

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

OFFICE OF LIEUTENANT GOVERNOR
STATE CAPITOL
ROOM 1114
SACRAMENTO, CALIFORNIA

TUESDAY, APRIL 4, 2017
2:02 P.M.

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

A P P E A R A N C E S

COMMISSION MEMBERS:

Mr. Gavin Newsom, Lieutenant Governor, Chairperson

Ms. Betty T. Yee, State Controller, represented by Ms. Anne Baker

Mr. Michael Cohen, Director of Department of Finance, represented by Ms. Eraina Ortega

STAFF:

Ms. Jennifer Lucchesi, Executive Officer

Mr. Colin Connor, Assistant Executive Officer

Mr. Mark Meier, Chief Counsel

Mr. Seth Blackmon, Staff Attorney III

Ms. Kim Lunetta, Administrative Assistant

ATTORNEY GENERAL:

Mr. Mitchell Rishe, Deputy Attorney General

ALSO PRESENT:

Mr. Francis Coats

Ms. Alison Madden, San Francisco Bay Marinas for All

Ms. Theresa Simsiman, California Stewardship Director, American Whitewater

I N D E X

	PAGE
I 2:00 P.M. - OPEN SESSION	1
II CONSENT CALENDAR - NONE	
III REGULAR	
01 CALIFORNIA STATE LANDS COMMISSION: Consider whether to discuss pending litigation in Closed Session. CEQA Consideration: not applicable. (503.2096)(A & S: Statewide) (Staff: S. Blackmon, M. Meier)	9
IV PUBLIC COMMENT	1
V CLOSED SESSION: AT ANY TIME DURING THE MEETING THE COMMISSION MAY MEET IN A SESSION CLOSED TO THE PUBLIC TO CONSIDER MATTERS THAT FALL UNDER GOVERNMENT CODE SECTION 11126(e)(2)(B) OR (2)(C).	10
Adjournment	11
Reporter's Certificate	12

1 P R O C E E D I N G S

2 CHAIRPERSON NEWSOM: I'll call this special
3 meeting of the State Lands Commission to order. All the
4 representatives of the Commission are present. We have
5 one item on today's calendar.

6 But before we get to that item, we have three
7 members of the public that clearly were paying attention
8 to public notices --

9 (Laughter.)

10 CHAIRPERSON NEWSOM: And took time to be here.
11 And in respect to their taking that time, I would love to
12 hear from all of you before we enter -- if it's okay with
13 the Commissioners, before we enter into our closed
14 session.

15 EXECUTIVE OFFICER LUCCHESI: Sounds good.

16 CHAIRPERSON NEWSOM: Whichever one of you wishes
17 to speak first.

18 MS. MADDEN: I think I might have signed the list
19 first, so.

20 CHAIRPERSON NEWSOM: And if you could just for
21 the record state your name?

22 MS MADDEN: My name is Alison Madden. I am with
23 the Organization San Francisco Bay Marinas For All, also
24 Save Docketown. And I know that you guys have heard us,
25 you know, come and address you before. So I appreciate

1 the opportunity.

2 I actually wanted to come today. We do know that
3 you're going to be in Berkeley on April 20th. And some of
4 our members may show up there. And what I wanted to come
5 and ask is I -- we have retained Gary Redenbacher and Bill
6 Parkin to address a settlement agreement that Redwood City
7 entered into with a lawyer named Ted Hannig.

8 And what we are proceeding forward on is the
9 Redwood City Charter actually establishes the Port
10 Department and the City Council, and they're entirely
11 separate, two different political entities, if you will.
12 And the port does not report to the city, and the city has
13 no review authority over the port. And our allegation is
14 that Docketown is in the Port jurisdiction, and so Ted
15 Hannig sued the wrong party.

16 It doesn't involve you guys at all, but what we
17 noticed when we were doing the research is that the
18 charter defines the port area as the tide and submerged
19 lands filled and unfilled, granted or ungranted, and the
20 land adjoining it, so the assessor's parcel number
21 adjoining it. And it has all kinds of ramifications,
22 because certain things like the Pete's Harbor permit is
23 not in the city council's jurisdiction and all kinds of
24 things.

25 But what we did then started to look at is the

1 city is applying to the BCDC for 10 percent liveaboards in
2 the municipal harbor. And so what we'd like to propose
3 that the State Lands Commission staff and Commissioners
4 maybe start thinking about is allowing the entire port
5 area. Redwood City defines the port area, as I just
6 stated, as the tide and submerged lands. It's also in the
7 interior of the port. It's the Redwood City Yacht Harbor.
8 So out of all the slips that are in the harbor, some or
9 private land, some not, so he contested.

