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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CHAIRPERSON CHIANG: Good morning. I call this meeting of the State Lands Commission to order. All the representatives of the Commission are present. I am John Chiang, State Controller. And I'm very happily joined today by Mona Pasquil, the Acting Lieutenant Governor and Cynthia Bryant, who represents the Department of Finance. This is Cynthia's first State Lands Commission meeting, and I'd like to extend to her a very warm welcome.

For the benefit of those in this audience, the State Lands Commission administers property owned by the State as well as its mineral interests. Today, we will hear proposals concerning the leasing and management of these public items.

Item number 2, the first item of business will be the adoption of the minutes from the Commission's last meeting.

Is there a motion?
COMMISSIONER PASQUIL: So moved.
CHAIRPERSON CHIANG: Is there a second?
ACTING COMMISSIONER BRYANT: Second.
CHAIRPERSON CHIANG: Second.
Without objection the motion is unanimously approved.
The next order of business is the Executive
Officer's report.

Paul, may we have that report, please.

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

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

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

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

On the Spirit of Sacramento, this was the vessel...
that's an old ferry that's parked downstream from downtown Sacramento against the bank. The owner, Mr. Barker, had not obtained a lease from the Commission and did not apply for one after repeated attempts to obtain one. The Commission authorized action against Mr. Barker. He's been served. He still hasn't moved the boat.

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

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

CHIEF COUNSEL FOSSUM: Yes, last week.

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

Okay, Curtis will hand those out. So that's a success story. And in connection with that, I think we're going to discuss that more in closed session, but we're
moving towards reaching agreement with the property owners to prevent future harassment of the public, such as occurred last summer.

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

CHAIRPERSON CHIANG: Any questions or comments?

Very good. Next item.

EXECUTIVE OFFICER THAYER: It would be the Consent Calendar.

CHAIRPERSON CHIANG: Okay.

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

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

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

Late last week, the Controller received an email out of concern for potential contamination impacts to Item number 12. This has to do with the restoration and
rebuilding of a restaurant, which will be partially --
eventually will be partially on State lands --
Commission-managed land, and partially on land managed by
the Port.

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

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

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

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

Is there a motion?

COMMISSIONER PASQUIL: So moved.

ACTING COMMISSIONER BRYANT: Second.

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

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

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

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

In a meeting the week after the State Lands Commission meeting, the executive officer of the air
district there indicated that that deadline had been met through the Commission's approval of that one increment. So the next deadline facing the Commission is the October 1st deadline for completion of the remediation of those three and a half miles.

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

LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

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

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

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

As you recall at the December 17th meeting, the Commission authorized an amendment to lease number PRC 8079.9 to allow the City of Los Angeles, Department of Water and Power, herein after I'll refer to them simply as "the city" to construct sand fences on Cell T1A-1 at Owens Lake, and to construct ancillary features to enable
wetland enhancement of existing vegetation, also known as managed vegetation.

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

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

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

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

First, regarding the city's progress in Cell
T1A-1. Following the meeting, Commission staff began working with the city to finalize the terms of the lease amendment. We were able to complete the amendment, and both parties executed it on December 29th, 2009. This enabled the city to begin work on the cell the next day, essentially, and allow them to avoid being fined by Great Basin.

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

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

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

As a follow up to this meeting, on January 13th, 2010, Commission staff sent a letter to Mr. Adams acknowledging that the city would act as the CEQA lead
agency for the preparation of a Mitigated Negative
Declaration for the solar demonstration project. The
letter also requested additional information on the
project, and more information about the potential impacts
from the use of brine as a dust control measure.

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

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

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

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

I'll repeat that. So the solar demonstration
project is going to be on the eastern portion of this Cell T1A-4. And the sand fences that were authorized were down here in T1A-1.

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

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

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

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

The city maintains that the solar demonstration project is needed in order to determine the feasibility of solar panel arrays as a dust control measure at Owens
Lake, to gain experience for future projects through the testing of different solar technologies and the harsh environment and particular solar conditions of Owens Lake, and to minimize the long-term consumption of natural resources, water.

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

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

With respect to another lease amendment requirement, city staff informed Commission staff on January 25th that a facilitator had been hired by the city to assist in the development of the master plan. The facilitator is Ms. Gina Bartlett and she is with the Center for Collaborative Policy at California State University, Sacramento.
To summarize what has been done to date, the city has provided written progress reports on the work at the Cell T1A-1 and on the proposed solar demonstration project. The city has also hired a facilitator to coordinate the development of a master plan.

