APPEARANCES

COMMISSION MEMBERS

Mr. John Chiang, State Controller, Chairperson, 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. Brian Bugsch, Chief, Land Management Division

Mr. Colin Connor, Assistant Chief, Land Management Division

Ms. Nicole Dobroski, Environmental Program Manager, Marine Facilities Division

Mr. Chris Huitt, Staff Environmental Scientist

Ms. Grace Kato, Public Land Manager, Division of Land Management

Mr. Kevin Mercier, Assistant Chief, Marine Facilities Division

Mr. Don Oetzel, Public Land Management Specialist

Ms. Holly Wyer, Sea Grant Fellow

ATTORNEY GENERAL

Mr. Joe Rusconi, Deputy Attorney General
APPEARANCES CONTINUED

ALSO PRESENT

Mr. John Berge, Pacific Merchant Shipping Association
Mr. Mike Bishop, Hanson Aggregates
Ms. Abigail Blodgett, San Francisco Baykeeper
Mr. Lloyd Bothwell
Ms. Sandra Burkhart, Western States Petroleum Association
Mr. Bill Butler, Jerico Products, Inc.
Mr. Braiden Chadwick, Ron & Billie Vanderbeek
Dr. Andrew Cohen, Center for Research on Aquatic Bioinvasions
Mr. Michael Evans
Mr. Robert Gregory, Foss Maritime Company
Dr. Charles Hanson, Hanson
Mr. Richard Higbie
Mr. Marc Holmes, The Bay Institute
Dr. Barry Keller, Sand Miner
Ms. Christian Lind, Jerico Products, Inc.
Mr. Bob Marston
Dr. Karen McDowell, San Francisco Estuary Partnership
Ms. Marina, Secchitano, Inland Boatman's Union
Mr. Ron Vanderbeek
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PROCEEDINGS

ACTING CHAIRPERSON GORDON: I'll call this meeting of the State Lands Commission to order. Representatives of the Commission present are -- I'm Alan Gordon chairing the Commission today for the Controller John Chiang. I'm joined today by Lieutenant Governor Gavin Newsom to my right, and Chief Deputy Pedro Reyes representing the Director of Finance Ana Matosantos to my left.

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 State school lands.

The Commission also has responsibility for the prevention of oil spills at marine oil terminals and offshore oil platforms and prevention of the introduction of marine invasive species into California's marine waters.

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

The first item of business will be the adoption
of the minutes from the Commission's Special October 1, 2012 meeting.

May I have a motion to approve the minutes?

ACTING COMMISSIONER REYES: So moved.

COMMISSIONER NEWSOM: Second.

ACTING CHAIRPERSON GORDON: Moved and second.

Could we call a vote, please. All those in favor?

(Ayes.)

ACTING CHAIRPERSON GORDON: Opposed?

That motion is passed.

Next order of business is the Executive Officer's Report. Mr. Fossum, proceed.

EXECUTIVE OFFICER FOSSUM: Thank you. Good morning, Commissioners. I'm pleased to report that the staff was invited to the California Association of Port Authorities meeting, in October, 3 weeks ago and had a very positive conversation with the leader of California's 9 ports.

We emphasized the importance of maritime trade to California's economy, and the quality of life, and the desire of the Commission and its staff to assist the ports in their missions. We believe that message was well received, and expected opportunities for cooperation and assistance to the ports will increase on that.
On the same note, our staff -- your staff has continued to be involved in a significant number of meetings with the Port of San Francisco representatives and developers working on at least a half a dozen projects to help revitalize the San Francisco waterfront.

Next week -- I wanted to let everybody know that next week is the Commission's 10th biennial symposium on technology, on offshore pollution prevention technology and an exhibition that goes along with that. There will be approximately 100 speakers at this meeting, and 50 exhibitors. It's a very important meeting. We have it every 2 years, and this is our 10th of that.

I do want to acknowledge some of the sponsors that have helped make this possible. We have Occidental Petroleum. We have Phillips 66, Tesoro, Greka, NuStar, Oxy, U.S.A., Port of Long Beach, BP, DCOR, Fish and Game's Oil Spill Prevention Response Office, Port of Los Angeles, Veneco, Western States Petroleum Association. And all of the sponsors -- that's just 2 categories. All the sponsors are on our website and we appreciate their support, and encourage all people to attend. We expect it to be a very productive program.

I'm also pleased to report that the Western States Lands Commission Association has signed a memorandum of understanding with the United States Bureau
of Land Management to advance the mutual relationships of those 2 organizations. The MOU is designed to encourage better communication between Western States, its members, and the Bureau of Land Management.

More specifically, the MOU addresses real estate transaction between Western Land Commission's 23 State members and the Bureau. It lists a number of particular items where the BLM will consider changing policy and practice to encourage federal and State land transfers.

This MOU has been in work -- in progress for several years, within input from many of the member States. It's expected the MOU will help advance the interests of the member States in their dealings with BLM.

I also want to acknowledge that along with our Prevention First Symposium next week, yesterday was the 40th Anniversary of the Clean Water Act. And I think that's worth bringing up as well and the progress that's been made in that regard.

Next, I want to give you an initial update on investigation on the use of State lands on the Colorado River at the Buena Vista -- Rio Buena Vista community in Needles. As you may recall at the August meeting, the Commission authorized suspension of leasing for boat docks at the Rio Buena Vista and directed staff to conduct an investigation and report back to the Commission on the
Public Trust needs in the area within 6 months.

On August 11th, your staff visited the property and talked with residents on site and held a public meeting to listen to residents and other members of the public. Your staff also met with representatives of the United States Bureau of Reclamation and the Army Corps on the property, and they also attended the public meeting. Staff believes that the site visit and meeting were very productive, and we hope to come back to you in December with a recommendation on a path forward.

There are 2 -- currently, 2 audits associated with the Oil Spill Prevention Administration Fund. The BSA audit from 2 months ago identified 2 recommendations, both have already been implemented. The Department of Finance audit is not complete at this time, but we believe it too will be productive and we will bring back to you information on that when it's completed.

Last week, the staff also responded to the 1-year follow up on the Bureau of State Audits audit of Commission leasing practices.

A year ago, the Commission authorized an amendment to the delegation of authority to expand the criteria for issuing letters of non-objection for certain uses of State land. As you all recognize, we have over 100 items on our agenda, and because the Commission only
meets every other month, we typically have things come up periodically. And so last year, the Commission gave delegation of certain limited projects to proceed, if they were exempt from CEQA. And so this report will identify that.

During that period ending in August -- end of August, the staff had issued 16 letters of non-objection, 4 of those were on school lands and 12 on sovereign lands. These activities included simple recreation-related activities of short duration, like a motorcycle rally, and America's Cup races. There were 20 archaeological and cultural surveys connected to -- excuse me, 2 archaeological and cultural surveys connected to data collection in preparation of environmental documents for projects. There were safety issues, such as a placement of airport-related sensors and dredging to remedy safe navigation. There was remediation related activities and removal of aquatic invasive species.

In order to consider issuing these leases, as I said, they needed to be exempt from CEQA. The staff is very aware of the need for the public to consider activities on public lands, and the staff will continue to be judicious in its consideration of the issuance of these letters. And I have a copy -- or can provide you a copy of the exact ones if you're interested.
Finally, what I'd like to do is acknowledge a couple of long-term staff remembers of the Commission who will be retiring very soon.

And the first is Debi Banks. And what we have come up with is a couple of resolutions acknowledging their dedication. And so if I could, I'd like to have them come forward and stand.

First, Debi.

Debi has the honor of being the longest-serving employee of the State Lands Commission.

(Applause.)

EXECUTIVE OFFICER FOSSUM: She's given the people of California -- the people of California and the State Lands Commission over 37 years of dedicated and distinguished public service. Since 1975, she worked diligently for the Commission in a variety of positions starting from entry-level Clerical, Office Services Supervisor, Management Services Technician, Staff Services Analyst, process -- progressing through the Information Systems Analyst series to the position of Information Services Section Supervisor, which she's held for the last 11 years.

She's in charge of all our IS.

"Whereas, there are few office processes and procedures that have been put in use over the
past 37 years that have not either been developed
or significantly influenced by her expertise.
She was the primary programmer and process
analyst in the development of many of the mission
critical databases in use at the Commission
today. She's managed the Commission's computer
information infrastructure system for the past 11
years, and provided superb customer service and
system reliability.

"As a result of her conscientious commitment,
dedication, and superior organization skills,
Debi Banks has succeeded in compiling an
impressive record of achievement and
accomplishments that have improved the
effectiveness and efficiency of the Commission
staff, earning her the admiration and respect of
all who have had the privilege of working with
her."

And this resolution reads, "Resolved by the
California State Lands Commission that Debi Banks
is commended and thanked for her distinguished
record of public service for more than 37 years
serving the State Lands Commission; and,

"Be it further resolved, that the Commission
extends its sincere best wishes to Debi Banks for"
a rewarding and gratifying retirement, and the
very best in the years to come."

(AppAUSE.)

(Thereupon pictures were taken.)

EXECUTIVE OFFICER FOSSUM: Everybody at the
Commission and staff has relied so much on here, when
anything goes down, computerwise.

(LAUGHER.)

COMMISSIONER NEWSOM: So we're dead now.

(LAUGHER.)

ACTING COMMISSIONER REYES: Thank you so much.

COMMISSIONER NEWSOM: Congratulations.

(APPLAUSE.)

EXECUTIVE OFFICER FOSSUM: We have one more here,
and that's Kevin Mercier. Kevin has been with the
Commission Since 1991 after completing a 20-year career in
the United States Navy, where he served with distinction
as a Petroleum Logistics Officer, his last assignment
being manager of the Navy's busiest west coast fuel
terminal at Point Loma in San Diego.

In January of 1991, Kevin became the first
Assistant Division Chief of the nascent Marine Facilities
Division of the California State Lands Commission, where
he was instrumental in managing the development and growth
of the Division and its programs.
Kevin introduced and implemented quality management principles within the Marine Facilities Division, which were directly responsible for creation of the oil spill database and resultant data measurement as a metric for management, so impressing auditors that it was recommended as a model for other State agencies.

Kevin's implementation of quality management also fostered creation of a risk matrix for focusing limited Marine Facilities Division resources on areas of greatest risk for oil spills, a direct extension of his efforts in measuring data and creating effective program outcomes.

Kevin established the basic training program ensuring that Marine Facility Division staff were properly trained to safely and effectively perform their duties, resulting in the necessary foundation for the Marine Facilities Division's pollution prevention mission along with the tools to be successful in accomplishing each facet of the mission.

As a former marine oil terminal manager, he is acutely aware of the relentless debilitating effects of the marine environment on engineered structures and the existence of a wide spectrum of age, design, and construction materials of oil terminals in California's marine waters.

He became an early proponent of assessing marine
oil facilities and championed an audit and inspection
scheme that has culminated in creation of the State's
Marine Oil Term Engineering and Maintenance Standards.
Those standards, known as MOTEMS, are a tool that arms the
Marine Facilities Division with the means to measure the
fitness for purpose of every marine oil terminal in
California, and guides marine oil terminal operators
towards measurable improvements in the condition and
operation of their terminals.

As a result of his conscientious commitment,
dedication, and superior organization skills, Kevin has
succeeded in compiling an impressive record of
achievements and accomplishment that have improved the
effectiveness and efficiency of the Marine Facilities
Division, earning him the admiration and respect of all
who have had the privilege of working with him.

"Therefore be it resolved that the State
Lands Commission that Kevin Mercier is commended
and thanked for his distinguished record of
public service for more than 21 years serving the
State Lands Commission. And be it resolved that
the Commission extends its sincere best wishes to
Kevin for a rewarding and gratifying retirement
and the best years to come."

(Applause.)
EXECUTIVE OFFICER FOSSUM: I'd like to call Kevin a great soldier, but having been a sailor --

(Applause.)

MARINE FACILITIES DIVISION ASSISTANT CHIEF MERCIER: I imagine people are a little bit worried about me saying anything, but --

(Laughter.)

EXECUTIVE OFFICER FOSSUM: Those who know you are.

(Laughter.)

MARINE FACILITIES DIVISION ASSISTANT CHIEF MERCIER: I had no accomplishments without the support of the staff here in Sacramento, and, in particular, the staff of the Marine Facilities Division, both past and present. Our staff at MFD are innovators and proactive. They created the MOTEMS, the marine engineering standards at terminals. They're world renowned for their marine invasive species scientific solutions, and I think you'll see some of that later in the day. And our admin staff pulls things together for us.

And our marine safety series guys at both the field offices in the Bay Area and in Long Beach are responsible for putting together, what I believe, has to be the best monitoring inspection program in any government that I've seen anywhere, and our record speaks
for itself. Very few spills, and the ones that were there were very small. And I remember you challenged me to get rid of the ones that were there, but I probably couldn't do it on my watch, but it might happen.

