

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

HOLIDAY INN CAPITOL PLAZA
CALIFORNIA ROOM
300 J STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, DECEMBER 5, 2012
1:04 P.M.

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

APPEARANCES

COMMISSION MEMBERS

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

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

Ms. Ana J. Matosantos, Director of Finance, represented by
Ms. Jennifer Rockwell

STAFF

Mr. Curtis Fossum, Executive Officer

Ms. Jennifer Lucchesi, Chief Counsel

Mr. Mike Bell, Land Management Division

Mr. Brian Bugsch, Chief, Land Management Division

Mr. Don Hermanson, Chief, Marine Facilities Division

Ms. Beverly Terry, Public Land Management Specialist

ATTORNEY GENERAL

Mr. Joe Rusconi, Deputy Attorney General

ALSO PRESENT

Ms. Shawn Cartwright

Ms. Donna Chambers, Humboldt County

Mr. Ted Hannig, Pete's Harbor

Mr. James Lee

Ms. Alison Madden, Peter's Harbor residents

Mr. Bob Marston

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Joseph Rosjas

Mr. Dave Shelton

Ms. Leslie Webster

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1 the minutes from the Commission's special November 19th
2 2012 meeting. May I have a motion to approve the minutes

3 ACTING COMMISSIONER ROCKWELL: So moved.

4 CHIEF COUNSEL LUCCHESI: Excuse me,
5 Commissioners.

6 ACTING CHAIRPERSON GORDON: Ah, we have another
7 of those.

8 CHIEF COUNSEL LUCCHESI: I was just going to
9 remind you. Pursuant to the Government Code, because both
10 Constitutional officers are represented by alternates,
11 only one of you may vote.

12 ACTING COMMISSIONER GARLAND: Second.

13 ACTING CHAIRPERSON GORDON: All those in favor?
14 (Ayes.)

15 ACTING CHAIRPERSON GORDON: The motion has
16 passed.

17 Next order of business is the Executive Officer's
18 report. Mr. Fossum here for his last public duty as the
19 Executive Officer of the State Lands Commission. I see
20 lots of staff people here to happily -- I mean to --

21 (Laughter.)

22 ACTING CHAIRPERSON GORDON: -- say goodbye to
23 Curtis. And, Mr. Fossum, your Executive Officer's report,
24 please.

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

1 Good afternoon, Commissioners and a special welcome to the
2 Department of Finance's General Counsel, Jennifer
3 Rockwell, representing Finance today.

4 First off, I'm very pleased to announce that I've
5 recently been notified by the California Maritime
6 Leadership Symposium Organizing Committee that they've
7 selected the Commission to receive their 2013 Honoree of
8 Merit Award. The symposium takes place in February of
9 each year in Sacramento. This coming February 20th and
10 21st will be their 13th annual symposium.

11 The organization consists of a broad based
12 coalition of maritime, industry, and associations,
13 including the California Association of Port Authorities,
14 California Marine Affairs and Navigation Conference,
15 California Marine Intermodal Transportation System and
16 Advisory Council, the California Maritime Academy, Harbor
17 Association of Industry and Commerce, and the L.A. and
18 Long Beach Propeller Club. It also includes
19 representatives of California's numerous ports and
20 maritime industrial companies.

21 This symposium has been the premier event focused
22 on briefing Sacramento policy makers on key issues
23 relating to the maritime transportation system and its
24 importance to the State and national economies. It's the
25 only comprehensive forum for port executives,

1 commissioners, and other stakeholders across the State to
2 address the growing challenges facing California's
3 maritime trade system.

4 This last year, both Lieutenant Governor Newsom
5 and State Controller Chiang addressed the symposium on
6 important issues facing the State.

7 I'd like to read an excerpt from the letter
8 informing us of this honor.

9 "The Symposium Committee has chosen to
10 present the California State Lands Commission
11 with this award in recognition of the dedication,
12 commitment, and lasting contribution to the
13 marine transportation system throughout the
14 California State Lands Commission's 75 year
15 history.

16 "The Commission has provided leadership
17 within State government to achieve a strong set
18 of standards for oil spill and invasive species
19 prevention proving to be an ally in protecting
20 and preserving California's waterways.

21 "Among the organization's greatest
22 achievements, for which the Commission is being
23 recognized, is the collaborative spirit that has
24 been generated among regulatory agencies, private
25 industry, and local communities around marine

1 safety and environmental stewardship issues. The
2 Commission has accomplished a great deal, and
3 this award adds testimony to those
4 accomplishments."

5 The award will be presented to the Commission in
6 the Capitol on February 20th.

7 I believe that the Commission and staff are, in
8 fact, poised in 2013 to take new initiatives and find new
9 opportunities to make even greater strides in assisting
10 California's ports and other waterfront jurisdiction in
11 enhancing the State's economic growth while protecting
12 California's wonderful quality of life.

13 We're working with the California Association of
14 Port Authorities to further develop ideas to implement
15 these goals.

16 Since the 75th anniversary of the Commission was
17 mentioned, I would like to remind everyone that this
18 coming June we will be celebrating the Commission's 75
19 years of dedication to protecting California's Public
20 Trust resources, all while generating \$10 billion in
21 revenue to the general fund. And that's \$25 billion, if
22 you're using 2012 dollars. So get your party hats ready.

23 I'm also pleased to report that your staff has
24 made some significant progress towards to developing GIS
25 information that will help streamline staff operations and

1 provide important information to other agencies and the
2 public about State land holdings. You'll be getting a
3 short presentation and informational demonstration later
4 in this agenda.

5 The next staff meeting -- excuse me. At the next
6 Commission meeting, the staff will be bringing a report to
7 you on progress of our renewable energy efforts working
8 together with other State and federal agencies.

9 As 2012 draws to the end, the Commission staff is
10 also seeing some substantial changes. First and foremost,
11 I'm especially pleased to report that the Commission at
12 its November meeting appointed current Chief Counsel,
13 Jennifer Lucchesi, as the new Executive Officer effective
14 December 8th of this year.

15 Jennifer joined the Commission staff over 13
16 years ago, and within weeks I had a hunch that some day
17 she'd be in charge.

18 (Laughter.)

19 EXECUTIVE OFFICER FOSSUM: She's a remarkable
20 individual with an incredibly sharp mind, deep dedication
21 to principles, political savvy, and what seems like
22 unlimited energy. I've been fortunate to have her advice
23 and hard work keep me from stumbling on many occasions.

24 She has, and I'm certain will continue to serve
25 the Commission and the people of California with

1 distinction.

2 In addition to the vacancy for the Chief Counsel,
3 bulletins announcing openings for the positions of Chief
4 and Assistant Chief of the Marine Facilities Division are
5 circulating. Don Hermanson, who came out of retirement
6 last year to take over the Marine Facilities Division, has
7 done an outstanding job during this last year in keeping
8 the program moving forward.

9 The Marine Facilities continues to lead the world
10 in oil spill prevention at marine oil terminals and
11 seeking practical solutions to preventing infestation of
12 California's marine waters from invasive species. And
13 although Don has retired once before, we're not going into
14 a formal thing, I would like to acknowledge him and ask
15 him to stand.

16 (Applause.)

17 EXECUTIVE OFFICER FOSSUM: Before I end my
18 report, I would also like to acknowledge several other
19 members of the staff. Specifically, let me introduce to
20 you the only 2 remaining Commission staff who've outlasted
21 me in years working for the Commission. And I'll ask
22 these people to come forward when I call their name.

23 John Lam. John joined the Commission in 1976 and
24 is the most knowledgeable member of the staff on what the
25 Commission owns, what the Commission and its predecessor

1 agencies have done since 1850, and where to find those
2 records.

3 He was also instrumental in helping develop the
4 GIS information you'll be presented with later.

5 John is the first place to go when you want
6 information about State Lands. And I understand that even
7 he may be talking to Caltrans next year -- or CalPERS, not
8 CalTrans.

9 (Laughter.)

10 EXECUTIVE OFFICER FOSSUM: CalPERS. And I'm not
11 going to say what I did at the last meeting.

12 (Laughter.)

13 EXECUTIVE OFFICER FOSSUM: The next longest
14 serving staffer is Jeanne Gunther. Jeanne arrived before
15 me, several months -- several months before me in 1977.
16 Jean is our graphic artist, and I mean artist. She is, in
17 many ways, the unseen person giving the Commission a face.
18 Everyone has seen her work from brochures, posters,
19 presentations, and numerous other pictures worth thousands
20 of words. She has and will continue to be someone who
21 will leave a legacy of accomplishments when she finally
22 decides to collect from PERS.

23 As far as I'm aware, there are only 3 other staff
24 remembers that can claim that they have worked at the
25 Commission since the 1970s. Remember when Jerry Brown was

1 Governor?

2 (Laughter.)

3 EXECUTIVE OFFICER FOSSUM: Dave Brown - not
4 related - the Chief of the Administrative Service
5 Division, came to us from the Highway Patrol in 1979. In
6 many ways, he's the wizard behind the curtain in our
7 office.

8 And Lori Pett, she also joined the Commission in
9 1979 and has been responsible for ensuring that the
10 Commission's actions are properly documented and put into
11 the Commission's database.

12 Last, but not least, Jim Frey. And more will be
13 said about him in a few minutes. Jim has been with the
14 Commission for 34 years. And he along with the others I
15 have mentioned are the individuals that I go to, and in
16 fact all the staff goes to, with questions. They
17 represent the best of the best by their dedication, hard
18 work, and conscientious desire to serve the Commission,
19 the Commission staff and the public.

20 And I know I've said this before, but the
21 Commission staff is the best, bar none. And I would like,
22 at this point, for us to give a round of applause to these
23 people.

24 (Applause.)

25 (Standing applause.)

1 EXECUTIVE OFFICER FOSSUM: And Jim, if you could
2 stay up here.

3 The State Lands Commission Division Chiefs put in
4 many uncompensated hours making sure that the operations
5 of the Commission are constantly improving and running
6 smoothly. Their integrity has truly inspired me. And,
7 you know, I can't stop without saying that that's what's
8 allowed me to be able to survive these last 2 years is
9 having such a wonderful senior staff and the people
10 working for them.

11 And lastly, Kim, I want to Thank you. Kim, you
12 are you here?

13 (Laughter.)

14 EXECUTIVE OFFICER FOSSUM: And you can tell by
15 the way I react here. I would not have been able to
16 function without you telling me where to go and what to
17 do.

18 (Laughter.)

19 EXECUTIVE OFFICER FOSSUM: Kim has run the
20 Executive Officer for both Paul Thayer and me for the last
21 13 years, and I couldn't have functioned without her.

22 Thank you very much, Kimberly.

23 (Applause.)

24 EXECUTIVE OFFICER FOSSUM: And, at this time, I
25 believe, Mr. Frey, we have something for you. This is a

1 resolution from the State Lands Commission, and I will
2 read it to you, Jim.

3 "Whereas, James Frey for over 34 years has
4 dedicated his career to public service; and,

5 "Whereas, Jim earned a Bachelor's of Arts in
6 Philosophy from Saint Patrick's College, a Master
7 in Social Work from California State University,
8 Sacramento, and a Juris Doctorate from the
9 McGeorge School of Law; and,

10 "Whereas, Jim began his career at the State
11 Lands Commission as a graduate student assistant
12 with the Legal Division in 1978; and,

13 "Whereas, Jim continued to provide expert
14 legal advice to the Commission and its staff as a
15 staff counsel beginning in '82, and Senior Staff
16 Counsel in 1998; and,

17 "Whereas, Jim has been instrumental in
18 providing legal advice to the Commission and
19 staff on innumerable projects and issues
20 involving sovereign and school land management,
21 water boundaries, federal legislative
22 jurisdiction..." - and I have to interpose here.
23 He is the expert, I believe, in California if not
24 the United States on these issues - "...and oil
25 and gas and mineral leasing and contracts. Jim

1 has assisted the Commission and led its staff
2 through some of the biggest challenges involving
3 natural resource and public policy issues facing
4 the State, including the protection and
5 enhancement of public access rights to and along
6 Lake Tahoe, oil and gas, geothermal, and other
7 hard mineral resource production, negotiating
8 title settlements and boundary line agreements
9 throughout the State to facilitate water
10 development; and,

11 "Whereas, Jim's accomplishments include the
12 completion of numerous title settlements and
13 boundary line agreements throughout California,
14 including Eureka, Napa, Marin and Sonoma Counties
15 and the Colorado River; successfully negotiating
16 the renewal of 2 PG&E master leases, each of
17 which contained dozens of leases helping to clean
18 up the Delta, including the San Joaquin,
19 Sacramento and American Rivers through his
20 elegant, stern, and resolution-oriented
21 negotiation style in lease compliance and
22 trespass actions, and providing legal assistance
23 to facilitate the restoration of the Salt River;"
24 - also which you'll be hearing about later today.

25 "Whereas, Jim is widely recognized and sought

1 out as an expert in federal legislative
2 jurisdiction throughout the United States and
3 highly respected by all those who have had the
4 honor of working with him; and,

5 "Whereas, Jim, over the years, became an
6 irreplaceable source of knowledge for the State
7 on legal and procedural principles from the
8 fundamental to the obscure and arcane; and,

9 "Whereas, Jim is the consummate gentleman,
10 heavily relied on and genuinely liked by all
11 Commission staff, and is routinely referred to as
12 "Money" or the "Go-to Guy" by staff, when it
13 comes to the Commission's leasing and land
14 management activities; and,

15 "Whereas, we wish Jim's retirement to be
16 filled with hiking along the coast and mountains
17 of California, researching his family's
18 genealogy, spending time with his wife Pat and
19 donating his time to helping others; and,

20 "Whereas, the State Lands Commission and
21 Commission staff will miss Jim's dedication,
22 sound judgment, and integrity and service to the
23 State Lands Commission and people of California.

24 "Now, therefore, be it resolved by the
25 California State Lands Commission that James Frey

1 be commended for his distinguished record of
2 professional service to the State of California,
3 and for the legacy of accomplishments during his
4 34 years serving the California State Lands
5 Commission. We extend best wishes for a
6 rewarding and gratifying retirement. And the
7 Commission wishes Jim, Pat and their children
8 Matthew and Megan the very best in the years to
9 come."

10 Thank you, Jim.

11 (Applause.)

12 CHIEF COUNSEL LUCCHESI: Now, we couldn't let
13 Curtis go before giving his resolution reading that out
14 loud. And I have to say that, Curtis, having 35 years of
15 the Commission, we had to go back and tap into the brains
16 of many people to put this together, which I think is
17 actually a work of art.

18 So let me begin, Curtis.

19 "Whereas, Curtis Fossum from 1970 to 1971
20 served his country in the United States Army as a
21 military police officer; and,

22 "Whereas, Curtis began his career at the
23 California State Lands Commission as a graduate
24 student assistant in the Legal Division in 1977,
25 after starting out as a seasonal clerk with the

1 Department of Education a month before; and,

2 "Whereas, Curtis has provided expert legal
3 advice to the Commission and its staff as staff
4 counsel beginning in 1978, senior staff counsel
5 in 1984, and in September 2006 as Assistant Chief
6 Counsel; and,

7 "Whereas, Curtis in September of 2008 became
8 the Chief Counsel for the Commission, where he
9 was instrumental in providing legal advice to the
10 Commission and staff on numerous projects and
11 issues involving offshore oil and gas resource
12 development, land and resource management,
13 coastal water boundaries, public access to
14 California's waterways, development within ports
15 and waterfront communities and wetlands
16 protection and restoration, as well as cleaning
17 up his predecessor's office.

18 (Laughter.)

19 CHIEF COUNSEL LUCCHESI: "And, whereas,
20 Curtis gave no end of grief to every attorney in
21 the Attorney General's Land Law Section through
22 his insightful questioning and probing of their
23 opinions and advice; and,

24 "Whereas, Curtis in October 2010, after
25 cutting off his ponytail..." --

1 (Laughter.)

