

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 agendaized 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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