But I just wanted to make sure I did a shout out for people that I've worked with. And they're the ones that really have done all the work. I've just been lucky to have been able to work with them.

Thank you.

(Applause.)

ACTING CHAIRPERSON GORDON: Well, since we seem to have unanimous approval for the wonderful work of the retirees maybe we could just have that for the rest of the agenda.

ACTING COMMISSIONER REYES: Just do the roll call.

(Laughter.)

EXECUTIVE OFFICER FOSSUM: We'll get them signed by you guys later.

ACTING CHAIRPERSON GORDON: Exactly.

All right. Next order of business will be the consent calendar. Mr. Fossum, could you please identify items that are going to be pulled off of consent.

EXECUTIVE OFFICER FOSSUM: Yes, Mr. Chair. The items that have been removed from the consent calendar are
Item 25, 27, 44, 53, 82, 89, and 90. And removed and put on the regular agenda is Item 29.

ACTING CHAIRPERSON GORDON: Very good. Is there anyone in the audience who wished to speak on an item still on the consent calendar?

That being -- okay. Nobody. Can I have a motion on the consent calendar, please?

COMMISSIONER NEWSOM: Move the calendar be approved.

ACTING COMMISSIONER REYES: Second.

ACTING CHAIRPERSON GORDON: Moved and seconded.

All in favor?

(Ayes.)

ACTING CHAIRPERSON GORDON: The consent calendar is unanimously adopted.

Let's then move on to Item 29, which I believe was just pulled off of the consent calendar.

Staff, please present.

EXECUTIVE OFFICER FOSSUM: Yes. I think I'll summarize it. You've seen this item before. It's a request -- it's a lease application by the Vanderbeeks at Lake Tahoe. The Commission has approved the dock element of that and asked the staff to work with the Vanderbeeks and come back with a recommendation on a rent for the deck that is on top of their boat lift.
The staff had proposed a rent rate that would increase their rent from, I believe, it's $1,674. It would increase it by $2,950 for that sun deck. The basis for that rent rate is the use of an upland value, upland land value, because the deck is a type of structure that could be created in a backyard, and so that's the value that we've used. We've used that same approach both in the Delta and in Huntington Harbor for decks that were constructed over State property. And so that's the basis for that. And, of course, Lake Tahoe land is quite expensive. So that's why the rate seems fairly high.

Also, I believe that the neighbors of the Vanderbeeks who have wished to have -- to maintain 2 buoys that have never been approved by the State Lands Commission or the TRPA or anybody else for that matter, and wished to maintain those buoys.

Again, Commission's -- staff's recommendation is that that be denied, because it's inconsistent with the regulations that the TRPA has, and therefore we would be -- the Commission would be countenancing something that is clearly in violation of another agency's regulations. If they ever were able to comply with TRPA's regulations, we would be happy to support those buoys, and recommend that they try and comply in some fashion and come back to the Commission.
ACTING CHAIRPERSON GORDON: Is a representative for the Vanderbeeks here to discuss their perspective on this?

EXECUTIVE OFFICER FOSSUM: Yes, I believe he is. Braiden Chadwick the attorney for the Vanderbeeks has signed a request-to-speak card.

ACTING CHAIRPERSON GORDON: Along with a Bob Marston.

EXECUTIVE OFFICER FOSSUM: And Mr. Marston is the owner of the property in the rear of the Vanderbeeks.

ACTING CHAIRPERSON GORDON: Are you going to wish to speak when Mr. Braiden is done -- Mr. Chadwick is done?

MR. MARSTON: Yes.

ACTING CHAIRPERSON GORDON: Why don't you come to the front so you'll just be ready at the time.

MR. CHADWICK: Thank you very much. Good morning, Commissioners.

I appreciate the time. This shouldn't take very long. Essentially, my clients are okay with every portion of the amended lease, with the exception of the rent, which they view as excessive.

Just 3 quick points. The first one being is the rent jumped from about $1,600 to nearly $5,000, just with the addition of being able to throw down a towel on top of the boathouse roof. My clients mentioned in the last
meeting that they were perfectly fine with paying additional rent with being able to use the roof of the boat house for recreational purposes.

They were on unaware when staff came back a few weeks ago with a request to jump that up from $1,600 to $5,000, that it would be so much.

And so what they would like to do is come into conformance with essentially what the State Lands Commission rental has been for neighboring property owners for similar improvements.

For example, I'd just like to note that Section 2003(a)(4), the rental rate needs to be calculated based on the value of the leased lands not on upland lands. Curt mentioned, of course, that what the State Lands Commission used was the calculation of upland land sales. They used comps from lakeshore, lakefront properties to calculate the rental rate for the use of the roof of the boat house to sun themselves. It seems a little excessive to use the lakeshore lakefront sales comparisons to calculate the rent of the leased lands.

This doesn't take up any additional footage. It doesn't take up any additional square footage over the lake. It's just the roof of the boat house. And so using upland values of sales comparisons for lakefront properties seems a little off, especially given the
mandate of the regulation, which calculates its based on
the value of the leased lands, not upland lands.

The third thing is that what we want to do is my
clients are okay with paying additional rent. They just
want to be treated the same as everyone else. And I'll
point you to 2 other leases State Lands has approved in
just this year, both in June and in January for sundecks.
And the rental rate for both of those $0.85 a square foot.

My clients are fine paying those rates that were
perfectly appropriate for these properties and those
sundecks also. They just want to pay -- they just want to
have parity with their neighbors and parity with the other
similarly situated improvements around the lake.

And so essentially, the appropriate rent using
the $0.85 threshold that was used to these other leases
amounts to $2,093.75 as the increase -- or the total,
because what they have is -- again, what was used around
the lake is $0.85 and what was used for the Vanderbeeks
was almost $6 a square foot, so that's quite the
discrepancy there.

So anyway, the end of the story is my clients
just wanted be to treated with parity with everyone else.
And since the sundecks for other lakeshore owners -- or
other property owners that have similarly situated
improvements is $0.85 a square foot, we'd just like to see
the same.

COMMISSIONER NEWSOM: Curtis I obviously -- your reaction to the letter that was submitted and to --

EXECUTIVE OFFICER FOSSUM: Thank you, Governor. We did get a counter proposal from Mr. Chadwick, and on behalf of his clients, it recommended that they pay an additional $419.75 cents, a little more than a dollar a day for what was previously the lease.

Staff did -- does use the upland value of that, because we characterize that use as one that is, in fact, a -- not a water-dependent use. You can have a deck in your backyard. I have a couple little decks in my backyard. They're not required to be out over the water. They have an impact on the public's use of the land in the sense that they impact visual area. It puts people out over the water doing things that are not water dependent.

So we view it as land. It is the State's land out there. And if their use is that intensive and not water dependent, then we believe it's akin to the upland land values.

COMMISSIONER NEWSOM: Curtis, what about the notion that there are 2 previous sundecks that we approved at substantially lower cost?

EXECUTIVE OFFICER FOSSUM: Absolutely. Good point. And parity -- we certainly believe -- one of
the -- I think one of the mantras that we try and live by is being fair with the public. And what's happened is a couple of events that have taken place.

The Legislature passed a law that we are now to charge for piers up at Lake Tahoe and throughout the State. People who had their applications in before March 31st of last year continue to not have to pay anything, while other neighbors who filed an application the next day do. And that doesn't seem fair, but that's what the Legislature determined. In fact, it was based upon a recommendation by the representative of the homeowners association there, the lakefront property owners association, that provision in the law.

As far as parity, we've also been -- I mentioned the State audit earlier. The Commission staff was criticized for not updating its benchmarks and keeping them up to date. The dilemma that the Vanderbeeks find themselves in is that while the Commission used a lower rate for the few decks that had previously been grandfathered in, we have now done a valuation of the upland values, and that is what raised that rate significantly.

So it does seem to be a large jump. It's an extra $2,950 from what had previously been the proposed rate, if they didn't have the deck. And we certainly
appreciate their willingness to offer additional value, but I think right now because we charge an upland land value in the Delta for the 2 or 3 decks that have been approved there, and for the probably over 100 decks that extend out over Huntington Harbor that private property owners use there, that would be its -- we feel it's consistent to use that value as opposed to a water-dependent recreational value.

COMMISSIONER NEWSOM: Thank you.

ACTING CHAIRPERSON GORDON: First, let me say, I'm somewhat uncomfortable negotiating the rent --

EXECUTIVE OFFICER FOSSUM: You need the microphone a little closer, Chair.

ACTING CHAIRPERSON GORDON: I'm somewhat uncomfortable negotiating the rental price here in open meeting. It strikes me that needs to be a much more private negotiation.

However, it also strikes me that just having 2 options, plain deck or upland residential, also doesn't serve our needs. It seems that this is somewhat of an animal with different spots on it. They're not -- there aren't any permanent appurtenances as one would put on a deck that you had in your backyard. You've got -- we're using the top of a boat deck.

So my inclination would be to look for a third
way, for want of a better term, where we could find maybe a third definition that would have limitations, so it would indicate that you couldn't have barbecue up there. You know, if all they're using it for is to put towels on it, and sun bathe, this strikes me as a fairly excessive interest, but that's about what I think they should be doing up there without having to pay significantly more. And if there is a way to negotiate a lease that limits it to a couple of deck chairs and some towels, then increasing the rent by 300 percent over what it would be without that is -- seems to me fairly excessive.

But I'm willing to listen to my colleagues up here and see where they would like to go on this, as I am searching here.

EXECUTIVE OFFICER FOSSUM: Just as a clarification, Mr. Chair. The only limitations on the use of the deck are that they don't build any permanent structures. We did have a couple of examples in the Delta where people started building another story on top and bathrooms and kitchens and all kinds of things. And so those type of uses are restricted, but if they want tables, chairs, awning or umbrellas and anything that's portable like that, that is not prohibited under the lease, as described.

ACTING CHAIRPERSON GORDON: I understand.
EXECUTIVE OFFICER FOSSUM: The Commission can certainly do that if they want to restrict it further, because its --

ACTING CHAIRPERSON GORDON: Those would be the -- we've basically got 2 options for leases right now. And I guess what I am looking for is to see if there is a third lease we could develop that would be much more prescriptive than the existing lease, but that would then create a formula for something not looking at a 300 percent increase for the right to have a -- you we, know basically grandfathered in the railing, because it had been there for a long time.

Anyway, I think I've stated my peace.

ACTING COMMISSIONER REYES: I think -- I can appreciate that there is no lease land value being used, because it is different. I see it as if owned a beachfront property and decided to extend my deck over the water, it would not be a pier rate, it would be a upland value calculation. And if I choose to use my pier for upland value activities, then it should be an upland value Calculation.

Now, the argument is made that there are no permanent fixtures, there are no plumbing, there's no electricity. I have neither one of those in my deck at home. It's just a flat structure, wooden structure, where
I enjoy barbecues -- a table actually, the barbecue is on the side.

So I'm not concerned about the rate that's being set. I think that's a fair rate. I think that the -- you know, we don't -- we're trying to come up with a rate for something that is not within what we do. We don't have the provisions for providing for rental or lease value for activities for this activity.

Now, we've grandfathered some in just because that's way they were, but we're not set up to do this. So in the interests of working with the family, the staff -- we told staff go and work something out. The option was for us to say permission denied, you may not use the lease, move on, and we wouldn't have to do a calculation.

But we said, no, go see out there and see what you can do. And I think staff went and did that. They came up with a rate that obviously folks don't find comfortable. And I think the option is this is the rate that is calculated. And I suspect that we will see more of these as we move along. And we need to determine is this what we're going to do or are we going to deny them?

If we're going to be willing to work with families so they can maintain this other activity, then the families need to understand that the rate is not going to be the same as the pier.
And granted, they're not the rate of -- you know, they're not building a house right on the shore. That would be a totally different value. So I'm okay with the staff's recommendation. I'm prepared to move it.

MR. CHADWICK: Mr. Reyes, if I may.

The only thing that I might respond to there is that I think that if you look at just having parity with other sundeck owners, if you want the term sundeck and the disparity between similarly situated properties. And some of these -- again, one of these was in January, one was just in June with -- and it's been a fairly consistent rate that's been applied there.

ACTING COMMISSIONER REYES: But hold on, we don't have parity. We had a timeline, so anybody that came in at a certain day got something just on the pier alone, and then whoever came in the next day got a different rate --

MR. CHADWICK: Right.

ACTING COMMISSIONER REYES: -- so we don't have parity. Moving forward, we will have parity.

MR. CHADWICK: My understanding, and I might be wrong on this. And, Curt, can maybe correct me on it, but I believe that the June 1 was outside of that date.

