APPEARANCES

COMMISSION MEMBERS

Mr. John Chiang, Chairperson, State Controller, represented by Mr. Alan Gordon

Mr. Gavin Newsom, Lieutenant Governor

Ms. Ana J. Matosantos, Director of Finance, represented by Mr. Pedro Reyes

STAFF

Mr. Curtis Fossum, Executive Officer

Ms. Jennifer Lucchesi, Chief Counsel

Mr. Dave Brown, Chief, Administrative Services

Mr. Colin Conner, Assistant Chief, Land Management

Mr. Jim Frey, Staff Counsel

Ms. Mary Hays, Public Land Manager

Ms. Ninette Lee, Public Land Manager

Ms. Sheri Pemberton, Chief, External Affairs

Mr. Chris Scianni, Staff Environmental Scientist

Mr. Greg Scott, Chief, Mineral Resources Management Division

ATTORNEY GENERAL

Mr. Joe Rusconi, Deputy Attorney General
APPEARANCES CONTINUED

ALSO PRESENT
Mr. Ade Adesokan, Bruno's Island
Mr. John Berge, Pacific Merchant Shipping Association
Ms. Abigail Blodgett, San Francisco Baykeeper

ALSO PRESENT
Mr. John Diepenbrock, Diepenbrock & Elkin LLP
Mr. Robert Gregory, Foss Maritime
Ms. Diana Hall
Ms. Cea Higgins, Sonoma Coast Chapter of Surfrider
Ms. Norma Jellison
Ms. Jessica Martini-Lamb, Sonoma Coast Water Agency
Ms. Karen McDowell, San Francisco Estuary Partnership
Mr. Jonathan Mendes, Harley Marine Services
Mr. Christopher Peterson, Crowley Maritime Corporation
Mr. David Phillips, Hydrex
Mr. Greg Price
Ms. Lauren Silva, American Coatings Association
Mr. David Snodderly, Bruno's Island
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C10 MARK B. NELSON, TRUSTEE OF THE WILBORN CHILDREN’S TRUST AND LORIE L. WILBORN, TRUSTEE OF THE NELSON HERITAGE TRUST (APPLICANTS): Consider application for a new General Lease – Recreational Use of sovereign land located in Lake Tahoe, adjacent to 4200 North Lake Boulevard, near Carnelian Bay, Placer County; for an existing pier and boat hoist previously authorized by the Commission and an additional existing boat hoist not previously authorized by the Commission.

C22 2280 SUNNYSIDE LANE, LLC (APPLICANT): Consider application for a new General Lease – Recreational Use, of sovereign land located in Lake Tahoe, adjacent to 2280 Sunnyside Lane, near Tahoe City, Placer County; for an existing pier and one mooring buoy previously authorized by the Commission and one existing mooring buoy not previously authorized by the Commission.

C81 BRUNO’S ISLAND YACHT HARBOR INC. (LESSEE): Consider extension of time to cure defaults of General Lease – Commercial Use issued to Bruno’s Island Yacht Harbor, Inc., involving the bridge and marina at Bruno’s Island in Seven Mile Slough, Sacramento County.
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C87 CALIFORNIA STATE LANDS COMMISSION: Staff Report on the monitoring of possible subsidence, Long Beach Unit, Wilmington Oil Field, in the city of Long Beach, Los Angeles County - Not Discussed

VI REGULAR CALENDAR

C88 CALIFORNIA STATE LANDS COMMISSION (INFORMATIONAL): Commission Staff’s Status Report on its Audit Action Plan in response to the Commission’s direction. 14

C89 THE STATE LANDS COMMISSION (INFORMATIONAL): Staff report on the development of Biofouling Management Regulations for Vessels Operating in California Waters 84

C90 SONOMA COUNTY WATER AGENCY (APPLICANT): Consider application for a new General Lease – Public Agency Use, of sovereign land located in the Russian River, at Goat Rock State Beach, near the town of Jenner, Sonoma County; for periodic breaching and construction and maintenance of an outlet/pilot channel to the Pacific Ocean. 182

C91 CALIFORNIA STATE LANDS COMMISSION: Consider sponsoring or supporting legislation for the second half of the 2011-12 state legislative session. 72

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Call this meeting of the State Lands Commission to order.
All the representatives of the committee are present -- present. I am Alan Gordon representing State Controller John Chiang; I'm joined today by Lieutenant Governor Gavin Newsom to my right; and to my left, Pedro Reyes representing the Department of Finance.

For the benefit of those in the audience, the State Lands Commission manages state property interests in over 5 million acres of land including mineral interests. Specifically, the Commission has jurisdiction in filled and unfilled tide and submerged lands, navigable waterways, and school lands. The Commission also has the responsibility for the prevention of oil spills in marine oil terminals and offshore oil platforms and prevention of the introduction of marine invasive species into California waters.

Today we will hear requests and presentations concerning the leasing, management, and regulations of these public sovereign and school land property interests and the activities occurring thereon.

The first item of business will be the adoption of the minutes from the Commission's October 27th, 2011, meeting.
May I have a motion to approve the meeting of the minutes?

COMMISSIONER NEWSOM: So moved.

ACTING COMMISSIONER REYES: Second.

ACTING CHAIRPERSON GORDON: Moved and seconded.

All those in favor?

(Ayes.)

ACTING CHAIRPERSON GORDON: Minutes are unanimously adopted.

Next order of business is the Executive Officer's report. Mr. Fossum, may we have the report, please?

EXECUTIVE OFFICER FOSSUM: Thank you, Mr. Chair, Commissioners. Good morning.

In seeking to provide relevant information to the public, I'm pleased to report that we've updated the Commission's website again, this time with new useful information. One, that identifies and provides links to the new laws that affect the Commission's jurisdiction; and second, that it identifies legislation covering the last 160 years involving statutory trust grants and tide and submerged lands of over 85 governmental entities. The nearly 600 statutes are organized by region, then county, and finally, by the government entity receiving the grants. We often receive requests for these statutes and they are not readily available to the public, generally,
but now they will be accessible to all on our website. I'm also pleased to announce that on December 30th, the First District Court of Appeal upheld the Commission's actions involving the lease to Chevron for its Richmond Long Wharf Marine Terminal. The challenge was based on a number of issues, but the Court went to great lengths explaining and upholding the Commission's actions involving both CEQA and the Public Trust. This is the Commission's largest producing surface use lease, and it generates $996,000 a year to the General Fund.

It's also worth noting that the Commission had put Venoco Oil Company on notice that the lease for its marine oil terminal at Elwood, Santa Barbara County, would not be renewed. A new pipeline has now been constructed and the last shipment of oil from that terminal is scheduled to be shipped by barge next month. This has been a long sought resolution of this matter.

In the first half of fiscal 11/12, the Commission, through its surface leasing and mineral operations, generated $242 million to the General Fund and 4.2 million to STRS. If oil prices remain at current levels, we anticipate generating a half a billion dollars during this fiscal year.

I'm very pleased to announce the Governor's
recently released budget. It recognizes the opportunity for the Commission to participate in a significant way in helping California reach its renewable energy goals by 2020. Given the past loss of staff positions, the 2012/13 budget will provide six positions for a school lands program to help consolidate acreage and market lands for renewable energy projects. The passage of AB 982 in late 2011 calls for the Commission to enter an MOA with the Secretary of the Interior and subsequently effectuate land exchanges in the California desert. We will be bringing the MOU to you at the next meeting.

We've already been meeting with BLM and the military to discuss the exchange of properties that facilitates solar wind and geothermal energy development in the desert. Three additional positions will work in conjunction with other agencies, gathering information on priority projects, including ocean energy opportunities, and also assist in developing GIS layers of ownership and mineral interests and identifying existing commission leases both onshore and offshore.

This effort is part of the Commission and the Administration's geospatial data inventory to bring improved coordination among local, state, and federal agencies and make useful information available to the public.
In addition to participating on several agency teams seeking to develop alternative energy projects in the desert, the Commission has received a growing number of inquiries from the renewable energy industry about developing offshore marine renewable resources. Staff's participating in interagency working groups in this area already.

Finally, nine positions are being provided to increase our auditing and enforcement capabilities in dealing with oil companies and other entities involved in operations on state property. This will help ensure compliance with the law so that the State gets the revenue it's entitled to.

In another move towards making the renewable energy goals the reality of the Governor, the Secretary of the Interior, on January 13th, signed an MOU that includes the Commission as a participant cooperating with other state and federal agencies to achieve the alternative energy goals.

In response to the growing need for the Commission to both respond to applications and participate proactively in the renewable energy planning, we've set up a multidisciplinary alternative energy team which includes our environmental planning, land management, mineral resources, legal, and administrative staff to accomplish
the State and Commission's goals and responsibilities.

I do have a number of personnel matters to briefly mention as well. We had a number of very strong candidates for a legislative liaison position, and I'm extremely pleased to announce that we've coaxed Sheri Pemberton away from the Legislature. Sheri has over twelve years of legislative experience with an extensive background in environmental and lending, foreclosure relief, public policy issues. Sheri worked in a variety of roles in the Legislature including chief of staff to former Assemblymember Ted Lieu and legislative director to several former Assembly members. Sheri will be our new Chief of External Affairs. I would like to have her stand up to identify her.

(Applause)

EXECUTIVE OFFICER FOSSUM: It was a tough year not having a legislative liaison last year, so we're very happy to have her.

We've also been fortunate to land two Sea Grant fellows. In the program's 24-year history, the current class of 11 fellows in the Marine Policy and Resource Management Program is the largest ever. While the Coastal Commission, BCDC, Parks and Rec, Fish and Game, State Water Resources Control Board, Natural Resources Agency, NOA, and the California Ocean Science Trust landed one
each, the Commission received two -- Amanda Newsom and Holly Wyer. We're very pleased to have them with us as well.

I do have a couple of sad notes to add. Last week, Craig Webster, who served the Commission as a process safety engineer, passed away in his sleep. Craig was only 53. After 25 years of experience working in and around the oil and gas business, Craig joined the Commission family in February of 2006. Since that time, Craig served as a member of the Safety and Spill Prevention Audit Team. Because of Craig's professionalism, attitude, and experience, he was promoted to an associate processing engineering position on the team two years ago. He continued his professional growth and that earned him increasing responsibility and respect, allowing him to coordinate the safety audit and follow-up activities on Platform Eva and take the lead role in conducting the safety and spill prevention audit at the Montalvo State and oil gas leases. Craig recently began a major field assignment with the entire team on the Long Beach safety audit. He will be deeply missed by the close knit team and his family and his many other friends and associates at State Lands. Our deepest sympathy goes out to Craig's family.

Commission family also lost one of its most
venerable and venerated employees. Last November, Myrtle
Stratton passed away after celebrating her 95th birthday
weeks earlier. Myrtle was an institution who will never
be forgotten by those who met her. Myrtle began work for
the Commission in 1944 as a file clerk. She became a
protector of the integrity and importance of the
Commission's records. Myrtle retired in 1981 after 37
years of service, but she did not give up her role as
protector. She served the next 23 years as a retired
annuitant until she was 88, a total of 60 years.

Anyone who's fortunate enough to meet her has a
story to tell, and I have several. She was feared and
loved but, most of all, respected. Her dedicated examples
set a high standard for all of us. She will be missed.

I do have two more losses to report -- a transfer
and a retirement. First, Lynn Takata, the manager of our
Marine Invasive Species program, has jumped ship --
sorry -- and will be taking her scientific expertise to
work for the Department of Water Resources Aquatic Ecology
section. And we wish her all the best in those endeavors.

Lynn, stand. Thank you very much for your --

(Applause)

EXECUTIVE OFFICER FOSSUM: And finally, as I
reported at the last meeting, we are losing chief of our
Mineral Resources Management Division, Greg Scott. I
would like to ask Greg to come forward and let me read this resolution into the record.

"Whereas, Greg Scott has given the People of California over 22 years of dedicated and distinguished public service; and,

"Whereas, Greg Scott, following 3 years of service in the United States Army and 17 years in the Petroleum Industry entered State service with the Mineral Resources Management Division of the California State Lands Commission in July, 1989 as a Petroleum Engineer; and,

"Whereas, Greg Scott, since 1989, has provided expert technical service and managerial direction, initially as a Petroleum Engineer, later Operations Manager and Engineering Manager, and rising to Assistant Chief of the Mineral Resources Management Division in 2001; and,

"Whereas, Greg Scott, in January 2009, was promoted to Chief of the Mineral Resources Management Division of the California State Lands Commission; and,

"Whereas, Greg Scott has ably and conscientiously guided the Commission's Mineral Resource Management Division staff with his dedication, expertise, and leadership; and,

"Whereas, Greg Scott, through his managerial guidance, effective leadership skills, technical
experts, and strong industry background, has identified opportunities and initiated and accomplished resource enhancement programs on state leases and granted trust lands that have provided significant financial benefits to the State of California, resulting in the Commission sending a total of over $3 Billion during his 22 years with the Commission and over $1 Billion during his 3 years as Chief to the General Fund; and,

"Whereas, Greg Scott, through his leadership while managing the Mineral Resources Division, has ensured the highest level of environmental protection and public safety involving development of mineral resources under the Commission's jurisdiction; and,

"Whereas, Greg Scott, through the determined involvement and persistent advocacy was instrumental in efforts for the development of the Santa Rosa waste water pipeline and injection for recharging the Geysers geothermal field thereby expanding clean renewable energy for all Californians and financially benefiting the State Teachers Retirement System; and,

"Whereas, Greg Scott, has kept abreast with advances in petroleum technology by his long time participation in professional society, the Society of Petroleum Engineers, serving as Los Angeles Basin Section Chair, and his leadership in the Society's technical
meetings; and,

"Whereas, Greg Scott, as a person, rejuvenates his stamina for State service, by delving in artistic outlets in wood sculpturing and model outrigger canoe building, collecting artifacts of the American West, and enjoying Hawaiian sunsets."

We all do that, I think.

(Laughter.)

EXECUTIVE OFFICER FOSSUM: "And, whereas, as a result of his conscientious commitment, dedication, and superior intellect, Greg Scott has succeeded in compiling an impressive record of career achievements, earning him the admiration and respect of not only those who have had the privilege of working with him, but those representing opposing interests; now, therefore, be it

"Resolved, by the California State Lands Commission, that Greg Scott is commended and thanked for his distinguished record of professional service for more than 22 years serving the State Lands Commission; and, be it further

"Resolved, that the Commission extends its sincere best wishes to Greg Scott for a rewarding and gratifying retirement, and the very best in years to come."

(Appplause)

MR. SCOTT: That was a mouthful, Curtis.
EXECUTIVE OFFICER FOSSUM: I'm done.

MR. SCOTT: Thank you very much, and, Commissioners, thank you. It's been a gratifying 23 years to work for State Lands Commission, particularly under the leadership of Curtis, and Paul Thayer before him, and the wisdom of the Commission. It's been a great experience for me. I'm going to miss the Commission very much. But I'm going to leave knowing that in a small way, I think I've been able to help the Commission do a lot of good things for the state and people of California.

I also want to say, Curtis, that after I leave that you will continue to be in good hands with our professional staff, Marina Voskanian. And I want to wish you the best for this year and the years to come.

So thank you for the recognition. Appreciate it.

ACTING COMMISSIONER REYES: Thank you.

(Applause)

EXECUTIVE OFFICER FOSSUM: Thank you very much, Greg, and I think Greg exemplifies our senior staff who have spent many years coming up through the ranks and is serving the Commission very well. And he will be very much missed. We're trying to bring him back as a retired annuitant.

Moving on, I guess to the Consent Agenda, we have pulled a number of -- removed from the agenda a number of
items -- Item 39, 47, 64, 65, and 74.

And we have taken three items from the consent agenda as well to be put on the regular agenda. People have asked to speak on these numbers. They are No. 10, No. 22, and No. 81.

So we can take those up after the consent -- I'm sorry. I've been noticed that we have another one, No. 83. Oh, I believe that's only if it comes off consent? Yes, that's correct. So that will stay on consent unless --

ACTING CHAIRPERSON GORDON: Is there anyone in the audience who would like to talk on any of the remaining items on the consent calendar?

That said, I would like to call for a motion on the consent calendar minus Items 39, 47, 64, 65, and 74, all pulled from the calendar; and Items 10, 22, and 81, which will be heard separately as part of the regular agenda.

Do I have a motion?

ACTING COMMISSIONER REYES: So moved.

COMMISSIONER NEWSOM: Second.

ACTING CHAIRPERSON GORDON: Vote. All in favor?

(Ayes.)

ACTING CHAIRPERSON GORDON: It's unanimous. The consent calendar is adopted.
Item 88 is an update on Commission staff's Audit Action Plan in response to the BSA audit.

May we have the staff presentation, please?

EXECUTIVE OFFICER FOSSUM: Dave Brown, the head of our administrative division, will be presenting this item.

ADMINISTRATIVE SERVICES CHIEF BROWN: I am Dave Brown, chief of Administrative Services.

At the Commission's direction, staff has prepared this report to update Commission on the progress staff has made in implementing its 2001 Audit Action Plan. The Commission staff submitted its 60-day response to the Bureau of State Audits on October 24, 2011. The Bureau's report assessing staff's 60-day response in implementing the Bureau's recommendations will not be released until mid-February. Staff's six-month response to the Bureau is due on February 23rd.

Staff was able to secure a preliminary evaluation of the 60-day response from the Bureau. Their findings indicated that of the 27 recommendations made in the report, six are fully implemented, nine are partially implemented, nine are pending, and three had no action at all. Additional information, documentation, and clarification was subsequently provided to the Bureau for consideration, and staff expects several items will be redesignated as fully or partially implemented.
This will not be known, though, until the report is published in February. Probably as far as our accomplishments to date, probably the most significant that Curtis mentioned earlier was, we were able to secure nine additional positions in the 2012/13 governor's budget. Four of these are auditors in our Long Beach unit, and five will be lease compliance appraisal staff for the Land Management Division. It is expected that these positions will increase General Fund revenues by up to $6 million annually.

Regarding the delinquent leases, in this area staff has made significant progress on several cases and has implemented a process that includes executive level review of cases, coordinating action among the divisions in pursuing the parties. Several items on today's agenda reflect settlements or requests to pursue further actions against those parties.

On holdovers, staff continues to make progress in reducing the number of leases in holdover. As previously reported, 24 of the 32 leases identified in the audit have been eliminated from holdover status. Of the remaining eight, one, GP Gypsum, was brought current at the October meeting. Another, the PG&E master lease is on today's agenda. Two will remain in holdover status due to ongoing environmental cleanup obligations and a determination of
final disposition. The remaining four are awaiting completion of environmental process. All have been brought current on rental rates.

Regarding rent reviews, staff continues to make progress in refining processes and procedures regarding rent reviews. Many changes, such as earlier identifications of those needing review, have been effective in helping staff complete the reviews in a timely manner. Staff is also expanding the use of CPI as an alternative to the more lengthy process of appraisals. Benchmark appraisals are also being updated to reflect current values and a schedule has been put in place to keep them current.

Regarding audit cycles, staff continues to make significant progress in conducting audits that were scheduled for this year. As of January 2012, we've completed an audit of Long Beach Unit revenues for the fiscal year periods 2007/8 and 8/9, as well as the audit for DCOR's royalty payments for 2005 through 2009.

Moreover, staff has started to work with the selected consulting firm to audit the royalty payments from the Rosetta Resources lease for 2006 through 2011. This was the instance where we were going to an outside firm to augment our audit staff.

Statutory trust grant oversight. As previously
reported, staff requested additional positions to implement the Commission's Statutory Trust Grant Compliance Program. However, the request was not approved. Staff is continuing to work with the State's trustees to commit their annual financial reports, as required by Public Resources Code, Section 6306, in a format that readily identifies the trustee's trust funds and details the income and expenditures.

Staff, with its limited resources, is also making every effort to assist local trustees with the waterfront revitalization programs.

The lease database. Staff is continuing to make improvements to the database and the process is to keep it current. Enhanced management reports are being devised to assist managers and prioritizing workload. Staff has also been exploring possible alternative systems and have contacted vendors for various demos.

Regulations in legislation. Staff is actively working on a regulation package to update Section 2003, the rent section, in the Commission's regulations in Title 2, California Code of Regulations. Staff hopes to submit a package to the Office of Administrative Law within the next couple of months.

Staff is also recommending that the Commission direct staff to develop and sponsor legislation that would
give the Commission authority to assess monetary penalty
against lessees who are out of compliance with surety bond
and liability insurance or who are in trespass.

These proposals follow up on several
recommendations by the Bureau to the Commission to secure
more authority to ensure compliance with lease terms and
facilitate enforcement of trespass. These legislative
proposals are described in more detail in Item 91 on the
agenda today.

This concludes my presentation. I'm available for
any questions.

ACTING CHAIRPERSON GORDON: Questions from the
Commission?

COMMISSIONER NEWSOM: I just want to express my
appreciation for the progress made to date. As you're
looking forward, what are the big red zone items for you,
the frustration in terms of the big things yet to be
accomplished, the ones that will take much longer than
those that you have just referenced?

ADMINISTRATIVE SERVICES CHIEF BROWN: The
legislation is one.

COMMISSIONER NEWSOM: Yeah.

ADMINISTRATIVE SERVICES CHIEF BROWN: Getting that
authority to go out and actually do something in a more
expeditious manner.
The other is the database. That's going to take some time to -- we're working with the database we have. I would like to replace it. But that's going to take some time. Identifying one.

COMMISSIONER NEWSOM: What would that entail?

ADMINISTRATIVE SERVICES CHIEF BROWN: Identifying one. We have a very limited IT staff. I have one programmer.

COMMISSIONER NEWSOM: Just one?

ADMINISTRATIVE SERVICES CHIEF BROWN: So it's something that I'm looking to try to find some off-the-shelf package, and there's several out there. I mean, we're not the only one that do land management.

COMMISSIONER NEWSOM: Right.

ADMINISTRATIVE SERVICES CHIEF BROWN: But it's one to fit -- trying to take something from private industry and make it fit into the government environment right now. And there are some prospects out there, but the one I found, it looked good, but it's horribly expensive.

COMMISSIONER NEWSOM: Out of curiosity, give me a sense of what horrible costs.

ADMINISTRATIVE SERVICES CHIEF BROWN: 175,000 a year.

COMMISSIONER NEWSOM: A year.

ADMINISTRATIVE SERVICES CHIEF BROWN: That's not
development cost. The way this company operates, instead of having user licenses, where we would have maybe 20 or 30 users, they license each property, and we have 4,000 properties.

COMMISSIONER NEWSOM: Oh, lord.

ADMINISTRATIVE SERVICES CHIEF BROWN: So it got a little expensive. I'm going to be talking to them and see if we can't try to get that fixed.

ACTING CHAIRPERSON GORDON: Any other questions?

ACTING COMMISSIONER REYES: No.

ACTING CHAIRPERSON GORDON: I would like to turn -- thank you.

I would like to turn to Item 22 now, which was pulled from the consent calendar. This has to do with a general recreational lease at 2280 Sunnyside Lane in Lake Tahoe. We have a speaker who would like to speak on the subject, Mr. Price. Is there more than one?

EXECUTIVE OFFICER FOSSUM: Mr. Chair, staff also has a presentation to make, and we can sort of take it either way, whether you would like to have staff presentation first or the....

ACTING CHAIRPERSON GORDON: Why don't we go with the staff presentation first, so the citizen can respond to the staff presentation.

PUBLIC LAND MANAGER HAYS: Good morning,
Mr. Chair, and members of the Commission. My name is Mary Hays, and I'm a public land manager for the Northern and Central California region of the Land Management Division, and I will speak on Calendar Item No. 22.

(Thereupon an overhead presentation was presented as follows.)

PUBLIC LAND MANAGER HAYS: I did give you a -- this item recommends that the Commission authorize a new general lease, recreational use, between the Commission and the applicant, known as 2280 Sunnyside Lane, LLC. The applicant is the owner of the upland lakefront residential parcel adjacent to state sovereign lands in Lake Tahoe.

The applicant's predecessors in ownership had been under lease with the Commission for the use of the pier and one mooring buoy since the late 1970s, and the previous leases qualify for rent-free recreational pier leases because the past owners had held title as individuals under former Public Resources Code Section 6503.5.

The most recent lease, approved by the Commission in 2000, and its subsequent assignment to other family members, was approved in 2001. The lease was set for a term that was to expire on November 29th, 2008. However, an application was not received until November 23rd of 2009, at which time staff became aware that the title to
the upland lakefront property had been transferred to a limited liability company. This transfer disqualified the lease as rent free pursuant to a special provision of the lease requiring the lessee to notify the Commission and that rent may be implemented pursuant to law.