2 CHIEF COUNSEL LUCCHESI: -- "...was appointed
3 as the California State Lands Commission's
4 Executive Officer, and for the past 2 years has
5 assisted the Commission and led its staff through
6 some of the biggest challenges involving land and
7 resource management, and oil spill and marine
8 invasive species prevention facing the State,
9 including preparing the State for climate change
10 and sea level rise, facilitating alternative
11 energy projects, protecting the State's maritime
12 activities, facilitating the reuse and
13 redevelopment of former military bases within the
14 San Francisco Bay Area, and protecting our
15 coastline from new offshore oil leasing; and,

16 "Whereas, Curtis's accomplishments include
17 assisting the major ports in California and their
18 redevelopment endeavors, successfully leading
19 staff and the Commission through 3 audits over
20 the past 2 years, protecting the public's access
21 rights to the State's waterways, including and
22 especially at Lake Tahoe, facilitating the
23 enactment of the Commission's Trespass Bill and
24 Fair Rent for Recreational Piers Bill, and the
25 acquisition of an encyclopedic knowledge of the

1 Commission's most obscure land title records;
2 and,

3 "Whereas, Curtis has dedicated his entire
4 career to the principles underlying the Public
5 Trust Doctrine and through hard work,
6 determination, and pure stubbornness has
7 contributed to the successful preservation and
8 restoration of almost every major wetland in the
9 State, including Bolsa Chica, Batiquitos Lagoon,
10 and the Western Salt Ponds in the San Diego
11 National Refuge; and fought at every opportunity
12 for public access to California's unmatched coast
13 and inland lakes and waterways; and,

14 "Whereas, Curtis, an expert in California
15 history and the Public Trust Doctrine, almost
16 never conducted a meeting without going to the
17 white board mentioning Statehood, referring to
18 court cases dating back to the 1850s, dusty and
19 academic perhaps, but providing the legal
20 precedent which defines the Public Trust
21 Doctrine, and which guides the Commission and
22 never ended a meeting without one or more tired
23 puns."

24 I think you all have witnessed that.

25 (Laughter.)

1 CHIEF COUNSEL LUCCHESI: "Whereas, Curtis has
2 been affectionately known by the staff as the
3 Public Trust Gnome, as a result of his dedication
4 to preserving and protecting the rights of the
5 public and California's heritage;

6 "Whereas, Curtis has shown the utmost respect
7 and appreciation to his staff, created a
8 wonderful work environment where employees were
9 encouraged to express themselves through their
10 work and bolo ties, and often promoted the fun
11 and free parking as a unique perk at the
12 Commission; and,

13 "Whereas, Curtis is one of the kindest and
14 most unique gentleman anyone could meet with his
15 rapier wit and passion for puns and telling
16 really corny jokes, general with a Swedish or
17 Norwegian them, so that even the most serious
18 person couldn't help cracking a smile; and,

19 "Whereas, we wish Curtis's retirement to be
20 filled with traveling the world with his wife
21 Susan, riding his 2 horses Reno and Blaze,
22 competing in trivia matches at the local pubs,
23 researching his family's genealogy, working in
24 his garden, and donating his time to his church,
25 the American River Parkway, and his other

1 favorite charities; and,

2 "Whereas, the California State Lands
3 Commission and Commission staff will miss
4 Curtis's intelligence, dedication, integrity,
5 personality, and sense of fairness.

6 "Now, therefore, be it resolved by the
7 California State Lands Commission that Curtis be
8 commended for his distinguished record of
9 professional service to the State of California,
10 and for the legacy of accomplishments he has led
11 and inspired during his 35 years serving the
12 California State Lands Commission. We extend
13 sincere best wishes for a rewarding and
14 gratifying retirement, and the Commission wishes
15 Curtis, Susan, and their sons, Matt and Joe, the
16 very best in the years to come."

17 Congratulations.

18 (Applause.)

19 (Standing applause.)

20 EXECUTIVE OFFICER FOSSUM: Thank you so much.

21 I do have to make some clarifying statements, I
22 think.

23 (Laughter.)

24 ACTING COMMISSIONER ROCKWELL: You're not going
25 to say your puns are good, are you?

1 (Laughter.)

2 EXECUTIVE OFFICER FOSSUM: There are pictures.

3 While most of those things were clearly true, I
4 have to say that I don't think I ever really cleaned up
5 Jack's office. I think it's still in boxes somewhere in
6 our office, so I can't take credit for that one.

7 You know, it has been a really rewarding career
8 for me. It's been a great honor for me to serve the
9 Commission and the people of California for these least 35
10 years. But that honor is really shared equally with the
11 honor of having worked alongside so many talented and
12 dedicated people.

13 The dedication to serve the public exemplified by
14 the Commissioners, their staff, and the Commission staff
15 is just an experience that it's hard to describe in a
16 short few words. In fact, I've been laying awake in the
17 morning or at night thinking about all the things I wanted
18 to say, and I just -- I can't say them all, but I've
19 written down just a couple, because I knew I would forget
20 them anyway.

21 It's really been the most rewarding career that
22 anybody could hope for. Right out of law school, coming
23 to the Commission, being able to be a young attorney
24 handling -- involving some really big cases. And Joe was
25 an attorney at the Commission at the same time, went on to

1 the Attorney General's office. John Briscoe is here
2 today. He's one of the most preeminent experts in Public
3 Trust law in the United States. He was a Deputy Attorney
4 General at the time.

5 And it's just been an honor to work with so many
6 people. There's so many here today that have kept me a
7 float over the years. Way too many to call out
8 specifically. But you all know who you are. We've worked
9 well together.

10 But really no one has helped me more than my
11 beautiful wife Susan. She's put up with me and my
12 attempts at humor for over 39 years, much more than the
13 Commission has. I'd like you to stand up please, Sue.

14 (Applause.)

15 EXECUTIVE OFFICER FOSSUM: It's going to be a
16 tougher act to follow. She doesn't go for the puns as
17 much as the staff does.

18 (Laughter.)

19 EXECUTIVE OFFICER FOSSUM: As I step away from
20 this role, I am buoyed up -- yes, I said buoyed up --

21 (Laughter.)

22 EXECUTIVE OFFICER FOSSUM: -- by the knowledge
23 that the current leadership and staff are as dedicated and
24 capable in carrying on and protecting the public's
25 interest in its Public Trust Lands as any that have gone

1 before.

2 I really could -- I could go on for hours, as you
3 know --

4 (Laughter.)

5 EXECUTIVE OFFICER FOSSUM: -- but my emotions
6 really won't let me. So just let me say thank you for the
7 opportunity to serve -- the opportunity to serve you all.

8 Thank you.

9 (Applause.)

10 ACTING CHAIRPERSON GORDON: Ms. Lucchesi, we will
11 be looking forward to the obscure legal references. It's
12 going to be big shoes to follow.

13 (Laughter.)

14 ACTING CHAIRPERSON GORDON: All right. Next
15 order of business will be the adoption of the consent
16 calendar. Mr. Fossum, can you please identify items that
17 have been removed from consent, please.

18 EXECUTIVE OFFICER FOSSUM: Yes, Mr. Chair. Items
19 C43, C57, C73, C74, C77, C80, and C81 are removed from the
20 agenda and may be considered at a later time. We also
21 have a request by a member of the public -- or 2 members
22 of the public to discuss Item C22, so we'll move that to
23 the regular agenda.

24 ACTING CHAIRPERSON GORDON: Okay. Anyone in the
25 audience who wishes to speak on an item still on the

1 consent calendar?

2 If not, the remaining group of consent items will
3 be taken up as a group for a single vote. We'll now
4 proceed with the vote.

5 All those in favor?

6 Oh, can I have a motion first, please.

7 ACTING COMMISSIONER GARLAND: So moved.

8 ACTING COMMISSIONER ROCKWELL: Second.

9 ACTING CHAIRPERSON GORDON: All those in favor?

10 (Ayes.)

11 ACTING CHAIRPERSON GORDON: Motion passes. The
12 consent calendar is unanimously adopted.

13 Item 83 is an informational report on the
14 Commission's Geographical Information Systems' efforts.

15 May we have the staff presentation, please.

16 EXECUTIVE OFFICER FOSSUM: Yes, Mr. Chair. Mike
17 Bell who is a former Senior Boundary Officer with the
18 Commission, he is a retired annuitant, and for the last 6
19 months or more, he's been working for us to help pull
20 together the GIS system. And he will give you a short
21 presentation on this.

22 (Thereupon an overhead presentation was
23 Presented as follows.)

24 MR. BELL: Good afternoon. My name is Mike Bell,
25 and I'm a retired annuitant with the Land Management

1 Division. As Mr. Fossum just said, prior to my retirement
2 in April of this year, I served the Commission as a Senior
3 Boundary Determination Officer. I'm a land surveyor, and
4 over the past 14 years or so I've pursued formal education
5 as well as practical application of Geographic Information
6 Systems, or GIS.

7 We have a technical issue to address here for a
8 moment.

9 (Thereupon the meeting paused to fix
10 technical issues.)

11 MR. BELL: I'm glad he was there. I couldn't do
12 that.

13 I've been asked to present an update of GIS at
14 State Lands. And I'll -- I'd like to do that by covering
15 these main topics.

16 First, quickly, what is GIS and how does it work?

17 Then, past State Lands Commission GIS efforts.

18 Our 2012 GIS efforts from this year, I'll
19 summarize those.

20 And then possible next steps in GIS.

21 --o0o--

22 MR. BELL: What is GIS?

23 A standard definition of GIS is that it's a
24 system of hardware, software, data, people and methods
25 capable of performing analysis. And the key to GIS's real

1 power is in that ability to perform analysis. You can ask
2 GIS questions and it will give you answers to very complex
3 questions very quickly.

4 At State Lands we have GIS software, 2 versions.
5 We have a GIS package capable of a basic analysis, and
6 then we also have a viewer GIS application on a few
7 staff's desks that we're using to explore ways that GIS
8 might be provided to staff. It doesn't have analysis
9 capabilities, but it may be useful.

10 Hardware. We have computers, scanners, plotters
11 to support the GIS software.

12 As far as people, we have GIS technical staff
13 like myself who can prepare GIS layers, perform analysis,
14 make maps. We do not, at this time, have a professional
15 level, if you will, GIS specialist that can coordinate and
16 direct an agency enterprise GIS.

17 As far as methods, we have methods in place for
18 creation of layers and such, but again not methods in
19 place for an enterprise GIS.

20 And data. The data that we created this year
21 we'll take a look at in a moment. But, you know, I'm only
22 joking halfway when I say that there's 2 kinds of data.
23 There's the data that somebody else creates, and you
24 simply download and pop it into your GIS, and then there's
25 the data that you need to create which is -- which can be,

1 especially for an agency like GIS -- or State Lands with a
2 lot of paper-based documents that need to be converted
3 into GIS. It can be a resource intensive effort. But
4 data is a very important part of GIS as well.

5 Now, how GIS works. Basically, GIS works by
6 combining the power of smart tables with smart maps in a
7 layered environment. And smart tables and smart maps,
8 those are my terms. Those aren't technical terms. But as
9 far as smart tables, we recognize spreadsheets, databases
10 as having the ability to store information about features
11 or items - in our case, it's normally parcels of land -
12 and storing information about those parcels, like, in this
13 case, a parcel ID number, a section or tract that it's in,
14 township, range, meridian, county.

15 And they're smart, because you can ask it a
16 question like show me all the parcels that are in
17 Mendocino County, and it will very quickly give you that
18 information.

19 Smart maps. GIS employs maps that are not only
20 capable of knowing where features are located on the
21 ground, for example, by latitudes and longitudes, but in
22 essence GIS map -- or GIS mapping knows where these
23 features are going. For example, the line that we see
24 here -- if my mouse is going to work, there you go. In a
25 lot of digital mapping, this line will be represented by

1 endpoints with latitudes and longitudes, for example, and
2 then the angle points will also be represented by lats and
3 longs. So any digital mapping knows where this line is on
4 the ground, but GIS assigns a beginning and an ending
5 point to that line, and the intervening vertices are
6 listed in order in that GIS. So the GIS knows not only
7 where this line is, but where it's going.

8 So GIS knows the direction of travel of the line.
9 It knows what's on the left of it and what's on the right
10 of it.

11 If we have a network of lines in a map
12 representing say street lines, then we can ask the GIS --
13 I'm at Point a, and I need to get to Point B, analyze this
14 data and tell me the shortest route. And, of course, we
15 recognize that technology as forming the basis for our
16 navigation applications in our vehicles and on our
17 iPhones.

18 There we go. Parcels are simply -- parcel
19 boundaries are simply lines that connect on themselves.
20 So a GIS knows what's inside the parcel, what's outside,
21 what touches the line, overlaps and so forth. So every
22 layers in a GIS uses this combination of tables and maps
23 that can play off one another to perform queries or answer
24 questions. And each of those layers can be overlaid on
25 one another, if everything is set up properly, to perform

1 an analysis between them.

2 Here we see, for example, a road layer that's
3 going to be represented by lines, and above it we see a
4 parcel layer that may be counties. You can ask the GIS
5 very quickly, you know, what portion of our road system is
6 in this county, how many acres of right of way does that
7 consist of, how many acres of pavement and all sorts of
8 questions that make it very valuable for agencies like
9 State Lands and many others.

10 GIS is a relatively new technology. It was first
11 developed in the 1960s. During that time, of course,
12 computers were large and expensive, so there was not much
13 practical use for GIS. During the eighties and nineties
14 computer power increased, cost dropped, and so we saw GIS
15 being introduced into the commercial market. The early
16 versions were still difficult to use, DOS based and so
17 forth. They weren't Windows based yet. And there were a
18 lot of GIS related issues that needed to be debated and
19 settled like the appropriate use for GIS, data standards,
20 accuracy standards and so forth.

21 But in the last few years, because of computer
22 power and because of the dramatic increase in published
23 GIS that's available for analysis, and the fact that
24 desktop GIS is available for most computers, GIS has
25 really come of age.

1 Past State Lands GIS efforts. GIS -- or State
2 Lands - I'm sorry - had a GIS dedicated staff of just a
3 couple of staff who pursued an enterprise GIS in the
4 mid-nineties to early 2000s. They did some studies for
5 strategic plans and such and they also generated some
6 prototype GIS layers, a school lands layer, reserved
7 mineral interest layer. There were some layers that were
8 generated for staff use like the ZNE and SD, and also more
9 recently our Environmental Division contracted with an
10 outside consultant to create a point feature surface lease
11 layer that we'll take a look at in a minute.

12 Staff also conducted a map pilot project, where
13 staff took old historic maps, investigated methods and the
14 realities of scanning those maps, putting them into a
15 searchable database. And also our legal staff
16 investigated issues surrounding certification of those
17 digital copies for legal use.

18 Early this year and late last year, there was
19 identified an immediate need for accurate State Lands GIS,
20 particularly in the desert regions, where we have most of
21 our school lands.

22 Military expansion by the U.S. Marines. The
23 Marines asked about data that they could get from us in
24 GIS form. At that same time, Desert Renewable Energy
25 Conservation Plan was going on. State Lands is a part of

1 that. And then AB 982, the passage of that required also
2 knowledge of the location of our State lands in the desert
3 region, school lands in particular.

4 Staff took a look around to see what GIS data
5 might be available. I mentioned earlier that there was a
6 prototype layer of school lands that was prepared several
7 years ago. We looked at that and found that that would
8 not really be sufficient for modern needs. And we also
9 looked at other sources that are published and available.
10 Most of these are general land ownership layers, but State
11 lands are represented there.

12 So we pulled out the layers that we could
13 identify that showed school lands, and up here on the
14 screen you'll see an analysis in GIS of what they look
15 like. We have 4 data sets, each with different
16 symbolization. We have the shaded gray, which is our
17 school lands layer, our prototype, and then different
18 hatching representing the other layers. And as you can
19 see, there's a wide disparity in opinions as to what the
20 State owns in the desert. This area is northeast of the
21 Salton Sea and near the northwest side of Chocolate
22 Mountains Gunnery Range.

23 So there was no reliable single GIS data set that
24 we could use. So staff created that data set. And as I
25 mentioned earlier, staff has software, hardware, and

1 people who are able to create data sets. But our trouble,
2 our obstacle for doing too much data -- or GIS work in the
3 recent past has been staffing availability. That was
4 partly alleviated early this year when I retired. And
5 management hired me back as a retired annuitant to focus
6 on GIS.

7 So with my time available and with some other
8 staff in the agency that were allowed to assist me, we
9 undertook the project. And the way we did that was to
10 convert our paper documents to GIS compatible digital
11 documents. Our Title staff researched status sheets,
12 which are the main index for our school lands. Every time
13 we -- for each school land parcel that we acquired from
14 the federal government a status sheet was prepared. And
15 anything that happened to that particular parcel was
16 logged here on this sheet. Sometimes they're very simple,
17 sometimes more complicated.

18 On this particular parcel, we see that part of
19 our school land was patented out. In those cases, the
20 Title Unit would provide supporting documentation, in this
21 case the patent, so that Boundary would have the
22 information it needed to create the parcel in GIS. These
23 paper documents were scanned by the Title Unit and given
24 to Boundary and Boundary used those. And they're now in a
25 repository that the GIS can find them to show them to

1 staff on demand.