And the other thing that I would mention too is just that I think basing the rental rate for use of a sundeck with no permanent structures or anything, you're
throwing a towel or maybe a chair or 2 down or something like, which is just the roof of the boat house again, on the sales comparisons for multi-million dollar properties that are on the beachfront of Lake Tahoe, I think, is not only legally incorrect based on the regulation, but I think it's skews it to the point of, you know, they're being asked to pay 3 times as much for an additional 400 some odd square feet under the lease.

And you go -- you jump from a rental rate of -- a recreational rental rate of, I think, it's -- well, 64 cents -- I'm sorry $0.64 a square foot to almost $6 a square foot.

And again, what -- you know, we tried to work with staff on this. And staff basically said this is, you know, take it or leave it. We're not going to discuss the rental issue with you.

And again, I view it as being contrary to State Lands Commission regulations, but just a little bit excessive. And I think, you know, we'd be willing to work with staff to come to a more agreeable rate. It just seems that jumping from $0.65 a square foot to $6 a square foot is a huge -- I mean, it's $20,000 for use of being able to throw a towel down and sun yourself, which can happen anywhere else on the pier also, I'll point out.

And so I think -- I don't think that the
classification of this as a residential use -- I mean, there's -- if you just go to the definition of residential use provided in the State Lands Commission lease, it doesn't fit there. It says something that's used for a residence or parking a boat that can act as a residence. That's a residential use under the State Lands Commission lease. The plain language of the lease it says that.

And so I think to classify this as a residential use and then use lakefront Lake Tahoe property values and sales comparisons to generate the rental for a sun deck that's merely the roof of the boat house I think is just excessive.

And again, for that -- this is just a family and they're being asked to pay an additional $20,000. And they're appreciative of being able to maintain their existing structure, and they make no bones about any of the other provisions of the lease, is just -- this is -- to them a, you know, tripling the rental rate is a bit excessive.

COMMISSIONER NEWSOM: Just to the Chair. Just, Curtis, what about the discrepancy or at least the assertion that there's discrepancy on the June rental?

EXECUTIVE OFFICER FOSSUM: Well, as I was saying, there is -- there are justifications for why that took place. One of the things is that the -- I should say
justifications. There's a history as to why that took place.

There are a number of decks up at Tahoe, I think it's more than a dozen, that were basically approved by the Commission in the past, either with knowledge or the fact that the staff had knowledge that these things were out there and proceeded to approve them as uses that were authorized.

In those instances, the rate that was being charged, up until this year, was one based on a much lower rate. Again, we were criticized by the Bureau of State Audits for not looking at our benchmarks and upgrading those, and so that's what the staff has done in trying to comply with the State Auditor and her recommendations.

So it is a big jump. There's no doubt about that. It is consistent with the approach that's been taken throughout the State though, on these kind of decks, where the Commission has been leasing them. And, you know, certainly Braiden's comments about it's not -- you can't build a house on there is absolutely right. There are restrictions. He pointed out that the standard covenants in the Commission's lease prohibit residential use, meaning you can't sleep on it, and live on it, and do all these things.

And I think the staff has maybe misused terms
that made people believe the rate we were charging was for a residence. What we were charging was an upland value, where residences are built, but your residence doesn't take up every square foot of your property on the upland. It takes up, you know, a portion of it.

So we look at those raw land values. The comparables that the staff came up with were raw land values, where there were no structures on the house -- on the properties. And we took the low end of the values. The values that were looked at were between 70 and about 120 dollars in that range, and we used a $75 land value to come up with the estimate of -- or the value based on 9 percent, and 9 percent is in the regulation. So that's the rationale for it.

As was mentioned, however, there are some restrictions on the use. You can't build a house on it. You can't live on it, but there's also no restrictions on anything -- the actual use out there. You can throw your parties. You can be out there 24/7, if you want to. Not much sun at night, but you could be out there and enjoying it.

Again, I think Mr. Chadwick is right, that you could put your lounge chair out on your deck and -- on your dock, and that's certainly something that people might want to do. But when you start going up with a
second level above your boat house or above your boat lift and building another level of your private use on public property, we see that as an increased value beyond the water-dependent use. And so that's been the approach the Commission has taken. But it's -- we take our direction from you, and you get to vote, we don't. We just recommend.

(Laughter.)

COMMISSIONER NEWSOM: I think we have someone else that wishes to speak.

ACTING CHAIRPERSON GORDON: Yes, Mr. Marston, would you like to address the Commission.

EXECUTIVE OFFICER FOSSUM: I think the other speaker -- if I'm not mistaken, the other speaker has to do with the buoys, not the rental rate.

And let me point out that the rental rate that was recommended by Mr. Chadwick for this dock is less than -- about $420 dollars, roughly.

Buoy's out at Lake Tahoe are $370 a year. So the increased rate that -- you know, yes, we would be going up to $2,950 more. Their recommendation was $420 more. So that's the range of difference, if you will. It's about $2,500 a year difference.

MR. CHADWICK: And we just applied the $0.85, which was applied to the other sun decks, approved earlier
this year. That's where we got our number from. And if it would help, you know, we can go back and work with staff to come up with a better -- to mutually agreeable rate, I think, with direction from the Commission itself. We'd be happy to do that.

ACTING CHAIRPERSON GORDON: Do we have a motion?

COMMISSIONER NEWSOM: Well, is there anyone -- just -- so no one else here to speak on this?

My first -- through the Chair. My first instinct, as I was reading this -- you know, I mean, maybe --

ACTING CHAIRPERSON GORDON: We do have one more. Sir, would you identify yourself and please --

MR. VANDERBEEK: It's just a question.

COMMISSIONER NEWSOM: Come on up to the mic, sir.

EXECUTIVE OFFICER FOSSUM: This is Mr. Marston who lives behind the Vanderbeeks, I believe.

MR. CHADWICK: This is Mr. Vanderbeek.

EXECUTIVE OFFICER FOSSUM: Oh, it is. I'm sorry. He doesn't have a speaker's slip here.

MR. VANDERBEEK: You know, we've lived peaceably at Tahoe for over 40 years, one side or the other. And the fact that we're talking about this is stupid to me in the first place, because that deck has been there like it was for 40 some years, and with the railing on top.
You know, I can afford it, but can my kids and my grandchildren afford it?

It's like so many other things that are happening in this State. Our State income tax is the highest in the nation. Federal tax is high. And I've got to pay high taxes on my cars, pay high taxes on my homeowners. I think -- every dollar I make I think government somewhere or other takes about 70 cents of it.

And maybe that's fair, but to me it's not fair because I worked hard to earn that dollar. All my life I've worked hard, and I've paid where it's due. And all of a sudden to start making rules about something that's been there for 40 years like it was, it just seems stupid to me, and maybe that's because of government, I don't know. This whole thing seems ridiculous to me.

ACTING CHAIRPERSON GORDON: I think we'll leave that commentary as it is.

Mr. Marston, would you like to talk -- let's hear about the buoys now before we go to a motion.

MR. CHADWICK: I'll be available for any questions, if you have any.

MR. MARSTON: I'm Robert Marston, and I'm representing myself and John and Linda Gage. They couldn't make it here today.

Along with this application, we had applied
originally for 2 more buoys. And we worked with Mary Hays here, and she's been a big help in helping me understand how the system works and what the rules and regulations are.

We originally applied for buoys with TRPA, and we were rejected with the caveat that if the State Lands Commission would allow us or if they saw clear to give us a permit, then TRPA would probably do the same. And now we stand here kind of doing the same thing with the State Lands Commission saying if you can get something from TRPA saying they agree, then we'll agree.

So I'm kind of caught in a Catch 22 here. I guess the bottom line is listening to everything and understanding the rules, the Army Corps of Engineers has grandfather clauses that clearly would apply, I think, to this and allow the buoys to remain, and circumventing everything else that we're talking about.

I believe the State Lands Commission does not have a written outline that explains a grandfathering clause. Although, just now, it's been brought up that the sun deck for the Vanderbeeks has been somewhat grandfathered in. So obviously grandfathering is a part of the process here, but it's not officially written.

So I've kind of got my back against the wall. I've got 2 different agencies that are telling me we need
to get a response from either one. I can't go to TRPA, because they won't accept any new applications now for I don't know how long. I don't think anybody knows. So we're stuck. And if the buoys are removed, it's going to be very difficult probably to get them back.

So I'm asking that these things be grandfathered in. If you need to adopt the Corps of Engineers procedures on grandfathering, that would be a great thing. And that's, in a nutshell, my consideration here. And it's the way -- you know, we're all here to find a way to do things that is legal, and this allows for the legality of the buoys to remain, in my simple mind anyway. And if you guys don't see fit, then I guess that's what it is, but we've worked hard with Mary to try and figure this out and the Vanderbeeks. And this kind of boils -- in my way of thinking, it boils down to this grandfathering clause, if we can extend that to these. These buoys have been here for well over 60 years, way before TRPA was created. And when you factor that in, it just seems unfair to take them away.

That's my speech. Thank you very much.

ACTING CHAIRPERSON GORDON: Mr. Fossum.

ACTING COMMISSIONER REYES: Before Mr. Fossum, sir, I have a question. Do you have anything in writing from TRPA that says that they would give it to you if we
give it to you or is this just a verbal communication?

MR. MARSTON: I don't know. We've had several
different consultants help us on this. And I've got pages
and pages and pages of stuff from Dave Shelton - I don't
know if you're familiar with him - on through to other
legal counsel. And I don't know for sure if I have it in
writing or not, but I'd certainly enjoy the opportunity to
try and produce that.

ACTING COMMISSIONER REYES: Mr. Fossum, do we
have any -- my concern in not supporting your request last
time is that TRPA was not giving you that permission. But
if there is something there, Mr. Fossum, that says that
they're willing to provide for this provision if we're in
the same boat, I'm a little bit more willing to go that
route. But if, in fact, TRPA is a no we're not doing
anything, then I'm not going to be in a position to vote
for something where we don't have approval of the other
regulatory agency.

MR. MARSTON: In other words, documentation.

ACTING COMMISSIONER REYES: Right.

Mr. Fossum.

EXECUTIVE OFFICER FOSSUM: Commissioners, the
Corps of Engineers has grandfathered in buoys. They
existed back in the early seventies. TRPA, as well, has
done some of that, except -- and there's an exception to
that though, and that is if you're not a littoral property owner. And so even though they would grandfather Mr. Marston's buoys normally, if he was a waterfront property owner, their own regulation prohibit that, and that's the provision that prohibits us from making a recommendation of approval.

We typically would approve this kind of thing and recommend the Commission issue a lease for these, but when TRPA's own regulations prohibit it, under these circumstances -- now, maybe those should be changed. That's not our purview.

The option we also gave him is that TRPA's regulations do provide that if it's a homeowners association, you can get an additional buoy. But apparently between the Vanderbeeks, and the Marston's, and Gages, they have not been able to come to a resolution on that to create something that will give TRPA the authority to issue a permit.

So unless TRPA changes their regulations or this homeowners association is created, they just can't get a permit. And for us to issue one that's inconsistent with theirs rules seems to be bad government, frankly.

ACTING CHAIRPERSON GORDON: So we've essentially got 2 different issues before us. We have the issue of --

EXECUTIVE OFFICER FOSSUM: We can't hear you.
Your microphone.

ACTING CHAIRPERSON GORDON: We've got 2 issues before us. We've got the issue of the buoys, and then we've got the issue of the rent. Let's start with the buoys. Do I have a motion with regard to the buoys or do we want to take an action on the buoys.

Let me somewhat summarize. If we take no action, Mr. Marston, as he describes it, and I think accurately, a Catch 22, where TRPA says they're not going to do anything unless we do something. And if we don't do anything, he's essentially -- the buoys are going to have to be removed.

ACTING COMMISSIONER REYES: Okay. I just want clarification. If that is the case, if TRPA is waiting for us to do something for them to do something, I view that differently than TRPA regulations clearly prohibiting them from doing anything.

So if TRPA regulations clearly prohibit, it doesn't matter what we do. If TRPA regulations allow for us to do something -- if we -- you know, if both agencies agree, that his proposal can move forward, then I would like to signal to TRPA that we are open for business, and that they can move forward and we would move forward with it.

But if the regulations clearly prohibit, then it's pointless.
ACTING CHAIRPERSON GORDON: Mr. Marston, let me propose an alternate solution maybe. Right now, we have nothing in front of us that delineates clearly what TRPA's position is. If we were to put this over and send you back to TRPA to just get something in writing that tells us specifically what their perspective is on their regulations, and if they would grandfather this, if we were to allow it, would that be acceptable to you?

ACTING COMMISSIONER REYES: Mr. Chair, with your permission, I'd like to go a step further. I'd like him to have something in writing from us, if that is the case, so that he can -- we can signal to TRPA that we're open if, in fact, they're open. Otherwise, TRPA is going to be doing to him what we're doing to him now. So this way he has something from us that says, yeah, the State Lands Commission is willing to look at this and approve this under the conditions that we normally do, if TRPA does the agreement.