--o0o--

PUBLIC LAND MANAGER HAYS: Slide No. 1. As part of the negotiation for a new lease, staff calculated back rent for the time the ownership changed on July 28th, 2004, to October 26th, 2011, the day of the last Commission meeting. Consideration of the application by the Commission was postponed from that meeting at the request of the consultant because the applicant and consultant were not able to attend.

The photo -- the slide shows the exhibit to the calendar item which shows the location of the State's sovereign boundary at 6223 Lake Tahoe Drive and a drawing showing the area of the pier and a 10-foot use area around the pier as well as two mooring buoys.

As part of the negotiation of the new lease, staff calculated back rent for the ownership change on July 28th, 2004, forward, to October 26th.

Sorry about that. I just repeated that. Using the Lake Tahoe benchmark, the seven years of back rent was
calculated in the amount of $12,893, which consists of
rent attributable to one mooring buoy at $1,230 and the
pier at $11,663.

For purpose of rent, the pier area is calculated, including the actual footprint of the pier, on state
lands, and a 10-foot use area lying adjacent and around the pier.

--o0o--

PUBLIC LAND MANAGER HAYS: Slide two.

This photo is a Google Earth photo taken on June 14th of 2001, which the lake level was at
approximately 62 -- I believe it's at 6227-something, so it's near high water.

EXECUTIVE OFFICER FOSSUM: It's 2011.

PUBLIC LAND MANAGER HAYS: It's 2011, excuse me.

Since at least 1971, leases for private recreational pier and buoy use at Lake Tahoe that did not qualify for rent-free status have included a 10-foot use area in the annual rent calculation. For over 40 years, it's been a practice of the Commission to include a 10-foot use area around and adjacent to a pier as a reasonable area of use by a lessee for mooring buoys or other personal watercraft, on- and off-loading passengers, and an area that the recreating public will generally avoid because of the proximity to and visual deterrence of
a private thick structure. Rent has been applied to the area -- to the use area as a charge for the public's reduced access to public land.

In addition, all rent-free recreational pier leases issued in the past, including the above expired lease, contains a grant of lease provision that the lease area consists of only those sovereign lands and a reasonable use area lying underneath, adjacent, and around the improvements.

--o0o--

PUBLIC LAND MANAGER HAYS: This is a photo submitted by the applicant of their pier, and we have several consecutive photos of the same pier. And I apologize for the quality, but it didn't blow up very well.

The lease before you today also includes a recommendation to include one additional existing mooring buoy at the request of the applicant. This buoy has not been previously authorized by the Commission. However, the applicant has certified that the buoy has existed on state lands for many years.

Staff has calculated annual rent going forward in the amount of $2,765 for the new lease using the current Lake Tahoe benchmark for the area occupied by the pier and buoys. The area calculated for the pier does include the
10-foot use area.

In December 2011, staff reviewed its practice of charging full rent for the use area for leases at Lake Tahoe, and based on provisions of Public Resource Code Section 6503.1 to consider local conditions, are recommending a 50 percent discount for the use area at Lake Tahoe as a reasonable charge for the public's reduced access going forward because of the seasonal use of the 10-foot use area.

If you could show the next several slides.

PUBLIC LAND MANAGER HAYS: They show the pier at low water.

PUBLIC LAND MANAGER HAYS: And this is showing, just looking up at the upland.

PUBLIC LAND MANAGER HAYS: Staff recommends that the Commission authorize acceptance of the back rent in the amount of $12,893 and issuance of the lease as outlined in the Calendar Item No. 22.

Colin Conner, Assistant Chief of the Land Management Division, is prepared to explain the Commission's practice on the methodology behind the establishment of the benchmark and is here to answer any
additional questions.

And the applicant, Mr. Gregory Price, is also here to address the Commission and -- on the issues of the reasonable use area, the use of the benchmark, and the resulting rent.

ACTING CHAIRPERSON GORDON: Mr. Price, do you think it would be best for our understanding of this for you to speak now, or would you like to have the staff explain the benchmark to the Commission first and how they calculated the rent?

MR. PRICE: It might be helpful to have the staff go through that. I mean, I summarized it in my presentation.

ACTING CHAIRPERSON GORDON: I think I'm going to go along -- let me bring the staff up. I want to fully understand how this is calculated and give you a full opportunity to discuss it.

MR. PRICE: Sure.

LAND MANAGEMENT ASSISTANT CHIEF CONNER: Good morning, Commissioners. My name is Colin Conner, and I'm the Assistant Chief of the Land Management Division. I also have a presentation. I would like to have that called up, if I could. And I believe you have it -- here we go.

(Thereupon an overhead presentation was
LAND MANAGEMENT ASSISTANT CHIEF CONNER: So let's see if I can go through this.

LAND MANAGEMENT ASSISTANT CHIEF CONNER: What I am going to do is try and provide a brief overview of our benchmark methodology specific to Lake Tahoe.

LAND MANAGEMENT ASSISTANT CHIEF CONNER: The leasing authority of the Commission flows down from the state constitution through Public Resources Code and then through the California Code of Regulations. This is the most recently enacted law, and this is what was known as SB 152. It became effective January 1st. This is going to convert basically all our rent-free recreational pier leases to revenue producing leases. So you are going to be seeing a lot more of these types of things, and these questions might come up again.

LAND MANAGEMENT ASSISTANT CHIEF CONNER: The Code of Regulation gives the Commission broad discretion in all aspects of leasing or setting rates.
Benchmarks are typically used to establish a uniform rental rate in a given and specific geographic area, where we have a large number of a similar type of facilities, mostly in areas where we have private recreational piers.

There are two types of benchmarks -- a recreational and residential. The recreational ones are, by far and away, the largest number. The use of benchmarks improves consistency throughout the geographic area with respect to the application of rent, you know, a fair playing field, and it also improves staff efficiency in that we don't have to appraise each particular property.

EXECUTIVE OFFICER FOSSUM: Colin, I would like to add that the new law that was enacted does direct staff and the Commission to use local conditions for valuation.

LAND MANAGEMENT ASSISTANT CHIEF CONNER: Right. And we will get into that methodology aspect as well.

The Lake Tahoe benchmark has been in use since 1985 and it was last updated in February of 2007. We're currently using it for approximately 70 leases in the Lake Tahoe area. It also goes to Donner Lake, as a matter of fact.

As SB 152, the new law -- it's in effect, but as the previous rent-free leases come due, they will be
converted to revenue generating. There's approximately 600 of those in this area.

The other benchmark areas that we have -- Southern California, which includes Huntington Harbor, Sacramento River, the Sacramento-San Joaquin Delta, San Francisco, Monterey Falls. The ones at the bottom -- Monterey Falls, Colorado River -- there's not a lot of those right now but we do want to establish an even playing field. The residential benchmarks -- Huntington Harbor for cantilevered decks; Sandy Beach for decks; and Solano Beach for seawalls.

Okay. The methodology -- and I'm going to be more specific with Lake Tahoe right now. But generally speaking, recreational benchmarks are based on the principle of substitution, and part of the reason for that is, at Lake Tahoe, we would love to be able to set a rent based on what other people are paying for renting of recreational piers. Unfortunately, those are primarily private land owners and they use those, so there's no real market to sample for that.

So we look at principle of substitution. If a property owner had a boat or wanted to get a boat, but didn't have a dock, what did he do? He would go to a marina, you know, probably lease a berth there. So what we do for this benchmark methodology is we survey nearby
marinas and buoy fields as to their docking mooring,
docking mooring sizes, and rates.

So I'm to use "slip" and "berth" interchangeably here, because essentially they're the same thing. But slip rates are generally expressed as a dollar per linear foot. So if you go to rent a slip or a berth from a marina, he's going to quote you something like 10 or 12 dollars per lineal foot, and that can be based on the size of your vessel or, more accurately, the size of the slip that he happens to have available. He might happen to have a 25-foot slip available. You have got a 20-foot boat. He's renting you the slip. So, you know, it would be $25, or whatever the rate is, times that slip length. This is going to come in, in a moment, the lineal foot thing.

So basically, we take the results from the survey and we try and get an average of that, for both the size of the slip rates and the rates that are being charged in Lake Tahoe.

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LAND MANAGEMENT ASSISTANT CHIEF CONNER: The key thing here is going from a per lineal foot basis, the way they charge rent to the way we charge rent, which is a per square foot method, because what we're dealing with isn't necessarily slips or berths. So we use a publication from
the Department of Boating and Waterways, which is entitled "Layout and Design Guidelines for Marina Berthing Facilities." Basically what they do is -- there's several tables. They just look at various berth sizes and what an appropriate submerged land area is for that. It helps people who are building or redesigning their marinas how to plan it. How many square feet do I need?

So we use that. We extrapolate the results from their -- from the survey, the dollars per lineal foot, but we found from our survey it was a dollar per square foot. And then we apply a 5 percent rate of return to that amount.

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LAND MANAGEMENT ASSISTANT CHIEF CONNER: This is a sample of the Boating and Waterways publication. And they are basically trying to say, okay, marina operator, might have -- this is a double-berth design, so you basically have two boats next to each other with catwalks on either side. But you can see, it's fairly mathematical here and that's how it results in these tables.

So we reference that. We look at, what's an average slip? And we're referencing their table. Something like 25 feet on this double-berth layout. We use the double-berth because we feel it's probably the most efficient with respect from a marina operator
standpoint; it's less facilities for him to build. And what it worked to is 628 square feet of submerged land area.

Now we're going to get into calculations.

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LAND MANAGEMENT ASSISTANT CHIEF CONNER: Actually, I'm getting ahead of myself here.

These are the results of the survey. At Lake Tahoe, we identified twelve marinas; seven responded to our survey. Again, this is back in 2007. At that time, there was a 99.4 percent average occupancy at these seven marinas, and six of which were a hundred percent occupied.

The average length surveyed was 25 feet.

The average rent was $33.66 per lineal foot.

As for mooring buoys, there were 11 marinas with buoy fields that were identified. Their occupancy was 93.4 percent. Their swing radius was 25 percent, with an average monthly rent of $542.

A couple things here: The swing radius, at Lake Tahoe you have a buoy, and literally the boat can pivot all the way around this thing. And so you have to space the buoy fields so that the boats don't, you know, bump into each other, basically. So what we looked at is, what's the typical swing radius at Lake Tahoe? We found 25 feet. So that basically says that you are going to
have a vessel of 25 feet or less attached to that buoy.

At Lake Tahoe, the season varies a little bit but it typically goes from about May to September or October. But they reported seasonal rates. We translated that into a monthly rate.

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LAND MANAGEMENT ASSISTANT CHIEF CONNER: So we have all the information. We have the methodology. And by the way, the methodology is what we've been doing since 1985; we're just carrying it forward, with slight variations based on -- we noticed there is an increase in the swing area and the vessel length. The marinas apparently have larger slips now.

So we take that $25 average berth and we apply it to the average lineal foot rate, and we get 841.50 per month. Multiply that by 12 months. So if you are in a marina, you are going to be paying $10,000 for that berth a year. Okay? If you don't have a dock and you want to berth your vessel, you are going to pay $10,000.

And I see a math error right there, by the way. It would be 10098, not 10980. And I don't think that calculation, that mistake, was carried forward, but I can double-check that.

The 5 percent of gross income is typically the rate that we charge for a commercial marina operator, and
what that rate reflects is the fact that a marina operator
has built the marina. He's provided all the amenities --
the docking, the parking, everything. What we're bringing
to the table is submerged land. Yes, it's a necessary
part, but our cost component is a lot less than what he's
put forth. He has to get a return on his investment and a
return of his investment. So basically, he has to get
paid back in. He's got profit. We feel he deserves the
lion's share of that, so we're going to charge him more.
We're going to get 5% of his gross income.

That works out to 504 dollars -- approximately 505
per year, our rate. We divide that by 628 square feet,
which gets us to the benchmark rate. That's the 80 cents
that we're applying to docks. We feel this is very
reasonable for a couple of reasons. If the guy had to --
if the property owner had to go out and get a berth, he
would be paying $10,000. You know, ours is 80 cents times
whatever area. In this case, I believe it's $2,500 for
his dock in the use area.

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LAND MANAGEMENT ASSISTANT CHIEF CONNER: The buoys
are calculated a little bit differently. We take the
swing area and we calculate the -- basically the area of a
circle. That went up from the 20-foot radius, that was
used in the prior benchmark, to 25 feet. So you can see,
the area has increased.

The actual monthly rent from the prior survey in 1992 -- that's another thing to bear in mind. This is 1992 to 2007 that the benchmark had not been increased. The survey indicated a large increase in rates. It more than doubled. So we applied that rate of increase to this new area.

The bottom line is it went to $340, basically, from $93 in 1992 to 340 now.

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LAND MANAGEMENT ASSISTANT CHIEF CONNER: Okay. Alternatives. What else could the Commission do out there? The Code of Regulations do provide for rent based on -- I'm going to back up for just a moment.

As I said earlier, in a perfect world, we would be able to sample what other people would be renting their recreational piers for. That doesn't happen. They use them. So we go to marinas.

What other methodology is available? Well, the regs basically say that we can charge rent based on 9 percent of appraised land value. Well, if we look at that, we would say that the pier and the submerged land underneath the pier are tied to the uplands. So we would be looking for residential land sales.

As you can imagine, residential land sales in
Tahoe -- first of all, there's not a large inventory of vacant land that's selling. Mostly it's already built up. If you do see sales of land, it might be an old cabin that a new person would buy that property, would demolish that, and would build a new house on it.

The key thing here is that if we go that way, we're most likely going to result in a much higher rent -- much, much, much higher rent. We have not gone this path for a couple of reasons, and it gets back to that efficiency. The benchmarks are based on local conditions, but at Tahoe, local conditions vary -- the north shore versus the south shore; the level of water dependent, for instance; the steepness of the shore. We would have to do either -- appraise each property as they came up, which could mean 600 properties in the near-term future, you know as these things cycle through this previous rent-free, we don't have the staff for that.

So we think the benchmark that we establish is the most reasonable and efficient and effective from a staff perspective, alternative.

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LAND MANAGEMENT ASSISTANT CHIEF CONNER: This is just a summary of what I just spoke about. Eighty cents per square foot per year for docks in the use area; 340 for the buoys. We think the methodology -- the
methodology is based on principle of substitution. We think that's fair. There's few other alternatives out there.

Those alternatives that are out there, the one specifically which would require appraisals, is probably going to result in a greater hit to the property owner.

The other advantage of the benchmark is it's applied consistently and efficiently by staff.

So that concludes my presentation. I understand that the applicant is here, and I will be available to answer any questions, or if you have any questions right now.

ACTING CHAIRPERSON GORDON: I have a couple of procedural questions.

With the change in law that went into effect this month, have we done anything to notify these leaseholders that their previously free use of these piers is going to change?

LAND MANAGEMENT ASSISTANT CHIEF CONNER: To my knowledge, no. We're looking at probably, you know, in this case -- well, over statewide, probably over a thousand, 1200, approximately 1200.

What we've been doing -- our typical practice is to notify a person one year in advance of their lease coming due. At that time, we would notify them that they
would be subject to the provisions of this new law. So they are going to be given a standard one-year advance.

ACTING CHAIRPERSON GORDON: A one-year notice.

EXECUTIVE OFFICER FOSSUM: Other than having put it in on our website, the new laws that are in effect and a link to the actual law so that -- and a description of it, if anybody goes to our website and looks there, they would see that.

We are looking at several other alternatives. One is to contact all the property owners that are involved directly, and also to have -- particularly there's a lot of concern in Orange County, in Huntington Harbor. Two of the channels there are owned by the State and the other channels are not. So certain property owners won't have to pay rent because they happen to have a right to use the channels in front of their property, whereas those that the State owns will be paying rent. We have a number of them under rent already -- under lease already. But there's a number that we're going -- a larger number, even than Lake Tahoe, that are not under lease and so we're considering contacting them in various ways, including possibly having a public workshop down there to answer any questions and even contact the press with information as well. So we're working on that right now.

ACTING CHAIRPERSON GORDON: Have you estimated
what the cost would be -- I'm sorry. How many
leaseholders do we have statewide that are possibly
affected over time?

LAND MANAGEMENT ASSISTANT CHIEF CONNER:
Approximately 1200.

ACTING CHAIRPERSON GORDON: 1200.

Have we estimated the cost if we were to send a
uniform notice to all 1200 of these people that as their
leases become due to notify them of this law? I
understand that one year, which makes a lot of sense, but
just give them a lot of lead time to prepare for the fact
that -- I mean, I think in some of these cases, people
probably have had these leases for generations, where they
haven't had -- and it's going to be a major, major change.
And sometimes just the prophylactic effect of giving
notice, just with a copy of the law, so that they will be
ready when they get the notice that says one year from
now, you are going to have to start paying.

EXECUTIVE OFFICER FOSSUM: We can certainly do
that. As I think either Colin or Mary in her presentation
noted that, for example, in Lake Tahoe we have 60 that
were already paying rent. It's just that the vast number
of them have not been because of the way they were holding
title on their property. So -- and there are a number in
Huntington Harbor and throughout the state, Sacramento
River as well, that have been paying rent and now it's just everybody will be doing it consistently. We can certainly look at that, all our currently free leases, and come up with a letter to notify them.

COMMISSIONER NEWSOM: Why not? I mean, it's an additional step. I appreciate, we're doing it a year in advance formally. But, you know, I could -- if you haven't paid anything or you paid a little bit and all of a sudden, you are going to have all kinds of questions and I think more notice, the better, more transparency, the better. The last thing we need to do is spend the next three years doing this.

EXECUTIVE OFFICER FOSSUM: Ten.

COMMISSIONER NEWSOM: Next ten years just doing this.

EXECUTIVE OFFICER FOSSUM: Thank you.

ACTING COMMISSIONER REYES: Does the staff need a motion to direct staff to provide for this? I imagine the 1200 -- probably 600 bucks to do this thing. Some of these leases are ten years old, so some of the folks who got their lease last year will not be reached for nine years.

EXECUTIVE OFFICER FOSSUM: Some of them that you are actually issuing today will not be having to pay rent for ten years, because the way the bill was amended by the
author, and with requests from Lake Tahoe, in fact, representatives there, there were cut off dates going back to March 31st for applications for last year and having a lease in effect. So some of those people who are on the agenda today actually qualify and will still have another ten years. That was the way the law was written.

ACTING COMMISSIONER REYES: So in ten years, they will get a letter.

EXECUTIVE OFFICER FOSSUM: Yeah. We will be contacting all the property owners and inform them of the changes in the law and what they can expect.

ACTING CHAIRPERSON GORDON: That's a good idea.

Mr. Price.

MR. PRICE: You bet.

As this is being recorded, I hope my use of the term "swing area" never gets taken out of context.

(Laughter.)

MR. PRICE: Anyway, I was one of those owners that was very surprised, because we've had this property since the 1940s. And my presentation doesn't go into the detail that Mary provided about the background, because there's no dispute there. We just didn't realize that we owed any additional amount. And then when the lease came up, we didn't realize that when we moved it from individuals to the same individuals in an LLC, that triggered all sorts
of other things.

So staff was very patient -- Mary, Ninette, and Colin -- and just walking me through what they just put together here, and, again, there's no disputing the background.

This presentation is just looking at going forward because it's not easy. And one of the pieces that wasn't brought up is that the rent increase, when the adjustment was made in 2007, resulted in a 375 percent increase. So folks that had been paying rent, like LLCs and marinas and such, saw a -- nearly 400 percent increase just from that. And then you add to that, you know, the majority of owners, 600, who are going to be shocked that they are paying anything at all. So there's going to be a parade of people over the next few years. So hopefully we can get this ready.

So I thought -- are my slides here? Great.

(Thereupon an overhead presentation was presented as follows.)

MR. PRICE: Staff was incredibly patient and indulged my every question. Unfortunately there was a document that outlined in more detail what Colin just reviewed but I didn't have an opportunity to review until we had a conversation.

But the agreement is, it's difficult to assess the
value for a residential pier because those aren't on the market. You need to base the value on something, and principle of substitution certainly makes sense. The State should, in my view, as an individual, collect lease payments for these piers as opposed to having them be free. Others may challenge that, but I think that's reasonable and fair.

A call-out to the staff for their help. Needs to be consistent, needs to be local to the market, and to have a common and simple-to-understand approach. I don't think there's any disagreement, I hope, in any of those points.

I will just go through the next three slides quickly. Can I advance them? Oh great.

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MR. PRICE: So Mary already put that up.

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MR. PRICE: And I don't have any slides of the pier, just cool pictures. So this was an August day with mist, which I thought was cool. But it just gives -- this is the summer before last. And the reason I wanted to put this in here -- because one of the issues that I have is regarding the use area. And you can see, the lake level
is relatively high, but there's just no way a boat can practically dock against most of the pier. I mean, it's only one little area where we have a catwalk where we can actually use the pier. So I get into that.

Again, the seasonal aspect of Lake Tahoe, just wanted to emphasize that. And then even over Memorial Day weekend, even during high season, it can enjoy wonderful weather.

So Colin went through all this. I'm presuming there are no questions.

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MR. PRICE: And then this is for the buoys. Again, Colin -- I just replicated that.

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MR. PRICE: The challenge that I had in going through this -- and again, just for my background, I'm a manager of a nonprofit. I'm not a lawyer. I'm not in real estate. I'm just a guy reading through some really complicated stuff and trying to synthesize it.

So late last night, over the internet, I just tried to find some comparables to slip -- 25-foot slips. So near Homewood and Tahoe Keys, that's what they are charging for five months, September to May.

If you look at the figure, and everything in
quotes is from the benchmark. If you look at the figure 841.50, that's from the benchmark. If you apply the seasonal amount for that, it's $4,207.

If you have ever been up to Tahoe in the winter, and you walk by a marina, there are going to be maybe one or two boats, and they are going harbor patrol and other folks. People are not on the lake in winter because of storms and snow and everything else.

So Colin did mention the principle of substitution, that if we didn't have a pier, we would pay $10,000 a year. Much more likely, we would be paying around $4,200 a year, which is in line with the benchmark, because we use it seasonally.

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MR. PRICE: So the calculation, if you go back here, it takes this -- this is, again, the benchmark numbers. It takes the monthly number, which is, again, the high season number, and then multiplies it by 12. Tahoe Keys does offer winter rates, which are incredibly low and incredibly available. Everyone is completely booked for the summer. So that's the first challenge. I'm not understanding why they are using the high season and I'm not understanding why staff is using a 12-month multiple on that. It just seems to make sense to me,
again, the number that they have, the monthly rate, completely aligns with what the market is saying for seasonal. So those are the first two issues.

And then I went ahead, just because I really enjoy PowerPoint, and calculated what the rent would be using a seasonal rate. And that's what this section is here. So using, again, the same numbers, the 5 percent rate of return, generates that level of income, attributed to the submerged land, divided by the 628, again, in quotes, which is there. I'm not sure where that comes from, but it's basically the amount of land that should be under a commercial marina for a 25-foot boat. But using that number, you come up with that square footage.

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MR. PRICE: Any questions on that, so far? Am I on a roll? Keep going. Okay.

So the second area of confusion for me was that the -- the seasonal versus annual, we already talked about. The calculation of the buoys, they didn't use the market rate. What they used was a 1992 rate of $93. They then escalated that by the market rate that they calculated, compared to the 1992 rate, and just calculated that increase and multiplied it times 92, as opposed to using the market rate, which it doesn't make sense why they did that.
The second thing is that they increased the swing area, which makes sense. But if you take a look at the actual rate in their benchmarks for a buoy, which is $541, multiply that times the seasonal rate, which is $2,700, and then if you look at -- again, this was online last night. The seasonal rate for a buoy in Homewood and Tahoe City ranged between 27 and 33 hundred. So we're within the ballpark. If you then use that -- their own rate and go through their same calculations, the larger swing radius, calculating the square foot, but then apply the 5 percent rate of return, which they don't do in the buoy calculation. In the buoy calculation, they calculate the entire radius and you pay rent on the entire radius; whereas, in the slip -- I should be a consultant about this, by the way. With the slip, you calculate the rate of return, which is just the 5 percent. So there's an inconsistency there that doesn't make sense to me.

And then I think I covered all those inconsistencies. So any questions on that? No? Okay.

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MR. PRICE: And then the third is absolutely -- it's a challenge figuring out how you charge for a residential pier. So using something that's similar makes sense.

The challenge that I have is that if you have seen
a commercial marina, it's protected -- boats are very
dense, everything's stacked up in there -- versus a
residential pier -- most of the piers in Tahoe are open
pile so swimmers and canoers and ducks and everything else
go back and forth under the pier, and you can't tie up
your boat if you don't want it damaged, because storms
come up, waves come up, winds, and it's just going to
smash against an open pier.