2 And this process added an additional benefit in
3 that it provided a digital back-up to these paper
4 documents.

5 So this is how the school lands layer that we
6 completed this year looks in GIS. You'll see on the
7 left-hand side of the screen is a table of contents
8 showing the layers that are in this GIS. The top layer is
9 our school lands shown in red. And I've also shown here a
10 boundary of the CDCA. The CDCA boundary that serves as
11 the AB 982 boundary as well, and then a county layer and a
12 base map for perspective. On the right-hand side, we see
13 a portion of the table for the new school lands layer.

14 Now, I mentioned that the power of GIS is not in
15 just displaying information, but in answering questions.
16 And there's 2 ways you can ask a question that we'll take
17 a look at very quickly, because it doesn't take long to
18 ask these questions. You can ask the map basically or you
19 can ask the tables.

20 In this case, I wanted to know what school lands
21 were located within the CDCA boundary. So I click on a
22 Button and this pop-up box appears showing me information
23 that I can choose from to ask that question. And just
24 less than a minute or so, I ask the question and the GIS
25 returns the school lands that are located within that

1 boundary. There's 800 and some or so. It highlights
2 those on the map and also highlights them in the table.

3 Now, we can export these parcels from the map to
4 make a new map or an exhibit for staff. We can export the
5 highlighted records from the table for a separate
6 spreadsheet to provide the staff. We can do a number of
7 things with this data.

8 The second way we can query the data is using the
9 table. And I assumed a situation in this case where
10 someone calls State Lands staff and says it may be another
11 agency staff person or a business or a private individual,
12 and they're interested in some land that they -- that is
13 northeast of Barstow. And the local assessor's office
14 indicates that it is owned by State Lands and they have a
15 description. It's Township 31 -- I'm sorry, Section 31,
16 Township 10 north, Range 1 East. And so they ask if we
17 own that.

18 Again, we can pull down a simple dialogue box and
19 it presents selections that we select from to ask that
20 question. Immediately, the GIS finds 2 parcels that meet
21 that criteria, highlights them in the table. It also
22 highlights them on the map, but we can't see it at this
23 scale. But we can click on another button and tell the
24 GIS to zoom down to those 2 parcels.

25 And here they are with imagery in the background

1 to provide some perspective. We have 2 parcels on the
2 either side of the highway, here and here. If we want to
3 see the information in the table just pertains to those 2
4 parcels, we can simply click on them with our mouse and
5 that's specific information pops up. And it's difficult
6 to see here, but we have a parcel ID, the section,
7 township, and range information to confirm we have the
8 right parcels that the caller was asking about. We have a
9 97 acre parcel on the left and a 16.6 acre parcel on the
10 right.

11 And, you know, that's all well and good that
12 we've gotten this information quickly, but we typically
13 want to share this information with other staff or
14 management or the caller. And again, with a couple of
15 clicks with our mouse, we can export this map onto an
16 exhibit in PDF form or JPEG and send it to those folks.

17 Now, in addition to creating this GIS layer,
18 staff converted this layer to a Google Earth compatible
19 layer that will provide additional information. So if we
20 open up Google Earth, cross our fingers, we see that I
21 have that layer in the Google Earth mapping environment.
22 We can expand that and we see each of our individual
23 parcels represented here.

24 I'm going to type in the search box the -- one of
25 the parcels that the caller asked about. It's highlighted

1 here. We double click. Google Earth zooms to our parcel,
2 and we can see that the same information from our table
3 that we saw in GIS is represented here. And here we have
4 the westerly parcel again, which is 97 acres, easterly
5 parcel, 16.6 acres. So this is very helpful for staff in
6 identifying parcels and getting additional information.

7 If, as in this case, the parcels are located near
8 a road, you can use the street view in Google Earth to
9 zoom down and take a look at the parcel.

10 In this case, the westerly parcel we see some
11 transmission lines. We want to take a look at that to see
12 if they're in our -- on our parcel. The east side we
13 don't see much, but we get a lot of information just from
14 this capability. That's all based on GIS once you get
15 that layer created.

16 Now, also -- and as a matter of fact, let's zoom
17 down here and take a look, we see that indeed there is a
18 tower line going across our westerly parcel. You can
19 barely see the towers here. Another tower there. As a
20 matter of fact, there's 2 sets of towers. If we zoom out
21 a little bit, those towers do not cross the easterly
22 parcel. So we've acquired a lot of information.

23 Now, I mentioned earlier that our environmental
24 staff contracted with an outside consultant to create a
25 point lease layer. We see 2 points from that layer. If

1 we click on them, we see information about these leases.
2 It's an electrical transmission line. A lot of good
3 information there. And we can click the link that will
4 take us to the calendar item, which is located on our
5 website. Anything that's located at a web address can be
6 linked to this Google Earth program.

7 And we also see another point. We click on it,
8 and we find it's a -- it looks like a fiber optics lease.
9 And there is the calendar item for that.

10 And, of course, whatever information that you
11 have that you want staff to see, you can put it in a place
12 where the GIS can find it and you can view that
13 information. So very powerful technology.

14 Now, in addition to the GIS layer that we
15 created, and in addition to presenting that to staff in
16 GIS that has analysis capability, like this program and
17 Google Earth, we have provided a few staff with prototype
18 viewers. These are free GIS software viewers. They don't
19 have a lot of capability for analysis, but they can show
20 you a lot of information. And the idea was to customize
21 these viewers for staff's needs, so that GIS can be put in
22 the hands of our staff as tools to help them do their job.

23 This is the Title staff custom interface that
24 lists layers on the left that Title staff need for their
25 work. We have one for School Land staff that is also used

1 or can be used by Environmental staff that work with our
2 School Lands staff on the DRECP and AB 982 projects. And
3 so GIS information relative to those projects is in this
4 map for their use.

5 So a summary of our work this year. In June, we
6 finished the desert region portion of our school lands
7 layer, because that was needed immediately for the DRECP
8 and AB 982 projects and the Marine Corps.

9 Just last week we finished the statewide school
10 lands layer. We've deployed GIS to management and staff
11 using not only our standard GIS software but also Google
12 Earth and our explorer. And we've also distributed our
13 school lands information. You see a listing of
14 recipients. And if you take a look at the top of the left
15 column, you'll see that just yesterday we placed this
16 information on the State Lands home page.

17 So anyone can go to the information tab, and
18 you'll find a GIS subfolder, click on that folder, and
19 there's a copy of the GIS version of the school lands
20 layer statewide. There's also a copy of the Google Earth
21 layer. Those are both zipped files. You download them to
22 your computer, unzip them, and you can use those layers on
23 your machine.

24 At the bottom right, you'll see applied -- that
25 we've applied for registration on Cal-Atlas. Cal-Atlas is

1 statewide clearing house for GIS data, where many folks
2 know they can acquire data for their use. And we've
3 registered to place our data on Cal-Atlas.

4 Possible next steps. There are a lot of other
5 layers that we could create with staff and the equipment
6 and the software we have now to increase our ability to
7 work efficiently and to provide others with data that they
8 could use.

9 This is a listing. You know, it's a management
10 decision as to what layers should be created first. And
11 then also, there is a question of enterprise GIS
12 development that I believe we need to address.

13 Just in closing quickly, I'd like to say that,
14 you know, many folks at State Lands contributed to this
15 project. And I mentioned throughout the presentation
16 Title staff and Boundary staff. And I'd like to recognize
17 from our Title Unit John Lam who we've seen already,
18 Leslie Danley and Shawn Nelson for their work on this
19 project, and from the Boundary Unit Jim Koepke and Matt
20 Fossum. And all these folks worked very hard. They
21 worked together and they did a fantastic job.

22 There were also contributions from our ISS staff,
23 Environmental staff, and Legal staff on the project. And,
24 of course, none of these staff members could have
25 contributed their time and talents without the support of

1 their supervisors and managers.

2 And our accomplishments of this year truly are
3 then the result of cross-divisional cooperation, which
4 only happens in GIS or anything else with the active
5 support and direction of the Executive Officer.

6 I would like to thank Mr. Fossum, who for now at
7 least is our Executive Officer, for his leadership and his
8 confidence in staff's ability to complete this project.

9 Thank you.

10 EXECUTIVE OFFICER FOSSUM: Thank you very much,
11 Mike. But let me say that a lot of the impetus from this
12 came from the people in front of us today. The
13 Commissioners are very interested in this program. And
14 although the staff has been working on this basically for
15 decades, Mike's expertise that he brought to this project
16 and the detail.

17 One of the things he didn't show you on here was
18 the difference in the old databases and the new one. And
19 because of the precision and the Google Earth base map,
20 people really can go and see precisely whether that tower
21 is on our property or on not. It's incredible the amount
22 of detail that this information now provides.

23 And I think it's important that Mike has pointed
24 out that we've distributed this layer, specifically to a
25 number of State and federal agencies, as well as

1 corporations that are doing business in California, and
2 engineering firms, and that it is on our website right
3 now.

4 And I don't know if any of you with your Apples
5 in front of you are looking at it, but you certainly can.
6 And it was exciting for me to see it for the first time on
7 our website yesterday. So I think it's a great
8 accomplishment, but having the support of the Commission
9 behind it has certainly meant a lot. And we do hope to
10 improve it a lot.

11 There's a lot of agencies out there putting all
12 kinds of information into layers. The precision that we
13 have in this particular layer we think is fantastic, but
14 there's more to be done as Mike said. So thank you very
15 much, Mike, for your efforts and we'll continue to try and
16 improve that as time goes by.

17 ACTING CHAIRPERSON GORDON: Any public comments
18 on Item number 83, GIS?

19 All right. Move on to Item number 84. This item
20 is to consider approval of and request to submit proposed
21 marine oil terminal engineering and maintenance standards
22 revisions. Easy to say.

23 May we have the staff presentation, please.

24 (Thereupon an overhead presentation was
25 Presented as follows.)

1 MARINE FACILITIES DIVISION CHIEF HERMANSON: Good
2 afternoon, Mr. Chair, Commissioners. I'm Don Hermanson,
3 the Chief of the Marine Facilities Division. I have a
4 short -- or a brief foundational statement to hopefully
5 help you in forming your decision making today.

6 The item now before you is the second revision of
7 the Marine Oil Terminal Engineering and Maintenance
8 Standard, or MOTEMS. MOTEMS is designed to ensure that
9 California's marine oil terminals are fit for purpose.
10 You may know that most of the State's terminals were
11 designed and built when oil tankers calling at these
12 terminals were much smaller and the seismic standards were
13 less stringent.

14 Revision 2 represents Commission staff's desire
15 to modify MOTEMS based on input from the regulated
16 community, involved engineering firms, and staff
17 experience with MOTEMS work over the past 4 years.

18 The proposed modification includes revision of
19 tables within MOTEMS, updated references, clarified
20 language, and additional sections to improve guidance to
21 marine oil terminal operators and their engineers.

22 This revision complies with the Administrative
23 Procedures Act for rule-making. It was noticed to the
24 public and was subjected to 2 public comment periods, the
25 second of which closed on November 20th of this year.

1 Commission staff received a total of 301 comments
2 regarding this revision, 284 during the first 45-day
3 comment period, and then 17 during the second 15-day
4 comment period, most of which were repetitive of the
5 initial 284 comments.

6 All of these comments were responded to either in
7 the Final Statement of Reasons or by modifying the
8 expressed terms, the text of the regulations, if you will,
9 contained within this revision.

10 Adoption of this agenda item allows the
11 Commission to then file this revision with the Building
12 Standards Commission, a necessary step as MOTEMS is a
13 building code and cannot be altered at the sole discretion
14 of the State Lands Commission.

15 Staff recommend that you adopt this agenda item
16 today.

17 Thank you.

18 ACTING CHAIRPERSON GORDON: Comments from the
19 Commissioners?

20 No.

21 Any public comments on this item?

22 May I have a motion?

23 ACTING COMMISSIONER ROCKWELL: So moved.

24 ACTING COMMISSIONER GARLAND: Second.

25 ACTING CHAIRPERSON GORDON: All those in favor?

1 (Ayes.)

2 ACTING CHAIRPERSON GORDON: So adopted, and the
3 motion is passed.

4 Item number 85 is to consider leasing practices
5 in and adjacent to the Colorado River located within the
6 Rio Buena Vista community.

7 Staff presentation, Mr. Bugsch, please.

8 LAND MANAGEMENT DIVISION CHIEF BUGSCH: Good
9 afternoon, Commissioners.

10 (Thereupon an overhead presentation was
11 Presented as follows.)

12 LAND MANAGEMENT DIVISION CHIEF BUGSCH: My name
13 is Brian Bugsch, and I'm the Chief of the Land Management
14 Division. Today, I'll be presenting Calendar Item 85
15 regarding leasing practices at the Rio Buena Vista
16 community on the Colorado River in Needles, California.

17 Next slide, please.

18 In 1991, the Commission and the Kahala Needles
19 Partners entered into a boundary line agreement known as
20 AD 134. AD 134 confirmed the State's fee ownership of the
21 sovereign lands within the Colorado River and granted an
22 approximately 10-foot wide public access easement to the
23 State of California acting through the Commission on and
24 along the top of the bank of the Colorado River at the Rio
25 Buena Vista community.

1 The U.S. Bureau of Reclamation initially placed
2 riprap in the Colorado River adjacent to the RBV
3 community. In an April 2002 letter, the Bureau stated
4 that their future ability to apply additional riprap to
5 the river bank line at this location was compromised due
6 to the development of the upland residences, and that the
7 reclamation would not be placing additional riprap.

8 They also said in this letter that the upland
9 homeowners would be responsible for maintaining the
10 protection of the bank line in the future, subject to the
11 approval and permitting of the riprap or bank construction
12 work by the U.S. Army Corps of Engineers.

13 Recently, staff has been made aware of a number
14 of unauthorized improvements placed on the State's
15 property as well as within the public access easement at
16 the Rio Buena Vista community. These unauthorized
17 improvements include, but are not limited to: Bank
18 protection, landscaping, fire pits, fences, and stairs.

19 In January 2012, the staff sent letters to the
20 homeowners association there, and the upland property
21 owners adjacent to the State's property. These letters
22 identified the location of the boundary line, the
23 Commission's jurisdiction, and the requirements to obtain
24 a lease from the Commission for any new or existing
25 facilities waterward of the boundary line.

1 So we basically informed them. And since that
2 time, staff has received applications for leases from
3 approximately half of the 37 upland riverfront lot owners.
4 These applications include requests for leases for the
5 construction of new boat docks, an existing boat dock,
6 riprap, stairs, and many other improvements and
7 facilities.

8 Staff has brought to the Commission 4
9 applications, 2 for boat docks, one existing boat dock,
10 and one proposed boat dock, and then 2 for the riprap bank
11 line and some appurtenant structures.

12 The Commission approved staff to enter into all 4
13 leases, but at this time none of the leases have been
14 executed.

15 Since our initial contact in January, staff has
16 received numerous phone calls and written correspondence
17 from the upland owners, HOA representatives, and other
18 interested parties expressing concerns about the proposed
19 boat docks, the impacts these boat docks would have on the
20 beach areas, and access to the beaches, and other
21 activities within and along the river.

22 At the August 14th meeting, as you may recall,
23 the Commission directed staff to suspend leasing for boat
24 docks in the Rio Buena Vista community while staff
25 conducted an investigation and reported back to the

1 Commission on the Public Trust needs in the area.

2 Staff has conducted that investigation, and the
3 calendar item before you, as well as this presentation,
4 serve as our report back to you.

5 On October 11th, staff conducted a site visit and
6 met on site for several hours with members of the Rio
7 Buena Vista community, as well as staff from the Bureau of
8 Reclamation and the Army Corps. Later that evening, staff
9 hosted a public meeting in nearby Laughlin, Nevada to
10 discuss the current conditions at the Rio Buena Vista
11 community.

12 At that meeting, more than 50 people attended - I
13 think it was probably closer to 100 - and provided
14 comments.

15 Areas of concern raised at the public meeting
16 included the homeowners association as a master lessee,
17 public access, unauthorized improvements and boat docks.
18 So I'll cover those topics now and report back to you.

19 The HOA as a master lessee. Staff had
20 discussions with the RBV residents and the HOA on the
21 necessity for a lease from the Commission. And there were
22 initial discussions early on about the possibility of the
23 HOA coming under lease for the entire riprap bankline.
24 And then in that case, the HOA would then act in the
25 capacity of a master lessee and also manage the public

1 access easement.

2 Great idea. Maybe not so great in reality, it
3 turns out. At the public meeting, there were numerous
4 comments opposing the HOA as a possible master lessee.
5 There was unanimity among the riverfront owners who
6 commented that they would prefer to be a direct lessee of
7 the State. No one spoke in support of the HOA as a master
8 lessee.

