COMMISSION MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

DEPARTMENT OF HEALTH SERVICES
1500 CAPITOL AVENUE
SACRAMENTO, CALIFORNIA

TUESDAY, MARCH 25, 2008
10:00 A.M.

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APPEARANCES

BOARD MEMBERS

Mr. John Chiang, State Controller, Chairperson

Mr. John Garamendi, Lieutenant Governor, represented by Mr. Bugsch

Mr. Michael Genest, Director of Finance, represented by Ms. Anne Sheehan

STAFF

Mr. Mario De Bernardo, Legislative Liaison, staff counsel,
Ms. Barbara Dugal, Chief, Land Management Division

Mr. Curtis L. Possum, Senior Counsel

Ms. Ms. Mary Hays, Public Land Manager, Land Management Division

Mr. Matt Rodriguez, Attorney General's Office

Mr. Paul Thayer, Executive Officer

ALSO PRESENT

Mr. John Asuncion, Blue Whale Sailing School

Mr. Robert Lowes

Ms. Micaela Van Dine, Reysner Law Office

Mr. Michael Wall, NRDC

Mr. Bruce Wolfe, San Francisco Bay Regional Water Quality Control Board

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PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
CHAIRPERSON CHIANG: Good morning. I'm calling this meeting of the State Lands Commission to order. All of the representatives of the Commission are present.

I'm John Chiang, the State Controller, and I am pleased to be joined today by a representative from the Lieutenant Governor's office and a representative from the Department of Finance.

For the benefit of those in the audience, the State Lands Commission administers properties owned by the State as well as its mineral interests.

Today, we will hear proposals concerning the leasing and management of these public properties.

The first item of business will be the adoption of the minutes from the Commission's last meeting.

May I have a motion to approve the minutes?

ACTING COMMISSIONER SHEEHAN: I'll move approval if there are no changes.

ACTING COMMISSIONER BUGSCH: Second.

CHAIRPERSON CHIANG: We have a motion and a second. These minutes are unanimously adopted.

The next order of business is the Executive Officer's report. Paul, can we have that report, please?

EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

The Executive Officer's report this morning is...
going to be devoted to an update on the Poseidon desalination facility and the steps taken by staff to develop the additional information requested by the Commission at its October 30th meeting when the Commission first heard this project.

Several of the Commissioners have requested that we do this to provide a public understanding of where we are on this. So I have a little detail here. And please interrupt with questions or wait until the end, whichever is more convenient.

The Commission did hear this on October 30th last fall. It was a project that would develop a 50 million gallon per day desalination facility in Carlsbad. The State Lands Commission postponed approval of the lease amendment authorizing use of the intake and outfall structures that are currently used by an existing power plant. And the Commission directed staff to develop additional information on two of the issues.

First, the desal facility will have the same impacts as a power plant that uses once recooling although at a lesser rate than the existing power plant. The existing power plant is authorized to use 830 million gallons a day. And the desal facility will use about 304 million gallons per day.

The affect though is to cause the destruction in
marine eggs and larvae whenever ocean water is taken into
the facility. The State Lands Commission has been working
on this issue for several years, and I think two or three
years ago adopted a resolution urging the phasing out of
cooling the power plants because of their effect on public
resources.

Poseidon has submitted a flow plan to the
Regional Water Quality Control Board which outlines
mitigation for this impact. And the Commission has wanted
more specificity about where proposed wetland restoration
would occur, more assurances that Poseidon would carry out
the maintenance and actual restoration and justification
for the restoration and other information.

The second issue of concern to the Commission
focused on Poseidon's proposal to make the project carbon
neutral. The day before the Commission hearing, Poseidon
submitted a plan. Poseidon provided a list of categories
of mitigation mechanisms. However, the Commission wanted
more details about how this is going to be done and
verification from staff that the carbon footprint of the
facility would be zero as promised by Poseidon.

The Commission at the October meeting indicated
it wanted to consider the details on the lease application
at one of the next couple of meetings. Staff indicated
again at the October meeting that the issues involved were
fairly complex and that our calculations of the carbon footprint varied substantially from the estimations used by Poseidon in developing their plan.

Two weeks after the October 30th meeting, the Coastal Commission met on November 15th and took up the same project. It did approve the coastal development, however it had a number of concerns specifically focused on the same two concerns that you, the State Lands Commission, had. As conditions of approval of its permit, it required that the same additional detail and analysis regarding marine impacts and mitigation and the greenhouse gas emissions mitigation plan be developed.

These Coastal Commission conditions required that the additional information and more fully developed plans be brought back to the Coastal Commission as our own process before the coastal development permit would be issued and construction could begin.

Poseidon and the Coastal Commission staff then met and developed and signed a mutually agreed upon Scope of Work. This document sets out what the information and analytical needs were and establishes the Coastal Commission's July meeting as the goal for completion of the work. This work is ongoing and won't be done until that July meeting.

Concurrently, the State Lands Commission staff at
your direction has twice exchanged information requests
and responses with Poseidon. We received the latest
response from Poseidon this month and is still under
review. We've also initiated discussions with the staff
of the Air Resources Board and the Energy Commission who
we regard as the state experts on greenhouse gas emissions
and mitigation. We hope to use those staffs to help us
evaluate the final plan when it's completed.

We've also established a similar relationship
with the staff of the San Diego Regional Water Quality
Control Board. The flow plan I mentioned earlier contains
the mitigation measures for the once-through cooling
impacts. The Water Board staff's evaluation of the plan
will be made using its expertise and analysis, and they
work on these issues much more than we do.

In February, that Water Board staff sent a letter
to Poseidon indicating again a lot of the same concerns
about the lack of detail in the flow plan, the same
concerns expressed by the other two commissions. Poseidon
responded with an elaborate I think 93 page response. And
the Water Board currently is scheduled to take up matter
at its April 9th meeting. We're hoping that that review
both by the Board staff and by the Board itself will help
us reach a conclusion about the adequacy of that
mitigation.
It's also true that I believe this permit requirements in respect to the final review of the flow plan has to occur before construction can start there as well. So it's the same sort of situation we have with the Coastal Commission in that this additional review has to occur before any construction can start.

Again, comment to all of these agencies has been a concern over the lack of detail in the plan submitted by Poseidon. We still have some concern about whether or not the mitigation plans as we presently understand them enable us to reach the conclusion that the greenhouse gas emissions will be zero. Poseidon has submitted a list of mitigation concepts or mechanisms, but haven't yet expressed which ones it's going to use. So it's difficult to come back with a conclusion. But we're working with the Coastal Commission staff and the staffs of these other agencies to evaluate what we've got.

So our present plans are we're going to continue that work. Our intention is to bring this back to the State Lands Commission roughly concurrently with when the Coastal Commission hears this. That is two benefits. First, this Commission will benefit from all the information that's being developed in that process. And we won't be operating with substantially less information than the Coastal Commission has and there can be better
coordination between the two agencies.

And the second reason of making it concurrent is if we acted about the same time, this Commission is not causing any additional delay to private construction. They can't go forward without the Coastal Commission approval or without our lease. And once that approval occurs from the Coastal Commission, we want to make sure the lease is granted in a timely manner if it's the desire of the Commission to approve it at the same time. So we would be working with the Coastal Commission and your offices to schedule a meeting so that can be done.

I'd like to clear up a couple of misperceptions. There's been some information being passed around that has suggested that the Coastal Commission will not re-hear this matter until the State Lands Commission has granted the lease. Sort of a catch-22 situation. I personally spoke with the Coastal Commission staff who assured me that was not the case. That there's into need for this Commission to act prior to the Coastal Commission in order for the Coastal Commission to take up its consideration of the completion of those two conditions that will come back to it. So there's no problem that way.

There's also been speculation that we would not bring back this matter to this Commission until the Coastal Commission and the Water Board had acted. Again,
we do not have that position at all as a staff. This Commission would end up acting a week before or after the Coastal Commission. None of that is important from our perspective. We do think though that the Coastal Commission and the Water Board processes will provide information that will be helpful to the Lands Commission. So that's the situation. And we'll keep your offices advised as we move forward on this with any hiccups along the way, any further delays. And I'd be glad to answer any questions if there are any concerns.

CHAIRPERSON CHIANG: Are there comments or comments?

ACTING COMMISSIONER SHEEHAN: I just want to clarify that our action is not contingent on either of the other agencies acting.

EXECUTIVE OFFICER THAYER: Correct.