MR. MARSTON: That would be great.

COMMISSIONER NEWSOM: Curtis, I saw you caucusing there. I imagine you have something to add.

EXECUTIVE OFFICER FOSSUM: Yes. Commissioners, what we have before you the last meeting, and at this one as well, is allowing the Gages, Schachts, and Marstons till November 24th to get approval from TRPA, or to get
their home owners association, so that they would qualify
for a -- I believe, it's only one buoy.

And so that's still on the agenda give them till
November 24th. That's still the staff's recommendation to
give them till that date.

Staff certainly can send a letter to TRPA saying
we're trying to comply with your rules. If you you'd like
to clarify them to us, we don't have an objection to this,
but we don't want to issue permits that are inconsistent
with your jurisdiction.

As far as the new regulations that were thrown
out by the court, they wouldn't have really had any impact
whatsoever on this. The same rules apply as far as
prohibiting under their old regulations, a non-littoral
property own, unless they're part of a homeowners
association.

So whatever your will is, but I just wanted to
point that out, that staff had recommended that they be
given until -- November 24th to try and get permission or
comply with TRPA's regulations.

ACTING CHAIRPERSON GORDON: Curtis, was that
November 24th date based on a calendar as to when we were
expecting to have our next meeting, because we've changed
our meetings a couple of times during the fall.

CHIEF COUNSEL LUCCHESI: Yeah, December 5th.
ACTING CHAIRPERSON GORDON: December 5th.
EXECUTIVE OFFICER FOSSUM: Do we know why it was
the 24th of?
Why did he set the 24th of November?
PUBLIC LAND MANAGER HAYS: We gave them 6 months.
EXECUTIVE OFFICER FOSSUM: Six months from when
this was first awarded. And so in 6 months they
haven't -- well, it's another month away yet, but --
ACTING CHAIRPERSON GORDON: I'm inclined to go
along with what Mr. Reyes just indicated, that if we would
send -- if staff would send a letter to TRPA that says we
are open to this if your regulations allow it. If the
other Commissioners would agree, I think that would be
where we would like to go. And, Mr. Marston, we will
provide you that letter shortly. And with that in hand,
you will be able to go to TRPA and get an answer from
them.
MR. MARSTON: That would be great. I'd really
appreciate you consideration and trying to figure this
out.
ACTING CHAIRPERSON GORDON: Excuse me. Mr.
Fossum, you have some --
EXECUTIVE OFFICER FOSSUM: And a response from
TRPA is that our regulations prohibit it?
ACTING COMMISSIONER REYES: Then that's the
ACTING CHAIRPERSON GORDON: Then we're done. But we want to at last stop this Catch 22 of being run around from different government agencies. He'll now have in writing from us that we're open to it if TRPA has a way around their regs to do this.

MR. MARSTON: And you folks will send that to us?

EXECUTIVE OFFICER FOSSUM: Yes. Absolutely.

ACTING CHAIRPERSON GORDON: Staff what's a reasonable timeframe to get that letter to him?

EXECUTIVE OFFICER FOSSUM: I don't know if we'll have it out this afternoon, but we'll try.

ACTING CHAIRPERSON GORDON: That's a little long, but we'll --

ACTING COMMISSIONER REYES: By early next week for sure.

MR. MARSTON: Thank you very much.

ACTING CHAIRPERSON GORDON: All right. Now, we are back to the issue of the rent. We have before us a proposed -- a proposed rent identified by staff at $4,564, somewhere around there.

CHIEF COUNSEL LUCCHESI: 4,624.

ACTING CHAIRPERSON GORDON: $4,624. Mr. Vanderbeek's representative has counter offered with an offer of a little bit over $2,000. And those are, at this
point, the 2 options before us. A third option would be to send it back to renegotiate.

Do we have a motion from the --

COMMISSIONER NEWSOM: Yeah. I don't know why, I think in the spirit of flexibility we just showed, and in the spirit of reconciling the frustration that Mr. Vanderbeek expressed, which I hear from many folks, and respecting the fact you're here again, and with respect to your attorney spending a lot of money to work through this process, which always concerns me, and at peril of you spending even more to extend a negotiation, Mr. Chadwick - I hope you're sensitive to that - you know, I would -- my first instinct was to -- and it was, you know, not literal, but can we split the difference.

And now I listen to I this and that's imprecise. And I think the Chair expressed that, I think, quite appropriately. Negotiating in this way is difficult, but I appreciated the sentiment of the Chair to begin with. And I conclude, having listened to this and thought through this, that I'd like to see us go back and see if we can get a more reasonable rent here.

It does seem, just on first blush, excessive. But at the same time, I want to also just express, Mr. Reyes' point, you know, and Mr. Fossum's, I mean, we've been pushing you to be more aggressive. Audits,
appropriately, have stated we need to be more aggressive
to get Market value. We have changed the rules and
regulations, but we're in this very difficult position
with all these grandfathered leases. And there's always
some exception to every damn rule, and we seemingly
express that in June, because there's certain
circumstances here and there. So the whole thing is
messy.

And, you know, with that, I don't want to
continue to complicate it, but I just feel in this
circumstance, once again, we should address another
potential exception here, and see if you guys can come
back and get that mutually agreeable rent, and then we'll
step up our game, as it relates to the new year, and
really put our foot down that we've got to operate with
these new set of rules.

ACTING CHAIRPERSON GORDON: And I would associate
myself with the Lieutenant Governor's comments. Mr.
Reyes, did you want to still make your motion, or should
we --

EXECUTIVE OFFICER FOSSUM: If that's direction to
staff from 2 of the Commissioners, it wouldn't necessarily
take a --

ACTING COMMISSIONER REYES: Yeah, that's all it
takes. At this point, I wouldn't have a second, so
there's no sense --

ACTING CHAIRPERSON GORDON: I'm trying to show equanimity here.

EXECUTIVE OFFICER FOSSUM: You're asking us to bring this back in December with a new recommendation?

ACTING COMMISSIONER REYES: I just want to signal that I was ready to move on this item, because I think, you know, there's a cost of getting some fringe benefits beyond -- above and beyond what the lease provides. And it is what it is. The option is not to get that benefit, and then it falls back into the regular tier, but I respect the fact that there's 3 of us, and two-thirds.

ACTING CHAIRPERSON GORDON: Yeah. I think what I -- just to be clear for staff, what -- at least from my perspective, is that I would really like to not turn this into individual exceptions. I'm trying to find a standardized way of dealing with these, where it is something less than upland use, and something more than just a deck. And if there were a third category, that would, I think, satisfy our -- where we're coming from.

EXECUTIVE OFFICER FOSSUM: And let me say, Mr. Chair, that staff has done that in the past, and we certainly, I think, have a sense of where the Commissioners would like to go on this. And, in fact, anticipating that, we've already been doing some thinking.
ACTING CHAIRPERSON GORDON: Excellent.
Mr. Chadwick, I think we're then going to put this over without a motion. Hopefully, you will sit down with staff shortly.

Well, actually let me put it a different way. Let staff do a little work on this on -- I think I'm hearing from my colleagues that they're also interested in trying to develop a third formula. And let's get back to you with that, and then we can have some negotiations based on that, okay? Is that satisfactory?

MR. CHADWICK: That works. Thank you very much.

ACTING CHAIRPERSON GORDON: All right. Very good. All right.

So we're going to put Item 29 over and we will move on now to Item 98 having to do with the always wonderful subject of marine invasive species in ballast water.

Staff, please.

EXECUTIVE OFFICER FOSSUM: Yes. Actually, this is the marine debris item dealing with the Tsunami from Japan and the efforts --

ACTING CHAIRPERSON GORDON: Sorry 98, not 99. It's Item 98 for the record.

EXECUTIVE OFFICER FOSSUM: And Holly Wyer of our staff will be presenting this item. It's informational.
No voting.

(Thereupon an overhead presentation was
Presented as follows.)

MS. WYER: Good morning, Commissioners. My name
is Holly Wyer, and I'm a Sea Grant Fellow in the Division
of Environmental Planning and Management.

And I'm going to talk to you today a little bit
about tsunami debris. Tsunami debris is actually a new
aspect of the broader longstanding marine debris problem
we've been having in the Pacific Ocean.

And the Tohoku Tsunami was first and foremost a
human tragedy. Entire communities were destroyed by the
tsunami wave and the debris from tsunami reflects this
widescale damage. Fortunately, the debris is not
radioactive. It was far offshore when the Fukushima
nuclear emergency occurred. And since then, as large
items have washed up on our shores, they've been tested
for radiation and nothing has come up above background
levels.

COMMISSIONER NEWSOM: I'm just going to, through
the Chair, interject. Through our source here in
California or mostly Oregon and Alaska. They've been -- I
mean, we've actually had substantial debris here on the
California coast?

MS. WYER: No, not yet. Mostly Oregon,
WASHINGTON, AND ALASKA.

COMMISSIONER NEWSOM: Yeah, okay. I just wanted to clarify.

MS. WYER: And actually, this vessel that is up on the screen right now was the first item to turn up on the west coast. And it turned up in northern British Columbia, then moved its way to Alaska, where it was sunk by the Coast Guard.

And the size of debris can range from vessels like this to small pieces of plastic. The Japanese government estimates that 1.5 million tons of debris from the tsunami is floating on the ocean. And the large visible concentrations of the debris that were visible after the tsunami have broken up, so it's very hard to track.

--o0o--

MS. WYER: So to track the debris, the National Oceanic and Atmospheric Administration is running a model once a month that forecasts, that -- sorry hindcasts where the debris is right now, rather than telling you where it will be in the future.

This was the most recent results of that. And as you can see, the bulk of the debris is in that dotted area above the islands of Hawaii. And then the full range of where debris can be is included in the larger outline.
And as you can see, it does include the full west coast of the continental United States.

--o0o--

MS. WYER: A very new report just came out of Washington State Sea Grant predicting where debris would end up going. And what was very interesting was that they estimate that 75 percent of the debris will not actually make landfall. It will remain stuck in the Pacific gyre, which is in between that circular set of currents in the middle of the Pacific. Of the debris that does make landfall, 50 percent of it is estimated to land in Alaska.

--o0o--

MS. WYER: The Japanese government estimates that 90 percent of the floating debris is composed of parts of collapsed houses and driftwood and other sorts of building materials. In addition to building materials, plastic is another very common debris item. It's also a part of that broader marine debris problem. It's very chemically stable and doesn't breakdown in the ocean well. It will break into smaller and smaller physical pieces as a result of sunlight exposure, but it doesn't ever chemically degrade.

Plastics are often made with a number of filler chemicals associated with them, like BPA. And when they're released into the ocean, BPA ends up being
released from the plastic and going into the marine environment.

In addition, because plastics are made of oil, they can also accumulate oil soluble pollutants, like DDT. And that's an emerging area of research of how plastic is accumulating oil soluble pollutants and transporting them around the environment.

In addition to plastics, some hazards are associated with tsunami debris. I'd say the most common issue is large items posing navigational hazards. And the U.S. Coast Guard is handling offshore items that are deemed to be navigational hazards. They respond on a case by case basis after consulting with appropriate agencies to determine what they'll do.

In addition to this, because the Tsunami washed out entire towns, there's a potential for medical hazard waste, industrial hazardous waste, to potentially wash up on our shores. There's no estimate for how much of this is out there, but it's likely to be a minority.

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MS. WYER: Finally, the tsunami washed out a number of items associated with marine infrastructure and activities, including fixed fishing nets, ships, cargo containers, and docks. Derelict fishing gear, regardless of its origin, is very destructive to marine life. And it
can potentially be a hazards to swimmers and divers if it ends up in an area where it's accessible.

Marine species often become entangled and trapped in gear and they die because they can't continue their vital life functions. And then as they're in this net, they look like easy prey for something else, which comes along and tries to eat it and then gets tangled up as well.

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MS. WYER: These larger items of marine origin from Japan have brought forth an interesting problem we didn't necessarily foresee. In early June, a dock that was ripped out of a fishing port in Misawa, Japan appeared on Agate Beach in Oregon, which you can see here.

And what made this dock really surprising was that there were 2 tons of living fouling organisms that were able to reproduce and maintain a biological community living on it.

For debris of marine origins, such as docks, buoys, and vessels, marine invasive species are of concern. Because these items are sitting in coastal waters in Japan, they have species that are likely to do very well and become invasive in coastal waters of California.

This dock specifically carried a number of
species that are already invasive in San Francisco Bay, and also carried species that are not found on the west coast yet, but are known to be invasive and problematic elsewhere.

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MS. WYER: The species we're most concerned about that were found on this dock are the Northern Pacific Seastar and the Asian Shore Crab. Both of these species are currently invasive on the east coast of the United States and are on a number of watch lists on the west coast.