9 Public access. At the public meeting and on
10 site, no one expressed concern about access to and along
11 the public access easement. The riverfront residents did
12 not express any issue with having the public pass along
13 the easement. And the inland residents did not say they
14 were prevented from using it.

15 Staff has only received one email over the past
16 year stating that riverfront owners have restricted access
17 to the river by placing gates between the residences.
18 While on the site -- while on site at our site visit,
19 staff was able to walk the entire length of the public
20 access easement on foot within the community. A few homes
21 have fences or gates at one end of the development, but
22 all fences and gates were open at the time of the site
23 visit. And staff anticipates any leases will require that
24 gates remain unlocked and appropriately signed to notify
25 the public of its right to pass along the easement.

1 There are some large objects within the public
2 access easement, but they do not block access along the
3 easement.

4 Additionally, some owners indicated that the
5 objects were placed strategically to create a protective
6 barricade between the easement and the riprap, as it is
7 rather steep at sections.

8 The riprap bank line. There are a variety of
9 improvements on the riprap bank line and the wing dams
10 that are not associated with the protection of the bank or
11 for public access. Much of the existing riprap has been
12 so heavily modified from the upland residents, that it no
13 longer resembles what Reclamation initially installed.

14 Reclamation staff was on site with us and stated
15 that although they do not like the fixed improvements on
16 the bank line, that removal of the existing fixed
17 improvements may do more damage to the integrity of the
18 riprap bank line than leaving it in tact. And
19 consequently, the staff recommends maintaining the riprap
20 bank line in its current state.

21 Commission staff recommends treating the riprap
22 bank line consistent with the Commission's leasing
23 practices for inland waterways throughout the State. No
24 consideration is recommended to be charged for unimproved
25 bankline protection or for stairs that provide public

1 access to the water, as such improvements provide a public
2 benefit.

3 Those improvements not directly related to the
4 bankline protection or public access will be subject to
5 consideration.

6 The boat docks. In addition to the public
7 meeting, staff conducted an unofficial email survey of the
8 residents within the Rio Buena Vista community. Of the
9 120 developed lots in the community, staff has received a
10 total of 58 responses to our survey. The results mirrored
11 and were consistent with what was expressed at the public
12 meeting.

13 Eleven households supported docks anywhere, 29
14 households supported docks that do not impact the 2
15 beaches, and 19 households oppose docks anywhere.

16 I can recount those numbers later, if you need.

17 Public Trust needs and uses. So here's our
18 analysis. The Public Trust needs and uses in the Rio
19 Buena Vista community are unique due to the density and
20 nature of the RBV development along the Colorado River,
21 the physical configuration of the Colorado River at this
22 location and the existence of the public access easement.

23 There are 2 recognized sandy beaches within the
24 community that are used extensively throughout the year by
25 both riverfront and inland residents of the community, and

1 other members of the public. This is the smaller beach
2 one you can see here.

3 Ten out of the 40 lots within the community that
4 front these 2 sandy beach areas, there are 10 out of the
5 40 lots that front these, while many of the current
6 beachfront owners have indicated that they do not want to
7 seek a lease from the Commission for a boat dock. This is
8 just a snapshot of the current situation.

9 If the Commission were to authorize boat docks
10 for the beachfront owners, the public needs and the uses of
11 the recognized beach areas would be significantly impacted
12 as you can probably see.

13 Overall, the riprap bank line at RBV is steep and
14 the only access to the river is via the stairs installed
15 by the upland owners. The bank line exists to provide
16 stabilization of the bank. And boat docks that do not
17 encroach upon the recognized beaches would not
18 significantly impact the Public Trust needs and uses in
19 the area in our opinion.

20 Having said all of that, in conclusion the staff
21 recommends the Commission authorize staff to resume its
22 processing of applications for boat docks at the Rio Buena
23 Vista community in Needles. And second, we request that
24 the Commission authorize staff to analyze applications,
25 including those for boat docks in the Rio Buena Vista

1 community on a case-by-case basis, and make
2 recommendations to the Commission consistent with this
3 staff report, the Commission's practices on leasing on
4 inland waterways, and the Public Trust needs in the area.

5 Thank you for your time, and I'm available to
6 answer questions if you need me.

7 ACTING CHAIRPERSON GORDON: I have a couple
8 questions, Brian. First of all, just so I'll understand
9 the Army Corps, the Bureau Rec dispute, is this the
10 classic Bureau does water delivery, Army Corps does flood
11 control, and they're both pointing the fingers at each
12 either for responsibility, liability, et cetera?

13 LAND MANAGEMENT DIVISION CHIEF BUGSCH: No. I
14 think all 3 of us are kind of working cooperatively in
15 this, but I think it was an area that had kind of been
16 neglected by different parties at different times.

17 But they weren't going to -- they just want some
18 cooperation between the 2. That was kind of the comment
19 there. But I think the Army Corps is primarily involved
20 with the boat docks, and any authorization related to
21 those. And the reclamation is more the bank line there.
22 That's kind of their jurisdiction, and so at different
23 times, it overlaps.

24 ACTING CHAIRPERSON GORDON: All right. Well,
25 that does lead to the main question. Looking at this

1 development, it strikes me that it is well within a deep
2 floodplain. I mean, we're right on the banks of the
3 river. Granted, the Colorado has been extremely low for
4 the last 10 years or so. My concern with us being
5 involved here is that, based on the Paterno decision, the
6 State could have significant liability when these
7 properties flood. And I use the word "when" purposely as
8 opposed to "if".

9 Have we looked at the liability issues as we
10 negotiate these leases?

11 EXECUTIVE OFFICER FOSSUM: If I can, Mr. Chair.
12 You brought up a couple issues, one with the Corps and the
13 Bureau. This was a Bureau project primarily -- many of
14 the places on the Colorado River are water delivery
15 facilities, they're dams are for water storage and
16 delivery to the Imperial Valley and other locations.

17 And the Corps' jurisdiction, as Brian mentioned,
18 is one basically where they're dealing with their
19 navigation jurisdiction. So both are involved, but it was
20 the Bureau that placed the riprap along the bank line to
21 make sure there wasn't erosion and keep the channels as
22 water delivery system.

23 As far as the flooding, I don't think that, in
24 this particular location, there's much of a threat for
25 flooding. There always is anywhere near a waterway, but

1 there was considerable amount of material apparently
2 brought in to build this subdivision. And the bank line
3 that was -- that the rocks were placed on were to prevent
4 that fill, I think, from eroding.

5 So it's fairly high elevation along there, but
6 our leases do require that the applicants indemnify, hold
7 harmless, and insure the State from any claims. So that's
8 the one protection we have here.

9 The real dispute, I think in some ways, is that
10 the federal government constructed this thing without
11 coming to the State. And so to the extent that we had an
12 involvement in it, it was as a passive property owner who
13 has had the federal government actually place this
14 structure on the State's property.

15 So I think we are in a better position when we do
16 enter into contracts with these property owners. It's
17 certainly something that we can continue to look into as
18 far as that relationship with the Bureau and their
19 responsibilities for things they build. But I think from
20 the standpoint of our analysis over the last few months,
21 this is probably the best position we can be in at this
22 time.

23 ACTING CHAIRPERSON GORDON: Mr. Rusconi, do you
24 share the opinion that we've legally covered ourselves on
25 liability with the hold harmless on the leases.

1 DEPUTY ATTORNEY GENERAL RUSCONI: This has not
2 been referred to the office for any analysis, but I think
3 that from what I've heard today we are in a pretty good
4 position.

5 ACTING CHAIRPERSON GORDON: Okay. That answers
6 my questions.

7 ACTING COMMISSIONER GARLAND: I'd move the item.

8 ACTING CHAIRPERSON GORDON: Do we have any public
9 comment?

10 Already. We've got a motion.

11 ACTING COMMISSIONER ROCKWELL: Second.

12 ACTING CHAIRPERSON GORDON: All those in favor?

13 (Ayes.)

14 ACTING CHAIRPERSON GORDON: Motion passes.

15 Moving on to Item number 86 to consider an
16 application for an amendment to a lease of sovereign land
17 located in the Salt River.

18 Staff presentation, please.

19 EXECUTIVE OFFICER FOSSUM: Beverly Terry from our
20 Land Management Division will give a short introduction, I
21 believe, here.

22 PUBLIC LAND MANAGEMENT SPECIALIST TERRY: Good
23 afternoon, Mr. Chairman and members of the Commission. My
24 name is Beverly Terry and I'm a Public Land Management
25 Specialist with the Commission's Land Management Division.

1 I'm here to provide a brief background on
2 Calendar Item 86, and introduce Donna Chambers with the
3 Humboldt County Resource Conservation District who will be
4 providing us with a brief -- with a presentation regarding
5 this item.

6 On October 27th of 2011, the Commission
7 authorized a general lease public agency use with the
8 Humboldt County Resource Conservation District for Phase 1
9 of the Salt River Ecosystem Restoration Project.

10 This project is being conducted in 2 phases. And
11 the lessee has now applied to amend its lease to include
12 Phase 2 of the project. This project addresses annual
13 flooding and water quality problems which have been an
14 issue with the Salt River channel for many years.

15 The project will restore some of the historic
16 tidal prism and provide extensive habitat, improvements,
17 and ecological benefits.

18 Now, I'd like to introduce Donna Chambers who
19 will provide us some insight on the existing conditions
20 within the Salt River channel, and a general overview of
21 the benefits the completed project will provide.

22 Donna.

23 MS. CHAMBERS: Thank you Beverly. Good
24 afternoon, Commissioners. Thank you for allowing me this
25 time to talk with you today. I appreciate it.

1 The lease action being considered is part of the
2 Salt River Ecosystem Restoration Project. And this is a
3 very unique and complex project that involves over 40
4 landowners, 12 local, State, and federal governments and
5 agencies, multiple regulators, several funders, and, of
6 course, many consultants.

7 Needless to say, it hasn't been quick or easy.
8 And I'd like to start by thanking your staff for all their
9 help and for working so closely with us throughout this
10 process.

11 The project has taken almost 30 years to get to
12 construction, and I'm going to do my best to sum it up for
13 you in 10 minutes or less.

14 So let's start by traveling about 6 hours north
15 up the coast to Humboldt County.

16 Do I start it or do you?

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

19 MS. CHAMBERS: Okay. There we go.

20 So you see at the top of the map is Ferndale.
21 And this gives you a good picture of what the area looks
22 like.

23 The Salt River watershed is considered a
24 subwatershed of the Lower Eel River Delta. The Delta
25 contains the Eel River estuary. This is the third largest

1 estuary in California and one of the most ecologically
2 important tidal marsh habitats in the State.

3 The watershed is bounded on the west by the
4 Pacific Ocean, to the north and east by the Eel River, and
5 by the Wildcat Hills to the south.

6 Just a point of clarification. Although, the
7 historic Salt River is shown in blue like it's full of
8 water, it's actually full of sediment for much of its
9 length.

10 In 1852, 2 brothers, Seth and Stephen Shaw,
11 canoed across the Eel River and paddled up the Salt River.
12 According to historic reports, they found a complex
13 network of sloughs and wetlands, stands of 6-foot tall
14 ferns, rivers with abundant fish, dense thickets of alders
15 and scattered forests of spruce and redwood. The brothers
16 located 2 claims, cleared several acres of land and built
17 a cabin.

18 More settlers soon followed, and the new
19 settlement adopted the name Ferndale. Over the next
20 several years, large tracts of land were cleared. Timber
21 in the valley and the Wildcat Hills was logged, levees
22 were built, and tidal sloughs why channelized.

23 We estimate that approximately 2,900 acres of
24 fresh and tidal marsh lands were reclaimed into highly
25 productive agricultural land prior to 1900.

1 Around 1876, Port Kenyon was established and was
2 about 2 miles downstream from Ferndale on the banks of the
3 Salt River, which is that river in front of you there.

4 Regular shipping trade began and the Steamer Mary
5 Hume made weekly trips between Port Kenyon and San
6 Francisco. At that time, the Salt River was estimated to
7 be 200 feet wide and 15 feet deep at Port Kenyon, and
8 easily accommodated small steamers such as this one.

9 In 1888, Ferdinand Westdahl of the Coast and
10 Geodetic Survey conducted a survey and reported his
11 observations as he traveled down the Salt River from
12 Ferndale to the area near the mouth of the Eel River. In
13 his report, he noted the rapid pace of changes that had
14 occurred since his last visit in 1872.

15 He said I have been astonished during my present
16 visit at the changes in the appearance of the Country. In
17 1872, the town of Ferndale consisted of but a small number
18 of houses, and Port Kenyon was an unbroken forest. Now,
19 the 2 places almost merge into one another.

20 By 1898, people noticed signs that the fragile
21 threads of the ecosystem were beginning to unravel due to
22 the extent of settlement activities. As Westdahl
23 recounted, the forest had been almost fully cleared and
24 much of the tidal wetlands had been diked and drained for
25 farming.

1 The system of levees and dikes led to a
2 substantial decrease in the amount of water that was
3 exchanged on each tidal cycle. This is known as a tidal
4 prism.

5 When tidal prism is reduced, it decreases the
6 velocity of tidal water, and this starts a cycle of
7 sediment deposition, which further reduces the tidal
8 action, eventually leading to the closure of the tidal
9 inlet.

10 By 1899, the effects of the loss of tidal prism
11 were becoming very clear, and the Salt River channel began
12 to fill with sediment and vegetation. Now, up through the
13 1960s, landowners worked to maintain the channel by
14 regularly cutting out the vegetation and digging out the
15 sediment.

16 However, in 1970, Department of Fish and Game
17 regulations were changed and they stopped the landowners
18 from continuing those activities. The channel fully
19 silted in, and this shows you what Port Kenyon looks like
20 today.

21 Approximately, 95 percent of the land in this
22 watershed is working land in private ownership. And
23 that's where our agency, the Resource Conservation
24 District, comes in. Our agency works with willing private
25 landowners, such as dairies, ranches and timber operators

1 who want to protect and conserve natural resources on
2 their lands.

3 The people of Ferndale established our RCD in
4 1987 to bring attention to the dysfunction of the Salt
5 River watershed, and to get help in developing a solution.

6 Since then, the RCD and the landowners have
7 joined forces with State and federal partners to bring
8 technical assistance, professional and scientific help,
9 and funding to implement the Salt River project.

10 Ferndale calls itself a cow town, and the milk
11 production from the valley is an important economic engine
12 for Humboldt County. The people of Ferndale are proud of
13 their agricultural heritage and want to protect the land
14 and their way of life. So one of the very unique
15 challenges for the Salt River Ecosystem Restoration
16 Project is to balance the restoration of a variety of
17 natural habitats, while also maintaining and protecting
18 this agricultural way of life and the economic integrity
19 of this community.

20 We know what led to the river's loss of
21 hydrologic function. As you can imagine, this dysfunction
22 has created a number of problems. When you're driving
23 into Ferndale this is the first sign that you see at the
24 Salt River. There's a sign and no river.

25 (Laughter.)

1 MS. CHAMBERS: Because so much of the channel is
2 completely filled with sediment and vegetation, it doesn't
3 function as fish habitat or as a drainage system for
4 Ferndale and the surrounding community. You can see just
5 in the short period of time, 70 years, how much that part
6 of the channel filled in.

7 Flooding is an annual occurrence. The flooding
8 impacts roads, homes, and the town's wastewater treatment
9 facility. Many of these pastures remain under water for 6
10 to 8 months out of the year, and this is a huge economic
11 impact. Six to 8 months out of the year, you heard that
12 correctly.

13 So we have dairy producers who rely on having
14 their cows out on these organic pastures to be able to
15 produce their milk. And it's just not possible.

16 So what is the solution?

17 This is some more shots of the flooding. And
18 this is annual. This isn't just a 5- or 10-year
19 occurrence. This happens every single year right now,
20 because there is no channel for the river.

21 The Salt River Ecosystem Restoration Project is a
22 watershed scale solution to restore as much of the
23 historic processes as possible within our modern day
24 realities.

25 First, the project will restore over 300 acres of

1 tidal marsh to enhance the effect of the tidal prism, and
2 that's shown at the top in blue. That was a working
3 organic dairy ranch, known as Riverside Ranch. The
4 property owners wanted to help the project, and they
5 actually approached Department of Fish and Game to sell
6 that property to help the project happen.

7 Next, sediment vegetation will be removed to
8 restore some 7 miles of historic channel corridor. And,
9 of course, keeping the sediment out of the channel is key
10 to the success of the project. And you can see down there
11 at the bottom, the Wildcat Hills.