ACTING COMMISSIONER SHEEHAN: And the information as I recall from our hearing were the two issues, the carbon neutral and the mitigation plan. If we get information that addresses those issues for us, we could act -- you know, to our satisfaction you felt addressed the concerns and you need to have these specifics that you're looking for we could act --

EXECUTIVE OFFICER THAYER: We could potentially act sooner, although Poseidon has entered into this
agreement with the Coastal Commission which basically indicates they reached an agreement with the Commission and are working through this process with them the same sort of things. But, yes, it's absolutely true.

ACTING COMMISSIONER SHEEHAN: The same issues that we have?

EXECUTIVE OFFICER THAYER: Yes.

ACTING COMMISSIONER SHEEHAN: And are we getting the same -- they're keeping us and the Coastal Commission from providing us the same information, keeping us up to date on the development on these two issues.

EXECUTIVE OFFICER THAYER: I believe so. But whether or not that's true, the Coastal Commission staff and our staff are exchanging all the information that's provided by Poseidon. So everyone is up to date with what each other has done.

ACTING COMMISSIONER SHEEHAN: To the extent we can get information, we can act. But we need some of the additional questions answered that we had.

EXECUTIVE OFFICER THAYER: Yes. There was a conference call between the various agencies or a number of the agencies last week and were planning for a very comprehensive call in early May when all this new information from Poseidon has been reviewed. We're hoping to involve Fish and Game in that as well so we can reach
some conclusion.

ACTING COMMISSIONER SHEEHAN: Perfect. So it sounded like Water Board is at least on schedule to meet April 9th.

EXECUTIVE OFFICER THAYER: That's correct.

ACTING COMMISSIONER SHEEHAN: Thanks

CHAIRPERSON CHIANG: Do you have any questions or comments?

ACTING COMMISSIONER BUGSCH: Just a clarification of the status of where we are at with those two issues. I know maybe you could just recap what's gone on a little bit. You did a little bit. But I know we had initially asked on the mitigation in both the carbon neutrality issue and they came back to us with an initial response and then we went back to them. But where are we at in particular in them answering or addressing those issues and our staff's comfort level and where we're at?

EXECUTIVE OFFICER THAYER: I think we're narrowing the gap. And so after their first response to our first set of questions, there are a number of issues that we think are resolved in terms of us having sufficient information. We sent a second letter which was more focused on the remaining issues and received a response to that. So I think we're seeing progress along those lines. And hope to complete that work.
CHAIRPERSON CHIANG: Very good. Thank you very much, Paul.

The next item is the consent calendar. I call on our Executive Officer to let us know what items have been removed from the consent calendar.

EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

There are five matters that will be removed. Four of them will be heard at an additional future meeting when some details are resolved. Those are items 14, 29, 44, and 73.

In addition we received a letter or fax of opposition to item 57 and we'll take that off the consent calendar, but will hear that in the regular calendar today.

CHAIRPERSON CHIANG: So I have two people who wish to speak on item 58. So we'll take that during the regular calendar.

EXECUTIVE OFFICER THAYER: Yes, sir.

CHAIRPERSON CHIANG: And then I have a question for the representative from the attorney general's office about item C 85. Are we required to approve this item?

ATTORNEY GENERAL RODRIGUEZ: As I understand it, the State Lands Commission staff has looked at this and made the findings that are necessary for this matter. So yes, you don't have any discretion at this point because of those findings.
CHAIRPERSON CHIANG: Thank you.

And is there anyone in the audience who wishes to speak on an item that still remains on the consent calendar? Okay.

Seeing none, if not, the remaining group of consent items will be taken up as a group for a single vote. We will now proceed with the vote.

Is there a motion?

ACTING COMMISSIONER SHEEHAN: I will move approval of the consent items with the exception of 14, 29, 44, and 73, and 57.

ACTING COMMISSIONER BUGSCH: I'll second the motion.

CHAIRPERSON CHIANG: We have a motion and a second. All those this favor please say aye.

(Ayes)

CHAIRPERSON CHIANG: All those opposed?

Without opposition, the motion passes.

The next item is the regular calendar. Should we proceed with --

EXECUTIVE OFFICER THAYER: Now that we've approved the consent calendar, we can take up 57 now at this point.

CHAIRPERSON CHIANG: Let's bring up the items that were removed from the consent calendar.
EXECUTIVE OFFICER THAYER: This is calendar item 57 and has to do with the extension of some deadlines actually for compliance with a lease at Courtland. And Barbara Dugal, who's chief of our Land Management Division will give a presentation on this.

CHAIRPERSON CHIANG: We have two individuals who have signed up to speak on this item. The first is Shawn Berrigan from the Reysner Law Office. The second person is Robert Lewis. If you would please introduce yourself for the record.

LAND MANAGEMENT DIVISION CHIEF DUGAL: Good morning. My name is Barbara Dugal. I'm the Chief of the Land Management Commission of the State Lands Commission, and I'm here today to present information on item number 57.

The Commissioners may recall at the December 3rd, 2007, meeting staff presented an item regarding the issuance of a ten-year general lease commercial use to Shawn Berrigan and Diane House. It is for the operation of a commercial marina, as Paul mentioned, in the town of Cortland.

At the meeting, there was a test run provided by members of the public about the improvements located on the leased premises which were in need of repair. After discussion, the Commission did approve staff's
recommendation, but they also instructed staff to issue a Notice of Default of the lease and that the lessees would have 90 days to cure those defaults.

On December the 7th, staff conducted a site inspection with Mr. Berrigan and his attorney. During the inspection, Mr. Berrigan indicated that he would be able to rebuild the docks and to make the repairs to the marina within the 90-days period that was provided by the Commission.

On December the 13th, staff issued a Notice of Default to the lessees. To date, the lessees have and are in the process of curing those defaults. And first of all, they have continued to pay the back rent and interest on a monthly basis. They have removed a wall which constituted a residential occupation. And they did acquire some used docks. But once they got those docks, they determined that they were not going to be appropriate for use, and they're in the process now of trying to secure new floating docks.

On March the 23rd, the Commission received a fax from Susan Wilkinson who stated her opposition to approving the extension of time to hear the defaults. Ms. Wilkinson's fax contains several allegations that are difficult to prove. And of course, staff cannot find the lease in default without proof of those defaults.
However, there is no dispute as to who the legal owner of the property is. It is Shawn Berrigan and Diane House who are the State's lessees.

Staff agrees the improvement are worn down and need to be repaired and replaced. And I think that we would all agree that this is not perfect arrangement. But staff is recommending that the Commission consider giving the lessees more time to cure those defaults which will allow the lessees additional time to try to make the marina a viable business again.

And I think there is somebody here to speak on behalf of the lessees. And thank you.

CHAIRPERSON CHIANG: Thank you very kindly.

EXECUTIVE OFFICER THAYER: If I could interrupt.

The alarm that we all heard was because somebody had gone out an emergency exit and that exit was alarmed. But it doesn't appear to be any real problem.

CHAIRPERSON CHIANG: Okay. Next speaker, please.

MS. VAN DINE: Hi. I'm Micaela Van Dine, a representative from the Reysner Law Office. Shawn Berrigan is our client. I'm here today to represent Shawn Berrigan and Diane House just to give a little status update as far as where they are on their improvements. They have been in compliance with the Commission had requested they do as far as moving the wall back on
the residential building that resides on the property. So that no longer invades into the State Lands' space. That is Shawn's residence as of today. Actually, he's been living there ever since he started the improvements on this and was granted the lease from the Commission.

As of right now, he did find investors and funding in order to buy new docks to replace the old docks. And at this time, he is waiting for the weather to basically calm down and no other storms. Because the soil around the land is very soft, having a crane or any type of contacting going on at that time with the land the way it is is just not safe. So with this extension that we're requesting, we will be able to rip out the old docks and replace them with the new ones and make sure it's safe for anybody who's working on that land. Thank you.

CHAIRPERSON CHIANG: Thank you very much. And Robert.

MR. LOWES: Robert Lowes. I've been working for Shawn helping him fit the marina and move that wall back, as she was stating. And the north docks are actually in pretty good shape, but he has determined, like she's saying, he wants all new aluminum docks in there. So I believe he's trying to get a request in June 1st if possible. He's already obtained a delivery date of May 1st. And I don't see any opposition. So if there's
anything further needed, I'm in support of their extension also.

CHAIRPERSON CHIANG: Thank you very much.