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MS. WYER: Commission staff is participating in a number of activities related to tsunami debris. We are participating in the Marine Debris Steering Committee at the invitation of the Ocean Protection Council. There's a large number of agencies participating, but I'm only going to cover the actions of a couple of them here.

The California Emergency Management Agency is taking the lead on tsunami debris response here. The short-term goal of the steering committee is to support CalEMA in its work. And the CalEMA has a draft Concept of Operations document that's currently in the Governor's office for review.

The way this document, from what I understand,
how it's structured is that the landowner is responsible for the clean up of debris on their land.

And good news, the Japanese government has mentioned that they will be providing the U.S. with 6 million in funding for debris removal to be distributed among affected states. And this could become funding for future clean-ups.

In addition to CalEMA, the Coastal Commission is expanding its adopt-a-beach program to have volunteers handle increases in non-hazardous debris, like plastics that we'll be seeing on the coastline.

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MS. WYER: So in addition to the steering committee, staff is also participating in the NOAA marine debris program's update calls. This provides us with a big picture on Tsunami debris, including those modeling results of where the debris field is right now, most recent shoreline and offshore sightings, and what the governments are doing about new debris.

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MS. WYER: Finally, the NOAA marine debris program felt that it was necessary to bring a group of experts together to deal with the marine invasive species problem associated with marine debris. Your marine invasive species program staff has been participating in
this group of experts to develop west coast-wide protocols and standards for handling invasive species on tsunami debris.

As part of these protocols, they are also participating in the Japanese Tsunami Marine Debris Taxonomic Assessment Team, which is meant to be a group that provides rapid response to sightings of debris with fouling, and they look at images of these debris items and determine whether or not fouling species are of concern.

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MS. WYER: Thank you for your time.

EXECUTIVE OFFICER FOSSUM: Thank, you Holly.

ACTING CHAIRPERSON GORDON: Mr. Reyes.

ACTING COMMISSIONER REYES: I have one question. Has any of the debris that's come over been radioactive or are we not seeing that yet?

MS. WYER: Nothing has been radioactive.

ACTING COMMISSIONER REYES: Thank you.

EXECUTIVE OFFICER FOSSUM: I think the reasoning for that is that the -- actually, the tsunami took place several days before any leakage was taking place in Daiichi, so that's the good news, if there is any.

ACTING COMMISSIONER REYES: Yeah, I just wondered if some of the subsequent stuff that, you know, was still out there for awhile.
EXECUTIVE OFFICER FOSSUM: I don't believe.

ACTING COMMISSIONER REYES: Okay. Thank you.

EXECUTIVE OFFICER FOSSUM: Unfortunately not.

COMMISSIONER NEWSOM: I compliment you and the coordination with other agencies. And I appreciate staff stepping up individually and volunteering and thank you for the presentation as well as the written presentation you provided us. Congrats.

ACTING CHAIRPERSON GORDON: We're going to move on to Item 99, which is to consider approval of a report to the Legislature assessing ballast water treatment systems for use in California waters.

Staff, please.

(Thereupon an overhead presentation was presented as follows.)

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Good morning, Mr. Chair, and Commissioners. My name is Nicole Dobroski, and I'm the Commission's Marine Invasive Species Program Manager.

Today, I submit for your approval staff's report reviewing the efficacy, availability, and environmental impacts of ballast water treatment systems for use in California.

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ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Over 250
species of non-indigenous -- 250 non-indigenous species, or NIS, are established in California coastal waterways. San Francisco Bay is one of the most heavily invaded water bodies in the world. And recent research by the Smithsonian Environmental Research Center in conjunction with our Marine Invasive Species Program colleagues at the Department of Fish and Game Oil -- Office of Spill Prevention and Response has demonstrated that California is a gateway for species introductions to the entire west coast of North America.

Seventy-nine percent of all coastal non-indigenous species from California through Alaska were first detected in California before they then spread along the coast.

Non-indigenous species have significant impacts on the ecology of coastal waters, human health, and the economy. California has the second largest ocean-based economy in the United States and California is first in ocean-based employment opportunities.

The coastal tourism and recreational boating industries accounted for more than 15 billion of California's gross State product in 2009. Non-indigenous species pose a threat to these and other components of California's ocean-based economy, including fish hatcheries and aquaculture, recreational and commercial
fisheries and marine transportation.

Shipping is the main vector of species introductions to California coastal habitats. Up to 81 percent of all established non-indigenous species in California are the result of shipping activities, including the discharge of ballast water and the biofouling on vessel hulls and wetted surfaces.

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ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: In recognition of the threat posed to California waters by non-indigenous species, the California Legislature passed several key pieces of legislation in 1999 and 2003 that established and enhanced the marine invasive species program. The governing statute was later amended by the Coastal Ecosystems Protection Act of 2006.

Among its provisions, the Act established California's performance standards for the discharge of ballast water. These standards are being implemented via regulations, but it is important to note that the standards and the associated implementation schedule are set in statute and must be implemented by Commission staff.

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ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: The Coastal Ecosystems Protection Act also requires the
Commission to regularly prepare reports for the
Legislature assessing the efficacy availability and
environmental impacts of ballast water treatment systems
for use in California waters. These reports are due 18
months prior to each of the implementation dates for the
performance standards.

The report presented today is a status update and
addresses the availability of treatment systems for
existing vessels, so those are those that were built
before January 1 of 2010, with a ballast water capacity
between 1,500 and 5,000 metric tons. And just as you can
see from the pie chart there, vessels in this size class
encompass 8 percent of all vessels that have called on
California ports since the beginning of the program in
2000. So it's a small percentage.

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ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Vessels
have several options for complying with California's
performance standards for the discharge of ballast water.
Approximately 85 percent of all vessel arrivals to
California retain all ballast water on board the vessel.
This is the most protective management strategy available,
and these vessels are compliant with California standards.
Vessels may also discharge ballast to a
shore-based or barge-mounted ballast water treatment
facility. Although, currently, no such facilities exist in California.

In most cases, potable water used as a ballast water -- used as ballast water and sourced from U.S. or Canada would also comply with California standards. Finally, vessel owners and operators may choose to install a ship-board ballast water treatment system in order to meet California's standards.

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ENVIRONMENTAL PROGRAM MANAGER DOBROSKI:

Commission staff has assessed performance and availability of ballast water treatment technologies to meet California's performance standards in reports to the California Legislature since 2007. In only 5 years since that first report, we have seen a large increase in the number of treatment systems available for review by Commission staff, from 28 systems in 2007 to 63 in 2012. We have seen a similar increase in the number of systems that have received type approval according to the International Maritime Organization Guidelines from 1 in 2007 to 22 today.

Few treatment system manufacturers had heard of the California State Lands Commission in 2007, and today we are frequently approached by technology developers wishing to work with us to review their available data,
and assess system testing plans to determine likely compliance with California standards.

California's standards and the Commission's program to implement those standards are impacting the development of treatment systems worldwide, and ship owners are taking note.

For example, Carnival Corporation began an intensive assessment of over 30 ballast water treatment systems 3 years ago to meet California's standards. They are down to a short list of 3 systems and all of those systems are on California's list of -- that have demonstrated the ability to meet the standards.

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ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: The 2012 Ballast Water Technology Assessment Report before you saw continued improvement in the quantity and quality of available data. Importantly, almost all system performance data that were received for this report came from the third-party testing sources.

Commission staff continues to review data collected from both land-based and ship-board testing of current technologies. As stated on the first page of the report, no system yet meets California's standards in 100 percent of land-based testing.

Treatment systems are tested multiple times
though across the land-based and ship-board regime, and 12 systems have demonstrated the ability to meet California's standards in at least 1 test.

Six of those systems have demonstrated --

ACTING COMMISSIONER REYES: May I interrupt for a second.

ACTING CHAIRPERSON GORDON: Stop, please.

ACTING COMMISSIONER REYES: So I'm trying to, in my mind, grasp this. On the cover page you say there are no systems, and then here we say 12 systems demonstrate ability to meet California standards in at least 1 system. Can you kind of do a bridge for me and what am I missing?

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Sure.

So there's 2 main testing regimes. There's one, there's land based, so large storage units, the entire system is test on land with a laboratory. There's also ship-board meeting, where the system is actually either installed into the vessel or you put it in like a container and put on board the vessel. So those are 2 of the testing regimes.

The land-based testing is much more rigorous. There's requirements for a soup of -- testing soup so that has to go through all of the treatment systems. That's soup is unlike any natural waterways that would be seen in the entire world. They're trying to push it to the limits
of sediment load, temperature, salinity, organism. So it's really -- it's the most rigorous testing out there, and none of these systems have complied 100 percent of the time.

These systems are tested multiple times in land-base test, oftentimes 12 to 15 different tests. So while no one has complied a hundred of the time. Many of the systems have at least complied for 1 test. We have 6 systems that have complied for 50 percent of those tests, and we have -- and for ship-board testing we have 3 systems that have complied for 100 percent of tests. So there's a range of differing testing approaches.

ACTING COMMISSIONER REYES: All right. Thank you.

CHIEF COUNSEL LUCCHESI: And, Nicole, the ship-board tests are more reflective of real life.

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Correct. So the ship-board tests are -- it is a system being put on a ship in normal operation. So, you know, the normal rigors of going out to sea and coming back. So Commission staff has put higher reliance on those ship-board tests because they're more indicative of real world situations.

ACTING CHAIRPERSON GORDON: I'm getting confused here.

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Yes, Mr.
ACTING CHAIRPERSON GORDON: So if you have 3 systems that can meet the tests a hundred percent of the time, what does U.S. EPA mean when they say that these are not statistically verifiable.

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Could I ask in what documented they stated that?

ACTING CHAIRPERSON GORDON: The U.S. EPA report says based on the know detectable limits standard that you can't test. That there's -- they're not statistically viable tests. So, I guess, I'm getting confused of if it meets the tests 100 percent of the time, why does U.S. EPA seem to think this can't be done?

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: There's different standards for that. You're talking -- referring to the greater than 50 organism size class, so these are the largest of the animals that we see in the ballast water discharge.

The no detectable living organism standard indicates that you need to set methods for determining if there are organisms in there. So I want to be clear that it's not a 0 organism standard. It doesn't mean that there's nothing alive in there. It means that we have set specific methods. When we use those methods, if we can't find anything, then we determine that there's no
detectable living organisms. Depending on that method of detection, there are different statistics involved with the amount of water that is sampled. The compliance protocols that we have brought to the Commission before -- I believe we brought -- the proposed protocols we brought them in May, I believe. Those would set specific methods for detection of these organisms and we would be able to run statistics on that. So if EPA has been commenting on it, it's from previous reports or previous data prior to the development of these compliance protocols.

ACTING CHAIRPERSON GORDON: Okay. Proceed.

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: So, as I said, 3 systems had demonstrated in 100 percent of ship-board tests. And, as I mentioned, given that treatment systems must perform on vessels while underway, Commission staff has placed greater weight on ship-board testing and demonstrating the ability to meet California standards.

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ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: We do want to -- it's encouraging to see the continued improvement in the performance of treatment systems, but we do want to point out that there are challenges in the analysis of some data, particularly for the 10 to 50
micron class size. So this is kind of the next size down from those biggest plankton organisms. At this time, available measurement techniques are not sensitive enough to verify compliance to California's standard of 0.01 organisms per milliliter. The existing data suggests compliance, but we cannot confirm or deny at this point. However, our inability to verify treatment system performance to a particular level based on available measurement techniques should not be confused with the system's inability to meet that standard.

So the measurement and the ability to do it are -- they're linked, but they're certainly not the same thing.

Additional data will be necessary to confirm which systems can and cannot meet standards in this organism size class.

So California has proposed ballast water compliance protocol regulations, which I mentioned you seen a first draft of in May, which will provide staff with a mechanism to fill these information gaps and collect additional data on the ability of treatment systems to meet the 10 to 50 standard, as well as the rest California's standards across a wide range of operational and environmental conditions.
The protocols will include specific methods of analysis for each organisms size class. They'll include grandfathering provisions, as necessary, and will also include a Commission-directed provision to delay enforcement beyond the IMO U.S. Coast Guard standards for all but the E. coli and enterococci standards for 2 years.

During this time, staff will collect data and put together recommendations for the Commission prior to the next technology assessment report, which is due in mid-2014.

Commission staff will bring these proposed protocols to the Commission for approval once the peer-review process and rule-making process are completed.

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ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: So in conclusion, this report is just one in a series of status updates that we have presented to the Legislature over the past 5 years, assessing currently available ballast water treatment technologies.

After review of the available data and recent improvements in system performance and in recognition of plans by Commission staff to adopt compliance verification protocols, including a Commission directed 2-year abeyance on enforcement beyond IMO U.S. Coast Guard levels, the report recommends that the Legislature continue to support
the Commission's implementation of the California performance standards for the discharge of ballast water. And staff requests that the Commission consider approval of this report and direct us to submit to the Legislature. Thank you.