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

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

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

And as part of the preparation of the master plan, the city and the facilitator plan to convene a
stakeholder group. The facilitator will then conduct interviews with representatives of each organization or group, including the Commission.

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

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

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

I did have a telephone conversation with Mr. Adams last night, talked over a few things. And it's clear from his comments that the L.A. -- there's some -- a little bit of conflict between the administration at LADWP and the Board. And there's certainly elements within the administration who believe that the best thing that could happen out there would be to drop Moat and Row and move forward with solar arrays. I mean, solar arrays have a number of benefits that I think the Commission would appreciate and fit in well with other statewide policies,
the Governor's proposals on renewable portfolio standards and the AB 32 deadlines.

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

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

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

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

As Colin indicated, we have talked with LADWP
about alternatives of both short and long term. And the
one that was discussed in December is obviously still on
the table, with the idea of trying to come up with a
master plan for dust control on the lake that would have
three different benefits.

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

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

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

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

In the short term, the conversations between the
staffs focused on things like brine, other fences. LADWP
has mentioned in concept the idea of using rows, but not
moats, some other things along those lines.

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

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

If necessary, you know, staff believes that we should be discussing these issues with the air district, and the air district board to indicate how serious we are and how respectful we are about -- or that the Commission is, about trying to control dust there, but that, you know, it would be very helpful if the air district would be willing to help us work jointly with the air district
and with LADWP to bring about a solution that would have all these benefits, rather than pursuing Moat and Row, which doesn't have as many benefits.

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

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

CHAIRPERSON CHIANG: Great.

Welcome back.

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

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

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

And so we very much appreciate the vote last time of the Commission to let us begin that first phase, as was indicated, down in the corner with the sand fence and the pipelines. And it worked out very well. In 13 days after the vote, we had the lease. Fourteen days later we were mobilized. And so we avoided being in a fine position.

And we appreciate the staff's work with us so closely on that, especially during the Christmas holidays.

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

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

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

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

But, of course, time is of the essence, and soon we'll have good weather. Right now, we've got snow on parts of the lake, which is a good thing too. But soon we'll have good weather and need to construct, so we're going to be working -- getting plans together and working very closely with staff, and hopefully come up with some things that they find are worth supporting and bring to
the Commission. But we do ask that it remain on the
agenda, because we do need either an affirmative or
negative vote that we continue moving forward on this.

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

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

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

But one of the things it has to do, is it has to
be commercially viable. And so we're looking at how to best do the solar pilot to prove that it works, and that it can be replicated and be affordable, both to L.A. Water and Power and to other agencies who would want to build the solar park out.

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

Lastly, on the master plan, Gina Bartlett from Cal State Sacramento is working with us. She's made a phone call to -- she wanted to start by making phone calls to all the players, and kind of get a little pulse of where everybody is at before we have our first meeting. She's very enthusiastic about what she sees. She was on the lake last week and did a tour. And I think we're off to a good start and have a lot of promise ahead. So I do certainly want to acknowledge Paul Thayer and his staff for working very closely with us on this.
On the schedule for solar, the schedule that was repeated was the one that we provided. His staff actually encouraged us to go faster than that. We'll certainly try to accelerate that schedule as much as possible and start building as quickly as we can.

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

CHAIRPERSON CHIANG: Thank you, Marty.
Any questions or comments?

Cynthia.

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

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

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

CHAIRPERSON CHIANG: Did you have a comment, Paul?

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

MR. ADAMS: Right.

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

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

On the CEQA thing, this has been the source of quite a bit of discussion before the Commission at past
meetings and between the two staffs. But earlier CEQA documents recognized a variety of alternatives, including the ones that are the certified methods of dust control, that one certified by the Great Basin.

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

Is that fair?

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

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

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

What the long-term solutions for these areas in the master plan is kind of unknown, because they don't
really fit either of those other models. But we do need some kind of dust control and we do need to find something that we can do that doesn't involve the use of water, additional water resources.

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

CHAIRPERSON CHIANG: Mona.

COMMISSIONER PASQUIL: Mr. Chairman, thank you. I have a question. Is brine one of the approved methods? It's not?

