

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

COURTYARD BY MARRIOTT EMERYVILLE
5555 SHELLMOUND STREET
EMERYVILLE, CALIFORNIA

MONDAY, FEBRUARY 1, 2010
10:01 A.M.

JAMES F. PETERS, CSR, RPR
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APPEARANCES

BOARD MEMBERS

Mr. John Chiang, State Controller, Chairperson

Ms. Mona Pasquil, Acting Lieutenant Governor

Ms. Ana J. Matosantos, Director of Finance, represented by
Ms. Cynthia Bryant

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Curtis Fossum, Chief Counsel

Mr. Colin Connor, Assistant Chief, Land Management
Division

Mr. Mario De Bernardo, Legislative Liaison

Ms. Mary Hays, Public Land Manager

Ms. Kimberly Lunetta, Executive Assistant

ATTORNEY GENERAL'S OFFICE

Mr. Joe Rusconi, Deputy Attorney General

ALSO PRESENT

Mr. Martin Adams, Los Angeles Department of Water and
Power

Mr. Lance Bishop

Ms. Ruth Gravanis, Public Trust Group

Mr. Dean Rewerts, California Ships to Reefs

Mr. Mark Ross, Council Member, City of Martinez

Ms. Sandra Threlfall, Public Trust Group

Mr. Philip Vince, City of Martinez

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1 Officer's report.

2 Paul, may we have that report, please.

3 EXECUTIVE OFFICER THAYER: Thank you and good
4 morning, Mr. Chair and members of the Commission.

5 As is our custom, I wanted to bring you up to
6 date on the latest on some of these enforcement actions
7 that we're pursuing. One of them will be on the regular
8 calendar today. This is the floating home that was
9 originally owned by Jean Taylor, but was purchased by a
10 Lance Bishop and moved to another slough in the Delta.
11 And staff is recommending that ejectment action be taken
12 by the Commission. As I say, that will be heard later.

13 John Asuncion and the Blue Whale Sailing School.
14 This is the trespass that's down in the south bay, where
15 there are docks on State lands without benefit of a lease.
16 The Commission had previously authorized us to take all
17 necessary legal action. The Santa Clara County Superior
18 Court entered a default against the school.

19 The next action will be for us to appear in court
20 and provide evidence of what sort of damages we're
21 seeking. And these will reflect the cost to remove the
22 improvements, and so we're going to be doing another site
23 inspection and obtain a final estimate and bring that back
24 to the court.

25 On the Spirit of Sacramento, this was the vessel

1 that's an old ferry that's parked downstream from downtown
2 Sacramento against the bank. The owner, Mr. Barker, had
3 not obtained a lease from the Commission and did not apply
4 for one after repeated attempts to obtain one. The
5 Commission authorized action against Mr. Barker. He's
6 been served. He still hasn't moved the boat.

7 And in recent high water there, it basically
8 sunk. There was water up to the second deck there, and he
9 has since been trying to patch it and refloat it, and has
10 not had any success. We're not sure if he'll be able to
11 accomplish that.

12 Finally, and again we'll talk about this a little
13 bit more in closed session, but I'm happy to report that
14 the fence on the north shore of Lake Tahoe, that the
15 Commission was concerned about and ordered that it be
16 removed because it prevented public access into one area
17 of the beach there, has, in fact, been removed. Curtis,
18 was that last week or the week before?

19 CHIEF COUNSEL FOSSUM: Yes, last week.

20 EXECUTIVE OFFICER THAYER: Last week. So that's
21 not there. And I think the Commission has got their
22 pictures already or we'll give those later.

23 Okay, Curtis will hand those out. So that's a
24 success story. And in connection with that, I think we're
25 going to discuss that more in closed session, but we're

1 moving towards reaching agreement with the property owners
2 to prevent future harassment of the public, such as
3 occurred last summer.

4 And unless there are any questions, that
5 concludes the Executive Officer's report?

6 CHAIRPERSON CHIANG: Any questions or comments?

7 Very good. Next item.

8 EXECUTIVE OFFICER THAYER: It would be the
9 Consent Calendar.

10 CHAIRPERSON CHIANG: Okay.

11 EXECUTIVE OFFICER THAYER: There are several
12 items that the staff wanted to pull from the Consent
13 Calendar.

14 Item 38 is the proposal to put some monitoring
15 wells in Owens Lake. And I think LADWP is reworking its
16 application.

17 Number nine is a proposal by Riverbank Marina to
18 put in a refueling facility near Sacramento. And there is
19 a dispute between staff and the applicant as to the
20 appropriate language in the lease, so that's going to be
21 removed from the calendar, and will be heard at a future
22 meeting.

23 Late last week, the Controller received an email
24 out of concern for potential contamination impacts to Item
25 number 12. This has to do with the restoration and

1 rebuilding of a restaurant, which will be partially --
2 eventually will be partially on State lands --
3 Commission-managed land, and partially on land managed by
4 the Port.

5 And there hasn't been time for the staff to
6 thoroughly investigate those concerns. And so the
7 Controller has asked that we remove that from the agenda
8 and we'll do that.

9 And then finally, although we don't have a
10 speaker's slip yet, my understanding is that Martinez
11 would like to discuss the proposed lease amendment --
12 excuse me, proposed lease renewal that is in Item 34. And
13 so we understand they're filling out a slip now, so staff
14 would recommend that we take that off the consent as well.

15 CHAIRPERSON CHIANG: Very good. Thank you. Is
16 there anyone in the audience who wishes to speak on such
17 an item?

18 No. Okay, if not, the remaining group of consent
19 items will be taken up as a group for a single vote.

20 Is there a motion?

21 COMMISSIONER PASQUIL: So moved.

22 ACTING COMMISSIONER BRYANT: Second.

23 CHAIRPERSON CHIANG: We have a motion and a
24 second. Without objection, the motion passes.

25 Next item, please.

1 EXECUTIVE OFFICER THAYER: The next item is the
2 informational item dealing with Owens Lake and the dust
3 control measures undertaken by LADWP there. The
4 Commission will recall that at our last meeting, staff had
5 brought the proposal from LADWP for three and a half miles
6 of dust control, through a mechanism known as Moat and
7 Row. There's some controversy associated with that and
8 some question as to whether or not that benefits the
9 Public Trust values of the lake.

10 At the last meeting in December, the Commission
11 approved one segment of that project, which involved
12 fences and not the actual construction of Moat and Row,
13 and directed staff to return with an informational item to
14 track progress being made on alternatives. The principal
15 alternative that is under consideration is the potential
16 use of solar arrays to control the dust there.

17 Staff and staff from LADWP have had several
18 conversations, phone conversations, and meetings that
19 occurred immediately afterwards. I think the most
20 significant thing initially was that the Commission had
21 great concern that without approval of this portion of the
22 Moat and Row project, that L.A. would be subject to a
23 \$10,000 a day fine.

24 In a meeting the week after the State Lands
25 Commission meeting, the executive officer of the air

1 district there indicated that that deadline had been met
2 through the Commission's approval of that one increment.
3 So the next deadline facing the Commission is the October
4 1st deadline for completion of the remediation of those
5 three and a half miles.

6 We do have a staff presentation on this, and then
7 I'd like to make some more comments when that's done. And
8 Colin Connor from our Land Management Division will make
9 that presentation.

10 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

11 Good morning, Mr. Chairman, members of the
12 Commission. Welcome, Ms. Bryant.

13 My name is Colin Connor. I'm the Assistant Chief
14 of the Land Management Division. And I'm here to present
15 information on Calendar Item 42, which as Paul said, is an
16 update on the status of the Phase VII dust control project
17 on the dry bed of Owens Lake.

18 Paul pretty much took all my information here, so
19 I'm just going to fill in the gaps.

20 As you recall at the December 17th meeting, the
21 Commission authorized an amendment to lease number PRC
22 8079.9 to allow the City of Los Angeles, Department of
23 Water and Power, herein after I'll refer to them simply as
24 "the city" to construct sand fences on Cell T1A-1 at Owens
25 Lake, and to construct ancillary features to enable

1 wetland enhancement of existing vegetation, also known as
2 managed vegetation.

3 As part of the amendment, the city was also
4 required to provide a written report to the Commission
5 staff by January 31st, 2010 detailing the city's progress
6 on the work a Cell T1A-1, on the city's negotiations with
7 Great Basin Unified Air Pollution Control District
8 concerning dust mitigation on Owens Lake, and also on the
9 city's progress in developing a solar demonstration
10 project.

11 The city also agreed to provide specific
12 mitigation for impacts to biological resources or until
13 specified in a master plan approved by the California
14 Department of Fish and Game and the Commission.

15 The Commission requested that staff report back
16 to them at the February 1st meeting on the city's progress
17 in the work on Cell T1A-1, on the city's coordination with
18 Commission staff on the proposed alternative dust control
19 plans for the remaining emissive sites, and remaining
20 emissive sites previously proposed from Moat and Row, and
21 for the development of plans for a solar demonstration
22 project.

23 What I'm going to be talking about here will
24 address the Commission's requests.

25 First, regarding the city's progress in Cell

1 T1A-1. Following the meeting, Commission staff began
2 working with the city to finalize the terms of the lease
3 amendment. We were able to complete the amendment, and
4 both parties executed it on December 29th, 2009.

5 This enabled the city to begin work on the cell
6 the next day, essentially, and allow them to avoid being
7 fined by Great Basin.

8 City staff informs us that work in the cell is
9 well underway. And I'll talk about some of the things
10 they've done in a moment.

11 With respect to alternative dust control plans
12 for the remaining Phase VII sites, the Commission's
13 Executive Officer met with Mr. S. David Freeman and Mr.
14 Martin Adams from the city, and Mr. Ted Schade of Great
15 Basin on December 22nd, 2009.

16 They discussed the proposed demonstration
17 project, and the possibility of using brine as a
18 substitute dust control measure for both Moat and Row and
19 for shallow flooding. City staff have also indicated to
20 Commission staff that they are looking at other
21 alternatives for other Moat and Row areas that will
22 further minimalize impacts on the lake bed.

23 As a follow up to this meeting, on January 13th,
24 2010, Commission staff sent a letter to Mr. Adams
25 acknowledging that the city would act as the CEQA lead

1 agency for the preparation of a Mitigated Negative
2 Declaration for the solar demonstration project. The
3 letter also requested additional information on the
4 project, and more information about the potential impacts
5 from the use of brine as a dust control measure.

6 On January 26th, Commission staff received a
7 one-page draft titled *Progress Report on Construction*
8 *Activities at T1A-1 at Owens Lake*. And a two-page four
9 exhibit draft titled *Progress Report on Owens Lake Dry*
10 *Solar Demonstration Information Collection Study*.

11 The progress report on construction activities at
12 Cell T1A-1 recounts the surveying, mobilization of
13 equipment, and trenching that has already taken place, and
14 provides a brief overview of upcoming work.

15 I should note that the city staff also provided a
16 final of both of those documents, both the progress
17 reports, and they were essentially the same document.

18 The progress report on the solar demonstration
19 project is somewhat more detailed. It notes that the
20 80-acre site will be located in the eastern portion of
21 Cell T1A-4, and I'm going to show you that. That is this
22 cell right here in dark. The sand fences that were
23 authorized by the amendment we just executed are down
24 here.

25 I'll repeat that. So the solar demonstration

1 project is going to be on the eastern portion of this Cell
2 T1A-4. And the sand fences that were authorized were down
3 here in T1A-1.

4 Okay. The city intends to conduct simultaneous
5 studies on the 80-acre site. A portion of the solar
6 project will be augmented with gravel. That means arrays
7 with gravel on the ground between the footings of the
8 arrays and on the streets in between.

9 Another portion will consist of solar arrays with
10 earthen berm wind breaks. And another portion will be
11 used to test emerging solar technologies.

12 The city states that the demonstration project
13 will incorporate all applicable environmental mitigation
14 measures proposed in the 2009 Moat and Row SEIR, that's
15 Supplemental Environmental Impact Report.

16 The city's solar progress report also provides a
17 timeline. This calls for submittal of a complete
18 conceptual proposal in February 2010, completion of an
19 environmental document, Mitigated Negative Declaration,
20 and lease authorization from the State Lands Commission in
21 August 2010. And lastly, commercial operation by July of
22 2011.

23 The city maintains that the solar demonstration
24 project is needed in order to determine the feasibility of
25 solar panel arrays as a dust control measure at Owens

1 Lake, to gain experience for future projects through the
2 testing of different solar technologies and the harsh
3 environment and particular solar conditions of Owens Lake,
4 and to minimize the long-term consumption of natural
5 resources, water.

6 On January 28th, the city hosted a meeting and
7 teleconference on its plans for the solar project.
8 Participants in the meeting included representatives of
9 the City Mayor's office, LADWP, a solar consulting firm,
10 the Public Utilities Commission, the California Energy
11 Commission, PG&E, Southern California Edison, Cal ISO
12 which is the Independent System Operator, the Sierra Club
13 and other groups.

14 A wide range of topics were covered at the
15 meeting, including a description of the demonstration
16 project and a vision for the full-scale project, which
17 would encompass some 60,000 acres and ultimately produce
18 three to five gigawatts.

19 With respect to another lease amendment
20 requirement, city staff informed Commission staff on
21 January 25th that a facilitator had been hired by the city
22 to assist in the development of the master plan. The
23 facilitator is Ms. Gina Bartlett and she is with the
24 Center for Collaborative Policy at California State
25 University, Sacramento.

1 To summarize what has been done to date, the city
2 has provided written progress reports on the work at the
3 Cell T1A-1 and on the proposed solar demonstration
4 project. The city has also hired a facilitator to
5 coordinate the development of a master plan.

6 The city has not yet provided information on the
7 status of their negotiations with Great Basin Air
8 Pollution Control District or any additional information
9 on alternative dust control measures such as brine.

