 conditioned on third-party review going forward for what
13 should be done in the second year?

14 MR. KRAUSSE: We could be strongly opposed to
15 that. We don't think it's appropriate for this permit.
16 We certainly will work with Supervisor Gibson, but that's
17 appropriate.

18 And since I'm back up here, one thing I would
19 say. The ultimate third-party review is the fact all of
20 our data will be open sourced. Supervisor Gibson and
21 anyone else who wants to take the results of our data and
22 decide if we arrive at the right conclusions has the full
23 ability to do that. I'm sorry to bust in.

24 ACTING CHAIRPERSON GORDON: As we go forward,
25 inform the Commission on that.

1 SUPERVISOR GIBSON: Mr. Krausse has made that
2 point before.

3 Let me point out my interest in third-party
4 review is to be sure the data are collected properly at
5 the get-go. There is idea of the old school of seismic
6 survey that says it doesn't matter how we collect the data
7 in the field, we can fix it in the processing lab. And
8 modern state-of-the-art technology rejects that idea out
9 of hand.

10 So the purpose of my efforts to promote
11 independent third-party review ahead of data acquisition
12 is all about getting the data acquired. Great it's going
13 to be open source, but very important it be done right.

14 ACTING CHAIRPERSON GORDON: Let me stop you right
15 there.

16 Mr. Randolph, can you come forward, please?
17 Identify yourself. And what I'd like to hear is what the
18 CPUC's response is to this third-party review going
19 forward.

20 MR. RANDOLPH: Good morning, Commissioners.

21 Edward Randolph, I'm the Director of the Energy
22 Division at the California Public Utilities Commission.

23 I have to admit I'm a little befuddled by the
24 conversation of third-party review today because there is
25 also extensive third-party review in place. We did create

1 the Independent Peer Review Panel. They exist. They have
2 reviewed the plans that PG&E has to date. They will be in
3 place throughout the study process and after the study
4 process.

5 Additionally, we are in the process of dotting
6 the I's and crossing T's with a contract on the County of
7 San Luis Obispo to give them funding for three additional
8 third-party experts to look at the process from that. And
9 I'm not sure what else is needed.

10 ACTING CHAIRPERSON GORDON: Thank you.

11 Dr. Gibson.

12 Thank you, Mr. Randolph.

13 SUPERVISOR GIBSON: Thank you.

14 I would respond to Mr. Randolph that indeed the
15 IPRP has conducted a lot of independent peer review, but
16 very specifically not on the issues that I'm raising about
17 the design of this survey. And the latest of the IPRP
18 reports points very specifically at the Shoreline fault,
19 the work in the transition zone as highly critical and not
20 fully reviewed.

21 We appreciate very much the funding that the PUC
22 and the position on the Independent Peer Review Panel that
23 the PUC has granted to the County of San Luis Obispo, but
24 it takes time to get these things in place. And I would
25 again advocate on behalf of my constituents the

1 third-party review be mandated as part of your permit
2 process and paid for by PG&E. That would be my position
3 at this point.

4 Again, those are my main points, to limit the
5 activity to those specific boxes that are appropriate and
6 I think we will yield the best results for consideration
7 during the interval between 2012 and the 2013. And also
8 that any nature of the survey, any details of the survey
9 to be contemplated should take into account the
10 suggestions for adjustment that the IPRP has brought
11 forward and that Dr. Hamilton and the Alliance for Nuclear
12 Responsibility brought forward. And we want to be sure
13 those issues are addressed.

14 ACTING CHAIRPERSON GORDON: Mr. Randolph.

15 MR. RANDOLPH: Good morning again. It seems that
16 most of my comments were already discussed, so I'll be as
17 brief as possible.

18 First, on Friday, CPUC President PV sent a letter
19 to State Lands Commission in support of this project. I
20 do have copies of that if you did not receive copies of
21 that.

22 We are in support right now of what I believe is
23 identified as Option 3B. The hybrid option that was
24 discussed this morning was first mentioned to us on
25 Friday, and we're a little scrambling on trying to figure

1 out if that actually works or not.

2 Our biggest concern is timing. We believe the
3 seismic studies are absolutely critical from a safety
4 perspective, that not only for the ongoing operation of
5 the plant, but note that the plant is storing nuclear
6 fuel -- spent fuel rods on site and will be for the
7 foreseeable future.

8 Additionally, the ships and equipment that are
9 being used for the studies at Diablo Canyon will also be
10 used for similar studies at San Onofre Nuclear Power Plant
11 in Southern California. And the timing and coordination
12 of all of the work is pretty tight. So we're concerned if
13 this project is delayed that that also delays studies in
14 Southern California that are equally as critical.

15 I think that's we trust that the other comments
16 that I you wanted to address was the independent studies
17 which we addressed already.

18 ACTING CHAIRPERSON GORDON: Mr. Ed Oberweiser,
19 Foundation of Sustainable Living, please.

20 Please keep your comments with regard to the
21 study, okay.

22 MR. OBERWEISER: My name is Ed Oberweiser. I
23 live in Fort Bragg, California.

24 I'm going to read my statement, because I'm not
25 an accomplished public speaker.

1 I've been a resident of the California coast for
2 30 years. I'm on the Board of Directors of the
3 Foundation. I'm extremely concerned about PG&E's proposed
4 seismic imaging process.

5 The Commission last approved a seismic survey
6 using air guns in off-shore waters more than 25 years ago.
7 This technology is more powerful than it was then, and
8 much more is known about the damages and deaths caused by
9 this technology to marine mammals.

10 According to the EIR, as far as I can see, it
11 says 18 40 to 360 cubic inch active air guns would
12 discharged every 15 seconds. These sounds would damage
13 marine mammals' ability to navigate and communicate.

14 Also according to the EIR, the test would kill or
15 injure marine mammals, including seals, dolphins, whales,
16 and otters. The acoustic testing can make them go deaf if
17 it doesn't kill them outright.

18 This year, a mass die-off with nearly 900
19 dolphins and Porpoises off Peru's coast occurred. Dr.
20 Carlos Yanos, veterinarian and marine mammal expert said
21 the most likely cause of death was acoustical trauma
22 followed by rapid ascent. Seismic testing activity was
23 taking place off the coast of Peru in approximately the
24 same time frame.

25 These tests will be conducted 24 hours a day, and

1 it will take place from approximately Cambria to
2 Guadeloupe, including some marine protected areas.
3 According to the EIR, the project would generate
4 potentially significant environmental impacts on air
5 quality, terrestrial, and marine biological resources,
6 greenhouse gasses, land use, recreation and noise. The
7 EIR also said these impacts would be significant and
8 unavoidable.

9 This technology is also used for surveying for
10 possible oil deposits. Is that what PG&E is doing here?
11 I'd like to know what the purpose of the seismic testing
12 really is. PG&E knew about the Hosgri fault when it built
13 Diablo Canyon in the 1970s against the wishes of many
14 central coast residents.

15 Is PG&E doing liability assessments due to
16 insurance company requirements? Are there any other
17 purposes for the seismic testing we haven't heard about?
18 Nuclear powers, unsafe electricity-producing technology --

19 ACTING CHAIRPERSON GORDON: Sir, I'm going to
20 stop you right here.

21 The EIR has gone over many of these issues. They
22 were discussed last Tuesday. We dealt with the issue last
23 Tuesday as to whether the seismic testing was necessary.
24 We understand and the EIR scopes very well the fact there
25 are significant and unavoidable consequences if we do

1 that.

2 The decision of the Commission reached last
3 Tuesday in certifying the EIR was that those unavoidable
4 consequences are justifiable because of the consequence of
5 a nuclear accident at this site makes it absolutely
6 imperative and time sensitive that we get the information
7 and these studies will provide us.

8 If you could respond to the specific survey --
9 the issue of whether we need to go forward has been
10 decided. I'm not trying to be rude, but it's just we have
11 30 people down in Morro Bay who would also like to
12 testify.

13 I want to make that very clear. We have weighed
14 the balance between the risk of a nuclear accident and the
15 damage that will be done to the economy and the fauna in
16 that area. We understand that. We know that, but we
17 think the consequences of a event far outweigh the
18 damages. That decision has been reached. Okay.

19 If you can respond specifically to the study
20 going forward and the testimony we heard today from PG&E
21 and others, I would appreciate it. Okay sir, thank you.

22 MR. GURNEY: Could you let him finish?

23 ACTING CHAIRPERSON GORDON: Excuse me.

24 MR. OBERWEISER: I think I should be allowed to
25 finish what I have to say, because I feel that weighing

1 the economic and safety balance -- I think I the nuclear
2 power plant is unsafe and shouldn't be happening anyway.
3 You've seen from Fukushima and Chernobyl and Three Mile
4 Island and Humboldt that this --

5 ACTING CHAIRPERSON GORDON: Sir, let me stop you.
6 Okay. Stop, please.

7 MR. OBERWEISER: I think it's pretty --

8 ACTING CHAIRPERSON GORDON: That issue is not
9 before this Commission. Whether nuclear power is a good
10 or bad decision, the plant exists. That decision was made
11 50 years ago.

12 We are dealing today with the consequences of a
13 potential event. We don't have the authority to close
14 down the plant. If that is your goal, the information
15 here will inform whatever decisions the NRC makes with
16 regard to that going forward. That is why it's been
17 reached we need this information. Okay. So seismic
18 studies are going to take place. That decision has been
19 reached. Please respond to what is before us today.

20 MR. OBERWEISER: That's all I have to say.

21 ACTING CHAIRPERSON GORDON: Thank you.

22 EXECUTIVE OFFICER FOSSUM: Mr. Chair, a couple
23 clarifying items.

24 When the Commission certified the EIR last week,
25 it did not go to the Statement of Override or the

1 findings. And although those are exhibits on the calendar
2 item on our website and so forth, staff has worked this
3 weekend and come up with modifications, if the
4 Commission's desire is to change those to the other
5 options. So those are available here.

6 ACTING CHAIRPERSON GORDON: Okay.

7 EXECUTIVE OFFICER FOSSUM: The other thing is
8 since you were asking Pacific Gas and Electric for
9 comments, one of the questions you asked last week was a
10 response to whether or not this survey could cause an
11 earthquake. And I think maybe it's appropriate at this
12 time to see if we could get a response.

13 ACTING CHAIRPERSON GORDON: Why don't we respond
14 to that?

15 MR. KRAUSSE: Mark Krausse on behalf of Pacific
16 Gas and Electric.

17 Our seismologists have an emphatic no with all of
18 the number of tests that have been done both for oil
19 exploration and for seismic testing as we're doing, there
20 has never been an earthquake caused from that work.

21 ACTING CHAIRPERSON GORDON: Thank you, sir.

22 Mr. David Gurney, Ocean Protection Coalition.

23 MR. GURNEY: Good afternoon. Good morning.

24 My name is David Gurney from Fort Brag, the Ocean
25 Protection Coalition.

1 Traveled over here this morning, three or four
2 hours' drive and would definitely appreciate since it was
3 on your agenda that public has three minutes to speak that
4 you allow a person their complete three minutes. So we
5 don't feel like Socrates arguing for his life against the
6 pot of water drained rapidly before him.

7 I could spend part of my three minutes trying to
8 finish Ed's comments, but I won't.

9 Both of us were misinformed that you had already
10 made this decision. We consider it a very unwise decision
11 and realize that you are in sort of a no-win situation
12 here. You are going to kill thousands marine mammals by
13 the seismic survey.

14 I want you to refer you to scientific evidence
15 that Dr. Yanos as Ed was mentioning from Peru where the
16 similar seismic surveys were taking place last spring and
17 thousands of porpoise and dolphins were killed by these
18 air cannons. You're talking 250 decibels. Eighty-six
19 decibels is enough to cause hearing damage in humans; 250
20 is lethal. And not to mention deafening.

21 I would refer you to a blog, my blog,
22 noyonevents.net for information about these surveys in
23 South America that killed thousands of marine mammals,
24 dolphins, and porpoises. You're having Humpback Whales
25 coming up in Abila Harbor. I'm sure you'll hear about

1 this from the Morro Bay residents.

2 I just want to say that you're going to be doing
3 this through a marine protected area. We try tooth and
4 nail to get restrictions placed in these marine protected
5 areas against oil drilling, seismic surveys, and Navy
6 sonar testing and so forth. But the Marine Life
7 Protection Act initiative put these areas through without
8 any kind of restrictions beyond just restricting fishing
9 and food gathering, which we think is somewhat outrageous.

10 PG&E has a track record of making very bad calls,
11 from trying to place a nuclear reactor on Bodega Head on
12 the San Andreas fault to the San Bruno fires to Diablo
13 Canyon itself.

14 And I'll wrap things up just by saying that the
15 option that you have not put on the table that needs to be
16 put on the table, despite your procedures here, is we need
17 to decommission Diablo Canyon as soon as possible. It's
18 obvious it's already well known. It's in an area of
19 earthquake faults. There's the Shoreline fault system.
20 That's the only alternative that's going to provide a
21 win-win situation both for humans and for marine mammals
22 and marine life.

23 If you're facing a disaster, no matter what you
24 do -- and I don't think it's been considered that these
25 seismic surveys could actually trigger an earthquake. I

1 don't know if you considered that. But I don't know how
2 you're going to feel if you allow this to go through and
3 an earthquake happens, whether it did or not, you're going
4 to have millions of lives on your conscious.

5 So although you say it's too late, I would highly
6 recommend you do not allow these surveys and that Diablo
7 Canyon and San Onofre begin the procedure of being
8 Decommissioned as soon as possible.

9 ACTING CHAIRPERSON GORDON: Thank you, sir.

10 Mr. Oberweiser, it hadn't occurred to me that you
11 had driven all the way down here from Fort Brag. If you
12 would like to come back and get two more minutes -- I took
13 up a significant piece of your time. Why don't you come
14 forward for two more minutes, sir.