EXECUTIVE OFFICER THAYER: It's not.

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

There are two areas that we could test brine actually. One is an existing pond that's very low in
elevation. It's kind of a brine sink for us. And there's another pond that's due to be filled in April. Actually, it's going to start earlier than that, and that's a brand new pond here.

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

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

COMMISSIONER PASQUIL: Thank you.

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

MR. ADAMS: Right.

EXECUTIVE OFFICER THAYER: But again, Ted Schade indicated --
MR. ADAMS: Is very in favor of it.
EXECUTIVE OFFICER THAYER: -- was enthusiastically in favor of it. And it comes down to, are there environmental impacts that we don't know about. We want to make sure there aren't any.

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

So we've been using little check berms in our other ponds to thin the water flow out. And by doing so, you get really little shallows that then grow a lot of brine flies, and you have vegetation that starts in the ponds. And so the ponds that are completely flooded become rather poor habitat. The ponds that are somewhat dried out and look like intermittent streams have all sorts of growth and all sorts of wildlife there. So a pond, per se, is not really the best answer. It's kind of this marshy pond.
So to get that, we've needed check dams to better manage the water. And so one of the thoughts is that in a brine solution, we might be able to use the row elements to build those and they become the check dams. So there may be a win-win that allows us to proceed, but we're looking at that. The question is how long it takes us to get approval of the brine and do we know that that's for sure coming on the horizon.

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

MR. ADAMS: We appreciate that.

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

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

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

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

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

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

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

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

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

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

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

CHAIRPERSON CHIANG: I'd like to have you work
with the Commission staff and they can report to me.

MR. ADAMS: Okay.

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

CHAIRPERSON CHIANG: Very good. Thank you very much.

MR. ADAMS: Thank you.

CHAIRPERSON CHIANG: Next item, please.

EXECUTIVE OFFICER THAYER: The next --

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

May we have the staff presentation.

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

PUBLIC LAND MANAGER HAYS: Good morning, Mr.
Chairman and members of the Commission, and welcome, Ms. Bryant.

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

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

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

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

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

(Thereupon an overhead presentation was Presented as follows.)

PUBLIC LAND MANAGER HAYS: Staff refused to
recommend issuance of the lease to Ms. Taylor, because she was using the floating home as a residence at the time. In order to secure a dock lease, Ms. Taylor sold the floating home to Mr. Bishop.

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

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

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

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

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PUBLIC LAND MANAGER HAYS: That's a long-distance
Since purchasing the floating home, Mr. Bishop has installed an engine in an attempt to convert it to a vessel capable of navigation under its own power, and thereby a recreational vessel.

---o0o---

PUBLIC LAND MANAGER HAYS: Here's the gangway going down from the levee.

---o0o---

PUBLIC LAND MANAGER HAYS: And that's the steering mechanism over the engine.

However, the engine is at the rear of the floating home, and it lacks a wheelhouse or other mechanism for which an operator can see the direction of forward travel to ensure safe navigation.

Mr. Bishop has provided staff with copies of a U.S. Coast Guard Safety Inspection Report, which identifies the floating home as a houseboat and has a California DMV issued vessel registration number.

Staff believes that because of the size of the floating home, the lack of a functional means of safe navigation and its residential construction, the primary use is a floating home, and therefore incompatible with the Public Trust.

Staff believes that the floating home should be
relocated to a waterway not under the Commission's jurisdiction.

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

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

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

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

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

In conclusion, because of the failure of staff's attempts to remedy the situation over the past 18 months,
and the uncertainty that Mr. Bishop and Mr. Soto will take
the necessary steps to remove the floating home from State
lands, staff is recommending that the Commission, one,
ratify staff's determination that the floating home and
all other improvements placed on State-owned sovereign
lands by Mr. Lance Bishop and Mr. John Soto are in
trespass on State-owned lands.

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

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

CHAIRPERSON CHIANG: Any questions or comments?
I have a question. You pointed out, because of
the size of the house and the fact that where the steering
wheel was that it had no visual to view the lake. Is
there any size house where the steering -- from the seat
behind the steering wheel that you would accept, right?

I'm thinking if you can't see the road,
regardless of the size of the house, it's just not acceptable.

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

CHAIRPERSON CHIANG: So --

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

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

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

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

(Laughter.)