Any questions or comments?

ACTING COMMISSIONER SHEEHAN: Just a question for the staff. So now it goes to May 2nd; is that correct?

EXECUTIVE OFFICER THAYER: That's the extension that's written up now. But if we're hearing he can't reasonably get the docks in until sometime in May --

MR. LOWES: Actually, May 1st is the delivery date he just acquired from the dock company that's going to install them. And he's asking until June first if it would be possible for the Commission to do that, please.

EXECUTIVE OFFICER THAYER: Staff would be willing to recommend that date.

ACTING COMMISSIONER SHEEHAN: Because are we meeting between now and then?

EXECUTIVE OFFICER THAYER: We don't have a meeting scheduled.

ACTING COMMISSIONER SHEEHAN: So, I mean, it's up -- but it sounded like it wasn't quite going to meet the -- and then June 1st and then one way or the other we'll know what's going to happen in terms of that.

So, you know, I'm comfortable for the additional whatever 30 days, because it sounds like progress is being
ACTING COMMISSIONER BUGSCH: I would just prefer that we set a deadline that can be met and we don't have to extend this an additional time. It's come up for an extension already. That we set something that can be reasonably accomplished because they've been showing progress towards meeting the lease, but that that would -- we need assurances from you that that we're going to set -- if we extend it to June 1st then that you can meet that deadline and you will not be coming back and asking for an extension.

MR. LOWES: That will give us 30 days.

ACTING COMMISSIONER BUGSCH: We want to see compliances. We'll give you adequate time to do that.

MR. LOWES: If you're suggesting you can extend that beyond that June 1st -- we believe everything can be in and installed by June 1st. We have a delivery date of May 1st on the docks. That's to the property. To remove the old docks and install the other docks, 30 days is sufficient time.

But if you're suggesting that you could extend that until the 15th of June to ensure that there's not another meeting about this, it would be nice to extend it to the 15th of June.

ACTING COMMISSIONER BUGSCH: I would prefer to
set it to a date where they feel comfortable they can meet that.

MS. VAN DINE: June 15th would be preferred to make sure we don't have to come back.

ACTING COMMISSIONER BUGSCH: And if they come back and ask for that again, I don't think the Commission will be very lenient in extending it any further.

EXECUTIVE OFFICER THAYER: I think there's some indication we may be meeting around June 24th if we expect a meeting before then. But June 24th would give us an opportunity to come back in a timely way and report back to the Commission as to whether the June 15th deadline --

ACTING COMMISSIONER BUGSCH: We don't want the dog ate my dock excuse or anything.

CHAIRPERSON CHIANG: Is that a motion?

ACTING COMMISSIONER BUGSCH: Yeah. I'd move to extend it to June 15th.

ACTING COMMISSIONER SHEEHAN: I'll second.

CHAIRPERSON CHIANG: We have a motion and a seconds.

All those in favor say aye.

(Ayes)

CHAIRPERSON CHIANG: None opposed. The motion passes. Next item.

EXECUTIVE OFFICER THAYER: The next item, Mr.
Chair and members of the Commission, is Item 87. This has to do with an enforcement action. And Mary Hays from the Land Management Division will give the staff presentation.

LAND MANAGER HAYS: Good morning, Mr. Chairman and members of the Commission. My name is Mary Hays. I'm a Public Land Manager with the Land Management Division. I'm here to present information on calendar item 87.

This item asks the Commission to consider staff's recommendation to give the South Bay Yacht Club an extension of time to cure certain defaults of their lease. The lease authorizes the use and maintenance of docking facilities on Alviso Slough.

On September 13th, 2007, the Commission authorized staff to issue a Notice of Termination and take steps to terminate the lease to the Yacht Club for failure to maintain the docking facilities in good repair and to provide public access to Alviso Slough. At that meeting, the Commission gave the Yacht Club 90 days to cure the defaults.

In October of 2007, staff performed a site visit after the Yacht Club submitted a full work plan outlining a timetable to complete the repairs and what permits would be needed. At that time, the Yacht Club described their plan for providing public access and the plan was...
acceptable to staff.

On December the 3rd, 2007, staff met with the permitting agencies to understand the length of time needed to complete the permitting process, because it became clear that the vegetation removal must be performed before the bulk of the dock repairs could take place. The vegetation removal will require a Department of Fish and Game streambed alteration permit. And this permit could take up to one year to issue because of the environmental review necessary due to potential impacts to habitat for protected animal and plant species.

On March 20th of 2008, staff performed a site visit to confirm that the Yacht Club has removed abandoned and derelict vessels from the leased premises and has made progress in performing as much work as they can prior to obtaining the necessary permits.

Based on the previously unforeseen time to obtain these permits, staff is recommending a extension to cure the default of the lease from December the 13th, 2007, to December 13th, 2008, which will give the Yacht Club time to do the repairs once the permits have been issued.

Staff and a representative of the South Bay Yacht Club who is present today are here to answer any questions you might have. Thank you.

CHAIRPERSON CHIANG: Thank you. Any questions or
ACTING COMMISSIONER BUGSCH: Do you have any photos? We saw photos the last time.

LAND MANAGER HAYS: Oh, yes, I do. I have some photos. Actually, I have one set -- I apologize -- of what was at the meeting in September. But I have a full set of current photos that were taken on March 20th.

During our inspection on the 20th, it appeared there really hadn't been a considerable more work done on the repairs than we had seen back in September of '07. And that was because of the permitting issues. So these photos show the obvious vegetation that's really impacting the entire Yacht Club.

CHAIRPERSON CHIANG: Questions or comments? We have one individual who has signed up for public comment, Mr. Asuncion. Thank you very much.

MR. ASUNCIÓN: Good morning. It's nice to see everybody again. Long drive from Santa Barbara this morning, but I made it.

I'm John Asuncion, and I'm the president and founder of the Blue Whale Sailing School. We're a charitable educational corporation here in the state for the last 14 years. The educational foundation was created by myself and my wife for people of color to give them a chance to go out on the bay, go sailing in San Francisco.
up and down the coast of Santa Barbara. The foundation is
known for all the classic yachts that we've restored over
the years. My yacht, US 49, challenged for the America's
Cup in 1987. We bought that boat for the foundation for
our flagship. The numbers on the boat are 49 after the
state of California. That's one of our major yachts.

We just donated another yacht I had to the city
of Seattle for their programs for abused children.

I've purchased a piece of property on the Alviso
Slough eight years ago for the general public for public
access. It was a dump site. I can't begin to tell you
what a dump site it was. It was abused for years and
years and years and the previous owner in the South Bay
Yacht Club.

I adopted the slough in 2000. And at this time,
we've retrieved 47 tons of garbage out of the South Bay
from the Gull Street Bridge to the Dumbarton Railroad
Bridge. At this time, we've had to witness the derelict
boats, human waste discharged into the bay. I brought a
large photograph, and I hope you get to see it to show
what's really out there. The average person that comes
down and looks out at a building and sees this and weeds,
you're not seeing the whole thing.

At this time, the State of California Fish and
Game -- I've been assisting them for a couple of years

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now -- are doing a State report some of the members, okay, for killing the different animals, trapping the animals. We've had beavers come up on our site. Because our site -- just picture walking into Golden Gate Park. That's what our park looks like.

I'm a retired golf course architect and a landscape architect, plus I was a contractor. I built projects from the day it started to the hotel was completed. So when you take a look at these photographs, these are the real photographs of this site. So private citizen like myself had to pull my checkbook out.

I have filed a lawsuit against the South Bay Yacht Club. I'll have them in court Thursday of this week for our second meeting with the judge and that will go forward.

And I'm appalled for this agency of State Lands that I sure respect a lot and all their staff is to give any type of continuance, you know, more time or anything like this on this project. When you see these photographs, I think you'll really realize what I've had to witness and see.

But the most important thing is now the Department of Justice ADA has stepped forward last week and they have denied our students -- you know, my wife's program supports the handicap in Santa Clara County for
public access. You know, when you come to our site

CHAIRPERSON CHIANG: Excuse me. Your time has elapsed. Do you mind if I give a couple more minutes?

We'll give you a couple more minutes.

MR. ASUNCION: You know, I'm not pleading with you. I don't plead with anybody.

But the most important thing is to really digest what's really going on. You know, this site -- this is for 100 years this has been going on. A man in San Francisco is going to go to prison because of his neglect of a tanker. The Fish and Game is out two weeks ago and to see these huge oil spills going out into the bay. It's appalling to me. It is absolutely appalling.