15 MR. OBERWEISER: Thank you.

16 I would also add that I would agree with what
17 David just said, that nuclear power is an unsafe
18 electricity-producing technology. We learned from this
19 those disasters. Every one of those plants is sitting on
20 its own spent fuel rods. And we need to decommission
21 these plants and get them off line because this is just
22 insane, as far as I'm concerned.

23 There is no safe way to store nuclear waste
24 generated by these facilities. The cost of
25 decommissioning the reactors even exceeds their

1 construction costs.

2 The millions of dollars would be better spent by
3 PG&E by developing renewable resources which won't add to
4 the man-made emissions of greenhouse gases that have
5 contributed to and accelerated global warming. PG&E's
6 money would also be better spent developing advanced and
7 safe energy conservation measures.

8 Please don't permit PG&E to conduct these tests.
9 Humanity is killing all life in the ocean in many ways.
10 This is rather suicidal, considering 40 percent of our
11 oxygen is generated by the world's oceans.

12 Thank you.

13 ACTING CHAIRPERSON GORDON: Thanks, sir.

14 Ms. Garrison, Natural Resources Defense Council.
15 Mr. Geesman, you're next.

16 MS. GARRISON: Good morning, Commissioners.

17 Karen Garrison, Natural Resources Defense
18 Council.

19 First, I just want to thank the Commission for
20 your efforts to enhance monitoring and improved marine
21 mammal protections. We're moving in the right direction.

22 But we want to reiterate the importance of
23 restricting seismic activities in November and December
24 and phasing the project over two years. I'll refer to
25 that as the phasing option.

1 That option remains the most effective way to
2 reduce environmental impacts. It's feasible. And we hope
3 the Commission will adopt it.

4 If you don't, we ask that you acknowledge in your
5 permit conditions that a phased approach may be stipulated
6 as a condition of federal authorization under the Marine
7 Mammal Protection Act.

8 I'll summarize the advantages of the phasing
9 option and explain why we think it's feasible. We
10 continue to consider the phasing option the most direct
11 way to minimize the significant environmental impacts for
12 several reasons. That window from mid-November to
13 mid-December is the period of lowest marine mammal
14 density. It avoids the most sensitive times for the
15 harbor porpoise life cycle, peak breeding and nursing.
16 And without this alternative, it's more than likely that
17 the project will have significant population scale of
18 impacts on harbor porpoises by displacing most of these
19 extremely sensitive animals from their core habitat for a
20 duration that most may not be able to withstand, given
21 their high metabolic needs. Additionally, the FEIR
22 recognizes the phased approach would reduce impacts on
23 endangered whales.

24 We appreciate the Commission is working to
25 identify measures that would reduce these impacts. The

1 staff's hybrid approach is very appealing, but in our
2 view, it doesn't go far enough to protect endangered
3 whales and marine mammals.

4 Measures designed to detect acoustic affects on
5 wild marine mammals are always significantly limited,
6 especially where, as here, the species is cryptic the
7 nature. The effects on foraging and animal health can be
8 devastating, yet difficult to detect through available
9 methods. And the impacts will be experienced on a
10 population scale.

11 By contrast, the phased alternative would have
12 the duration of continuous disruption of the porpoise
13 population, a critical factor since the risk of adverse
14 foraging and health consequences increases the longer the
15 animals are exposed.

16 Alternative 2B would also leave allow time for
17 enhancement of the monitoring system before operations
18 begin and by affording opportunities for adaptive
19 management between phases.

20 It's likely the federal law will require the
21 phased approach in addition to monitoring and adaptive
22 management measures. Marine Mammal Protection Act
23 requires the National Marine Fishery Service to
24 affirmatively find that impacts on marine mammal
25 populations are negligible. We expect that phasing will

1 be necessary to accomplish that, and we believe it's
2 likely that NMFS will reach the same conclusion.

3 The proposed study may not resolve the ongoing
4 debate that influences estimates of earthquake risk,
5 whether a quake on main fault like Hosgri can sidetrack
6 onto a branch fault like the Shoreline. I won't get into
7 the details of that. But we suggest that we before year
8 two, a review be completed of data and analysis from year
9 one to determine whether the second phase of the study is
10 necessary to estimate quake risk. If the review
11 determines it is not, the days of seismic activity could
12 be reduced by about half.

13 Now let's turn to why phased project is feasible
14 and justified by the EIR.

15 ACTING CHAIRPERSON GORDON: Ms. Garrison, could I
16 stop you for a second? You're beyond your three minutes,
17 but I would like -- it's okay. We're getting some
18 important information here.

19 What I'd like you to do, PG&E and staff have put
20 forward a modified 2B, which is a phased approach. I know
21 you probably just saw that this morning.

22 MS. GARRISON: Yeah.

23 ACTING CHAIRPERSON GORDON: In your remaining
24 time -- we will give you leeway -- can you respond to that
25 proposal? Because PG&E has agreed that a phased approach

1 can get the information necessary. They pushed back where
2 they will only be in the water from November 1 through
3 December -- my understanding is what NRDC has been
4 requesting. So can you respond as to how NRDC feels about
5 that new proposal?

6 MS. GARRISON: We definitely think that's moving
7 in the right direction.

8 But the key issue is the one I just raised, which
9 is that the exposure time of harbor porpoises, in
10 particular, which are probably the most impacted by this
11 proposal in general, the exposure time is really
12 important. And if it exceeds a certain amount because
13 they could be forced out of their habitat, their core
14 habitat, if it exceeds a certain amount, we could be
15 looking at really significant population level impacts.

16 So the idea of the phased approach is to limit
17 the seismic days to 25 -- about 25, 27, something like
18 that, in any given year.

19 The hybrid approach, which I think is very
20 appealing, has the problem of allowing the seismic days to
21 reach 48 or whatever the maximum is. So harbor porpoises
22 would be exposed continually for that length of time. And
23 they may not be able to tolerate that length of exposure.

24 ACTING CHAIRPERSON GORDON: Can I ask one other
25 question? And I'm not sure you're the person.

1 Is there any way essentially to -- for want of a
2 better term -- chase the porpoises out of the harbor while
3 this is going on, some mechanical white shark or
4 something? Is there any way to get them out of the region
5 so they are not impacted as greatly?

6 MS. GARRISON: The problem is that they really
7 need a lot of food on a daily basis. And their core
8 habitat is the place where they get the best access to
9 food. If you chase them out, that's exactly the problem.
10 They're in a place where they may have much less ability
11 to get the food they need on a daily basis. So chasing
12 them out is counterproductive.

13 EXECUTIVE OFFICER FOSSUM: Mr. Chair, if I could
14 for a minute.

15 You referred to the staff's -- the option that we
16 discussed or brought up this morning. And in essence,
17 it's not truly a phased approach. It is an attempt to
18 provide an alternative to the -- if they can't get all the
19 information this year, we hope they can get all the
20 information in 2012 during that limit phase we're looking
21 at. And only if they can't do that would they then be
22 permitted to go to the next year. We're not trying to
23 break it in half. We're trying to get it done. If we
24 can't get it done --

25 ACTING CHAIRPERSON GORDON: The goal is to get

1 all the information the first year, is what has been
2 proposed this morning.

3 And then it would seem like at some level -- I
4 don't want to say it's semantics. But the idea to get
5 everything we can the first year, hope that's enough. And
6 then have a subsequent review of what we received the
7 first year to determine whether we need to go back in the
8 water the second year.

9 EXECUTIVE OFFICER FOSSUM: Correct. I think that
10 is the same goal that NRDC and others have is if you can
11 get that information done, maybe you don't have to do the
12 second year.

13 MS. GARRISON: Yeah. I think the difference is
14 that the hybrid approach proposed by staff would allow
15 seismic activity from December -- correct me if I'm
16 wrong -- November 1st through December 31, which is a lot
17 longer. If PG&E could get all the data it needs within 26
18 days of the first year, we could live with that approach.
19 It's the length of exposure that's the issue.

20 ACTING CHAIRPERSON GORDON: I think the goal and
21 the message from this Commission to PG&E is to do
22 everything that is in all deliberate speed to get this
23 stuff done as quickly as possible with as little an impact
24 as possible. I think we are all moving towards that
25 place.

1 But there is a reality that if we cannot get the
2 information that first year that they may have to come
3 back a second year. That is what is before us, to give --
4 is to open that window the second year, if necessary.

5 MS. GARRISON: I refer you to my recommendations
6 and the other information.

7 ACTING CHAIRPERSON GORDON: Thank you.

8 Mr. Geesman.

9 MR. GEESMAN: Thank you very much.

10 I want to speak on behalf of an intelligently
11 designed two-year phased approach as originally
12 recommended by NRDC. If you do not do that, from the
13 Alliance for Nuclear Responsibility's standpoint, you're
14 throwing Dr. Hamilton under the bus. You're throwing Dr.
15 Gibson under the bus.

16 The slide that was inadvertently shown up here
17 when Mr. Krausse was speaking identifies the areas
18 pinpointed by Dr. Hamilton for review. You can see in the
19 red circles on that map that they are outside PG&E's
20 contemplated study area.

21 The PUC proposed decision makes clear that the
22 PUC expects PG&E to take into account Dr. Hamilton's
23 concerns. How are they going to do that without
24 supplementing their environmental documentation and
25 gaining permits for that additional work?

1 Similarly with respect to Dr. Gibson proposed
2 peer review, what happens if at the end of that 90 to 120
3 day period the determination is made that a different ship
4 would have provided better information? If you allow for
5 a one-year process, you're not going to be able to take
6 into account the recommendations of either Dr. Hamilton or
7 Dr. Gibson.

8 Let me say one thing about the peer review that
9 has already taken place. I've participated in every
10 meeting that the so-called Independent Peer Review Panel
11 has conducted since January. The panel originally
12 requested information from PG&E about the ship in January.
13 PG&E stonewalled them until the Administrative Law Judge
14 in the proceeding in April denied PG&E's request for a
15 protective order.

16 We're jammed here against the wall in terms of a
17 calendar only because of the foot dragging from PG&E.
18 What you need to do is proceed deliberately in a very
19 careful designed two-phased process and condition the
20 commencement of the second phase on permits being obtained
21 for Dr. Hamilton's proposed studies and the independent
22 peer process suggested by Dr. Gibson having been
23 successfully completed. No delay.

24 We, at the Alliance, strongly think the studies
25 need to get started. But let's not rush to complete the

1 studies. Because as you well know, an inadequately done
2 piece of research is just going to bring us back again and
3 again and again. And although the Alliance thinks these
4 studies are imperative, we shouldn't lose sight to what
5 we're doing. We are carpet bombing the seabed with
6 artillery. We ought to minimize the impacts to the
7 maximum extent possible. Thank you very much

8 ACTING CHAIRPERSON GORDON: Thank you.

9 Ms. Becker, Executive Director, Reliance for
10 Nuclear Responsibility.

11 MS. BECKER: Thank you. I want to talk about
12 dominos and investments in San Luis Obispo County. I
13 heard last week Mr. Reyes mentioned this is a domino
14 effect if we don't start now, then the next agency and the
15 next agency and the next agency will be held up. And in
16 each one of those agencies, there is an investment that
17 needs to be made. And the investments to be made by the
18 rate payers of California, PG&E's rate payers.

19 Well, when PG&E's rate payers during construction
20 brought to you seismic issues, brought to the State of
21 California seismic issues and the nuclear regulatory
22 seismic issues, we put it off and put it off until we were
23 forced against a door. The plant wasn't built right. It
24 had to be rebuilt at a great cost.

25 I want to talk about the costs. I want to talk

1 about doing it right and doing it well. I don't want to
2 hold anything up. But when the people of San Luis Obispo
3 have brought concerns in the past, we have been right over
4 and over and over. We are not only rate payers. We are
5 not only people who live by this nuclear power plant. We
6 are the people who actually brought the information that
7 the State had to change its mind and did the NRC later on.

8 So I want you to carefully listen to our
9 community, because we do get it right. And we are trying
10 to protect our community, do what's best for the state of
11 California, and keep PG&E out of our pockets to the extent
12 possible. Thank you.

13 ACTING CHAIRPERSON GORDON: Thank you,
14 Ms. Becker.

15 Any other witnesses here in Sacramento?

16 What I'd like to do now is turn to the remote
17 feed in Morro Bay and begin witnesses there.

18 MS. SUGAR: We are starting with seven general
19 comment. So Carol Georgi can come up and speak, followed
20 by David Georgi and Harvey Cohon. If you could come up
21 and sit in the front.

22 ACTING CHAIRPERSON GORDON: Would you tell us how
23 many witnesses you have in San Luis Obispo in Morro Bay?

24 MS. SUGAR: Yes.

25 EXECUTIVE OFFICER FOSSUM: We believe it's about

1 40.

2 MS. GEORGI: I'm Carol Georgi. I represent both
3 the Surfrider Foundation and the Marine Sanctuary Alliance
4 on our California central coast.

5 We ask the State Lands Commission to postpone
6 issuing PG&E a permit to conduct the seismic surveys until
7 responsible planning and thorough mitigation are provided
8 by PG&E.

9 California Fish and Game is planning a September
10 workshop with the State Lands Commission and the
11 California Coastal Commission. You need this coordinated
12 effort to review a draft permit, to compare conditions
13 against take criteria, to explore a complete monitoring
14 plan for inclusion in the permit.

15 Postponing issuing a permit is responsible, a
16 mature decision for a permit. A premature decision for a
17 permit could double the negative impacts that the vessel
18 need to return for more studies.

19 Chairman David Levy, of the United Kingdom's
20 Friends of the Earth sends his statement: "Seismic
21 testing is a geological fault zone with a nuclear plant
22 built on top of it. Are they stupid, or do they just want
23 to play Russian Roulette with people's lives?" That's
24 from England.

25 Our coastal waters are a vulnerable gap between

1 two natural marine sanctuaries, the Monterey Bay National
2 Marine Sanctuary and the Channel Islands National Marine
3 Sanctuary. Our marine life share the same water. Many,
4 many studies have been done of our San Luis Obispo waters
5 by NOAA. These are the books that contain these studies.
6 This is the before. This tells you what fish, where they
7 are, what mammals. And the studies are here, and they're
8 not in the EIR, even though we recommended that.