EXECUTIVE OFFICER THAYER: I think to answer correctly, even if that steering mechanism had been at the front, where you had excellent views, that this was
originally built, or remodeled to become a house, and that it is a house and adding a motor doesn't change that.

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

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

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

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

CHAIRPERSON CHIANG: Yes, Mona.

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

But because that slough is so narrow, was there
any damage to any of the levees or anything around that when they were moving it?

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

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

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

CHAIRPERSON CHIANG: Any questions?

ACTING COMMISSIONER BRYANT: No.

CHAIRPERSON CHIANG: Very good. Thank you very much.

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

Mr. Bishop.

Welcome.

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

Now, as far as the vision that everybody is concerned with, I did ask the Coast Guard if that was
going to be an issue, and they said no, because there
still are navigable boats that are from the twenties and
thirties that you still yell down the tube, go left, go
right. And also, like I've told everybody on the
Commission that I have spoke to, there is a camera system
on the roof pointing forward. There is no monitor yet.
I'm waiting on a monitor.

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

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

Now, there are other floating homes that I know
of that the Commission has dealt with. I believe his name
is Roger Moore. And it is on the mouth of the Georgiana
Slough. And it is also registered as a houseboat. There
is no motor attached to it. There's actually a push barge
that needs to be located behind it to push it. So the
vision is the same.
And as far as everybody saying you can -- the inside of it is like a house and everything like that. I think that's the purpose of a houseboat is to get away on something that floats that is like a house, kind of a vacation. You go out on it. You stay on it. It's like a house. Just like an RV. And I think for, I believe, tax purposes, if it has a bathroom and a shower, you can write it off as a second residence.

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

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

Now, the motor has 300 some odd horse power, steering, forward, reverse, fuel system, vent system, everything like that. So, in my eyes, it's a houseboat. I bought a houseboat with no motor. I put a motor on it. I'm not using it for residential use. I've asked the Commission to write a letter that says it is okay -- it is viewed as a normal houseboat, as long as it's not used for
residential use. And they said they cannot provide anything like that for me, because I've run into problems trying to take it to a marina. Because I believe with Jeanne Bird it was a couple year-long process to try to get rid of it.

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

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

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

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

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

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

MR. BISHOP: I've contacted Arrowhead Marina, Riverbank Marina, Freeport Marina, Cliffs Marina, Sherwood Harbor, and numerous other ones. Now, if you go to any other marina, there are structures like this that do not have motors on them. And as far as everybody wanting to get it off State lands, I don't see how that is necessarily fair, if it is viewed as a houseboat. It's registered as a houseboat. Like I said, I bought it as a
houseboat. I made sure there was a pink slip that said
this is a houseboat. Kind of like you buy a classic car
with no motor. I powered it, because I saw -- she told me
the issue that she was having with the Commission, how it
was not viewed as a motor boat. And I went out and
looked. And she had a little stand with probably a five
or 10 horse on it. It's kind of insulting to everybody's
intelligence.

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

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

And the way I have it attached is the same way as
other docks and boats that are on the river. So it's
technically not touching State lands. It's above the
normal high-water mark from what I understand is the
jurisdiction. I've asked them to provide in writing where the line is. And I'm not trying to get out of it that way, but I wanted to not be in violation while I was working on it, trying to get this resolved that it was viewed as a houseboat, so I wouldn't trespass in any way, shape, or form.

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

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

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

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

MR. BISHOP: I believe that's his name. I know it's Roger. I think it's Roger Moore. I've tried to
contact him, because I know he had an issue before.

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

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

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

But on that latter point, other than the Attorney General's involvement in Richardson Bay, it's a judgment
call for the Commission as to what's a houseboat and what's --

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

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

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

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

   And the whole idea, and I think Mr. Bishop mentioned that, if you've got a houseboat and it's going
up and down the river every day, that's fine. We don't have any problem with that whatsoever. It's when somebody takes any kind of vessel, whether it's a boat or a barge or anything else, and leaves it anchored on State property. It's on the public's lands, and they're being used for a private purpose. It's not navigating. It's parking.

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

CHAIRPERSON CHIANG: And how far are those locations?

CHIEF COUNSEL FOSSUM: The location? Throughout the Delta.