So the challenge that I have is that they have
taken the evaluation of a commercial marina and just
applied that, without any changes, to a residential pier.

So in the benchmark, they have calculated a
double-berth layout, which makes no sense to a residential
pier, to use that concept throughout the entire
calculation of what they are doing.

And then the second part of that is the use area
itself. I understand that it's been practiced, but it
doesn't make it a good decision, even if you have been
doing it for 40 years. I don't think anyone has really
brought this up, because if you are getting a lease with a
giant use area around it, but you are just signing
something for ten years and there's no dollar amount, it
doesn't really matter to you.

So what the actual impact of this has is that if
you calculate and then the state -- these are the State's
numbers. If you calculate the square footage of our pier, it's 1,150. If you add the 10-foot use area around it, which, in talking with staff, it is, you know, the presumed area you can park jet skis and boats -- which is completely impractical, because they are going to go under the dock and slam up against the pier -- but that increases the lease area by 250 percent by just broadening that large area around it.

Now, the executive director last month did make a concession -- because I presume I'm not the first person to come up to staff with this -- and change the price associated with the use area a 50 percent discount, which was explained to me -- and Mary mentioned it -- as seasonal usage, as opposed to actual usage. So those are the issues with the use area.

Staff does have a precedent as far as not charging use area where it's not practical. So if there is a boatlift, which we don't have a boatlift, that area would not be calculated as a use area. And if you have a boathouse that has walls that go down in the water, that area, where you couldn't tie up a boat, wouldn't be calculated as a use area. So there's precedent for this. And what I would argue is that you should charge a use area where it's being used. And each lease goes through this calculation.
MR. PRICE: You know, in the map --

MR. PRICE: -- you know, the State is doing this, anyway.

MR. PRICE: I don't think it would be very difficult to either have the applicant just circle where their boat is, as opposed to this presumed imaginary -- you know, I can dock ten boats along the pier, which it doesn't seem to make sense.

MR. PRICE: And then the last thing is, obviously, my focus is on Lake Tahoe and our little slice of it. The staff is looking at the entire state, and I think one of the challenges is that a pier is a pier, so if you look at the delta, completely different usage. You don't have the same type of weather patterns. You don't have seasonality; it's a longer season. So you do have tie-ups around piers. And that kind of same concept of commercial was implanted on residential and the same delta use was put on residential.
MR. PRICE: So in summary, the inconsistent use of submerged land attributed to income -- so that 5 percent rule that Colin went through -- was used for the slips and not for the buoys, and I'm not sure why.

The inconsistent application of local conditions and seasonal use. So in buoys, they used seasonal calculations, but in the slips, they used the high season, and then stretched it out over 12 months.

And then for the buoy calculation, at least, they weren't using their own market rates. They were taking a 1992 rate, upped it by a percent increase, which, again, didn't make sense to me.

And then the whole commercial -- the pier use area doesn't make sense. I mean, it seems to me that you want to charge for the pier and charge for the area that you are using. And then I didn't realize that there was 600 folks like me in line.

And then one thing I would ask is that there is a Lakefront Owners Association. A representative there has been helping me, just because this is all new to me and understanding the language. One of the things that I would request is that the Commission ask staff to engage stakeholders, and this is a significant stakeholder, to review these issues so that you don't have to hear from
folks like me in the future.

ACTING CHAIRPERSON GORDON: Any questions?

COMMISSIONER NEWSOM: I got so many questions I don't even know where to begin.

ACTING CHAIRPERSON GORDON: Bring staff back up.

COMMISSIONER NEWSOM: I hope you wrote all those concerns down. You want to sort of knock through them?

EXECUTIVE OFFICER FOSSUM: Let me mention something initially. We certainly appreciate the analysis that Mr. Price has given us.

When the question was asked about notifying property owners and so forth, he just mentioned the representative from the Tahoe Lakefront Owners Association, that representative or lobbyist participated at the hearings in the Legislature when this bill was going on -- in fact, spoke with the author's office -- and that's why some of the provisions in the new law were enacted. For example, local conditions, but also as to the deadlines, cutoff deadlines, for when these things would be implemented.

Commission staff and the Commission have actually been improving leases over the last three years that would have made these rates retroactive -- not retroactive, but leases that were already in existence for the last three years had provisions that would have allowed us to charge
rent immediately instead of waiting ten years.

Those things were all amended out at the request of the representative of the Lake Tahoe Owners Association. So their representatives are fully aware of this law, even if they didn't contact their clients.

MR. PRICE: But if I'm not mistaken, there hasn't been an actual meeting where the Commission has asked you to connect with stakeholders --

EXECUTIVE OFFICER FOSSUM: That's correct.

MR. PRICE: -- and have a conversation at Tahoe.

EXECUTIVE OFFICER FOSSUM: And we will be -- doing it now.

ACTING CHAIRPERSON GORDON: There's a suggestion for some kind of a workshop with staff with the applicant.

Mr. Newsom?

COMMISSIONER NEWSOM: Well, I just -- you know, let's just knock right through all these points and get your feedback. Does any of that make sense? Do you disagree with all of it?

EXECUTIVE OFFICER FOSSUM: Could you turn your microphone, please?

COMMISSIONER NEWSOM: You heard me.

LAND MANAGEMENT ASSISTANT CHIEF CONNER: Yeah.

Mr. Price has shared these concerns with us in a prior conversation. And I think the biggest thing is trying to
I understand the benchmark. It is complicated. I think the underlying principle is easily understood: Substitution. But how do you get there?

I think one of the key things -- and I just want to talk about a couple of things. One is, when we were talking about the pier and we're comparing it to a marina, the pier is fixed for a year. I mean, the pier is there. We are charging for a structure that is there all the time. For rent-setting purposes, we're going to the marinas to get an idea of what they are charging for rent. And then we're saying, we don't own your marina improvements. But that's -- that pier, you can't look at that from a seasonal basis. We have to charge for the annual occupancy. His pier, his recreational pier, is out there twelve months a year. Whether or not he has a boat on it, he's using it, whoever is using it. It's there.

So we're taking the information from the market and we're applying that on an annual basis. We think we're being reasonable by looking at only a 5 percent percentage of that. Okay? If you just even looked at the numbers that he provided, at Obexer's or something, you would be paying over $4,000 for a slip or, you know, 3800 to 4,000.

MR. PRICE: For a season.

LAND MANAGEMENT ASSISTANT CHIEF CONNER: What's
the proposed rent at this point?

  EXECUTIVE OFFICER FOSSUM: Twenty-seven.

  LAND MANAGEMENT ASSISTANT CHIEF CONNER: $2,700 for a structure that's going to stay there forever, basically. You have got the annual ongoing use of this structure. So we think that's reasonable. And the same thing is, with the buoys, from the information that he compiled, we are charging $340 per buoy for the year. If you are using it beyond the season, great. You have got the right to do that. You don't have to take it out.

  The seasonal rates that he's quoting are several thousand dollars. Again, we think this is reasonable. The methodology, while complex, I think from back in the '80s -- and I wasn't around -- was designed to be reasonable. What is a reasonable -- you know, a reasonable way? How do we get there? This is the process that was developed. And on both counts, while the -- again, the math might be, you know, hard for the layman to follow, the results are very reasonable.

  ACTING CHAIRPERSON GORDON: Doesn't it seem like -- as a nonmathematical wizard, let me see if I can get to kind of the bottom of this.

  So Mr. Price, your argument is that they are charging you a high season rate for 12 months as opposed to, say, the six months when it might be in heavy use.
MR. PRICE: Well, again, I'm conceding that you have to base it on something. And the challenge that I have with the methodology is that the method is an income stream method, which is primarily seasonal. And what they did was they took that high season rate and applied it year-round.

The second point, from Collin's comments, was that these piers just didn't grow out of the ground like mushrooms. The residents have built them as well. So the exact same argument for the commercial, as far as, you know, rate of return and everything else, the residents have built it. So again, I'm using their numbers.

ACTING CHAIRPERSON GORDON: Let me kind of go beyond the numbers here.

MR. PRICE: Sure.

ACTING CHAIRPERSON GORDON: If the cost to put the boat in a marina for six months would be 4,000-some-odd dollars --

MR. PRICE: Right.

ACTING CHAIRPERSON GORDON: -- if you didn't have a pier --

MR. PRICE: Right.

ACTING CHAIRPERSON GORDON: -- and, yet, using all these very complex calculations, you come up to an annual rate of $2,700 --
MR. PRICE: Right.

ACTING CHAIRPERSON GORDON: -- it strikes me, without going through all the math, that it's a fairly equitable result for the property owners.

MR. PRICE: What you are not considering, though, is that the pier didn't just appear. So there's building of the pier. We've had continued maintenance of the pier. Storms hit and took out our catwalk. So the exact same argument that is used for the commercial seems to get disconnected when you are talking about a residential pier. Meaning, you could pay several hundred thousand dollars to build a pier and have this $2,700 rent, or you could save several hundred thousand dollars and not build a pier, and pay 4500 a month -- or a season. Does that make sense?

EXECUTIVE OFFICER FOSSUM: That is a rationale for only charging 5 percent as opposed to a marina would be a hundred percent. So we're taking 1/20th.

I would also like to mention one thing, and that is, while there isn't typically a market for these things outside the marina, we have seen, from time to time, advertisements, either in the papers or on Craigslist or something like that, where individuals on the lake have offered, for a week or something, to lease their buoys or docks, and sometimes those are in excess of a thousand
dollars for one week -- obviously in high season, maybe on
the 4th of July or something -- but very high rates for
those.

And, in fact, there's been kind of a waiting list
for people who don't have piers on the lake who would love
to have one, but because of the complications that have
been going on with the Tahoe Regional Planning Agency and
trying to get their environmental regulations approved,
they actually had people applying to give a hundred
thousand dollars to TRPA just for, basically, a mitigation
fund to apply, because of the impact it had on the lake.

What we think -- and this really gets maybe more
into the 10-foot use area around the lake. Obviously,
some piers, people can dock there, but many of them -- as
you see in Mr. Price's -- would be unlikely to use it very
much of the time. And we may have referred to it as a use
area in there, but, in essence, it's really a -- public
isn't going to be using that area. It's a visual and
psychological impediment, I think, for the public being
able to go out on the lake. And I wouldn't -- typically,
if I was out kayaking or canoeing or boating or fishing
wouldn't pull up within that ten feet of the person's
pier. It's probably a much larger area that the public
would be unlikely to use out there just because of that.

And so that's the real reason that we have a
10-foot area, and it's also the reason that we have discounted 50 percent. We talked about it a lot. And the fact is, the fish get to swim through there and the ducks and everything else in those areas, but the public isn't likely to go there, so they are being excluded, and that's the rationale behind it. So it's kind of a nonuse area for the public, even though it can be used.

ACTING CHAIRPERSON GORDON: Mr. Newsom?

COMMISSIONER NEWSOM: That was my remaining question. I mean, you were shaking your head at -- I won't say dismissively, but in -- give us your sense.

LAND MANAGEMENT ASSISTANT CHIEF CONNER: Right. I think that Curtis touched on it. We're going through this mathematical function relating to piers -- excuse me, a marina, you generate $10,000. Okay? A marina operator, he rents out that slip and he generates, over the course of that year, $10,000, or maybe he doesn't get it for the full year. Maybe he's -- some boats are taken out, I get that.

He's basing his rates on that, though, that his facility is out there on an annual basis. And whether or not there's boats on a seasonal basis or maybe some stay out there, he's collecting just enough rent to help him pay off that annual facility, to make a profit on it as well.
We're trying to reflect that by saying, hey, we're only taking 5 percent annual return on that because we recognize your investment. How he charges rent and collects his rent and structures his rent, he knows that his marina is going to be out there every year as well, and so he might have to make his rates high during the summer. He might -- a lot of people keep their vessels in there. But again, we're looking at only 5 percent of that.

It gets back to, what is a reasonable rate of return on our contribution? Our contribution is the submerged land.

COMMISSIONER NEWSOM: It's understood.

ACTING COMMISSIONER REYES: I guess the way I look at this is that based on the calculations is sort of a proxy. You could come up and say, it's going to be a dollar and a quarter plus a X percent surcharge for a land around it. A dollar and quarter per square foot plus X percent and then call it a day. And then people challenge, how do you arrive at a dollar and quarter? We can call it, you know, 25 cents, people will challenge, how did you get to 25 cents. So the way I look at it is, it's kind of a proxy. And you do the discount by doing the 5 percent.

And the -- I have spent a lot of time up in Tahoe
and I'm in the Tahoe Conservancy as well. And then -- so I'm sort of with staff, that when you are canoeing around the area, you don't have a tendency to go under those piers. You have a tendency to respect that and view that as -- knowing better, I still respect it as a private property. If I'm out there with my family, the dock, I wouldn't want people swimming under that thing. So that's kind of the way I look at it.

So I just view it as a proxy and the best guess by staff is a proxy that we use. And I think it is a sticker shock because we haven't done it before, and I think it's a critical part. More than anything else, it's something that we're now required to do.

COMMISSIONER NEWSOM: Just -- not to get off topic, but the issues of the back rent, those are not issues for you?

MR. PRICE: No. Staff was very accommodating. Again, it was just a surprise to us. And then digging into it, why do we owe rent and how is that calculated?

COMMISSIONER NEWSOM: Yeah.

MR. PRICE: But, again, you can go on the internet and you can see what the seasonal rates are. Colin and I did have a conversation about this. But it just -- it's not $10,000 a year. I mean, you can see online, they are charging $4,000 or so for the season and then the marinas
are empty in the wintertime. So to base it on a $10,000
number, granted, it has to be based on something.
Absolutely. But at least start with what's actually
happening in the market, and instead of a number that
can't be supported by the market.

ACTING COMMISSIONER REYES: Would it be better if
they used the number and do the dollars per month for the
five or six months as seasonal, and then don't do a big
discount? Do a 50 percent instead of the 5 percent?
There's different ways to get to --

MR. PRICE: So if I had to call it, I think what
would make sense would be to start with the market rates
for both the buoys and the slips, which there's
inconsistency there, which would both be seasonal in Lake
Tahoe, and apply the rent to the pier itself -- I think
that is completely reasonable -- and then apply the rent,
this use area, to where a boat could be used for
offloading.

But I think you are going to have a lot a people
saying, why am I spending rent -- you know, why is my rent
going up 250 percent because of this use area? And we do
have a lot of folks that go right under our pier. So I
mean, granted, it is a visual barrier, but it's not
completely off limits.

ACTING COMMISSIONER REYES: So let's just say for
now that we disagree on the surface area. But if we were
going your route and we use the monthly rate and limit it
to the deck surface area and did not do a discount at all.

MR. PRICE: Well, but the discount is applied to
the use area. It's not applied to the pier.

ACTING COMMISSIONER REYES: Got it.

MR. PRICE: So there's the pier. And then there's
the 10-foot use area which increases, in our case,
250 percent of the leased area, and then that 250 percent
is then discounted to 125 percent of the increased lease
area.

ACTING CHAIRPERSON GORDON: Let me see if I can
summarize where we are right now. The Commission has
several options before us. First option is that we could
pass the -- we can go for exactly as it is marked up here
on Item 22, which would be both back rent and going
forward.

We could split it. We could implement the back
rent and split going forward and determine that we wish to
have maybe some workshops with the owners over there and
look at the formula that is being used and bring this back
at a future date.

Or we could reject everything that is in No. 22
here, both the back rent and the forward rent, and bring
the whole thing back.
I leave it to the other members of the Commission to determine which direction they would like to go at this point. If we could get a motion on one of these items.

Curtis, you are looking perplexed by those options.

EXECUTIVE OFFICER FOSSUM: I am perplexed only that it would postpone some of the elements. Might I suggest that what we could do is -- this is my suggestion: Approve the item and direct the staff to go back and look at some of these issues that Mr. Price has brought up. And if -- at a subsequent Commission meeting, we bring them back to you for a presentation to modify the approach we've taken, that that would be retroactive for Mr. Price as well and any other Lake Tahoe property owner that might be approved at today's meeting. I think we want to treat everybody the same.

ACTING CHAIRPERSON GORDON: Would that work for you if we approve with the caveat in the record that we are going to go forward, review the calculations, and come back at a future date, after holding some, maybe, workshops in Tahoe with the property owners to determine if this calculation works?

MR. PRICE: Yeah. I think the option 2, as you outlined, made sense. But I think there's a disconnect because I'm hearing workshops and meetings with
stakeholders, and I'm hearing from the executive director to just meet with me. So I think meeting with stakeholders would be incredibly helpful because that would help -- you know, I'm just one circumstance. So I think getting more folks involved in that and understanding what the issues are.

EXECUTIVE OFFICER FOSSUM: That's fine. I think Mr. Price has outlined probably other remarks that some of the people have commented to us and done an eloquent job of doing so. It certainly is another position to look at, so I think we're certainly willing as staff to try and be reasonable. We think we already are reasonable, but there's different ways to approach this, and so we're prepared to look closely.

We are doing a new benchmark this year for Tahoe, so the rates are likely to go up again.

As far as the 2007 benchmark, there is another five years in the can that we will have to look at what values may have changed in that period of time. But we always want to be reasonable and so we're certainly willing to reassess this. And if the Commission wants us to have a hearing or a workshop up at Tahoe to get input on these issues....

ACTING CHAIRPERSON GORDON: Mr. Reyes, do you have a motion?
ACTING COMMISSIONER REYES: Yeah.

DEPUTY ATTORNEY GENERAL RUSCONI: Excuse me, Commissioners. I just want to put something on the record, that if that's the approach you want to take, I just want to make sure that Mr. Price understands that if this lease is approved as it is now, if he wishes to challenge it, then the clock is going to start ticking on his challenge to the Commission's action, should no change happen in the future. Just want to make sure you understand that.

ACTING COMMISSIONER REYES: Is there a way to -- I mean, the question here is, we want to direct staff to take another look at this. We have information. Talk to the folks in Tahoe and see if there's something there that could be taken into consideration when establishing this. If, in fact, nothing can be done and, in fact, the current ruling stands, then I would like the clock to start, for purposes of his appeal, at that point, when folks walk away.

Can we, on the record, provide for an extension or leave the item open? Because, you know, if we stall this for three months, then it runs out of time and I don't think that would be equitable.

EXECUTIVE OFFICER FOSSUM: Commissioner Reyes, he always has the opportunity to re-approach the Commission
to ask for a modification in that regard. You can always amend the lease. What I am suggesting is that if the Commission decides at a subsequent meeting to direct staff to use a different approach to calculate these things -- as Colin said in his original presentation in the first few slides, the Legislature has directed the staff to charge rent for these things --

ACTING COMMISSIONER REYES: Correct.

EXECUTIVE OFFICER FOSSUM: -- but your regulations do give you flexibility as to how you do this, so it's up to the three commissioners. These are staff recommendations as to how we've approached it at this point. We think it's fair and reasonable, and so we're recommending approval of this. But we will certainly take your direction, and if your direction in the future is to modify these rents retroactively, we can do that as well.

ACTING COMMISSIONER REYES: So here's kind of --

EXECUTIVE OFFICER FOSSUM: If he wants to challenge it legally, is that what you are getting at?

DEPUTY ATTORNEY GENERAL RUSCONI: I think the question he asked is whether we can toll running the statute of limitations on the challenge, and, yes, the Commission can do that.

ACTING COMMISSIONER REYES: Okay. And I wouldn't want that to happen. And I guess that's what I want to
say. Is that the -- so I'm prepared to move with staff's recommendation to approve the lease now, but I also want to be clear and ask staff to spend time with the association and the property owner right now, in the near future, to try to take a look at this. If the decision -- when do we meet next? In two months?

EXECUTIVE OFFICER FOSSUM: March.

ACTING COMMISSIONER REYES: March. So by March, I think, you should be in a position to tell us -- we can put it in the agenda as, this is a new methodology or no changes to the methodology. Then at that time, if there are no changes to the methodology, at that time, his clock would start.

And I don't know if that's an action of the board or if we preclude him from making that. Because then at that point is when he's going to know that, you know, I want to pursue other courses.

ACTING CHAIRPERSON GORDON: So what I am hearing would be a conditional approval of the lease for the two months until our March hearing, at which point we would bring the lease back for a final approval at that point in time. Does that summarize your point, Mr. Reyes?

DEPUTY ATTORNEY GENERAL RUSCONI: I wouldn't consider it a conditional approval. I would say that it's approved.
However, the Commission will toll the running of the statute of limitations on any challenge until the next meeting.

EXECUTIVE OFFICER FOSSUM: And the Commission staff will bring the Commission, at the next meeting, an agenda item that will have a staff report on what's taken place and if --

ACTING COMMISSIONER REYES: Whether or not we're changing the methodology --

EXECUTIVE OFFICER FOSSUM: That's correct.

ACTING COMMISSIONER REYES: -- and if the methodology changes and impacts this property owner, then it will be adjusted accordingly.

COMMISSIONER NEWSOM: For the Chair, my only concern about that, in the next two months you are not necessarily going to have had an engagement with the stakeholders in Lake Tahoe. So I imagine the methodology most likely won't change because you haven't had enough engagement except for with the applicant himself. Nonetheless -- oh.

PUBLIC LAND MANAGER HAYS: Through Mr. Price, we have talked with the executive officer from the Lakefront Property Owners and said that we were going to be setting up a meeting within two weeks after this Commission meeting to discuss this.
COMMISSIONER NEWSOM: Good news. Then I think the
direction makes a lot of sense. That's fabulous. I
certainly would support that direction.

MR. PRICE: Can I play back what I think I heard?
So there's back rent that I think goes through
October 2011? Okay. So we'll get an invoice for that.
The new lease would be from October until -- five years or
ten years? Ten years. But we won't know that current
rate until this all gets sorted out. And I'm not sure of
the comment about the toll. So I don't know what that
means.

ACTING CHAIRPERSON GORDON: Counsel, would you
explain what you mean by the toll?

DEPUTY ATTORNEY GENERAL RUSCONI: The rent that is
currently in the calendar item in the proposed lease will
be approved under -- my understanding of the motion --
starting in that date, it might be changed in two months,
based on the staff's work. However, it might not.

MR. PRICE: Right.

DEPUTY ATTORNEY GENERAL RUSCONI: But your ability
to challenge that new rent will not start, the clock won't
start, until the next meeting.

MR. PRICE: Got it. Okay.

ACTING CHAIRPERSON GORDON: Do you understand?

MR. PRICE: Yep.
EXECUTIVE OFFICER FOSSUM: One other item. What we would like to be able to do is send this to -- this is what we do with reimbursement agreements is, they submit the funds to the State and then they're reimbursed.

For example, we received a letter from one applicant in Huntington Harbor who submitted his $2,500 and was sending a letter complaint that he -- you know, why am I having to spend all this money? And I'm not getting interest on it. The State is keeping it. Our records show that he will be -- as soon as he signs the lease -- getting back $1,800 of that $2,500.

So what we would recommend is that if the Commission in the future does change these calculations or agrees to that, that we would refund those anybody who paid it. It should be paid now so the contract is valid. They have not been under a valid lease for the last four years because of the change in ownership and so we would like to have a lease in effect.

ACTING CHAIRPERSON GORDON: So what you are -- let me see if I can understand what you are saying.

So Mr. Price would begin paying immediately based on the amount set in the item that is before us. However, if come the March meeting, we determine that we would lower that or raise it after we calculate, that the amount of --
EXECUTIVE OFFICER FOSSUM: I think -- he has said if he signs the lease, he's not going to be able to raise it.

ACTING CHAIRPERSON GORDON: If we were to lower it, that he would get refunded his money --

DEPUTY ATTORNEY GENERAL RUSCONI: Back to October.

ACTING CHAIRPERSON GORDON: Yes. Okay?

ACTING COMMISSIONER REYES: That's my motion.

COMMISSIONER NEWSOM: I will second it.

ACTING CHAIRPERSON GORDON: All those in favor?

(Ayes.)

ACTING CHAIRPERSON GORDON: All those opposed?

Nice job.

MR. PRICE: Thank you so much.

EXECUTIVE OFFICER FOSSUM: Chair, if I could, I would like to ask the Commission to take up Item 91, our legislation, next. The reason for that is that we may lose a quorum for voting purposes, our inability to vote on that if we don't have enough commissioners present.

ACTING CHAIRPERSON GORDON: Okay. Let's move to Item 91.

CHIEF, EXTERNAL AFFAIRS PEMBERTON: Good morning. Presenting on Item 91 -- and we have three -- or five legislative proposals. The first deals with --

THE REPORTER: State your name, please.
CHIEF, EXTERNAL AFFAIRS PEMBERTON: Sheri Pemberton.