ACTING CHAIRPERSON GORDON: Questions? What I would like to do then is go forward with supporters of adoption of the report in its existing form, please come forward. I've got a list of speakers.

EXECUTIVE OFFICER FOSSUM: Yes, Mr. Chair. We have 2 people who've identified they'd like to speak in support, I believe.

Karen McDowell and Abigail Blodgett.

ACTING CHAIRPERSON GORDON: Ms. McDowell, can you please identify what organization you're representing?

MS. BLODGETT: I'm actually -- I'm Abigail Blodgett.

ACTING CHAIRPERSON GORDON: Oh, you're Abigail Blodgett. Okay.

MS. BLODGETT: I hope it's okay that I came up first.

ACTING CHAIRPERSON GORDON: Let's start with Ms. Blodgett.

MS. BLODGETT: All right. Good morning. I'm
here on behalf of San Francisco Baykeeper to express our
support of the Commission's 2012 assessment of ballast
water treatment systems, along with our -- the State
management program for aquatic invasive species, as a
whole.

Baykeeper is a nonprofit organization with 2,300
members that aims to protect and enhance the water quality
of the San Francisco Bay, and its surrounding ecosystems.

Over the past decade, we have been the tireless
advocate for the regulation of ballast water discharges
under both State and federal law. In 2008, Baykeeper and
other plaintiff environmental groups won a lengthy battle
when the Ninth Circuit Court of Appeals agreed that
ballast water discharges must be regulated under the Clean
Water Act

It is widely known that the introduction of
non-native aquatic species into local waters has massive
environmental and economic impacts. These organisms
destroy local habitats by preying on native organisms,
competing with natives for food and space, and introducing
deadly pathogens and parasites.

Many California waterways already listed as
impaired under Section 303(d) of the California -- of the
Clean Water Act, including every single segment of the San
Francisco Bay and the Delta.
These organisms also cause massive economic impacts by clogging pipes at drinking water, wastewater, and power plant facilities.

So considering these series and widespread environmental and economic consequences, I believe that it's essentially that the State Lands Commission continues to move forward with implementing its legislative mandated aquatic invasive species program as quickly as possible, develops a program that effectively reduces the presence of aquatic invasive species in California waters.

The technology report before the Commission today clearly shows that ballast water treatment technologies are greatly improving each year, and there are additional options for meeting the California standards that have not been fully explored, such as land-based treatment facilities.

The report also states that the Commission intends to continue gathering meaningful data on the effectiveness of treatment technologies, which will not be possible if there's no incentive for vessels to install these systems due to a delayed implementation or weakening of the California standards.

Putting this debate over the effectiveness of treatment technologies aside, I'd like to point out that the State ballast water standards are based on the level
of regulation needed to improve the quality of California's waters, rather than what technologies are actually available at the time.

The Commission should look to the federal Clean Water Act as a model for its invasive species program, under which water quality objectives are routinely set at levels consistent with environmental health.

Any technological challenges associated with meeting these standards must be dealt with at the vessel compliance stage, but should not be confused with or displace the standards themselves.

Also, the proposed ballast water regulations that the Commission will be considering at a future meeting would include several protections that give the shipping industry and the Commission plenty of time to determine which technologies can be used to effectively meet the California standards, like the proposed 2-year limited enforcement provision, and the 10-year grandfathering scheme for vessels that have already installed on-board treatment systems.

For all these reasons, the Commission's decision to adopt the technology report would be a reasonable and necessary step towards continuing to address the complex and significant problem of aquatic invasive species in California waters.
Thank you very much for your time.

ACTING CHAIRPERSON GORDON: Ms. McDowell.

DR. McDOWELL: Hello. I'm Karen McDowell from the San Francisco Estuary Partnership, which is part of the National Estuary Program. I have a Ph.D. in Marine Ecology and I'm an environmental planner.

I've been working on ballast water issues since 1999, and from '99 to 2003 my sole job was to work on ballast water and the development of systems and find out what was going on.

I'm currently on a series of federal, regional, and aquatic invasive species panels. And as you know, San Francisco estuary is one of the most invaded systems in the world. And it's important that we move forward with the ballast water treatment and ballast water management program and treatment systems.

And I just want to impress that even though the California standard is below the current detection limits in a few size classes, it's standard practice in water quality to set compliance protocols based on current detection limits.

And as Nicole mentioned earlier, they do have the draft verification protocols that were presented, at least once, to this Committee, and those verification protocols would be used to test verification to the standards.
The California standard has been in place for many years, and it is more stringent than the IMO level. And this is critical, because the international community is using this as a target, and it's critical that they have this lower target, that's the target that's protective for the environment.

If that target is made less stringent, there will be no incentive for further development of treatment systems, and they'll just stop at the current IMO level. So it's critical that we maintain the target that's going to be protective of the environment.

The report does show that these systems do have potential to meet the standard. And I've been doing this for a long time. The testing for ballast water treatment systems is a little bit slow. It is expensive. It's not the same as being in a laboratory and being able to test hundreds and hundreds of times in a period of weeks. It just takes longer. But things are moving closer. We're getting close.

And I think this next phase of vessels that's coming in is a small percentage of the fleet. And the most practical approach to move forward is to move forward with the current schedule and test the systems with the verification protocols. And that will give us data for 2 years, so you can enforce to the IMO level, and then
you'll collect this data for 2 years, and be able to answer everyone's questions of whether the systems can meet the California standard or not. So we support this approach to move forward and accept the report.

Thank you.

ACTING CHAIRPERSON GORDON: Thank you.

Mr. Holmes.

Is Marc Holmes in the audience, Bay Institute? And can Mr. Cohen please be ready to testify after Mr. Holmes.

MR. HOLMES: Thank you, Mr. Chairman. I'm not here to speak in support of the report.

Are we on the next list?

ACTING CHAIRPERSON GORDON: (Nods head.)

MR. HOLMES: Okay. My name is Marc Holmes. I'm the Program Director of The Bay Institute, a nonprofit environmental organization established in 1981. I'm a former member of the CalFed Bay-Delta Authority from 2003 through 2009, and I was an advisory panel member appointed at the invitation of the State Lands Commission that culminated in the recommendation of the standards that were adopted in the legislation in 2006.

I'm here today to express a concern about the report, and specifically related to Commissioner Reyes'
question about what actually is a testing protocol that actually tells us whether these on-board facilities are meeting our standards or not.

And I'd like to clarify that our read of the report is that the land-based assessments give you the more accurate evaluation of whether ship-board facilities are treating these invasive species adequately or not. And the answer clearly is that they are not.

I'd like to give you some background on our decision at the time to essentially recommend that State Lands Commission staff go forward with investigating primarily exclusively really ship-board treatment methods, in order to do this.

There was very little known at the time about ship-board treatment methods. We hope that, in fact, what has happened would happen at that time, that it -- the recommendation would spur private innovation in the development of these ship-board technologies. And we were informed that we were pretty close to actually having ship-board treatment technologies that were effective.

It's 6 years later, and what we now know is that no ship-board treatment technology can meet the standards. We had investigated, at that time, and considered the question of land-based treatment technologies, because we knew that land-based treatment technologies could
effectively treat all the invasive species and organisms. The challenge was getting the ballast water to land-based treatment facilities. We were informed at the time and concluded that there were logistical problems associated with that, that were, if not, insurmountable, that didn't exist in the ship-board treatment. And so we opted to recommend, given the representations that ship-board technology was just about there.

At this point, it seems that we -- it would be prudent to expand the investigation to include land-based treatment technologies, that this may or may not be a promising course of action to continue to investigate exclusively ship-board technologies.

So I'm suggesting that the report should be amended, and that the recommendation from the Land's Commission to the Legislature should be to expand the investigation, because it has been sufficient -- we've had sufficient time to consider whether these treatment technologies should board will be effective.

They will not, in the near term, and we should expand the consideration for land-board facilities as well.

Thank you very much for your time.

ACTING CHAIRPERSON GORDON: Mr. Holmes, have you given any thought to -- let's -- I'm going to jump a
little bit. Assuming that the land-based systems were to work, have you given any thought to how many ports these would have to be installed at and what the cost would be, and also who might pay that cost, being as last time I checked, the general fund is broke?

MR. HOLMES: Those were exactly the questions that we considered at the time, and one of the reasons. Not because we know what the cost would be or how many ports, but just because we were informed that ship-board technologies were more promising.

Well, let's save the time and energy, et cetera. And actually, I had hope that by this time that we would have several systems ship board. But those are the questions that we think it's time to ask and instruct the staff to investigate. Now, I don't think anybody has the answers to those questions, and so I would recommend that you not rush to presume that they are insurmountable.

ACTING CHAIRPERSON GORDON: Okay. Thank you very much. We appreciate your testimony.

EXECUTIVE OFFICER FOSSUM: Mr. Chair, if I could --

ACTING CHAIRPERSON GORDON: Hold it. We have a question from --

ACTING COMMISSIONER REYES: No, Curtis.

ACTING CHAIRPERSON GORDON: Oh, Curtis, you have
EXECUTIVE OFFICER FOSSUM: I think Mr. Holmes' comments are very well taken. And that I think it's almost a given that having on-land-board or either barge or land-based treatment systems for ballast water would be preferable. And I think we've always believed that we were told by industry really was that they didn't think it was practical, because they would be traveling all over the world to different ports. And if you put a treatment system on your vessel, then you could go to all those ports.

Whereas, if California had a system of -- treatment systems here, then vessels would still be required to put their treatment systems on their end, and they would -- it would kind of be a doubling down, but I think we would agree that if it was practical, that that would certainly be preferable.

If the Commission wants the staff to start investigating the costs associated with that or the practicality of that, and include that in the next report, I think that would be something that would be worth investigating.

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Mr. Chairman, if I may.

ACTING CHAIRPERSON GORDON: Yes, ma'am.
ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: The Public Resources Code established standards. Vessels may meet those standards in whatever form they choose, whether that be ship-board or land-based treatment.

Additionally, we are required to review available treatment technologies. It does not specify -- the PRC does not specify ship-board versus any other type. At this time, there are no currently available shore-side ballast water treatment facilities to review. There are water treatment facilities, and many of those methods may be applied to ballast water treatment, but none -- there are no facilities, at this time, that are land based for us to review to then provide information to you.

ACTING CHAIRPERSON GORDON: No facilities or no systems?

I mean, we understand that there aren't any facilities, because we haven't gone that route yet, but strike -- maybe I'm splitting hairs is there. Is there a difference between facilities systems that could be installed onshore?

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: I would argue that at the land-based level right now, there are no systems or facilities. There are methods of approach, but I could say that I could pour -- part of this, I can pour Tabasco in a ballast water treatment tank, and that would
kill everything. Now, that's a method that's available to me, but really it's not an available system.

    ACTING CHAIRPERSON GORDON: Got it.

    ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: We encourage port operators to develop shore-side ballast water treatment facilities. We encourage scientists to work with them. We do have research funds available each and every year to support methods that may address ballast water treatment systems, and we would be more than happy to entertain proposals to address shore-side treatment.

    So we're working in that direction. Just -- we did not review them for this report, because they are not currently available.

    ACTING CHAIRPERSON GORDON: Okay. Mr. Cohen, I think he can speak to the same --

    Mr. Reyes.

    ACTING COMMISSIONER REYES: I do have a question. When is the next report to the Legislature do?

    ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Mid-2014.


    ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: After this one, yes.

    EXECUTIVE OFFICER FOSSUM: Certainly, but the Commission staff can begin investigating, you know, costs
associated with that. I think the conversations that we have had with ports and with the shipping industry and everything else is that it raises a lot of complexities.

They concluded the simple solution was everybody put one of these million dollar ballast water treatment systems on your ship and you're good to go. That was the easy answer for them.

Are they as effective?

No.

Will they ever be?

Probably not, because if you're putting every ounce of water into an onshore system that can treat it much more rigorously, you're better off.

But if it's not practical, if the ports can't have the kind of plumbing installed in them, and have everyone of these vessels that come in hook up to it, because they all have different ports -- discharge ports and intake ports on their vessels, you know, it could happen. It might be 20 years from now or something. But we can certainly still investigate it and see where it leads.

ACTING CHAIRPERSON GORDON: Let's go to Mr. Cohen and then I think we'll -- when industry comes up after Mr. Cohen, I would really like you to address the issue of, in addition to your testimony that you were planning, also
address the issue of onshore, and from the industry's perspective, whether that is an avenue that would make sense to you.

Mr. Cohen.

DR. COHEN: Thank you. My name is Andrew Cohen. I'm the Director of the Center for Research on Aquatic Bioinvasions. I'm a marine biologist. I've been studying biological invasion in ballast water for 20 years.