10 Looking forward, staff anticipates that the city
11 will be providing an update on the city's negotiations
12 with Great Basin concerning the dust mitigation, and that
13 the city should also provide, at its earliest opportunity,
14 any other alternatives for other Moat and Row areas that
15 will further minimize the environmental impacts to the
16 lake bed.

17 Regarding the demonstration project, the city
18 will also need to submit a lease application to Commission
19 staff for the project, including a sufficiently detailed
20 project description, in other words, more than what they
21 had provided in their progress report. Staff would also
22 like to coordinate with the city staff to schedule an
23 on-site meeting for the solar demonstration project.

24 And as part of the preparation of the master
25 plan, the city and the facilitator plan to convene a

1 stakeholder group. The facilitator will then conduct
2 interviews with representatives of each organization or
3 group, including the Commission.

4 Commission staff looks forward to working with
5 the City of Los Angeles to control dust emissions on Owens
6 Lake, while at the same time preserving the natural and
7 biological resources, habitat and Public Trust values that
8 make the lake bed unique.

9 This concludes my presentation. Staff is
10 available to answer any of your questions. I understand
11 that the city -- representatives of the city will be here,
12 but may not be here at this time.

13 EXECUTIVE OFFICER THAYER: I think he's here. If
14 there's not any questions of Mr. Connor, I just had a
15 couple concluding comments.

16 I did have a telephone conversation with Mr.
17 Adams last night, talked over a few things. And it's
18 clear from his comments that the L.A. -- there's some -- a
19 little bit of conflict between the administration at LADWP
20 and the Board. And there's certainly elements within the
21 administration who believe that the best thing that could
22 happen out there would be to drop Moat and Row and move
23 forward with solar arrays. I mean, solar arrays have a
24 number of benefits that I think the Commission would
25 appreciate and fit in well with other statewide policies,

1 the Governor's proposals on renewable portfolio standards
2 and the AB 32 deadlines.

3 But the Board is clearly -- the Board of LADWP is
4 still very concerned about meeting this October 1st
5 deadline, and has directed that its staff continue to seek
6 approval of Moat and Row for the entire project from the
7 Commission.

8 So I think one of the center pieces for today
9 would be whatever direction the Commission wants to give
10 to staff, in terms of whether we should agendaize this for
11 the next meeting, agendaize part of it, that kind of thing.

12 The staff, as was the case at the December
13 meeting on this project, opposes Moat and Row, believes
14 it's not consistent with the Public Trust Doctrine, that
15 these other methods that have been used over the vast bulk
16 of the area of dust emissions to control those emissions
17 had an ancillary benefit for Public Trust values and
18 included vegetation, and shallow flooding, so that Public
19 Trust resources, the bird use, that kind of thing, were
20 enhanced, rather than diminished.

21 Whereas, Moat and Row, while potentially
22 controlling the dust, doesn't have any of those ancillary
23 Public Trust benefits. It degrades the Public Trust
24 values of the lake.

25 As Colin indicated, we have talked with LADWP

1 about alternatives of both short and long term. And the
2 one that was discussed in December is obviously still on
3 the table, with the idea of trying to come up with a
4 master plan for dust control on the lake that would have
5 three different benefits.

6 The first would be the -- it would control dust,
7 and control all the areas. They're not all covered right
8 now.

9 The second one would be to save LADWP some water.
10 Right now they're, I think, upwards of 65,000 acre feet a
11 year that are used for the dust control measures.

12 And the third benefit would be that this plan, in
13 the aggregate, would provide Public Trust enhancements to
14 the lake, rather than detriments.

15 So that's kind of the goal of the big plan - the
16 big plan, almost all in capital letters - but there's a
17 lot of work needed to be done on that. And it's clear
18 that plan will not be ready by the October 1st deadline.
19 This pilot program is the first step in that. And the
20 pilot program would determine whether or not solar arrays
21 can beneficially reduce dust. And that's really the key
22 to that entire approach.

23 In the short term, the conversations between the
24 staffs focused on things like brine, other fences. LADWP
25 has mentioned in concept the idea of using rows, but not

1 moats, some other things along those lines.

2 The Great Basin, in fact, is very enthusiastic,
3 their staff, about using brine as an alternative, and says
4 it's something they've supported right along, but that
5 some view that as an interim measure only. Nonetheless, I
6 think from our perspective what we, as a staff, will
7 continue to do, absent some different direction from the
8 Commission, would be to work as hard as possible to come
9 up with alternatives to Moat and Row that can be
10 implemented by the October 1st deadline, things such as
11 brine, so that that deadline can be met.

12 But three and half square miles is pretty
13 daunting, in terms of getting enough done to meet that
14 deadline. So I think, given the immense attractiveness of
15 the big plan over Moat and Row, that I think there's
16 certainly goodwill on the part of the Commission, as was
17 evidenced by the approval in December, and goodwill on the
18 part of LADWP to get the job done.

19 If necessary, you know, staff believes that we
20 should be discussing these issues with the air district,
21 and the air district board to indicate how serious we are
22 and how respectful we are about -- or that the Commission
23 is, about trying to control dust there, but that, you
24 know, it would be very helpful if the air district would
25 be willing to help us work jointly with the air district

1 and with LADWP to bring about a solution that would have
2 all these benefits, rather than pursuing Moat and Row,
3 which doesn't have as many benefits.

4 So that's where we are right now. And I know
5 that Marty Adams is here to discuss this from LADWP's
6 perspective.

7 And then once he's done, maybe we can talk a
8 little bit further about what we want to agendize for the
9 next few meetings and that kind of thing.

10 CHAIRPERSON CHIANG: Great.

11 Welcome back.

12 MR. ADAMS: Thank you very much. My name is
13 Marty Adams. I'm the Director of Water Operations from
14 L.A. Water and Power.

15 As Mr. Thayer said, you know, there is somewhat
16 of a conflict in our direction. And the conflict stems
17 from the fact that we have two goals. There's the
18 long-term good goal of the master plan on the lake, and
19 implementing solar is part of that plan, and coming up
20 with lake habitat that ideally may be probably better than
21 historically ever had existed out there.

22 Then on the short-term, we have this immediate
23 compliance issue due October 1st to do the three and a
24 half square miles of Moat and Row. And our concern is
25 that our actual variance and our compliance does direct us

1 to do three and a half square miles of Moat and Row. And
2 that is what we're required to complete.

3 And so we very much appreciate the vote last time
4 of the Commission to let us begin that first phase, as was
5 indicated, down in the corner with the sand fence and the
6 pipelines. And it worked out very well. In 13 days after
7 the vote, we had the lease. Fourteen days later we were
8 mobilized. And so we avoided being in a fine position.
9 And we appreciate the staff's work with us so closely on
10 that, especially during the Christmas holidays.

11 But that's the first step. And as we talked
12 about, we would have to come back for more bites at the
13 apple or the whole apple. And certainly that is what we
14 are charged with.

15 We are looking at other alternatives and ways to
16 enhance Moat and Row. Even with that, there's a slight
17 conflict. There's ways to maybe alter it or change it.
18 We've done such things as look at designs that got rid of
19 the rows -- I mean, part of the moats and the entrapment
20 hazard that Steve Mindt talked about last time. We looked
21 at the possibility of vegetating the rows, so they're more
22 like earthen berms, and maybe use the rows as the
23 foundation for shallow flood with brine, because ponds
24 have to be stair-stepped. And so maybe they could become
25 the basis of our terraces, that we could meet our

1 compliance and then shave them down to the elevation that
2 we need.

3 None of this we had a chance to discuss with
4 staff yet. We're very close to developing some ideas, so
5 I don't want to, you know, put them on the spot. But
6 hopefully next week we'll be able to travel to Sacramento
7 and talk in detail about some ideas. All the ideas are
8 growths out of the Moat and Row concept, because that's
9 the one thing that we can build. And so they may or may
10 not be acceptable to the Commission.

11 What we're hoping is that we'll be able to put,
12 because it's seven different pieces, the plans together,
13 and to keep the item on the agenda. And if the Commission
14 sees that it's moved enough for you to vote on all of it
15 or even a piece at a time, as staff is comfortable, as
16 long as we can continue progress toward the project, and
17 toward the goal, then I think that we have a chance to
18 stay in compliance.

19 But, of course, time is of the essence, and soon
20 we'll have good weather. Right now, we've got snow on
21 parts of the lake, which is a good thing too. But soon
22 we'll have good weather and need to construct, so we're
23 going to be working -- getting plans together and working
24 very closely with staff, and hopefully come up with some
25 things that they find are worth supporting and bring to

1 the Commission. But we do ask that it remain on the
2 agenda, because we do need either an affirmative or
3 negative vote that we continue moving forward on this.

4 In regards to the other reports, I don't want to
5 repeat everything that got said, but certainly the solar
6 plan is moving ahead. There's been some determinations of
7 how best to proceed. There was a design out that had very
8 flat solar panels very close to the ground that would
9 entirely control dust on their own.

10 But there's a question whether it would do it
11 good enough to Great Basin's satisfaction. And probably
12 the most important thing is it looked like it was not very
13 commercially viable. That part of the idea of the solar
14 park is that it wouldn't just be water and power playing,
15 but as the report indicated, we have a standing committee
16 group that meets, kind of a stakeholder group, down in Los
17 Angeles every month.

18 And it involves, well Mike Peevey from PUC was
19 there. Mike Picker from the Governor's Office was there
20 this last time. Cal ISO, Edison. Everyone who could
21 bring transmission or anything to the table is involved.
22 And they're all very excited about the opportunity to
23 build solar on part of Owens Lake, as an area, and then
24 create this habitat as an area, so that we have an offset.

25 But one of the things it has to do, is it has to

1 be commercially viable. And so we're looking at how to
2 best do the solar pilot to prove that it works, and that
3 it can be replicated and be affordable, both to L.A. Water
4 and Power and to other agencies who would want to build
5 the solar park out.

6 So we're wading through those details right now.
7 We are making progress in the Cartago area on the sand
8 fence area. And the pipe there is to try to mimic nature
9 and to try to grow native vegetation, sort of like --
10 almost like leach lines, as opposed to a vegetation area
11 that we have in the lake now. Over here, this looks like
12 a farm of saltgrass. It's effective. It's a real
13 maintenance issue. But we're trying to find ways to grow
14 native vegetation, and then we need to try to find ways to
15 get that approved as a dust control for the lake.

16 Lastly, on the master plan, Gina Bartlett from
17 Cal State Sacramento is working with us. She's made a
18 phone call to -- she wanted to start by making phone calls
19 to all the players, and kind of get a little pulse of
20 where everybody is at before we have our first meeting.

21 She's very enthusiastic about what she sees. She
22 was on the lake last week and did a tour. And I think
23 we're off to a good start and have a lot of promise ahead.
24 So I do certainly want to acknowledge Paul Thayer and his
25 staff for working very closely with us on this.

1 On the schedule for solar, the schedule that was
2 repeated was the one that we provided. His staff actually
3 encouraged us to go faster than that. We'll certainly try
4 to accelerate that schedule as much as possible and start
5 building as quickly as we can.

6 If anybody has any questions, I'll be glad to
7 answer them.

8 CHAIRPERSON CHIANG: Thank you, Marty.

9 Any questions or comments?

10 Cynthia.

11 ACTING COMMISSIONER BRYANT: I think you said, if
12 I got this right, that you are required to do three and a
13 half square miles of Moat and Row, is that correct? Is it
14 you -- that Great Basin has required you to do that or is
15 that what you're choosing to do to mitigate?

16 MR. ADAMS: We are required to mitigate three and
17 a half square miles for dust. The Environmental Impact
18 Report and the designs and the plans call for Moat and
19 Row.

20 One of the toughest things will be if we try to
21 depart, will be the question, do we have any environmental
22 documentation that allows us to do anything different at
23 this point. So that's part of the corner that we're in,
24 is that getting an approved alternative. One is timing
25 and the other is regulatory compliance. So that's the

1 only thing that we have on the table, at this point,
2 that's been approved.

3 CHAIRPERSON CHIANG: Did you have a comment,
4 Paul?

5 EXECUTIVE OFFICER THAYER: I would just add to
6 that, that I think the district is most concerned about
7 getting that last three and a half miles. It's no longer
8 the -- originally, it was the last three and a half miles.
9 Now, there's some additional areas --

10 MR. ADAMS: Right.

11 EXECUTIVE OFFICER THAYER: -- to be cleaned up,
12 but certainly didn't direct Moat and Row. In fact, Moat
13 and Row is not one of their approved methodologies for
14 addressing dust control. The district has certified two
15 or three different other methods and said these you can
16 use.

17 On Moat and Row, they've basically said it's a
18 two strikes and you're out deal. They're willing to allow
19 L.A. to go forward with Moat and Row. But if it doesn't
20 work, and L.A. then does some remediation to make it work,
21 and then it doesn't work again, they would have to take it
22 out and go back to the approved methodology. So it's
23 really L.A.'s choice.

24 On the CEQA thing, this has been the source of
25 quite a bit of discussion before the Commission at past

1 meetings and between the two staffs. But earlier CEQA
2 documents recognized a variety of alternatives, including
3 the ones that are the certified methods of dust control,
4 that one certified by the Great Basin.

5 The final EIR, which we had concerns about how
6 that was developed, procedurally suggests that those
7 aren't feasible because it uses too much water, but
8 they're the same methods that used water and that were
9 used before.

10 Is that fair?

11 MR. ADAMS: Yeah. The back-up methods, yeah.

12 So in answer to your question -- and that's one
13 of the reasons that we're looking for avenues to possibly
14 enhance the Moat and Row, take away some of the negatives
15 and provide some positives, because that may be consistent
16 with the environmental documentation that we filed, may be
17 constructible, and it may get over the hump. And then, of
18 course, with the master plan, some areas would transition.