The first legislative proposal deals with quitclaim deeds for land leases. There's an existing bill, AB 1054, authored by Assemblymember Skinner, that delays the effective date of a quitclaim for a lease with the Commission until the lessee reclaims or restores the land. And AB 1054 is nearly identical to a bill that Commission sponsored two years ago that the governor vetoed.

And as background, current law, enacted in 1955, allows a lessee to file a quitclaim at any time, at which point they no longer pay rent on the land, and they may reclaim or restore the land for many years after it has filed its quitclaim, and so the State is unable to collect rent or use the land for any other purpose during that time. And in addition, the lessee is not required to maintain their insurance or their bond so the State's liable for any financial risk or property damage.

So we think this bill would remedy that situation by delaying the effective date of the quitclaim until the Commission approves the restoration. So this bill was approved by the Assembly Natural Resources Committee and the Assembly Appropriations Committee earlier this month, and should be voted on by the full Assembly today and the
recommendation is for the Commission to sponsor that, that legislation.

ACTING CHAIRPERSON GORDON: So moved.

COMMISSIONER NEWSOM: I have no questions either.

ACTING CHAIRPERSON GORDON: All those in favor?

COMMISSIONER NEWSOM: That recommendation moves forward to legislation.

CHIEF, EXTERNAL AFFAIRS PEMBERTON: And the second legislative item involves a title settlement and land exchange with the City of Newport Beach that the Commission approved last year, and it's simply, when settling the title and boundary dispute with the City, we acquired a public trust parcel as part of Marina Park Title Settlement and Land Exchange Agreement that the Commission approved last year and the governor signed in January. So a provision of that agreement just requires the Commission and the City to pursue legislation to include that public trust parcel in the City's Statutory Trust Grant.

So the recommendation is to sponsor that legislative proposal.

ACTING CHAIRPERSON GORDON: Is there anyone in the audience who would like to speak on that? A motion?

COMMISSIONER NEWSOM: Moved.

ACTING CHAIRPERSON GORDON: Second?
All those in favor?

(Ayes.)

CHIEF, EXTERNAL AFFAIRS PEMBERTON: And the third --

ACTING CHAIRPERSON GORDON: Passed.

CHIEF, EXTERNAL AFFAIRS PEMBERTON: Thank you.

The third legislative item is very similar. It also involves a title settlement and land exchange with the City of Long Beach that the Commission approved last year and the governor signed in August of 2011. And that title exchange -- that title settlement and land exchange agreement includes a provision that the Commission and the City will also pursue legislation to include those final public trust parcels in the City's Statutory Public Trust Grant.

ACTING CHAIRPERSON GORDON: Would anyone in the audience like to speak on that item?

Do we have a motion?

COMMISSIONER NEWSOM: I will move it.

ACTING CHAIRPERSON GORDON: Second.

All those in favor?

(Ayes.)

CHIEF, EXTERNAL AFFAIRS PEMBERTON: Thank you.

The fourth proposal involves trespass and this was a bill that the Commission sponsored in 2009 that the
former governor vetoed. The rationale for the bill is that the Commission regularly deals with trespassing structures and facilities on state lands and our only remedy, if the person responsible refuses to apply for a lease or remove the structure, is to take the person to court, which involves significant attorney general time, staff time, and a lot of money. And there's also really no deterrent for a trespasser when they are making that initial decision whether to come under lease or remove the structure.

So I think, in practical terms, it takes about three to five years from the first contact to retaining the services of the attorney general. So in that time frame, the trespasser is occupying state lands and we aren't receiving any revenue or able to manage the land for any other purpose.

So this proposal would give the Commission administrative authority to impose monetary penalties against the person for trespass, and that's consistent with the authority other states have and other state agencies --

COMMISSIONER NEWSOM: If I may, Mr. Chairman, what was the rationale for the veto? Do you recall reading a veto message?

CHIEF, EXTERNAL AFFAIRS PEMBERTON: Yeah. The
governor felt the bill was too broad and there could be
due process considerations for private property owners.

COMMISSIONER NEWSOM: Is this -- does this new
legislation take into effect those concerns, or is it
literal, or are we just resubmitting the old legislation
as is?

CHIEF, EXTERNAL AFFAIRS PEMBERTON: I think at
this time our intention or recommendation is to resubmit
the previous proposal and we feel that there are adequate
due process provisions in the bill. There's eight
different mitigating factors. There's a 60-day area
carryover there. There's a 30-day notice provision to the
individual. They have the opportunity to come before the
Commission. They have the opportunity to apply for a
lease, remove the structure and --

ACTING CHAIRPERSON GORDON: Which governor vetoed
this?

CHIEF, EXTERNAL AFFAIRS PEMBERTON: Arnold
Schwarzenegger.

ACTING CHAIRPERSON GORDON: The rationale may not
apply --

COMMISSIONER NEWSOM: I hear you.

ACTING CHAIRPERSON GORDON: Do we have any
comments from the public?

A motion?
COMMISSIONER NEWSOM: So moved. Support.

ACTING CHAIRPERSON GORDON: Second.

All those in favor?

(Ayes.)

ACTING COMMISSIONER REYES: Mr. Chair, I will abstain.

ACTING CHAIRPERSON GORDON: It is approved, two-nothing.

CHIEF, EXTERNAL AFFAIRS PEMBERTON: Thank you.

And the fifth proposal involves a recent Bureau of State Audit report stating that the Commission is not adequately enforcing their insurance and bond requirements. Current law requires most lessees to ensure their premises and post a bond. The specific insurance and bond requirements vary depending on the type of the lease, the size of the structure, and other factors. The BSA report found that the Commission, as I mentioned, is not consistently ensuring that lessees maintain their bond and liability insurance. So their report and subsequent recommendation to the Legislature suggested that we consider seeking legislation to provide the authority to assess a monetary penalty against lessees who are out of compliance with their bond or insurance requirements.

And staff is continuing our research and working toward developing legislation to do that. So the
recommendation is just to -- for staff to continue that
process with the intention or hope of introducing a bill
this year.

And that's the last item.

ACTING CHAIRPERSON GORDON: Comments from the
public?

We have a motion.

MS. HALL: I do not believe --

ACTING CHAIRPERSON GORDON: Can you please come up
to the microphone and identify yourself for the record.

MS. HALL: I am Diana Hall, and I believe that
it's just too easy for you guys to just shove this stuff
down the public and not consider them. I think you are
taking advantage of the public.

ACTING CHAIRPERSON GORDON: Specifically with
regard to what?

MS. HALL: Well, I'm not very good at speaking,
but I'm just telling you, the things I'm hearing are
very -- like, pushing through the previous one, and now
you want to start a new bill. And who reads these bills?
Do you read these bills?

ACTING CHAIRPERSON GORDON: Ma'am, just first,
it's a legislative process. These bills -- they are
introduced, they go online. They cannot be heard in
committee for 30 days after they have been introduced.
There are various bills that go through the Legislature. If someone doesn't know about, they will be noticed. You can sign up. There are websites for all different kinds of subjects that go through the Legislature.

So what you are objecting to -- you do understand, this is a piece of legislation. It will go through five or six committee hearings in the Legislature, have to be voted on by both floors, and then be signed by the governor before it would then become law.

MS. HALL: Okay. I just think at this level, that you go a little too quickly on to these things. I think we need less restrictions so that people can have a way to make a living and to be able to support this California, period. We live here.

ACTING CHAIRPERSON GORDON: Let me make a suggestion. If we go ahead and authorize this piece of legislation, it will be introduced. It will be posted on the Commission's website.

MS. HALL: Okay.

ACTING CHAIRPERSON GORDON: I would go to the website, find out about it. Any hearings on the bill in the Legislature before committees will be posted. You will have an opportunity to show up in the Legislature, if you so choose, to testify for or against the legislation at that point in time.
That will take -- if they drafted the bill this week, it would be introduced in the Legislature somewhere around February 24th. It would have until September 15th to move through the Legislature, through all those processes. So it would be six months with numerous legislative hearings where you would have the opportunity to be notified and check online, the progress of the bill, and support or opposition that you might have.

And if you look at the analysis of the bill that will appear online, you will see organizations that will come down and support or oppose. You have an opportunity to call those organizations, get to work with them, and work through the process if you have problems with the legislation. But just a suggestion.

MS. HALL: Okay. But just getting these things there, and then it's up to the public to fight against them, I think you should have more concern of what you are putting there on your own behalf. That's what my feeling is. You should know what it is so you can put -- not just get them in there and then it's up to the public to fight it. You need to take it into more consideration before you put it there. It causes way too much work for everybody.

ACTING CHAIRPERSON GORDON: Thank you, ma'am.
ACTING CHAIRPERSON GORDON: Do we have a motion on the item?

COMMISSIONER NEWSOM: I move the item.

ACTING CHAIRPERSON GORDON: I will second it.

All those in favor?

(Ayes.)

ACTING COMMISSIONER REYES: I will abstain.

ACTING CHAIRPERSON GORDON: And Mr. Reyes is abstaining for the vote on this.

EXECUTIVE OFFICER FOSSUM: Thank you, Mr. Chair.

Item 10, who indicating that they wish to be speaking to the Commission, that was pulled from the consent agenda, today, after hearing Item 22, they have -- I've let them know that the same terms would apply to them and so they do not wish to make a presentation at this time.

ACTING CHAIRPERSON GORDON: This is Item No. 10?

EXECUTIVE OFFICER FOSSUM: Yes. But I think it would be appropriate to do a vote on that as well.

ACTING COMMISSIONER REYES: I so move Item 10.

And also for any of the other leases subject to the same adjustments, that we allow for that as well as a clock, the statute of limitations.

COMMISSIONER NEWSOM: That's right. I support
that. So move.

ACTING CHAIRPERSON GORDON: So this is on Item No. 10. Do I have a motion?

ACTING COMMISSIONER REYES: So moved.

COMMISSIONER NEWSOM: Second.

ACTING CHAIRPERSON GORDON: All those in favor?

(Ayes.)

ACTING CHAIRPERSON GORDON: Next -- all right.

I'm going to do a little time management right now, just for everybody in the audience. I think the item that will take the longest for us, for the rest of the day, is Item No. 89, the biofoul management regulations. We are going to need a closed session at some point that will include the Lieutenant Governor, and he has informed me, he's got about another between 30 and 45 minutes. I am thinking we will probably going -- I think we're going to move right now to Item No. 89, which is the biofouling.

EXECUTIVE OFFICER FOSSUM: I was just going to suggest, if you wanted to take a break, we think the closed session would probably take about five minutes, and it may be that other people want to take a break as well. So it's up to you.

ACTING CHAIRPERSON GORDON: I will tell you what we're going to do. We're going to go into closed session right now. It will take us about five minutes. What time
1 is it right now?

SECRETARY LUNETTA: 11:43.

ACTING CHAIRPERSON GORDON: 11:43. At 11:55, we will come back to open session. So if we could clear the room, I think. If we can clear the room, so we can go into closed session, we will come back at 11:55 and continue with the agenda.

(Thereupon the meeting recessed into Closed session at 11:43 a.m.)

(Thereupon the meeting reconvened in open session at 11:56 a.m.)

ACTING CHAIRPERSON GORDON: Call the Commission back to order, please.

I would like to turn to Item 89 on your agenda, which is an update of biofouling management regulations for vessels operating in California waters. May we have a staff presentation, please.

(Thereupon an overhead presentation was presented as follows.)

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Thank you. My name is Chris Scianni and I'm a staff environmental scientist with the Marine Invasive Species Program in the Marine Facilities Division. And today I'm going to be presenting an informational item on the development of biofouling management and regulations for vessels
STAFF ENVIRONMENTAL SCIENTIST SCIANNI: I do want to say good morning -- good afternoon, Mr. Chair and Commissioners. Before I begin, I wanted to emphasize the purpose of our program as codified by the State Legislature in the Marine Invasive Species Act, and that is "to move the state expeditiously towards elimination of discharge of nonindigenous species into the waters of the state." So because that is the legislatively declared purpose of our program, it is the guiding principle behind all of our arguments.

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So to start with a bit of background, nonindigenous species are organisms that are transported by humans into areas that they don't naturally or historically occur. And if the conditions are right in these new areas, these organisms can become established and even invasive, and they may start to cause some of the negative impacts that are typically associated with invasive species.

These six photographs here are just six examples of the many organisms that are not native to California but have established populations in our waters. All six
of these have been associated with biofouling communities and all have negative impacts in California and throughout the U.S.

The impacts from invasive species are many, and they can include environmental impacts such as native species displacement and altered food webs; there can be economic impacts such as infrastructure damage, reductions in fishery yields, reductions in tourism, and in reduced tax revenues that are associated with that; and also human health impacts.

Overall, a peer review study from 2005 indicated that invasive species are responsible for about $120 billion in losses and damages each year in the United States.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So one of the ways that these nonindigenous species are moved all around the world is through vessel biofouling, which is one of the most important and, arguably, the most important mechanism for introducing nonindigenous species into coastal areas.

Biofouling is defined as the attachment or the association of organisms to the submerged or wetted surfaces of a ship. And it had been referred to hull fouling in the past, but it's now evident that the hull is
not the only surface of a ship that is susceptible to biofouling. And, in fact, many of the wreckage areas, that we refer to as niche areas, are more susceptible to biofouling than the hull itself. That's because these niche areas are often lacking effective antifouling protection, or they are areas that are sheltered from some of the hydrodynamic forces that are typically associated with the hull.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So in addition to the hull, some examples here are bow and stern thrusters, out-of-water support strips, which are areas where the vessel will sit on a support block while it's being dried off and while the rest of the ship is being cleaned and painted with fresh antifouling coatings. Those areas are not protected, and it's when water -- the ship goes back into the water, there is no protection there.

Additionally, a sea chest, here in the bottom, are recesses where the vessel will take water on board for a variety of purposes. And there are many others. These are just three examples of some of these niche areas that are more susceptible to biofouling.

And when we refer to biofouling, we're not only talking about the organisms that physically attach
themselves, like a mussel or a barnacle, but also mobile
organisms that live within that 3-dimensional structure.

So the example here on the bottom is a small octopus that
we found living on the mussels on a ship that had
basically been dried off a few years ago.

And this middle photo here represents a whole
suite of mobile organisms that were pulled from a single
sea chest on a vessel in New Zealand a while back.

On the bottom right photo is the same photo that
you saw on a title slide. And that's another problematic
niche area. It's a recess where a cruise ship stabilizer
fin will slide into, and, again, this area is often
unprotected or underprotected with antifouling coatings or
added, additionally, to an area that's sheltered from some
of the high velocity water flows. So it is more
susceptible. And, basically, I put this picture up on the
top to give you an idea of what that looks like when it's
fully extended.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So the big
question is, why do we care about biofouling? And from
the shipping industry's perspective, it's important
because biofouling on a hull represents surface roughness,
and that leads to increased hydrodynamic drag when the
vessel is moving through the water. And increased drag
leads to increased operate -- fuel consumption and, ultimately, fuel costs as well. So it's in the shipping industry's best financial interest to prevent biofouling on their hulls. Most shipping companies do a pretty good job of that. Unfortunately, that same financial incentive is not present for most of those niche areas that we're so concerned about.

The reason the state of California should be concerned is because, as I said earlier, biofouling is considered to be arguably the most important vector or mechanism for the introduction of nonindigenous species into coastal areas.

This table here illustrates that and it summarizes studies from all over the world. If you look at the first row here, you see that biofouling is responsible for about 42 and a half percent of all of the established coastal nonindigenous species throughout the entire world, and that value might be as high as 60 percent for us here in California.

If you just scan through the rest of it, you will see that biofouling has been implicated as the main vector for the introduction of nonindigenous species in many different countries and many different regions all over the world. So this is obviously a program that needs focused attention.
STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Just this month, our program's sister agency, the California Department of Fish and Game, released their triennial report which details the coastal and port surveys that they are required to conduct under the Marine Invasive Species Act. The 2010 surveys indicated that there are 324 established nonindigenous species currently here in California's estuary and marine waters.

This includes three new species that were discovered in the San Francisco Bay during these 2010 surveys; and they were not there in previous surveys. And these three photographs here are just some examples of what those three new San Francisco Bay species are. There's a polychaete worm here, a red alga, and a caprellid amphipod. And all three of these were likely introduced from biofouling or ballast water.

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: And just to give you a visual idea of how one of these species could have been brought into San Francisco Bay on the hull of the ship, the caprellid amphipod specifically, we have a video here -- if we could click on the picture on the left -- of a ship that we visited a couple years ago in a dry dock. And you will see hundreds of these caprellid...
amphipods moving around on the small section of the hull.

(Video presentation)

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: And this is a small patch of that ship. And if you look to the right, that's the entire ship. It's a very large ship, so it's entirely likely that there were tens to hundreds of thousands of these organisms on a single ship. And because these are mobile organisms, it's also possible that they can literally jump ship if they are introduced into a favorable environment.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So in light of the overwhelming evidence of the bioinvasion risk to California from biofouling and the need to protect California's waters, the State Legislature adopted legislation in late 2007, placing a mandate on the Commission to develop and adopt biofouling management regulations.

Staff quickly set out to fill key information gaps that would be necessary to inform the development of these regulations. We developed a reporting form that would allow us to collect information directly from the shipping industry about their hull husbandry practices and certain voyage characteristics that are known to influence biofouling accumulation.
So, for instance, these pictures show us some examples of the data that we've been collecting -- information about the ship's dry docking schedule; the types of antifouling coatings that are being used; the occurrences of in-water cleaning; and the occurrences of extended residency or stationary periods. And these are just a few examples of the many pieces of data that we have been collecting from every ship every year from 2008.

At the same time, we continue to fund targeted research that's in depth to complement the hull husbandry dataset and also to answer some of -- give us insight into some of the biological patterns that are associated with biofouling.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: All of this information was fed into a technical advisory group process that we started in August of 2010. This was an open and transparent process to share information and inform the development of these regulations.

Our intent was to bring together industry, technical, scientific, and regulatory experts to join in the discussion on the current status of biofouling and bioinvasion science; the regulatory requirements and guidance documents that were in development and that currently existed throughout the world, and that includes
the development of the International Maritime Organization's biofouling guidelines and regional biofouling management regulations in Australia and New Zealand. And all three of those organizations were active participants in our technical advisory group.

We also discussed the current capabilities of antifouling technologies, current vessel practices, and routine maintenance schedules.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So this technical advisory group consisted of a number of varied stakeholders that actively participated in these meetings and that provided comments and suggestions on various drafts of these regulations and that were included in the TAG e-mail distribution list. And that includes many shipping industry representatives, including ship owners and trade groups, antifouling coating and system manufacturers and distributors, as well as dry docking and in-water cleaning providers.

It also included many world-renowned scientists who specialize in bioinvasions and biofouling in particular, and many of the scientists that we included in this group also authored studies that we relied upon and included in our official document.

And we included many government and regulatory
bodies from around the world including the State Water Resources Control Board here in California; our counterparts in the states of Oregon, Washington, and Hawaii, and also in Canada; several U.S. federal agencies; and again, the International Maritime Organization, the Australian government, and the New Zealand government.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So as I said earlier, we started this TAG process in August of 2010, and in the year and a half since then, we've held four formal meetings and have had several informal meetings. During the first two formal meetings, we discussed the current state of the science and the regulatory regimes all around the world.

We heard directly from the two co-chairs of the IMO's ballast water and biofouling working group about the ongoing development of IMO's biofouling guidelines. And we took all the information that we learned during those first two meetings and we prepared a first draft of these regulations, and we distinguished that to the group prior to our third meeting. We discussed that first draft and took comments and suggestions during and after that first meeting -- that third meeting, excuse me, and used all that information to create a second draft, which we then sent to the group prior to the fourth meeting. And again,
we discussed it at the fourth meeting and accepted comments and suggestions during and after that meeting.

That information was fed into a third draft that was then given to the TAG electronically and we accepted electronic comments and suggestions at that point, and created a fourth draft that became the official proposed regulations that we released to the public in September of 2011.

That officially started the California rulemaking process under the Administrative Procedures Act. Under the Administrative Procedures Act, we set the first comment period at 45 days. However, during that time, staff accommodated several requests from the shipping industry, including one to extend that comment period an additional three weeks to 66 days, and another request to hold a public hearing, and we held that public hearing in Oakland in November.

So at the close of that first public comment period, we took all the comments that we received and we reviewed them, considered them, and we made considerable revisions to the first publicly released draft. We released those revised regulations in December, December 30th, and that was after another -- accommodating another request from the shipping industry to delay that by a couple weeks because of the Christmas holiday. We
also doubled the required length of the second comment period to 30 days to allow extra time in light of the New Year's holiday, and that comment period will close on this coming Monday.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So for the rest of the talk, I wanted to just go over the major provisions of the proposed regulations. First, I wanted to describe what our intent was with these proposals. First, we wanted to build upon the IMO biofouling guidelines, which are now adopted. We wanted to improve upon that voluntary framework that was put in place to ensure that effective biofouling management strategies are adopted for each and every ship that operates here in the state. We wanted to basically encourage shipowners to develop coherent biofouling management strategies that would allow them to maintain consistently clean ships, and that would reduce the likelihood of introducing nonindigenous species into California and every other port that a vessel will visit throughout its cruise.

And we felt that this could be accomplished through enforceable, quantifiable regulations that would encourage effective planning for holistic biofouling management, not only the hull, but also those niche areas that there is not currently a financial incentive to
maintain in the state.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: The major component of these regulations, and the foundation of the proposed regulations, is a strong and effective biofouling management plan. This management plan will detail the vessel-specific management strategy per each ship, and that strategy will vary from ship to ship because of the unique characteristics of each ship.

This plan will detail the specific characteristics that influence biofouling accumulation, such as the type, number and location of niche areas, the traveling speed of the vessel, the planned in-service period, the trading route, and a whole suite of other pieces of information that should be used and should be taken into account when a ship owner is deciding upon which types of antifouling coatings and systems to be using on their ship. Also, the information from those antifouling coatings and systems should also be included in this plan.

This management plan was seen as the major tool by the international community, and it is a major component of the IMO biofouling guidelines, and it's our understanding that proactive companies are already starting to develop these.

ACTING COMMISSIONER REYES: Question.
ACTING CHAIRPERSON GORDON: Sure. Mr. Reyes.

ACTING COMMISSIONER REYES: So if you go back to that, the strategy and plan will vary by ship -- specific characteristics of the ship, the niche areas, and so forth. So you're -- without going through all the other, you are envisioning different strategies for different types of vessels.

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Yeah. Because each ship will have their own unique speed that they travel at, have their own unique amount of time that they sit in port. So a tank vessel is going to be different from a passenger ship, because a passenger ship is in port for maybe eight to 12 hours, versus a tanker might be there for a couple of days. So the type of coatings -- a whole suite of coatings are out there targeted for different operational profiles. So....

ACTING COMMISSIONER REYES: So a cruise ship will have different than a cargo.

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Oh, definitely.

And another point I would like to make is that in the past, vessel owners have used one single antifouling coating for the entire ship, and it may be that it's more appropriate for them to use one coating on the hull and others in different niche areas that are more -- more
problematic. That's what I want them to think about.

CHIEF COUNSEL LUCCHESI: If I may interrupt. I just wanted to remind those in the audience and the Commissioners that because we are in the middle of the rulemaking process for these regulations, this portion of the meeting and the transcript will be submitted to OAL as part of the rulemaking procedures, and staff will be responding to any comments made by the Commissioners and/or the audience appropriately and in accordance with the APA.

ACTING COMMISSIONER REYES: Thank you.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: The second portion is the biofouling record book which will complement the vessel-specific management plan and it will document the implementation of that plan, so it will serve as a central location to house details about the installation, application, use, maintenance of these antifouling systems that are used on the ship, and it will document the ship's inspection and maintenance history, including propellor polishing, biofouling evaluations, in-water cleaning, or dry docking operations.

All this information in one central location will assist the ship owner and operator of assessing the efficacy of their biofouling management plan and will
alarm them if something needs to be done to remediate whatever they see in those inspection reports.

It will also assist the Commission staff during inspection as to evaluation compliance with the proposed regulations. And again, this record book was a major component of the IMO biofouling guidelines.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: We're also proposing performance standards that would set upper thresholds for allowable biofouling on a vessel's wetted surface. The intent here is twofold: First, to provide protective limits for biofouling accumulation in order to minimize species release. And this -- these limits are in line with the stated purpose of the Marine Invasive Species Program.

The second is to provide incentive for proper planning and implementation, including the selection of appropriate antifouling systems.

Overall, we would set two performance standards: One would be targeted towards the majority of the vessel's hull, and the other would be targeted towards those more problematic niche areas.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: The first standard would require that no more than 1 percent cover
of macrofouling exist on the hull of the ship, and macrofouling refers to the visible, large organisms and not necessarily the slime layer that's typically associated with these ships.

These two diagrams here are just examples of what 1 percent might look like.