12 We've been working -- the RCD has been working
13 with private landowners in those upper watersheds for the
14 last several years to reduce sediment input. So we've
15 been using bioengineering techniques, because they're
16 very -- like 100 slopes up there.

17 We've also been doing streambank stabilization
18 projects, offsite watering, fencing to keep the cows out
19 of the streams. We've been upgrading roads and culverts
20 and using a variety of different funding sources with
21 landowner cost share to be able to accomplish those
22 things. And this work will continue on into the future.

23 Finally, to be able to manage and maintain the
24 restored channel, the project partners have developed a
25 plan that spells out thresholds and triggers for

1 maintenance that the regulatory agencies have approved as
2 part of our project permits.

3 And I think another very important part of this
4 project is that the landowners have stepped up to the
5 plate and they've formed a nonprofit watershed council,
6 and the watershed council has charged themselves with
7 overseeing the maintenance and monitoring of this project
8 into the future.

9 Our goal is to restore this to this.

10 Thank you very much for your time.

11 ACTING CHAIRPERSON GORDON: Any comments from the
12 Commissioners?

13 ACTING COMMISSIONER ROCKWELL: Very impressive
14 work.

15 ACTING CHAIRPERSON GORDON: Any public comments?
16 Do I have a motion?

17 ACTING COMMISSIONER ROCKWELL: So moved.

18 ACTING COMMISSIONER GARLAND: Second.

19 ACTING CHAIRPERSON GORDON: All those in favor?

20 (Ayes.)

21 ACTING CHAIRPERSON GORDON: Motion is adopted.

22 We'll now move to hear the items removed from the
23 consent agenda. The first item we'll hear is Item
24 number --

25 EXECUTIVE OFFICER FOSSUM: One and only, 22.

1 ACTING CHAIRPERSON GORDON: Twenty-two. Mr.
2 Bugsch.

3 And we also have a couple of public comments on
4 that. If you folks can please get ready, Mr. Shelton and
5 Marston.

6 LAND MANAGEMENT DIVISION CHIEF BUGSCH: Good
7 afternoon, Commissioners. I think you've heard this.
8 This is maybe the third time on this one, so I'll try and
9 be brief on it.

10 This item asks the Commission to authorize a
11 lease between the Commission and the Vanderbeeks, Robert
12 Marston, John Gage, and Joan Schacht for a pier with a
13 boat, boat lift, and sundeck. The item also requests that
14 Mr. Marston and the Gage/Schachts be required to remove 2
15 existing unauthorized mooring buoys no later than December
16 15th.

17 In the event that Mr. Marston and the
18 Gage/Schachts cannot obtain littoral status or have
19 obtained a written determination from TRPA that Mr.
20 Marston and the Gage/Schachts do not qualify for a TRPA
21 buoy permit by today.

22 I'd like to inform you that the rent for the
23 sundeck has been settled and all parties agree.
24 Therefore, the only issue remaining is the unauthorized
25 mooring buoys.

1 Just as a refresher, on the October 19th meeting,
2 Mr. Marston addressed the Commission advising that he
3 was -- he and the Gage/Schacht parties were in a Catch 22
4 situation.

5 On the advice of the Commissioners, you guys
6 directed staff to provide Mr. Marston and the
7 Gage/Schachts with a letter to present to TRPA basically
8 saying that if they were open for business, we were open
9 for business. This letter was sent to Mr. Marston and the
10 Gage/Schachts on October 25th, so within a week of the end
11 of the Commission.

12 On November 26th, after Thanksgiving here, the
13 Commission staff forwarded that letter to TRPA not knowing
14 if it had been sent on by Mr. Marston. TRPA staff advised
15 us that they had not received the letter. But they
16 reviewed the letter on that date and responded with a
17 letter, in which TRPA confirmed that the agency cannot
18 authorize, recognize, permit or take any other action on
19 buoys which had not been previously permitted by TRPA.

20 I think you all have copies of that letter. It
21 essentially confirms everything that we've been saying and
22 is in lock-step with what we've been saying for the past
23 7, 8 months regarding this. So hopefully, I think both
24 agencies are in line on this.

25 It should also be noted again that for the

1 Marstons and Gage/Schachts to keep their mooring buoys,
2 the Vanderbeeks would have to give up at least one of
3 theirs, and they would also have to form a homeowners
4 association. They've had 7 months to do that. That
5 hasn't happened.

6 The lease has been -- also, the lease has been
7 issued to the Vanderbeeks for the 2 mooring buoys at this
8 littoral lot. And they've made it pretty clear through
9 their actions that -- and through conversations with Mary,
10 that they're not willing to give up any.

11 So we ask that the Commission move forward with
12 and approve the staff's recommendations.

13 Thank you.

14 ACTING CHAIRPERSON GORDON: All right. Mr.
15 Marston. Wellcome back again.

16 MR. MARSTON: Hi. Thank you very much. Speaking
17 here too much. My name is Bob Marston. This is Dave
18 Shelton. He's a professional engineer that works in the
19 Tahoe area and permits -- works with homeowners and
20 permitting buoys and docks and buildings and all kinds of
21 good stuff.

22 This gentleman's representation about the letter
23 being sent out to myself and not being forwarded on to TR
24 -- or excuse me to -- yeah, to TRPA, the reason for that
25 is I met with Dave who actually began our permit process

1 on the buoys a couple of years ago. And he suggested that
2 we try and come up with some words to trance -- to talk to
3 TRPA about, that would allow us to understand our
4 understanding of the current regulations, the fact that
5 TRPA cannot permit anything due to the lawsuit they have,
6 and what they feel they will be doing going forward, which
7 really no one has any idea. Although, it appears as
8 though with the change in management on the -- what's the
9 name of the -- yeah, the League to Save Lake Tahoe, it
10 would appear though that they may be going back more
11 towards some of the ordinances that they had in 2008.

12 And I've got Dave here to talk about that and
13 then I'll finish up here.

14 MR. SHELTON: Thank you. My name is Dave
15 Shelton. I'm a civil engineer at Lake Tahoe. I've been
16 working with issues regarding the lake for the last 35
17 years.

18 The request that was made for the applicants to
19 get permits from TRPA for these buoys was basically
20 impossible to comply with. And the reason that it's
21 impossible to comply with is that TRPA governing board has
22 directed their staff not to take any action on any buoys
23 at this time.

24 We're in a period where TRPA, at one point in
25 2009 when they wrote the letter to the Marstons and Gages,

1 had a mechanism by which they could consider approval of
2 these buoys, and they could permit these buoys. And one
3 of the conditions that remained to be obtained was to have a
4 California State Lands lease.

5 Subsequent to that time, there's been a lawsuit.
6 The lawsuit has required the vacating of that ordinance,
7 the 2008 ordinance, and TRPA has reverted back to the
8 pre-2008 ordinance. That pre-2008 ordinance doesn't allow
9 them to consider any buoys.

10 So there were hundreds of buoys that were
11 permitted by TRPA in 2009. And any of those people that
12 came to TRPA today could not get any action from TRPA,
13 because they're not allowed, on direction of their board,
14 to consider anything.

15 So the request that was sent to TRPA to come up
16 with a permit by December of 2012 was literally impossible
17 to comply with. We believe that with the change in the
18 executive director at the League to Save Lake Tahoe, they
19 initiated the lawsuit that challenged the 2008 shore zone
20 ordinance at TRPA.

21 The current director, Darcie Goodman Collins, has
22 basically adopted a presentation -- or gave a presentation
23 that I attended, and they intend to be much less
24 oppositional. So there's renewed optimism that there's an
25 opportunity for TRPA to get back and adopt a new shore

1 ordinance. And if they adopt a new shore zone ordinance,
2 we're hopeful that they have provisions similar to what
3 they had in 2008, which would allow consideration of the
4 Marstons' and Gages' buoys.

5 So right now, we're just in a window of no
6 opportunity. And until TRPA is allowed to consider and
7 adopt a new ordinance, there's no way that we could
8 comply. So respectfully, we ask that Special Provision
9 number 9 that requires removal of the buoys be removed
10 from the lease to allow us to get time to go back to TRPA,
11 let them adopt an ordinance, and then perhaps we can
12 proceed.

13 ACTING COMMISSIONER GARLAND: Remind me again how
14 long these buoys have been there?

15 MR. SHELTON: These buoys have been there -- I've
16 been told a number of things. I have a photograph from --

17 MR. MARSTON: Let me speak to that. If you don't
18 mind, we met with Mary Hays and Jim Frey awhile ago. And
19 Mary said that she has a photograph showing the buoys
20 there since 1952.

21 ACTING COMMISSIONER GARLAND: Excellent. So
22 there was ample opportunity when buoys were being
23 permitted to have gotten a permit at that time, this is
24 not something new?

25 MR. MARSTON: This is something new to me, but

1 it's not new to the way things are going.

2 ACTING COMMISSIONER GARLAND: Thank you.

3 ACTING CHAIRPERSON GORDON: Let me understand
4 something. And maybe -- I'm not a boater, but a buoy is
5 essentially modular, right? You've got something that's
6 floating on the surface and it's attached to an anchor of
7 some kind on the lake bottom?

8 MR. MARSTON: Yeah. It's got a chain that goes
9 down to weight, a concrete weight.

10 ACTING CHAIRPERSON GORDON: So if we were to
11 require removal of the buoy today and you were -- an TRPA
12 changes their policies in the future, we're not, in any
13 way, permanently affecting your rights, correct? You
14 would be able to, at a future date, if you were able to
15 get the permit from TRPA to reattach the buoy, if that's
16 what the policies are going to be.

17 Is there permanent damage that we're going to
18 cause here by adhering to the existing regulations?

19 We've been through this. We think we've worked
20 out some serious compromises here. I mean, we started
21 with a place where staff was fairly strongly opposed to
22 allowing the docks to remain. We worked our way through
23 that. We came out with a -- then we had problems on the
24 amount of the lease for the dock. We've worked through
25 those to everybody's satisfaction.

1 Now, we're left with a situation where we have
2 modular buoys that could be removed, and if you win in the
3 future, they could be reattached. So I'm trying to figure
4 out what the damages are we are -- the permanent damages
5 might be. And you've still got the option of negotiating
6 with the Vanderbeeks over the use of the buoys.

7 So I'm trying to understand what harm we are
8 going to cause at this point in time by going forward with
9 what TRPA is currently interpreting their requirements to
10 be.

11 MR. MARSTON: My understanding, and Dave can
12 speak to this probably more elaborately, is TRPA
13 requires -- and part of our application is the fact that
14 the buoys have been there pre-1952. And so we're looking
15 to have them grandfathered in. And if they've got to be
16 grandfathered in, then they have to be in continuous use
17 from the date you claim that they existed. And if we pull
18 them out, that's the end of it. They can easily sit there
19 and say, well, they're no longer in continuous use,
20 therefore you can't grandfather them in. And it just
21 seems like we're caught in a ton of little gotchas here
22 and there.

23 And what we're asking is that can we leave them
24 in until TRPA comes up with their regulations? And if
25 their regulations don't allow it, then that's it. It's

1 done. It's over with. But right now, if we have to pull
2 them out, we're done. We're pretty much toast, and the
3 chances of their opening up buoy permits for upland owners
4 that is, according to everybody who's worked with TRPA and
5 the way that the agencies are handling these issues, we're
6 just going to be out of luck. And these things have been
7 here forever, and we're just asking the opportunity to get
8 a fair shake with TRPA.

9 ACTING COMMISSIONER GARLAND: Do you dispute that
10 you had the opportunity when the window was open to get a
11 fair shake with them?

12 MR. MARSTON: Well, is that --

13 ACTING COMMISSIONER GARLAND: I'll take that as a
14 no?

15 MR. MARSTON: No. No. The problem lies in the
16 fact that Mr. Vanderbeek decided that he didn't want -- he
17 didn't want to deal with the regulatory agencies, and he
18 kind of controlled the permit process. And he didn't want
19 us to mess around and ask for permits on the dock, on the
20 buoys or whatever, and therefore our hands were kind of
21 tied.

22 ACTING COMMISSIONER GARLAND: I appreciate that
23 you're stuck in the middle of neighborly, or not so
24 neighborly, dispute, but that's not for us to decide on,
25 so I'd like to move this item.

1 MR. MARSTON: And I agree.

2 MR. SHELTON: Excuse me. If I could address you
3 again.

4 Two answers. First of all, you asked what
5 permanent damage would be done. And I think Mr. Marston
6 addressed that. TRPA's 2008 ordinance had a provision
7 that existing buoys that could be documented to have been
8 existed prior to 1972, would be considered for a permit.

9 And one of the conditions -- the second condition
10 to that was not only did they have to exist before 1972,
11 but they had to subsequently obtain a California State
12 Lands lease, so that's what we're in the process of. So
13 that answers your question about, you know, is it
14 permanent damage?

15 Yes, because, if we take them out, they're no
16 longer existing, and then TRPA can say well, those are not
17 existing. You don't qualify.

18 To answer your question about did we pursue the
19 window of opportunity?

20 We did. In 2009, we applied for these permits
21 from TRPA. We received a letter back from TRPA saying
22 that they would consider granting us permits if we had a
23 California State Lands lease. And I think you've been
24 presented with that letter.

25 So we did pursue the window of opportunity in a

1 timely manner when it was available in 2009. Subsequent
2 to that, while the Marstons have been pursuing the lease,
3 the lawsuit happened, the provisions were vacated, and
4 currently TRPA has reverted back to old provisions that
5 didn't allow that window of opportunity.

6 We're hopeful when they adopt a new ordinance it
7 would probably be similar to the ordinance they adopted in
8 2008. They spent years gaining consensus before they
9 adopted that ordinance. We're hopeful that when they go
10 through a new adoption process, they'll rely on some of
11 that knowledge, and that the new ordinance they adopt may
12 be very similar to what was adopted in 2008, which gave us
13 that window of opportunity.

14 ACTING COMMISSIONER ROCKWELL: Is there a
15 requirement that they adopt a new ordinance or is there
16 something on -- like agendized or coming up for a vote?

17 EXECUTIVE OFFICER FOSSUM: It could be years.

18 ACTING COMMISSIONER ROCKWELL: So the current
19 ordinance does not permit this?

20 EXECUTIVE OFFICER FOSSUM: (Shakes head.)

21 MR. MARSTON: I'm sorry. I couldn't hear you?

22 ACTING COMMISSIONER ROCKWELL: I was just
23 wondering whether the current -- so the current ordinance
24 does not permit what's being requested, and there's no
25 current agenda item or notice out to the public that

1 they're planning on changing this ordinance?

2 MR. MARSTON: The current TRPA ordinance?

3 ACTING COMMISSIONER ROCKWELL: Yes.

4 MR. MARSTON: Well, I guess one of my points is
5 the current TRPA ordinance is history, because they're
6 rewriting all the ordinances and it's specifically the
7 short zone ordinance. So to take the letter that TRPA
8 wrote and understand that as being fair, so to speak,
9 when, in fact, these ordinances are being rewritten as we
10 speak, is a bit unfair, because we need to find out what
11 they'll allow when they redo the ordinances.

12 And that's what we're asking, just allow us to
13 wait until TRPA comes up with a ordinance, and if we can't
14 work with them, then it's over. And if we can, then we've
15 got something to work with.

16 ACTING CHAIRPERSON GORDON: It strikes me you're
17 arguing a somewhat contradictory position. On one hand
18 you're saying under existing TRPA rules, you're not
19 permitted the buoy. They're going to rewrite -- unless
20 it's continuous, unless you've had continuous -- it was
21 continuous.

22 I'm thinking out loud here.

23 But then you're arguing that they're going to
24 change the rules, arguably. Now, it would seem that if
25 they are going to change their regulations, they have the

1 ability at that point to say it doesn't have to be
2 continuous or continuous unless State Lands Commission has
3 denied in the meantime.

4 So you'll still have your argument before -- in
5 the rule-making process at TRPA to argue that there should
6 be an exception for buoys that were removed pursuant to
7 State Lands rulings. And I think that is where I'm
8 leaning. I'm getting nods from the other 2 commissioners.

9 So I think your argument is going to be with
10 TRPA, that, you know, you're not going to have a problem
11 showing that this thing was in continuous operation right
12 up to now, and you need to get them to change their regs
13 to acknowledge -- if they are willing to allow long-term
14 that they have an exception in their new regs that your
15 situation, where you were in this window, is acceptable,
16 because I am thinking we have got -- we've been hearing
17 this for a long time. I think we understand this issue,
18 and there are -- there does need to be a limitation, but
19 we're going to leave it up to TRPA to decide how many
20 buoys they wish to assign to individual properties and on
21 the lake.