And as a taxpayer, I'm not going to stand for it. So I've stood up and told our attorney, Rocky Ortega, I don't care what it costs. We're going to close this place down. Thursday, I will ask the judge for a restraining order to close this place down. If the State doesn't do their job, I think I'll have to do the job for the State.

Thank you very much for your time. It's very nice seeing all of you.

CHAIRPERSON CHIANG: Thank you very much.

Questions or comments?

ACTING COMMISSIONER SHEEHAN: Yeah. And I don't know who I should direct this to in terms of -- as I
understand the gentleman, he does not want us to extend
the lease. What happens if we do not do that? I mean, I
guess from a practical perspective, they are taking steps
to begin to clean it up, meeting with Fish and Game. And
it's not as quickly as you want. If we do not extend it,
I'm not sure that's going to get it cleaned up any faster.
At that point, who then becomes the responsible party?
MR. ASUNCION: Excuse me. I'll pay for it.
From day one, I stepped up to the Yacht Club and the
county and the attorney in Santa County. I would pay for
the cleanup of the whole site, get every permit, bring in
the different contractors we need to give public access
back to the general public. And they have denied it. You
know, the Yacht Club has denied it. So if you wonder
who's going to pay for it, I'll pay for it.
ACTING COMMISSIONER SHEEHAN: Okay. So in terms
of who -- financially, you were responsible. I would have
to ask the lawyers is that's within our jurisdiction.
But the other question I have is one of the
issues is getting the proper -- we have to go through Fish
and Game and a couple of other agencies. So even though
we may have someone who's willing to pay for it, we still
have the issue of the process, Fish and Game and some of
the other agencies, and what is that -- because
regardless, somebody has to go through that process.
SENIOR COUNSEL FOSSUM: That's right, Commissioner Sheehan. Basically, what we found is that everybody desires to clean up the slough. The question is how do you do it legally. And the Department of Fish and Game has to issue a streambed alteration for that. That take times. They have to do environmental studies to determine what's appropriate under the circumstances. And we understand that's moving ahead.

The water district which is just across the way from the Yacht Club has a major task of wanting to clean up the slough. But there's a lot of habitat in there they have to protect when they're doing that. There may be mitigation measures and everything else that will be part of the process. That's why we're asking the Commission to give them a longer period of time, because they need to get these permits to do it legally. It's not that they're not attempting to it, do but they don't want to break the law and do it.

ACTING COMMISSIONER SHEEHAN: Okay. And then I guess back to the first question when he said he would be willing to pay for it.

SENIOR COUNSEL FOSSUM: I'm sure they would accept a donation to pay for the removal of that, because it's probably going to be quite expensive.

The other thing is they do have a period to cure.
When they're in breach of lease, a number of the terms of the lease they were in breach of they have a 30-day period to cure. That's what we're asking the Commission to give them additional time because they can't get the permits in 30 days to do the work.

ACTING COMMISSIONER SHEEHAN: The staff is requesting, if I understand it here -- although we're sort of into the year already because of our scheduling. It would be now nine months; correct? Are we confident that we're not going to be back here discussing the same issue? Or how confident or what can we do to make sure? Because this goes back to previous Commission members since we first heard from the gentleman.

SENIOR COUNSEL FOSSUM: I believe some of the things that have transpired in the last few weeks give us much more confidence than we may have had before. The December date was initially picked by the staff because the Department of Fish and Game said it may take as much as a year to complete the studies. It's now believed the studies may be done in a few more months. And of course getting the contractors in to do the excavation. We don't what the environmental treatment will be. It may be species in there nesting at certain times of the year. All those issues should come out in the environmental treatment that's being done to do the project cleaning out
the slough.

EXECUTIVE OFFICER THAYER: If I could supplement that answer a little bit. It was somewhat surprising to us and almost an object lesson to hear how long the BCDC process was taking and the Fish and Game process was a necessary component to getting the stuff cleaned up.

So we believe it can be done by December, but we're -- there are a number of different players and different agencies involved. And we don't know precisely how long that will take. Certainly we'll monitor the process. And if it takes longer than that, we'll be prepared to tell the Commission why that's taking longer, whether it's been problems on the part of the Yacht Club or other circumstances that cause the delay. But right now, we believe that's the length of time we need.

ACTING COMMISSIONER SHEEHAN: I guess one of the issues is are we confident that the Yacht Club owners are doing everything they can to expedite the process? And that it's -- you know, Fish and Game has to go through, BCDC has to go through the process, especially as you say with the species and some of the issues they have to deal with. But I would hope we could communicate with those agencies also to try to --

SENIOR COUNSEL FOSSUM: Expedite things. I think your experience last year was exactly that. And we didn't
have so much confidence that they weren't moving it in due speed. But I think that their coordination now with both BCDC and Department of Fish and Game and the water district shows they are in fact joined in the effort now to try to move it ahead. So we are much more confident.

ACTING COMMISSIONER SHEEHAN: Have we had discussions with those fellow agencies?

SENIOR COUNSEL FOSSUM: Absolutely.

ACTING COMMISSIONER SHEEHAN: To confirm they are in fact proceeding as they --

SENIOR COUNSEL FOSSUM: Almost daily.

ACTING COMMISSIONER SHEEHAN: Okay.

ACTING COMMISSIONER BUGSCH: The same thing goes back to what I had said before in terms of setting a realistic deadline and then meeting that deadline. I think at least this Commissioner would like those deadlines to mean something and not continue to delay. I understand that we're not in full control of this situation. There's other extenuating circumstances that could push it back. But again if we're going to set another deadline, this one was up before. We heard this last year. And then we're coming back and then extending it again. If we're continuing this on, I think we need to set hard deadlines to do that.

The other question is if they do not get a
permit, first of all, what's the realistic expectation
that Fish and Game is going to grant this permit. And
second, if they do not get the permit, what's the end game
from there?

LAND MANAGER HAYS: It's my understanding -- and
I have had conversations with the Department of Fish and
Game -- is that they are looking at -- the Santa Clara
Valley Water District is preparing an environmental
document for the dredging the entire slough, which would
include that area where the Yacht Club is. Their draft
document, the water district has -- and I confirmed it
with the water district. They believe the draft document
will be out in May or early June. And the final would be
adopted in late summer. That would give -- the Fish and
Game would like to use that document in order to issue
their permit. And then it's just a matter of time. They
already have their docs ordered. They have some of their
docks ordered. So they would begin the repairs.

They actually would have to do the reed removal
first and then do the repairs. So we felt that -- and
through talking with them that they could make that
through December. Because some of the work they need to
be done is after the nesting season. So it was a good
window.

But we have talked with the Yacht Club. And if
we find that the environmental document is not moving along at the same pace that we anticipated, they're going to then have to do their own studies and go for their -- to get a separate environmental review of just their area. So we are going to be monitoring them right through the spring to see where this documents -- when it's going to be released. And Fish and Game has reviewed this document, and they feel very comfortable it's going to cover what they expect.

ACTING COMMISSIONER BUGSCH: So they think they will be able to grant this permit and should be granted by the middle of the summer?

LAND MANAGER HAYS: That's what they told us.

ACTING COMMISSIONER BUGSCH: You think if that takes place that December deadline would be sufficient to clear the weeds and put in the new docks and get it in compliance?

LAND MANAGER HAYS: That's what my understanding is talking to the South Bay Yacht Club and the agency. That should give them enough time.

ACTING COMMISSIONER BUGSCH: Again if we go forward with this, I almost prefer to grant a little bit more leeway in terms of doing something so that when we come back I want the deadline to mean a deadline. So we build into that if they don't agree to it by mid summer,
they get to it by the end of the summer -- I don't know how the nesting season factors into that if that means we have to delay another year, another six months. But I just want to play out a little bit more exactly a realistic expectation. So we're doing our dual diligence as a Commission to allow people with flexibility for things that may come up that are anticipated or unanticipated and then setting that. If you can't come into compliance at that point, then that's the deadline.

ACTING COMMISSIONER SHEEHAN: Yeah. I certainly understand what the Lieutenant Governor's representative is saying.

I would be reluctant to give any additional time at this point in time. We're going to have at least one if not two or three meetings between now and the time of this in December. At that point in time if, you know, some further delays then we would have the time to act on an extension. I mean, I would rather stick to the December date, get updates at our meetings especially if we meet late June. By then we would know whether the information, the environmental report is out, and it can go to Fish and Game, or at least the preliminary one in terms of that. I mean, my instinct would be to stick with the date.