ACTING CHAIRPERSON GORDON: Does this require ships to be out of the water to be inspected to check what's 1 percent cover?

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: No. I will get to that in a bit, but there will be regular inspections that can be done in water and that are being done in water right now.

ACTING CHAIRPERSON GORDON: And who's doing inspections?

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: In-water diving contractors that they hire to clean and they hire to polish propellers and that are hired for biofouling evaluations and inspections.

ACTING CHAIRPERSON GORDON: But who -- so they self-report and do we check on the work?

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Yeah. So right now, if a ship has their propeller polished, for instance, they will go in and divers will go in, polish the propeller, go around the ship and do a biofouling
evaluation, and that will all go into a report with pictures and descriptions. They'll put that into their biofouling record book. And when our inspectors go on board, they will look at that record book, and they are required to have an inspection no more than six months prior to coming into California. So they're doing this -- most shipping companies are already doing this every six months, polishing their propellors and getting evaluations.

ACTING CHAIRPERSON GORDON: All our inspectors do is look at the data book.

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Yes. But if there is a concern, we have the ability to -- we will have the ability to either put an ROV in the water to look and take photos and video, or we can hire diving companies to do that.

ACTING CHAIRPERSON GORDON: How many inspectors do we have currently on staff?


EXECUTIVE OFFICER FOSSUM: These are our marine facilities inspectors that typically are looking at the oil spill prevention efforts of the marine terminals, but they would be looking at the logbooks as well. So when
the ships come in --

ACTING CHAIRPERSON GORDON: They are already doing the oil inspections. And they are going to be inspecting how many ships a year with this 13 staff?

EXECUTIVE OFFICER FOSSUM: Whether we dive on these ships or not remains to be seen. We may not have staff for that. It just depends.

But what's important here is, these are self-reporting. They are to keep the logbooks. They are to come up with the management plans. It's up to the ship owners to do these things. And Chris will get to it a little bit later, but besides the 1 percent, there's other standards that are going to be set before they actually have to take any action. So you will hear more from that in a second.

ACTING CHAIRPERSON GORDON: Are these general funds?

EXECUTIVE OFFICER FOSSUM: No.

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: These are Marine Invasive Species Control Fund.

COMMISSIONER NEWSOM: Just out of curiosity -- I'm sure you're going to get to this -- the 1 percent, how does that compare and contrast to international standards or other standards?

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Right.
Now there are no international standards. The only existing guidelines -- there are no regulations in place yet. They are in development in Australia and New Zealand right now. During the discussions at IMO -- and that is a voluntary guideline -- they -- early on, they talked about setting a standard that would be clean ship. A definition of a clean ship would be no macrofouling at all. Zero percent. That went by the wayside because that was not appropriate for a voluntary guideline to have a standard like that. So that went away. IMO said that they will be evaluating the implementation and the efficacy of the biofouling guidelines and, if necessary, they will try to put in place a convention similar to the Ballast Water Convention that they do.

So this standard of 1 percent will allow for a minimal amount of biofouling that occurs from mechanical coating damage, which happens on ships in regular service. That may be from anchor chains rubbing the bulbous bowel or from other tugs fendering next to it. But this will allow that mechanical coating that we put in -- will not allow for widespread coating failure, which may occur if a vessel uses an inappropriate coating or a vessel goes outside of its normal operating profile.

I do want to point out that for an average vessel, and average-sized vessel, 1 percent of the wetted surface
area is about 180 square yards, and that's a very large surface area and that would represent a large amount of potential biofouling per ship. And so while this isn't as protective as it can be, it was a compromise that we made based on the comments that we received during the first public comment period.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: And just as a visual aid, this is a ship that we visited in dry dock a couple of years ago that would have passed that 1 percent threshold. It has a biocide-free coating on the top and you can see that there are no macrofouling organisms on the top throughout the majority of the hull. There are some damaged areas, like I talked about earlier, towards the bow of the ship, and the biofouling that occurs there, but overall, the ship would have been under the 1 percent cover, threshold, so there wouldn't have been any complaints.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: The second performance standard is targeted at those problematic niche areas, and just to remind you, those niche areas are more susceptible of biofouling due to a variety of reasons including inadequate antifouling protection, variable hydrodynamics, or coating damage, or a combination of
these. These niche areas present clear bioinvasion to California and every other coastal area, and that has been repeatedly demonstrated in the scientific literature over the past ten years, including many of the studies that we relied upon and included in our rulemaking docket.

The six niche areas that we're targeting with these proposed regulations are sea chests, bow and stern thrusters, stabilizer fins, the out-of-water support strips I talked about earlier, rudders, and propellers.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So that second standard is no more than 5 percent macrofouling cover on those six niche areas. And these diagrams here are just to give you an idea of what 5 percent might look like on a ship, but of course they'll vary from ship to ship. We're providing this elevated performance standard here to allow some leeway for these niche areas, because we understand that they can be more susceptible to biofouling and they may be more difficult to manage. But I will ensure that focused attention is placed on these areas where minimal financial incentive currently exists to keep them in a clean state.

The other important part to point out is that keeping it at such a low threshold will limit biofouling aggregation and species diversity. You tend to get more
species when you have more biofouling in the area.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So a vessel -- no. I jumped ahead. Sorry. We've set conditions for the presumption of compliance for sea chests because sea chests are one of many more problematic niche areas both to deal with and it's one of the most -- the scientific literature has pointed out that it is one of the most problematic in terms of a bioinvasion, and they are small areas that are typically loaded with biofouling.

ACTING COMMISSIONER REYES: What is a sea chest?

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: A sea chest is a recess of the hull that the vessel will take water on board for it to fill their ballast tank, for it to cool their engine, for a variety of purposes. So they are actively pulling water on board and pulling these larvae on board and actively recruiting. So it's an area that is pretty hard to maintain. And because they are hard to maintain and because they are -- it's actively pulling water, it can be dangerous to send divers down to go in and clean, so they are not normally cleaned under most situations. In some cases, they are. But because they are not normally cleaned, if preventive management fails, then post-hoc management is often difficult.
But there are existing protective technologies that are in use and have been in use for decades, since the '50s. And 50 percent of the fleet uses these. And these are marine growth prevention systems that are often installed either in a sea chest or further downstream in the sea strainer. And they basically release small doses of each copper or sodium hypochlorite to prevent things from growing there.

We know that at least 50 percent of the fleet has these installed on their ships, and we are saying this condition is that if a ship is using one of these, we will consider it complying with the regulation because it does seem to be preventative.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: These three photos on the top are the same ones we saw on the previous slide, and those are just examples of sea chests that are not protected with these types of antifouling systems. You can see that they are pretty heavily fouled.

And the photos on the bottom are sea chests that are protected with marine growth prevention systems that are actively being used. So this is the type of encouragement that we hope to give to the ship owners.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So we
talked about this earlier, but a vessel must be compliant
with the performance standards at the time of regular
inspection for biofouling extent, and we spelled that out
with a schedule that was specifically aligned with routine
maintenance, but this provision and the schedule were both
suggested by shipping industry members of the technical
advisory group. And this was also a compromise based on
comments that we received after the first comment period.

This inspection should take place no longer than
six months prior to arrival to California or no longer
than 12 months prior if the vessel was recently dried off
or it was delivered as a new ship. And if a vessel is
found to be out of compliance at the time of inspection,
then the biofouling should be removed.

And then I do want to say that the schedule that
we're pointing out here was aligned with current propeller
polishing activities, which occur every six months for
most vessels already, and during the propeller polishing,
most of the propeller polishing diving providers will do a
swim around and prepare a report to evaluate biofouling
extent.

And because this schedule here allows a ship to
come into California possibly more than five months since
their last evaluation, we put a provision in there to
allow Commission staff to require maintenance if, for
instance, a ship comes into California in gross exceedance of those performance standards. So we're defining "gross exceedance" as no more than 5 percent for the hull, where the actual performance standard is 1 percent, or no more than 50 percent cover for the niche areas, where the actual performance standard is 5 percent. And this type of cover should not happen in five months unless something goes terribly wrong -- if the vessel sits for a couple of months in port. So this basically is just so that Commission's hands aren't tied if a ship is evaluated and is confined but then undergoes some sort of practice that would put them in an out-of-compliance position, a grossly out-of-compliance position.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: And then the final, major, provision in these regulations is a provision for extended residency vessels. And these are vessels that will sit in one area, stationary, for 90 days or greater, because this is a practice that is associated with heavy biofouling accumulation.

And these two photos on the top here are just an extreme example of what can happen when a ship sits for a long period of time. This vessel here sat for seven months, and you can see heavy biofouling on that hull. And then this picture here is the sea floor just below
that ship, and this is an area where that organism is not
native to it. So the authors of the study showed that
this species was transported into this new environment
from the ship, and that's the type of thing we're trying
to prevent with this provision.

This provision will also -- actually, I should
jump back. This provision will require inspection if a
vessel sits in one area for 90 days, and if cleaning is
required, then it needs to be cleaned before it comes to
California. This encourages a clean-before-you-go
strategy, where a ship that sits in the one area, the
organisms that colonize it will be local to that area,
will already be in that area, so if they are moving in
that area, it shouldn't be a major concern from a
biological perspective. And this is the strategy that has
been pushed in New Zealand and all around the world.

This is also an important provision because of the
current global economy. A lot of ships over the past few
years have been laid up, waiting for work, in places like
Singapore here, where they are just waiting for work, and
when the ship gets hired, if this is not managed before it
goes into service, it can be a pretty heavy load of
biofouling.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: A few
other provisions that are included is the continuation of
the collection of the hull husbandry reporting form, which
we have been collecting since 2008. This will allow us to
collect valuable data to evaluate vessel practices and the
efficacy of our regulations. It will also allow the --
excuse me, allow for per vessel risk assessments to
prioritize Commission inspections. So we'll send
commissioners -- the Commission staff out on inspections
based on the most risky ships based on the reporting
forms.

There's also a provision that clears up
uncertainty surrounding propeller cleaning in California.
There was concern from several industry members during the
first public comment period that a current permit by the
State Water Board would ban the practice of propeller
polishing unless the Commission took action, because of
the language in that permit. So we've added a provision
in there to allow the practice to continue because we
don't feel that it is a major concern from a biological
perspective or from a water quality perspective.

We want to point out that propeller cleaning is an
important tool for ship owners to improve fuel efficiency.
And like I said earlier, this activity is conducted about
every six months for most vessels. The other important
part is that during this propeller cleaning, like I
mentioned earlier, they will do a biofouling evaluation, and that's important for us. We want to be able to have them -- have the capability to conduct their evaluations in California so that they can remain in compliance with our schedule.

And finally, there's a component that would allow for an alternative -- petitioning the alternatives. A ship owner can petition an alternative if they feel they have a practice that would fulfill the purpose of the regulations, a better idea, then they can petition the Commission staff, and this section lays out the requirements for how do I go about petitioning the response time before they will get an answer, and how the approval process will go through.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: And then next steps. Like I said earlier, we're currently in the midst of that second comment period, and that comment period will close next Monday, on January 30th. We will continue at that point. We will look at those comments that we received and we will evaluate them and we will continue to operate under the provisions of the Administrative Procedures Act.

This will ensure active participation by all stakeholders and will ensure that our actions are open and
transparent. When they are ready, we will bring the
proposed regulations back before the Commission for final
approval, and although it's not required, we are planning
on preparing a guidance document to put guidance out there
on how a vessel could develop vessel-specific management
strategies, give ideas, and provide examples of the
management plan and record books so that they have
templates to work off of.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: And then
finally, the last part of my presentation, I wanted to
play a small statement from the -- from Dr. Ian Davidson,
who was the principal scientist for most of the
Commission-funded studies over the past few years. Just
to give a little bit of background into the science that
fed into these regulations.

So can you push play?

(Video presentation)

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Just the
last slide, I just want to remind Commissioners that we
had five letters that were sent in support and I just want
to say their names and their affiliations for the record:
William Aila, the chairperson from Hawaii's Department of
Land and Natural Resources; Harry Coulombe, the marine
division manager at Far West Corrosion Control Company;
Dr. Oliver Floerl, a scientist with New Zealand's National Institute of Water and Atmospheric Research; Dr. Ashley Coutts, the managing director of Biofouling Solutions in Tasmania; and Dr. Naomi Parker, the science policy manager at MAF Biosecurity New Zealand and one of the two co-chairs of the IMO ballast water and biofouling workgroup.

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STAFF ENVIRONMENTAL SCIENTIST SCIANNI: And that ends it. I would be happy to answer any questions.

ACTING CHAIRPERSON GORDON: When would these -- when would these regulations take effect if they were passed on the schedule that we have right now?

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: We have stated that it would go into effect on January 1st, 2014. However, the performance standards would not go into effect until a vessel comes out of their first dry dock after 2014, so it's possible that a ship that goes into dry dock in 2013 won't have to comply with the performance standards until potentially 2018.

ACTING CHAIRPERSON GORDON: What about the data gathering? When would that start under the regime you are currently proposing?

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: January 1, 2014. But we're currently collecting those data and we're
planning on using the same reporting form, so we're currently collecting and we have been collecting since 2008.

ACTING CHAIRPERSON GORDON: The dry -- I don't know the word you used, "stochastic." Stochastic ships are the ones that are in dry dock, not the ones being --

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: No. Those are the ones that their travel patterns are not predictable, it's stochastic. So it's also for those ships that I referred to as laid up or they are sitting in one stationary position for a long period of time. So those are the ones that Ian was talking about are considered to be extremely risky from a biological --

ACTING CHAIRPERSON GORDON: Yeah.

ACTING COMMISSIONER REYES: You know, I would like to hear from the members of the public and the industry. I would like to hear from the industry and other affected parties and see what they have to say.

ACTING CHAIRPERSON GORDON: Okay. Let's start -- we have a whole list of folks who wish to speak. Why don't we start with those who are supporting the regulations as written. It's hard for me to tell from here. Do we have any folks here who wish to speak in support of the regulations as written? Will you come forward, please?
And I -- this is for everyone who is testifying. There will be some leeway given, but please try to keep your comments to approximately three minutes.

MS. BLODGETT: Hello. My name is Abigail Blodgett and I'm here representing San Francisco Baykeeper, which is a nonprofit organization that aims to protect water quality in the Bay Area.

Baykeeper is generally very supportive of these draft regulations and we hope that the commissioners will be supportive as well. In particular, we commend the State Lands Commission for including measurable performance standards and also for following the IMO guidelines for biofouling management.

However, I would like to make a few comments about how the regulations could be improved to better protect water quality in California waters.

Again, we are concerned that there's a section prohibiting gross exceedances of the performance standards. And I think that this provision is faulty because it will allow vessels to enter California waters with up to 15 percent of their niche areas covered with macrofouling. From my plain understanding of this regulation, it seems like this provision contradicts the main performance standard that limits macrofouling to 5 percent on niche areas.
Another comment is that we very much thank the Commission for requiring vessels to prepare a detailed biofouling management plans and record books. But these documents should be made available to the public to ensure that there's adequate transparency of vessel operations. For example, to show that this is a feasible process, the State Water Resources Control Board recently decided to require all permittees under the statewide general permit for pesticide discharges to electronically file their notice of intent and pesticide action plans, and all of these notices of intent and pesticide action plans are on the state board's website. We would like the Commission to require something similar.

Finally, we're concerned that the draft regulation allows vessels to clean their contaminated ships in water way too often. Any vessel that's allowed to clean their ships in the San Francisco Bay will be releasing invasive species into a waterway that is already impaired under section 303(d) of the Clean Water Act for exotic species. The EPA's vessel general permit expressly states that cleaning should occur on dry land whenever possible, so the Commission's draft biofouling regulation should require the same.

That's the end of my comment.

ACTING CHAIRPERSON GORDON: Thank you.
Next in support?

MR. PHILLIPS: Good afternoon. I'm David Phillips. I represent a company called Hydrex, and we, among other things, have a system for a nontoxic system for coating hulls and keeping them clean. And we -- I would like to say, we're very impressed that California is pretty much leading the way with the regulations that are being introduced, and it definitely needs to be done.

I do feel -- I wasn't involved in the TAG groups, unfortunately. I do feel that the response to public comment or industry comment has led to unnecessary compromise. I don't know the science of it exactly -- I'm not a scientist -- but it seems that 26 square yards, of whatever it is, of macrofouling is a pretty good risk of introducing some invasive species. So if the purpose of the legislation is to eliminate the introduction of hull-borne invasive species into California, why not eliminate it?

There is a very practical, cost effective, economical way -- which I don't know that I have time to go into now, and I probably don't, in three minutes, for sure -- to completely eliminate macrofouling on the hull and in the niche areas. There is a system. It's out there. It's being used by the Disney cruise line. It's being, right now, applied to the space launch Odyssey.
There are a number of cargo vessels that use it. It's in use. It's proven, and it works.

The beauty of the system of keeping the hull and the niche areas free of macrofouling is that the ship owner and operator saves between 5 and 25 percent of his fuel, which is a huge cost, way, way, way surpasses the cost of maintaining a ship. So, and at the same time, you reduce greenhouse gas emissions by cutting down the fuel use. So everybody wins. It's a nontoxic solution.

ACTING CHAIRPERSON GORDON: How many companies make this particular system?

MR. PHILLIPS: I would say there are probably two or three that make it right now. It's -- basically what it is, is it's a hard coating, it's nontoxic, and it can be cleaned. Those are the things that are important. You can't really clean toxic antifouling coatings because you create a pulse discharge of biocides and you damage the coating. You can't really clean silicone-type coatings beyond microfouling. You can keep them at a microfouling state, but as soon as you get into removing barnacles and stuff like that, you are going to pull off the coating. You are going to damage it. Then you have to up your numbers to the 5 percent and so on.

Basically I guess my message is, we're totally in favor. I'm talking to Washington state as well. They are
very interested in the progress. I think California is leading the way. Australia and New Zealand is right up there. But I don't think the compromise is unnecessary [verbatim]. I think what's happened is, information has been introduced which is not fully accurate and that's resulted in some compromises that I don't think need to be made. If you are going to eliminate the threat of invasive species, then eliminate the threat of invasive species.

One more comment on propeller polishing. It's absolutely 5 percent of your fuel cost is keeping your propeller clean. If you clean it frequently, you don't have to get into the abrasive grinding that is done, called polishing. You can actually keep it clean by frequent, quick, brushing, abrasive brushing, and that will, again, prevent the elimination -- the emission of copper and other chemicals into the water, greatly reduce it. And so we're completely in favor of that as well.

ACTING CHAIRPERSON GORDON: Let me -- I'm in a difficult place. I'm going to put on my lawyer hat for one second.

MR. PHILLIPS: Yes.

ACTING CHAIRPERSON GORDON: You said, it sounds like you have built a better mousetrap. Tell me what the industry is going to say when they come up as to, if this
stuff works at a hundred percent level, nontoxic, decreases hull drag, why are they going to say they are not using it? And if there's only one company -- if there's several companies that are making it, so it's not a sole source contractor, why wouldn't every ship builder in the world come and use this stuff?

MR. PHILLIPS: I think they will. I think it's a matter of it becoming a cultural lag, of we've always done it this way and it's too much of a hassle to blast our hull down to remove all the paint. It's hard to get sand -- you know, to get good blasting done, and basically it's because we've always done it that way and because the industry is, at the moment, operating on a basis that uses poison as a way of keeping fouling down. It's done it for years. Ninety-plus percent of the ships on the water are using it. However, those very biocides that are using are coming under increasing scrutiny, including in California.

So you are now going to have to clean these vessels and you are just going to be just distributing biocides into the water. I'm getting off the question. Sorry.

They are going to say, we will use it, as soon as they actually get a chance to see it in action. They talk to the people that are using it. I mean, every new build that's put out by the Disney cruise line is coated with
this -- with a hard coating. They don't use antifouling anymore. And they issue savings in fuel statements of 10 percent and up. So I think they will.

ACTING CHAIRPERSON GORDON: Thank you.

Any other supporters of the proposed regulations?

MR. PHILLIPS: Thank you.

ACTING CHAIRPERSON GORDON: Thank you very much, sir.

MS. McDOWELL: Hello. I'm Karen McDowell. I represent the San Francisco Estuary Partnership, which is part of the National Estuary Program.

San Francisco Estuary is known as one of the most invaded systems in the world, and scientists have described the estuary as an important hub for marine invasive species for the entire western North America. Because of this, our program has been involved in developing policies for aquatic invasive species for many years. I personally have been involved since 1999. We were included as one of the members on the State Lands Commission's technical advisory group on vessel biofouling. I would like to commend the staff for convening a very open process. They had strong stakeholder participation, and they also involved some of the world's leading scientists on this issue.

Our program is very supportive of the proposed
regulations, and, in particular, we support the provisions which address the niche areas, which have been noted as being high risk areas, and also the vessels that have had extended residency periods, which are also high risk vessels.

We think that implementation of these regulations will help stem the tide of invasive species into California and into western North America.

Thank you.

ACTING CHAIRPERSON GORDON: Thank you.

Any other supporters of the regulations as drafted?

We will start with opponents. Why don't you come forward. I got Ms. Silva, Mr. Berge, Mr. Mendes, Mr. Peterson, in no particular order. You folks can....

MR. PETERSON: Chris Peterson, vice president of operations of Crowley Maritime Corporation.

First, let me say, there's no box to say pretty much okay, got a couple of issues.

ACTING CHAIRPERSON GORDON: In the middle somewhere.

MR. PETERSON: So I don't want to be the guy that's in favor, basically, of invasive species. In general, we do, we support the regulations of invasive species coming into California, in fact, globally.
Crowley, we've been in business since 1892, started in San Francisco Bay. We have very, very strong ties to the state of California.

As the presentation was given -- continual references made to ships, and the one market that was left out was the very vital tug and barge industry that applies to the coastal states of particularly California, Washington, Oregon, Hawaii and Alaska, the Northwestern states.

Reference was made to the regulations would not affect the economics of cleaning hulls and whatnot because we polish propellers anyways. Well, barges don't have propellers. So our normal dry dock cycle, for example, is every -- twice in every five years. Roughly every two, two and a half years. Hulls are cleaned. All these precautions are made. Every effort to provide -- put on the best available technology for coatings.

But the standard, the performance standard, that's being put forth in the current regulation is almost unachievable for a barge. Particularly, San Francisco Bay, a diving inspection will not reveal the percentage of hull fouling usually. Finding a clear day to do a good hull survey in San Francisco Bay is almost impossible.

So our request is really that staff and State Lands continue to work specifically with tug and barge
industry through American Waterways Operators to ensure that we're implementing these standards that can work as a whole for that industry.

The standards, I know, was put forth as a catchall to cover all vessels over 300 tons, but there's a certain segment of vessels there that don't really fit in well. So if we can continue to look at the performance standards and how that might apply to barges and the tugs -- associated tugs towing them. That's what we would request.

ACTING CHAIRPERSON GORDON: Do tugs and barges travel in international waters?

MR. PETERSON: They do. So there are, again, cases -- if coming from Korea, for instance, protected land, we fully understand that, yes, there's an issue with that. And invasive species coming from the Far East are different than invasive species potentially coming from San Francisco Bay to Southern California. So that's really our point around that is, the coastal trades weren't really addressed in this regulation adequately.

Most of it, again, we're all in favor of the recordkeeping, the reporting, most of the other IMO type of regulations that are in here. Just a few performance standards issues that we would like to take a look at.

ACTING CHAIRPERSON GORDON: Thank you, sir. Any
questions?

Next.

MR. BERGE: Thank you, Mr. Chairman and Commissioners. My name is John Berge. I'm the vice president with the Pacific Merchant Shipping Association, and we represent shipping lines calling in California's ports.

I should point out, our organization has supported the State's Marine Invasive Species Program since its inception, and we also included support to the authorizing legislation, AB 740 in 2007, granting authority to regulate biofouling. We do appreciate the effort that staff has made in addressing some of the comments submitted to the first draft of this rule, but unfortunately we still find that the new iteration is fundamentally flawed in certain respects.

The proposed rule correctly seeks to minimize the risk of invasive species introduction from fouling of high risk vessels, such as those that have been laid idle for extended periods. But it also seeks to impose a one-size-fits-all scheme on low risk active vessels that we believe is contrary to the adoption of best available technology as demanded by the governing statute and will also result in several unintended consequences, not the least of which include reduced coating effectiveness and
life span, which the other gentleman here just referred to; a consequent increase in the degree and incidence of fouling; and we believe unnecessary expense to industry with results that are contrary to both of our shared goals.

Advances in coating technologies are moving the industry towards performing minimal in-water cleaning, as the process itself diminishes the effectiveness and lifespan of the coatings. And I would like to point out, it is the in-water cleanings that is our issue. Obviously, when the ship is in dry dock -- and you saw those pictures -- they should be cleaning to the greatest extent possible. There's no controversy whatsoever there.