10 You know, we'd like to see if -- that we can have
11 a potential resolution to have 10 percent of the port area
12 be allowed liveaboards. And I know the 10 percent comes
13 from the BCDC rule. It comes from the Bay Plan and
14 McAteer-Petris Act. And its in the Bay Plan because of
15 the rich history of living on San Francisco Bay, not
16 because of the safety issue.

17 And I know that the State Lands Commission has
18 allowed two to four percent liveaboards for safety. And
19 we just want to propose that as a question of kind of a
20 mixed question of fact and why it's actually not safe to
21 have two to four percent with people traveling, and they
22 work. And it's actually risky to the people that live
23 there in such a small community.

24 And I also wanted to say statewide boating is
25 enhanced by having a marina because they intend to take

1 the marina out. So we have, you know, a long guest dock.
2 We brought a club who just hosted all the tall ship
3 sailors that came in. We have sail-ins, we have
4 sail-outs. We have boating safety. We clean the creek.
5 So many, many public -- advanced by the liveaboard
6 community. So that is mostly what I wanted to say.

7 I also wanted to say, you know, Massachusetts
8 law, Florida, Tennessee Valley Authority, the federal,
9 Seattle, Portland, Washington, Oregon, they all allow this
10 kind of approach that if you have a community that also
11 supports and doesn't inhibit other material Public Trust
12 purposes, that it's permanent.

13 So I think that's everything I wanted to say. I
14 wanted to let you know about the litigation that it
15 doesn't involve you, but that we are hoping that that's
16 peaceful resolution.

17 And if I could, can I have leave this stuff.
18 It's just declarations and whatnot, declarations of
19 hardship. There's a 85-year old lady cancer who keeps
20 calling me saying she thinks she's going to die if she has
21 to move. And Redwood City is trying to kick us out this
22 year, even though you guys never said this year. We know
23 you guys would have given us 10 or 15 years.

24 Thank you.

25 CHAIRPERSON NEWSOM: Thank you.

1 Francis.

2 MR. COATS: Hello. I'm Francis Coats. And I
3 came here to ask for an opportunity on the part of the
4 public to work with the agency staff in an open,
5 transparent, and cooperative manner on developing a
6 document to inform the public and the agencies of the
7 public's rights relative to public access and the use of
8 the Public Trust lands.

9 That -- this is -- you know, grows out of at
10 least the strategic plan process, where there's a
11 commitment to do that, and I'm advised that the agency
12 staff has been working with somebody at the Attorney
13 General's office on this for -- I've been told that for at
14 least a year.

15 I know nothing about it. And being a retired
16 State employee, I'm afraid that whatever come -- they come
17 up with is going to set in concrete and there's going to
18 be great resistance to any kind of input or change once
19 somebody spent a year and a half working on a document
20 with the Attorney General. So that's, A, I'd like to be
21 able to work on that.

22 And B, I'm looking for a response to a rulemaking
23 petition I submitted on January 17th for an interpretation
24 of Article 1, Section 25 of the State Constitution, which
25 is the fishing rights. Basically, the part I'm interested

1 in is that State agencies are obligated to reserve in the
2 public the absolute right to fish upon any land owned by
3 the State, sold or transferred by the State, that -- I'm
4 told that the Commission doesn't believe that land swapped
5 for other land is transferred, or maybe it doesn't think
6 its land. Either one I don't follow.

7 I'm also told they're relying on a 1962 Attorney
8 General's opinion relative to a Leslie's Salt Company
9 transaction. And I would point out that the Supreme Court
10 case on this subject is a 1978 decision, 16 years later.
11 And their Attorney General's opinion was done without the
12 benefit of any real appellate court decisions on this.

13 In 1973, there was the Quinn -- in re Quinn, and
14 1978, the San Luis Obispo Sportsmen's Association Case.
15 The Supreme Court case very clearly said that State-owned
16 land means land owned by the State, except that the right
17 to fish on State-owned land does not apply to prisons or
18 mental institutions. It doesn't leave a lot of room
19 for -- a swap is not a transfer, let alone a sale. So
20 thank you for your time.

21 CHAIRPERSON NEWSOM: Appreciate it.

22 Appreciate it. We can talk about that in a
23 moment. Theresa.

24 MS. SIMSIMAN: I'm keeping mine brief. I'm sure
25 you remember -- may remember me from last time.

1 Theresa Simsiman with American Whitewater. I am
2 the California Stewardship Director. American Whitewater
3 is a national organization that has been working over 60
4 years on public land in terms of the Public Trust and
5 access to our rivers.