19 And one of the problems is that the areas that
20 are here, you know, these brown areas are the Moat and Row
21 areas. A lot of the habitat is looked at in the north
22 area and then a lot of the solar is looked at the south
23 area. And that's not exactly, but generally speaking.

24 What the long-term solutions for these areas in
25 the master plan is kind of unknown, because they don't

1 really fit either of those other models. But we do need
2 some kind of dust control and we do need to find something
3 that we can do that doesn't involve the use of water,
4 additional water resources.

5 So that's the only thing that we have on the
6 table, at this time, that's approved. And so what we do
7 to enhance that to make it acceptable or the promise of it
8 converting to something different in the near term, but we
9 do look to try to continue progress of constructing,
10 because it's pretty quick and simple construction.

11 CHAIRPERSON CHIANG: Mona.

12 COMMISSIONER PASQUIL: Mr. Chairman, thank you.

13 I have a question. Is brine one of the approved
14 methods? It's not?

15 EXECUTIVE OFFICER THAYER: It's not.

16 MR. ADAMS: You know, it's an interesting
17 concept, because shallow flood is approved, but a lot of
18 the environmental documentation speaks to water from the
19 aqueduct, and then it really probably becomes a Fish and
20 Game issue, in terms of, is there a habitat conflict. And
21 that's one of the things is we have some calls into Fish
22 and Game. And we're going to make sure we track them down
23 this week to find out if they have concerns.

24 There are two areas that we could test brine
25 actually. One is an existing pond that's very low in

1 elevation. It's kind of a brine sink for us. And there's
2 another pond that's due to be filled in April. Actually,
3 it's going to start earlier than that, and that's a brand
4 new pond here.

5 And so if we could use brine successfully, the
6 question becomes can we get a 1600 permit for that. But
7 if we do that, then probably what we would do is buy salt
8 from the State and make the brine in the ponds. And the
9 concept then is that the brine -- the salt forms a crust,
10 almost like rock candy on the surface made out of salt,
11 and then you don't have the evaporation.

12 And so history has told us that there are times
13 that they've used brine and had trouble with it ever
14 drying out, which would be ideal then. So it's kind of a
15 fill it very infrequently as opposed to continuously. But
16 if we were the only two players in the game, we'd be all
17 set. But we have to get some other permissions.

18 COMMISSIONER PASQUIL: Thank you.

19 EXECUTIVE OFFICER THAYER: And so answering the
20 question directly. It's not one of the certified methods,
21 except to the extent that you could regard it as shallow
22 flooding.

23 MR. ADAMS: Right.

24 EXECUTIVE OFFICER THAYER: But again, Ted Schade
25 indicated --

1 MR. ADAMS: Is very in favor of it.

2 EXECUTIVE OFFICER THAYER: -- was
3 enthusiastically in favor of it. And it comes down to,
4 are there environmental impacts that we don't know about.
5 We want to make sure there aren't any.

6 MR. ADAMS: Right. So that's the question. And
7 then the question becomes, if we -- you know, one of the
8 theories -- and again, I haven't had a chance to talk to
9 Paul and his staff about it. But one of the thoughts is,
10 in any kind of ponds, you build ponds and berms. And one
11 of the lessons we've learned in the other ponds is that
12 when you make a big pond with now berms in the middle, the
13 water doesn't spread very well, and you end up with lots
14 of deep water, which doesn't give you good shoreline
15 habitat and gives you kind of unnecessary use of water.

16 So we've been using little check berms in our
17 other ponds to thin the water flow out. And by doing so,
18 you get really little shallows that then grow a lot of
19 brine flies, and you have vegetation that starts in the
20 ponds. And so the ponds that are completely flooded
21 become rather poor habitat. The ponds that are somewhat
22 dried out and look like intermittent streams have all
23 sorts of growth and all sorts of wildlife there. So a
24 pond, per se, is not really the best answer. It's kind of
25 this marshy pond.

1 So to get that, we've needed check dams to better
2 manage the water. And so one of the thoughts is that in a
3 brine solution, we might be able to use the row elements
4 to build those and they become the check dams. So there
5 may be a win-win that allows us to proceed, but we're
6 looking at that. The question is how long it takes us to
7 get approval of the brine and do we know that that's for
8 sure coming on the horizon.

9 CHAIRPERSON CHIANG: Marty, let me share my
10 perspective. I clearly am only speaking for myself.
11 Clearly, I believe this body has been benevolent. We've
12 been obviously trying to protect the ratepayers of the
13 City of Los Angeles, certainly the Agency.

14 MR. ADAMS: We appreciate that.

15 CHAIRPERSON CHIANG: We didn't want you to have
16 to pay unnecessary fines, but we do have a Public Trust
17 responsibility.

18 So, in my first estimation, clearly -- and you
19 would have trouble doing this, at this point in time, to
20 have water there would be the true public purpose
21 fulfilling the Public Trust. We know you can't get there.
22 Part of this is the significant water challenges that not
23 only face the city, but that face the state of California
24 at this particular moment.

25 So I view some solar development as positive. I

1 do want to mention, because I don't know if the body is
2 stuck there, right, the Board, but I don't view Moat and
3 Row as a palatable alternative. So to the extent that you
4 get to brine, perhaps as an interim solution then, plus I
5 think would more quickly resolve my issues.

6 And so, you know, it's sort of that exercising
7 the flexibility to come up with solutions. But if we
8 continue to have these extended discussions about Moat and
9 Row, I don't know if we're going to engage in our best
10 thinking, right?

11 I know everybody is acting in their best faith,
12 right? But to think that I view Moat and Row as a
13 palatable alternative, I think may be a useless exercise
14 of time and resources, when I'm not sure it fulfills the
15 long-term responsibilities.

16 I do understand you have an October 1st deadline.
17 Again, I will try to help you meet that hurdle, but I'd
18 like to see other thinking and more urgent thinking about
19 what the alternatives are.

20 MR. ADAMS: Certainly. I appreciate that, and I
21 understand your position. And certainly from our
22 standpoint, we're going to do whatever we can to try to
23 present things to you and to the staff that we think are
24 palatable, that will allow us to remain in compliance,
25 given the timing with looking to do alterations or

1 enhancements wherever possible.

2 And ultimately, I understand it will come to a
3 vote of the Commission. At some point, you'll either be
4 able to accept something or you won't. But we do think,
5 from an agency standpoint, that we do need to eventually
6 get to that point if we continue working or we're just not
7 allowed to.

8 But at this point, we're kind of munching along,
9 but there is a deadline coming. And so we will need, at
10 some point, a determination that it's either go ahead full
11 speed on whatever aspects we're able to present or certain
12 ones you can live with and certain ones you can't.

13 CHAIRPERSON CHIANG: Okay. So should we direct
14 staff to work with DWP to negotiate what would be
15 completed and discussed at the next Commission meeting?

16 MR. ADAMS: Can I request that the Moat and
17 Row -- the last time we had the Moat and Row lease on the
18 agenda as the whole lease, and we did end up picking off a
19 piece of it and modifying it, which does work. By having
20 it on the agenda then, at least it allows the Commission
21 the opportunity to act on any or all of it, if you want
22 to. Can I ask that it remain on the agenda until we come
23 to some resolution of all the pieces, either allowed or
24 not allowed?

25 CHAIRPERSON CHIANG: I'd like to have you work

1 with the Commission staff and they can report to me.

2 MR. ADAMS: Okay.

3 EXECUTIVE OFFICER THAYER: And we'll do that, and
4 report to all three of the Commission offices as we work
5 through -- and, you know, I certainly -- the goal for us
6 would be to be able to bring in another segment, but with
7 something other than Moat and Row that would get more
8 acreage control of the dust control, but without using
9 Moat and Row. And our hope would be to be able to bring
10 something like that back to the Commission in April, but
11 we'll keep the Commission offices informed as we go
12 through this process.

13 CHAIRPERSON CHIANG: Very good. Thank you very
14 much.

15 MR. ADAMS: Thank you.

16 CHAIRPERSON CHIANG: Next item, please.

17 EXECUTIVE OFFICER THAYER: The next --

18 CHAIRPERSON CHIANG: So the next Item is 43. So
19 we will consider authorization to file litigation
20 regarding an unauthorized floating home in Yolo county.

21 May we have the staff presentation.

22 EXECUTIVE OFFICER THAYER: Certainly. Thank you,
23 Mr. Chair. The presentation will be made by Mary Hays
24 from the Land Management Division.

25 PUBLIC LAND MANAGER HAYS: Good morning, Mr.

1 Chairman and members of the Commission, and welcome, Ms.
2 Bryant.

3 My name is Mary Hays, and I'm a Public Land
4 Manager with the Commission's Land Management Division.
5 And I'm here to present the information on Calendar Item
6 number 43.

7 This item asks the Commission to take enforcement
8 action against Lance Bishop and John Soto for trespass on
9 State sovereign lands in Elk Slough by continuing to moor
10 a floating home to the bank of the slough.

11 The floating home is owned by Lance Bishop. And
12 John Soto owns the adjacent upland, where the floating
13 home is moored and has allowed Mr. Bishop to tie the
14 floating home to the bank and to install an access
15 stairway and a gangway.

16 As background, staff has been updating the
17 commissioners on this violation for the past 18 months.
18 Staff first became aware of the floating home when it was
19 owned by Jeanne Taylor and she had it moored to her dock
20 in Courtland.

21 I'll just go on. You have photos I believe
22 that -- here we go.

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

25 PUBLIC LAND MANAGER HAYS: Staff refused to

1 recommend issuance of the lease to Ms. Taylor, because she
2 was using the floating home as a residence at the time.
3 In order to secure a dock lease, Ms. Taylor sold the
4 floating home to Mr. Bishop.

5 The floating home consists of two pontoons with a
6 residence built on top of them. It is 64-feet long, and
7 24-feet wide, and was originally used as a Harbor Master's
8 office by Ms. Taylor. And it was later converted to a
9 floating home without knowledge of staff or the
10 Commission's approval.

11 On October -- excuse me, on December 3rd, 2007,
12 the Commission approved a holdover tenancy agreement with
13 Ms. Taylor, which among other provisions, required her to
14 remove the floating home from State sovereign lands
15 because of its residential use, which was inconsistent
16 with the Public Trust and in violation of the terms of her
17 lease, which prohibited residential use.

18 Some time in the summer of 2008, Ms. Taylor sold
19 the floating home to Lance Bishop, who moved it to Elk
20 Slough.

21 --o0o--

22 PUBLIC LAND MANAGER HAYS: There's a photo of the
23 facility on Elk Slough.

24 --o0o--

25 PUBLIC LAND MANAGER HAYS: That's a long-distance

1 relocated to a waterway not under the Commission's
2 jurisdiction.

3 Over the past year and a half, staff has written
4 letters and had numerous telephone conversations with Mr.
5 Bishop requesting removal of the floating home. Staff met
6 with Mr. Bishop on the floating home in July of 2009.

7 And upon Mr. Bishop's request, staff provided
8 names of marinas not located on State sovereign lands in
9 the Delta for his use in finding an alternative location.
10 Mr. Bishop and Mr. Soto have expressed their willingness
11 to work with staff. Mr. Bishop has stated he has had no
12 success in finding an alternative location, and failed to
13 provide -- and has failed to provide staff with a firm
14 date for the relocation of the floating home.

15 On January the 7th, 2010, staff again wrote
16 asking that the floating home be removed by February 1st
17 or staff would take enforcement action to the Commission
18 for consideration.

19 As of today, staff believes that the floating
20 home is still tied to the bank of Elk Slough.

21 --o0o--

22 PUBLIC LAND MANAGER HAYS: This last photo was
23 taken a couple weeks ago.

24 In conclusion, because of the failure of staff's
25 attempts to remedy the situation over the past 18 months,

1 and the uncertainty that Mr. Bishop and Mr. Soto will take
2 the necessary steps to remove the floating home from State
3 lands, staff is recommending that the Commission, one,
4 ratify staff's determination that the floating home and
5 all other improvements placed on State-owned sovereign
6 lands by Mr. Lance Bishop and Mr. John Soto are in
7 trespass on State-owned lands.

8 Two, authorize Commission staff and the Office of
9 the Attorney General to take all steps necessary,
10 including litigation, to eject Mr. Lance Bishop and Mr.
11 John Soto from Elk Slough, to remove the floating home and
12 gangway from the slough, to require restoration of the
13 State-owned lands at this location to their condition
14 prior to the placement of the structure all to the
15 Commission's satisfaction, and to recover the Commission's
16 damages and costs.

17 This concludes my presentation. I'm available to
18 answer any questions you might have.

19 CHAIRPERSON CHIANG: Any questions or comments?

20 I have a question. You pointed out, because of
21 the size of the house and the fact that where the steering
22 wheel was that it had no visual to view the lake. Is
23 there any size house where the steering -- from the seat
24 behind the steering wheel that you would accept, right?

25 I'm thinking if you can't see the road,

1 regardless of the size of the house, it's just not
2 acceptable.

3 PUBLIC LAND MANAGER HAYS: There really isn't
4 anyway to see forward to have a normal mode of
5 transportation on the waterway.

6 CHAIRPERSON CHIANG: So --

7 PUBLIC LAND MANAGER HAYS: It's so wide that if
8 you're steering, you can't see either direction

9 CHIEF COUNSEL FOSSUM: Mr. Chairman, I'd like to
10 interject that even if this was a sailing vessel that had
11 been around the world three times, it's in trespass on
12 State lands. It's not moored there legally, and that's
13 one of the reasons that the Commission is being asked for
14 an ejection.

15 CHAIRPERSON CHIANG: I was just wondering --
16 let's just say if you have any type of impaired viewing
17 that would affect the mobility of the vessel, would you
18 allow it? So it's not because of the size of the house.

19 CHIEF COUNSEL FOSSUM: And basically DMV will, I
20 think, put a CF number on anything that floats and that
21 you're willing to pay the fees on.