And then what other options do we have in terms
of other types of monitoring penalties on the Yacht Club
if they don't meet the December 7th date or December --
whatever it is. So I realize we're limited in what we can
do in that regard. But to put a date and to have them
shoot for that target.

I'm reluctant to push it back at this point in
time, because as I say, I guess I'm the one Cindy, when
she worked -- we've heard this. And I think the
30 days -- I think we all realize 30 days was not
sufficient to actually fix it all. But I think it was,
all right, we're serious about doing something about this.

I think the goal is to get it cleaned up, you
know. And that's why if we don't do it, that doesn't
solve the problem that you have. I'm not sure even if
you're willing to step up for the dollars and all that
it's not going o actually get it cleaned. I'm trying to
keep my eye on how do you get the whole thing cleaned up
and fixed.

So I would go with the staff recommendation now.
I think at our next meeting if we could have an update,
you know, and get the report from BCDC as well as the
water district and Fish and Game as to where they are in
the process and where they are on the schedule. And then
as we go through the summer and fall, we can decide what
else would be done. But I would put that date out there
and tell them we expect that one to be met. So that would
be my only observation. Because I think we always have
the time to do that. But if you move it out now, you're
just prolonging so --

ACTING COMMISSIONER BUGSCH: I'm okay with that.

I mean, if we don't have a clear idea of what we're doing
in general.

I just want to make sure that we're moving in
that direction, setting deadlines and making them.

SENIOR COUNSEL FOSSUM: If they're not to the
complete the work this fall, basically, then it's probably
going to be until the following August until they can
complete the work or start the work again because of
construction windows dealing with working in the slough
and habitat impacts. So if they miss it this --

ACTING COMMISSIONER BUGSCH: Go ahead. Repeat
that again.

SENIOR COUNSEL FOSSUM: There are certain
construction windows when they're dealing in the wetlands
along the slough. The way this is phased is obviously
they want to dredge, remove the vegetation, dredge it out,
clean it up, and then bring in the docks.

There's certain construction windows they are
allowed under Fish and Wildlife and Fish and Game permits
to work within because of habitat. There could be
spawning species. There could be nesting species and
different things like that. So, you know, if you wanted
to give them six months probably it might not do any good
at all, because they may not be able to actually do the
work.

ACTING COMMISSIONER BUGSCH: There's certain
windows for construction. If they miss this window, the
next opportunity would be next fall.

SENIOR COUNSEL FOSSUM: That's what I'm told.

ACTING COMMISSIONER BUGSCH: Can I -- one more
quick comment. I'm definitely in support of working with
the lessees to try to do that. I'm not advocating that we
move forward with the legal process or anything like that
and to move them out. But I think that's always the best
way for us to do that.

ACTING COMMISSIONER SHEEHAN: What can we do to
expedite the process so that we could do the work this
year? Is there anything this Commission can do or the
staff can do so we're not into, you know, a nine and
twelve month delay?

SENIOR COUNSEL FOSSUM: I think we have been
encouraging the other agencies, BCDC and Fish and Game and
the water districts, to all work together so that the
project can proceed this summer.

ACTING COMMISSIONER SHEEHAN: Because certainly,
you know, Fish and Game and BCDC are State agencies. And I think we can communicate with them, you know. And if so, go up through the agency to incur. The water district obviously is a little different. But if there is any way we can impart to them the importance of this and trying to get it done this year, I would encourage us to do that.

EXECUTIVE OFFICER THAYER: We will do that. And we did have a meeting or telephonic meeting with some of these agencies in December, and that really highlighted a lot of the problems that we saw. And I think in the long run, we're going to end up being a facilitator here between the yacht club and these other agencies that will involve both sides.

CHAIRPERSON CHIANG: Paul, do you have anything else to add?

EXECUTIVE OFFICER THAYER: No. To conclude, staff's -- number one, we want to see this place cleaned up. And we think that Mr. Asuncion has correctly identified a number of problems that are existing out there. I know he wants things to move at a faster pace, and we would like to have them move faster as well.

However, we also believe that this permitting process, once we dug into it, is causing the delays and resulting in them not being able to meet the original deadline. And this new deadline is a reasonable
approximation of when we think that these improvements can be made.

MR. ASUNCION: Can I say one more thing?
The agencies -- number one, BCDC, didn't do their Job. Santa Clara Valley Water District, this sits under their nose. One of the Chairperson, Richard Santos, is a member of the yacht club. He can look out the building every day, and he didn't do his diligent work as a representative of the taxpayers. You know, our representatives in Mountain View, Sally Lieber's office, has failed all the taxpayers, okay, of that county and who she represents and to support this yacht club over the years.

And this has been going on for 100 years okay. I just came onto the scene eight years ago when I purchased this property and then donated it to our foundation for public access.

So the bigger picture is here let's give them another year. Let's give them another year. Let's give them another year. Not one of these individuals go out and pick up any weeds or trash out of the bay. When I'm up here every other week, I'm in my boots. I'm in the water. All of the volunteers are picking up garbage. We are doing our diligent work. But I'm not trying to tell anybody how to clean their house. But they're next door
to me, I want them to clean their house. And I'm going to be the guy that's going to stand up and bark and yell and to make them clean their place up.

Santa Clara Valley Water District are a bunch of buffoons. That's the only word to use. I have a lawsuit with them with the South Bay Yacht Club. And their attorney's here. They're part of this lawsuit, because this is a public nuisance. They have put the general public, the businesses, and the residents in harm's way because of fires. The agencies of the city of San Jose fire department cited State Lands plus the yacht club, because of this derelict wasteland that's there. And it's been there. And I hope they clean it up.

But what I'm trying to do is they are responsible for the cleanup. They are not going to piggyback up on Fish and Game's permit. And that's going to be their savior.

You know, Ms. Hays is making a statement they're working with Fish and Game. She does not know there's another investigation and another division what has been going on at this yacht club. So I think Ms. Hays better make a call today and get ahold of some of the officers that we've been transporting out into San Francisco Bay for the last two years.

So I thank you for your time. And I know you're
going to do the right thing. And the most important thing is for all of the taxpayers of California is to clean the place up. And the people that have the lease stand up and do it. Get out there and clean it up. The contractor they had abandoned the place for two months. There are sunken boats as we speak right now in that slough at the State Lands' property. There is photographs there. I don't any anybody really looked at those photographs. Okay. That's the most important thing.

Thank you very much.

CHAIRPERSON CHIANG: Thank you.

Is there a motion?

ACTING COMMISSIONER SHEEHAN: I'll move staff recommendation.

CHAIRPERSON CHIANG: We have a motion of staff recommendation.

ACTING COMMISSIONER SHEEHAN: I would like to though emphasize that we'd like regular updates as part of that motion would be helpful.

EXECUTIVE OFFICER THAYER: We'll make that part of the OE report, routine outstanding enforcement action.

ACTING COMMISSIONER BUGSCH: Second

CHAIRPERSON CHIANG: There is a second. All those in favor say aye.

(Ayes)
CHAIRPERSON CHIANG: None opposed. Motion passes.

Next item, please.

EXECUTIVE OFFICER THAYER: The next item involves the Suisun Bay Mothball Fleet. The Lieutenant Governor's office in particular had asked for a briefing on the situation down there. We also have a closed session item about this as well.

But Mario De Bernardo of our staff has invited several different agencies to come and testify. There's been some scheduling conflicts that reduced the participation some. We still have representatives from the Regional Water Quality Control Board and NRDC who has filed a lawsuit against the federal government for some of the contamination that's alleged to have occurred from the ships.

But opening this briefing will be Barbara Dugal giving a brief background.

LEGISLATIVE LIAISON DE BERNARDO: Can I quickly say something, Commissioners? We invited MARAD to participate as well as NOAA who will be conducting a study on the contaminated sediments in the Suisun Bay. They both couldn't make it. So as part of -- NOAA has conveyed some information to me. And as part of my report, I will let you know about that. But I wanted to let you know the
federal agencies were also invited.

CHAIRPERSON CHIANG: Can you introduce yourself for the record?

LEGISLATIVE LIAISON DE BERNARDO: Mario De Bernardo, Legislative Liaison, staff counsel, for State Lands.

CHAIRPERSON CHIANG: Thank you very much.