22 We do have a -- Chris, you made a motion. Ms.
23 Rockwell, did you second the motion?

24 ACTING COMMISSIONER ROCKWELL: Is the --

25 ACTING CHAIRPERSON GORDON: Which would be to

1 adopt the staff recommendation which is to deny the
2 extension of the buoys.

3 ACTING COMMISSIONER ROCKWELL: I second that,
4 yes.

5 ACTING CHAIRPERSON GORDON: Okay. Are there any
6 other public comments on this issue?

7 All right. I have a motion and a second.

8 All those in favor of the staff recommendation to
9 deny the buoys?

10 (Ayes.)

11 ACTING CHAIRPERSON GORDON: It so passes 2 to 0.
12 Gentlemen, thank you.

13 EXECUTIVE OFFICER FOSSUM: Just one point of
14 clarification. The statement you made that the staff was
15 opposing the docks, it was the sundeck not the docks.

16 ACTING CHAIRPERSON GORDON: I misspoke. The good
17 news is we had solved that issue a month ago.

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

19 ACTING CHAIRPERSON GORDON: All right. Let's
20 see, where are we now? Do we have any other items that
21 were removed from the consent calendar to be heard?

22 EXECUTIVE OFFICER FOSSUM: No, that completes the
23 regular agenda. We now have public comments.

24 ACTING CHAIRPERSON GORDON: Yes. All right. We
25 have a handful of folks wishing to make public comment.

1 Are these all on Pete's Harbor?

2 Is there anybody wishing to make public comment
3 on some subject other than Pete's Harbor?

4 All right. Then could all of you -- all of you
5 folks wishing to speak on Pete's Harbor please come up
6 together and I will allow you to determine the order of
7 who is going to testify.

8 I've got Ted -- I can't read -- Harry it looks
9 like. Alison Madden, Shawn, a professional soccer player
10 with one name apparently.

11 (Laughter.)

12 ACTING CHAIRPERSON GORDON: Joseph Rosjas, James
13 Lee, and Leslie Webster. If you could all approach the
14 microphone, please. And actually, I think what I'm going
15 to do is I will -- one prerogatory of the Chair, I'm going
16 to have Ms. Madden speak first, because we have heard from
17 her before. And I know she's a very articulate
18 spokesperson for at least one side of this issue.

19 Ms. Madden, could you come forward, please.

20 CHIEF COUNSEL LUCCHESI: Mr. Chair, if I may just
21 clarify a couple of things. I do know that Mr. Hannig,
22 who signed up to speak, he represents Ms. Uccelli. So I
23 think the other folks that have signed up to speak may be
24 residents or representing the residents of Pete's Harbor,
25 Mr. Hannig does represent Ms. Uccelli. I just wanted to

1 point that out to you.

2 ACTING CHAIRPERSON GORDON: Okay. Why don't we
3 start -- in fact, I've got a better idea. Why don't we
4 start with the representative of the property owner,
5 because I think they will lay out their case, and then I'm
6 going to suspect that the rest of you do not completely
7 agree with the position that they are adopting. So why
8 don't we do that.

9 Sir.

10 MR. HANNIG: Good day. My name is Ted Hannig. I
11 am with the Hannig Law Firm in Redwood City, California.
12 And I have the privilege of representing the Uccelli
13 family and Pete's Harbor.

14 It is a little bit difficult for me to address
15 exactly what all the intentions are of the parties today.
16 So while I have the privilege of going first, I'm not
17 quite sure and I'm available to you should there be issues
18 that you might want to address.

19 ACTING CHAIRPERSON GORDON: You'll have an
20 opportunity for cross-examination with your time.

21 MR. HANNIG: Yes, whatever you'd like.

22 I did want to point out the history, because I
23 think there is a misconception of how Pete's Harbor came
24 to have a land lease. And as you probably know, back in
25 the 1980s there was litigation that resolved issues

1 between the State and Pete's Harbor. And it resulted in
2 both legislation, a court judgment, and a land lease, an
3 act signed by the Governor, as you know.

4 So there's a lot of rich history, but the history
5 actually precedes that dispute. And it goes back to
6 September 24th, 1956.

7 ACTING CHAIRPERSON GORDON: Hang on one second.
8 We're having some kind of technological issue
9 here.

10 MR. HANNIG: Let me turn it off.

11 Back in 1956, Mr. Uccelli applied for a permit to
12 build where is the outer harbor, which is the subject and
13 the only subject over which the State Lands Commission has
14 any jurisdiction.

15 The State Lands Commission filed an objection in
16 1956 to his plan to develop the outer harbor, and a boat
17 ramp. And then they studied the land patents that were
18 issued to Mr. Uccelli. And I have many copies here for
19 the Commission. The letter from the State Lands
20 Commission in September of 1956 withdrawing the opposition
21 to the permit, saying that actually they've determined
22 that it will be on privately owned land, and this office
23 therefore withdraws the objection previously interposed,
24 signed by Rufus Putnam, Executive Officer of the State
25 Lands Commission.

1 So in September 1956 -- and if there is a person
2 who I can leave these copies with, I'd be happy to do that
3 or if any of the Commissioners would like to see them --
4 the State Lands Commission informed the Uccellis that, in
5 fact, the outer harbor was on private property. And in
6 reliance upon that, they built it out.

7 And it wasn't until about 25 years later when
8 there was, in Mr. Uccelli's perspective, some political
9 acrimony involved in the State Lands Commission, and he
10 ended up in a dispute, which resulted in that court case,
11 State legislation, a judgment, and then ultimately 2 land
12 leases, 6856 and 6857, that involved the 3 parcels of
13 land.

14 Since that time, Peter's Harbor has operated as a
15 marina. And we know from the letter from the San
16 Francisco Bay Conservation and Development Commission in
17 1984 that all of Mr. Uccelli's obligation was to maintain
18 a marine harbor or berthing facility at Pete's Harbor in
19 order to have that occupancy.

20 So I'll leave that with you as well when I leave.
21 But this is the position that came from the State of
22 California, and it has continued to do so.

23 Currently, there is repair work at the marina.
24 It coincides very well with the time that the property is
25 for sale, but we had a big storm last weekend and pilings

1 actually came down at the marina. And so the Harbor
2 Master's decision to undertake the repair effort at Pete's
3 Harbor is quite correct and very safety driven.

4 I wanted to make the Commission aware, as
5 apparently it was not, that only a portion of the tenants
6 there are liveaboard tenants. It was stated in the record
7 at the last hearing that all of the boat slips were
8 houseboats or residents. And it also suggested that the
9 marina was going to be taken apart, and that it could
10 not -- we could not guarantee the slips would be rebuilt
11 there again.

12 There's no plan to demolish any slips. And
13 there's only a small portion of the tenants who are
14 liveaboard. About two-thirds of them have already vacated
15 as of today's date. And in the tenants that were there,
16 the liveaboard tenants, 90 percent of them, since 2002,
17 signed a provision, which I'll also leave with you, that
18 states, "Since the marina is up for sale and no more
19 liveboards are being admitted, the liveaboard status was
20 granted to you as a favor, I...", then they insert their
21 name, "...agree to leave the slip when this will be
22 required by the marina with notice from the owner."

23 So the liveaboard slips, since 2002, have all had
24 that, and that's why 90 percent of them have it. So they
25 were all -- as far as the liveboards go, they were all on

1 notice of the intention to sell and to ask them to leave.

2 There is nothing in the leases that requires
3 residents there. In fact, it suggests the otherwise.
4 And, as you know, the Public Trust Doctrine does not
5 include residents as a Public Trust use. It's navigation,
6 fishery, commerce, recreation.

7 So there's been some suggestion apparently that
8 somehow that marina area, because of the Public Trust
9 doctrine, needs to have floating residences there. And
10 that's completely inconsistent with the Public Trust
11 doctrine, the history, the leases that were signed, and so
12 forth.

13 The Uccellis though have another colorful history
14 with the State Lands Commission, which is also, I'm sure,
15 going to be developed and discussed. So I would like to
16 address it head on. We came up here for meeting with the
17 State Lands Commission to discuss it on September 18th.

18 After the leases were signed back in 1984-85, Mr.
19 Uccelli made attempts to contact State Lands to ask where
20 to make payment. He was unsuccessful to get a response.
21 He then asked a woman who worked for him, who was later to
22 become his wife and is here present today, Paula Uccelli,
23 to make efforts to contact State Lands, and she did that.

24 She did not get a response as to where to send
25 the check. So then they ran into a State legislator who

1 I've interviewed about this subject, and he attempted to
2 get his staff to find out where to make payment, no
3 answer. He suggested that a Republican assemblyman who'd
4 also co-authored the bill. The Uccellis contacted him.
5 I've also interviewed him. The same answer. His staff
6 was unable to get an answer where the checks were to be
7 made paid -- were to be delivered.

8 So since that time, Mr. Uccelli opened an account
9 and he deposited the rent checks, waiting for the State to
10 come and get them. The State never made any contact with
11 him since 1985 or whenever that was back then, and the
12 fund has been there being added to.

13 When Ms. Uccelli arrived here for the meeting,
14 she said, "Oh, I have my checkbook with me. How much do I
15 owe you? We can settle up that account." And the answer
16 was, "Well, we don't know. We'll get back to you.

17 After a period of not hearing that answer, I sent
18 up \$20,000 plus in cashier's checks to the State Lands
19 Commission saying here's the last 4 years of rent, because
20 my understanding from our legal analysis is that's the
21 maximum the State is allowed to charge. It may even be
22 less. Those checks have gone unnegotiated, undeposited,
23 are in a fire safe somewhere at State Lands, even though
24 there was no condition on the tendering of that rent. We
25 didn't say it had to be payment in full or it's a waiver

1 or release or anything like that.

2 And, in fact, I attempted to contact the Chair of
3 the State Lands Commission for -- Gavin Newsom for
4 discussion, and was told the liaison would get back to me.
5 And that's been about 2 or 3 weeks. So I've suffered the
6 same --

7 ACTING COMMISSIONER GARLAND: Who did you contact
8 in my office?

9 MR. HANNIG: I contacted Gavin Newsom's office.

10 ACTING COMMISSIONER GARLAND: Whom in my office
11 did you speak to?

12 MR. HANNIG: I don't have her name with me. I
13 remember speaking -- a very nice woman, and she called me
14 back from Sacramento.

15 ACTING COMMISSIONER GARLAND: If you're going to
16 talk about my staff, you might want to bring names with
17 you when you talk about my staff. I believe your time is
18 up, by the way, as well.

19 MR. HANNIG: Well, I can tell you the woman was
20 extraordinarily professional, nice to me, that I spoke
21 with. I would hire her in a minute to work for me. She
22 was very pleasant with me, but I never heard back from the
23 staff that she was passing the message on to. That was
24 the point that I was making.

25 ACTING COMMISSIONER GARLAND: And do you know the

1 woman you spoke to and who she was passing it on to,
2 because she would have told you.

3 MR. HANNIG: I have in my office notes, because I
4 did speak with her.

5 ACTING COMMISSIONER GARLAND: Convenient that
6 it's not with you. Thank you.

7 MR. HANNIG: Well, I'm sorry you feel that way
8 sir, but I did speak with her and I do have my phone log
9 from her calling me back, and discussing it with her. And
10 she did mention a gentleman who was out of the office on a
11 Friday, but she had email contact with him, and that she
12 would dispatch an email and that he is the person -- it
13 might even be you. I don't know -- the person that
14 regularly works with Gavin Newsom with respect to State
15 Lands. And she identified --

16 ACTING COMMISSIONER GARLAND: When was this call
17 made?

18 MR. HANNIG: Two or 3 weeks ago. Maybe 3 weeks
19 ago.

20 ACTING COMMISSIONER GARLAND: So do you realize
21 when you say you called the Chairman, you were not calling
22 the Chairman. The Chairman is the Controller's Office.
23 So are you -- is there an issue here or was there and
24 issue here?

25 MR. HANNIG: No. I called Gavin Newsom's office.

1 ACTING COMMISSIONER GARLAND: Thank you.

2 MR. HANNIG: That is who I understood from the
3 State Lands schedule when we attended the meeting who was
4 the top Executive Officer. So I must have --

5 ACTING COMMISSIONER GARLAND: That's just
6 completely incorrect.

7 MR. HANNIG: Okay. So I had made efforts, but I
8 will say I made efforts to contact through Gavin Newsom's
9 office, and that's how it was passed along to me, that I
10 would hear a response and I did not. But let me --

11 ACTING CHAIRPERSON GORDON: Let me stop you for
12 one second.

13 MR. HANNIG: Yeah.

14 ACTING CHAIRPERSON GORDON: Mr. Fossum, do we
15 have an accounting, at this point in time, of the amount
16 of money that we believe that the leaseholder owes the
17 State?

18 EXECUTIVE OFFICER FOSSUM: It's my understanding
19 that a demand letter has been sent to the Uccelli's on how
20 much we believe that they owe the State for lack of
21 payment to the Commission. And we've asked for
22 documentation as to these alleged attempts to send money
23 in the past to the Commission, and we've received nothing.

24 ACTING CHAIRPERSON GORDON: Okay. How much is
25 the accounting that the State Lands has come up with?

1 CHIEF COUNSEL LUCCHESI: We calculated it based
2 on a payment on December 1st. With penalties and
3 interest, it's approximately \$406,000, give or take.

4 ACTING CHAIRPERSON GORDON: Absent penalties and
5 interest, how much would they owe, just as -- there seems
6 to be some confusion as to what happened from 1984 onward
7 as to where the checks were supposed to be made. I'd be
8 just interested in knowing if we were to try to get just
9 straight rent what would that have come to, do we know?

10 CHIEF COUNSEL LUCCHESI: We can do some quick
11 calculations. I can't do it right now in my head, but
12 we'll -- let us add some things together.

13 ACTING CHAIRPERSON GORDON: All right. And you
14 have sent a demand letter. What was the date of the
15 demand letter, do we know?

16 CHIEF COUNSEL LUCCHESI: November 9th.

17 ACTING CHAIRPERSON GORDON: Sir, do you have --
18 have you received that letter?

19 MR. HANNIG: I have.

20 ACTING CHAIRPERSON GORDON: Okay. So at least we
21 now have you know where you can pay. You know how much
22 they're demanding.

23 MR. HANNIG: We have paid actually. The letter
24 did not acknowledge that we paid the 20 some thousand
25 dollars that they had on file at the time and did not

1 credit it in that calculation.

2 But I would -- there are 2 issues. There's the
3 statute of limitations and there's penalties and interest.
4 And we are prepared to have --

5 ACTING CHAIRPERSON GORDON: I understand the
6 legal issues involved.

7 At least, we've now made that connection --

8 MR. HANNIG: Yes.

9 ACTING CHAIRPERSON GORDON: -- that there's an
10 acknowledgement that there's an amount owed, and we can
11 now begin negotiations on how to settle that.

12 CHIEF COUNSEL LUCCHESI: And we do have a meeting
13 scheduled for next week to meet with Mr. Hannig to discuss
14 these elements.

15 ACTING CHAIRPERSON GORDON: Well, that strikes me
16 as a --

17 MR. HANNIG: I believe that's with the developer
18 next week.

19 CHIEF COUNSEL LUCCHESI: Oh, okay.

20 ACTING CHAIRPERSON GORDON: Let me ask a question
21 before we call the residents up, which is my understanding
22 is this is a fairly large development.

23 MR. HANNIG: 411 homes.

24 ACTING CHAIRPERSON GORDON: 411 homes.

25 What is the need to take a public marina and turn

1 it into a private marina with regard to a upland housing
2 development? That strikes me as the crux of the issue.

3 These folks aren't even fighting your
4 development. They're acknowledging the development can go
5 forward. They are simply arguing -- and I've actually --
6 just so you'll understand, I've heard from some folks, I
7 think they define themselves as cruisers. People who live
8 on boats and move around the country to different places,
9 that there is a dearth of these kind of berths -- a dearth
10 of berths -- I'm going to follow Curtis -- in the Bay
11 Area. And that these slips are needed.

12 And also address another issue for me before we
13 turn to the others. I sit on several boards having to do
14 with below market rate housing. The Bay Area is an
15 extremely expensive place for people to live. We've
16 gentrified the entire coast.

17 These are, I believe, affordable middle class
18 rents. And I would like you to address for me why it's
19 necessary in building the development to remove these
20 slips from the public?

21 MR. HANNIG: All right. I'd be happy to address
22 your concerns.

23 First of all, why the connection with the change
24 in the marina to a more restricted marina than is
25 currently there?