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

CHIEF COUNSEL FOSSUM: There's probably a dozen or more. They may not be as convenient. He may know Mr.
Soto, and Mr. Soto has given him the opportunity to access this area through his land. But there's a number of marinas in the Delta. And as Paul said, we'd be happy to send a letter to those marinas that are not on our property. Some marinas are partially on and partially not on the State lands. And we would not assert any jurisdiction on those private areas.

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

There are a lot of areas in the Delta, which has been so -- the Delta having been so manipulated where artificial waterways were created. And, you know, our records are reasonably good in terms of determining whether those are. And from our perspective that's not the State's land. We don't have any jurisdiction to decide what uses are there. And most importantly, the
Public Trust Doctrine, which is the common law that says residences are not allowed on Public Trust Lands doesn't apply to those artificial waterways, so it seemed like a solution that would allow it to continue.

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

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

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

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

MR. BISHOP: Okay.

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

MR. BISHOP: Which is a separate issue, but you
guys use that example. And this runs. I'm here. I can show you that it moves.

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

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

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

CHIEF COUNSEL FOSSUM: I would like to make one clarifying thing. Paul mentioned that it was an office. The Commission's position also is that offices typically are not consistent with the Public Trust, unless they are
in support of a marina or operation like that, where
they're necessary to the operation of the marina.

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

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

CHAIRPERSON CHIANG: Cynthia.

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

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

And in our last meeting, Mary, James, and Eric --
Vicky wasn't there. We were in our meeting, you guys left
and discussed some things. And you came back and you said, okay, we're willing to work with you to go to a marina. If you have any problems, have the marina owners call us, even on State lands is what we kind of determined.

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

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

As far as it being on Elk Slough, that's because I can't take it anywhere, because there's no letter or there's no -- I can't go to a marina and say oh, yeah, it's going to be okay, because in our last meeting, I started to do that, and then three days later, I got a
phone call that says it can't go on State lands at all. It has to be off State lands, so it's one thing and then it's another.

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

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

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

One, it's in trespass. Two, it's not even really a navigable vessel. It's not used for navigation. It's not taken up and down the river and navigated. It may be
able to be moved, by an engine, but that's not its purpose.

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

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

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

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

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

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

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

CHIEF COUNSEL FOSSUM: Well, I think we are disagreeing with it. But irrespective of whether it's, in fact, a navigable vessel and is being used for navigation, in this instance, he's in trespass. And they've placed that vessel and the dock -- or the gangway out there
without the Commission's consent.

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

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

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

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

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

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

EXECUTIVE OFFICER THAYER: No, we're not -- what we're saying is that we're willing to write the letter for
marinas that aren't on State property, because we don't have any jurisdiction there and the law doesn't prohibit it from being on those sites. And so if those marinas are concerned about us, which they shouldn't be, because we don't have any jurisdiction over them, we'd be happy to write a letter indicating that we don't have any authority over those marinas, and that, as such, we don't have any problems with you arranging to have your boat there.

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

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

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

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

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

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

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

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

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

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

EXECUTIVE OFFICER THAYER: No. We often have situations where marinas need a variety of permits for
purposes, and you can meet the requirements from say the
Air Board or the Water Quality Board, that kind of thing,
and get approval, but it doesn't necessarily mean that it
complies with all law, the fact that you can get those
approvals. They don't have the responsibility for looking
at Public Trust issues. DMV, it's not their issue. It's
not the sort of thing they manage.

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

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

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

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

MR. BISHOP: No, I understand that. Now, the
issue of it going on State lands or off State lands, it's a trespassing issue where it's at. As long as it goes to a permitted dock, then it's okay, right? I mean, is it --

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

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

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

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

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

EXECUTIVE OFFICER THAYER: That's correct.

MR. BISHOP: Okay.

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

MR. BISHOP: So every other houseboat on State
lands needs to go off State lands at this time?

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

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

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

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

EXECUTIVE OFFICER THAYER: We see that differently.

MR. BISHOP: Okay.

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

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

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

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

CHAIRPERSON CHIANG: Well, I was just giving you a full opportunity to vet. We haven't voted yet. I
wanted you to have your full opportunity to make whatever
comments or questions. That's why we wanted you to make
your full case. That's why we keep asking questions,
right. I know you didn't want to go back and forth, but I
wanted you to have your full opportunity.