But as drafted, the six-month inspection schedule, coupled with the performance standard, would demand a de facto six-month cleaning, which is contrary to the recommendations by the coating's manufacturers, rather than drive the industry to use better coatings, the rule of greater perverse incentive to switch to the cheapest coatings, since they will be degraded through that process.

The rule also proposes numeric performance standards through percentage fouling cover that are infeasible as a practical matter to apply and document in real life in-water cleaning operations. You just see a
little snapshot at a time in low visibility water. And to
just estimate what 1 percent would be versus 2 percent,
you know, we find is infeasible.

Furthermore, the overall requirements for in-water
cleaning of niche areas still remain infeasible and unsafe
in many real world situations as well, just in terms of
getting to those particular locations, such as the sea
chests, the hull, the bowel thruster, things of that
nature. And, in fact, it's also important to understand
that there are fewer and fewer options around the world to
perform in-water cleaning, as many major ports have
adopted bans or restrictions. And the representative from
Baykeeper suggested that we be careful about even cleaning
in California ports as well. So that's a concern.

So as I mentioned, we believe that the focus
should be on high-risk vessels and the employment of
biofoul management and the associated recordkeeping as
outlined in the regulation, which is at least consistent
with industry practices. However, those provisions of the
rule that establish arbitrary one-size-fits-all cleaning
requirements, we believe, are extremely problematic for
the reasons stated and should not be adopted.

ACTING COMMISSIONER REYES: What are your thoughts
about the technology that's being used by Disney ships?

MR. BERGE: It's interesting. I don't really know
that much about it. I did recently read a press release
or a news document of some sort a few weeks ago,
interestingly. And my understanding is that the idea is
because it's a nontoxic hard coating that you can
especially scrape off during the cleaning, you don't have
to worry about the implications of it degrading the
coating's effectiveness, per se. But my understanding is
also that, essentially, for that to work, you would have
to clean it almost in every port you call for it to be
effective, and you couldn't just wait for, for instance,
six months to then clean it again. Such a scenario I see
could work worldwide, provided that every port in the
world adopt such a requirement. Otherwise, I think what
you would find out is you would just be cleaning off the
various hull fouling from other ports in the world that
don't require such things.

   ACTING COMMISSIONER REYES: Thank you.

   ACTING CHAIRPERSON GORDON: Mr. Berge, I know you
folks have all been working together and you are
probably -- you are all getting to a place where
compromises have been made and we're not reaching an
agreement yet.

   You seem to have agreement on the high risk
vehicles. I understand those are the ones that have been
in dry dock and the ones that are in port and not going
anywhere for a while. Define "high-risk vehicles" for me. You used that term to begin with.

MR. BERGE: Well, I would defer to the rulemaking, which was essentially vessels that have been stationary, or in one place, for 90 days or more. We think that's appropriate, although I could point out that I think there's a concern with the tug and barge people. When you define a vessel being in a port for 90 days, I think the intent of the Commission was to refer to those ships that have been laid up. And I believe Mr. Scianni made comment about that as well. But for tug and barge, for instance, they could be in Seattle for six months in continuous operation. And that might fall into that category.

But yes, in general, I would say we are in agreement that vessels that have been laid up, the so-called stochastic events, are high risk and should be addressed accordingly.

ACTING CHAIRPERSON GORDON: All right. So we've got -- let's kind of bifurcate this thing into two categories. So we've got stochastic vessels that everybody agrees are high risk.

And are you in agreement that the protocol that they are proposing in the regulations as drafted is acceptable for those vessels?

MR. BERGE: Yes, we believe that that's
acceptable. We think there's some problems in terms of
still defining the 1 percent, but, nonetheless, I think
that's -- the problem is so huge that we have to do
something about those particular vessels.

ACTING CHAIRPERSON GORDON: Okay. So I'm trying
to kind of break it down to where our disagreement is. So
on the stochastic vessels, we have agreement. Your
industry is acceptable on the 1 percent on the vessels.

MR. BERGE: We would be able to live with that, I
believe.

ACTING CHAIRPERSON GORDON: Does that also include
the niche problems on those vehicles?

MR. BERGE: We believe that the vessels that have
been laid up should be cleaned. Really, they should be
cleaned at the location they have been laid up at so that
they don't transfer the --

ACTING CHAIRPERSON GORDON: I see staff shaking
his head, so we're in agreement there too.

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Yes.

ACTING CHAIRPERSON GORDON: Yes. All right.

On the data collection, on the continual
monitoring of the data and the inspections, are you
agreeable with the protocol that they have proposed on
that?

MR. BERGE: I would actually like to commend the
staff in really working hard to align those protocols as close as possible with those guidelines adopted by the IMO, which obviously, being in an international industry, are important to us.

I believe there are -- and I can't talk to specifics right now. There might be one or two minor points that some people might have disagreement with. But I think that's something that can be worked out through the Administrative Procedures Act process.

ACTING CHAIRPERSON GORDON: So what we've got left then are the nonstochastic vessels, which your industry believes the 1 percent standard and the 5 percent standard would -- with inspections every six months on those vessels, would lead the industry to actually go in a direction that we don't want because the inspections and the cleaning are going to damage the coatings that are being used as a result. If I'm following what you said, you would then use -- you are not going to want to use expensive coatings because they are going to have to be redone every six months, you are going to inspect and treat, and, therefore, the implication would be that you would go towards cheaper, probably more toxic, coatings. Is that what I am understanding your testimony to be?

MR. BERGE: Well, I would certainly argue that the incentive would be there to move towards that direction.
I can't necessarily speak that every vessel would do that. But that's our concern.

ACTING CHAIRPERSON GORDON: And let me also understand what the specific objection is to the 1 percent. Is that -- if the standard is 1 percent and inspectors are going to have to go down -- as I understand, these boats are going to be in the water. Your belief is that you can't accurately determine whether it's 1 percent, 2 percent, 5 percent, with divers in the water. And, therefore, you are going to be required to pull these ships out of the water at a more regular basis, which will both be more -- well, the thing is, it will be very expensive because these ships are going to be out of commission while you are doing that, would probably be your main concern; right? Am I summarizing this?

MR. BERGE: Yeah. I would say that with 1 percent and, you know, as I mentioned, you got a little snapshot of a 1,200-foot, 3 football-length, 3 football-field-length, vessel, I think any ship owner would basically assume 1 percent is 0 percent, because there's no way to tell whether you're 1 percent or 3 percent. So you would just have to essentially clean every time you do an inspection.

And I should point out that some of our members, who met with the Commission and who I think even the
Commission would agree, probably operate the cleanest regularly calling vessels in the world and have the best management practices, believe that -- they have told us that they believe they would not be able to meet those performance standards, as listed right now.

ACTING CHAIRPERSON GORDON: These standards aren't coming into effect until 2014. We've got two years between now and then.

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: The first dry dock after 2014.

ACTING CHAIRPERSON GORDON: But basically two years.

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Two to seven years. Because the ships go into dry dock every five years. Sure. So the standards wouldn't go into effect until the vessel's first dry dock after 2014. So it could be that the vessel doesn't go into dry dock until 2018.

ACTING CHAIRPERSON GORDON: All right. Let me try something here. If we were to move forward with these stochastic vessels as proposed, if we were to move forward with the data collection as proposed, separate out the other vessels, and give you guys six months, nine months, to go back to the -- is there benefit for you guys sitting down for another six months and trying to work this out?
Or have we truly gotten to a point -- everybody wants to talk about compromise. But there's a place where everybody has got their positions hardened, there's nowhere to go, we got A and we got B, we got to choose between the two of them. I mean, would six months or nine months on that issue get us anywhere?

MR. BERGE: May I comment, to start?

ACTING CHAIRPERSON GORDON: Sure.

MR. BERGE: We did participate in the TAG process, and it is a good process. I would point out that some of the things kind of came in the written draft rule that were somewhat of a surprise to some of us in the TAG, but I will leave that as it stands.

Nonetheless, it's understandable that you have a few people from the industry who might show up at these things, but when you suddenly publish a proposed rulemaking, a formal proposed rulemaking, suddenly the eyes of the world focus on you. And I think since that time, we've gotten a lot more input from a lot more sectors of the industry who have raised some concerns, but who have also said that they think there are better ways to do this. So I personally believe there is value to continuing to work with the Commission and getting a more comprehensive rulemaking for those particular vessels.

ACTING CHAIRPERSON GORDON: Without pushing back
the 2014 date at all.

MR. BERGE: We would like -- obviously, we would like to take whatever amount of time it needs to get it done. But again, I will leave that to the commissioners to decide what's wisest.

ACTING COMMISSIONER REYES: I guess I'm trying to understand your questions and where you are going with this. It seems to me that we are part of the regulatory process right now and this is where we get input from the public; the public gets a chance to tell us what they view. Staff hasn't finalized those because you need to respond to that. And so before I start bifurcating rules or regulations, I would like to see what the final process is, and then we sit and say, you know, I sort of -- with all due respect with staff, I disagree with point A and point 7 because X, Y, and Z. I'm sort of perplexed in terms of where we're going with our questions.

I'd rather hear from the folks now. We will get writing. I know you and I will meet with folks in the next few weeks and continue to meet to try to understand better what the issues are. I find this very informative so I appreciate that, both from the staff. I've read the documents. But it's always, when you have pictures and diagrams, for me, I get a better sense of what we're talking about.
And so I kind of like to have the process evolve, I guess, is sort of my perspective and see where it lands. I mean, they are still going to have to respond to some of these issues and in their response, they may have to amend their proposal. We don't know that yet. So before we have something before us, I would rather have input, understand, and reserve our -- as the board, our right or obligation or responsibility to hone things, move things, approve things, whatever we need to do.

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Can I make a statement?

I think it's important to recognize that throughout the whole process, we nor the scientific literature made reference to low-risk vessels. Our understanding from the science is that, sure, stochastic vessels are very high risk, but that's also a very small portion of the fleet and that niche areas are -- the punchline in most of the science over the past ten years is that niche areas are big problems, and they need attention. And considering that we're pushing the stochastic vessels, which are about 2 percent of California's fleet right now, as defined with the 90-day period. And when we're talking about these very risky niche areas on 98 percent of the fleet, it is a big issue and it's something that we as staff and the scientific
community do see as a big problem and needs to be addressed.

One other thing. The intent of the regulations is not to require more cleaning. That's not what we're looking for. We're trying to change mindsets so that more planning beforehand, before the vessel goes into dry dock, look at the different coatings. Mr. Phillips talked about one type of coating. There are tons of coatings out there that are targeted for specific vessels and that funding -- we're trying to encourage better planning so that --

ACTING COMMISSIONER REYES: But I mean, in all fairness, the regulation may require more cleaning.

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: It may.

ACTING COMMISSIONER REYES: Right.

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: If the coating fails.

ACTING COMMISSIONER REYES: Yeah. So let me go back to Counsel. Am I correct in my assertion that we still have the ability to amend or to go -- just the process.

EXECUTIVE OFFICER FOSSUM: This is informational only and, again, the comment period has not closed yet. It won't until next week. Once the staff gets all the comments, including the ones from --

ACTING COMMISSIONER REYES: You will address these
EXECUTIVE OFFICER FOSSUM: -- today, we will have a response to those, and it may be that we change the rules and submit them again in proposed regulations, or it may be, at that point, we put together a package to bring back to the Commission at which time then the Commission can decide or send back for additional modifications.

We still do have three more people who want to speak on this item.

ACTING COMMISSIONER REYES: Thank you.

ACTING CHAIRPERSON GORDON: Next speaker, please.

MR. MENDES: Good afternoon. My name is Jonathan Mendes. I represent Harley Marine Services, a tug and barge company.

ACTING COMMISSIONER REYES: With all due respect, this is about the only time Finance is going to have the gavel. So move over.

MR. MENDES: Yeah. My name is Jonathan Mendes on behalf of Harley Marine Services in the American Waterways Operators. My intent here is to actually echo Mr. Peterson's comments regarding our concern as barge operators, that there's a sense of unfairness and, naturally, with the regulation, where we're kind of taking the short end of the stick.

We -- typically, as we fall under the high risk by
definition, we actually are a very low risk by trait. So we do see the necessity for, you know, the biofouling control. However, if this were to go to print as is today, it would significantly impact the barge operators in which we do operate the coast of California and we have a significant impact on the local economy as well.

The expense of meeting these standards as an extended residency candidate, we would see some significant negative impact to our, you know, operations, financially. So I think it's important.

And as you highlighted, we do have an opportunity to still go back and look at this to make sure we do get consideration for, not just a blanket, you know, one all be all for extended residency. We would like that to have strong consideration for the barge industry.

You know, typically, our operations, I may have a barge here in San Francisco Bay for three months, but it's going to go to L.A. for a week. Or it may even touch Anacortes or Portland for three or four days and come back. So as you can see, there is some impact that we would see and we would like consideration on that.

And that's pretty much it.

ACTING COMMISSIONER REYES: Thank you.

MR. MENDES: Thank you.

MS. SILVA: Good afternoon. Lauren Silva, and I
am representing the American Coatings Association, ACA. ACA represents paints, coatings, and antifouling coating manufacturers and suppliers throughout the world, and we would just go ahead and agree with PMSA's previous comments, but will go into more specifics.

ACA's members are committed to providing the shipping industry with state-of-the-art products that prevent fouling on shipping, hulls, and niche areas, thereby reducing the potential for translocation of invasive species. These coatings are also designed to significantly reduce the need for expensive cleaning to maintain the coating's effectiveness.

But rather than promoting the latest coatings and best management practices for those coatings, this regulation seems to be based on arbitrary claim to and gross exceedance standards, and that is exactly the reason for our concern with the latest iteration of the regulations.

The regulation requires inspection every six months that when combined with the requirement to meet the numeric percentage clean-to standards, will most likely require comprehensive hull cleaning at least every six months depending on the ship's schedule in California.

The results: Such frequent cleaning would remove the active coating ingredients of the best available
coatings, resulting in a decrease of the projected lifetime of the coatings system and more fouling, rather than less. Through the TAG process, industry has in the past been able to work successfully with staff to develop mutually agreeable legislation regulations. We appreciate the changes made to the revised regulations to reconcile the biofouling recordkeeping and plans with IMO guidelines and to expand the timeline of implementation to 2014.

However, it is not realistic to expect vessels the size of cruise ships, cargo ships, and tankers to guarantee that their ship meets a 1 percent macrofouling standard. On vessels of this enormous size, this regulation will require the responsibility officer to guarantee that there is virtually no fouling. And it's unclear how the State Lands inspectors will determine that such a de minimis amount of fouling is even present.

ACA believes that it's unfeasible to meet or enforce a standard. But, unfortunately, the surest option for ships trying to meet the letter of law appears to be to overclean and decrease the projected lifetime of the coating systems. ACA wants to be clear on this point. These coatings dissolve away over time in a controlled fashion and are very effective against biofouling. If cleaning is performed too frequently, the coating's life will be shortened and effectiveness compromised, actually
promoting biofouling.

We urge the State Lands Commission staff to bifurcate this rule, taking time, as mentioned, to appropriate best management practices and best available technology for hulls in niche areas.

We aren't saying no regulation. We just believe that we can truly provide a reasonable, enforceable regulation using best available technology and practices prior to staff's own deadline of 2014.

Thank you for the opportunity to comment and provide industry's perspective on this important rulemaking, and we look forward to working with everybody.

MR. GREGORY: Good afternoon, at this point. My name is Robert Gregory. I work for Foss Maritime Company. It's a tug and barge company that has offices in California and throughout the country.

I'm going to echo some of the points brought up previously. With our barge operations locally, our barges move every day. They are not in labor status, but under the current regs they would be defined as such.

And just a couple points. I want to echo every point that came up, but we don't believe we could discern the 1 to 5 percent. So as -- our judgment would say every time you did an inspection, you were probably in need of a cleaning, just because -- our barges are a lot smaller
than the ships that Mr. Berge was talking about, and, you know, if you've ever seen a film of an inspection in San Francisco Bay, it's pretty hard to tell what you are looking at when you are looking at a vessel, and, you know, unless we have experience, rely on the driver's opinion, our opinion is always going to be to clean or to dry dock.

And that was one of my other points I wanted to bring up is, right now we're currently on, with most of our barges, either a two-and-a-half- or five-year dry docking schedule. And it's currently hard to get on the dry docking schedule as is. So if we increase the number of cleanings and dry dockings that vessels have to do up and down, within the country and out of the country -- you know, U.S. ships have to prefer to dry docking in-state because of Jones Act rules -- we're going to need some more dry docks with a lot of additional costs to the ship owners.

So I thank you for your time.

ACTING CHAIRPERSON GORDON: Have staff up one more time. I have a couple questions that are going to perplex me going forward. And I will confess to the -- I haven't read the regulations.

So what is the -- what is the penalty should a ship certify that they are 1 percent and it turns out that
they are 2 percent?

   STAFF ENVIRONMENTAL SCIENTIST SCIANNI: So --
well, the reporting form that they will put into their
record book will spell that out, will spell out the 1
percent cover. I want to say that the percentage cover is
a metric that is used -- has been used for a long time by
scientists and by diving contractors. It is -- apparently
many of the reporting -- the inspection reports that we do
see have percentage cover already. So it is something
that is being evaluated by contractors.

   The penalty would be a similar penalty -- a
similar penalty to what would be incurred with a violation
of the ballast water rule, because it's all within the
Marine Invasive Species Act. It would be --

   ACTING CHAIRPERSON GORDON: What kind of dollars
are we talking about?

   STAFF ENVIRONMENTAL SCIENTIST SCIANNI: It's
27,500. Up to 27,500 per violation.

   ACTING CHAIRPERSON GORDON: Per violation. Per
event or is it per -- how does that calculate?

   STAFF ENVIRONMENTAL SCIENTIST SCIANNI: The way
it's written is it's per violation and each day -- each
subsequent day of a violation counts as its own violation
too.

   ACTING CHAIRPERSON GORDON: So each day in
California waters --

STAFF ENVIRONMENTAL SCIENTIST SCIANNI:
Potentially --

ACTING CHAIRPERSON GORDON: -- exceeding the 1 percent would be $27,000?

STAFF ENVIRONMENTAL SCIENTIST SCIANNI:
Potentially, but I think throughout the life of our program, our approach has always been to work with the industry and try to educate and not necessarily go out and fine people. So definitely, it would be a working-with scenario to try to get them to understand that they may need better planning next time they go into dry dock. So it's not necessarily that we will go out and hand out fines from day one.

ACTING CHAIRPERSON GORDON: But look at San Francisco Bay, as the example that I've used. I mean, I suspect that the clarity of the water is -- you are not going to see very far. So the diver goes down. They have contracted with a company who's qualified to do this. The diver goes down, looks over the hull, can't see the hull, and particularly with the niche areas, I suspect it's going to be very difficult to get inside there and see, particularly if you have got murky water. So what is this report going to tell us when they look at this thing?

EXECUTIVE OFFICER FOSSUM: Mr. Chair, if I could,
and clarify it if this is wrong, Chris. But they are
going to need to inspect their ships every six months.
They don't have to inspect it every time they come into
California. If they have done it within the six months
and at the time the inspection was done, they had the
1 percent, then if they come into California and it turns
out they have got 4 percent, they are still not out of
compliance.

ACTING CHAIRPERSON GORDON: So you are in the
harbor in Singapore, all right, which is -- you have got a
storm that's come through and it's fairly murky and you've
contracted with someone. You have gone underneath this
massive vehicle and inspected it. I mean, are we going to
send an inspector to Singapore to check that the
company --

EXECUTIVE OFFICER FOSSUM: No. No. Companies
will be contracting and hiring people either for their
companies themselves or with contractors who will do these
inspections. They are doing them now because they need to
inspect them to see whether they need to actually clean
the hulls for themselves. And they do this polishing
periodically, every six months. So there's divers down
there already. They are looking at these vessels. They
are going to be reporting that to the owner. They are
going to put it in the logbook. And then if there's more
than 1 percent, they should be cleaning it. If they have
now done that and within the next six months, they are
clear, unless they come into California and they have
5 percent more.

ACTING CHAIRPERSON GORDON: I'm going to play
devil's advocate for one second here. So I am in -- let's
use Singapore as an example. So the company who does the
inspection are going to be in Singapore. You are going to
essentially rely on the inspection that they do in
Singapore. Correct?

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Yes. But
the inspection report will have either still photos or a
video of a closed circuit television that they already
include in their reports. There will be video evidence or
still photograph that's included.

ACTING CHAIRPERSON GORDON: All right.
EXECUTIVE OFFICER FOSSUM: They are already doing.
It's just following on current practices. And that's why
we tried to draft these regulations to reflect what's
actually going on in the industry, but to set some
standards that they would be encouraged to meet those
standards in a way so that even if they violate the
1 percent when they come into California, it's because six
months ago they did this survey and concluded that it was
1 percent or less on their vessel. They come into
California in two months and there's 4 percent, they are still not violating the standards. But the next time they come into California, if it's still within the six months, and it's still 4 percent, they are still not violating it. It's not a fast and firm 1 percent all the time. And that's one reason we're getting criticism from some of the environmental groups is that we're, in fact, giving some leeway on those standards, but we're trying to be as practical as we can with the shipping industry and going with their six-month standard that they use for inspecting these vessels and cleaning the props and so forth.

ACTING COMMISSIONER REYES: I thought I had it.

(Laughter.)

ACTING COMMISSIONER REYES: Let me make sure I get this. The inspection will occur practically anywhere in the world. It will happen in San Francisco; it will happen in San Diego; it can in Portland; it can happen in Hawaii or Singapore. As long as it happens within six months, within the six months they come to California. Now, our staff is going to look at the recordkeeping. Did they in fact have an inspection occur, and did it show under the 1 percent criteria? And to the extent that there's pictures, there's -- everything's fine, then everything's copasetic. But if our staff goes and looks at this report and says, oh, yes, it's picture perfect,
and you have crabs all over the hull and seaweed growing up the water intake or the wings of the vessel, whatever they are called, stabilizers, then that's where you are using your own staff to look at it and say --

EXECUTIVE OFFICER FOSSUM: Potentially, certainly. And I think Chris showed the one slide or the combination of slides where there were several indications on the hull of biofouling --

ACTING COMMISSIONER REYES: Right.

EXECUTIVE OFFICER FOSSUM: -- but it was less than 1 percent. So they weren't even in the gross exceedance; they weren't even in the minor exceedance on that vessel. If it had been three times as much on the vessel as was shown -- it would have to be more than three times because that was less than 1 percent. Then they would have -- what's the next step after that, Chris? They are fined at that point?

ACTING COMMISSIONER REYES: My point being that, by and large, we will rely on the recordkeeping to do this.

STAFF ENVIRONMENTAL SCIENTIST SCIANNI: Yes.

ACTING COMMISSIONER REYES: And it's in those scenarios where things don't look right, that then our staff will then do the actual inspection on site.

ACTING CHAIRPERSON GORDON: It's like any other
law. The police are out there. They don't catch everyone who runs red lights, but if you happen to be one who did and you violated the law, then you will be caught.

    But right now we have -- we talked about the inspectors we have. None of them are divers. Chris is the only diver we have on staff. And we're not intending to send him down at this point.

    (Laughter.)

    EXECUTIVE OFFICER FOSSUM: So we're --

    ACTING COMMISSIONER REYES: You mean by our own staff, somebody we hire to send?

    EXECUTIVE OFFICER FOSSUM: We think that 99 percent of the companies out there doing this are going to be law-abiding citizens. They're going to follow the rules and there's not going to be a problem. Yes, it's going to be more requirements for them because they are going to have to be thorough in their inspections. They're not just going to be looking for fraud. But a good company are probably already complying with us. Some companies think they may not be able to comply with that. And again, if they have done this inspection and they have got it down to 1 percent, then even if they come into California, again, with 5 percent on their hull and 15 percent in the niche areas, that's only when they are in violation, if they've done their inspections within six
months and documented it.

ACTING COMMISSIONER REYES: The issue is trying to reach the 1 percent. That's where the difficulty -- going to have an impact on the industry.

EXECUTIVE OFFICER FOSSUM: These are -- this is new things here. As Chris says, they already do the statistical analysis, but this is the first time we've had regulations like this. And frankly, it was interesting -- I don't know if it was in "The Bee" or online, but I just saw a similar slide to the one that was showing about Singapore, about all the new vessels, new, brand new, vessels, that are sitting overseas. It might have been in "The Bee" this morning. And there are hundreds of them and they are overbuilt. And so the industry has got a lot of problems, economic problems, right now.