9 We have these concerns:

10 Public safety and local economies. What beaches
11 will be closed and when? How will we be notified? Signs?
12 News? Internet? We need more advanced notice and
13 preparation to mitigate people in the water to harmful
14 noise levels. If it kills a porpoise, it kills a human.
15 We're mammals.

16 Scientific studies after the seismic testing.
17 Who will count the dead mammals washed ashore? Who will
18 film underwater to see what is left of the kelp forest
19 ecosystem? This is a DVD of the before taken filming with
20 HD video in Shell Beach, Morro Bay, and Port San Luis.

21 Mitigation efforts for protecting marine mammals
22 need more analysis. They are jumping out of the water.
23 I've never seen so many whales in the last two weeks.
24 Near shore. Right next to Dog Beach by Hanford Pier.

25 Mitigation plans to restore the marine ecosystem.

1 Don't just give money. Bring back the life. Mitigation
2 plans to restore the marine ecosystem are essential.
3 Mitigation changes -- one more.

4 PG&E is funding a study of 60 sea otters to tag
5 and test body fluids and return them to learn how the
6 seismic tests affect them. Sea otters can be moved, not
7 studied in a they painful science experiment.

8 Thank you.

9 ACTING CHAIRPERSON GORDON: Next witness, please.

10 And I would request, we have 40 people wishing to
11 testify. So could people please try -- stop for one
12 second, sir.

13 MR. GEORGI: (Inaudible) We were asked today to
14 confine our comments to the actual seismic studies and
15 their effect on local communities.

16 I would like to remind us all that the local
17 communities include the web of life that extends out into
18 the ocean, onto land. You have admitted that you have no
19 idea what consequence is going to happen when we do the
20 sonic blasting. You don't know what's going to happen.

21 So if you're not knowing what's going to happen,
22 it could be catastrophic. And therefore, I would
23 encourage this panel to go back to the principles on which
24 we should all base wise public policy. You need to look
25 at the greatest good for the greatest number for the

1 longest time. And the greatest number includes all the
2 creatures in the web of life.

3 So I would encourage you all to consider the
4 words of the great American when is proceeding on making
5 these decisions, take it easy, man.

6 ACTING CHAIRPERSON GORDON: I would request with
7 38 more folks wishing to speak, please limit your comments
8 to things that have not been said by earlier witnesses and
9 try not to repeat the previous witnesses. Thank you. Go
10 ahead.

11 MR. COHON: I'm Harvey Cohon. I'm representing
12 the Pacific Wildlife Care, a triage place for the repair
13 of animals. They come in our center. I haven't heard
14 anything about getting ready for what might happen. And
15 I'm seeing lately that we don't have the facility to
16 handle what might occur.

17 I don't see it being talked about. I see the
18 amount of pelicans that we have now, 20 to 30 of them. I
19 see the amount of pelagic birds we have. There is no talk
20 of these animals. And when we have the oceans in a
21 30-mile radius, 50-mile radius happening all over, we
22 don't have the facility to handle them. Mitigation, I
23 don't know. But I just want to point that out.

24 ACTING CHAIRPERSON GORDON: Thank you, sir.

25 MS. SUGAR: Next we have Roger Andriola, Steve

1 Snyder, and Henry Pontarelli come and sit up front.

2 MR. ANDRIOLA: Some say PG&E not known for its
3 understanding corporate citizenship, environmental ethics,
4 or integrity, is the white collar corporate criminal whose
5 \$10 dollar overpaid duplicitous CEO Peter Darby should be
6 prosecuted for its long history of misconduct leading up
7 to the San Bruno gas pipeline explosion murder of eight.
8 They point to PG&E's \$50 million raid on its captive rate
9 payer pocket books to finance its failed Proposition 16
10 unscrupulous political propaganda campaign properly pulled
11 out by the Sierra Club as an improper attempt to mislead
12 voters, simultaneously coupled with its audaciously
13 arrogant \$4 billion complicit CUPC rate increase demands.

14 To its routinely reckless cut and slash attacks
15 on Cambria's fragile, endangered Monterey pine tree
16 forest; to its undercover cloak and dagger operation to
17 discredit critics of its new electromagnetic wave emitting
18 meter reading system; to its phony claim that it could not
19 find its own key records showing that San Bruno excessive
20 gas pipeline pressure would likely lead to multiple
21 deaths; to exposing the Hinkley farming area to its toxic
22 underground groundwater polluting plume.

23 While I wouldn't go that far, it is certainly
24 true that PG&E has repeatedly proven that it deserves its
25 hard-earned well-deserved reputation for deception,

1 dishonesty, and always environmentally irresponsible
2 behavior, followed by endless excuses every time its
3 incredibly incompetent, grossly negligent corporate
4 misconduct causes serious injury, damage, and death.

5 Former residents of Fukushima, Japan, like Cheiko
6 Shiema (phonetic) now see the way their government
7 regulators deliberately misled the public with a false
8 corporate claim that nuclear power production, always a
9 fantasy dream, now clearly a reality nightmare could ever
10 be safe.

11 Short of thermal nuclear war, PG&E and its Diablo
12 Canyon Nuclear Power Plant present the biggest threat to
13 our land and sea, one that will eventually render our
14 California scenic central coast permanently uninhabitable.

15 ACTING CHAIRPERSON GORDON: Sir, please wrap up.

16 MR. ANDRIOLA: Your Environmental Impact Report
17 indicates that PG&E's proposed huge underwater cannon
18 blasts could seriously injure our sea's precious wildlife.
19 We should not be experimenting with tortured deafening of
20 our marine mammals. Before PG&E can claim no serious
21 risk, its CEO and top management team need to confirm the
22 validity of their "it can be done safely" claims by
23 getting into the waters with threatened marine mammals off
24 of our coast to take some test blasts up close, to clearly
25 hear what whales can hear at a considerable distance of

1 many miles, to see for themselves how their underwater
2 ears could take it.

3 The State Lands Commission now has a choice to go
4 on record as being complicit with PG&E's profit-motivated
5 attempt to drive out and destroy all marine mammal life
6 and the Point Buchon State Marine Reserve or not.

7 Thank you for allowing public comment on this
8 important topic from California and the central coast
9 community.

10 MS. SUGAR: Next we have Steve Snyder, then Henry
11 Pontarelli and Carolyn Skinder. If you could state your
12 name for the record before speaking.

13 ACTING CHAIRPERSON GORDON: Sarah, can you hear
14 me? Can they hear me down there when I speak?

15 Could the witnesses please attempt to limit their
16 testimony to the three minutes allotted. We've still got
17 36 people. In respect to the other folks who would like
18 to have an opportunity to speak, please limit to three
19 minutes and please try to keep your testimony to the
20 subject before us, which is the permit.

21 Sarah, can you please keep an eye on the light.
22 When the light comes on, make sure the people identify.
23 And after about 10 or 15 seconds, please try to motion to
24 move to the next witness. Okay. Thank you.

25 MS. SUGAR: I think I got most of that.

1 If Steve Snyder is not here, could Henry
2 Pontarelli come up, please, followed by Carolyn Skinder.
3 Please try to limit your comments to the three minutes.

4 MR. PONTARELLI: Good morning. Thank you.

5 My name is Henry Pontarelli. I'm the owner/vice
6 president of Lisa Wise Consulting, a San Luis Obispo
7 County City-based economics and land use planning firm.
8 We started working in City of Morro Bay for the commercial
9 fishing industry in 2004. We conducted financial
10 infeasibility analysis of some infrastructure expansion and
11 improvements.

12 In 2008, we conducted an industry analysis and
13 business plan funded by the California Coastal
14 Conservancy. And for the last two years, we've conducted
15 economic impact analyses that were as a client of the
16 Morro Bay Commercial Fishermen's organization.

17 I believe the results from those reports, the
18 economic reports, are part of the public record. What I
19 wanted to touch on a little bit -- what I was asked to
20 touch on is the risk and vulnerability.

21 Our commercial fishing industry has gone from a
22 20-year low of \$1.7 million in 2007 to \$7.4 million last
23 year in earnings. This is money -- price paid to
24 fisherman at the dock.

25 But above and beyond those numbers, our related

1 industry participants have taken risks. They've taken
2 loans. They've gone into their savings. They borrowed to
3 invest in their businesses. And then in the last five
4 years, we've got two new forklifts at the dock, new
5 stainless steel hoists, two new delivery trucks. We've
6 got three new boats at the harbor, live fish holdings
7 tanks. We've got an industry that's emerged for baiting
8 hooks, hook baiting services.

9 Our processors have hired to address the
10 increased demand. The processor in Atascadero has hired
11 up to 15 people to address that demand.

12 So what we have evidence of is an industry that
13 is adaptable, willing, able to adapt, resilient, and able
14 to plan for the future and adapt to shifting markets.
15 There also remains this concept of risk and vulnerability,
16 and we think that's an appropriate item or appropriate
17 issue for decision makers to consider. Thank you.

18 MS. SUGAR: Thank you.

19 We have Carolyn Skinder, followed by Pamela
20 Arment and Mary Webb.

21 MS. SKINDER: I'm speaking today on behalf of
22 superintendent Paul Michel from the Monterey Bay National
23 Marine Sanctuary.

24 And first of all, we'd like to thank the State
25 Lands Commission for their concerns for sanctuary

1 resources and for certifying the EIR with the
2 environmentally superior alternative that avoids the
3 significant impacts to the sanctuary.

4 We also want to reiterate our interest in having
5 a better sense of what impacts, if any, would still occur
6 to sanctuary resources with the northern zone now excluded
7 from the project. We do not have a clear understanding of
8 the extent of impacts of the small are project footprint.

9 The National Marine Sanctuary would very much
10 appreciate follow-up to the specific concern. And while
11 we understand the benefits of the data PG&E seeks, we need
12 to ensure that sanctuary resources are adequately
13 protected.

14 NOAA's role is to apply the requirements of the
15 Marine Mammal Protection Act, the Endangered Species Act,
16 and Magnuson Steven's Act and the National Marine
17 Sanctuary Act as appropriate for this project. We are in
18 the process of evaluating this project to assess the scope
19 and nature of potential impacts to marine life under the
20 above laws.

21 Because a federal vessel, a National Science
22 Foundation vessel is proposed for use in the seismic
23 survey, NSF has prepared a draft environmental assessment
24 under the National Environmental Policy Act. NOAA
25 recently submitted comments, this draft EA, and will be

1 working with the NSF to resolve any questions about the
2 content and findings in the draft EA.

3 NOAA is reviewing project components that may
4 impact marine resources under its care to determine if the
5 project can be conducted in a manner compliant with
6 federal natural resource protection laws.

7 NOAA's review of this project is taking place in
8 the headquarters in Silver Spring, Maryland. It is
9 currently under review, so it may not be possible for them
10 to speak specifically about the impacts of the proposed
11 project or what the outcome of the review will be. But
12 you are welcome to contact Christine Patrick in NOAA
13 Communication and Fisheries. That contact information
14 phone number is 301-427-8003, or Christine Patrick at
15 noaa.gov to answer questions.

16 Thank you very much on behalf of Paul Michel.

17 MS. SUGAR: Next, we have Pamela Arment, followed
18 by Mary Webb and Eric Greening.

19 Again, if you could state your name.

20 MS. ARMENT: Okay. Pamela Arment.

21 And I recognize this Commission must determine
22 whether the public's need for the survey data is
23 sufficient to outweigh and social economic concerns. It's
24 not. But it appears today that you've already made up
25 your minds to move forward without hearing of some of

1 these devastating consequences.

2 PG&E probably has enough information on the fault
3 lines to do their low-energy 3D test they've done already
4 over the past two years. I re-watched the Board of
5 Supervisors meeting last night where they stated that.
6 There is enough time for them to provide required info for
7 their 2015 deadline assessment.

8 I question the need to do this high-energy test
9 now where the harm is much greater than any benefits of
10 such testing. This isn't the place to experiment in.
11 There is no guarantee that PG&E will even have to upgrade
12 after any of the results of the testing. But it will
13 guarantee that they're doing what they have to to get
14 their license renewed. This looks to me like a bail out
15 for PG&E. We rate payers will have to pay 64 million-plus
16 to destroy the towns we live in and our ocean life for
17 PG&E to comply with what they have to do.

18 How do you mitigate such devastation to all the
19 businesses that rely on all the ocean wildlife? What
20 mitigation could there be for the lives of the dolphins
21 and whales that will be killed?

22 The majority of people here don't know the extent
23 of the damage to the mammals. They only know seismic
24 testing will be done. Local news articles and TV reports
25 have not mentioned once the extent of damage to the

1 mammals for miles up and down the central coast. Most
2 people will find out when it's too late.

3 Here is a brochure that Morro Bay has that they
4 featured the otters, the whales, the seals. This is what
5 Morro Bay is. There's no place like Morro Bay. It's
6 unique. It's a tourist town. It's motto is, "Discover
7 Mother Nature." The town survives on tourism. A place to
8 come with your family and watch sea creatures up close.
9 It's the only place you can walk down to the water on any
10 given day and see otters and sea lions, egrets, and
11 pelicans. It's packed full with wildlife, like no other
12 place I've ever seen in California.

13 The birds won't stay if the fish are gone. The
14 otters will be gone. The sea lions will be gone. All
15 that will be left is people. Unhappy people.

16 As a lead agency, if you approve the permit,
17 other agencies are sure to follow. You have the ability
18 to stop this insanity right here. Morro Bay will get
19 national attention.

20 Was that three minutes? Okay.

21 But I can't believe that Gavin Newsom would want
22 to be known for the action to destroy all the mammals and
23 our coast towns here. I really can't. Thank you.

24 MS. SUGAR: Again, you can agree with something
25 that someone has said before you. But we would like to

1 give everyone a chance to speak.