LAND MANAGEMENT DIVISION CHIEF DUGAL: Good morning, again, Mr. Chair and Commissioners.

For the record, my name is Barbara Dugal, and I'm Chief of Land Management Division. And I'm going to give you a brief overview of item number 88. And it regards the Mothball fleet down at Suisun Bay.

The US Maritime Administration, or MARAD, which is an office within the Department of Transportation, has been using Suisun Bay to station its reserve fleet since 1946. However, it was not until August of 1995 that a 25 year lease between MARAD and the Commission was entered into. The lease authorizes several things.

First, it authorizes the placement of the ships in the bay.

Second, it authorizes a 1,400 foot long peer and improvements around the pier that are used to maintain the fleet.

At one point, the original fleet contained over
500 vessels. However, today, the number of ships in Suisun Bay is less than approximately 80 vessels. The majority of these vessels are classified by MARAD as being non-retention vessels. What that means is they're non-operational and will likely be scrapped in the future.

In February of 2007, an assessment was commissioned by MARAD. And that assessment indicates the hulls of the vessels in the fleet may have already lost as much as 19 tons of heavy metals, copper, lead and zinc.

In October of 2007, the San Francisco Regional Water Quality Control Board sent a letter to MARAD requiring the preparation of submittal of a technical report in the form of an impacted sediment investigation work plan. And that plan was to be provided by February first of 2008.

In November of 2007, the Commission sent a letter to MARAD requesting pursuant to terms of the lease that the same report that was required and requested by the Regional Board be provided to the Commission.

In January of this year, MARAD responded to the Commission's November letter and advised rather than conducting the independent site assessment, that MARAD was going to defer the study that would be conducted by NOAA, which has been authorized by Congress.

Staff understands that the NOAA study is in the PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
preliminary stages of development and that the study could take up to four years to complete.

On March 18th, Commission staff advised MARAD that while we hope that we will be able to use the NOAA study and it will be comprehensive in nature and staff will be reviewing it and providing comments as the study progresses. The study does not relieve MARAD of its legal responsibilities on the lease.

Staff also advised MARAD it has a continued obligation under the lease to prevent discharges of hazardous substances, waste, and other materials into Suisun Bay. And it must take all necessary steps to comply with federal, state, and local laws and regulations, all activities associated with the management, maintenance, removal, and disposal of the fleet in Suisun Bay.

I'd like to introduce Mario who will be giving an overview of the NOAA report and discussing some legislative issues associated with the fleet.

ACTING COMMISSIONER SHEEHAN: The lease? They have a lease from us that we got in 1996?


ACTING COMMISSIONER SHEEHAN: And the lease is for how long?

LAND MANAGEMENT DIVISION CHIEF DUGAL:
Twenty-five years.

ACTING COMMISSIONER SHEEHAN: And in terms of -- perhaps this is maybe -- I should direct some of these in terms of our enforcement mechanisms for some of the requirements that they're supposed to be carrying out as part of that is what? What? Can we give them a 30 days' notice?

EXECUTIVE OFFICER THAYER: There are a variety of --

ACTING COMMISSIONER SHEEHAN: A cure.

EXECUTIVE OFFICER THAYER: There are a variety of options like that. And I think we intend to take those up in closed session since a lot of them --

ACTING COMMISSIONER SHEEHAN: That addresses that.

LEGISLATIVE LIAISON DE BERNARDO: So I'll be talking about the legislative approach that State Lands staff has taken to address the issue of the Mothball fleet in Suisun Bay.

There are three major legislative goals with addressing this issue. The first one is the goal of removing the ships. Second one is the goal of cleaning up the sediment. And the third goal is preventing additional paint discharges into the bay while we await for ship disposal.

In 2000, congress extended the deadline to 2006. 2006 has come and gone, and the ships are still there. In January of this year, the Defense Authorization Act, Senator Boxer was able to get language into the bill that created a vessel disposal program. And the program creates a working group. And the working group is to provide a plan to Congress sometime in May or June outlining the plan to dispose federally-owned obsolete vessels according to federal and state environmental law.

The enabling statute for the working group allowed the working group to invite interested state environmental agencies to participate. We have on several different levels requested that the working group include agencies from California to participate, and our requests have been rejected.

I'm currently working with Senator Boxer, Congresswoman Tauscher, Congressman George Miller's offices to lobby the working group for our participation. And I have a phone call with Boxer's office this afternoon on this issue. Hopefully, the plan will lead to either
the agency's disposing of the vessels or Congress passing
law that requires them to comply with the plan. So that's
ship removal.

The second goal legislatively is the cleanup of
the sediment. In order to conduct a cleanup, we need to
know the extent of the contamination in the Suisun Bay.
As Barbara said, we asked MARAD to provide a site
assessment, and they deferred to a NOAA study. The NOAA
study was authorized by legislation in December. Again,
pushed by Senator Boxer's office as well as some of the
other Congressional delegation from California. The law
gives $15,500,000 to conduct a study this year on the
contaminated sediments in the Suisun Bay.

NOAA said they couldn't make it today. But I
wanted you to know they wanted me to tell you they are
trying to conduct a scientific study on this. I think
they've been very professional about this and very
transparent. They've already met with State agencies such
as State Lands, Water Board, DTSC, to discuss the goals of
this study. They met with NGOs, and they're meeting with
MARAD this week to discuss goals. They've also met with
several State agencies to discuss the technical aspect of
the plan.

They hope next month to put together a draft of a
sampling plan, which they would then implement in the
field this summer and then do lab analysis this summer.
In September they plan on releasing data to the State
agencies, MARAD, and I think some of the NGOs. They've
promised us they will submit the data to us simultaneously
as they submit it to MARAD. So transparency, once again,
is one of their objectives. They plan on receiving
comments from State agencies and in February publishing a
final report.

Now, this $1.5 million going into the study this
year is only part of a comprehensive plan to determine the
contamination of the sediment in the Suisun Bay. NOAA has
estimated a comprehensive plan could take up to four years
and cost $8 million. And State Lands staff is working
with the relevant Congressional offices to propose that to
draft legislation that will include additional funding to
NOAA so they can continue their study.

Our goal then is to take the study once it's
done, and hopefully there will be legislation or the
agencies will act on that information and help clean up
the sediment in the bay.

And then the third goal is the ongoing discharge
of paint while the vessels are waiting for removal. As
Barbara said, there's been about 17,000 kilograms,
anywhere from 17 to 19 tons, however that is converted, of
metals that have been already discharged into the bay from
these ships. And these metals were contained in the
paint.

There's according to a study Commissioned by
MARAD, there's 55,000 kilograms of these types of metals
still on the ships. And so we are going to discuss with
the legislators and the federal government possible ways
to address this through legislation.

The Water Board has been one of the agencies that
has been most concerned about this ongoing paint
discharge. So I will segue now into introducing the Water
Board. Bruce Wolfe is here.

MR. WOLFE: Good morning. Thank you, Mario. I'm
Bruce Wolfe, the executive officer of the San Francisco
Bay Water Quality Control Board.

The Mothball fleet is a significant concern for
us, and we appreciate the opportunity to work with State
Lands staff on this as well as other State agencies been
involved, Department of Toxic Substances Control. To a
certain degree, I'd say it's been a great combined staff
effort we've been able to speak largely with one voice to
the maritime administration. Unfortunately they're not
hearing that one voice clearly.

It's useful to note that not only are we the
Regional Board for the San Francisco Bay, Suisun Bay area
that addresses all water quality aspects pursuant to the
State Water Code, we are also implementing the federal Clean Water Act as delegated from U.S. EPA. And this is significant to note, because at times the Maritime Administration has said that everything would be fine if we didn't have to comply with state of California requirements. Actually, we're implementing federal requirements. And it's confusing to us why this is an issue in California and not elsewhere, the two other Mothball fleets around the country.

Nonetheless, as Mario stated, there are three significant areas of water quality concern that we are working and have been coordinating with both State Lands staff and DTSC staff. That is the cleaning of the ships in the bay uncontrolled. We first became aware of that in the summer of 2006. Unfortunately, it had to come through the press to be aware of that.

We had then contacted Maritime Administration saying we needed to get plan and monitoring proposals for how they're going to control the pollutants that were coming off the cleaning of the ship holes. And since October 2006, no ships have been cleaned in the bay. Unfortunately, we still do not have a satisfactory plan for cleaning the ships. And we are optimistic that a proposal by a private entity to reopen the Mare Island dry docks for the purpose of dismantling ships here rather
than having to have them towed through the Panama Canal to Brownsville, Texas, that that will be an opportunity to get many of these ships disposed.