22 (Laughter.)

23 EXECUTIVE OFFICER THAYER: I think to answer
24 correctly, even if that steering mechanism had been at the
25 front, where you had excellent views, that this was

1 originally built, or remodeled to become a house, and that
2 it is a house and adding a motor doesn't change that.

3 I know the AG is aware that this issue was faced
4 on Richardson Bay with Forbes Island, for example, where
5 the owner tried to say that that was a boat. This was
6 something that was on a barge and looked like an island.
7 It had palm trees coming out of it and was anchored in San
8 Francisco Bay and the same approach was taken there.

9 The last slide, which wasn't projected, but I
10 think you have up there, is the ad that was put out by Ms.
11 Taylor previous to the sale to the present owner, which
12 shows the advertisement, the flier that was put out
13 advertising this as a floating home, and she was
14 attempting to sell it for those purposes.

15 So, again, our view is that regardless of what
16 engine or sailing wheel you add to it, when you look at
17 the interior, when you look at the size and shape of this,
18 the fact that it was built for these purposes, that we
19 regard this as a house rather than a houseboat.

20 COMMISSIONER PASQUIL: Mr. Chairman, I have a
21 question.

22 CHAIRPERSON CHIANG: Yes, Mona.

23 COMMISSIONER PASQUIL: I have a question for
24 staff. Thank you very much for doing this.

25 But because that slough is so narrow, was there

1 any damage to any of the levees or anything around that
2 when they were moving it?

3 PUBLIC LAND MANAGER HAYS: We don't really, at
4 this point, don't know how it was moved. But Mr. Bishop
5 is here in the audience and I believe he does want to
6 speak. He may be able to speak to that.

7 EXECUTIVE OFFICER THAYER: We're not aware of any
8 damage.

9 COMMISSIONER PASQUIL: Okay, I was just curious.
10 Thank you.

11 CHAIRPERSON CHIANG: Any questions?

12 ACTING COMMISSIONER BRYANT: No.

13 CHAIRPERSON CHIANG: Very good. Thank you very
14 much.

15 We have Mr. Lance Bishop who has signed up to
16 offer public comment.

17 Mr. Bishop.

18 Welcome.

19 MR. BISHOP: Hi. As far as what everybody is
20 saying here, I do have DMV registration, which meets the
21 standards for a houseboat. And I also have a Coast Guard
22 boarding that meets the safety standards for any navigable
23 vessel.

24 Now, as far as the vision that everybody is
25 concerned with, I did ask the Coast Guard if that was

1 going to be an issue, and they said no, because there
2 still are navigable boats that are from the twenties and
3 thirties that you still yell down the tube, go left, go
4 right. And also, like I've told everybody on the
5 Commission that I have spoke to, there is a camera system
6 on the roof pointing forward. There is no monitor yet.
7 I'm waiting on a monitor.

8 Now, as far as the width of it, it meets the
9 standards for a houseboat per DMV. And as far as length
10 and size of it, there are larger houseboats on the river
11 everywhere.

12 And I brought up when we had our meeting, I
13 believe it was after Martin Luther King Day, I brought up
14 the fact that they're rocking the levees in Sacramento
15 with barges that are probably 100-foot wide and 400-foot
16 long. And they're being pushed with something probably
17 the eighth of the size of them. And they're going up and
18 down the river with no issues.

19 Now, there are other floating homes that I know
20 of that the Commission has dealt with. I believe his name
21 is Roger Moore. And it is on the mouth of the Georgiana
22 Slough. And it is also registered as a houseboat. There
23 is no motor attached to it. There's actually a push barge
24 that needs to be located behind it to push it. So the
25 vision is the same.

1 And as far as everybody saying you can -- the
2 inside of it is like a house and everything like that. I
3 think that's the purpose of a houseboat is to get away on
4 something that floats that is like a house, kind of a
5 vacation. You go out on it. You stay on it. It's like a
6 house. Just like an RV. And I think for, I believe, tax
7 purposes, if it has a bathroom and a shower, you can write
8 it off as a second residence.

9 So therefore any houseboat can be used as a
10 residence or any RV can be used as a residence. And I've
11 repeatedly asked them, the Commission, to write a letter
12 to me, because I think their main concern is use for
13 residential use, which it's not.

14 I bought a houseboat with no motor. And before I
15 believe Jeanne Bird had a little five, ten horse outboard
16 on it, which is kind of insulting to everybody's
17 intelligence, because everybody knows it's not going to
18 move it.

19 Now, the motor has 300 some odd horse power,
20 steering, forward, reverse, fuel system, vent system,
21 everything like that. So, in my eyes, it's a houseboat.
22 I bought a houseboat with no motor. I put a motor on it.
23 I'm not using it for residential use. I've asked the
24 Commission to write a letter that says it is okay -- it is
25 viewed as a normal houseboat, as long as it's not used for

1 residential use. And they said they cannot provide
2 anything like that for me, because I've run into problems
3 trying to take it to a marina. Because I believe with
4 Jeanne Bird it was a couple year-long process to try to
5 get rid of it.

6 And she didn't have a motor on it. And she tried
7 to relocate it to certain places, and nobody really wanted
8 to touch it, because they're kind of intimidated by the
9 Commission.

10 And I've spoke to them and they said they don't
11 want to go near it, because they're intimidated. Because
12 it's my belief that any permitted dock is in violation in
13 someway or another. It's kind of like when you build a
14 house, you have an inspector come and you're trying to
15 stay within code as much, but you're always going to be
16 off a little bit. So I've had people actually shoe me
17 away and say that we won't go near it. We won't go near
18 it, even properties that aren't on State lands.

19 So I'm here with this information to try to get
20 it viewed as a normal houseboat and maybe get a letter of
21 something of some sort that says it is viewed as a normal
22 houseboat, as long as it's not used for residential use,
23 just like any other houseboat there is on the water, and
24 then I can move it somewhere.

25 CHAIRPERSON CHIANG: Okay. Do you want to

1 respond?

2 EXECUTIVE OFFICER THAYER: I think that Mr.
3 Bishop has some good points, in terms of the fact that
4 we're faced with fact situations where houseboats are
5 constructed with many of the same residential facilities
6 that are on this boat or on his house, but that, you know,
7 the problem is this was constructed as a house. It wasn't
8 constructed as a boat and was advertised as a house.

9 If there are marinas that have difficulty
10 accepting you because they think that we're going to come
11 down on them, you know, marinas that are located outside
12 of the State Lands Commission jurisdiction, we'd be happy
13 to reassure them that from our perspective we don't have
14 any authority over those locations. And if that would be
15 of assistance, we'd be glad to provide that.

16 CHAIRPERSON CHIANG: Which facilities have you
17 contacted and they've identified that concern?

18 MR. BISHOP: I've contacted Arrowhead Marina,
19 Riverbank Marina, Freeport Marina, Cliffs Marina, Sherwood
20 Harbor, and numerous other ones. Now, if you go to any
21 other marina, there are structures like this that do not
22 have motors on them. And as far as everybody wanting to
23 get it off State lands, I don't see how that is
24 necessarily fair, if it is viewed as a houseboat. It's
25 registered as a houseboat. Like I said, I bought it as a

1 houseboat. I made sure there was a pink slip that said
2 this is a houseboat. Kind of like you buy a classic car
3 with no motor. I powered it, because I saw -- she told me
4 the issue that she was having with the Commission, how it
5 was not viewed as a motor boat. And I went out and
6 looked. And she had a little stand with probably a five
7 or 10 horse on it. It's kind of insulting to everybody's
8 intelligence.

9 So this has enough power to move it. And that
10 when they did their on-site inspection, I started it. I
11 put it in gear, it moved it. I put it in reverse, it
12 moved it. Now, as far as the slough being too narrow, the
13 slough is probably 120-, 140-foot wide. So you can spin
14 it around there. No issue. There was no damage done to
15 anything.

16 Now, as far as the improvements on the levee,
17 those are all temporary, so I can access it to work on it,
18 to put the motor on it. The stairs have eye bolts in them
19 that you hook onto them and you drag them off the levee
20 and they're gone. The gangway, same thing, nothing is
21 permanently attached.

22 And the way I have it attached is the same way as
23 other docks and boats that are on the river. So it's
24 technically not touching State lands. It's above the
25 normal high-water mark from what I understand is the

1 jurisdiction. I've asked them to provide in writing where
2 the line is. And I'm not trying to get out of it that
3 way, but I wanted to not be in violation while I was
4 working on it, trying to get this resolved that it was
5 viewed as a houseboat, so I wouldn't trespass in any way,
6 shape, or form.

7 Now, as far as John Soto is concerned, he's on
8 the same page as I am that this is a houseboat. And it's
9 a normal houseboat. It just happens to look different.

10 Now, as far as the structure's look and size,
11 there's another one that's smaller above Riverbank Marina
12 on the Sacramento River actually right above Ski Beach
13 that motors up and down the river all day long. It's on
14 pontoons. I think it was actually a -- the little
15 trailers that you can park that are a residence, but
16 they're registered as a mobile home, they put that on
17 pontoons with a motor on it, and there's been no issues.

18 Even at Courtland Marina, there is a barge with
19 an actual travel trailer on it with a motor on it. And
20 there's no issues with that.

21 EXECUTIVE OFFICER THAYER: We're not familiar
22 with all of the examples that he's citing, the Roger Moore
23 one as well. But --

24 MR. BISHOP: I believe that's his name. I know
25 it's Roger. I think it's Roger Moore. I've tried to

1 contact him, because I know he had an issue before.

2 EXECUTIVE OFFICER THAYER: Well, you described
3 where he was and so we should be able to figure it out. I
4 mean, these are the sorts of things that when we find out,
5 we do follow up on. In our conversations with Ms. Bird or
6 Ms. Taylor, we informed her that she either had to modify
7 that back to what it was before, which was an office. It
8 wasn't built as a residence originally. It was only
9 converted later. Or she had to do the same thing we're
10 suggesting for Mr. Bishop, which was to locate -- sell
11 this to somebody and have it located off of State
12 tidelands.

13 And finally, of course, with respect to the
14 gangplank, and the prolonged location where it is now, Mr.
15 Bishop may view that as temporary. However, those sorts
16 of facilities -- it's the same situation we're in with the
17 Spirit of Sacramento, where the boat has been tied up on
18 the Yolo county side for several years now and no lease
19 has ever been obtained.

20 And so for all of those reasons, you know, again
21 staff believes that it's there in violation because
22 there's no lease for it to be sited there. And also we
23 believe this is a floating home rather than a houseboat.

24 But on that latter point, other than the Attorney
25 General's involvement in Richardson Bay, it's a judgment

1 call for the Commission as to what's a houseboat and
2 what's --

3 CHAIRPERSON CHIANG: What do you view as being
4 tied up, for what duration of time?

5 EXECUTIVE OFFICER THAYER: Well, in many
6 counties, two weeks is considered to be the maximum amount
7 of time that you can be tied up at any one location, or
8 anchored out. People who are moving around the Delta and
9 anchor their boats somewhere, if it's longer than two
10 weeks, that's regarded as being permanent.

11 There's a lot of discussion back and forth on
12 that. We were working with a gentleman in San Diego Bay
13 who wanted to live aboard his vessel. And so there's two
14 different issues here. One is liveaboard and one is how
15 long a vessel is in one spot. And I don't know whether
16 you have any other input.

17 CHIEF COUNSEL FOSSUM: Yeah. In the San Diego
18 experience that Paul is referring to in both the Port
19 District in San Diego Bay as well as the city in Mission
20 Bay, were having problems because this individual, I think
21 by ordinance, they allowed 72 hours in an anchorage area,
22 and beyond that you were considered, you know, to be
23 semi-permanent, I guess.

24 And the whole idea, and I think Mr. Bishop
25 mentioned that, if you've got a houseboat and it's going

1 up and down the river every day, that's fine. We don't
2 have any problem with that whatsoever. It's when somebody
3 takes any kind of vessel, whether it's a boat or a barge
4 or anything else, and leaves it anchored on State
5 property. It's on the public's lands, and they're being
6 used for a private purpose. It's not navigating. It's
7 parking.

8 And so one of the primary issues we have here is
9 for the last, almost, 18 months, I guess we've been trying
10 to get this vessel -- this boat, this barge, whatever it
11 is, it doesn't matter, into a lawful area, and since the
12 Commission's position is that residential use is not
13 acceptable. And on private lands, even if it's
14 water-covered lands, and there are -- we gave a list of a
15 number of locations that we would have no problem with,
16 because it's not publicly-owned lands to Mr. Bishop and
17 he's chosen not to take those -- his houseboat there.

18 CHAIRPERSON CHIANG: And how far are those
19 locations?

20 CHIEF COUNSEL FOSSUM: The location? Throughout
21 the Delta.

22 EXECUTIVE OFFICER THAYER: So within a range of
23 40 or 50 miles.

24 CHIEF COUNSEL FOSSUM: There's probably a dozen
25 or more. They may not be as convenient. He may know Mr.

1 Soto, and Mr. Soto has given him the opportunity to access
2 this area through his land. But there's a number of
3 marinas in the Delta. And as Paul said, we'd be happy to
4 send a letter to those marinas that are not on our
5 property. Some marinas are partially on and partially not
6 on the State lands. And we would not assert any
7 jurisdiction on those private areas.

8 EXECUTIVE OFFICER THAYER: Many of the marinas
9 that Mr. Bishop just listed are, in fact, on State
10 tidelands, so it wouldn't resolve the issue, Riverbank,
11 Cliffs Marina. Some of those others are ones where the
12 same issue would exist if he brought it there. We're
13 looking for areas -- as the Commission knows, natural
14 waterways are subject to State ownership or public
15 ownership of the beds of those waterways. Unnatural ones
16 are not. So in the same way that Shasta Lake is not
17 subject to the Commission's jurisdiction, because it's
18 unnatural.