2 We have Mary Webb, Eric Greening and Crystal
3 Baker.

4 MS. WEBB: Thank you, Commissioners, for the
5 opportunity to speak again. Mary Webb.

6 I was going to speak on behalf of Green Space,
7 but Green Space has turned in letters. I think you pretty
8 much know where that organization stands.

9 The problem I have is when you're speaking for a
10 nonprofit organization, sometimes you can't say exactly
11 what you want to say. So I'm going to just speak as an
12 individual.

13 This project should be stopped. I think you
14 should do the no-project alternative. There is not enough
15 information. The studies are not fully in. The agencies
16 have not even talked to each other enough to decide what
17 they should do from here. There is more scientific
18 information that just came in August 14th from a biologist
19 from Nova Scotia. She wrote a review of the impacts of
20 seismic air gun surveys on marine life, Dr. Lindy
21 Weilgart. I think that information is to be taken into
22 consideration. The staff did a lot of reporting on
23 references for marine mammal impacts, but a lot of her
24 information and her references are not in the EIR.

25 We know -- well, as an individual, AB 1632 that

1 was proposed by Senator Blakeslee should be repealed. I
2 think it's a bad idea. This nuclear power plant needs to
3 come down.

4 And I think people locally are just now finding
5 out about this project. There is a petition online to
6 halt the seismic surveys. We have about 400 people that
7 have signed it now. But there should be thousands on that
8 petition. Not everybody is seeing information out there
9 yet. I think there is a lot more to be analyzed here that
10 you can't possibly do today.

11 I know you have some kind of a hybrid approach
12 today, and I haven't been able to see it. I don't know.
13 I'm not a scientist. I can't analyze that in 15 minutes
14 before you try to make a decision today.

15 The ocean is an incredible resource. My husband
16 and I walk along these beaches every single day. This
17 weekend is like someone else said, there is whales out
18 there. There are pelicans just dive booming. There's
19 feeding frenzies on every single pull-out that you can
20 pull along scenic Highway 1. There is herring milt in the
21 water right now. That's food live for all these birds.
22 You know, you go to San Simeon Cave and you can see so
23 much life going on out there, how can you possibly walk
24 the beach? How can you look in the eye of a marine
25 mammal? How can you look at an elephant seal and know

1 this thing is going to happen?

2 And from tourism, I don't understand how the
3 Chamber of Commerce can come up here and support PG&E
4 instead of the marine mammals in the water. How can you
5 possibly go to the beach and look at these animals and say
6 what they say? The whole thing needs to be stopped.
7 Thank you.

8 MS. SUGAR: Next we have Eric Greening and
9 Crystal Baker and Christine Heinrichs.

10 MR. GREENING: Thank you.

11 I am Eric Greening. We need to be very clear
12 about what you have decided and what you have yet to
13 decide. You Chair mischaracterized it completely. And I
14 hope the Commissioners recognize this.

15 You have certified an EIR which says if this goes
16 forward, marine mammals will be killed. You have not
17 decided whether or not it is worth doing it. That step is
18 the finding of overriding considerations. You have not
19 taken action on your overriding considerations.

20 And the previous speaker who was mistakenly
21 lectured is owed an apology about that. That question is
22 open to all of us to speak about overriding
23 considerations. Take the information from the EIR and
24 say, okay, we know we're going to destroy this, this,
25 this, and this, but it's worth doing because. This is a

1 decision you have not yet made.

2 The overriding considerations in front of you
3 simply cannot support a decision to approve them. They
4 are far too vague, even if this is worth doing. They are
5 a vague call to safety issues.

6 But who or what is the danger and what would be
7 the response of the information? There is absolutely no
8 clarity. The danger is not coming from the sea mammals.
9 We are not endeavoring to kill sea mammals because they
10 endanger us in any way. They would never harm us in any
11 way.

12 The danger isn't even necessarily the earthquake
13 faults themselves. If the plant is left out of the
14 equation, if Diablo Canyon is left out of the equation,
15 the on-shore faults, the zones we have, the building
16 standard we have for off-store faults, Rinconada, San
17 Andreas basically cover most of the on-shore issues.

18 The issue is the Diablo Canyon. So then the
19 question is would these vague appeals to safety and the
20 overriding considerations, what exact information would be
21 the threshold for PG&E to take what action?

22 I will remind you of the past speakers testifying
23 to their constant record of foot dragging any time
24 alarming new information comes up. What is -- what reason
25 do we have to believe that new information from the

1 sacrifice of the life of the ocean would not simply be met
2 with further foot dragging? Where can we specifically
3 see, what information would lead them to change the plant
4 in what way? What information would lead them to abandon
5 re-licensing? What information would lead them to shut it
6 down. We don't see that. You don't have overriding
7 considerations you can approve. Thank you.

8 MS. SUGAR: Next, we have Crystal Baker followed
9 by Christine Heinrichs and Robert Seitz.

10 MS. BAKER: Hello. I'm Crystal Baker, a member
11 of the Coastal Band of Chumash Nation. I'm one of 2,000
12 members.

13 Commissioners, I would like to thank you for your
14 support in contacting the Chumash people and wish to
15 remind PG&E that it is policy with the Native American
16 Heritage Commission to make meaningful contact with all
17 the most likely decedents in the Chumash territory.

18 Due to lack of meaningful consultation with
19 Chumash people, we wish to request more time to look over
20 the reports and the process. If you must make a decision
21 today, I ask the Commissioners not to support a pass of
22 the seismic testing at this time. We do not support any
23 process that would be against the Endangered Species Act,
24 against the United Nations Declaration on the rights of
25 the indigenous peoples or against the Marine Life

1 Protection Act Initiative.

2 There is a greater chance that we won't find any
3 more than what we already know from the previous tests.
4 That the cost of the negative impact on the ecology would
5 be too much for such little data.

6 As a reminder, that impact will alter our
7 religious beliefs, our cultural traditions, our medicine,
8 our cultural resources, and our quality of life for the
9 next seven generations. Thank you for listening again.

10 MS. SUGAR: Thank you.

11 MS. HEINRICHS: Christine Heinrichs with Cambria,
12 California.

13 First, I'd like to thank the Commission for the
14 meetings are thoughtful and for having this remote
15 location to allow us to testify.

16 And I'd like to thank Mr. Krausse of PG&E for
17 proposing to essentially shut down this project by not
18 carrying it out within 1.1 miles of marine mammals. Those
19 animals are always in the water. They will always be
20 within 1.1 miles of the boat. The fact that you cannot
21 see them does not mean they are not there. Elephant seals
22 and whales particularly are deep water animals. The
23 elephant seals only surface for two to four minutes and
24 stay down very deep in the ocean.

25 The males will be returning at that time of year

1 for the breeding season. This is an excellent way to
2 totally disrupt the males arriving on the beaches for
3 breeding. This is unacceptable. This is not allowed by
4 law. This is against federal law. And there is no
5 justification for changing this.

6 If this project is allowed to go forward, I
7 intend to represent the people of California at these
8 compensation and mediation meetings that PG&E says they
9 will send up to ask for mitigation for all the damages
10 being done.

11 These fish that are in the water don't belong to
12 the fishermen. They are the entrust by the people of
13 State of California to maintain them for the world. This
14 is a unique area and it requires protection. It is
15 legally protected, even from PG&E.

16 The cost of this survey is absurdly high. I
17 would like to see that \$64 million spent on installing
18 solar panels on roofs, which would probably displace the
19 amount of energy being generated by Diablo Canyon. That
20 would be a much better use of this money.

21 It's important to note that PG&E does not even
22 offer any changes to the plant in response to collecting
23 this data. The only thing that will be changed is their
24 computer model, which will give them a 3D model rather
25 than a 2D model. They do, as other people have said, have

1 plenty of data on exactly what's going on out there.
2 There is no further justification for this, except to give
3 them a better tabletop look so that they can slice and
4 dice this. They can rotate the model. But there are no
5 modifications planned for the plant.

6 I encourage the Commission to adopt the
7 no-project alternative, number one, and do not pursue this
8 project. Thank you.

9 MS. SUGAR: Next we have Robert Seitz, followed
10 by Aaron Oaks and Eli Coplen.

11 MR. SEITZ: Thanks for letting me speak here
12 today.

13 My name is Robert Seitz. I'm a trawl fisherman.
14 Been one for the last 20 years.

15 About ten years ago, we started down the road of
16 changing our fishing practices, setting aside areas that
17 we weren't allowed to fish, changing our gear. And it was
18 all geared towards protecting several species of rockfish
19 who needed to be rebuilt.

20 And over the ten years, we've endured financial
21 hardships. But now we're coming out the other end. Some
22 of the species have been rebuilt and others are rebuilding
23 but will take a lot longer.

24 And my fishery is considered sustainable now.
25 And it seems kind of ridiculous and insulting to me that a

1 lot of this good work that we've done can be destroyed in
2 just a few short months.

3 And I would also like to point out my partners
4 and I invested money to purchase a boat specifically to
5 participate in this fishery here in Morro Bay. I had a
6 crewman move here along with me from Washington. We've
7 hired some local guys. And my pounds have been crossing
8 the docks in Morro Bay for over a year now and been
9 consumed in local restaurants as well as been sold
10 overseas.

11 And after a year -- just a short year being here,
12 I feel very optimistic that my family and I and my
13 crewmen's families will be able to make a good go of it
14 here in Morro Bay. But the seismic testing I think could
15 have huge and far-reaching impacts on our fish stocks.
16 And that scares me. So I hope that they go with the no
17 seismic testing option also.

18 And it's true that fishermen kill fish, but we
19 also have an interest in not killing all the fish. I'd
20 like to see my boys be able to participate in fishing just
21 like me.

22 So thank you very much for listening to me.

23 MS. SUGAR: Next, we have Aaron Oaks, followed by
24 Eli Copland, and Tom Roff.

25 MR. OAKS: Good morning, members of the

1 Commission.

2 My name is Aaron Oaks, and I'm Managing Editor of
3 the rockofthecoast.com and I stand with Morro Bay. And I
4 stand with our district and the best interest of our
5 district. I stand in opposition to this project. I agree
6 with everyone who opposes this project and EIR.

7 But I'm here to talk about clear damage that is
8 going to happen to Morro Bay. I take exception to Mr.
9 Krausse's laughably weak assessment of compensation,
10 because that information is not public. It's horrendous.
11 The damages are incalculable. It will be significant and
12 unavoidable, not just for marine life, not just for the
13 fishermen, not just for the on-shore businesses, but for
14 the entire community of Morro Bay.

15 The Commission needs to understand this. Folks,
16 we are looking at the socioeconomic equivalent of San
17 Bruno happening right here in my district, in my
18 community. This is unacceptable.

19 I hope that Mr. Krausse and PG&E will make this
20 information public about how they're going to specifically
21 compensate everyone who will be affected.

22 Again, I stand with Morro Bay. I stand in
23 solidarity with the community, fishermen, with the
24 Chumash. They are all my brothers and sisters. They are
25 my family.

1 We need to stop this. We need to stop this. We
2 need to shut down Diablo Canyon. There is no excuse. And
3 I hope, Mr. Newsom, you can hear me, because I know when
4 you say you were at the meeting last week, I saw that your
5 Twitter account, you were tweeting a little bit. And
6 gosh, hope that meeting was really important.

7 So again, I stand with Morro Bay. We will rise
8 above this. We will not waiver in our resolve. I hope I
9 made myself clear today.

10 MS. SUGAR: Thank you.

11 Next we have Eli Coplen followed by Tom Roff and
12 Fred Collins.

13 MR. COPLEN: I'm Eli Coplen. I grew up here. I
14 grew up with fishing money. I was raised that way. I
15 studied biology the last ten-plus years. I've been
16 intimately involved in the commercial fisheries trying to
17 save our public resources, which we all own.

18 I work for the West Coast Groundfish Observer
19 Program. While I cannot officially speak for them, I
20 speak for myself. I'm a fisherman. I have spent many
21 hours or days, weeks on fishing boats. These fishermen,
22 the fishery was called a failure ten-plus years ago. Been
23 involved with it since. These fishermen have gone through
24 closures of certain areas to all kinds of restrictions.
25 I've been on these boats. I've heard hours. I've been a

1 captive audience to these guys complaining about all this
2 stuff. I may have some Stockholm Syndrome.

3 But these are over-fished species. Some of these
4 species live 100, 200 years old. Takes them 30 years to
5 reproduce. To get old enough to ten, 10, 20, 30 years of
6 these species. We've been rebuilding these species for
7 ten years. People talk about marine mammals and all that
8 stuff, but this is part of the chain. There is no
9 research on that. There is a little bit on squid. We had
10 about 100,000 plus, maybe a million pounds in the last few
11 weeks delivered here.

12 Salmon, there is research on the effects of
13 salmon. Finally had a salmon season this year. Not to
14 mention all the rockfish and stuff some of these guys
15 have. Some of these guys have over-fished species of just
16 a few pounds per permit.

17 You know there is total allowable catch for these
18 species that get divvied up between commercial and sport
19 fisheries and science. Where is the poundage going to
20 come from to do this research? It's not even going to be
21 accounted for.

22 I'm against this. Thank you.

23 MS. SUGAR: Thank you.

24 Next, we have Tom Roff and Fred Collins and
25 William Walter.

1 MR. ROFF: Good morning. Thank you to the
2 Commission for giving us this opportunity to speak.

3 I'm the Chairman of the California Central Coast
4 Joint Cable Liaison Committee. And I work with AT&T,
5 Verizon, and Global Crossing when they put the cables in
6 here. And they had many meetings with the fishermen and
7 we discussed ways to minimize the impacts.

8 So far with PG&E, we've had a meeting. They gave
9 us a ridiculous offer of what they felt the fishery was to
10 this community and all the fishermen. We have since had
11 one other meeting that was called off, that I was aware
12 of. And they've been, as another speaker said, foot
13 dragging. They do not want to recognize the type of
14 impacts which this community is going to suffer.