However, because there's over 50 ships and only a couple of dry docks, it's clear the ships are going to be out there for a long time. One of our concerns is the historic level of pollutants that have come off these ships. The February 2007 report indicated that there's multiple tons of materials that have come off these ships.

And then the ongoing discharge of material from the ships. And that is something that we could regulate under the federal Clean Water Act. We would essentially say no discharge is allowed of those type of materials. We are currently implementing cleanup plans for materials such as mercury and PCBs in the bay, and the material that comes off these ships is much more than anything allowed in those cleanup plans.

So it's clear that not only do we have environmental problem, but we have many parties that are concerned that they are being closely regulated when the Maritime Administration and these ships is not. If it was anybody but a federal agency at this point, we would have brought enforcement actions and fines and penalties against the party for the non-compliance. The Maritime Administration remains in non-compliance, and we are
proceeding to get representation from the attorney
general's office to consider our enforcement actions.

And we have, with State Lands staff and legal
representatives of State Lands, signed a confidentiality
agreement to be able to talk about the enforcement
approaches. Because we recognize that it's probably going
to be inefficient for all of the agencies involved to
initiate certain enforcement actions when it's been
difficult to get any response or any satisfactory response
out of Maritime Administration to this point.

So I'll stop my discussion at this point. Be
happy to answer any questions. But I wanted to make sure
it was clear that this is significant enough of an issue
to us that I felt it important that I come up today to
address you and provide an opportunity to discuss it
further with you.

CHAIRPERSON CHIANG: Thank you, Bruce.

We have Michael Wall.

MR. WALL: Good morning. It's a pleasure to be
here. I appreciate the opportunity to address the
Commission.

My name is Michael Wall. I'm a senior attorney
with the Natural Resources Defense Council based in
San Francisco where I lead our litigation team. NRDC has
more than 100,000 members in California and offices in Los
Angeles and San Francisco as well as elsewhere throughout the country.

In October of last year, NRDC along with Bay Keeper sued the Maritime Administration in federal court over this ghost fleet. We brought that suit because MARAD had shown no intention of complying with existing federal law. And I'd like to briefly outline the problems that we see that we hope to address through the suit and how we expect it to proceed.

I'd also like to emphasize I believe our interests are largely consistent with those of the Commission and the Regional Board and we have had ongoing discussions with the staff.

As you've heard, MARAD has these more than 50 obsolete degrading ships anchored in Suisun Bay. I don't know if you've seen the pictures, but some of these ships have large pieces flaking off the hulls. MARAD did an analysis which you heard about last February that concluded that at least 19 tons of heavy metals had come off of 40 of those ships. But in reality, the amount of metals that came off was greater than that. At one point, this fleet had 500 ships. And many of those that have been removed were in very seriously degraded condition.

The metals at issue are your typical range of toxic heavy metals, many of which are already impairing
the San Francisco Bay and Suisun Bay, which the State has formally designate as being impaired for metals. And the quantities of metals that are known to have come off the ships are, as the Regional Board indicated, orders of magnitude above the levels of pollutants that major industrial dischargers in the bay area are permitted to discharge under the Clean Water Act. So this is a very significant source of metals contamination.

Now, this bay is contaminated from a number of sources historically, and the particular spot in Suisun Bay where the vessels are anchored is subject to tidal action and wind scouring. So it may be difficult to pin down precisely where all the metal has gone. But there is no doubt it has come off. It has gone into the bay. The bay is impaired. There are fish advisories advising people not to consume many of the fish in the bay, and that this is an ecosystem, as you are aware, that is in steep decline.

Now, over the years, Congress has enacted a number of laws requiring MARAD to address this problem. And MARAD has systematically ignored those federal laws. We are pleased the Congress is looking at this once again but have lost confidence in MARAD's willingness to comply with either federal law or the explicit orders of the Regional Board, and that's why we filed suit.

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
Our suit has three basic components. First, we sued under the federal Clean Water Act, because these ships are discharging pollutants into the bay without a permit. That is illegal. Every other discharger in the bay that wants to discharge pollutants has to go in and get a rigorous permit. These guys don't have one. They never applied for one. It's illegal.

Second, essentially what MARAD has done is it's like we woke up in 2006 and realized some obscure federal agency was floating rusting barrels of hazardous waste in Suisun Bay and leaving it there until it figured out perhaps decades from now what it intended to do about it. No private party would be allowed to do that. Storage and disposal of hazardous waste are strictly regulated under California's hazardous waste laws and under the Federal Resource Conservation Recovery Act. And MARAD has never applied for a permit, doesn't have a permit to do that. So we brought an enforcement action under that as well.

We also have a NEPA claim because MARAD has done no environmental analysis including on plan it developed a come of years ago that was supposed to provide for the disposal of these ships, but instead indicates MARAD intends to maintain a fleet of ships perhaps as many of 50 of them indefinitely.

Now, our lawsuit is brought under the citizens
provision of these statutes. Under RCRA, that allows us
to seek civil penalties from MARAD. Under both RCRA and
the Clean Water Act and NEPA we can seek an injunction
from a federal court. And our hope is that a federal
court will have more persuasive power than Congress has
had or the Regional Board or over government regulators
have had to date.

The nature of litigation is that it's sometimes
slow. If the present court schedule sticks, we would have
a trial in the summer of 2009. Probably with some motions
before that. We are optimistic that because the facts in
this case -- the relevant facts really aren't in dispute,
we may be able to resolve this case well in advance of
that. But we can't guarantee if it's going to happen.

And if these statutes are complied with, the
Clean Water Act and the Resource Conservation Recovery
Act, they don't themselves explicitly call for disposal of
the ships. But in our view, there's no way that MARAD
could comply with these statutes other than taking the
ships out of Suisun Bay and properly disposing of them.
And we look forward to continuing to work with the
Commission, the staff, and the Regional Board staff and
hope that you'll cooperate in that endeavor as the land
owner.

I'm available to answer any questions. Thank you
for the opportunity to speak.

CHAIRPERSON CHIANG: Thank you very much.

Comments?

ACTING COMMISSIONER BUGSCH: Yeah. First of all, I'd just like to thank the staff and thank NRDC and the Water Board for speaking on this issue. The Lieutenant Governor thinks it's very important. And he asked that the panel be held to shine a little more light on this issue.

Specifically, I think the delta we all know how important it is. We're finding out more daily how important it is to the state and its future and doesn't need additional barriers such as this.

And I want to encourage us to continue to, as we're doing it -- I think we're doing a good job of this -- continuing to leverage our relationships with these various agencies to put pressure. I mean, kind of the same thing that Anne was saying. We all wanted it cleaned up and everything, the other issue. We want to do it in a constructive manner and to build those partnerships, and I think we're moving in the right direction. So I just want to complement everybody on that. And us continue to shed light on this and put pressure on the federal government, because as hard as it may be to get the South Bay Yacht Club cleaned up or whatever, to get the federal government
to move sometimes can be more difficult.

I just had one other question regarding the ship removal. And one of the things that you were advocating, Mario, was that we ask our -- the other partner would be the federal legislators which we're also using. But you discussed we're asking them and other people to have State Lands be part of the vessel disposal program, I think, working group. Is there any other things or any other ways that we can kind of push forward with to leverage or different ideas that we can do to kind of move forward with the ship removal aspect? I know this is a difficult thing we're pushing along. Maybe the Water Board may have some comments on it as well.

LEGISLATIVE LIAISON DE BERNARDO: Well, the working group seems like a good idea in that they are finally -- I mean, they are actually meeting and they do have to report to a number of committees 90 days from enactment of the law, which was January 28th. They have to comply with the federal and state environmental law in their plan. So we were trying to get on the working group to give the state environmental law perspective to the situation. Whether or not they actually invite us is up in the air. But we can certainly provide the members of Congress that are on these committees a report stating the State law, stating any sort of recommendation we have, and
persuading them in that way to move forward with the legislation. I'm not sure if that addresses your question.

ACTING COMMISSIONER BUGSCH: That's fine. The other question was just in terms of you mentioned that they would be there for quite a while. And one of the options may be in sort of trucking them from the Panama Canal to Texas to try to dismantle them locally. What is the realistic nature of that actually being an option?