19 There are a lot of areas in the Delta, which has
20 been so -- the Delta having been so manipulated where
21 artificial waterways were created. And, you know, our
22 records are reasonably good in terms of determining
23 whether those are. And from our perspective that's not
24 the State's land. We don't have any jurisdiction to
25 decide what uses are there. And most importantly, the

1 Public Trust Doctrine, which is the common law that says
2 residences are not allowed on Public Trust Lands doesn't
3 apply to those artificial waterways, so it seemed like a
4 solution that would allow it to continue.

5 Again, the two choices being either convert it
6 back to an office, and sell it to a marina, where it can
7 be used as an office space or a repair place, that kind of
8 thing, or if you want to keep it as a residence, move it
9 to some area which isn't subject to that law, and that's
10 the more important part than just being under the State
11 Land's Commission jurisdiction. It's not legal on State
12 tidelands. It is legal, if it's artificial.

13 MR. BISHOP: Now, I don't want to turn this into
14 back and forth, because we've done this for quite a long
15 time.

16 Now, as far as the Spirit of Sacramento, the
17 Spirit of Sacramento is sunk and doesn't run. And there's
18 nobody here to talk to you about the Spirit of Sacramento.

19 CHIEF COUNSEL FOSSUM: Even when it was floating,
20 it was in trespass and the Commission took action to have
21 it ejected, because they did not have a lease.

22 MR. BISHOP: Okay.

23 EXECUTIVE OFFICER THAYER: Which is a separate
24 issue, it wasn't a house.

25 MR. BISHOP: Which is a separate issue, but you

1 guys use that example. And this runs. I'm here. I can
2 show you that it moves.

3 Now, also as far as you said houseboats or any
4 boat that's in trespass that doesn't travel up and down
5 the river, on our last meeting, Mary, James, and even Eric
6 was there, that we came to the determination that there
7 are numerous, numerous boats that are tied up on State
8 lands at marinas that don't run, and don't move for years
9 on end, and there's nothing that happens to them.

10 Now, as far as everybody saying that it needs to
11 be off State lands, because it's either used for
12 residential use or commercial use, this is a houseboat.
13 The Coast Guard deems it as a houseboat. The Coast Guard
14 does the enforcing on the river to make sure things are
15 safe.

16 Now, that's why I bought it as a houseboat, and
17 honestly, after all of this, I wish I would have never got
18 involved in it. But I'm stuck with it, so I'm trying to
19 make the best of it. And I did power it, because that was
20 an issue. It wasn't viewed as a houseboat, because it
21 could not maneuver. Now, it does.

22 CHIEF COUNSEL FOSSUM: I would like to make one
23 clarifying thing. Paul mentioned that it was an office.
24 The Commission's position also is that offices typically
25 are not consistent with the Public Trust, unless they are

1 in support of a marina or operation like that, where
2 they're necessary to the operation of the marina.

3 You know, Mr. Bishop may be right. There may be
4 vessels. I'm sure there are vessels. I've had a canoe
5 and I didn't put it in the water for three years. Some
6 people park these at marinas. But the point we're trying
7 to make is that by having a floating home on public lands,
8 it's usurping the public's right to use those areas. And
9 they're using it for an exclusive private use.

10 And even if it was a sailing vessel, the fact
11 that it's been there for 16 months or more without a
12 permit is considered a trespass, and that's why we're
13 asking the Commission for authority to take action.

14 CHAIRPERSON CHIANG: Cynthia.

15 ACTING COMMISSIONER BRYANT: How did your
16 negotiations go with the marinas that the staff suggested
17 on non-Commission lands?

18 MR. BISHOP: On non-Commission lands, they still
19 don't really want to mess with it. Some people even said,
20 I don't want that thing anywhere near here, because of the
21 Commission. Just like I said, the violations that some
22 marinas or places go that are permitted, that aren't
23 permitted, they don't want to raise any red flags.

24 And in our last meeting, Mary, James, and Eric --
25 Vicky wasn't there. We were in our meeting, you guys left

1 and discussed some things. And you came back and you
2 said, okay, we're willing to work with you to go to a
3 marina. If you have any problems, have the marina owners
4 call us, even on State lands is what we kind of
5 determined.

6 Now, I recorded the conversation for my own
7 reference. And I can't use that, because you guys didn't
8 know that, but I'm just saying that this is a houseboat.
9 I bought a houseboat. If I sell it to somebody else, I'm
10 willing to bet that they're not going to come here and
11 explain themselves to you. It's going to end up like the
12 other boats that were tied up at Courtland Marina.
13 There's a big blue troller that's now hung up on the bank
14 further down the river. All these boats are hung up on
15 the side of the river, and I don't want that to happen.

16 I'm here to try to make the best of it. I view
17 it as a houseboat. The Coast Guard views it as a
18 houseboat. DMV views it as a houseboat. Now, as far as
19 DMV issuing paperwork on anything, they have to fall in
20 guidelines.

21 As far as it being on Elk Slough, that's because
22 I can't take it anywhere, because there's no letter or
23 there's no -- I can't go to a marina and say oh, yeah,
24 it's going to be okay, because in our last meeting, I
25 started to do that, and then three days later, I got a

1 phone call that says it can't go on State lands at all.
2 It has to be off State lands, so it's one thing and then
3 it's another.

4 CHAIRPERSON CHIANG: Can you explain the
5 determination by the DMV and the Coast Guard as a
6 houseboat and its impact upon our entity. For instance,
7 under the State of California, except for medicinal
8 purposes, marijuana is illegal. However, under sales tax
9 law, it's still taxable, even though it's an illegal
10 substance. So there's disparate treatment by the various
11 entities, or inconsistent, not fully aligned.

12 CHIEF COUNSEL FOSSUM: I think that's a good
13 analogy, Mr. Chairman, because the fact that one entity
14 may consider it to be within their jurisdiction and permit
15 it, it doesn't necessarily mean that it's legal within
16 other jurisdictions.

17 So even if I have a licensed vehicle, it doesn't
18 mean I can park it anywhere I want. And in this instance,
19 parking, even legal vessels, on State lands without a
20 permit from the Commission, putting docks out, and so
21 forth, is a trespass. And that's the point we're trying
22 to make here. He's got several problems.

23 One, it's in trespass. Two, it's not even really
24 a navigable vessel. It's not used for navigation. It's
25 not taken up and down the river and navigated. It may be

1 able to be moved, by an engine, but that's not its
2 purpose.

3 And whereas, Paul mentioned at Lake Shasta and
4 even in the Delta, there are houseboats that are designed
5 to go out for a weekend, for a week and navigate around
6 the Delta. This is not designed in that fashion.

7 But even if it was, and if somebody brought one
8 of those other vessels up and tied it to Elk Slough, we
9 would come to you and ask for permission to eject them.

10 CHAIRPERSON CHIANG: And under what authority did
11 you say it has to be navigated, because it's a houseboat?

12 CHIEF COUNSEL FOSSUM: I'm sorry. I'm just
13 saying just because -- even if it was a navigable vessel,
14 the fact that they're tied up --

15 CHAIRPERSON CHIANG: Mr. Bishop claims that it
16 is, right?

17 CHIEF COUNSEL FOSSUM: Yes. Even if it was, we
18 would --

19 CHAIRPERSON CHIANG: I'm not sure if staff is
20 disagreeing, because he did move it.

21 CHIEF COUNSEL FOSSUM: Well, I think we are
22 disagreeing with it. But irrespective of whether it's, in
23 fact, a navigable vessel and is being used for navigation,
24 in this instance, he's in trespass. And they've placed
25 that vessel and the dock -- or the gangway out there

1 without the Commission's consent.

2 MR. BISHOP: Like I said, I don't want to argue.
3 If you go three miles down the road to Steam Boat Slough,
4 there's probably 30 houseboats that are tied. They're
5 actually anchored, so they are touching State lands. And
6 they're there for the long term.

7 Now, I know Yolo county has a long-term anchoring
8 permit. I think you pay \$50 and you can anchor up as long
9 as you want. I haven't done that, and I don't plan on
10 doing that. That's why I'm here, is to get -- I want to
11 go to a marina. I don't really like it where it's at.

12 CHIEF COUNSEL FOSSUM: And the staff has offered
13 to write a letter to any marina that objects to him that
14 is not on State property, and encourage them to take him.
15 And we're happy to do that.

16 MR. BISHOP: Okay, thank you. That's what I
17 wanted. And now that you said that, we can move forward
18 with this.

19 CHAIRPERSON CHIANG: Okay. And then if there's
20 any issue not receiving a letter, just contact me.

21 MR. BISHOP: Not receiving a letter. So it's
22 viewed as a normal houseboat at this point, so it can go
23 to a permitted dock.

24 EXECUTIVE OFFICER THAYER: No, we're not -- what
25 we're saying is that we're willing to write the letter for

1 marinas that aren't on State property, because we don't
2 have any jurisdiction there and the law doesn't prohibit
3 it from being on those sites. And so if those marinas are
4 concerned about us, which they shouldn't be, because we
5 don't have any jurisdiction over them, we'd be happy to
6 write a letter indicating that we don't have any authority
7 over those marinas, and that, as such, we don't have any
8 problems with you arranging to have your boat there.

9 But those are the marinas that aren't on State
10 property that we're talking about.

11 MR. BISHOP: I think she had -- you were going to
12 say something, weren't you?

13 COMMISSIONER PASQUIL: First, thank you very much
14 for coming. I appreciate you addressing this issue. I
15 have a question of staff.

16 You mentioned that Mr. Bishop was given a list of
17 such marinas that he could go to. And you have that?

18 MR. BISHOP: I don't have it, but John has one.
19 I didn't get mine in the mail. John has one. I spoke to
20 John. And the reason why John isn't here is because this
21 is kind of my issue. He doesn't really need to be
22 involved in it.

23 COMMISSIONER PASQUIL: Well, can we just make
24 sure that you get a copy of that list. And then you can
25 work with staff to try to move your vessel or move the

1 houseboat.

2 MR. BISHOP: No, I do have an issue. How come it
3 can't go on State lands, because it's your guys' opinion
4 or because you guys don't want to deal with it if it's off
5 State lands.

6 EXECUTIVE OFFICER THAYER: The reason it can't go
7 on State lands is because we view it as a floating home.
8 That it's designed and built that way, even if you're not
9 using it that way, at this time. The reason that it can
10 go on artificial property that we don't have jurisdiction
11 over, is because there's no law that prohibits what you
12 have from going into those areas. That law of no
13 residences on the water applies only to natural waterways
14 in California.

15 And so we're just saying, it's because of that
16 law, that law governs both recommendations. Number one,
17 it's why we don't think it should be where it is now or on
18 other State lands, but it's also why it would be okay to
19 go into artificial cuts, marinas that are on artificial
20 waterways.

21 MR. BISHOP: I understand what you're saying.
22 But you guys have jurisdiction over the Coast Guard and
23 DMV to call it a houseboat or not a houseboat?

24 EXECUTIVE OFFICER THAYER: No. We often have
25 situations where marinas need a variety of permits for

1 purposes, and you can meet the requirements from say the
2 Air Board or the Water Quality Board, that kind of thing,
3 and get approval, but it doesn't necessarily mean that it
4 complies with all law, the fact that you can get those
5 approvals. They don't have the responsibility for looking
6 at Public Trust issues. DMV, it's not their issue. It's
7 not the sort of thing they manage.

8 And so with most of the elements these days, you
9 need approvals from -- you have to comply with all of the
10 relevant law, not just some of it. And so they're only
11 administering -- gee, you give us -- I can't remember, is
12 it \$10 now to register a boat and we'll give you the
13 registration number.

14 So there's a law that says if you have something
15 that you consider a boat, you have to get that registered.
16 So that's the law that they're implementing, but it's not
17 the same as our law.

18 MR. BISHOP: Now, before you said if this was a
19 normal houseboat, this would still be the issue. So
20 you're saying that this is not a houseboat and you're
21 basically saying you have jurisdiction over the Coast
22 Guard and DMV.

23 CHAIRPERSON CHIANG: Well, in my view, even if
24 it's a houseboat, you have a trespassing issue.

25 MR. BISHOP: No, I understand that. Now, the

1 issue of it going on State lands or off State lands, it's
2 a trespassing issue where it's at. As long as it goes to
3 a permitted dock, then it's okay, right? I mean, is it --

4 EXECUTIVE OFFICER THAYER: A permanent dock.
5 Well, you could even anchor it in artificial waters, as
6 far as we're concerned. It's not within our jurisdiction
7 and it's not within the Public Trust law that we believe
8 prohibits floating homes on natural waterways.

9 So if you're off the natural waterways, that law
10 doesn't apply to you, and you can have it there.

11 MR. BISHOP: I understand your guys' point with
12 that, but you're calling this not a houseboat at this
13 time.

14 EXECUTIVE OFFICER THAYER: That's correct. We're
15 calling it a floating home.

16 MR. BISHOP: You're calling it a floating home.
17 Like I said, DMV and Coast Guard don't mean anything is
18 what you're telling me right now, that it's not viewed as
19 a houseboat, because you guys believe it's used as a
20 floating home?

21 EXECUTIVE OFFICER THAYER: That's correct.

22 MR. BISHOP: Okay.

23 EXECUTIVE OFFICER THAYER: They don't make that
24 determination for us.

25 MR. BISHOP: So every other houseboat on State

1 lands needs to go off State lands at this time?

2 EXECUTIVE OFFICER THAYER: No, we regard this as
3 a floating home, because of the way it's constructed.
4 Most houseboats are not constructed this way.

5 MR. BISHOP: Most houseboats are pontoon boats
6 with a structure on the top.

7 I Googled a houseboat and it says barge or
8 floating structure with a living quarters on top.

9 That's Google's houseboat. It doesn't say
10 anything about a motor. Some of them say it could be
11 motorized. It could be not.