15 And foot dragging isn't going to get it. We are
16 very -- I mean, I'm in shock when I look at the possible
17 damage to our local environment. I never thought the
18 government would let them go ahead and destroy the mammals
19 that could be destroyed in this project.

20 So essentially, I'm here to tell the Commission
21 the phrase in the permit that says that PG&E shall make
22 its "best effort" to work with the community on
23 mitigation, what is a best effort? There is no definition
24 of best effort. They went to one meeting with us. Is
25 that a best effort? I don't think so.

1 I would like to see the Commission change that
2 particular line to meet or have some sort of language that
3 says they really discussed with the entire community the
4 types of impacts. And I don't think you will realize what
5 it will do to our community. Thank you.

6 MS. SUGAR: Next we have Fred Collins, followed
7 by William Walter, and David Nelson.

8 MR. COLLINS: Fred Collins, Tribal Administrator,
9 Northern Chumash Tribal Council.

10 I speak for over 400 million indigenous people
11 around the world. I'm an ambassador for them. Chumash
12 people are known as your eminence with the UN. We took
13 great concern about your trying to limit our ability to
14 present overriding evidence.

15 We are a stakeholder. We have not been
16 contacted. Last week, we told you this. We have not been
17 contacted in this process. Are you paying attention to
18 us? You must stop this process. You need to let the
19 people -- the indigenous people of this community and this
20 world stand and have an ability to understand what's going
21 on here. And from what we see, it's not good.

22 You need to pay attention to us. We have not had
23 the opportunity to voice our opinion in this process.

24 Over this weekend, I talked to all the leaders in
25 the Chumash community and no one was contacted by the

1 Native American Heritage Committee. And one contact, even
2 if somebody did receive some sort of contact, that's not
3 adequate. Yuma versus Secretary of the Interior, just
4 this year, 9th District Court. 30 contacts, not enough
5 contact. Federal codes being used in this process. 106
6 should be implemented. We are a stakeholder. We have not
7 been talked to. We had a brief meeting on Friday with
8 PG&E. I mean brief.

9 I take -- I don't like what Mr. Krausse said that
10 we have an agreement with them. We do not have an
11 agreement with them. There was never an agreement reached
12 on Friday. We talked about working together and making
13 this process more available to the Chumash community,
14 period.

15 Last week, when PG&E spoke, they talked about how
16 they saved our sacred site. My family grew up -- that was
17 my family site where PG&E has built their plant. You know
18 how they saved it? They piled up a big pile and put a
19 fence around it and it said here it is. Now you go ahead
20 and look at it.

21 I'm very upset about this process going forward.
22 You know why it was named Diablo Canyon? Missionaries
23 were out there trying to get my family to come to the
24 mission. There was an earthquake right there, and a huge
25 wave came up on the shore and chased the missionaries

1 back. That's why it's called Diablo Canyon.

2 You've got to stop this. This is insanity.
3 You're trying to wipe and move the Chumash people and
4 indigenous people with the swipe of a pen, the swipe of a
5 hand. We will not be abused. And we will not let this
6 happen.

7 ACTING CHAIRMAN GORDON: Hold on one second, sir.

8 I'd like -- there is an allegation made that
9 there has been insufficient contacts with the Chumash
10 Nation. Could somebody from State Lands staff please come
11 forward and address contacts that have been made?

12 EXECUTIVE OFFICER FOSSUM: Mr. Chairman, I can
13 summarize those I think.

14 June of 2011, the staff mailed Notice of
15 Preparation for the project to agencies of known interest,
16 including the Native American Heritage Commission.

17 In July, staff received a letter from them, from
18 the Commission and a list of 22 Native American contacts
19 to consult with on the project, 14 of which were
20 affiliated with the Chumash tribe. A list of those -- and
21 recommended actions to adequately address and mitigate
22 project-related impacts of archeological resources.

23 In November of last year, the staff through its
24 EIR consultant sent letters certified mail to 22 contacts
25 on the list provided to us by the Native American Heritage

1 Commission.

2 Mr. Collins, who spoke both this last week as
3 well as today, was among those members the Coastal Band of
4 Chumash -- the Northern Chumash Tribal Council who
5 received those certified letters notifying of the process.

6 So we think we've gone to great lengths to try to
7 contact the Native Americans in the region and to solicit
8 any comments they might have through the CEQA process.

9 ACTING CHAIRPERSON GORDON: Thank you Mr. Fossum.

10 Next witness, sir. Move forward, thank you.

11 MR. WALTER: My name is William Walter, and I'm
12 an attorney with the Morro Bay Commission of Commercial
13 Fishermen's Organization.

14 And I don't want to repeat past observations. We
15 are concerned about the lack of information for this going
16 forward.

17 We did send a letter to the Commission on last
18 Friday, and we had previously suggested many pages of
19 mitigation measures of biological resources and economic
20 impacts.

21 We were concerned that the train is leaving the
22 station. And particularly with regard to Exhibit G, which
23 was the permit terms and conditions there would be no
24 protection at all that is necessary.

25 PG&E has referenced a claims procedure, but those

1 claims procedures should be established through project
2 conditions. And they're not, or they're done in a very
3 general way.

4 They've also referenced work to monitor the
5 biological resources. That also needs to be a condition
6 in order to be enforceable.

7 So on Page 2 of that letter, we have sent out to
8 you. I don't know if you have the ability to protect it
9 on the screen. And it was an effort at something
10 relatively simple, perhaps not what we would like. But if
11 the train is leaving the station, something needs to be
12 done or it really becomes damaging.

13 And we suggested three changes to Exhibit G, the
14 permit terms and conditions. One is concerning the
15 biological resources, which you would add at paragraph 9,
16 new paragraph F. And let me just read that. It's hard to
17 read.

18 "Before the commencement of the project,
19 permittee shall enter into written agreements for fishery
20 impact monitoring with qualified independent consulting
21 organizations, including, at a minimum, Central Coast
22 Fishery research projects directed by Dr. Dean Went and or
23 other faculty members, California Poly Tech, State
24 University at San Luis Obispo for potential impact to
25 fisheries resources for a minimum of five years after

1 completion of the project. The qualified consultant shall
2 prepare a study and monitoring claims designed to monitor
3 long and short-term impacts on fishery resources and all
4 areas potentially impacted by the project.

5 "If, at the end of the five-year study period,
6 the results show a need to the remaining project impacts
7 in fishery resources, such study shall be continued for
8 successive five-year periods for as long as they indicate
9 there are impacts on the resources.

10 "If impacts are identified" -- and I'll just
11 abbreviate this -- the mitigation plan shall be prepared
12 by such consultants and funded by the permittee. The
13 Commission should retain jurisdiction to enforce the
14 conditions.

15 In terms of economic mitigation, we suggest
16 paragraph B that they fully mitigate all of these impacts.
17 And you can put in other interests, such as perhaps
18 tourists or visitor-serving interests. But all of those
19 things should be done, and it should be a condition. This
20 is suggested language. It's not necessarily perfect for
21 solving every problem, but it's better than nothing.

22 Last, there is a bond that's required in the
23 amount of \$5 million. The bond should be increased to a
24 minimum of \$20 million. So please consider these and put
25 something, please. The train is leaving. Put some

1 conditions in there, please.

2 MS. SUGAR: Thank you.

3 Next, we have David Nelson, then Elizabeth
4 Brousse and Glenn Knowles.

5 And again, please state your name for the record.

6 MR. NELSON: My name is David Nelson. I thank
7 you for this opportunity.

8 I have a huge problem here. I feel like I'm
9 playing cards with a marked deck and being told I can't
10 tell anybody about the markings. I'm being told I can't
11 talk about anything except the ERI.

12 And you know what, that document was devised to
13 overshadow the damage that's going to be done here.

14 I've dealt with mitigation from PG&E from their
15 once-through cooling systems in the same waters. And it
16 took us 15 years to get through the lies and deception of
17 that, those ERIs that uphold that system.

18 Now we're being told, don't talk about the failed
19 nuclear system. We've got to do this to make sure that
20 there's no more earthquakes under a system that shouldn't
21 be there in the first place. And I'm told don't talk
22 about that.

23 Okay. Well, let's talk about the fishermen. I
24 feel for them. I've been to fishermen meetings where they
25 were told change their equipment. Now you're going to

1 destroy that. And we're being told we get mitigation.

2 I asked about mitigation for abalone that PG&E
3 destroyed. They get to pay \$250,000 which we rate payers
4 are paying and we don't have any more abalone. Mitigation
5 doesn't work. You just don't kill the stuff. It's as
6 simple as that.

7 I mean, the plant is doomed. Maybe you haven't
8 heard about Fukushima. The whole end of Japan is barren.
9 It's going to be that way. My father-in-law served in the
10 Peace Corps over in Ukraine and Chernobyl. It's a
11 wasteland. It's not a wasteland, but people can't live
12 there. And the animals may look like they're there, but
13 they're not. They're dying, different. We've changed
14 them. Why don't you understand that?

15 You're telling us that we have to do a study
16 because the results of the earthquake under this power
17 plant override the importance of the biological. This
18 doesn't make any sense to me, because no matter what they
19 come up with with these seismic studies -- and I've soaked
20 in the waters in Abila which is just a few miles from
21 Diablo Canyon. You don't get hot water out of sound land.
22 There's things going on there. We knew that 25 years ago
23 when we marched against the power plant. Now you're going
24 to destroy another segment of our life. And you just
25 can't do it.

1 Don't tell me not to talk about shutting it down,
2 because that's what's going to ultimately happen. It's
3 just so dumb to do this, all this money and all these
4 studies, kill the fish, and then turn around and close it
5 down in 2020 after the population of our community says
6 that's enough. Thank you.

7 MS. SUGAR: Thank you.

8 Next, we have Elizabeth Brousse, followed by
9 Glenn Knowles and Noah Smukler.

10 MS. BROUSSE: Good morning and thank you.

11 When I arrived this morning at 9:00, having
12 traveled from Templeton, I signed in and I looked for a
13 category to identify myself. I didn't see the word
14 "grandmother."

15 This past week, I took my nine-year-old grandson
16 to Abila for a walk along the beach. And we saw the
17 beautiful and usual site of a whale breaching so close to
18 shore. And I thought, were these sonar booms in place,
19 that whale would be deaf by now and probably dead.

20 So I have been thinking constantly and hardly
21 sleeping, having read the description of how you plan to
22 do. I quote from the San Luis Obispo Tribune, "This
23 process will emit loud blasts every 15 seconds." I would
24 look at my watch and time it. "For 30 and 3 days from
25 Guadeloupe to Cayucos.

1 Many of you may not know this area. It's one of
2 the most beautiful and scenic areas of all of California
3 with the central coast.

4 Who do I speak for? Well, I'm a conservationist.
5 I send money everywhere: Restore Hetch Hetchy, Yosemite
6 Conservancy, Ocean Conservancy; Sierra Club -- I'm very
7 disappointed in you, Sierra Club -- League of Conservation
8 Voters. And NRDC, I'm disappointed with you as well.

9 We should all be stating: This procedure must
10 not go through. I agree with what you said. What is the
11 overriding consideration? What do we need the data for?
12 Is the data to determine if Diablo presents a threat?
13 Will we be satisfied once these boats returned after
14 having killed many much mammals and sea life and be told
15 Diablo is secure? How many of us will believe that?

16 Is the purpose of this to say, well, it's not
17 safe, so we'll have to tear Diablo down? Do you think
18 PG&E is going to say that? I don't think so.

19 Now, we know that relicensing cannot take effect
20 because of a recent court decision in Washington just a
21 few weeks ago. Joined in by 23 environmental groups along
22 with Mothers of Peace, stating that no relicensing can
23 take place or new nuclear power plants built until the
24 issue of the storage fuel is decided.

25 So thank you very much.

1 MS. SUGAR: Thank you.

2 Next we have Glenn Knowles, followed by Noah
3 Smukler, and Bill Blue.

4 MR. KNOWLES: I'm Glenn Knowles, a long-time
5 resident and local photograph. You might have seen some
6 of my pictures lately on the news.

7 I don't know if the Commission has been living in
8 a fishbowl somewhere, but the central coast has got a lot
9 of notoriety about the sea life, mammals, fish. You can't
10 go anywhere on the coast right now without seeing them.

11 Personally, I think this project probably
12 wouldn't have gone very far if it eliminated your pet dog
13 as part of the project. Basically, you're talking about
14 my pet dog. That's why I'm here today.

15 I think this is ill-advised. I think it should
16 not be permitted. It won't do one thing to mitigate the
17 risk of possible earthquake in this coastal region that we
18 call home, the Garden of Eden, as Pandora's Box sat on it
19 and you called that Diablo Canyon.

20 So I don't see where the study is going to change
21 the risk involved to Diablo Canyon. It's basically nuclear
22 energy. It's an unsafe thing to have in your
23 neighborhood. I'm tired of having it in mine. Thank you.

24 MS. SUGAR: Next, Noah Smukler, followed by Bill
25 Blue and then William James.

1 MR. SMUKLER: Thank you. I'm Noah Smukler,
2 recently re-elected Morro Bay City Counsel member. And I
3 did speak last week to the City of Morro Bay's concerns
4 with the project. You do have a letter from the City
5 Counsel and our City staff. I will be speaking to the
6 details of that letter today. I'm representing the City's
7 interest. I have my personal ideas about this, but I
8 think those are being represented very well by other
9 speakers today.

10 So from the City's perspective, we are very happy
11 that you agreed to host this meeting. One of our issues
12 has been a lack of public input opportunities. That's
13 important to us.

14 We have heard from our commercial fishing
15 association as well as the tribes and other economic
16 interests that they haven't been given adequate
17 opportunity to comment on this. And that is a very
18 important concern for us, and we hope that you'll address
19 that.

20 We, from the City's perspective, have agendized a
21 meeting for next Counsel -- an item for our next Counsel
22 meeting to follow-up on the outcome of today's meeting and
23 to talk about what we can do to get further involved and
24 support our local stakeholders. So we intend to be a
25 resource.