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

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

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

CHAIRPERSON CHIANG: Thank you.
Any questions or comments?

ACTING COMMISSIONER BRYANT: I mean, I think
you're hearing pretty clearly that -- I think today what
we're going to decide is whether or not to allow staff to
Go forward to eject you from this location. I mean, my advice to you is to look at these non-State lands' marinas. And I'm not hearing from you that you've really done that particularly. So I think that's where you've got to get your boat moved is to a place where this Commission has no jurisdiction. That's my sense anyway.

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

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

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

CHAIRPERSON CHIANG: Question, comments?

Okay, is there a motion?

ACTING COMMISSIONER BRYANT: I'll move it.
CHAIRPERSON CHIANG: Move staff recommendation?

ACTING COMMISSIONER BRYANT: Move staff recommendation.

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

Is there a second?

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

EXECUTIVE OFFICER THAYER: Absolutely.

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

EXECUTIVE OFFICER THAYER: Mary Hays.

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

The motion passes without objection.

Next item.

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

And the Commission put off hearing it in December. There was some concerns over the language of the bill. And rather than keep going here, I think Mario
is going to give a presentation on this, which will do it better than I.

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

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

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

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

Staff still recommends that the Commission take a neutral position on this bill. The liability issues associated with ship reefing can be addressed through statutory immunity, as proposed in AB 634. However, a
reefing applicant could also address the Commission's liability concerns through insurance, bonding, and indemnification.

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

Thank you.

CHAIRPERSON CHIANG: Any questions or comments for Mario?

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

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

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

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

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

And therefore, we're not objecting to it. We're just neutral. We don't have an objection to that. If the legislature thinks it's a good policy, then fine, but it
doesn't seem to relate to our purposes, is the only reason
we made the recommendation we did.

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

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

EXECUTIVE OFFICER THAYER: I understand.
CHAIRPERSON CHIANG: Any other comments or
questions?

COMMISSIONER PASQUIL: You answered it already.
CHAIRPERSON CHIANG: Okay. Is there a motion?

ACTING COMMISSIONER BRYANT: I'd move to support
this bill.
CHAIRPERSON CHIANG: Okay. We have a motion of support.

Is there a second?

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

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

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

MR. REWERTS: No problem, Mr. Chairman. My name is Dean Rewerts. I'm the vice president for reef development for California Ships to Reefs.

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

And the one thing I would like to point out, that with the exception of rocketry and, I believe, some aspects of target shooting, scuba diving is the only listed activity -- or activity seeking to be listed, that requires numerous levels of certification as you get into
the more difficult aspects of it. And it is inherently dangerous. There are a whole bunch of things that can go wrong, even if a diver does everything correctly.

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

CHAIRPERSON CHIANG: Are there questions or comments?

Are there any other public comments?

Okay, thank you very much.

CHAIRPERSON CHIANG: Is there a motion?

Mona.

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

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

Please take roll.

EXECUTIVE ASSISTANT LUNETTA: Controller John Chiang?

CHAIRPERSON CHIANG: Aye.

EXECUTIVE ASSISTANT LUNETTA: Acting Lieutenant Governor Mona Pasquil?

COMMISSIONER PASQUIL: Aye.

EXECUTIVE ASSISTANT LUNETTA: Department of Finance alternate Cynthia Bryant?
ACTING COMMISSIONER BRYANT: I abstain.

CHAIRPERSON CHIANG: Okay. The motion passes. Next item, please.

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

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

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

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

(Laughter.)

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

CHAIRPERSON CHIANG: Very good.

LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR: Good morning again. In case you forgot, I'm Colin Connor. I'm the Assistant Chief of the Land Management Division.

This item involves three main things. The first
is the termination of an existing lease and the issuance of a new 46-year general lease commercial use to the City of Martinez. The second thing is the endorsement of five subleases. And the third is the approval of an agreement and consent to encumbrancing of lease.

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

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

The issuance of a new lease will allow the city to make improvements to the marina, including sections of the breakwater, and marina entrance, a new concrete encased float module berthing system containing 367 berths, upgrades to the electrical and water service for the marina, construction of a fuel dock pump-out station,
new bait shop, and new restaurant, shower, locker room facilities, as well as a dry boat storage center.

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

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

LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR: In the basin here. By the way, this is the breakwater out here, and it's going to be reconfigured. As a matter of fact, I think I'll take the opportunity to show you the new plan.