12 EXECUTIVE OFFICER THAYER: We see that
13 differently.

14 MR. BISHOP: Okay.

15 CHAIRPERSON CHIANG: We would look at all of
16 those on a case-by-case basis.

17 MR. BISHOP: So this is viewed not as a
18 houseboat, at this time?

19 CHAIRPERSON CHIANG: Regardless of whether it is,
20 that's staff's perspective. There are multiple issues to
21 weigh here.

22 MR. BISHOP: So where do we go from here is
23 basically what I need to know, because --

24 CHAIRPERSON CHIANG: Well, I was just giving you
25 a full opportunity to vet. We haven't voted yet. I

1 wanted you to have your full opportunity to make whatever
2 comments or questions. That's why we wanted you to make
3 your full case. That's why we keep asking questions,
4 right. I know you didn't want to go back and forth, but I
5 wanted you to have your full opportunity.

6 MR. BISHOP: Yeah. It's a houseboat. I bought
7 it as a houseboat. I intend to use it as a houseboat.
8 It's moored there right now because everybody is
9 intimidated by the Commission, as far as going to a
10 marina. I've spoken to a few of them.

11 There are spots available. They are on State
12 lands versus off State lands. And I don't want to take it
13 there if it's going to cause havoc for them. In other
14 words, I don't want to go there -- it's like a bad tenant.
15 I would becoming a bad tenant, and I don't want to do
16 that.

17 So it's a houseboat. Bought it as a houseboat.
18 It wasn't powered. Powered it. Intend to use it as a
19 houseboat. It's not used for residential use. And that's
20 it.

21 CHAIRPERSON CHIANG: Thank you.

22 Any questions or comments?

23 ACTING COMMISSIONER BRYANT: I mean, I think
24 you're hearing pretty clearly that -- I think today what
25 we're going to decide is whether or not to allow staff to

1 go forward to eject you from this location. I mean, my
2 advice to you is to look at these non-State lands'
3 marinas. And I'm not hearing from you that you've really
4 done that particularly. So I think that's where you've
5 got to get your boat moved is to a place where this
6 Commission has no jurisdiction. That's my sense anyway.

7 CHAIRPERSON CHIANG: And then I wanted to make it
8 very clear, right, I mean, if you have difficulties
9 because those marinas are afraid of the State asserting --
10 or The State Lands Commission asserting jurisdiction where
11 we have none, I certainly will interject to say that the
12 State Lands Commission has no jurisdiction, because I
13 think it would be inappropriate exercise of authority.

14 So if they are concerned, you know, staff can do
15 it. If you don't think staff has made it clear, contact
16 my office and I'll say whether the State has jurisdiction
17 over that marina or not, because we don't want to impede
18 based on a false notion that the State Lands Commission
19 will interfere with your ability to negotiate with them.

20 MR. BISHOP: I still have an issue with it not
21 being viewed as a houseboat, but there's nothing I can do
22 about it apparently.

23 CHAIRPERSON CHIANG: Question, comments?

24 Okay, is there a motion?

25 ACTING COMMISSIONER BRYANT: I'll move it.

1 CHAIRPERSON CHIANG: Move staff recommendation?

2 ACTING COMMISSIONER BRYANT: Move staff
3 recommendation.

4 CHAIRPERSON CHIANG: We have a motion to move
5 staff recommendation.

6 Is there a second?

7 COMMISSIONER PASQUIL: Second. I just want to
8 make sure that we -- he gets the list.

9 EXECUTIVE OFFICER THAYER: Absolutely.

10 CHAIRPERSON CHIANG: Then, Paul, who are you
11 going to assign to work with Mr. Bishop?

12 EXECUTIVE OFFICER THAYER: Mary Hays.

13 CHAIRPERSON CHIANG: Okay. Mr. Bishop, Mary Hays
14 will work with you.

15 The motion passes without objection.

16 Next item.

17 EXECUTIVE OFFICER THAYER: The next item is the
18 matter of whether or not the Commission would want to
19 support AB 634. The Commission heard this in December and
20 put it over. Since that time -- and again, the basic bill
21 was to look -- was motivated by a group that wanted to
22 convert old ships to reefs.

23 And the Commission put off hearing it in
24 December. There was some concerns over the language of
25 the bill. And rather than keep going here, I think Mario

1 is going to give a presentation on this, which will do it
2 better than I.

3 LEGISLATIVE LIAISON DE BERNARDO: My name is
4 Mario De Bernardo, Legislative Liaison for the State Lands
5 Commission. Good afternoon, Mr. Chair and Commissioners.

6 AB 634 is authored by Assembly Member Harkey.
7 And it's a bill sponsored by the California Ships to Reefs
8 organization. This bill would protect the State from
9 liability for injuries and property damage associated with
10 scuba diving on State lands.

11 Ships to Reefs is sponsoring this bill because it
12 would like reef ships for scuba diving and environmental
13 habitat on State lands. Ships to Reefs believes that AB
14 634 would allow the Commission to make a decision on ship
15 reefing projects without fear of liability.

16 As Paul stated, you guys heard this on -- the
17 Commission heard this on December 17th, and we recommended
18 a neutral position, if amended. Since that meeting, the
19 bill was amended to address staff's concern, and was
20 unanimously passed through the Assembly and is now in the
21 Senate Rules Committee.

22 Staff still recommends that the Commission take a
23 neutral position on this bill. The liability issues
24 associated with ship reefing can be addressed through
25 statutory immunity, as proposed in AB 634. However, a

1 reefing applicant could also address the Commission's
2 liability concerns through insurance, bonding, and
3 indemnification.

4 Therefore, AB 634 is not required for the
5 Commission to make decisions on ship-reefing projects.

6 Thank you.

7 CHAIRPERSON CHIANG: Any questions or comments
8 for Mario?

9 ACTING COMMISSIONER BRYANT: I just -- I disagree
10 with your recommendation here, and here's why. When you
11 read AB 634, as it's currently drafted and what's sitting
12 at Senate Rules, it doesn't say anything about Ships to
13 Reef. And you read the staff analysis, and we'll get to
14 that issue down the line it sounds like. But for right
15 now what's in front of us is just adding the word "scuba"
16 or "self-contained underwater breathing apparatus" into
17 language that exempts us from liability when people
18 undertake these hazardous activities.

19 So to me, it seems like we should be supporting
20 this legislation. That this, in fact, would help us with
21 our waters in general. And that when we just look at the
22 words of the bill, that we should be in support of it. So
23 I'm a little confused why we're staying neutral. It seems
24 like we're staying neutral as a way to not worry
25 about -- as a way to keep options open for us when another

1 matter comes to us down the line.

2 EXECUTIVE OFFICER THAYER: If I may respond to
3 that. You know, the original version of the bill went
4 much further and specifically talked about ships to rigs.
5 And there were concerns because it immunized the
6 organizations that were actually putting the ships there.
7 And so that was of greater concern. We might have
8 recommended opposition to something like that.

9 The present bill though, I guess from our
10 perspective, doesn't really deal with whether uses are
11 authorized or not there. It's more this liability
12 question. And it seems that that's something for the
13 legislature and the State, as a whole, might have an
14 opinion about that or decide that, yes, it serves the
15 public interest to exempt or to exempt the State from
16 liability, so that more people scuba dive.

17 But it seems like that hasn't been a drawback.
18 It seems like an issue that's not related as to whether a
19 use is allowed on the property or not. It's just the
20 circumstances under whether the State would be sued or
21 not. So that just didn't seem to us like something that
22 directly affects the State Lands Commission.

23 And therefore, we're not objecting to it. We're
24 just neutral. We don't have an objection to that. If the
25 legislature thinks it's a good policy, then fine, but it

1 doesn't seem to relate to our purposes, is the only reason
2 we made the recommendation we did.

3 ACTING COMMISSIONER BRYANT: I guess I'd just say
4 that it's in front of us now for -- obviously, there's
5 other reasons why it's in front of us. So I was just look
6 at it as -- from my point of view as a Commissioner, it
7 struck me that it would be helpful to have this hazardous
8 activity articulated in these other exemptions. I talked
9 briefly to counsel before the meeting about how often do
10 we get sued on some of these issues.

11 And so to me, since it's here, I would be more
12 inclined to say, yeah, this is a good idea. As stewards
13 of these lands, this would be good for us to have. And
14 that would be something that would be helpful to the
15 legislature and the Governor when it's on his desk to
16 decide, or we take no position at all. But just being
17 neutral on it to me implies that we some how or another
18 don't think it's good one way or the other.

19 EXECUTIVE OFFICER THAYER: I understand.

20 CHAIRPERSON CHIANG: Any other comments or
21 questions?

22 COMMISSIONER PASQUIL: You answered it already.

23 CHAIRPERSON CHIANG: Okay. Is there a motion?

24 ACTING COMMISSIONER BRYANT: I'd move to support
25 this bill.

1 CHAIRPERSON CHIANG: Okay. We have a motion of
2 support.

3 Is there a second?

4 Oh, I am so sorry. Would you mind withdrawing
5 that, I need to allow for public comment.

6 ACTING COMMISSIONER BRYANT: I'll hold it in
7 abeyance.

8 CHAIRPERSON CHIANG: We have public comment.
9 Dean, I apologize. I jumped ahead.

10 MR. REWERTS: No problem, Mr. Chairman.

11 My name is Dean Rewerts. I'm the vice president
12 for reef development for California Ships to Reefs.

13 As Mario indicated, the bill has been amended.
14 It was amended on January 7th to merely add scuba diving,
15 all forms of scuba diving, to the list of hazardous
16 activities that take place on both State lands and other
17 public lands, for which there is immunity to the
18 government entity that controls those lands. It passed
19 out of both the Judiciary Committee and the Assembly
20 unanimously.

21 And the one thing I would like to point out, that
22 with the exception of rocketry and, I believe, some
23 aspects of target shooting, scuba diving is the only
24 listed activity -- or activity seeking to be listed, that
25 requires numerous levels of certification as you get into

1 the more difficult aspects of it. And it is inherently
2 dangerous. There are a whole bunch of things that can go
3 wrong, even if a diver does everything correctly.

4 With that, I will leave it and take any
5 questions.

6 CHAIRPERSON CHIANG: Are there questions or
7 comments?

8 Are there any other public comments?

9 Okay, thank you very much.

10 CHAIRPERSON CHIANG: Is there a motion?

11 Mona.

12 COMMISSIONER PASQUIL: I would like to move that
13 we move with the staff's recommendation. I'd like to move
14 the staff's recommendation, please.

15 CHAIRPERSON CHIANG: Okay, we have a motion. We
16 have a second.

17 Please take roll.

18 EXECUTIVE ASSISTANT LUNETTA: Controller John
19 Chiang?

20 CHAIRPERSON CHIANG: Aye.

21 EXECUTIVE ASSISTANT LUNETTA: Acting Lieutenant
22 Governor Mona Pasquil?

23 COMMISSIONER PASQUIL: Aye.

24 EXECUTIVE ASSISTANT LUNETTA: Department of
25 Finance alternate Cynthia Bryant?

1 ACTING COMMISSIONER BRYANT: I abstain.

2 CHAIRPERSON CHIANG: Okay. The motion passes.

3 Next item, please.

4 EXECUTIVE OFFICER THAYER: That concludes the
5 agenda items. There's still public comment and then a
6 closed session.

7 CHAIRPERSON CHIANG: Okay. We have two people at
8 this particular point in time who have signed up to offer
9 public comment. The first is Ruth Gravanis. Ruth, I
10 apologize --

11 EXECUTIVE OFFICER THAYER: Mr. Chair, I erred.
12 I'd forgotten that we'd removed the Martinez Marina. And
13 so we should probably take that before public comment. I
14 apologize. The Attorney General reminded of that.

15 CHAIRPERSON CHIANG: Ruth, you'll have your
16 moment in the sun in a few moments.

17 (Laughter.)

18 CHAIRPERSON CHIANG: So the staff presentation on
19 this will be given by Colin Connor.

20 CHAIRPERSON CHIANG: Very good.

21 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

22 Good morning again. In case you forgot, I'm
23 Colin Connor. I'm the Assistant Chief of the Land
24 Management Division.

25 This item involves three main things. The first

1 is the termination of an existing lease and the issuance
2 of a new 46-year general lease commercial use to the City
3 of Martinez. The second thing is the endorsement of five
4 subleases. And the third is the approval of an agreement
5 and consent to encumbrancing of lease.

6 This involves the continued use of an existing
7 marina, breakwater, and other marina-related facilities
8 and improvements. It also involves the following upland
9 facilities: The Martinez Yacht Club, a Sea Scout
10 building, a boat repair facility, an amphitheater, and a
11 public park and bay trail.

12 The marina and upland facilities occupy
13 approximately 58.77 acres of sovereign lands located on
14 the south side of the Carquinez Straits in the city of
15 Martinez, Contra Costa county. This exhibit right here
16 shows it. This is the existing marine facilities, and
17 these are the upland areas right here. This is the boat
18 repair, amphitheater, Sea Scout building, yacht club, and
19 this is the park and trail areas.

20 The issuance of a new lease will allow the city
21 to make improvements to the marina, including sections of
22 the breakwater, and marina entrance, a new concrete
23 encased float module berthing system containing 367
24 berths, upgrades to the electrical and water service for
25 the marina, construction of a fuel dock pump-out station,

1 new bait shop, and new restaurant, shower, locker room
2 facilities, as well as a dry boat storage center.

3 The city proposes to dredge approximately 274,000
4 cubic yards of sediment from the marina basin to restore a
5 safe navigation depth for vessels, and it will conduct
6 periodic maintenance dredging.