1 And you are correct, it is the absolute essential
2 element. It is the only contractual element that's a
3 contingency in the contract between the buyer and the
4 seller as far as governmental issues go. There's no
5 entitlement clauses as is normally found. They're very
6 confident ultimately they'll get city approval. You're
7 incorrect that they are not opposing the development.
8 They have filed an appeal with the City, and there's a
9 city council hearing on January 20th appealing the
10 unanimous planning commission approval of the project by
11 the speakers that are here today.

12 ACTING CHAIRPERSON GORDON: But the issue raised
13 though has to do with the privatizing of the marina not
14 the development itself.

15 MR. HANNIG: And so let me explain how -- why
16 that is such a crux of this.

17 The marina, if it is opened as a public marina,
18 as I understand it, will have parking requirements. The
19 project also will have parking requirements, and there
20 would be insufficient parking on the site to address both
21 the housing that is anticipated and the marina.

22 And so my understanding -- I'm not the developer.
23 I cannot speak on behalf of the developer, but what I can
24 tell you is for a project of this type, to be successful
25 it has to have a certain amount of density. And they've

1 calculated that the project that they're proposing to be
2 successful has 411 homes. And to make the marina work
3 with that -- and I don't know how much margin there is in
4 there. The developer might -- they need to have the
5 housing there, provide the slips for the marina, so
6 there's additional parking.

7 The good news, of course, is that when those
8 slips are there and people in the -- that the residents,
9 the apartment residents, the 411 are using those slips,
10 other slips become available in the area.

11 So, yes, a boat slip there is being used by a
12 resident, but that resident has moved their boat over from
13 somewhere else, which now makes another slip available.
14 In the Bay Area, we have a very limited number of boat
15 slips. So when you -- and they're commuting closer to
16 their slip, so it makes a lot of sense what they're doing.
17 They have residents using slips that are very close to
18 their boat.

19 ACTING CHAIRPERSON GORDON: Let me make a -- I
20 think my role here sometimes is to find compromises. It
21 would strike me that if -- I mean, we have a city council
22 that has said you need X number of parking spaces for a
23 particular development. A reasonable compromise might be
24 that if the tenants and the developer went to the city
25 council and said require less parking spaces for the

1 development, that you might be able to come up with a
2 solution that would meet everybody's needs.

3 If the only real issue are the number of parking
4 spaces, what is the impediment to that?

5 MR. HANNIG: Well, I think there's also --

6 EXECUTIVE OFFICER FOSSUM: Mr. Chair, if I could,
7 there are a number of legal as well as practical issues
8 that are involved in this as the speaker has made clear,
9 both regarding our lease and the relationship between the
10 owner of the uplands and their tenants. And so I think
11 that as desirable as it is to seek a resolution on this,
12 it may not be the appropriate time to get into too many of
13 the details on some of those issues.

14 ACTING CHAIRPERSON GORDON: Okay. Continue.

15 MR. HANNIG: So my understanding is not only that
16 the marina has availability for public boat slips, but the
17 conversation has transmuted to say "public" means
18 "liveaboard". And I can find no basis to say in the
19 Public Trust Doctrine that "public" means "liveaboard", or
20 below-market housing. And I cannot find any -- tracing
21 back to Roman law even, I cannot find anywhere where the
22 Public Trust Doctrine says that below-market housing is
23 part of the Public Trust Doctrine.

24 So it is possible that you get the compromise on
25 housing, it is possible that you would get the compromise

1 on parking perhaps, but I don't think that's going to
2 solve the issues that are being presented to you today
3 where people want to insist that they have liveaboard
4 housing at that marina.

5 The marina cannot undertake the repair work nor
6 can it undertake development, if it does develop, with
7 residents -- liveaboard residents being there.

8 We have had litigation in the past with
9 liveaboard residents when there's construction, and they
10 have had a settlement in our area based on just less than
11 a mile away from Pete's Harbor where they claimed
12 overspray from construction damage to all their boats, and
13 so they all had to have their boats repainted.

14 So the insurance companies and the contractors
15 will not undertake development and construction work with
16 residents being there at the same time or boats in general
17 being there at the same time.

18 So there are many obstacles to your question in
19 coming up with an answer to your question. I appreciate
20 compromise, but I also have these other constraints that I
21 have to advise you of that would pose some hurdle that
22 would require us to get over them as well.

23 ACTING COMMISSIONER GARLAND: I appreciate you
24 think you need to advise us, but we have excellent
25 advisors into that in Ms. Lucchesi.

1 My understanding the marina we're talking about
2 is under State Land lease, and therefore it's transfer for
3 private use would have to be approved by this Commission?

4 CHIEF COUNSEL LUCCHESI: Our staff is continuing
5 to look into this. There's a number of different layers.
6 There's the statute to authorize this use. There's the
7 stipulated judgment and then there's the lease language.
8 The lease language that operates or that guides this
9 marina talks about the use being a commercial marina and
10 ancillary purposes.

11 A strict reading of that would lead one to
12 believe that the use going from a commercial marina to a
13 private marina that's only accessible by the upland
14 residents would require an amendment to the lease to
15 proceed.

16 EXECUTIVE OFFICER FOSSUM: And if I could add.
17 If you look at the graphic up here, what you'll see is a
18 number of elements. When we talk about a marina, there's
19 the internal marina within the development that the
20 Legislature basically said the State doesn't have any
21 ownership interest in. There's some docks out in Redwood
22 Creek that's actually granted to the local government by
23 the Legislature for their management. There is the area
24 in red, that is the part of the legislation as well that
25 was directed -- that directed the Commission to enter into

1 a lease.

2 The provisions in that are different because
3 there -- than the other lease that the Commission has
4 entered into, which is in the lower left area. That area
5 had already been determined to be State Lands Commission
6 owned as part of an early title settlement, and so was not
7 involved with Mr. Uccelli or the legislation at the time.

8 And then you can also see that there is some
9 issues outside the -- in the, what I call, the north area
10 that appear to be within the grant to the City of Redwood
11 City and also appear to be within the Commission's lease.
12 So there is a number of issues to resolve on this, and
13 legal issues, boundary issues, and interpretations that
14 are going to take some time to iron out, I believe.

15 ACTING COMMISSIONER GARLAND: Thank you.

16 MR. HANNIG: Did I provide enough information to
17 respond to your question, sir?

18 ACTING COMMISSIONER GARLAND: No. I'd still like
19 the name of my staff that you talked to.

20 MR. HANNIG: I'd be happy to provide that to you
21 when I get back to my office. But again, she was very
22 professional and I compliment her actually.

23 ACTING COMMISSIONER GARLAND: Thank you.

24 ACTING CHAIRPERSON GORDON: Ms. Madden.

25 MS. MADDEN: Okay. Thank you so much for taking

1 the time to hear from us today.

2 I do have a few documents that I would like to
3 hand to you. I don't know if you've seen yet communicated
4 from the staff a picture of the development. I think it
5 helps. I also have the original complaint by the State of
6 California in 1981, and it details the decades of good
7 faith effort and negotiation that were put into working
8 with Mr. Uccelli before they brought the action.

9 Attached to it are many exhibits -- and this I
10 believe was in a later discovery memo -- many exhibits
11 that show for years in the sixties and seventies that the
12 Army Corps of Engineers repeatedly advised that he didn't
13 have title, he needed permission. So I'd like to
14 introduce these.

15 Kim, sorry.

16 So I do want to clarify that it's absolutely a
17 correct statement that we are not opposed to their land
18 based initiative at all. We respect the right of Ms.
19 Uccelli to retire and to sell the property for the person
20 who wants to buy it to develop. We're not opposed to the
21 residences.

22 We do believe that this was fast tracked at the
23 City level. And there's a lot of talk about for sale for
24 10 years. There's not for sale sign at the property.
25 I've been looking at it to move down there since '96, and

1 I've never seen a for sale sign. There's a hallway with
2 all kinds of commendations and newspaper articles, and
3 there's nothing up there that shows the one article one
4 time that was run where Pete Uccelli and The Chronicle
5 said that he wanted to grant an option to the developer,
6 which is The Pauls Corporation of Denver, and represented
7 by Mr. Paul Powers, and he's here today.

8 So that was a long time ago in 2002. There was a
9 clause added to the backside of the 4-page lease that
10 said, "Since we are no longer admitting liveboards, your
11 status here is a favor". And that was in 2002, and for 10
12 years, they admitted liveboards by the hundreds. And
13 when I say that, they come and go. There might be
14 cruisers. There might be recreational boaters. And this
15 is not at all -- the issue is the Public Trust use of the
16 outer harbor, and that is the issue here for the State
17 Lands Commission, what the Commission will decide on when
18 the proper application is made by the developer, which --
19 or owner, which we hope will be sooner rather than later.

20 So we were advised of this development. Since
21 2002, there was one proposal in 2003 to build a very
22 large -- like a little city on this whole inlet, like a
23 Redwood Shores, and the voters voted it down in 2004.

24 When they voted that down, both the ordinance of
25 Redwood City and the initiative, the liveboards and the

1 recreational boaters, the commercial harbor would have
2 stayed. Since that vote down by the people, there has not
3 one time been brought to the people a new proposed
4 development. There was an effort in 2008 that was never
5 made known to anybody. Due to the economic conditions,
6 the developer withdraw it, went back to Denver. And not
7 until this July 2012 has anyone ever heard of a
8 development since 2004 when the voters voted it down.

9 And one thing I do want to slip in there, we've
10 been out there -- we talked to the voters and we thought,
11 well, let's just see what they think, the people of
12 Redwood City. Do you want to keep outer harbor commercial
13 and accessible to the public instead of private dock slips
14 for high-end residential luxury condos. And we got 600
15 signatures in a long weekend and we got 1000 change.org
16 support.

17 And we haven't been back out there because we
18 have been going to the planning commission and to the city
19 council. We do have an appeal, but you're absolutely
20 right, Chair Gordon, our desire is that we work with them
21 to perhaps have a few fewer apartments, so that there's
22 enough parking to keep the outer harbor commercial.

23 And so what I wanted to say is that it was very
24 much fast tracked. When it came back this July, we were
25 actively deceived for 2 months and told that there was

1 no -- that there had been no, you know, permit filed.

2 We were met with on September 20th. The State
3 Lands Commission was met with on September 18th, 2 days
4 before. The neighbors and the car dealer were met with 3
5 weeks before, the most important parties in this dispute.

6 The city attorney, the assistant city attorney in
7 the open hearing public record has said, if the State
8 Lands Commission does not consent to the -- the outer
9 lease there is the one that was on the Leslie Salt land,
10 that requires affirmative consent and has more of the
11 traditional terms and conditions of the standard State
12 Lands Commission lease. That requires affirmative
13 consent. The other ones allow transfer, but that would
14 only be transfer of the use that's consistent and
15 permitted, which is a commercial harbor. It says it in
16 the lease.

17 And there's a lot of different provisions in the
18 lease. It was actually, you know, mandated by an act of
19 the California Legislature in 1983, which was emergency
20 legislation. And, you know, there's all kinds of
21 provisions of that act. And one of them declares the
22 existing commercial harbor and marina open for the public
23 to be consistent with the Public Trust. So there's an act
24 of the statute -- I don't know -- Mr. Hannig just made an
25 argument that for 50 years they've been using this marina

1 to make millions and millions of dollars inconsistent with
2 the Public Trust. That is -- that's the unavoidable
3 conclusion to that argument.

4 So here we have it's an existing use, it's
5 consistent with the Public Trust, and with people -- we
6 have somebody who's going to read a statement. You know,
7 a Vietnam veteran has lived there 20 years has paid
8 \$250,000 in rent. He could find where to pay his rent.

9 And, you know, we have -- he is at the VA today
10 because he's having a surgery. He needs to go to the VA 3
11 times a week. We have a woman that couldn't come here
12 today because she was hit by a car out of the Villas,
13 which is next door, and she's been in just terrible pain
14 for years, and she's unable to work. And so they're
15 living on one income where she used to be a very vibrant
16 phlebotomist and she can't come here.

17 We have other people who specifically asked this
18 June, "Hey, we saw some surveyors. Are you selling the
19 property?" And they were told no. And so they acted in
20 their detrimental reliance and they have a houseboat,
21 actually a floating home, that there is nowhere to put it
22 now, because all of the other slips have been filled.

23 So Mr. Hannig raises a lot of factual arguments
24 that -- you know, people fled in the first few weeks and
25 took up all the remaining slips. So that's -- what I want

1 to say is that the city attorney, when I said in open
2 hearing, she said if you don't consent to the outer lease
3 and you don't approve the change in use, this particular
4 permit that has been issued will go away.

5 And so that means everyone can go back to the
6 drawing table and say why didn't you tell us, why didn't
7 you ask the voters? And so what I wanted to say is when
8 we go out and we ask them, since we've been in the press,
9 we've been in -- you know, on TV, LA Times, all of this.
10 They've been finding us. And they're finding me on
11 LinkedIn. And they're finding us and saying we don't want
12 you guys to go. So the voters want the boaters. I can
13 tell you that.

14 If we put this to an initiative and said to the
15 Redwood City, look, all you have to do is come up with
16 parking. And right down the road, there's federal parking
17 for the Bay Area -- the open space across, they're
18 restoring the wetlands, there is space for parking down
19 there on the street. The city has a right to have part of
20 this road that goes in. It was the Leslie Salt easement,
21 and it's private now, at 1 Uccelli. The city could make
22 that its street sidewalk.

23 So there -- you know, there are options here, and
24 there is so much room for compromise. And really I just
25 feel that, you know, 2 days before we were told, it was

1 just assumed. And it's been like this since the 50s. It
2 was assumed that they really feel they own that. It's
3 been described in the press by Mr. Hannig as an ironclad
4 49-year lease that she has absolute rights over.

5 And so I think really that what I want to say is
6 please don't allow the current -- what we've heard
7 potential for is that the current money collection there
8 is members of the Assembly that are involved in this. And
9 we know politically that there may be a desire to, you
10 know, go down the road of looking at all the facts, the
11 good faith, et cetera, and there may be a potential for
12 settlement on that. We'd really like to say please don't
13 bring this privatization into that settlement. You know,
14 please consider it the separate action that it is for
15 public comment.

16 And finally, and I think probably, the most
17 important thing that I came here for is to ask -- and I
18 know we're not on the agenda today, and so I don't expect
19 this today, but sometime between the Commission and the
20 staff over the next few weeks to see if there's somehow we
21 could keep the status quo.

22 So it is true that the inner harbor is now the
23 act, deeded it to Pete. If you looked at old maps, the
24 slough wrapped around and it was Smith Slough. And so
25 that's been resolved by the act now, and they can have

1 that. I want to say that next door, the Villas, has 150
2 residents and 3 have boats. That it is -- it is very
3 much -- maybe 5 tops. It's a 2 to 3 percent of this 411,
4 and if it gets reduced to 360 or, you know, something,
5 they're going on the 40 density units per acre and making
6 an argument that there's no way they can make money with
7 fewer than that.

8 And they also have residents as planned in the
9 100-foot BCDC space. So I'm really calling this a place
10 map. What it was intended to do is to give them a vested
11 map for the most that they could ask for 2 years. When
12 they built down the road at 1 Marina, they closed --
13 somebody else will talk more about this -- they closed 400
14 slips and eliminated 300 of the same, you know, type of
15 people, recreational boaters and liveaboards. And this is
16 just vitiating recreational boating in Redwood City.
17 There's nowhere to go. The port commissioners said we
18 were sleeping on Ms. Uccelli's couch. It has just been
19 awful at the city level.

20 So what I want to say is if there's any
21 opportunity, here is the timeline. We're told that we
22 need to be out by January 15th. We will face eviction
23 proceedings under the threat of attorney's fees. Our
24 appeal is heard 2 weeks later. There is a State Lands
25 Commission meeting in February. We hope that they would

1 have, you know, applied for this permit to have an
2 amendment to change the use. They might not do that for
3 Lord knows how long.

4 And we are prepared -- we have a -- I happen to
5 be an attorney. We have Internet, you know, start-up
6 people, we have investment, we have Vietnam vets that are
7 on a very regular income and they pay their rent. We're
8 prepared to get insurance. We're prepared to pay rent in
9 escrow. We're prepared to show you who we are, and that
10 we can -- in good faith, these people have been taking
11 care of this place like it's their own home for 20 years.