I have some history with ballast water regulations. In 1999, I was asked by California Assemblyman Ted Lempert to co-write the bill that became California's first ballast water law in 2005. I was part of the panel that developed California's ballast water standards, and have since continued to periodically serve as a technical advisor to the State Lands Commission staff.

And in 2010/2011, I was part of the science -- the EPA Science Advisory Board, which was tasked with assessing what ballast -- what treatment technology can do to treat ballast water.

And this brings me here to make 2 points. They're actually uncomfortable points for me to make, but I think they need to be made and they need to be made as clearly as possible.

The first of which is that the conclusion in the
current report and in previous reports were similar, but in the current report that there are systems -- ship-board treatment systems that can meet California's ballast water standards is contrary to what the EPA Science Advisory Board Panel found, which was a panel of the leading scientists in Canada and the U.S. who are working on this issue.

It's contrary to what the test data actually show. It's contrary to what every scientist I know who's working on this concludes, including other advisors to the State Lands Commission staff, 2 of whom were on the -- 2, in addition to myself, were on the Science Advisory Board Panel.

And I believe it's contrary to what the equipment manufacturers feel about their own equipment. Their is no evidence that equipment manufacturers have made any effort to build systems specifically to meet California's standards, which are far more strict than the IMO standards. They all, as far as we know, have simply been building systems to meet the IMO standards, and they've simply been testing them to determine whether they meet the IMO standards.

So this requires a little bit of review if I can have a moment on this, which is that California standards address 7 categories of organisms. There's the biggest
category, which is basically zooplankton, the next
category, phytoplankton, there's bacteria viruses and then
3 what are called microbial indicator species to indicate
fecal contamination and one is a pathogen.

The IMO standards, these international standards,
developed by the International Maritime Organization, in
2004, in which all of these treatment systems are built to
meet contain 5 categories, the 2 biggest ones that
California has, but no standard for bacteria, no standard
for viruses, and then the same microbial standard. It's
the same categories.

And in each of these groups, in 4 of these, the
standards are actually pretty similar. The largest
category -- they're worded differently, but the California
standard basically comes out to be somewhere around the
IMO standard. And for the 3 microbial indicators, it's
pretty close to or the same standard.

So what really matters when you're comparing what
these systems can do is the phytoplankton, the bacteria
and the viruses. Phytoplankton standards are a thousand
times more stringent in California than IMO. Bacterial
standards are very stringent, and there's no standard in
IMO, and viral standards are stringent and there's no
standard in IMO.

When we look at the phytoplankton standards that
the protocols that are followed have -- are designed to
have the resolution to tell whether these systems meet the
IMO standard, a thousand times less stringent standard.
They simply do not have the resolution to tell you whether
they meet the California standard. All they can tell you
is whether there is or is not a gross violation of the
California standard on the order of 100 times or 1,000
times too high a concentration.

And what we find when we look at the test results
is that all of these systems have gross violations of that
standard. All of them have numbers that show up that
would indicate gross violations of the California standard
in some of the tests.

Now, some of those systems have passed the
California standard in one test, in the sense that you get
a non-detect. Now, a non-detect doesn't mean it meets the
California standard, again because the test isn't suitable
for that. It only tells you there wasn't a gross
violation of the California standard.

But the State Lands Commission says, well, if it
passes in one test, then we say, well, it's shown an
ability to meet the California standard in at least one
test, ignoring the fact that in the other 12, 13 tests
there were gross violations of California standard.

Again, sometimes they say more than 50 percent,
sometimes they say in ship-board it passes, but you have
to look at all the test data.

   It's like -- an analogy that may not work for
you, but an analogy is if you're correcting a math test,
if you only look at the correct answers and refuse to look
at the incorrect answers, then the score is going to be
100 percent, even if only one answer is correct.

   We've got to look at all the answers, how many
right, how many wrong. And even more on the wrong ones,
are then in the ballpark or do they show that the student
has no clue?

   In this case, the answers aren't even in the
ballpark where we have answers. Where there's violations,
they are gross violations of California. In other
cases --

   ACTING COMMISSIONER REYES: Yeah, you're you
right, bad analogy.

   (Laughter.)

   DR. COHEN: What's that?

   ACTING COMMISSIONER REYES: Bad analogy.

   DR. COHEN: Bad analogy. But you have to look at
the whole test, I guess, is what I would say. You can't
just look at one trial or just the ship-board trials. You
have to look at all the data that you've got.

   And this is what the Science Advisory Board did
and other scientists do. And their conclusion is there is no way that these systems can meet that standard.

Then we got to the bacterial standard, where it's even worse. There is no bacterial standard in IMO. And what the IMO says to -- and so there's no real protocol for testing bacteria, but it says you should test bacteria to the testers, because we want to have this information for future. So the testers did -- they did different things.

Mostly, they did the easiest tests, which is to take some water, stick it on a culture media, a culture plate, and count the number of bacteria that grow, a very standard test. And what that counts is what's called culturable bacteria, or sometimes culturable heterotrophic bacteria or even culturable heterotrophic aerobic bacteria. It all means the same thing. It means the things that will grow on these plates.

And what we know from 20 years of ocean studies and ballast water studies is that in ocean water and in ballast water what grows on these plates is only a tiny fraction of the bacteria that are in the sample. It's usually less than a tenth of a percent. It's always less than a percent.

So if you're only counting what grows on the plates, which is what staff does when it says that these
tests meets the standards, then you're only -- then you're
ignoring generally 99.9 percent of the bacteria that are
in the sample. And if you ignore 99.9 percent of the
bacteria, it's pretty easy to get low numbers.

But, in fact, if you look at the tests where they
count total bacteria, these tests fail all the time. In
fact, some of these systems increase the amount of
bacteria in the treatment process. They basically turn
ballast water tanks into incubators of bacteria -- I see a
puzzled look -- because they kill off the things that eat
bacteria very well - that's the biggest stuff - and they
kill off a lot of the things that bacteria eats, so
there's a lot more food lying around for bacteria. That's
what the thinking is.

But what the test data clearly show is that many
of these systems increase the concentrations of bacteria
in ballast tanks.

And then we get to viruses and there's no data
whatsoever on viruses, so there's no basis whatsoever for
concluding that these systems meet California standards.

And as I said, the scientific census, the clear
conclusions of the Science Advisory Board is that the
California systems are -- the ship-board treatment systems
are about 1,000 times shy in those areas where we can do
numerical comparisons of meeting the California standards
with possible developments that might come to within 100
times being shy of meeting California standards, but
there's no way in the world they're going to meet
California standards. That was one point. I'm sorry it
took awhile.

The second point is that there is a way of doing
it, and that is using standard water treatment processes,
what is called conventional water treatment. Taking the
water off the ship and treating it onshore. The Science
Advisory Board also did the most thorough review of this
that's been done. They concluded that it's technically
feasible, that the studies that have been done that have
looked at the economics that have compared ship-board to
onshore treatments, have found that onshore would be
cheaper. They found that it could be developed in the
same period of time that ship-board treatment did, at
least as a first analysis.

They found several other advantages, not the
least of which is that it would be far easier to monitor
and to enforce.

In California, you had asked the question how
many? How many plants would be needed and so on?

In 2000, the California Association of Port
Authorities commissioned a study from the URS Dames and
Moore Corporation to a study of what it would take to do
onshore treatment in California. And they did an engineering analysis -- preliminary engineering analysis and cost analysis.

And they found that it was technically feasible. They estimated that 10 ports would need treatment plants. The model they used was 1 treatment plant at each port. It might actually be cheaper to put 2 in at some ports, depending on their configuration. But we're probably looking at 10 to 15 plants.

At other ports, there's so little ballast water that comes in, that it's not worth building a treatment plant. And so they would just store it and then barge it down to where there was a plant when it was needed.

So we're looking about 10 plants. They're quite small plants actually. They're smaller than some of the plants you would have to put on the largest ships. I can explain what that is, but it's in the report. We can let it go for now, but it's really a quite small capacity that's needed.

The big costs are in putting in the pipes and retrofitting the ships to offload ballast water. The Dames and Moore costs came out to about $200 million, which is -- at a million dollars a vessel, that's less than it's going to cost for ship-board. That covered part of the cost. It covered the treatment plants, the piping,
the outfalls, the storage onshore and so.

But there were some costs that weren't. But again, when you look at the costs, they don't seem to be -- they seem to be in the same ballpark as doing ship-board, if not cheaper.

And so really, you know, you all have a choice at this point. And I think -- I can't put it more starkly, I don't know how you can accept the report. Although, that's not my main concern.

My main concern is that we stop -- that the State Lands Commission staff stop saying we're going to solve this by -- with on-board systems, because as long as you're saying that, nobody is going to build an onshore system. The ports have no interest if you're telling them that we're going to solve it by putting treatment plants on-board ships.

And therefore, there are no treatment plants onshore to observe. And if that's your basis for rejecting onshore treatment, which it has been, you're always going to reject it.

But my concern here is that you -- that they're stopping this pretense that this is going to be solved by onshore systems, because it's not, and to start moving towards doing whatever work is needed, the studies that you need, the conversations with the ports, the work that
needs to be done to start moving us towards a system that actually will do it.

Thank you very much. I'm happy to answer any questions.

ACTING CHAIRPERSON GORDON: Hold on, I think there's a few questions for, sir.

Mr. Reyes.

ACTING COMMISSIONER REYES: Is there anybody else?

No.

Yeah, I have a question. King for the day. Your onshore system vision, what would that be? What would you -- if you could come up with a system right now, what would that be for the onshore.

DR. COHEN: What would that look like?

ACTING COMMISSIONER REYES: Yeah.

DR. COHEN: So you would build a treatment plant for it. This is not treating it in existing wastewater treatment plants. Some people have talked about the possibility of doing that. That might work in some cases, it might not. But we assume we're going to build treatment plants. If we don't have to, it's cheaper.

And you would probably use media filtration, which is like a sandbed filter and other material filter, commonly used in water treatment, and then followed by a
disinfection step, like UV or chlorine. If that wasn't
good enough, you'd do 2 disinfection steps. If that
wasn't good enough, you could use membrane filtration.

The fact is that with only 10 small plants to
deal with, you can put a lot of money into the treatment
process itself and it doesn't change the cost to the
overall effort very much. The actual treatment process is
down around 5 percent of the total cost.

On ship-board, the treatment plants are basically
the total cost. So if you decide you want to upgrade
them, you've got to upgrade them on hundreds of ships,
thousands of ships, whatever it is.

Onshore you can just add a new process or change
these small plants. So that's what the basic plant would
be like. There would be pipes that go out to each wharf
that ships come on, so they discharge when they're at the
wharf. They don't have to go to some special wharf
discharge. That's why the pipe cost is so much, because
you have to connect to every place that they're coming in.

And you outfit the ships. There is an outfitting
process that's needed. They need to outfit their pumps,
so that they can discharge their ballast water in the time
it takes to unload cargo. Some of them don't currently
have that ballast pumping capacity, so they will have to
increase it.
And there have been engineering studies done to assess that, again my major engineering firms. And the costs seem quite feasible.

And so the ship would come in. It would discharge whatever ballast water it has to while it's loading cargo, and then it would go. It would pay a fee for doing this. That was what we'd pay for the -- ultimately. You know, amortized over time would pay for the treatment plants themselves.

The ports presumably would have to be involved in building them initially and then operating them. And the ports do this routinely for other kinds of services that are needed for ships to come into port.

If something is needed, they will make sure that that service is provided, provide it themselves, contract to somebody to provide it, provide space for it. They'll make it happen, but they're not going to do it as long as you're telling them that we're going to solve this with treatment systems on board a ship.

ACTING CHAIRPERSON GORDON: Mr. Newsom, do you have anything?

COMMISSIONER NEWSOM: I'd like to hear from others.

ACTING CHAIRPERSON GORDON: Let me ask one, kind of what I think is the, foundational question here, which
is that before us today is a report --

DR. COHEN:  Could you speak into your microphone.

ACTING CHAIRPERSON GORDON:  Oh, I'm sorry.

The foundational question before us today is that we have a report, which we are being asked to vote on to pass to the Legislature. Is it your opinion that the report, as written, does or does not accurately represent the science as it exists today?

DR. COHEN:  I believe it's completely inconsistent with the science as it exists today.

ACTING CHAIRPERSON GORDON:  Okay. Thank you.

EXECUTIVE OFFICER FOSSUM:  Mr. Chair, if I could.

As I said with the prior speaker, we think that the efficacy of a shore-based treatment system is clearly more advantageous, from the standpoint of the treatment of the ballast water. Mr. Cohen estimated a $200 million. That could be it. One of the problems is California can't require ships to install on their vessels, either water treatment systems or devices that would enable them to hook up to an onshore treatment system. Federal law preempts. And even though shippers may willingly do that, California couldn't require it regardless.

So I think the idea of investing in these kind of treatment systems, if they were practical land-based systems, would be wonderful. But as Nicole pointed out to
you, there are none to report on. They don't exist.