7 CHAIRPERSON CHIANG: I'm sorry, Colin, where
8 would the dredging take place?

9 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

10 In the basin here. By the way, this is the
11 breakwater out here, and it's going to be reconfigured.
12 As a matter of fact, I think I'll take the opportunity to
13 show you the new plan.

14 This is the proposed reconfiguration. And the
15 entrance of the breakwater will be different. As a matter
16 of fact, as you can see, they're going to raise the
17 breakwater and repair damaged sections.

18 So it's actually -- right now, the marina has
19 approximately 400 berths, and it will be downsized to 367
20 actually. So the entire basin will be dredged. And as
21 part of the proposed lease, there will be periodic
22 maintenance dredging to maintain that.

23 The city also proposes to construct finished pad
24 sites for a planned restaurant, service center, and
25 maintenance facility. Commission approval will be

1 required prior to the construction of these buildings for
2 the pad sites.

3 The existing yacht club, Sea Scout building, boat
4 repair facility, amphitheater, park and bay trail
5 facilities will remain unchanged.

6 The previous lease with the city approved by the
7 Commission, September 1964, authorized a 49-year lease.
8 That lease will expire in 2013. Upon authorization, this
9 lease will terminate the old lease.

10 The city currently has five outstanding loans
11 with California Department of Boating and Waterways, and
12 plans to secure funding for many of the proposed
13 improvements to the marina with a new loan from Boating
14 and Waterways.

15 Accordingly, the city is requesting an agreement
16 and consent to encumbrancing of lease for all the loans in
17 an amount not to exceed \$13 million.

18 In order to keep the marina project economically
19 viable, the city is proposing a loan amortization period
20 of 46 years. For approval of the new loan from Boating
21 and Waterways, the city must have the right to use the
22 leased premises for a term concurrent with the loan
23 period, and that's the reason they're asking for the
24 46-year lease from us.

25 The city has agreed that all revenue that's

1 generated by the city from the leased premises will remain
2 in the city's marina enterprise zone for loan repayment,
3 capital improvements, repairs and maintenance, and
4 periodic maintenance dredging.

5 The proposed improvements to the marina are
6 expected to take 8 to 10 years to complete. The
7 consideration for the first 10 years of the proposed lease
8 will be a minimum annual rent of \$10,000 for the marina
9 portion against five percent of all the revenue that the
10 city generates from its leases on the upland facilities,
11 which are, again, the amphitheater, Sea Scout building,
12 yacht club, boat repair. And I believe that's it.

13 Beginning in year 11, the State will receive a
14 new negotiated minimum annual rent against a schedule of
15 percentage of gross rents and fuel charges for the
16 marina-related activities and percentage of gross income
17 from the upland facilities.

18 The city leases operation of the marina-related
19 facilities to Almar Management. There are also four other
20 city subleases occupying portions of the uplands. The
21 Commission has reviewed these leases and is requesting
22 approval of subleases to Almar Management for the
23 operation of the marina, Gerald Long as operator of the
24 boat repair facility, Sea Scouts for a building for
25 meetings and activities, Martinez Yacht Club for their

1 clubhouse, and lastly, Benefactors Incorporated doing
2 business as the Willows Theater Company, for use of the
3 amphitheater for theatrical performances.

4 Because the marina slips, docks, and boats are
5 vulnerable to vandalism, theft, property destruction,
6 accident, fire, and other on-water problems, the city is
7 requesting a limited and controlled presence of navigable
8 vessels to be used as liveboards for 24-hour security
9 purposes.

10 Based on the configuration of the marina, staff
11 is recommending that no more than seven vessels be used
12 for these purposes, and only designating slips subject to
13 the approval of Commission staff.

14 These security vessels will be required to leave
15 the marina waters, at least once in each 90-day period for
16 a minimum of six hours. The city will submit an annual
17 report covering the security activities for each year.

18 And I want to point out that the liveboards
19 are -- what staff is recommending is based on the seven
20 piers basically.

21 So one per to provide security purposes.

22 CHAIRPERSON CHIANG: What criteria do we use to
23 determine security?

24 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:
25 There is no real set criteria. As you're aware,

1 there is a prohibition of residential use. So we don't
2 look kindly on liveboards. So what we look for is if
3 there is some justification for having a liveboard, it's
4 primarily centered on security. And in the case like
5 this, it would be kind of a neighborhood watch type
6 purpose, to provide security eyes and ears for each of the
7 fingers.

8 It's a case-by-case basis. We don't -- there are
9 no set guidelines for it.

10 CHIEF COUNSEL FOSSUM: Let me add if I could,
11 that for probably the last 30 or so years, this issue
12 comes up periodically. And the Commission and the
13 Attorney General's office in working with the City of
14 Berkeley, not far from here, they were redoing their
15 marina, I think it was about 1981, if I'm not mistaken.
16 And they came up with a proposal, the small percentage
17 that they -- and as well as having the necessity that the
18 vessels be seaworthy, that they leave the docks and go out
19 and actually navigate so they weren't just parked there.

20 And so they came up with a percentage, I think it
21 was between three and five percent. And the Commission
22 staff, at that time, felt that that was a reasonable type
23 of approach. And so, since that time, that's been more or
24 less what we've followed. There isn't any particular case
25 law. It's what makes sense from a public standpoint. It

1 provides security, if there's fires or other emergencies
2 that take place. The rationale is that they are then eyes
3 and ears for those purposes. Otherwise, it would still be
4 prohibited.

5 CHAIRPERSON CHIANG: Thank you, Curtis. Colin,
6 you can proceed.

7 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

8 Yes. In closing, some of the terms of this lease
9 as negotiated are unique. They're intended to reflect the
10 needs of the city and recognize the public benefits
11 provided by the project and are considered to be in the
12 State's best interests.

13 This concludes staff's presentation. I
14 understand representatives from the City of Martinez would
15 also like to address the Commission.

16 CHAIRPERSON CHIANG: Very good. We have two
17 individuals from the City of Martinez. First, let me
18 welcome City Council Member Mark Ross. And then if I
19 could have the City Manager Philip Vince succeed Mr. Ross
20 after his comments.

21 MARTINEZ CITY COUNCIL MEMBER ROSS: Good morning,
22 Mr. Controller, Acting Lieutenant Governor and Director,
23 we are here from Martinez, and we're very happy to be
24 here. I do want to say your staff is exemplary. I'm a
25 real estate broker and a property manager myself. And so

1 negotiation is part of my life. And I've worked a little
2 bit with Eric, but my staff has had the pleasure of
3 working with your staff. And I haven't met Colin, but
4 Colin you are exemplary in how you are serving the State
5 and the people's interests. You drive a hard bargain, but
6 you recognize what the State's interests are and how this
7 can work. And I really appreciate the good work that your
8 staff has done.

9 The one thing that I'm here to talk about is
10 our -- how many people we can have on a liveaboard. The
11 Martinez Marina has been troubled over the years. When I
12 was elected 13 years ago, it was a mess. I grew up in
13 Martinez. It's my home town. I used to drive my little
14 Stingray three-speed down there when the marina was first
15 built. I've watched it deteriorate through the neglect of
16 the City of Martinez.

17 I ran for City Council. The first thing I wanted
18 to do was restore the marina back to where it was when I
19 was a kid, so kids from the region can come and play there
20 again, like I did.

21 And we've come a long way with the private
22 management of Almar, and the previous managers, that the
23 Department of Boating and Waterways had insisted we do.
24 And it's turned around really nice.

25 One of the main problems though was it is such an

1 isolated marina. It's also separated from most of the
2 urban area by train tracks, so police response is not as
3 quick as it could be. And what we found in this vast area
4 is maybe a couple people per dock is a good way of going.
5 I mean, that's five percent of the total spaces. I
6 understand from what I've been told is that maybe 10
7 percent is a thumbnail number that's used in other
8 marinas. But we're looking at maybe two per dock. One
9 would be fine, but we think that because it's of no
10 financial interest to us, other than just security is what
11 we're asking for, is maybe two per dock.

12 The rest of the deal we're very comfortable with.
13 We're very excited about. We're very pleased that the
14 State has been very agreeable to what we need and
15 extending the lease. It's a unique place. It's a unique
16 situation that we have. And we think that we can make it
17 work, not just for the citizens of Martinez, but the
18 subregional and regional users that come from all over.

19 And also as a politician, who promised to get the
20 marina right, I like keeping my promises. And this is
21 really the last one on my list that I started with 13
22 years ago.

23 CHAIRPERSON CHIANG: I'm sorry, this is, did you
24 say, the last one on your list?

25 MARTINEZ CITY COUNCIL MEMBER ROSS: The last

1 promise. I have my flier from 13 years ago, and I've got
2 everything done, except for the marina, and --

3 CHAIRPERSON CHIANG: Well, well done.

4 MARTINEZ CITY COUNCIL MEMBER ROSS: Thank you.

5 Thank you. But this is the toughest nut to crack. We've
6 had several iterations of it, and this is the last thing.
7 So if all I have to do here is talk about a few more
8 liveboards to provide security and keep some of the
9 things -- the eyes and ears open there, that's just great.

10 So I want to thank staff for letting us get to
11 this point, and my staff, which has just been very
12 exemplary also, in working for years on this very tough
13 and intransigent problem. It's tough doing marinas as you
14 well know.

15 CHAIRPERSON CHIANG: Council Member, let me ask
16 you a question --

17 MARTINEZ CITY COUNCIL MEMBER ROSS: Yes.

18 CHAIRPERSON CHIANG: -- because part of the
19 reason I ask this is to identify criteria. Not having
20 been out there, it's hard just to throw out a number.
21 Would your preference be that we voted for the seven and
22 then you can continue discussions and then if -- right, we
23 can come back with an amendment or would you rather us
24 just postpone this and you have the discussions?

25 MARTINEZ CITY COUNCIL MEMBER ROSS: I'd vote for

1 the seven, if we are so allowed to keep continuing to talk
2 about it, we'd be more than happy with that.

3 CHAIRPERSON CHIANG: Okay. Yeah, you can
4 certainly have extended conversations. I would encourage
5 you to do so. But not having the opportunity knowing how
6 deep it is, not, you know, having heard the argument about
7 limited access for law enforcement out there, you know, if
8 you share all those things, it would better assist --
9 certainly, better assist me.

10 MARTINEZ CITY COUNCIL MEMBER ROSS: That would
11 be -- we'd be more than welcome to go that route. Thank
12 you very much. Like I said, this is kind of like the
13 final pistachio on a big cake. And it is important, we're
14 not -- I don't want to minimize it, but your staff has
15 been very helpful, and I don't see why they wouldn't be
16 more helpful in the future.

17 CHAIRPERSON CHIANG: Interesting, pistachio over
18 cherry.

19 (Laughter.)

20 MARTINEZ CITY COUNCIL MEMBER ROSS: And I think
21 our city manager wanted to say something.

22 Again, thank you for your time and your
23 consideration. Again, you've got an exemplary staff. And
24 real estate is a little slow. I might have to put in an
25 application to work with a nice team like that.

1 (Laughter.)

2 CHAIRPERSON CHIANG: We can always use more
3 outstanding public servants. We just don't -- we only
4 have limited financial resources in the State, as we
5 unfortunately are all well aware.

6 MARTINEZ CITY COUNCIL MEMBER ROSS: Well, we want
7 to help with those finances through our marina.

8 (Laughter.)

9 MR. VINCE: Commission, executive staff, I want
10 to thank the State Lands Commission --

11 CHAIRPERSON CHIANG: Oh, Philip, sorry to
12 interject. Could you introduce yourself for the record,
13 please.

14 MR. VINCE: Philip Vince, City Manager, Martinez,
15 Contra Costa county.

16 I'd like to thank the State for all its patience
17 in working diligently with staff, and the Department of
18 Boating and Waterways. We've developed a really good
19 working relationship. I'd like to comment a little bit
20 more emphatically on the number of liveaboards.

21 I'm more inclined to agree with the executive
22 legal counsel who said in 1981, Berkeley, they negotiated
23 somewhere between three and five percent. I don't know
24 what the total number of slips was, but right now we have
25 12 liveaboards, and it would be problematic for us to

1 reduce that to seven.

2 But more importantly, we did a statistical survey
3 of most marinas around, and came up with the average is
4 around four percent. We're asking for five. We can live
5 with four percent. Four percent for us, based on the 368
6 slips, would be 16 berths, which I think is real important
7 for the liveaboard number to make this work with our
8 private partner Pacific Marine, and Almar.

9 So I'd like to be a little more emphatic about --
10 I don't think seven is really going to work. Now, we had
11 discussed at length, Colin representing the State Lands,
12 that we were going to need more than that. And he
13 encouraged us to come up and make our case, not in an
14 adversarial sense, but I think it would work a lot better
15 with our clients if we could do that, because this has
16 been our whole lynchpin of our economic development. When
17 I came from Moraga, I didn't know anything about
18 water-based towns, but I've learned quite quickly.

19 But one of the things we do want to stress is the
20 security. We're going to be putting \$23 million into this
21 entire upland and water project. And I think the security
22 factors, and also to give an opportunity for some of our
23 liveaboard people to be part of the community. And while
24 it technically doesn't qualify as affordable housing, I
25 think oftentimes people view that and it extends our

1 ability to actually give that type of housing presence.

2 Anyways, that's it for me. I'll take any
3 questions.

4 CHAIRPERSON CHIANG: Thank you, Philip.

5 Mona, you have a question?

6 COMMISSIONER PASQUIL: Thank you. Would you be
7 open though to accepting the seven today and then coming
8 back, and especially including the information about the
9 public safety response times and whatnot, because I think
10 that would be helpful for the staff to have. And if we
11 need to move -- you know, change the number, we can do
12 that.