6 So I've come here today to kind of get, you know,
7 request for a follow-up of where we're at with the legal
8 guide, because we feel that, again, it will be good a tool
9 for us to use. And it was our understanding from the
10 stakeholder meeting that we had, that we would be more
11 involved. And I am just here to say I'm ready to be
12 involved.

13 CHAIRPERSON NEWSOM: Okay. Appreciate that. I
14 think -- those are the three.

15 Anyone else?

16 Do members of my staff wish to speak?

17 (Laughter.)

18 CHAIRPERSON NEWSOM: You seem to have a lot to
19 say privately. Interesting silence.

20 So we'll close public comment. Thank you, all,
21 for being here.

22 Anything you want to just reflect out of respect
23 to the speakers.

24 EXECUTIVE OFFICER LUCCHESI: Of course. I'm
25 happy to. With regard to the public access document, it

1 is our intention to involve both Francis and Theresa on --
2 in the development of that document. I will say that we
3 have not actually worked on it since our stakeholder
4 meeting, so we're not moving on, you know, without you.
5 It's a workload issue right now.

6 So -- and in terms of Francis -- Mr. Coats' other
7 comments regarding the Attorney General's opinion, and his
8 request for a rulemaking, we are looking into that. I'm
9 not sure if we've actually provided a written response to
10 that, but we are preparing one if we haven't already yet.
11 We've also been working with the Attorney General's
12 office. So we are working on all of the things that Mr.
13 Coats and Theresa raised.

14 It is taking longer than I'm sure they would
15 hope. And frankly, it's a workload issue at this point.

16 ACTING COMMISSIONER BAKER: Do we have a sense of
17 a time on the public access thing?

18 EXECUTIVE OFFICER LUCCHESI: Well, the

19 ACTING COMMISSIONER BAKER: Second quarter this
20 year, third quarter.

21 EXECUTIVE OFFICER LUCCHESI: Well, no. I don't
22 have a sense at this moment in time, because the message I
23 got from our stakeholder meetings and other public
24 comments at various Commission meetings were that the
25 various stakeholders wanted to be at the table in the

1 development of the legal guide. So that entails some
2 coordination and some setting up of meetings, and that
3 sort of thing, as opposed to just providing them a draft
4 of what we've already worked on so far and getting a
5 reaction. So it's really on my plate, frankly, right now
6 to set up those meetings, and work through that process.

7 ACTING COMMISSIONER BAKER: So I'm going to go
8 out on a limb here. Can maybe you come to our meeting in
9 a couple of weeks with kind of a outline of a plan and
10 timetable --

11 EXECUTIVE OFFICER LUCCHESI: I can do that.

12 ACTING COMMISSIONER BAKER: -- so you don't have
13 to do it off the top of your heard what this looks like.

14 EXECUTIVE OFFICER LUCCHESI: Right. I'm happy to
15 do that.

16 CHAIRPERSON NEWSOM: That's great. All right.
17 Thanks. Excellent.

18 So item number 1, consider whether to discuss
19 pending litigation in closed session.

20 EXECUTIVE OFFICER LUCCHESI: Yeah. So staff is
21 asking for the -- we're not in closed session yet. This
22 is still the public open session. We haven't -- you're
23 welcome to leave or listen.

24 (Laughter.)

25 EXECUTIVE OFFICER LUCCHESI: We -- staff is

1 asking the Commission to adopt the recommendation as laid
2 out in the staff report before you, and I'm happy to
3 answer any questions at this time.

4 CHAIRPERSON NEWSOM: Anyone?

5 CHIEF COUNSEL MEIER: The recommendation is to go
6 into closed session.

7 CHAIRPERSON NEWSOM: Motion to go to closed?

8 ACTING COMMISSIONER ORTEGA: Yes.

9 ACTING COMMISSIONER BAKER: Second.

10 CHAIRPERSON NEWSOM: Without objection, we'll go
11 into closed session, and we thank you guys for being here.
12 You can come back at the end for public comment again, if
13 you wish.

14 (Off record: 2:14 p.m.)

15 (Thereupon the meeting recessed into
16 closed session.)

17 (Thereupon the meeting reconvened in
18 open session.)

19 (On record: 3:00 p.m.)

20 CHAIRPERSON NEWSOM: So we're back in open
21 session. Anything to report out?

22 EXECUTIVE OFFICER LUCCHESI: No.

23 CHAIRPERSON NEWSOM: Nothing.

24 Is there any public comment?

25 Seeing none, public comment is closed.

1 That, I believe, ends today's closed
2 session/special meeting.

3 Thank you. You're wonderful.

4 (Thereupon the California State Lands
5 Commission meeting adjourned at 3:00 p.m.)

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C E R T I F I C A T E O F R E P O R T E R

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing California State Lands Commission meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California;

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

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of February, 2017.

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