And but be that as it may, we've got problems with them bringing in these invasive species that are causing billions of dollars of impact on the national economy. And California just today, again, announced new regulations on car emissions, and we're way ahead of the rest of the country and the world. And that's what we do. We try and protect the environment here.

ACTING COMMISSIONER REYES: I'm not going to make any judgment. I'm trying to understand.

ACTING CHAIRPERSON GORDON: I'm trying to
understand this too. My concern is kind of -- we stipulated that stopping as many of these organisms from entering in California is the goal. And my worry is -- and all it is at this point is a worry -- is that I'm not sure -- I'm not positive this approach works. I mean, is this the most effective way to do this, is my biggest concern. And what I keep hearing from the industry is that, first of all, we're worried about, frankly, that we don't have enough staff to do what we need to do, that we're going to be depending on lots of out-of-state and out-of-country reporting that would be -- I'm not sure how reliable it's going to be. So we're going to have on paper this nice regulatory regime that if we inspect one out of a hundred ships and these folks are getting certifications in ports of call all over the world, are we accomplishing what it is we're trying to accomplish, is my biggest concern? Is this the direction to get there, as we....

EXECUTIVE OFFICER FOSSUM: Well, again, I'm going to analogize with traffic. I would almost warrant that everybody who drove here today broke some law on the way here. They failed to signal. They failed to be -- they went 56 miles an hour or something in another zone. They did a rolling stop. You know, it's very likely that there will be people who violate it, but if you don't have the
rules, there are no rules, and nobody's going to comply. And so ours is trying to set a goal that we think is a practical one, and we know that most of the shipping companies, again, are very reliable, so we expect they will be able to meet those goals but we have to be looking out for the scofflaws too. And without any rules, that's where you are.

ACTING CHAIRPERSON GORDON: Any more witnesses? Staff, thank you very much for your very informative -- thank you to all the witnesses. I think we're going to move on to -- there isn't any action we need to take on this one.

EXECUTIVE OFFICER FOSSUM: We have two more items, Mr. Chair. We have one that is dealing with the Russian River and the other one is Item 81, which is Bruno's and they would like to address the Commission on the --

ACTING CHAIRPERSON GORDON: Let's do Item 81 right now. I think we've already voted on this. We have witnesses who would like to testify.

EXECUTIVE OFFICER FOSSUM: Actually, we brought that -- we took that off the agenda.

ACTING CHAIRPERSON GORDON: Oh, we took that one off. Okay.

Come forward, please, staff.

STAFF COUNSEL FREY: My name is Jim Frey, staff
counsel for the Commission.

We originally brought Bruno's Yacht Harbor to your attention last September. The staff found the marina in default on various provisions of the lease. You ratified those defaults and you approved the termination of the lease subject to the rights of Bruno's lender to cure the defaults within 60 days. You also gave the Executive Officer his discretion an additional 60 days to extend the time to cure the defaults.

All of those defaults, except one pertaining to the access ridge and its good repair and safe condition, have been cured. During the summer, Bruno's hired an engineer to design repairs for the bridge. The repairs were made. We had asked for a certificate of getting the bridge in a safe condition. We received a very brief note from the engineer saying that the repairs have been done according to his instructions. There was no data backing up the repairs and there's no certification of safety. So we renewed our request for a new inspection.

The lender stepped forward and initiated the process, and between the lender, Bruno's, they hired Duarte Warranty Engineering Company in December to do another inspection.

And in the end, in the long run, Duarte did two inspections, one at the request of Bruno's and one at the
request of the Commission. We met with Bruno's and the
engineer after the first inspection, had some discussions,
and we asked for the second inspection, which was done.
I've summarized -- I've listed all the problem
areas that the engineer found and his recommendations in
the calendar item, but I can summarize them for you rather
briefly:

In the bridge's current condition, and without
further repair, the bridge's load limit should be
restricted to vehicles weighing less than 6 tons and
traffic on the bridge should be limited to 3 miles per
hour;

There were missing or deteriorated stringers,
wheel curves, guardrail connections, blocking at the vents
and deck planks;

Cross-bracing was found to be in poor condition
and a pile cap was rolled;

Decking was not fastened to the stringers in some
instances;

And there's dry rot on a number of the -- on the
interior of a number of bridge pilings.

ACTING COMMISSIONER REYES: Excuse me. What's a
stringer?

STAFF COUNSEL FREY: Duarte is here. I will ask
him to explain that to you.
MR. ADESOKAN: It's essentially a string that goes across the width of the bridge, under.

EXECUTIVE OFFICER FOSSUM: If I can just summarize, and you certainly can ask more detailed questions here. But basically what happened is the engineer that was hired came up with a number of recommendations as to repairing the bridge that they thought would make it safe for the time being, along with a couple of recommendations on the need for future inspections.

Staff has agreed to recommend that the lease be reinstated and give the lessee until the end of July to complete the repairs but to also amend the lease to require that they do these repairs and inspection, and that's the substance of your recommendation.

STAFF COUNSEL FREY: And also, we've asked that the inspection be done on a two- and four-year cycle after the current repairs are completed.

EXECUTIVE OFFICER FOSSUM: Which was the same as the recommendation by the engineer.

STAFF COUNSEL FREY: Correct.

Bruno's disagrees with our recommendation and Mr. Jack Diepenbrock is here to address you on that and he has, I believe, a counterproposal for us for your consideration.
ACTING CHAIRPERSON GORDON: Come forward, sir -- Counsel.

MR. DIEPENBROCK: May it please the Commission, my name is Jack Diepenbrock. I'm a lawyer with Diepenbrock Elkin in Sacramento. I work in government permitting issues, real estate, and real estate financing. I get a lot of assistance from my partners.

Contrary to what Mr. Frey said, and, unfortunately, through no immediate fault of either party, we've been very slow in getting to issues and careful negotiation as to the recommendations. Indeed, we just got the proposed amendment on Tuesday, which I promptly forwarded to my client, Mr. Snodderly, who's a neat guy, who has operated this marina for a lot of years. But unfortunately, he had the flu. We tried to talk on the telephone last night and earlier this morning and talk further, and I've had two conversations with Mr. Frey and one very brief exchange with Mr. Fossum.

In short, while there are things in the report that we don't necessarily agree with -- some of the sequencing seems a bit off to us -- we are in agreement to do all of the work that has been recommended by Mr. Duarte and to do it by a specified deadline of July 31.

We have provided a report to Commission staff. We have issued an RFP for contractors to do the work. We're
providing working drawings to them, so that we will know precisely what they are supposed to do, so they can sign off downstream -- or the engineer can sign off that everything's been done to his satisfaction.

We have four or five contractors on the bid list, two of whom are diligently working on their proposals. One of those is CC Myers. This is a small item compared to everything else that you have been talking about today. We are doing our best to provide to our patrons and our visitors a safe bridge. And I want to say about the contract winning bidder for -- with a specified time for completion of the work and for a cost that makes sense. As I will say later, however, it's necessary that money be borrowed in order to pay for the forthcoming work as well as some of the work that was done last fall, that was mentioned by Mr. Frey.

We're also prepared to do a lease amendment and expect the obligations going forward for further inspections on a two-year cycle for the pilings and a four-year cycle for the bridge as a whole. I should have said that on completion of the work to be done by July 31, we expect them to be able to file with the Commission the report of Duarte Engineering to the effect that the repairs have been completed satisfactorily and having been accomplished the bridge is structurally sound for its
intended purposes. That is, vehicles and pedestrian
access up to a 20-ton limitation.

Our issue, as we have it now, is not really what
we're agreeing to do but how that agreement is to be
documented. Mr. Frey says the staff seeks an amendment of
the lease that would cover both the immediate repair work
and, second, the commitment for future inspections and to
do an addition to the inspections the work that is
recommended to be done. We've got some language. I think
that Mr. Frey and I are pretty close to an understanding
as to what those provisions would look like, but not in
respect to the documentation.

The lease amendment is fine as to the future
obligations. However, we do need to get financing. The
inclusion of these two reports by Duarte and all of this
stuff that is sought to be included by way of amendment to
the lease is going to clutter up the lease beyond belief
and confuse the likely lenders and who we will be going
for, for money. And that's not only my belief, but I
checked with my partners in my office and we do special
real estate transactions and project financing, and we're
very worried about that, the impact, of an inclusion
including that repair work so of course with all these
findings with respect to recommendations as to things that
ought to be done.
ACTING CHAIRPERSON GORDON: My understanding is that the dispute at this point is, Counsel for the Commission believes these -- that these conditional conditions need to be part of the lease, and your argument is that if they are part of the lease, the financing to get the work done won't come through?

MR. DIEPENBROCK: That's true in part. It's not true that we don't see that the requirement of periodic inspection and repair work will muddy the lease such as to make it unhappy for a lender who typically looks for a nice clean lease without a lot of unanswered questions.

We think the issue of the immediate repairs, that's going to be resolved and done by the 31st of July. The lease will go on till 2020. And we've had a lot of discussions with a lot of people with financing with respect to that lease. We don't think that post-July 31, those provisions for immediate repair will have any further relevance because the work will have been done and certified, or we will be out on the street.

And we suggest instead, what we think should be a satisfactory substitute, that Bruno's and the general contractor execute a contract calling for a price and calling for a time of completion and that the contractor place with us and with the Commission a performance bond. That work will, in fact, be done.
ACTING CHAIRPERSON GORDON: Mr. Frey, can you respond to that counterproposal, please?

EXECUTIVE OFFICER FOSSUM: If I could, Mr. Chair, I think our concern here is that we are relying on their engineer's analysis of the bridge and that -- it was a very detailed analysis in that it found a number of issues that they thought were not requiring immediate repair -- dry rot in the piles and whatnot. So we're relying on that engineer's report. But that engineer's report, in addition to the immediate type of repairs needed, also indicated that because of those conditions on the bridge, there would need to be inspections every two years or he would recommend inspections every two years. And given that the safety of the public and those using this bridge are of utmost concern to us, that's why we want it in the lease.

And I understand the concept of having a bond out there for repair, but, you know, if the bond is not needed to be called, that would be great because the inspection is finding that it needs to be repaired. We're certainly willing to look at a bond as well, but the idea of not cluttering up the lease by not having covenants in there that we can require inspections isn't something I was prepared to recommend.

ACTING CHAIRPERSON GORDON: Mr. Diepenbrock, is it
possible -- it's been a long time since I've looked at real estate law. But is it possible there could be some type of secondary document that the lenders would need to see that would be a contract to go into the issue raised by Mr. Fossum?

MR. DIEPENBROCK: We have proposed that very thing, but I know that Mr. Fossum had only about 30 seconds to hear my proposal during a recess, which was that we are, in fact, okay with an amendment to the lease that will address the issues of the future inspections and the future repair work.

ACTING CHAIRPERSON GORDON: We just need --

MR. DIEPENBROCK: We would like to delete the other stuff -- here's the report, for instance; that's one of two reports from Duarte. And we just think that that's going to turn off the loan officer.

EXECUTIVE OFFICER FOSSUM: We are certainly prepared to reassess if we think that the situation is changed by the time that they complete the bridge work near the end of July. We have a Commission meeting late in July. I believe the last Thursday, if I'm not mistaken. And if by that time they are -- they have come up with different terms that they think are necessary for lending purposes, we certainly would be willing to look at the condition of the bridge at that time and see if
there's any changes in circumstances. Right now we're relying on the engineer's report and we need to....

ACTING CHAIRPERSON GORDON: What I am hearing is, he's willing to contract for the ongoing inspections exactly as you are requesting. Is that correct? Just in a separate contract from the lease.

MR. DIEPENBROCK: No. That will be in the lease. Excuse me. I didn't make that sufficiently clear. I'm saying that we're quite prepared to do an amendment of the lease that will speak to the obligation of the other tenant to cause these periodic inspections to be made going forward, the first one of which would be two years to look further at the pilings to see how much the dry rot has impacted their load bearing capability and do the work. And the second is, after four years, on the four-year cycle --

ACTING CHAIRPERSON GORDON: What is it you -- what is it you don't want in the lease hold that you believe confuses the lease for the lenders?

MR. DIEPENBROCK: What I don't want is the first part of the recommendation given in the staff report that states -- and I believe there's no question about the State's position as it is now, that they want the lease amendment to include the immediate repair work that, as I say, will be done on the 31st of July and will be subject
to the performance bond. That would be a side agreement, if you will, that there's no need for the lender to have it unless they ask. If they ask, they ask. But as of now, most loan officers are going to say, well, gee, we've got to hire our own engineer now to make sure that all this -- these things have been cured and so on and so on. Whereas, by the 31st that will happen and be certified by the engineer. As I say, we will be out of that. We don't think that's an unreasonable request.

Excuse me, I don't want to negotiate.

EXECUTIVE OFFICER FOSSUM: No. And we understand the concern in trying to find somebody to lend you money if they think there's a problem with the lease. But there is a problem with the lease. And for us to not have enforceable conditions in there about the repair and amend the lease to require that seems to me to do a disservice not only to the public, the state, but to anybody who would want to lend on that so that it would be a matter of record.

ACTING CHAIRPERSON GORDON: Let me restate this. You are proposing to have the work done --

MR. DIEPENBROCK: Yes, sir.

ACTING CHAIRPERSON GORDON: -- inspected, finished, before you sign the lease? And you don't want --
MR. DIEPENBROCK: No. No. No. There already is a lease in place. We're talking about an amendment.

EXECUTIVE OFFICER FOSSUM: Actually, there is no lease in place because the lease lapsed as of the 120 days. So what we have recommended is allowing the Commission to reinstate their lease. They are actually technically in trespass right now. But to do that upon an amendment and to allow that amendment therefore to be a binding obligation on the part of the lessee to finish the repairs and do the inspections, it's that simple.

MR. DIEPENBROCK: I don't want to be contentious, but we're not trespassing until the cartel tells us we're out of there. But anyway, I'm not trying to do that.

What I am really suggesting at the end of the day that might make sense for you, and I would hope for Mr. Fossum and Mr. Frey, is that we extend our cure period for a mutually agreeable period of time, 30 to 60 days, and get this resolved and get our contract made and meet with a lender -- excuse me, not with a lender, with a contractor, and do some preliminary explorations with the lender. We're talking about over a hundred thousand dollars of work when it's all said and done. And this is a small business. This is a very small business, and we're in tough economic times.

ACTING COMMISSIONER REYES: So let me make sure I
understand now, because I've heard a lot of stuff and I
have a tendency to try to track it all and then get
confused with the details.

But right now, you're saying you don't have a
lease, and we're willing to give you a lease or renew the
lease with an amendment that says you will do this
construction, this mitigation or retrofit, by July, and
then you also agree for regular periodic inspections
moving forward. And that's what staff has recommended.

Your position is, you muddy the waters by
requiring that the construction or the retrofit occur
before July, even though you are willing to sign something
on the side that this construction or retrofit will occur
and you will even go as far as posting a bond for that.
But you don't want the lease to include that because
lenders will consider this to be a muddy lease. But if I
understand correctly, you don't really have a lease to
take to a lender at this point that's a valid lease,
anyway. Did I misunderstand? Am I on the right track,
Counselors? I want one of my counselors to tell me where
I am missing the boat.

CHIEF COUNSEL LUCCHESI: In October of last year,
the Commission terminated the lease but gave 60 days with
an extension to 120 days at the discretion of the
executive officer to cure those defaults. Those defaults
have not been cured. The repair of the bridge is
outstanding still. And so right now, there is no
effective lease.

ACTING COMMISSIONER REYES: So it seems to me,
Counselor, that you are better off with a lease that has
provisions to get a loan than no lease at all to go get a
loan.

MR. DIEPENBROCK: I'm simply saying that we need
to divide the documents. I'm trying to say to you that
we're quite ready to do a lease amendment and do it
immediately to the effect that we will do these future
inspections. And I'm willing to say that and commit what
my client is authorizing me to commit and that he's
prepared to provide a document apart from the lease which
will require that these repairs be accomplished by the
stated date of July 31. That's what I am trying to say to
you. And I think that that answers the Commission's need
for security that the work, the immediate work, will, in
fact, be done. As I've indicated, we've hired the most --
or expect to hire, I should say -- the most reputable
bridge contractor on this side of the Rockies to do the
work. So we ask only that we deal with the form and not
the substance. We have an obligation clearly set forth,
secured by a performance bond, that the repairs will, in
fact, be accomplished according to the recommendations by
I don't know what could be more fair than that.

ACTING CHAIRPERSON GORDON: Let me restate and make sure I understand now.
You would like two separate contracts. One, the lease, the terms of the lease, plus ongoing inspections. Okay. Second contract for the repairs. Repairs will be done by July 31st with a performance bond that they would be done by July 31st. They would be done by CC Myers.

MR. DIEPENBROCK: He's one possible bidder. My hope is he will be successful because I know his company.

ACTING CHAIRPERSON GORDON: Mr. Fossum, tell me why that doesn't work. Logically it sounds like it works, for me.

ACTING COMMISSIONER REYES: But failure to perform that, you still have a lease moving forward, and now it's up to us or to staff to go pursue that ratification. Why do we want to be in the bidding process? I'm sorry. That question was to you, sir.

EXECUTIVE OFFICER FOSSUM: I think that's right, Commissioner. Suppose it is a hundred thousand dollar bond and they believe that the repair works will not exceed that. I haven't seen any estimates at all, so I really don't know.

MR. DIEPENBROCK: We have none to give you.
EXECUTIVE OFFICER FOSSUM: So it could exceed a hundred thousand dollars. If it's a hundred thousand dollar bond, they have a lease, they market it, they fail to repair the bridge in time, we have and -- we have a bond now that really requires that we then go and repair that bridge. If that's -- you know, the Commission can decide what it wants in that regard.

I understand the marketing restrictions that it may give to a lender if they see something like they have an obligation to repair something like July 31st, why would I want to buy that house if it needs a roof on it? Some lenders may. Certainly, we know what the lending market looks like now and there's a lot of property out there that has problems, and so they may be reluctant to actually lend money on something like that.

That's -- but I don't know whether -- it's something that I don't feel very comfortable with for a couple of reasons: One, having it in an actual lease that's enforceable against them, and secondarily, because we recorded the lease amendment, it would be a matter of record and so wouldn't lead anybody on. So it's in the State's best interest to then take a bond in lieu of a covenant lease. And that's the Commission's decision, but it's my recommendation that the lease be amended.

Again, we can come back to the Commission at a
later time if we look at that bond that's being offered
and believe that it's a legitimate alternative, but it was
brought to me this morning, and, at this point, I'm
unwilling to recommend that. But it's your call.

ACTING COMMISSIONER REYES: Mr. Chair, I'm willing
to, at this point, move with the staff's recommendation as
stated and then give executive officer the flexibility to
take a second look at that offer to see what it does. And
it does, in fact, protect the interest. We're in the
business of protecting the public trust. We're not in the
business of going out there and building and making --
taking bids from people and doing RFPs. That's not what
we do. That's not our forte nor should it be our
business, with some limited exceptions.

So I would rather go now with the staff's
recommendation, and to the extent that they have a strong
case, which they feel, then -- and they can come up with
those provisions that will provide for the modifications,
the retrofits that are necessary to make this a safe
project, then I guess that's kind of where I am, Mr.
Chairman.

ACTING CHAIRPERSON GORDON: I think I'm in the
same place, actually, with the direction to staff. You
raised an interesting point, which is the sufficiency of
the bond. If the bond were sufficient to cover the
State's interest here -- we've had this conversation before. We have a small business person with potentially large liability on this lease. I would like -- we've gotten this far towards trying to get this thing as a viable, going, operation for the State without problems. If the bond is sufficient to cover the State's interests, I'm very interested in exploring what Mr. Diepenbrock has explored. If it's not, then I don't think we have any option.

MR. DIEPENBROCK: Let me add for whatever comfort it may be. We do have a million dollar liability insurance policy as to which the State is an additional insured in case there should be some mishap out there.

I think what I would like to see you do, if you would, is to set a timeline for us to meet and confer and see if I can persuade Mr. Fossum that what I am proposing is okay or for him to convince me that his is the better course. I would suggest we have -- you have another Commission meeting in March.

ACTING CHAIRPERSON GORDON: I'm going to have you work with Mr. Fossum fairly extensively. I don't think we have to do anything formal. I think if you make a request to him to meet and confer at the earliest possible date, I am absolutely confident he will meet with you in the next 24 to 48 hours. That's always been my experience.
EXECUTIVE OFFICER FOSSUM: I'm going on vacation.
(Laughter.)
EXECUTIVE OFFICER FOSSUM: But the staff will be
happy to meet with him and look at a few -- go over the
details of this proposal, and I would be certainly willing
to bring it back to the Commission at the next meeting.
ACTING COMMISSIONER REYES: Bring it back to the
Commission --
EXECUTIVE OFFICER FOSSUM: Unless you are
suggesting that I have the authority to accept the bond in
lieu of a lease covenant. I believe they should sign the
lease at this point.
ACTING COMMISSIONER REYES: I think the lease
should be signed now. That should be a done deal.
EXECUTIVE OFFICER FOSSUM: And I will be happy to
bring back their alternative and our recommendation on
that alternative.
ACTING COMMISSIONER REYES: At the next meeting.
And to the extent that, yeah, there is something that
really makes sense that requires us to then revise the
lease at that point, we can do that at the next meeting.
EXECUTIVE OFFICER FOSSUM: We want it to make
sense.
ACTING COMMISSIONER REYES: Okay. So that was my
motion.
ACTING CHAIRPERSON GORDON: I will second.

All those in favor?

(Ayes.)

EXECUTIVE OFFICER FOSSUM: Excuse me. We have one more speaker slip on that. Mr. Snodderly also has indicated a request to speak.

ACTING CHAIRPERSON GORDON: Come forward, sir.

MR. SNODDERLY: Good afternoon, gentlemen. My name is David Snodderly and I signed a lease in 1985, so I challenge anybody in the room who's been here since 1985 on one of these leases to stand up and raise your hand. There aren't any.

We employ three to five people for the past 30 years, and we have expanded in order to pursue this issue. But it's been over $80,000 to -- to the initial repair to the bridge and the subsequent inspection of the entire bridge. And it's money we really didn't have. Owens Financial put it up as our banker because we're kind of in a corner.

Now, you might say, gosh, you have all these good hammers to use to get this bad guy to perform. But I will point out to you that the 1995 bridge report, which was furnished to staff, was prepared at our request, because in 1994, having been in a position of owning a marina for 10 or 12 years at that time, maybe 15, I don't know,
anyway, we owned the bridge and it was decrepit in 1994. So we got an engineer's inventory report.

We took that engineer's report, contracted with Emerson Engineering to guide our hand and repair and hire people. We repaired the bridge. We brought the weight limit up from probably a total restriction less than we're talking about now to highway limits as standing. The limit on the bridge now is 12,000 pounds and 3 miles per hour. Mr. Duarte is here today to answer any questions you might have as to the safety of the bridge. I contend that the safety is not an issue on the bridge if you hold the weight to 12,000 pounds and stay under 3 miles an hour. And I think Mr. Duarte would agree with that. He might say, well, you should put up "closed" to keep people away from the curbing because it needs some attention and we can do that. We can do that in the next couple of days.

So we could provide you gentlemen with safety because that's of paramount interest from our point of view, for our own clients, and will provide about 175 slips for the public over these past 30 years. So we're interested in safety. We're interested -- my God, gentlemen, we agree. You are interested in the same thing we're interested in. You are interested in the performance; we're interested in that too. We performed
in '95 and nobody kicked us off. Nobody did that, because we saw the need and we filled the need. We did the job. But nobody seems to recognize that we're trying our best to be a successful small business. And my health has suffered a little bit lately. I wasn't able to respond very quickly to the amendment because I had a stomach condition. So here we are. We just need to know how to document what we agreed on. And what we would like from you is approval to get the first piece of work, which is kind of complicated because it names specific stringers, specific pylons, specific bridge pieces and components that need attention and are drilled and tested further and replaced. That's an ugly piece of work to sit down and try to figure it out and describe it to you.

So what we are suggesting is we put that on a separate agreement that says, okay, we'll do that. We'll reinstate the lease. We don't take the position, by the way, that it's been cancelled. But we will put that aside as a nonissue for the moment. And so we will reinstate the lease, give us the -- until July 31, which we agreed to do with staff on January 12th. So give us the right to do that, and that will fall away from the lease to the 31st of July, anyway, because that work will be done and it will be all subject to the inspection at two years and four years and two years and four years. And after the
eight years, the lease is up.

We hope to get Mr. Fossum to see that maybe a new lease is a good thing for both parties. So we want to be good guys and convince you folks of that. That's pretty much it.

ACTING CHAIRPERSON GORDON: Counsel, I'm going to ask you a question right now. We had already voted on this measurement. Do we need to go back and rescind the vote or are we --

EXECUTIVE OFFICER FOSSUM: There was, but because there has been not --

MR. SNODDERLY: Let me speak.