13 But I don't think we had that public safety --
14 all the additional information.

15 EXECUTIVE OFFICER THAYER: If I may to just
16 interject before he responds. That's exactly the
17 situation we were in, and I think BCDC has a policy that
18 the city's familiar with of allowing up to 10 percent.
19 And again, our perspective is different from BCDC's, and
20 we haven't gone along with that. But I think the city
21 originally was doing its planning, and as a result wanted
22 to have 36 slips. And economically that provided a better
23 return for the city. And I think it was only that they
24 weren't aware of our concerns, our Public Trust concerns,
25 over not permitting residential except for security

1 purposes.

2 And I think the city came back just last week, I
3 think late last week, with a proposal of 16. We're not
4 averse to 16 as a staff, we just haven't had a chance to
5 look at the safety reasons that would dictate that to be
6 the right number. And we're very happy to sit down with
7 the city and learn the substantiation for that number and
8 come back with a recommendation for amendment at the next
9 meeting, if we can work that out.

10 MR. VINCE: Okay, if we can get on the next
11 meeting, I think that's reasonable.

12 CHAIRPERSON CHIANG: So you're okay with that?

13 MR. VINCE: Yeah, I mean, I prefer to move --
14 because we're going to be signing our lease with Almar,
15 I'd prefer four percent and I'd feel better, but I
16 understand if your comfort level is for us to meet with
17 staff and negotiate. As long as we can get back on the
18 March/April agenda, that would be great.

19 CHAIRPERSON CHIANG: Any questions?

20 ACTING COMMISSIONER BRYANT: No.

21 CHAIRPERSON CHIANG: Very good. Is there a
22 motion?

23 COMMISSIONER PASQUIL: Yes. I'd like to move
24 that we proceed with the staff recommendation and also
25 make sure that it's on the agenda for the next meeting.

1 ACTING COMMISSIONER BRYANT: Second.

2 CHAIRPERSON CHIANG: Okay. So that would be
3 seven. We have a motion and a second.

4 Without objection, the motion passes.

5 Thank you.

6 MARTINEZ CITY COUNCIL MEMBER ROSS: We'd love to
7 have you out to lunch out there some day.

8 (Laughter.)

9 CHAIRPERSON CHIANG: Next item, please.

10 We have public comment. And now we get to hear
11 from Ruth.

12 MS. GRAVANIS: Thank you very much,
13 Commissioners. And thank you for having your meeting in
14 the San Francisco Bay Area.

15 CHAIRPERSON CHIANG: Happy to be here.

16 MS. GRAVANIS: I've been before you before as a
17 member of the Public Trust Group. We've talked about
18 things like clarifying the role of the various trustee
19 agencies, and how to educate those trustees about their
20 role. I'm grateful to staff for having conducted several
21 workshops throughout the State. Unfortunately, the
22 attendance --

23 CHAIRPERSON CHIANG: Ruth, sorry to interject.
24 Can you just state your name for the record, even though I
25 said it.

1 Thank you.

2 MS. GRAVANIS: Ruth Gravanis. You had it right,
3 Commissioner Chiang.

4 And to continue on, I wanted to thank staff for
5 the workshops that they've held throughout the state. And
6 unfortunately, the agencies never showed up, neither the
7 commissioners or directors themselves nor their staff
8 shows up at any of these workshops. So we will continue
9 to work with your staff to try to come up with ways that
10 we can get better attendance. We welcome any ideas that
11 you might have as well.

12 The need for clarifying the role of the trustees
13 and for sharing it with the trustees has become even
14 greater recently, as we start to engage in trust trades
15 that impress the trust on more uplands and inlands, even
16 hilltops, such as Yerba Buena Island and Mare Island that
17 are away from the water. We need some more guidance about
18 how these areas should be dealt with.

19 We know water-related recreation is an important
20 part of the trust for our shoreline. Are all recreational
21 uses appropriate on Trust lands in the uplands? These are
22 some questions we would like to have some clarity on.

23 An illustration of some of the confusion about
24 the role of the trustees arose with the habitat management
25 plans for Yerba Buena Island, where the authors of the

1 study, the Treasure Island Development Authority staff,
2 which is one of the trustees, suggested that wildlife
3 habitat would have to be constrained by public access
4 needs, because the tidelands trust calls for public access
5 and recreation. They seemed oblivious to the fact that
6 wildlife habitat is a Public Trust use. They also seemed
7 oblivious to the fact that the Trust calls for showing no
8 favoritism over one Trust-consistent use from another.

9 I'm grateful to staff for commenting on the
10 habitat management plan, and hopefully some of those
11 misunderstandings will be straightened out. But
12 nevertheless, it would be good if these trustees knew that
13 in advance. These policies are on your website and
14 they're very clear and easy to find. How do we get the
15 trustees to read the website? I'm not sure.

16 Another issue, though, that's come up has to do
17 with, what I call, trustees in waiting. What happens when
18 a trust exchange has been authorized by the State
19 Legislature, but has not been effectuated yet by you, and
20 years can go by in the interim.

21 With using Yerba Buena Island as an example, SB
22 815 identified as Trust values there, the scenic
23 opportunities, the great views of the Bay, and the
24 wildlife habitat. In the years that go by, however, the
25 views are rapidly disappearing as the non-native trees

1 become thicker and taller and block out many opportunities
2 to view the maritime activities on the bay, and the
3 habitat values are seriously degraded as non-native
4 invasive species displace and degrade the very valuable
5 habitat remnants that we still have on YBI, remnants of
6 the habitat that we've had since long before the Ohlone
7 even found the place.

8 So clarifying what role the trustees have to make
9 sure that the values don't deteriorate would be an
10 important thing to have.

11 I see that my time is up, but two more issues
12 that I want to mention.

13 One is the vocabulary that we all use when we're
14 talking to the general public, where we say things like
15 "Trust Encumbered" or "We impose the Trust on a piece of
16 land". All of you and all of your lawyers know that those
17 have specific legal meanings, but the public doesn't know
18 that. The trustees doesn't know it. And what happens is
19 we end up perpetuating the view as the Trust as something
20 negative, something we want to get rid of.

21 And I would like us to put our heads together to
22 think about ways that, at least in our public information,
23 we try to dispel that notion and help the public think of
24 the Trust as something that is valuable and good and
25 important.

1 And lastly, I wanted to go back to an issue that
2 you were talking about earlier this morning, renewable
3 energy generation on Trust lands. There are proposals for
4 both solar and wind generation on Yerba Buena Island and
5 on Mare Island, and we are in need of guidance very, very
6 soon about to what extent these energy-generating
7 facilities are Trust consistent uses or ancillary uses.
8 It would be really helpful if we could have some clarity
9 on that soon.

10 I look forward to continuing to work with your
11 staff who have been very, very helpful to come up with
12 some resolution of some of these issues.

13 Thank you.

14 CHAIRPERSON CHIANG: Thank you for being here.

15 Sandra.

16 MS. THRELFALL: Good morning, Commissioners.
17 Thank you for this opportunity to speak. My name is Sandy
18 Threlfall. And I am with the Public Trust Group also.
19 Our focus is the Bay Area, to maintain and educate -- to
20 maintain the Trust and educate the populous to the
21 importance of the trust.

22 You received a letter from us end of December.
23 And the opening line was just to get your attention. We
24 would like you to put a hold on anymore Trust trades. The
25 reason being, and there are multiple reasons, a number of

1 the public agencies, the State included, are experiencing
2 economic stress. And that puts, in the case of Oakland or
3 San Francisco, the trustees for the trust in a position of
4 conflict. Because on one hand, they are fiscally
5 responsible for their agency, but on the other hand, they
6 are responsible for the maintenance of the Public Trust in
7 perpetuity.

8 And I know that I've been advised that we
9 can't -- a trustee could not put the trust in perpetuity
10 because Trust uses keep changing. But, in fact, as long
11 as they're Trust uses, I see the Public Trust lands as the
12 gift to our grandchildren and great grandchildren.

13 And every time there is economic duress, the
14 number of trades seem to increase, so that the Trust can
15 be lifted or the land can be unencumbered, and we can put
16 private uses on our shorelines.

17 I really feel that this is an issue that needs a
18 lot more dialogue. Actually, it needs some dialogue. We
19 advocated for training sessions for the trustees. Your
20 staff did a beautiful job, and you educated a lot of
21 public. You did not educate any trustees, because they
22 did not attend.

23 So where do we help them understand that while
24 there is a conflict, and there is a financial
25 responsibility on their part, there is a responsibility to

1 us, to you, that they maintain that Public Trust as long
2 as there are Public Trust uses for it.

3 That's it in a nutshell. The notion of
4 perpetuity, the notion of the trustees, in fact,
5 maintaining and protecting the Trust lands for all of us.
6 Now, we are planning a face-to-face with the staff to kind
7 of process this.

8 But when it comes down to it, it's you, the
9 Commissioners, who really have the opportunity to help us
10 come up with ways that the Public Trust can, in fact, be
11 kept -- the lands can be kept in the Public Trust, so that
12 they will be there for perpetuity.

13 And my time is up, but I'm hopeful that we can
14 find a way. We even talked about a catalogue -- no,
15 catalogue is not the right word -- a training binder and
16 almost make the new trustees read it out loud. Have you
17 ever noticed when you read something out loud, you
18 remember it better. The notion that the Trust is a
19 valuable thing, and changing the language is certainly the
20 first step.

21 But thank you for this opportunity to speak.
22 And, yes, we will be meeting with Mr. Thayer and staff to
23 try and find answers to this dilemma.

24 Thank you.

25 CHAIRPERSON CHIANG: Very good. Thank you.

1 Anybody else signed up to comment?

2 EXECUTIVE OFFICER THAYER: I wonder if I could
3 respond to those comments.

4 CHAIRPERSON CHIANG: Please, Paul.

5 EXECUTIVE OFFICER THAYER: Mostly to just
6 acknowledge the great work that the Public Trust Working
7 Group is undertaking. I don't know of any other
8 organization in the U.S. or California that's focused on
9 the Public Trust doctrine. It just doesn't exist. Other
10 groups may use that doctrine or utilize the principles in
11 fighting out issues for development and that kind of
12 thing. But this is the only group that we know about that
13 focuses exclusively on the Public Trust doctrine, and how
14 it's implemented. And they are our allies in almost
15 everything that we do and that they do. We work very
16 closely with them, and have for years.

17 We did hold two rounds of workshops at the
18 instigation of this group, with meetings each time in San
19 Francisco --

20 CHAIRPERSON CHIANG: At the initiation?

21 EXECUTIVE OFFICER THAYER: What's that?

22 CHAIRPERSON CHIANG: You said "instigation".

23 (Laughter.)

24 EXECUTIVE OFFICER THAYER: At their instigation,
25 right -- in San Diego and L.A. and San Francisco. And we

1 had fairly good turn out from the public. There were 40
2 or 50 people there. But they're right, there weren't that
3 many of the grantees that were there. In San Francisco
4 actually there were some Port officials that were there.

5 And we have the exact same concerns over how
6 granted lands are used that they have and some of the same
7 frustrations. We do have a Granted Lands Program that
8 works on a day-to-day basis with the ports and cities. So
9 there is outreach beyond what is in those workshops, but
10 it would have been great if those grantees had come. But
11 we do have these other programs that are ongoing.

12 We also have monthly telephone conversations with
13 the members of this group, so that we can inform each
14 other about what's happening, particularly in the Bay Area
15 where they're located.

16 I thought it was a great point in there about the
17 vocabulary, not thinking of -- that we're not thinking of
18 the impression that's made from what are really legal
19 terms, but the concept of Public Trust being imposed on
20 lands or the Public Trust burden or whatever. There's
21 probably better words we can use. And I hadn't heard that
22 point before. That's a very good one.

23 Finally, with respect to putting a freeze on
24 exchanges of Trust lands, with the idea that Trust lands
25 are supposed to be maintained permanently, and therefore

1 shouldn't really be traded, and that over the long run,
2 lands that don't -- Public Trust lands that presently
3 don't seem to be useful for Public Trust purposes might
4 very well have that purpose in the future.

5 I would disagree slightly with the Public Trust
6 working group on that issue. The statute specifically
7 authorizes us to make these exchanges. And we worked on
8 revisions that we thought tightened up that statute
9 several years ago. And, in fact, there's an exchange that
10 was on the consent calendar, as the Commissioners know, in
11 today's agenda.

12 But it's usually the case that the use of lands
13 vary or because of fill -- historic fill when that was
14 done more, there can be areas that are far removed from
15 the ocean. They're still Public Trust Lands. And if
16 through one of these exchanges we can improve the acreage
17 and value that's close to the water, we see this as a
18 benefit to Public Trust Lands in general in California to
19 be able to do those exchanges. There are tight legal
20 constraints over when those can be approved and when they
21 can't be approved. And they're always done, not by staff,
22 but at Commission meetings. So we think that's a tool
23 that needs to stay with the Commission. But copies of the
24 letter were distributed to the Commissioner's offices when
25 they first came in, and are, I think, in your folders

1 there today.

2 And finally, as Sandy said, we're looking forward
3 to having a meeting with them. We've had some trouble
4 with schedules, setting something up, but we know in the
5 next few weeks we'll end up meeting with them and go over
6 some of this in greater detail.

7 But in spite of the fact they had some particular
8 things that they would like us to do in their
9 presentations, on the whole, we're really glad they're
10 here, both today and generally. They've been a great
11 assistance, in terms of carrying out the Public Trust
12 Doctrine.

13 CHAIRPERSON CHIANG: Very good. Thank you.

14 Okay, I think that's all for our public calendar.

15 We do have private session. Paul, thank you very
16 much for -- I don't have to do mass retirements this
17 month. It's nice to keep our great staff.

18 (Laughter.)

19 CHAIRPERSON CHIANG: So we will go into closed
20 session. And for those of you who aren't participating or
21 are not legally allowed to participate in closed session,
22 we would ask kindly that you depart.

23 (Thereupon the California State Lands
24 Commission meeting recessed into closed
25 session and adjourned at 12:02 p.m.)