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

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

The city also proposes to construct finished pad sites for a planned restaurant, service center, and maintenance facility. Commission approval will be
required prior to the construction of these buildings for the pad sites.

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

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

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

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

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

The city has agreed that all revenue that's
generated by the city from the leased premises will remain in the city's marina enterprise zone for loan repayment, capital improvements, repairs and maintenance, and periodic maintenance dredging.

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

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

The city leases operation of the marina-related facilities to Almar Management. There are also four other city subleases occupying portions of the uplands. The Commission has reviewed these leases and is requesting approval of subleases to Almar Management for the operation of the marina, Gerald Long as operator of the boat repair facility, Sea Scouts for a building for meetings and activities, Martinez Yacht Club for their
clubhouse, and lastly, Benefactors Incorporated doing business as the Willows Theater Company, for use of the amphitheater for theatrical performances.

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

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

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

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

So one per to provide security purposes.

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

LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR: There is no real set criteria. As you're aware,
there is a prohibition of residential use. So we don't
look kindly on liveaboards. So what we look for is if
there is some justification for having a liveaboard, it's
primarily centered on security. And in the case like
this, it would be kind of a neighborhood watch type
purpose, to provide security eyes and ears for each of the
fingers.

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

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

And so they came up with a percentage, I think it
was between three and five percent. And the Commission
staff, at that time, felt that that was a reasonable type
of approach. And so, since that time, that's been more or
less what we've followed. There isn't any particular case
law. It's what makes sense from a public standpoint. It
provides security, if there's fires or other emergencies that take place. The rationale is that they are then eyes and ears for those purposes. Otherwise, it would still be prohibited.

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

LAND MANAGEMENT DIVISION ASSISTANT CHIEF CHIEF CONNOR:
Yes. In closing, some of the terms of this lease as negotiated are unique. They're intended to reflect the needs of the city and recognize the public benefits provided by the project and are considered to be in the State's best interests.

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

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

MARTINEZ CITY COUNCIL MEMBER ROSS: Good morning, Mr. Controller, Acting Lieutenant Governor and Director, we are here from Martinez, and we're very happy to be here. I do want to say your staff is exemplary. I'm a real estate broker and a property manager myself. And so
negotiation is part of my life. And I've worked a little
bit with Eric, but my staff has had the pleasure of
working with your staff. And I haven't met Colin, but
Colin you are exemplary in how you are serving the State
and the people's interests. You drive a hard bargain, but
you recognize what the State's interests are and how this
can work. And I really appreciate the good work that your
staff has done.

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

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

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

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

The rest of the deal we're very comfortable with.

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

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

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

MARTINEZ CITY COUNCIL MEMBER ROSS: The last
promise. I have my flier from 13 years ago, and I've got
everything done, except for the marina, and --

CHAIRPERSON CHIANG: Well, well done.

MARTINEZ CITY COUNCIL MEMBER ROSS: Thank you.

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

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

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

MARTINEZ CITY COUNCIL MEMBER ROSS: Yes.

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

MARTINEZ CITY COUNCIL MEMBER ROSS: I'd vote for
the seven, if we are so allowed to keep continuing to talk about it, we'd be more than happy with that.

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

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

CHAIRPERSON CHIANG: Interesting, pistachio over cherry.

(Laughter.)

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

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

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

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

(Laughter.)

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

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

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

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

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

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

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

But one of the things we do want to stress is the security. We're going to be putting $23 million into this entire upland and water project. And I think the security factors, and also to give an opportunity for some of our liveaboard people to be part of the community. And while it technically doesn't qualify as affordable housing, I think oftentimes people view that and it extends our
ability to actually give that type of housing presence. Anyways, that's it for me. I'll take any questions.

CHAIRPERSON CHIANG: Thank you, Philip. Mona, you have a question?

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

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

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

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

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

CHAIRPERSON CHIANG: So you're okay with that?

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

CHAIRPERSON CHIANG: Any questions?

ACTING COMMISSIONER BRYANT: No.

CHAIRPERSON CHIANG: Very good. Is there a motion?

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

CHAIRPERSON CHIANG: Okay. So that would be seven. We have a motion and a second.
Without objection, the motion passes.
Thank you.