1 We ask that you actually do reach out to these
2 people in an authentic way. The stakeholders are here in
3 a way I haven't witnessed since my time on the Counsel or
4 I have not witnessed it to this degree. You have
5 different entities, groups, and individuals that, for the
6 most part, you may not realize are very unlikely to sit on
7 the same side of an argument. And we're known for that.

8 But we have here in this room and throughout this
9 process these groups aligning for the very simple reason
10 that we are all dependent on the health of our oceans and
11 our ecosystem. And as a representative, that's something
12 that makes me take strong heed and recognize that there's
13 something here. And from the City's perspective, we ask
14 that you take more time to evaluate the impacts, both to
15 the environment and to the economy.

16 And we feel that you've undervalued the direct
17 impacts to the economy from the fishing, land, and the
18 overall value. As you've heard, that has been increasing.
19 But you also have basically disregarded the trickle or
20 surge effects across our economy. We're very much
21 dependent on the health of our oceans for all economic
22 benefits and sectors here.

23 And what will this do to our restaurants? To our
24 culinary infrastructure and all of the investments that we
25 put into trying to help let people know from around the

1 world what we offer here in Morro Bay and on the central
2 coast.

3 We haven't looked at the recreational impacts.
4 This is very much what we're building our economy on here.
5 It's very important going forward that you recognize that
6 and that you build into this plan, if you go forward, a
7 strong mitigation plan to make sure that those impacts are
8 compensated to all stakeholders.

9 So thank you for your time. And again, we do
10 have resources here to help you evaluate those impacts and
11 provide you with some information and numbers. So we'd be
12 happy to do that if that's possible.

13 MS. SUGAR: Next, we have Bill Blue, followed by
14 William James, and then Owen Hackleman.

15 MR. BLUE: My name is Bill Blue. I'm a
16 commercial fisherman. Have lived out of Morro Bay since
17 1974. I have 37 years on the ocean fishing in this area.

18 We contacted State Lands back in April with a
19 concern. My main fishery in dungeness crab takes place
20 right in the survey area.

21 Our industry from the day one has said we would
22 prefer this project not to take place. We side with all
23 other parties in the interest of our community. This
24 project should not take place. It's an unmitigatable
25 process. And you know you're going to do damage to the

1 resources.

2 I have two sons that participate in this
3 business, two grandsons. California is the most regulated
4 commercial fishing industry in the world. We've gone
5 through all these processes to help preserve our resource
6 here. And you're going to allow someone to come in and
7 just destroy things, knowingly destroy things.

8 It sounded to me earlier in the discussion that
9 basically the train has left the station, as our attorney
10 said. If you're going to let this train leave the
11 station, we strongly recommend that you make mitigation a
12 condition of this permit. Thank you.

13 MS. SUGAR: Thank you.

14 Next, we have William James, followed by Owen
15 Hackleman and then Tom Hafer.

16 MR. JAMES: Good morning. My name is William
17 James. You guys know me as Bill James.

18 Morning, State Lands Commissioners. Thank you
19 for allowing me to speak today.

20 And I've been fishing in this area since 1986,
21 and that's more than 20 years, 26 years. Commercial
22 fishing for over 27 years. I'm a commercial fin fish
23 fisherman. And fish other fish, too.

24 I been one of the representatives on the North
25 Shore Fishery Advisory Management Plan for this area, and

1 we've been working on increasing the stocks in this area
2 for near-shore fish since 2000 and working really hard.
3 None of our fish are over fished. Our near-shore fish are
4 fine. And we went through all these sacrifices. And now
5 to have them come and be killed is outrageous.

6 I don't believe that what PG&E is saying about
7 how much fish or larvae they're going to kill. I think
8 they're going to kill more. So basically I'm against the
9 project.

10 And mitigation, that mitigation is so slow it's
11 ridiculous. I have a four-year degree in economics. So
12 the economic degree. And they're not even dealing with
13 fishermen right or the first link on the impacts of the
14 restaurants locally her. But there is a live fish
15 fisheries restaurants that are in San Francisco, which we
16 sell all of our live fish go up there. They don't go
17 overseas. They go into San Francisco. You're impacting
18 the State of California with the sales tax. When the fish
19 are sold to the restaurants, and they sell for a lot of
20 money per pound, \$24 a pound in the restaurants up there.
21 It's a percent of that is big money.

22 We care for our fish. We really, really care.
23 And so I really, really -- it's just going to be
24 mitigation. You are going to plow this thing through, you
25 really need to go over it and think it out. Archie Ponds

1 is a major fish buyer in Abila, and he is one of the major
2 fish buyers in San Francisco. He's going to be impacted a
3 lot because he buys from all the Abila folks, the
4 near-shore fish and some of the Morro Bay. Between Morro
5 Bay and Abila, the near-shore species with the high dollar
6 fisheries, we sell probably 60 percent California to
7 San Francisco. California production.

8 So this is very important in our area.
9 Appreciate the time. Please, no-project.

10 MS. SUGAR: Thank you.

11 Next, we have Owen Hackleman, followed by Tom
12 Hafer, and Joey Racano.

13 MR. HACKLEMAN: Good morning, Commissioners.

14 My name is Owen Hackleman. I'm a commercial
15 fisherman out of Morro Bay. I grew up in this county and
16 went to Cal Poly, studied biology. And I saw there was
17 opportunity in sustainable fishing here. It's an
18 inherently risky business as it is, without having the
19 worry about such an invasive and displacing impacts that
20 really I think everybody in this room would agree we would
21 rather not have the project.

22 But if you're saying it has to happen, both
23 economic and environmental mitigation needs to be made as
24 a condition of the project.

25 I and a lot of other fishermen and business

1 people in this harbor are very extended financially. In
2 light of the recent success in our fisheries, we've come
3 out of the depths of really economic disaster for
4 fishermen here and we're really doing well now. A lot of
5 us after seeing that we're doing well have extended
6 ourselves financially considerably.

7 And I'm just starting my own operation this year.
8 And if this really adversely effects the fishery, I can
9 say without a doubt I will lose my boat. I'll lose my
10 business. I will lose everything. My family will not
11 make it.

12 And I have to catch fish south of 36 right in
13 this area. That's where my quota is associated with. I
14 can't go to Moss Landing and fish. I'm stuck here,
15 whether this affects the fishing or not. I'm scared this
16 could really badly affect my family.

17 Sable fish and dungeness crab can be highly
18 migratory without sonic booms in the area. The fish could
19 just get up and leave. We don't know that. And a
20 condition of this project isn't to find out if that's true
21 or not.

22 I just see this as kind of an effort to shove
23 this project through without consideration to the
24 communities involved and the environment. And I'd really
25 like to see that as a condition of the project with

1 environmental and economic mitigation to be made priority
2 by the State Lands and the efforts to protect the
3 fishermen are considered and our environment. Fishermen
4 really care about the environment because that's what our
5 families depend on. Thank you.

6 ACTING CHAIRPERSON GORDON: Before the next
7 speaker comes up --

8 MS. SUGAR: Next, we have Tom Hafer and Joey
9 Racano and Steve Hackleman.

10 ACTING CHAIRPERSON GORDON: Sir, can you stop for
11 a second?

12 Mr. Fossum, reacting to the last speaker -- and
13 I'm certainly not an expert in this area. What I heard
14 him say is he has a license to fish in certain areas. And
15 this project would keep him out of specific areas that he
16 is licensed to fish in.

17 Do we have any ability to work with Department of
18 Fish and Game to see if there is any way that we can
19 facilitate people that are affected in this way in getting
20 a license to fish elsewhere so that they will not be more
21 impacted? Or even informally, can we contact Fish and
22 Game and see if there is anything we can do for the
23 fishermen who are being kept out of their fishing grounds
24 so they can continue to earn a livelihood of some kind
25 while this is going on?

1 EXECUTIVE OFFICER FOSSUM: Certainly, we can
2 consult with Fish and Game other agencies, federal
3 agencies that may be involved also, and encourage them to
4 have flexibility for the fishermen. If there is
5 opportunities for them to extend their license to other
6 areas during this period of time, we can certainly look
7 into that. But we will consult with them.

8 ACTING CHAIRPERSON GORDON: If the will of the
9 Commission, I would very much direct staff to make those
10 efforts with both federal and State agencies and see if we
11 can find some way to help these folks fish to the greatest
12 degree possible during this period. Thanks.

13 Next witness, please.

14 MR. HAFER: Tom Hafer again.

15 That would be the NOAA agency. You have to work
16 with black cod. The state doesn't have a say in that.

17 Commissioners, you know, us fishermen nowadays,
18 we spend so much money to go fishing that we can't fail.
19 We have to catch. The price of fuel, the price of bait
20 and everything else, it's a no-fail policy for us.

21 I think it's really important that you attach the
22 permit with some stipulations stating that certain things
23 have to be gone through by PG&E and work with the
24 fishermen on this.

25 You know, a lot of people say that PG&E hasn't

1 been working with the fishermen. We do. We have had
2 meetings. We have talked with them on the phone. We
3 talked to them in person. So they are trying. But we
4 would just like to have something written on paper that is
5 signed by them just to make sure that everything is on the
6 up and up and they can't back peddle on us when this thing
7 goes down and we find out there is no fish in the ocean
8 and we can't make any money. Thank you.

9 MS. SUGAR: Thank you.

10 Next, we have Joey Racano and Steve Hackleman and
11 David Kirk.

12 MR. RACANO: Honorable Commissioners, Joey Racano
13 with the Ocean Outfall Group statewide working on ocean
14 issues throughout California.

15 I would bring to your attention that there are
16 only two things that can come of this seismic testing.
17 Only two reasons that's even before us.

18 Number one, politically powerful PG&E wants to
19 stay open at the Devil Canyon plant that sits on an
20 earthquake faults. No thank you.

21 Number two, it gives us an opportunity to kill
22 whales. And like Mr. Alan Gordon had just alluded to, try
23 to ask Fish and Game for some flexibility with a hard-won
24 State Marine Reserve at Point Buchon. No thank you again.

25 Diablo, Fukushima, Chernobyl, radioactivity

1 concentrated in the kelp off Santa Cruz. Fukushima, 14
2 out of 14 tuna tested in San Diego tested positive for
3 radiation. Chernobyl, 20,000 years until anybody can
4 walk.

5 Now, I'd like to talk a minute about the idea of
6 our State Marine Reserves and the Marine Life Protection
7 Act Initiative. It created State Marine Reserves and
8 other marine-protected areas and the world watched as we
9 succeeded here in Morro Bay. Fisheries are coming back.
10 These people are finally working again. Don't dangle a
11 carrot in front of them and tell them you'll put them on
12 welfare. These guys aren't welfare cases. They're
13 fishermen.

14 Now your, EIR it's right there. Whales go toward
15 the sound just as well as they go away. You want to --
16 Mr. Gordon, you want to talk about chasing dolphins. I
17 say again no thank you.

18 The PG&E wants to take otters into the laboratory
19 and remove fluids. That's ghastly. No thank you.

20 You know, the idea was that the whales, they are
21 smart. They're smarter than us. You saw the Star Trek
22 episode. When you process bits of information processed
23 by the brain, whales dwarf us. According to Carl Sagen of
24 Cornell University, whales are the great composers. They
25 compose our long symphonies that dwarf Bach and Mozart.

1 They hear at two hertz. It's very low. It travels very
2 far. They used to be able to communicate across oceans.
3 They use it for social. They use it for mating. They use
4 it for singing. When you deafen a whale, you can condemn
5 it to a slow, lingering death.

6 Now take your piece of crap plant and take it off
7 the earthquake fault.

8 MS. SUGAR: Thank you.

9 Next, we have Steve Hackleman, followed by David
10 Kirk and Margaret Webb.

11 MR. HACKLEMAN: Good morning. Steve Hackleman,
12 commercial fisherman.

13 My son, Owen, spoke earlier. And he's made a
14 significant economic investment in the fishery here. I,
15 myself, have also made a significant economic investment
16 in the fishery here.

17 But what I want to speak to is not environmental
18 concerns, but some of these folks spoke well up to this
19 point. I want to speak to the economic mitigation.

20 PG&E is required to make a best effort and the
21 PG&E spokesperson said earlier said the best effort
22 consists of utilizing existing claims procedures. They
23 are the ones creating the economic impact. So it seems to
24 me the burden should be placed on the applicant to provide
25 the means of making -- having a user-friendly, efficient,

1 fair process to mitigate any concerns that testing would
2 go on.

3 It should not -- the burden, it should not fall
4 on the fishermen or the economic infrastructure that
5 supports the fishermen here in Morro Bay. The burden
6 should be on the applicant. It should be user-friendly
7 process, not a process for those that, say, a tree fell
8 over the power line or a transformer blew up. This risk
9 is much more significant than that and much more
10 widespread class of people are going to be impacted.

11 And to say we should all submit a claim every
12 week and be lumped in with everybody else, that will
13 create a new job for me. I'm going to have to hire a
14 secretary or something to follow my paperwork weekly
15 through PG&E.

16 It's important that they be proactive in
17 providing economic remediation. And the burden should be
18 on them. It shouldn't be on the fishermen or the impacted
19 workers in the community. Thanks.

20 MS. SUGAR: Next is David Kirk followed by
21 Margaret Webb and then Kenneth Dutra.

22 MR. KIRK: Dave Kirk, President of Port San Luis
23 Fishing Association. I represent about 70 fishermen. And
24 a lot of them are near-shore fishermen. And Bill spoke a
25 little bit about the near-shore. That's going to be

1 directly impacted by the City.

2 And a lot of these fishermen are very poor. They
3 have small boats. They work real hard. I'm not one of
4 them. I fish other species, and I'll probably be
5 marginally impacted. And I'm not looking to grab a big
6 hunk of money on mitigation. And that's not a lot of
7 money on the table. If you divide it up over all the
8 fishermen, it's still poverty level, which most of these
9 guys are living in.