EXECUTIVE OFFICER FOSSUM: Yeah. I suggest that you -- I would like to add just a couple of things and that is that we understand from the information provided to us by Mr. Snodderly, that, in fact, 17 years ago, they did repair half the bridge at that time and even the engineering report at that time suggested some additional things to be done. So now what we have is the other half of the bridge primarily, which is where the problems have arisen, and so it's not that the bridge wasn't repaired in 1995, as was mentioned today, and we did get one engineering report from them. They didn't think any repairs were needed, but they got one engineer to say the repair work was done and they put in a steel beam, and we
didn't find that acceptable. So now we have their engineer's report and all we would like to do is comply with that.

ACTING COMMISSIONER REYES: Is there any other public testimony? Yes.

MR. ADESOKAN: My name is Ade Adesokan. I'm the activities manager at the marina.

What I would like the commissioner to know is that based on the last meeting that we had, we complied with every single request of the Commission at that point in time, including doing the work that was specified on the bridge that was repaired at that time and we have an engineer sign off.

Now, subsequently, after the engineer's report was delivered -- or the engineer sign-off was delivered, the State Lands Commission staff found it necessary for additional -- for additional inspections to be done. At that point in time, we did that inspection at a cost of about almost $15,000, and that was done. We delivered that to the staff, and we've been in talks with them to make sure that all of those things are done and we agreed that the work will be done. So what we're asking from the commissioner at this point in time, because the lease was in place for the last 27 years. All work by that lease was done and it's performed to date, except for the
bridge, which was a subsequent request on the Commission
to do anything.

So if everyone has a car, as an example, and you
are driving a car, and you want a total inspection done on
that car, the mechanical -- or whoever does the inspection
is bound to find something, even though you might be
taking your car in for an oil change or a tune up. If
after you have got the car tuned up and they ask for a
general inspection and they find something is due to be
done, then we do it, and we agree to do that.

So we're not in terms of disagreeing with the
Commission except that what we're asking is that we
basically work together to make sure that this is done and
that we have the banking available to us to be able to
fund the project. And if we get the funding done, then we
can do all the work that's required. We've already agreed
to do the work.

So what I would like from the commissioner is that
we get the amendment that says that we need to have the
inspection done. In the meantime, leave things as is
until the bridge is complete and they are giving the date
of July 31st, if I'm not mistaken. So if we've done the
work by July 31st, then we signed a lease for 27 years
already and it has eight years to go on it. So -- and
we've agreed to do the inspection on that bridge two years
and four years intervals, then we should be okay.

I mean, we have 27 years of history here with that bridge and with no lease amendment or anything of that nature. And there's only eight years left. The burden of having to sign another lease and getting an amendment and all this is just substantial that it would make it almost impossible for us to get financing to get the job done.

ACTING COMMISSIONER REYES: Thank you.

Mr. Chair, I would like to move that we rescind the prior vote and essentially expunge the record.

ACTING CHAIRPERSON GORDON: Second that motion.

All those in favor?

(Ayes.)

ACTING CHAIRPERSON GORDON: The vote is renounced. The previous vote has been rescinded.

ACTING COMMISSIONER REYES: Now that we have public testimony and we have the opportunity to hear from folks, I would like to still make that motion, my prior motion, that we go with staff's recommendation at this point and ask staff to work with the parties, and to the extent that this bond idea can actually pan out to staff's satisfaction, that this lease be brought back at the next meeting. But absent that agreement, then the lease would then stand as it is recommended by staff for those two issues.
ACTING CHAIRPERSON GORDON: Second that motion.

All those in favor?

(Ayes.)

ACTING CHAIRPERSON GORDON: Two-nothing. The vote is out.

EXECUTIVE OFFICER FOSSUM: Mr. Chair, we have one more item -- if we could take a short break.

Just to let you know, the public -- the one person for public comment has left so they will not be testifying, so we just have the one item left, No. 90.

ACTING CHAIRPERSON GORDON: No. 90. So the two on No. 83 on the Treasure Island, we don't have anybody left?

That was taken -- all right. All right.

(Break taken in proceedings.)

ACTING CHAIRPERSON GORDON: Everybody take their seat. Everybody wake up. It's been a long day.

We got one more item. Item No. 90, which is an application for a new general lease of sovereign land located in the Russian River of Sonoma County Water Agency.

Can I have the staff presentation, please?

PUBLIC LAND MANAGER LEE: Good afternoon. My name is Ninette Lee. I'm a public land manager with the Commission's Land Management Division, and I'm here to present information on the calendar No. 90, and I have a
A presentation too, with a few slides.

(Thereupon an overhead presentation was presented as follows.)

PUBLIC LAND MANAGER LEE: This item asks the Commission to authorize a lease between the Commission and the Sonoma County Water Agency for continued breaching, periodic breaching, at the mouth of the Russian River to prevent flooding, and construction and maintenance of an outlet channel to form a freshwater lagoon for fish habitat enhancement and to prevent flooding in the Russian River.

The mouth of the Russian River is located at Goat Rock State Beach near the town of Jenner. And here's an aerial photo showing the beach in Jenner.

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PUBLIC LAND MANAGER LEE: The next slide is our site and location map from the calendar item that shows the proposed lease area.

The Sonoma County Water Agency has been a lessee of the Commission since 1996 when it took over artificial breaching of the sandbar that forms at the mouth of the river. Prior breaching had been performed by the Sonoma County Public Works Department and private citizens. The Water Agency has been mechanically breaching the sandbar when it closes and water levels threaten low-lying
properties. However, when the sandbar is breached, saltwater from the ocean mixes with river water, creating saline conditions in the estuary.

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PUBLIC LAND MANAGER LEE: And here's a photo of a natural open channel.

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PUBLIC LAND MANAGER LEE: And then about one week later, a sandbar formed.

In 2008, the National Marine Fisheries Service issued the Russian River Biological Opinion in response to section 7 in consultation with the U.S. Army Corps of Engineers for operation of upstream dams. The Biological Opinion found that both the artificial breaching practices and the upstream dam operations during the low flow season of May 15th through October 15th have significant adverse impacts on the river's estuarine rearing habitat for steelhead, coho salmon, and Chinook salmon by interfering with natural processes that cause a freshwater lagoon to form behind a sandbar.

As a result, the Biological Opinion requires the Water Agency to develop and implement a new method of opening the sandbar during the low flow season to create a more productive environment for rearing Pacific salmonids.

This new more controlled method of breaching,
known as the Russian River Estuary Management Program, would involve establishing a summer freshwater lagoon during the low flow season. The Water Agency would continue current breaching practices for the remainder of the year as needed. Establishment of the summer lagoon is similar to current breaching practices, but the outlet channels would not be excavated as deeply or narrowly. A bulldozer and/or excavator would be used to dredge sand, which would then be placed on the beach adjacent to the channel.

Historic breaching practices vary year to year, occurring mainly in the spring, early and late summer, and fall. For the proposed summer lagoon management, the Water Agency may need to open up the mouth of the river up to 22 times per year and perform maintenance once a week. --o0o--

PUBLIC LAND MANAGER LEE: And this shows a created outlet channel. --o0o--

PUBLIC LAND MANAGER LEE: And this slide shows actual breaching activity.

An environmental impact report on the proposed project was prepared and certified by the Water Agency on August 16th, 2011. It identified a number of significant and unavoidable impacts, some of which involve the
Commission's public trust responsibilities toward the State's sovereign land.

For example, the project may reduce the quality of surfing at Goat Rock State Beach during the summer lagoon management program. It may also reduce the availability of river-side beaches, impair water quality, and create long-term disturbance for the Jenner harbor seal haul-out.

PUBLIC LAND MANAGER LEE: And there's a picture of the beach, and there are some seals in the distance.

While the project may impact some public trust uses, it also provides the public trust regional and statewide benefits through improvement of rearing habitat for state and federally threatened and endangered salmonid species. It can also allow the Water Agency to continue to provide water, sanitation services, and flood protection in its district. Commission staff has received letters from several organizations and individuals outlining their concerns with their project's impacts.

In addition, a lawsuit was filed by the Russian River Watershed Protection Committee, alleging that the EIR is inadequate under the California Environmental Quality Act and that the Water Agency's decision approving the project should be set aside and certification of the
EIR be vacated.

The lease before you today contains special provisions that require the Water Agency to submit adaptive estuary and water, rubble, and barrier breach management plan, annual water quality data summary report, and an annual report on the harbor seals' reaction to the proposed activities. In addition, the provision states that the lease will terminate if the EIR is ruled invalid.

The Water Agency has requested a term that would meet the Biological Opinion stipulations to implement the project through 2023. However, given uncertainties in the necessary frequency of a outlet channel construction and exact environmental reactions to lagoon management, the Water Agency is using an adaptive management approach to accomplish the project.

Considering this approach and the potential for project modifications, Commission staff recommends authorization of a lease providing for three periods of summer lagoon management. Staff believes this term would provide sufficient experience and information to determine the project's success and the ability to incorporate any modifications into a new lease.

Jessica Martini-Lamb, principal environmental specialist at the Sonoma County Water Agency, is here to provide you with a brief presentation on the project.
Commission staff as well as the Water Agency staff are available to answer any questions you may have, and there are also two people here wishing to present their concerns regarding the project.

Thank you.

ACTING CHAIRPERSON GORDON: This has been a long day. Can you be brief, please.

MS. MARTINI-LAMB: I will try to be brief. Ninette did a fantastic job of summarizing where we are with the project right now. Thank you very much.

(Thereupon an overhead presentation was presented as follows.)

MS. MARTINI-LAMB: I'm Jessica Martini-Lamb, principal environmental specialist with the Sonoma County Water Agency.

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MS. MARTINI-LAMB: And as Ninette mentioned, the purpose of the estuary management project is to adaptively manage the Russian River Estuary to enhance rearing habitat for endangered salmon while at the same time continuing to minimize flood risk to low-lying properties along the Russian River Estuary.

And I would like to briefly provide some background on how we got to this project and the steps that the Water Agency is taking to manage the estuary for
this purpose.

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MS. MARTINI-LAMB: As Ninette mentioned, since the 1950s, the barrier beach that forms at the mouth of the Russian River has been breached. The Water Agency took over this responsibility in the mid 1990s, and soon after, steelhead, coho salmon, and Chinook salmon were listed under the Endangered Species Act. Coho salmon are also listed under the California Endangered Species Act.

And the Water Agency entered into a Section 7 consultation with the U.S. Army Corps of Engineers and the National Marine Fishery Service, in which they evaluated the Water Agency's and the Corps's operations within the watershed.

Following over a decade of consultation and issuing the Russian River Biological Opinion in 2008, California Department of Fish and Game issued a consistency determination in 2009. And the Biological Opinion directed the Water Agency to modify our breaching practices from mid May to mid October in order to enhance rearing habitat for endangered juvenile salmon while continuing to minimize the flood risk.

As you can see from this picture, when the barrier beach forms and encloses the river mouth, the resulting water backwaters as water surface elevations increase.
When the estuary is tidal and open, the tides extend up to Duncans Mills. When it closes, it essentially doubles the length of the lagoon.

These increasing water surface elevations pose potential flood risk for low-lying properties along the estuary, but this also recognizes that the increased freshwater depths in the estuary provide an opportunity to enhance rearing habitat.

Central and north coast lagoons have been documented to provide habitat conditions that allow juvenile salmonids to thrive and grow prior to migrating out to the ocean. In fact, studies have shown that in some of these lagoons that the juvenile salmon that rear in lagoons comprise a majority of returning adults to watersheds.

Enhancing the habitat for these salmon would be accomplished by modifying the breach activity, as Ninette mentioned, and the Water Agency recognizes that this effort may result and impacts the public trust resources and discloses impacts in our Environmental Impact Report.

However, public trust resources can also benefit from this project. Coho salmon are one of the most certainly the most at-risk species in Sonoma County and one of the most at-risk species in the state, and it would allow us to continue providing the protection for flooding...
for properties along the estuary.

By adaptively managing the lagoon and incorporating the lessons that are learned while we're continuing to gather and interpret data, the Water Agency hopes to comply with the Biological Opinion while minimizing the project impacts as much as possible.

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MS. MARTINI-LAMB: Here's a quick slide of this. On the top right, is a picture of the artificial breaching that we do. On the bottom right is a picture of an example of what a lagoon outlet channel might look like. This is actually a naturally formed channel that we would try to replicate. And the picture on the left shows the area along the beach where the work could occur.

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MS. MARTINI-LAMB: The management tools that we're utilizing have been considerable. The Water Agency has put considerable effort into monitoring biological resources and water quality in the estuary. Some of this effort was required by the Biological Opinion. But water quality work and the fisheries stating what the Water Agency has done has been ongoing since 2003, prior to the filing of the Biological Opinion.

We do fisheries monitoring in multiple lower river tributaries as well as operating the track of the upstream
end of the estuary, resulting in abundance of steelhead utilizing the estuary. We do beach seining basically at every available location from the river mouth to Austin Creek in order to attempt to recapture these salmon and understand their growth rates in the estuary. We are doing sampling of invertebrates and zooplankton as part of an effort to understand the prey that are available in the estuary as it's currently managed and how those prey resources will respond to changes in estuary management and management of the freshwater lagoon.

We also do twice monthly baseline pinniped monitoring surveys and do pinniped monitoring surveys along with our beach management actions.

And as well for water quality, we maintain native saunas at ten locations along the estuary and in the lagoon to measure water quality constituents and learn more about how water quality will change in the estuary with the change in management. Those changes in water quality will drive how prey, the prey, develop and how the salmon will respond to changes in lagoon management.

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MS. MARTINI-LAMB: We've been working with partners to keep moving the estuary project forward. We maintain open dialogue with our partners and with the public on what we're learning about the estuary. We're
working with universities such as UC Davis and Bodega Marine Lab, UC Berkeley, Lawrence Livermore Laboratory, and the University of Washington. We collaborate with local partners on the pinniped monitoring efforts and work with local volunteers.

And finally, we maintain regular communication with the public on the outreach -- to outreach and inform them on the progress of the estuary management plan.

So I thank you for your time this morning. I was trying to keep it brief here -- or this afternoon. And thank you for the opportunity to present.

ACTING COMMISSIONER REYES: Mr. Chair, I know we're short on time here. But in all fairness, I think that as a supporting statement, that lasted more than three minutes, so in all fairness, the opposition should also get -- I have a meeting in Sacramento. The opposition should be afforded the same.

If anybody else is speaking in support of this, please hold onto the three minutes. I have no idea who it is, but I just think that -- you know.

ACTING CHAIRPERSON GORDON: I agree.

Any other support? We have comments to make on the project, yes. I'm going to get my helper here to do the slides. We have a PowerPoint.

(Thereupon an overhead presentation was
MS. HIGGINS: Hi. Thank you for this opportunity to comment. I'm Cea Higgins with Sonoma County Surfrider, and we're here to give comment on the construction of the outlet channel in the highly debated possibility of benefit to juvenile steelhead salmon. There are unanswered questions and unfinished studies necessary to determine whether this lease is economically viable or desirable, conducive to public access, or consistent with environmental protection.

Because this project has negative impacts to public resources that this Commission is charged with protecting, because it reduces recreational access to the state beach and Russian River, eliminates navigational access from the river to the ocean, negatively impacts fishing and community businesses and the local economy, negatively impacts listed and unlisted wildlife species, and negatively impacts water quality, we suggest a one-year lease is more in keeping with the mandate that's been entrusted to you in the Public Resource Code.

I kind of want to pull the camera out a little bit so that you see that this is an entire ecosystem that we're looking at and quite a cherished one for Sonoma County residents. We certainly appreciate and acknowledge the SLC staff for reducing the proposed lease from the
original 15 years to three years. However, we would hope that the Commission would act to approve the lease before a period of one year, which would be commensurate with the one-year permit issued by your sister agency, State Parks. State Parks staff recognizes that as an adaptive management plan, changes may be necessary to the outlet channel construction at any time during each annual construction period. They require the flexibility to adapt their permit and its restrictions on an annual basis. So should the State Lands Commission by issuing a one-year lease only.

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MS. HIGGINS: Sonoma County state beaches receive over 3 million visitors a year and the Russian River Estuary is a premier visitor attraction that's located at Goat Rock State Beach. It's the most popular Sonoma beach park. It has the easiest access to the ocean.

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MS. HIGGINS: It's the only beach park with river access for safe wading. It has free parking.

The attempts to construct and maintain the outlet channel will require an unknown number of beach closures during the most heavily used times of the year, severely restricting public access each time.

All previous attempts at the channel construction
have failed. The Water Agency has not been able to estimate the number of days required to successfully make the channel because they don't have a baseline.

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MS. HIGGINS: The lower Russian River of the estuary and the coastal zone is a world class recreation area. The combination of the lower flows and the backflow from a closed mouth will negatively affect boating, surfing, swimming, and, most important, water quality.

The estuary is a designated marine protected area. It's included in the State Marine Conservation and Recreation Management Areas. It's also the home to the largest harbor seal colony on the Sonoma coast.

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MS. HIGGINS: The Mitigation Monitoring Plan admits that the IHA does not provide for a long-term harassment or alteration of the habitat conditions that would contribute to the harbor seal abandonment of the Jenner haul-out, and, because of this, NMFS Marine Mammal section has only issued a one-year permit at a time for the last two years.

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MS. HIGGINS: The numerous and respected stakeholders -- I stand here as Surfrider, but there are over 173 pages of comments on this EIR, all supporting a
valid solution to salmon restoration, but we have repeated questions on the accuracy of the EIR findings, challenging the conflicts --

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MS. HIGGINS: -- that are listed within the Biological Opinion and the conflicts of the project with California Public Resource Code.

These concerns have yet to be addressed except to be deemed significant yet unavoidable in the EIR approval by the board of supervisors, who also happens to be the board of directors for the Water Agency. This buyout identifies the risk as significant disruption and adverse modifications to the habitat of coho. We are talking several different species here, all with different habits.

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MS. HIGGINS: In 2011 with river flows during the management period averaging over 125 cubic feet per second and a river mouth which remained open, the exact opposite conditions recommended in this management plan, coho salmon reached record numbers. Something worth considering.

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MS. HIGGINS: In addition, the buyout outlines the likely effects on water quality. It concludes that the combination of high inflows and breaching practices impact
rearing habitat, yet the EIR for the low flow, which is yet to be completed, and the EIR for the out ship channel [verbatim], was separated. One cannot separate a river from a river mouth or attempt to benefit one species at the detriment of others and expect success.

The violation of CEQA is currently being litigated by the Russian River Watershed Protection Committee and the results of that litigation should be a part of the review process that can only occur with the lease tenure of one year.

The feasibility of alternative methods such as raising structures or removing the bunk or altering the jetty have not been adequately investigated. Current jetty studies will not be completed until 2012 or the end of this year, and approval of a one-year lease would allow reevaluation once those studies were completed.

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MS. HIGGINS: In other inadequately addressed issues is the actual cost of the management plan. Current estimates don't include the unknown costs of construction and maintenance of the outlet channel. No cost benefit analysis has been done on the project or project alternatives or the negative impacts to the local economy.

The California Coastal Commission has rejected the Water Agency's request for an amended permit, requiring a
new application which does include all this previously
questioned and missing information.

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MS. HIGGINS: Marine resources shall be
maintained, enhanced and, where feasible, restored.
Issuing a one-year lease will improve the opportunity to
restore the estuary so that it can be a healthy habitat
for all species of marine organisms.

Thank you.

ACTING CHAIRPERSON GORDON: Staff, can you come
back up, please? The procedural objection I'm hearing
right now is three years versus one-year lease.

PUBLIC LAND MANAGER LEE: Right.

ACTING CHAIRPERSON GORDON: Can you tell me what
the downside of the state interests are if we went to a
one-year instead of three-year lease at this point?

PUBLIC LAND MANAGER LEE: That would require the
Water Agency to submit another application, actually,
right now for a new lease and then they submit filing fees
and deposit for....

ACTING CHAIRPERSON GORDON: How much would that
cost the Water Agency to resubmit?

PUBLIC LAND MANAGER LEE: It's an estimated
deposit for public agency. It's a $3,000 deposit to cover
the application processing cost.
ACTING CHAIRPERSON GORDON: What would the Commission's -- what would your reaction be to a one-year as opposed to a three-year, just as far as what you are trying to accomplish?

EXECUTIVE OFFICER FOSSUM: Mr. Chair, if I could, we looked at that, because, as was pointed out, the Department of Parks and Recreation have the State -- they have only identified one year as the period that they would be allowing. However, the Department of Fish and Game gave three years, and so we felt that an agency that was focusing on the need for the study of the salmonids and how it's going to impact it was more appropriate at the time, but it's certainly, again, the Commission's discretion.

ACTING COMMISSIONER REYES: I would like to know if there's any other opposition. So we will hear from everybody before we take any action and end up rescinding ourselves again.

MS. JELLISON: My name is Norma Jellison, and I live in Bodega Bay on the Sonoma County coast, and I'm also a volunteer with State Parks with the harbor seal colony at the mouth of the Russian River, which you saw some slides on.

So I would like to make just a few brief comments to you, very brief. The National Marine Fisheries
Biological Opinion forced the Sonoma County Water Agency to develop this estuary management project focusing on one species without really meaningfully considering the negative impacts on many of the other inhabitants and users of the estuary. Harbor seal colony nursery, the Dungeness crab nursery in the river, the boaters, the surfers, and, most importantly, those of us of the public, who use the beach at the Russian River.

Any reduction to public access to the state beach and the river -- and we're talking maybe 22 times a year for just the construction period -- we don't know how many times for the maintenance of construction -- would really be another blow to our hard-hit state parks and to our local visitor-based economy. These beach closures and the sustained six-month closure of the mouth of the river, which is the only access to the Pacific Coast from the Russian River for the many, many boaters and fishers and surfers who use this area is really tantamount to a taking of public trust resources from us, the public.

So I urge the Commission to be very cautious and very conservative and to consider approving a one-year lease commensurate with the state parks who approved a one-year period because they too were very, very concerned about state park public resource and access for families to the beach and to the river.
Thank you very much for your time.

ACTING CHAIRPERSON GORDON: Thank you.

Mr. Reyes?

ACTING COMMISSIONER REYES: The thing is, as I think about this, it seems to me that, given the climate changes that we're seeing, and there's no year that's like the last year, one year kind of does not allow for that longer period of time to look to see what's going on. So I concur that a ten-year proposal would be too long. But frankly, I think I'm comfortable enough with the three years. It's not a permanent lease. Three years is not a very long period of time. And I understand the issues of the -- are you protecting species at the cost of the other, but that's sort of the role of the Environmental Impact Report, and it is being litigated.

So I think the recommendation is that we do the three years with the caveat that if the Environmental Impact Report gets thrown out, the lease is void. I think that's a reasonable approach. But Counselor is telling me to think about something.

CHIEF COUNSEL LUCCHESI: CEQA provides that in the event there's a challenge to the CEQA document, a responsibility agency, such as the State Lands Commission, is required to proceed as if the CEQA document is valid, unless -- the one exception is if there's a stay issued,
and there has not been a stay issued by the court in this case yet. And so the Commission is required to rely on this EIR.

ACTING COMMISSIONER REYES: That's CEQA. But to the extent that the loss -- if they prevail in the lawsuit against CEQA, then --

CHIEF COUNSEL LUCCHESI: -- the project is not valid.

EXECUTIVE OFFICER FOSSUM: The conditions of our lease require permits from all appropriate agencies, and if there's nothing to rely on, then the lease --

ACTING COMMISSIONER REYES: Then this issue still --

EXECUTIVE OFFICER FOSSUM: We're relying on that CEQA document at this point.

ACTING COMMISSIONER REYES: Which is the valid document --

EXECUTIVE OFFICER FOSSUM: -- at that point their lease is not valid either.

ACTING COMMISSIONER REYES: The lease will also go to the Coastal Commission at the next stop.

EXECUTIVE OFFICER FOSSUM: And the Army Corps of Engineers.

ACTING COMMISSIONER REYES: Corps of Engineers.

So for that reason, I will move staff's
recommendation.

    ACTING CHAIRPERSON GORDON: I will second.

    All those in favor?

    (Ayes.)

    Vote is two to nothing. It is out. Staff's recommendation is approved.

    Are there any other public comments?

    Any other item before the Commission?

    That means the meeting is closed.

    Thank you.

    (Thereupon the California State Lands Commission meeting adjourned at 2:52 p.m.)

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CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, 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, Kathryn S. Swank, 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 9th day of February 2012.

_____________________________
KATHRYN S. SWANK, CSR, RPR
Certified Shorthand Reporter
License Number 13061