12 And so that's what we're asking for is some kind
13 of status quo, some indication. We know that it takes
14 months to work out all of the complexities of this. There
15 is the act, a judgment, 2 leases, there's a legislative
16 intent and I've gone and found it all. And, you know, I
17 have the letter from the Governor -- this is what I want
18 to stay, in the act, it was never, never, never proposed
19 that -- in front of the Legislature was the privatization
20 for residential use of Public Trust Lands. So the act
21 absolutely does not give that. It was like -- there's the
22 construction statutory and contract construction that --
23 and anything that -- what's not before a judge is not
24 decided. This was not before the Legislature. It was not
25 decided.

1 ACTING CHAIRPERSON GORDON: Who authored the act?

2 MS. MADDEN: It was Dominic Cortese. I believe
3 his son is an elected official in Santa Clara County and
4 is on the BCDC now. And we haven't heard, you know,
5 anything from him. And the year before I would say -- I
6 have the letter here to the Governor. The year before it
7 was Naylor. There were 2 nays. I think one of them was
8 Maxine Waters. And I can give you everything I brought
9 today, because I have copies of it.

10 Are there any questions that I can answer?

11 ACTING CHAIRPERSON GORDON: I don't think so.

12 MS. MADDEN: Okay. Thank you.

13 ACTING CHAIRPERSON GORDON: Next.

14 MS. WEBSTER: So I don't know what to say. I
15 think Alison said everything, but -- my name is Leslie
16 Webster. I've lived at Pete's Harbor for over 4 years. I
17 live on a houseboat. It's not a floating home. It has an
18 engine and it's mobile. I'm one of what was, on September
19 20th, 144 liveboards living on 86 boats at Pete's Harbor.

20 I'm here as a member of Save Pete's Harbor 2012,
21 a coalition that wants the harbor to remain a commercial
22 marina. What has been overlooked elsewhere is that we
23 actually support the sale and development of the harbor,
24 but we encourage reasonable and responsible waterfront
25 development. We believe that Pete's Harbor should

1 continue to be open to liveaboards, cruisers, and weekend
2 boaters. We believe it should remain a place where the
3 public feels invited to use the lands, waterways, and
4 resources, and we are concerned about the possibility of a
5 non-public trust use.

6 As it is, Pete's Harbor is an open harbor where
7 the public feels free to walk or bike around the ungated
8 property wander down the docks, come watch the fireworks
9 on the 4th of July, look at the boats, talk to the people
10 who live on them, go kayaking. There are no gates, but it
11 is a safe place precisely because of the liveaboards.

12 This existing usage is consistent with your
13 regulations and your goals. If it continues as a
14 commercial marina, you can be assured that it will
15 generate revenues, enhance the economy, and assure the
16 ongoing viability of the State Lands while protecting the
17 environment.

18 We are concerned about the development plan that
19 has been fast-tracked through the City of Redwood City.
20 This developer -- this development is proposed by an
21 out-of-State developer who previously cleared a nearby
22 marina of over 400 slips and did not rebuild them. The
23 same developer has stated that he has no interest in a
24 marina at Pete's Harbor.

25 His project at Pete's Harbor pays lip service to

1 the public's enjoyment of the Trust Lands, when in reality
2 it will be a place where the public will feel they are
3 trespassing in a private luxury housing complex. It will
4 not enhance the public's enjoyment of the Trust Lands. It
5 will sacrifice much of the public benefit of Pete's Harbor
6 for private advantage.

7 I know that you're not addressing this topic
8 today, but I urge you to consider it carefully and not to
9 consent to assign the lease and allow the change of use
10 from commercial to private residential without adequate
11 political -- without adequate public participation and
12 comment.

13 Thank you.

14 ACTING COMMISSIONER GARLAND: Thank you.

15 Next speaker.

16 MR. LEE: Good afternoon to the Commission. My
17 name is James Lee and I'm a Redwood City native. I was
18 born and raised there. Like many people who are born and
19 raised in Redwood City, I do have memories of Pete's
20 Harbor as a child. As Leslie mentioned, it is a place
21 that you go to see fireworks. It is a place that you go
22 to feed the ducks, to see the water, get a little bit of
23 nature. And so I don't personally live at the harbor
24 myself, but I am a Redwood City resident, and I really
25 care about what's happening to this community.

1 It is a community. It's almost -- with the
2 liveboards and the folks who live in their mobile homes
3 at the harbor, there's almost 200 people -- or there were
4 almost 200 people before this process started.

5 I wanted to talk about -- before we came here
6 today, we've actually been lobbying over -- a few blocks
7 down at the Capitol. We've talked to our State Assembly
8 members, State Senators, and all the staff members we
9 talked to have said, so, you know, "Why are you here? Why
10 aren't you not at the city level?"

11 And one thing I want to convey to the Commission
12 today is that we have made no headway at the city level.
13 The folks at Save Pete's Harbor, folks like myself who are
14 Redwood City residents, we've gone to multiple planning
15 commission meetings, city council meetings, and it's like
16 talking to a brick wall. It's really hard to get any sort
17 of headway.

18 And the city recently also passed a new set of
19 guidelines for how land use appeal hearings will be held.
20 And those were voted on by the city council a week after
21 the Pete's Harbor residents filed their appeal with the
22 city.

23 There was one council meeting we attended where
24 Ms. Uccelli was sitting in the back row with a planning
25 commissioner just chit-chatting, not even outside of city

1 hall, but just chit-chatting.

2 And that's fine. You know, we can have any
3 personal relationships we want, but it just shows the
4 uphill battle we have when we're trying to make our case
5 to a city that is friend of the landlord in this case
6 here.

7 The folks at Pete's Harbor, when this process
8 started, they should have been able to go to their city
9 officials to ask for help, whether it was for relocation,
10 mitigation, compromise like we were talking about.

11 Instead, one of their port commissioners,
12 Lorianna Kastrop, came to a city council meeting and
13 called -- and she is a friend of Ms. Uccelli, and she came
14 to a city council meeting to call these Redwood City
15 residents couch surfers, people who had an artificial
16 sense of entitlement after paying thousands of dollars in
17 rent for decades.

18 This is what we're dealing with. And when we
19 talk to elected officials what we always get is that this
20 is not in their purview. What happens in the city is not
21 in their purview, even though the general plan for the
22 city says that Pete's Harbor is great because it adds to
23 the affordable housing element for the city.

24 And so that's why we're here at the State level.
25 We want you to do what you can that is in your purview.

1 We are here to ask that you refuse to consent to assign
2 the lease, and certainly refuse to transfer the lease if
3 there's going to be a change in the use of the marina from
4 commercial public access to private and residential.

5 Thank you so much.

6 ACTING CHAIRPERSON GORDON: Next.

7 MR. ROSJAS: Good afternoon, Commission and
8 fellow Californians. My name is Joseph Rosjas. I am not
9 from Redwood City, but I am a resident of the peninsula.
10 I'm from Sunnyvale, and I am an activist that has been
11 involved in low income and affordable housing issues along
12 the peninsula.

13 Even though the issue of liveboards isn't
14 strictly part of the Public Trust, it is definitely part
15 of the public good. When we claim to be an area, a city,
16 and a State that is welcoming to our veterans, where we
17 claim to cry at their hardship and wax poetic about all
18 our efforts in their favor, I have here a letter from a
19 Vietnam veteran who was referred to earlier. His name is
20 Buckley Stone. And he was unable to be here because he is
21 having surgery. And I would like to read his letter and
22 add it to the public record.

23 "My name is Buckley Stone. I am 54 years old
24 and have lived a simple life afloat for 20 years.
25 I joined the U.S. Air Force after high school.

1 In 1977, I became terminally ill with lymphoma
2 and was hospitalized for 18 months and survived
3 experimental chemotherapy. During that time, I
4 suffered renal failure, cardiopulmonary embolism,
5 blindness and a host of other infections and side
6 effects. I was clinically dead twice and my
7 parents flew back east both times to bury me.

8 "I was air evacuated from Pease Air Force
9 Base near New Hampshire to the National Institute
10 of Health in Washington D.C., where I received
11 medical care. In 1987, I was classified as being
12 in remission and was deemed cured after 5 years
13 without treatment.

14 "When I was well enough, I put myself through
15 college and worked in the electronic industry for
16 25 years. I did not sit at home to collect a
17 check from the VA. I went to work, and
18 fortunately I put a lot of money into my Social
19 Security, which I rely on for part of my income.

20 "In 2000, I fell ill again with Hepatitis C
21 from the transfusions I received and had to have
22 another year of chemo. During this time, I lost
23 my career and my income. I was placed on
24 permanent disability by the VA, and have been
25 living on a fixed income since 2002. I've been

1 receiving medical treatment at the Palo Alto VA.
2 And because of my extensive complicated medical
3 history, I must be able to continue my medical
4 treatment at this location.

5 "These complications and side effects have
6 put my immune system in serious risk. It is
7 critical to my health to remain as close to the
8 VA as possible. My wife Wendy is my primary
9 caregiver and takes care of my day-to-day needs.
10 Without her I would have died again.

11 "Please save this piece of Redwood City
12 history and our community. Thank you for your
13 time and interest in this matter."

14 Now, it may not be part of the Public Trust to
15 take care of our veterans, but it is part of the public
16 good. And as a more personal issue, and an amateur
17 photographer, Pete's Harbor is just absolutely gorgeous.
18 Just looking out over the boats at night, any time of day
19 you see the lights of 101, and the businesses across the
20 bay, and it's absolutely amazing.

21 Please save Pete's Harbor. Please allow us to
22 negotiate with the developers. Please deny the renewal of
23 the lease.

24 Thank you.

25 ACTING CHAIRPERSON GORDON: Next witness.

1 MS. CARTWRIGHT: My name is Shawn Cartwright and
2 I wish I was a famous soccer player.

3 Pete's Harbor is a community that matters. How
4 many people in this room actually know everyone on their
5 block?

6 You do?

7 You're the only one. You're the only one who
8 raised their hand. So you're lucky.

9 The people at Pete's Harbor they know everyone on
10 their block. They know everyone in the harbor. It's the
11 only place that I've ever seen. And the other night,
12 there was a car that crashed in my neighborhood. It came
13 up on the sidewalk, drunk, the whole thing. How many
14 people drive up on your sidewalk? Crashed into a palm
15 tree. How many people came out in my neighborhood?

16 Me and a guy down the block. That was it. Three
17 o'clock in the morning.

18 But in Pete's Harbor they would all come out.
19 They would come out if you pulled up with like a fruit
20 with. "Hey, welcome. How are you doing?" Somebody new
21 in the neighborhood. That's how they are. And that's why
22 it's a community that matters, and that's why we're here.

23 And that's why I'm here, because honestly when I
24 first heard about it, "Ooh, a bunch of people on boats
25 getting thrown out. Who cares?"

1 I thought because it was a bunch of rich people
2 who could afford to live on boats. But it turns out,
3 because it's Pete's Harbor, it's one of the biggest BMR
4 communities on the entire peninsula. And to lose
5 something like that, particularly as somebody who grew up
6 on welfare, that's huge to me, to lose a big chunk of BMR
7 housing. Redwood City doesn't have enough to begin with
8 as it is.

9 I find that to be a travesty that we would even
10 consider doing something like that. You know you can live
11 aboard a boat for 700 bucks a month? That's kind of nice.
12 You go on vacation, you just put away and go someplace
13 new. That's really nice.

14 I wanted to say that over 2 dozen jobs are going
15 to be lost due to business closure. Many of those
16 businesses are owned by the people that live at Pete's
17 Harbor.

18 We've already covered the veterans issue. We've
19 got children that are going to be like having to switch
20 schools. And there are 91 current registered voters at
21 Pete's Harbor, so -- I bet you didn't know that?

22 Also -- I'm sorry. I've got all the notes here.
23 The Pauls Corporation has a history of using non-union and
24 non-prevailing wage. So what they did at their last
25 building, the one right next door that they built was they

1 managed to get the unions, the trade unions, to go ahead
2 and fund their EIR, and then after that, they still used
3 non-prevailing wage and non-union labor. So there's no
4 reason to believe that they're not going to do that again.

5 It's a really nice trick.

6 So as somebody who believes in labor, I find that
7 to be a big issue, and I believe that everyone should be
8 paid a prevailing wage, particularly as somebody from San
9 Jose and we finally upped our minimum wage, so woohoo.

10 Proud of that.

11 Sausalito just went through the same issue.
12 Sausalito just went through the same issue of them trying
13 to get rid of the boaters.

14 And Peninsula Marina, anyone, anyone?

15 Yeah, there is no Peninsula Marina, because they
16 got rid of them. They got rid of them. The same people
17 got rid of them. So we've got to stop this. This is
18 what's happening right now is getting rid of these
19 boaters, getting rid of liveboards.

20 And then you push them out, and then they anchor
21 out. And then what happens? They end up crashed along
22 the rocks. And then you don't even have the boat. And is
23 this what we really want to do? Is this what we really
24 want to do to boaters? Is this what we want to do to the
25 biggest BMR community in the peninsula? Is this what we

1 really want to do to an entire neighborhood, a community
2 that matters?

3 In closing -- I see my little red dot -- this is
4 a breach of the Public Trust. I know my colors. I watch
5 Sesame Street. This is a breach of Public Trust. And I
6 implore you not to assign or transfer the lease, and not
7 to change the use from commercial public access marina to
8 a private residential one.

9 Pete's Harbor, it's a community that matters.
10 These people matter. And what's being done is wrong and
11 it's dishonest. More than anything, it is completely
12 dishonest.

13 Thank you.

14 ACTING CHAIRPERSON GORDON: Next witness. I
15 think last one. Leslie Webster.

16 MS. WEBSTER: I already spoke.

17 ACTING CHAIRPERSON GORDON: Oh, she already
18 spoke. Okay. Do we have anybody?

19 Is that it?

20 Do you have anything?

21 ACTING COMMISSIONER GARLAND: No, thank you.

22 ACTING CHAIRPERSON GORDON: One short statement,
23 which is, at least for one Commissioner, some knowledge of
24 the Public Trust. Had you gone back 25 years -- as
25 recently as 25 years ago, the view of the Public Trust in

1 California and in some instances was that it was simply a
2 matter of coming down from Roman Law of navigation and the
3 right to fish.

4 We have expanded the Public Trust as the years
5 have gone by to take in recreational uses and
6 environmental uses.

7 It's a living, breathing, document. It's living
8 breathing common law theory over 2,000 years old and will
9 continue to evolve. Whether having housing in a Public
10 Trust use is appropriate, I think we're going to have to
11 reach that decision going forward. But it strikes me that
12 there's a compromise to be reached here somewhere.

13 And if that means downsizing the development a
14 little bit or finding parking somewhere else, at least for
15 one Commissioner, that will be something we will look at
16 very, very seriously. I can't speak for either of the
17 other 2 Commissioners, but we will be looking for a way to
18 find a way out of this and keep the housing that currently
19 exists.

20 Anything else?

21 All right. That concludes the open meeting.

22 We'll now adjourn into closed session. Will the
23 public please clear the room.

24 Thank you.

25 EXECUTIVE OFFICER FOSSUM: Excuse me, Mr. Chair.

1 There is one other element on the agenda, Commissioners
2 Comments.

3 ACTING CHAIRPERSON GORDON: That's true. Yeah,
4 hoisted on your own petard, as they say.

5 Do you have anything?

6 I think we're okay this time. Thank you, Curtis.

7 EXECUTIVE OFFICER FOSSUM: Wonderful.

8 ACTING CHAIRPERSON GORDON: Your final action.

9 EXECUTIVE OFFICER FOSSUM: Thank you for that
10 gift.

11 (Off record: 3:38 PM)

12 (Thereupon the meeting recessed
13 into closed session.)

14 (Thereupon the meeting reconvened
15 open session.)

16 (On record: 4:15 PM)

17 ACTING CHAIRPERSON GORDON: We are now back in
18 public session. We have finished private session. We
19 are -- I am going to gavel this to a close in one second,
20 unless there's any public comment.

21 But first, we do need to say goodbye to Mr.
22 Fossum and say thank you for your 50 years of service.

23 (Laughter.)

24 ACTING CHAIRPERSON GORDON: You disproved the
25 rumor that you were here at the beginning of the State

1 Lands Commission, but --

2 EXECUTIVE OFFICER FOSSUM: Californian native 62
3 years.

4 ACTING CHAIRPERSON GORDON: Enjoy your retirement
5 Curtis. It's really been a pleasure and an honor to work
6 with you this last year and a half.

7 EXECUTIVE OFFICER FOSSUM: Likewise. And thank
8 you all. And look forward to keeping an eye on everybody
9 on the webcast from my couch.

10 (Laughter.)

11 ACTING CHAIRPERSON GORDON: Meeting is closed.

12 (Thereupon the California State Lands
13 Commission meeting adjourned at 4:15 PM)

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