10 Dr. Dean Went in the presentation to the
11 Commission, the Fish and Game Commissioners mentioned
12 impacts of 30 percent, 40 percent, as high as 70 percent
13 on different species directly.

14 To kind of change the subject, I'd like to refer
15 to San Francisco Chronicle article on PG&E and the USGS
16 disagreeing on the Hosgri fault. And Jean Hardibeck with
17 the USGS who discovered the Hosgri fault assumes that
18 these faults are connected. And this study isn't going to
19 prove they are connected or not, unless they do the study
20 all the way up to Bolinas. And I'd like to see that just
21 pass through Monterey and San Francisco and see how they'd
22 like to have a seismic study there. And she says that
23 this can produce 7.7 earthquake and under the plant.

24 And then Johnson with the USGS is quoted in the
25 same article as saying that "the mapping is going to yield

1 some interesting results." Still, it won't uncover vital
2 information about potential dangers to Diablo Canyon.
3 Geologists and seismologists think it may provide some
4 protective images to the Hosgri, it's unlikely to tease
5 out the most critical data of the fault, such as its
6 length, the rate at which its slipping, and how often or
7 frequently it has erupted in the past. Thank you.

8 MS. SUGAR: Thank you.

9 Next, we have Margaret Webb, followed by Kenneth
10 Dutra and Barbara-Joe Osborne.

11 MS. WEBB: I have submitted comments on this as
12 an individual, but today I'm here on behalf of Save the
13 Whales.

14 Save the Whales, a nonprofit corporation based in
15 California, is writing on behalf of the proposed PG&E
16 central coast California seismic imaging project and to
17 express our objection to this testing.

18 We understand that PG&E desires to do the project
19 because of a disastrous tsunami in Japan last year and the
20 resulting emergency at the Fukushima Daiichi nuclear power
21 station. PG&E is concerned that because of the
22 possibility of a similar scenario at the Diablo Power
23 Plant at Abila Beach, a plant build on a known earthquake
24 fault.

25 Of major concern to Save the Whales is the

1 potential harmful and significant effects of the project,
2 particularly on endangered species, such as the blue
3 whales, fin whales, humpback whales, gray whales, and the
4 California southern sea otter.

5 A species with great potential harm is the small
6 population of harbor porpoise in the Morro Bay area. They
7 are the species that are most sensitive to loud man-made
8 sound and the mammal most vulnerable to habitat
9 abandonment and to hearing loss. Because they depend on
10 sound, like whales, to function, the project could destroy
11 their capability to survive and reproduce. Because of the
12 harbor porpoise's limited range including most of its core
13 habitat, it would coincide with the proposed project.
14 Every day of the survey would greatly impact these
15 animals.

16 The California Coastal Commission Final Impact
17 Report determined that permanent hearing loss and other
18 such serious injury could result from the project and
19 would surpass significant and unavoidable. The impact of
20 the behavioral disruption would even have greater
21 consequences as the population could leave the majority of
22 their habitat at the height of their breeding season and
23 during the first months of the mother's nursing their
24 calves. They would be forced into less-than-optimal areas
25 that would most likely not be able to sustain their

1 required caloric intake.

2 The Final Environmental Impact Report from the
3 California Coastal Commission believes that the impact on
4 harbor porpoises would be significant and unavoidable.
5 Newly established marine protected areas in San Luis
6 Obispo County contain valuable plant and animal life and
7 they are considered particularly important and worthy of
8 MPA designation. It conflicts between the project and
9 Section 30230 and 30240 of the Coastal Act and portions of
10 Section 36710.

11 The seismic survey could affect the marine
12 resources, including Point Buchon State Marine Reserve,
13 Point Buchon State Conservation area, Cambria State Marine
14 Park and White State Conservation Area.

15 MPAs were established to protect and conserve
16 marine life and its habitat. The taking of marine
17 resources is explicitly prohibited within the State Marine
18 Reserves as designated under the Marine Life Protection
19 Act.

20 Thank you very much for this opportunity.

21 MS. SUGAR: Thank you.

22 Next, we have Kenneth Dutra, followed by
23 Barbara-Joe Osborne and Lynda Merrill. That's the last
24 speaker slip.

25 MR. DUTRA: I'm Kenneth Dutra from San Luis

1 Obispo.

2 And at the last meeting we had last week, I was
3 curious to find that in Sacramento how many chairs were in
4 that building and how many people attended and how many
5 people actually wanted this test to go on.

6 I came here today to testify, and I truly believe
7 that this problem is bigger than the taxpayers. This
8 problem -- I haven't heard Governor Brown step in and say
9 we need to review this. We need to look at it or we just
10 need to plain stop this nonsense.

11 I heard once Roosevelt, he said -- President
12 Roosevelt and he said he had the best marine biologist in
13 his hands. It's time for President Obama to step in and
14 say something. Send those marine biologists down here.
15 Our government needs to do something, because just us, the
16 people -- I haven't even heard how many people were in the
17 Sacramento meeting. (Inaudible) Half of the stuff he
18 says we can't even hear right here. And we're sitting in
19 this room. And the computers were shut down beforehand at
20 the other meeting and half of the United States didn't
21 even know that this was a meeting was going to exist.
22 That's a convenience, and that's my own thought.

23 I'm done with the lies. I think that all of us
24 deserve better. And we need to get Governor Brown, we
25 need you to (inaudible) the Commissioner from the

1 Department of Fish and Game, do what we told you we wanted
2 you to do in the first place, protect our wildlife. Thank
3 you.

4 MS. OSBORNE: My name is Barbara-Joe Osborne.
5 I've been prior in Morro Bay since 1994. Prior to that, I
6 lived in Santa Monica and I'm a California native.

7 Please add Eric Greening's testimony to mine as
8 if I said it. (Inaudible) I am a financial manager for a
9 living. I do business for profits -- (inaudible)

10 ACTING CHAIRPERSON GORDON: Ma'am, hold on. Can
11 we stop for a second?

12 The feed isn't good right now. We're going to
13 let you get your full time back. So just hold on for one
14 second. We'll tell you when to resume.

15 Let's take five minutes. We'll take a five
16 minute break. We'll recess for five minutes while we get
17 the technology working. Thank you.

18 (Whereupon a recess was taken.)

19 ACTING CHAIRPERSON GORDON: If everybody will
20 take their seat.

21 MS. OSBORNE: Hi. Welcome back. My name is
22 Barbara-Joe Osborne, and I live in Morro Bay. Moved here
23 in 1994. I'm from Santa Monica and I'm a native
24 Californian.

25 What Eric Greening said, would you please add

1 that to my testimony so I don't have to repeat it.

2 This issue is about money, and actually money.
3 It isn't about anything else. You are going to talk about
4 the environment and things being killed. But this is
5 about money. Someone who wants to boil water. They want
6 to create steam and create electricity and sell it. Oh,
7 they also want to kill a few things because they need to
8 because they really, really need to do that.

9 Our economy in San Luis Obispo County, not just
10 Morro Bay, is completely dependent upon oceanfront. We
11 live here one person at a time. And we built up and
12 created businesses that feed and support everything that
13 has to do with our ocean. This is not Merced. So doing
14 something to the ocean is not incidental as it might be
15 to, say, Merced. That's not as nice a place.

16 For example, cost me \$85 to be here. I help
17 small businesses get profits. If I'm not doing that, I'm
18 not making a living right this second.

19 However, if you put all the businesses -- if you
20 impact them and they go out of business, I don't have a
21 job. And other supporting people don't have a job either.
22 But then guess what? I'll not get things cleaned, so I
23 won't be able to take clothes to the cleaners. I won't
24 see movies so much, so all the movies will be impacted. I
25 can't eat out at restaurants, although we don't have fish

1 anymore. I cannot buy as much gasoline. I can't travel.
2 I can't do a lot of things. And I'm not the only one.
3 And I don't hear that anyone is talking about that impact.
4 That is huge.

5 And what you're doing is taking all the
6 businesses in the country and pitting them one other
7 business in the county who, oh, is having the problem.
8 I'm sorry they're having a problem.

9 But we are dependent also on people coming here.
10 I'm not so sure people are going to come here because they
11 don't really go to Japan right now. So this is really
12 important. It's not insignificant. It's money. We like
13 it. So let's make it self-serving. We won't have as much
14 sales tax to send to the State.

15 Please think about the money. You don't have to
16 rush through this thing. This is really important. So
17 I'm against the project, of course. Thank you.

18 MS. SUGAR: The last two speakers are Lynda
19 Merrill and Adrienne Harris.

20 MS. MERRILL: Good morning, Chairman and State
21 Lands Commissioners.

22 My name is Lynda Merrill, and I'm a 30-year
23 resident of Morro Bay and a native Californian.

24 I'm most disturbed that you have said that our
25 testimony here this morning will not be important to your

1 decisions, the decisions that you're making today.

2 I'm opposed to this permit. And I agree with
3 each person in our audience. If you could look at the
4 faces out here and see the impassioned testimony of these
5 people, you would know that you cannot dismiss what they
6 have to say.

7 We are concerned. Our economy is dependent upon
8 the ocean's health. We cannot -- our fishermen cannot
9 survive if the fish are affected and killed. We cannot
10 survive this.

11 Please listen to the people who have spoken
12 today. Please assure me that you have heard us and that
13 you will take these fine people into consideration.

14 Thank you so much.

15 MS. SUGAR: Now the last speaker is Adrienne
16 Harris.

17 MS. HARRIS: Good morning. My name is Adrienne
18 Harris. I'm the Executive Director of the Morro Bay
19 National Estuary Program.

20 The short-term impacts are from this testing is
21 concerning. The long-term impacts are unknown.

22 We are finally excited about the progress being
23 made in this community on the central coast for
24 sustainable fisheries management. This testing could
25 adversely impact fishing industry and the tourism industry

1 in our local area.

2 I ask the counsel to ensure that they spent
3 enough time to adequately determine whether the benefits
4 of this testing outweigh the consequences and to
5 adequately determine the appropriate mitigation measures
6 before moving forward.

7 Thank you very much for the opportunity for the
8 community to speak today.

9 EXECUTIVE OFFICER FOSSUM: Mr. Chairman, if I
10 could speak to a couple of these comments at this time on
11 behalf of staff, I'd like to do that.

12 One of the things is some of the fishermen
13 brought up the impacts to them, which is significant,
14 acknowledged in the EIR.

15 One of the things that hasn't been discussed I
16 think is the opportunity the fishermen have during the
17 periods of time even when the testing is going on, there
18 are three zones. Those three zones only have the testing
19 going on for 34 days. The other two zones during any
20 particular time would still be open to fishermen to go out
21 and fish. We're only excluding the area of testing. They
22 would be notified in advance of each of these areas so the
23 availability to continue to fish in those areas would also
24 still be for them.

25 The other thing is that this isn't something

1 staff has taken lightly at all, and I'm certain the
2 Commission hasn't. The Commission has not voted yet. It
3 has only certified the Environmental Impact Report for
4 this project and will be asked to act on the Statement of
5 Overriding Considerations, the findings, and the permit
6 itself.

7 One of the things I think that's extremely
8 important is to acknowledge that these are public trust
9 lands under the Commission's jurisdiction and the public
10 trust doctrine which has evolved over thousands of years
11 and today is one that is important to this Commission is
12 that commerce, navigation, and fisheries are paramount.
13 So we don't take lightly impacts on fisheries, commerce,
14 or navigation. These are essential elements of public
15 rights.

16 But when it comes to the need of the public for
17 knowledge about the threat of a nuclear failure, whether
18 that be simply a shutdown that I think we wouldn't be in
19 contact with Morro Bay right now if we didn't have some
20 form of electricCity helping us. We all use a lot of
21 electricCity in California, and it is important to the
22 economy.

23 So the economic effect of a shutdown alone would
24 be significant. But a disaster, of course, would be much
25 worse.

1 Just to reiterate, the Commission and its staff I
2 think is taking this very seriously. We understand there
3 are unmitigated impacts. We tried to mitigate as many as
4 possible. And that concludes my statement.

5 ACTING CHAIRPERSON GORDON: Mr. Krausse, could
6 you please come to the microphone?

7 There is one issue, and you've already addressed
8 it, but we did hear some concern about the financial
9 losses to the fishermen and some of the businesses might
10 have.

11 Can you lay out in more detail what the process
12 is? I understand there is an existing PG&E claims process
13 understanding that the people down there are concerned
14 they might not succeed in filing against PG&E. They're at
15 a disadvantage.

16 Can you go on and reiterate for the folks in the
17 audience and anyone else down there who may be interested
18 what arbitration process has been set up if they are
19 dissatisfied with PG&E's handling of their claims for
20 losses?

21 MR. KRAUSSE: Certainly. So first and foremost I
22 want to set out that the commercial fishermen as a group
23 are the ones we were perhaps inappropriately primarily
24 focused on. We have been meeting with them several times.
25 We have a meeting this Thursday. The San Luis Bay

1 fishermen have confirmed that. We're waiting to hear from
2 Morro Bay fishermen.

3 If we can reach a deal with that group, that
4 would likely be a kind of block settlement, an approach
5 that would agree to an aggregate amount of money to be
6 provided to those fishermen and then to be worked out
7 whether we use a third-party arbitrator or mediator to
8 dispense that to determine who gets how much.

9 Barring that, if we don't reach an agreement on
10 that, the commercial fishermen would be in the same
11 position as anyone else who can show that their loss was a
12 result of PG&E's work here. Whether you're an on-shore
13 business, a hotel, anybody who can say, look, here's where
14 I was before you did your work. Here's the work. Perhaps
15 something else in the way of causation. It's a proof set
16 like anything else. We would then process that claim, pay
17 it or not pay it if we didn't feel it was appropriate.
18 And they would have the ability to go out to a third-party
19 arbitrator.

20 We have some we've used in the past. We can
21 start from scratch. We talked about JAMS, judicial and
22 arbitration and mediation service. There is a commercial
23 service that does that kind of work. They would have
24 someone non-PG&E affiliated that would arbitrate their
25 claim. As a neutral, I think they deserve more or it was

1 about right.