MARTINEZ CITY COUNCIL MEMBER ROSS: We'd love to have you out to lunch out there some day.
(Laughter.)

CHAIRPERSON CHIANG: Next item, please.
We have public comment. And now we get to hear from Ruth.

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

CHAIRPERSON CHIANG: Happy to be here.

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

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

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

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

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

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

An illustration of some of the confusion about the role of the trustees arose with the habitat management plans for Yerba Buena Island, where the authors of the
study, the Treasure Island Development Authority staff, which is one of the trustees, suggested that wildlife habitat would have to be constrained by public access needs, because the tidelands trust calls for public access and recreation. They seemed oblivious to the fact that wildlife habitat is a Public Trust use. They also seemed oblivious to the fact that the Trust calls for showing no favoritism over one Trust-consistent use from another.

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

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

With using Yerba Buena Island as an example, SB 815 identified as Trust values there, the scenic opportunities, the great views of the Bay, and the wildlife habitat. In the years that go by, however, the views are rapidly disappearing as the non-native trees
become thicker and taller and block out many opportunities
to view the maritime activities on the bay, and the
habitat values are seriously degraded as non-native
invasive species displace and degrade the very valuable
habitat remnants that we still have on YBI, remnants of
the habitat that we've had since long before the Ohlone
even found the place.

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

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

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

And I would like us to put our heads together to
think about ways that, at least in our public information,
we try to dispel that notion and help the public think of
the Trust as something that is valuable and good and
important.
And lastly, I wanted to go back to an issue that you were talking about earlier this morning, renewable energy generation on Trust lands. There are proposals for both solar and wind generation on Yerba Buena Island and on Mare Island, and we are in need of guidance very, very soon about to what extent these energy-generating facilities are Trust consistent uses or ancillary uses. It would be really helpful if we could have some clarity on that soon.

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

Thank you.

CHAIRPERSON CHIANG: Thank you for being here.

Sandra.

MS. THRELFALL: Good morning, Commissioners.

Thank you for this opportunity to speak. My name is Sandy Threlfall. And I am with the Public Trust Group also. Our focus is the Bay Area, to maintain and educate -- to maintain the Trust and educate the populous to the importance of the trust.

You received a letter from us end of December. And the opening line was just to get your attention. We would like you to put a hold on anymore Trust trades. The reason being, and there are multiple reasons, a number of
the public agencies, the State included, are experiencing
economic stress. And that puts, in the case of Oakland or
San Francisco, the trustees for the trust in a position of
conflict. Because on one hand, they are fiscally
responsible for their agency, but on the other hand, they
are responsible for the maintenance of the Public Trust in
perpetuity.

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

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

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

So where do we help them understand that while
there is a conflict, and there is a financial
responsibility on their part, there is a responsibility to
us, to you, that they maintain that Public Trust as long
as there are Public Trust uses for it.

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

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

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

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

Thank you.

CHAIRPERSON CHIANG: Very good. Thank you.
Anybody else signed up to comment?

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

CHAIRPERSON CHIANG: Please, Paul.

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

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

CHAIRPERSON CHIANG: At the initiation?

EXECUTIVE OFFICER THAYER: What's that?

CHAIRPERSON CHIANG: You said "instigation".

(Laughter.)

EXECUTIVE OFFICER THAYER: At their instigation, right -- in San Diego and L.A. and San Francisco. And we
had fairly good turn out from the public. There were 40 or 50 people there. But they're right, there weren't that many of the grantees that were there. In San Francisco actually there were some Port officials that were there.

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

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

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

Finally, with respect to putting a freeze on exchanges of Trust lands, with the idea that Trust lands are supposed to be maintained permanently, and therefore
shouldn't really be traded, and that over the long run, lands that don't -- Public Trust lands that presently don't seem to be useful for Public Trust purposes might very well have that purpose in the future.

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

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

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

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

CHAIRPERSON CHIANG: Very good. Thank you.

Okay, I think that's all for our public calendar. We do have private session. Paul, thank you very much for -- I don't have to do mass retirements this month. It's nice to keep our great staff.

(Laughter.)

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

(Thereupon the California State Lands Commission meeting recessed into closed session and adjourned at 12:02 p.m.)
CERTIFICATE OF REPORTER

I, JAMES F. PETERS, 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 California State Lands Commission meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California;

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of February, 2010.

______________________________
JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
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