MR. WOLFE: That's a realistic option. The opportunity is real there at Mare Island, because the dry docks do exist. There is silt in front of the dry docks. The proponents of that are pursuing permitting through us for the permit federal permit. They're also pursuing permits to remove the sediment. Lennar Corporation owns much of that land, and they need to work out a lease arrangement with these parties. We're trying to see what are -- if there are impediments in there and is there anything the State can do to remove the pediments.

So that's something we're going to continue to push because this would be a very appropriate helpful partial solution. And I say partial in the effect that again there's two dry docks there. They are not large enough to accept all ships that need to be disposed of.
But they at least could start the process. But where there's a minimum 50 ships, there's a few more added to the fleet, the non-retention fleet, each year. So it's clear there's going to be a lot of ships out there. Even if there is disposal at Mare Island, we remain incredulous it's more cost effective to these ships to through the Panama Canal. It takes about four to six weeks to do it. And that's where the rub is, where they're taken out of the bay waters they need to comply with the federal Invasive Species Act. They need to be cleaned. And the problem was. It wasn't just the growth on the hulls that was coming off during the cleaning, it was parts of the hull three-quarters of an inch thick and all the materials that we definitely do not want in the bay. So we're continuing to try to push Maritime Administration to come up with an approach that would satisfactorily clean the ships. They are looking at -- there is one larger dry dock in San Francisco that's predominantly used for cruise ships, large naval vessels. So it's in demand. And nonetheless, that company that owns that I understand has been in negotiations.

The Maritime Administration is concerned that some of these ships are so old they could go into dry dock. And even though they are supported while they're sitting in dry dock, their hulls may fail while they're in
dry dock. They may go in and never come out. They apparently are demanding that the dry dock owner take full liability for that. And the dry dock owner say, wait. We can go very far, but we can't go quite that far. So that's something we're trying to see is there something the State can do to get into that. But again it's a challenge through the federal contracting laws. And presently, there is -- other than this dry dock in San Francisco, which is trying to become an approved cleaning facility and disposal facility, there's nothing else on the west coast. So that's the challenge.

I've had many private parties come into my office and say hey, I have this great idea. Here's something we tried in Hong Kong. Here's all this. I say I'm not the one. You need to get on the list from the Maritime Administration and have them accept that your approach is satisfactory. It can fit with the federal contracting. And that's been the difficult action.

ACTING COMMISSIONER SHEEHAN: I have a question. I don't know who this is for. If I heard the numbers, at one time there were 500 ships and now down to 50.

LAND MANAGEMENT DIVISION CHIEF DUGAL: It's about 80 approximately.

ACTING COMMISSIONER SHEEHAN: Are they still sending ships there?
MR. WOLFE: Our understanding is there are "new ships" -- these are very old. And the reason there's approximately 80 ships there is that part of them are what they call retention. In other words, they're still owned by the Navy or Coast Guard so they may at some point come back into service or, for instance, the USS Iowa battleship is there. The Navy still owns that. The Coast Guard and Navy are putting money in maintenance of those ships.

But when they're classified as non-retention, which about 50 to 55 of them are at this point, this means they're never coming back. The Maritime Administration is responsible, and they get no money to maintain these ships. And so they tell us Congress said get rid of the ships. They may nothing about maintaining the ships. That's the difficulty. It's clear those ships are going to be out there for some time. And Maritime Administration says it's not their irresponsibility to maintain them.

ACTING COMMISSIONER SHEEHAN: You said the USS Iowa or whatever, are we confident the standards -- they're not contributing to this problem?

MR. WOLFE: Well, in a broader base, we understand the Maritime Administration has gone through and rated each of those ships. And there is a report that
is -- one of their consultants has prepared that apparently is coming up with they say is a plan to address what the status of these ships not only in Suisun Bay but also in Virginia and Texas where there are fleets like this. And then come up with a coordinated plan for what's the priority when do we get rid of those.

We understand that that report has at least been completed into sort of final draft, but we have not seen it. And I understand that Mario may be able to speak to this that State Lands staff has submitted a Freedom of Information Act request for that report. So it's clear again that there's different levels of the potential ultimate environmental impact of those ships.

Maritime Administration has told us in the past that they've removed the most significantly poor maintained ships from the fleet and that none of the ships are in danger of collapsing in place. We haven't seen any report that sort of documents that. So we're very nervous about the longer those ships are in the place that they could be more than just paint coming off. It may be the whole ship coming a part.

ACTING COMMISSIONER SHEEHAN: Well, and I assume the report to have to be done on an ongoing basis, because the state of the ship. If you have new ships coming in --

MR. WOLFE: If new ships are put into this -- so
it's true. And I think to a certain degree, the Maritime Administration understands that, but they push back and say there are certain things that are mandates certain things that are not and certain thing we get funded for and other things we are not. But nonetheless, in our mind, they are the responsible party. They have a discharge, and it needs to be controlled.

ACTING COMMISSIONER BUGSCH: One other thing you said, if I could just to make sure I heard you right, you said the Maritime Administration says that the ships that are non-retention they believe are not their responsibility to maintain.

MR. WOLFE: Correct. Initially in our discussions they said, well, we'll look at how we maintain. We're not quite sure. The ships are close together. It's hard to do this. We told them we require under federal Clean Water Act that, for instance, when the Golden Gate Bridge or Bay Bridge is painted and chips of paint are scrapped off they collect those. It is not a rocket science technology to clean the ships and control everything. So then they've took the next approach come back and say, oh, well, we have no funding to do any of that, so we're not going to consider that. So that's continued --

ACTING COMMISSIONER BUGSCH: Are they saying we
don't have the funding to do that or it's not our responsibility.

MR. WOLFE: They've taken the approach to say we don't have the funding.

ACTING COMMISSIONER BUGSCH: They're not saying they it's not their responsibility?

MR. WOLFE: They segued to the fact Congress has told us that's not our mandate. Our mandate is dispose of ships, not necessarily to maintain the ships.

ACTING COMMISSIONER BUGSCH: Interesting.

CHAIRPERSON CHIANG: Okay. Next item. Very good that concludes this item. As we've alluded to, we'll discuss this in closed session in terms of other actions that the Commission could take.

The final action has to do with the resolution which was requested by the Controller for adoption by the Commission which has to do with regulation of greenhouse gas emission. And Mario will give the presentation on that.

LEGISLATIVE LIAISON DE BERNARDO: This resolution recognizes the steps that California is making in combating climate change and greenhouse gas emissions. It asks the federal government to adopt policies following the lead of California and make a move towards reducing the country's greenhouse gas emissions.
The resolution also addresses the EPA -- recent
decision made by the administrator of the EPA regarding
the Clean Air Act waiver applied for by the California Air
Resources Board. Resolution asks the U.S. EPA to
reconsider its decision and reverse it.

CHAIRPERSON CHIANG: Very good.

Questions or comments?

ACTING COMMISSIONER SHEEHAN: No. I'm happy to
support this resolution. I appreciate the Controller
bringing this. Needless to say, as someone who works for
the Governor, this has been an issue we have been tracking
with the EPA.

Matt, the AG filed something recently in this
regard like today, yesterday. Is that on the waiver?

ATTORNEY GENERAL RODRIGUEZ: I'm not familiar
with that.

ACTING COMMISSIONER SHEEHAN: I get things on my
Blackberry from the Governor's office.

ATTORNEY GENERAL RODRIGUEZ: I'll check on mine
as well.

ACTING COMMISSIONER SHEEHAN: But anyway, I'm
happy to support and be happy to move approval, if there's
no other comments on this, and applaud the Controller and
the Commission for also weighing in on this important
issue. Sooner or later, we're hoping to get the attention
of the federal government on this one.

ACTING COMMISSIONER BUGSCH: I'll second the motion and Anne's comments.

CHAIRPERSON CHIANG: Okay. Good. We have a motion and a second. All those in favor say aye.

(Ayes)

CHAIRPERSON CHIANG: None opposed. The motion passes.

And that concludes the open session portion of this meeting. We will now adjourn into closed session.

May I please ask -- I apologize. Does anyone wish to make public comments? Thank you very much. This concludes this public portion of the open session and we will now adjourn to closed session.

(Thereupon the California State Lands Commission recessed into closed session at 11:31 a.m.)
CERTIFICATE OF REPORTER

I, TIFFANY C. KRAFT, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Tiffany C. Kraft, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of April, 2008.

TIFFANY C. KRAFT, CSR, RPR
Certified Shorthand Reporter
License No. 12277