2 ACTING CHAIRPERSON GORDON: Thank you. That's
3 what I was looking for.

4 Any questions, Mr. Reyes?

5 ACTING COMMISSIONER REYES: Mr. Chair, I just --
6 we had a number of conversations. We've had -- first of
7 all, I'd like to thank the folks who testified both here
8 and down in the San Luis Obispo County.

9 There was testimony made that the decision has
10 been made. And I want to assure folks the decision has
11 not been made. Had the decision been made before we got
12 here, we would not be having this second meeting. It
13 would have already been dispensed with. It would have
14 been a 30 minute hearing and we would have moved on.

15 Clearly, the recommendations by staff now
16 reflects some of the material that we heard at the last
17 meeting. We sought clarification with some of the issues
18 that were raised by folks today. And that's what causes
19 us to struggle with this decision-making process. But the
20 decision has not been made. I don't come here with a
21 vote. I did not come to the meeting last week with a
22 certain vote. I listened to a lot of folks before the
23 hearing. I've listened to a lot of folks since the last
24 hearing. I read a lot of material since that last hearing
25 as well. But I just want to assure folks it is a

1 deliberate process from which we take input from
2 testifiers and the material we've read.

3 ACTING CHAIRPERSON GORDON: Thank you, Mr. Reyes.
4 Sir?

5 ACTING COMMISSIONER GARLAND: I want to explain
6 my presence.

7 Unfortunately, the Lieutenant Governor had to go
8 on to another meeting and wanted to make sure that the
9 participants in Morro Bay understood that we've taken the
10 concerns that you've raised seriously. And wanted to also
11 reiterate that we wouldn't be having this meeting if the
12 decisions were already made.

13 Some of us, including the two gentlemen to my
14 left, have been working on this for quite some time and
15 take these concerns very seriously. And we appreciate you
16 taking the time out of your day on a Monday to come and
17 share your thoughts with us.

18 There are at least -- there was one set of
19 outstanding issues that we discussed last Tuesday that I
20 would like to address now as far as independent review.
21 And if I could get both Dr. Gibson and Mr. Krausse, I
22 believe we have an agreement on third-party independent
23 review that may help us move forward on this issue.

24 Gentlemen, the understanding as I know at this
25 point is that third-party independent review will go

1 forward, that PG&E strongly supports the third-party
2 independent review of this project; is that correct, Mr.
3 Krausse?

4 MR. KRAUSSE: On the conditions we discussed,
5 absolutely, we support additional funding from the PUC to
6 pay above the level of the 200,000. I think it's going to
7 require over 300,000, provided there is an independent
8 selection process so we can absolutely support that.

9 ACTING COMMISSIONER GARLAND: And that goes to
10 the second part of this, Supervisor Gibson, which is that
11 the IPRP will be responsible for reviewing the independent
12 experts and putting them forward, the folks who will be
13 doing this review. And if the county is in need of more
14 funds to cover the costs of the independent review, we
15 have PG&E's support that you can return to PUC and request
16 more funds to cover those costs; is that correct?

17 SUPERVISOR GIBSON: Yes. I think it's most
18 appropriately an IPRP matter to hold this particular
19 review. And as you discussed the options for moving
20 forward on this permit decision, there are a few details
21 that I think would be useful and I'd like to discuss them
22 at an appropriate point.

23 ACTING COMMISSIONER GARLAND: And then from the
24 Lieutenant Governor's perspective, I will tell you that we
25 are -- and this goes to everything we've heard in the last

1 two meetings -- there is promises made and promises kept.
2 And we will be calling balls and strikes on this.

3 And to that end, the final part of what I
4 understand we agreed to is that should the project not get
5 done in year one, which seems unlikely at this point, that
6 we would have the independent review brought to the
7 Commission for presentation, that PG&E would be here to
8 respond to independent review, and then any potential
9 changes that would need to be made for year two of the
10 project would come through us as the lead agency; is that
11 correct?

12 EXECUTIVE OFFICER FOSSUM: Yes. Any changes to
13 the project, other than what's already provided, would
14 require Commission approval and subsequent environmental
15 treatment of some fashion, whether it's a subsequent EIR
16 or whatever would be necessary depending on the
17 information if there was a change.

18 MR. KRAUSSE: If I may just clarify on that. If
19 the results of the IPRP sort of a second look going to
20 next year, if we come back and we look at those and we
21 agree, yes, other things should be done, the work here
22 will need to be to do conforming changes on the permit.

23 ACTING COMMISSIONER GARLAND: That's correct.
24 That's my understanding as well. That would take care of
25 our concerns on third-party review.

1 I would like to give you since you've worked so
2 hard on this time if you'd like to state for a minute or
3 two, please, be my guest.

4 SUPERVISOR GIBSON: Thank you, Commissioner.

5 I think all of the issues that I have raised on
6 behalf of the county, the residents of the county, as to
7 the reasons for the independent third-party review remain
8 in place.

9 I would remind the Commission that one of the
10 easier aspects of the survey design that was at question
11 here was the amount of time it would take to collect data,
12 and that depends on the technology. It's my vision that
13 that that independent review continues the analysis of
14 that particular issue as well.

15 And the Statement of Overriding Considerations
16 that, should you chose to approve this permit, you will
17 have to make Statements of Overriding Considerations that
18 include the certification that the maximum amount of
19 mitigation has been done. And that includes the question
20 of minimizing time in the water. So I don't want to
21 prejudge the consequences of what the independent review
22 picks up.

23 I do believe that if the project moves forward in
24 this season, that there are specific aspects of the
25 project that would be definitely better to do and others

1 that absolutely need further review and would strongly
2 counsel or advocate to the Commission that very specific
3 limits be placed on what activities do take place pending
4 the third-party review.

5 Beyond that, you know, this matter of third-party
6 review is an intensive process. The ability to secure
7 increased funding on it is important in order to get it
8 done right.

9 And so if I could at a point step away from my
10 technical aspect, I would do that at an appropriate point.
11 But while I have the lectern, I will do this.

12 I stand before you not simply as a technical
13 individual involved with the Independent Peer Review
14 Panel, but a letter from our Board of Supervisors on the
15 general aspects of this project is in your record. And I
16 want to emphasize my support of comments made in public
17 testimony both last week and this week that in moving
18 forward with this project, should the Commission approve
19 it, we, the Board of Supervisors, expects the maximum
20 amount of environmental mitigation to avoid where possible
21 and minimize the other environmental impacts.

22 And similarly, on the matter of economic impacts,
23 we expect avoidance to the greatest extent possible and
24 full and fair and functional. By that I mean the process
25 of getting compensation, mitigation of the economic

1 impacts for the many enterprises that will be so impacted.
2 I do believe especially the economics need to be very
3 carefully considered in the specific conditions that you
4 write for this permit.

5 So with that, I thank you for the ability to
6 express those other aspects of this decision that's so
7 important.

8 ACTING CHAIRPERSON GORDON: Thank you, Dr.
9 Gibson.

10 Let me summarize what has taken place over the
11 last week at this point in time.

12 When we came here, when the Commission was called
13 to order last Tuesday, August 14th, the preferred
14 alternative was a four-track proposal with the three-track
15 proposal at that point in time, with the sounding
16 authorized to begin on September 15th over one year,
17 continuing from September 15th all the way through
18 December 31st.

19 After the hearing last week, the testimony we
20 have taken from approximately 50 witnesses in Morro Bay,
21 the Alliance for Nuclear Responsibility, Dr. Gibson,
22 numerous environmental groups, we're at a place now where
23 this has been modified at least as a proposal.

24 We now have before us -- and I'm going to leave
25 Mr. Fossum to lay out exactly the technical details of

1 what's in front of us -- a proposal that is now three
2 tracks. We're still at three tracks. We would be in the
3 water from November 1 through December 31st, would be the
4 maximum number of days the first year. Increased
5 mitigation; we now have a claims process for both
6 fishermen and on-shore businesses. We will have
7 additional third-party review, independent third-party
8 review, after the data is gathered the first year. We
9 have increased spotting of mammals with additional low
10 altitude flights over the survey areas. These are changes
11 that have been made as a result of the testimony both
12 written and oral that we have received.

13 With that, Mr. Fossum, I'd like you to lay out
14 technical details of the revised proposal that we may have
15 in front of us today.

16 ACTING COMMISSIONER REYES: Mr. Chair.

17 ACTING CHAIRPERSON GORDON: Mr. Reyes.

18 ACTING COMMISSIONER REYES: One clarification.

19 When you say we're in water November 1st to December 31st,
20 that's the actual study. But we're in the water before
21 that to get there.

22 ACTING CHAIRPERSON GORDON: It would be the time
23 they are authorized to do the actual soundings of the
24 study would be beginning -- now only could begin on
25 November 1 and December 31, pushing back away from the

1 breeding season for certain species in the vicinity. And
2 we've limited the time from where it was as of last week.

3 Is that clear to everyone? Okay.

4 Mr. Fossum, I'm going to turn it over to you now
5 to summarize a revised proposal. And then when Mr. Fossum
6 is done, I will ask for a motion from one of my colleagues
7 with regard to what Mr. Fossum is presenting at this point
8 in time.

9 EXECUTIVE OFFICER FOSSUM: Very well, Mr. Chair.

10 And just as a reminder, with both alternates
11 being present for the elected officials, only one will be
12 actually cast a vote on this measure. And that will be at
13 your decision between you.

14 Let me just clarify a couple things.

15 First of all, you did mention both compensation
16 for fishermen. There is a provision in the permit that
17 requires good faith compensation. We understand that the
18 separate commitment has been made by PG&E as they
19 testified here today, both to their process and a
20 follow-up process of mediation.

21 The Commission still has before it the
22 alternative that was presented to them last week that's
23 found in the staff report. The option that we've provided
24 to you today is one that does shorten the period of time
25 for the permit from September 15th to October 15th. Cuts

1 a month off on the front end and it limits the period of
2 using the guns for the seismic survey to that two-month
3 period of November. It also does provide for the option
4 for a second year if it can't be completed in the first
5 year.

6 Let me go through the actual findings that the
7 Commission would have to be made. So you may want to
8 adopt this as a motion if this is where you end up going.

9 As to the CEQA finding, the State Lands
10 Commission finds that the EIR was prepared and certified
11 by the Commission on October 14th, 2012; that EIR is
12 number 758, State Clearinghouse Number 2011-061085. That
13 was prepared for this project.

14 Secondly, the State Lands Commission would adopt
15 the mitigation monitoring program as contained in Exhibit
16 D to the calendar item, Number 104.

17 Third, you would adopt the findings for the
18 modified timing three-loop configuration made in
19 conformance with California Code of Regulations Title 14
20 Section 15091 consistent with the Commission's
21 authorization attached hereto.

22 And fourth, adopt the Statement of Overriding
23 Considerations for the modified timing three-loop
24 configuration made in conformance with California Code of
25 Regulations Section 15093 consistent with the Commission's

1 authorization attached hereto.

2 There is a significant lands inventory finding.
3 That would be the Commission finds this activity is
4 consistent with the use classification designation with
5 the Lands Commission pursuant to Public Resources Code
6 Section 6370 at seq.

7 And finally, the authorization would be for
8 issuance to the Pacific Gas and Electric Company of a
9 non-exclusive geophysical survey permit commencing October
10 15th, 2012 through December 31st, 2013, to conduct
11 high-energy geophysical surveys only from October 15th,
12 2012, through December 31st, 2012.

13 And if the survey has not been completed, then
14 also from October 15th, 2013 through December 31st, 2013,
15 Within the area indicated on Exhibit A, with the use of
16 air guns confined to a November 1st through December 31st
17 of each year and to zones one, two, and four as indicated
18 on Exhibit B, following the courses generally indicated
19 for zones one, two, and four on Exhibit C. That's the
20 modified timing three-loop configuration.

21 And subject to the provisions of the mitigation
22 monitoring program as set forth in Exhibit D, both within
23 the boundaries of the state of California and to the
24 extent that any such provision is not in conflict with
25 federal requirements in waters outside of the state.

1 Authorize staff to make the necessary changes to
2 the permit substantially in the form of Exhibit G to
3 calendar Item 104 to effectuate the Commission's
4 authorization.

5 ACTING CHAIRPERSON GORDON: Do I have a motion
6 with regard to permit as described by Mr. Fossum?

7 ACTING COMMISSIONER GARLAND: So moved.

8 ACTING COMMISSIONER REYES: I'll second.

9 ACTING CHAIRPERSON GORDON: All those in favor?

10 (Ayes)

11 ACTING COMMISSIONER REYES: Aye.

12 ACTING COMMISSIONER GARLAND: Given the rules,
13 the Lieutenant Governor will be shown as not voting.

14 ACTING CHAIRPERSON GORDON: That motion passes
15 two to nothing.

16 ACTING COMMISSIONER REYES: I have one
17 clarification.

18 Although we did discuss the fact that fishing
19 could occur in the other zones where the study is not
20 being conducted at the time, we also ask staff to seek
21 conversation with Fish and Game so that what other
22 flexibility could be provided to the fishermen impacted.
23 But that doesn't need to be part of the motion. I just
24 want to memorialize that.

25 EXECUTIVE OFFICER FOSSUM: If I could ask the

1 Commission to reconsider its vote on that, we had a second
2 from a member who did not vote on the final. I think that
3 the motion and second should come from the two officers
4 who are actually voting.

5 ACTING CHAIRPERSON GORDON: Okay. Do we have a
6 motion?

7 ACTING COMMISSIONER REYES: So moved.

8 ACTING CHAIRPERSON GORDON: Second.

9 Call the question.

10 All those in favor?

11 (Ayes)

12 ACTING CHAIRPERSON GORDON: Thank you very much.

13 With that, this meeting of the California State Lands
14 Commission is adjourned.

15 (Whereupon the California State Lands Commission
16 meeting adjourned at 12:09 PM)

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