And should they exist?

Probably, but they don't exist. So we can't report to the Legislature that we think that these systems are great. I mean, we could say that we think that would be a good idea. We'd agree with that, but they don't exist. So the report is basically on what the status is of these systems.

We also agree that the systems aren't where we want them to be, at this point. We admit, as again Nicole said in the very first page of the report, that no treatment systems are at the level that they should be right now.

When we talk about potential or ability to treat, we're talking about tests of individual systems that have been made by others that show that they can treat to most, if not all, of California's standards. There are exceptions, the virus standard, for example, and the bacteria. Some of these are problematic.

But as to the -- and when you have a level that says treating, so that you can't measure it anymore. In other words, is it to the standard -- when they talk about it being 100 times -- California standards being 100 times more or 1,000 more than the IMO standards, what they're talking about is the standard is higher, but the
technology for even measuring that standard doesn't exist. So what we do is we take the technology of what does exist to be able to measure to that standard. And based upon that, determine whether or not there's any viable organisms left, because you can't do perfection. You can only measure to what science allows you to measure to. If you have a perfection goal, that's fine, but we can only report on what's measurable, and that's the basis for that.

ACTING CHAIRPERSON GORDON: My concern is this, we've been doing this for 6 years now. Though, I've only been on this Commission for a year and a half. There is still serious data gaps and technology gaps in what the California standard is driving. Now, that's not to say that the California standard is wrong. I think it does drive technology. We've done it in numerous fields in air pollution, water pollution, et cetera, in California.

This is a report though. This isn't a regulatory regime we are looking to pass. And if the report were to say -- and we've done this in other areas that -- and I am just going to extrapolate now for a second some things that I would like to hear maybe some of the industry folks say, that the industry is interested in onshore, and that the report said that we recommend that the federal government work with the industries towards developing an
onshore protocol that would work nationwide. California could again drive that engine to the standard we want, but on something that, if it is practical, works better.

The other aspect that appeals to me, frankly, is working on numerous bonding authorities in California, that the ports do have the ability to pass bonds that would make this financially feasible and pass the costs of those bonds onto the shipping companies that use their facilities, rather than simply onto the general public of California, or otherwise.

Since what is going to be before us today is adopting this report and sending it as is to the legislature -- and as Mr. Reyes' question was answered before, since there won't be another report for 2 years, it strikes me that this onshore option and how one might move in that direction is something that we should include in a report to the Legislature.

And with that, unless other of my colleagues have any comments, I would like to ask the industry reps, starting with Mr. Berge to come forward, comment on the onshore proposal, first, and then your general comments on the report, please.

MR. BERGE: Good morning. Thank you, Commissioners. John Berge with the Pacific Merchant Shipping Association.
It's not often I agree with Andy Cohen. We've had our differences in the past, but we both agree that I think we need clarity here. And the clarity that we see is the fact that these systems cannot meet the standard. Using the available data to extrapolate that they might meet the standard is scientifically inappropriate, and we need to look at other options. And that's where I think we stand right now.

As far as shore-side treatment, I think that debate needs to happen. But as Mr. Cohen said, that's not going to happen until we have some clarity about exactly what is the capabilities of on-board treatment systems right now.

And I think it's clear, from what you've heard, we've provided abundant information over the last few years to the Commission, essentially to support the comments that Mr. Cohen -- Dr. Cohen could make much better than I could.

In terms of the debate for onshore treatment, there's a lot of issues to discuss. You know, we don't see it being quite as simple as Dr. Cohen does, but the fact of the matter is, no matter what we do, it's going to take some time to reach that conclusion, to see whether that's a feasible option or not.

Right now, in statute, we have an implementation
schedule, 2 milestones which have already passed. And new ships -- with the majority of all new ships being built right now, which starting in January 2012, which will be arriving in the State waters within the coming months, at least the coming year, are not going to be able to comply.

And the fact of the matter is this debate needs to be had at the Legislature. And the only way we can have this debate is if we're really clear about what's feasible, what isn't.

And right now, while not intentional, I think the report the way that it's been drafted over the last few iterations has actually clouded this issue.

So I don't know if that makes sense what I said, but, you know, again, we're willing to have that debate. It's an important debate to have, but we need to have it based on all the best science available.

ACTING CHAIRPERSON GORDON: Next witness, please.
MR. BERGE: If I could just continue on?
ACTING CHAIRPERSON GORDON: Sure, Mr. Berge. I'm sorry.
MR. BERGE: In regards to this report, I think the Legislature was very clear in their charge to the Commission. The report is to answer whether current technology can meet the standard.
I think based on what you've heard and the
material that we provided to you, the answer to that is no. And I think the Legislature needs to hear that concisely, so that they can have a valid debate about where are the options available and how we address this issue.

The only other item I'd like to address briefly is our disagreement with the report's interpretation of the Commission directive from May regarding an abeyance of enforcement.

The fact is vessels must install treatment systems to treat the entire discharge, all of the standards. And to essentially have an abeyance that's for some of the standards but not others, is essentially impractical and essentially leaves us, I would say, a little bit pregnant.

Adding to that the fact that Mr. Cohen said that perhaps a bacterial standard, the one they want to continue enforcing, is perhaps the most problematic of the whole suite of standards.

I think it's clear that we need to have a complete abeyance for the 2 years to allow this information to unfold and get a better idea of essentially what these systems can do.

I also want to point out that under federal law, adopted in May of this year, vessels will be unable to use
any treatment systems in U.S. waters that have not received Coast Guard approval. That's adopted federal law.

That approval process is underway right now. The Coast Guard employs even greater or more rigorous testing protocols than the protocols that are being referenced in the report, the IMO G8/G9 protocols. And already we're seeing systems that have passed -- or I should say been approved under the IMO testing regime are showing lower performance rates under this more rigorous testing.

So as this process unfolds, we're going to have a much better understanding of the true efficacy of treatment systems. And hopefully at the end of this, ships will actually have the best available onboard treatment technology installed.

So, in closing, I would just ask that the Commission shed light on this reality and issue a factual assessment, so we can have an honest debate in the Legislature about how to fix this.

ACTING CHAIRPERSON GORDON: Thank you, Mr. Berge.

Ms. Burkhart.

MS. BURKHART: Good afternoon. Thank you for allowing me the opportunity to speak. My name Sandra is Burkhart, and I'm with the Western States Petroleum Association, WSPA for short. WSPA is a nonprofit trade
associate representing 27 companies that explore for, produce, refine, transport, and market petroleum, petroleum products, natural gas, and other energy supplies in California and 5 other western states.

We do support the comments PMSA just made and we have submitted a comment letter ourselves, which you've received. In fact, our engineering staffs at our member companies had over 100 comments on the draft report, and they were virtually all related to the clear lack of scientific evidence that the California discharge standards can be met by any viable technology.

WSPA had mentioned we did submit the comment letter. There's 2 concerns in particular I wanted to highlight today.

The first one is that the conclusions in the draft legislative report are clearly inconsistent with the data analysis. Thus, our recommendation is to revise the report to provide a scientifically valid assessment of whether currently available technologies can meet the standards as was just suggested by many others.

Or alternatively, clearly acknowledge that we are not there yet, which was mentioned earlier, is that we're getting closer. We're almost there, but we're not there yet. And we need to be honest with the Legislature about where we are.
And secondly, our second concern is in regards to the inappropriate requirement of the implementation of the E. coli and intestinal enterococci bacteria. Neither of these species are considered invasive species, and therefore should not be regulated under State Lands under the Marine Invasive Species Program.

Additionally, if this scenario described in the draft report comes through, vessel operators could be required to install treatment systems and then later be required to replace those treatment systems in order to meet the full suite of species that we would be required to meet.

So in recommendation number 2, we would defer that these 2 standards for the 2 species be removed, and that it be a full 2-year abeyance as was directed originally by the staff.

And so I did want to go back to the onshore treatment and let you know that WSPA would be in support of having discussions and having, you know, debates about the potential for onshore treatment. However, with that being said, assuming that the lege report does not get approved today -- it should not be approved today. And with that being said, we would be more than happy to meet, have industry come in, have discussions, look at what we can do to have a viable option in that area.
So thank you for your time. I appreciate it.

ACTING CHAIRPERSON GORDON: Mr. Fossum, you look like you would like to respond.

EXECUTIVE OFFICER FOSSUM: I just want to make it clear that -- and I think we did that on the very first page of the report that says, "No systems demonstrated the ability to meet California's ballast water discharge standards in 100 percent of land-based third-party tests".

I don't think we can be much clearer that we aren't there yet. There's been progress made. The Commission has not adopted testing protocols yet, and that is an opportunity that will be coming up to you in a few months. Both the last speakers have asked for a 2-year abeyance on all standards.

Certainly, with staff looking at that as part of the protocols for studying compliance and measuring protocol -- adopting measuring protocols, that can be considered at that point in time.

As far as the staff's position at this time, we are not prepared to recommend that the Commission ask the Legislature to do that, until we've even had the ability to study it further. It's certainly the Legislature's protocol -- or prerogative. It's yours as well. But we believe that the progress is being made and that we've acknowledged in the report that they can't meet it at this
point. There is no 100 percent.

This morning -- you know, if somebody asked us did Babe Ruth have the ability to hit a home run? I think the answer would be yes. Did he have the potential to hit a home run? Yes. Did he hit a home run every time he was at the plate? No.

ACTING CHAIRPERSON GORDON: He's dead, isn't he?

(Laughter.)

EXECUTIVE OFFICER FOSSUM: He is, but the point is did he have the potential, did he have the ability? And if some of the tests show in some of the testing that they have the ability, we want to report that. And we're acknowledging that no system did 100 percent of the time in these land-board tests. We think it's a very factual report. We want the Legislature to have this kind of information. It certainly doesn't say we're home free here, and there's no problem, just slap one of these things on your vessel. It's not that simple.

And, you know, if there's hearings this year, we will be reporting to you on that. You can give us direction if you'd like, this coming year. But we think it's important to get this report over there as soon as possible. People can certainly debate about some of the conclusions reached, but staff stands by this report.

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Curtis,
if I may. I just would like to comment on the E. coli and enterococci standards that we are talking about moving forward with.

First of all, we have the authority to regulate them because they are set in standard in the statute. So by that nature we have the authority. Those standards are the same as the recreational water quality contact standards set by the EPA and the State Water Resources Control Board.

Commission would -- commission staff would like to continue with enforcing them for multiple reasons. One, the methods to analyze those 2 types of bacteria are well established. Any biological lab in the United States can do the analysis for those 2 type of bacteria, and they can analyze to the sensitivity the level of our standard.

For the land-based and ship-board testing, the analysis we did of those systems, 17 of 17, 100 percent of the systems out there met those standards in the ship-board tests, and 16 out of 18 met the standards 100 percent of the time for those 2 bacteria. So we're not talking about once in awhile. We're talking about 100 percent of the time. Those bacteria we can analyze the tests and we know that the systems out there can meet those standards.

Regarding the rest of the --
ACTING CHAIRPERSON GORDON: Can I stop you right there, because we do seem to have 2 separate issues before us today. One would be whether we're going to send the report forward, and 2, whether we are going to continue to enforce or begin -- continue or begin enforcing the bacterial standards.

EXECUTIVE OFFICER FOSSUM: With no way to measure it --

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Well, that matter should -- you know, we should bring it up when we bring the compliance protocols forward. I was just trying to clarify for the Commission's --

ACTING CHAIRPERSON GORDON: Okay. On the bacteria issue, Mr. Cohen and Mr. Holmes, could you come forward. I need to have a better understanding. I'm not a scientist, and I -- we seem to be -- from my perspective, we're getting very conflicting testimony as to whether the bacterial standards can be met today.

DR. COHEN: They can be met with technology that exists, which is the technology that we use to treat water. You know, these systems under the EPA surface water treatment rule are required to have reductions in viruses and in other organisms that are reductions that would allow you to meet the California standard. And they are far greater reductions than we see achieved by
ship-board treatment tests.

Once comment that was just made, I believe, was about how the E. coli and enterococci standards are met many, many times, and not just a few times, but often. They are met in these tests. And, in fact, the other standard, the Vibrio cholerae test, is met all the time. The Vibrio cholerae is met in every single test, because there are no Vibrio cholerae going into the system. The protocols are so poor, that in every single one of the tests, the intake water has none of this bacteria in it, the untreated controls have no other bacteria in it, and the treated water has no bacteria in it. It tells you nothing at all about what the treatment system does, yet the treatment system passes because nothing is coming out of the treatment pipe.

The same thing, not quite as extreme, but essentially the same thing is true for the E. coli and enterococci tests, in most of these tests the water going into the system also passes the standard.

And so the fact that it passes the standard when it comes out of the treatment system, and out of the parallel pipe where it's not treated at all and just comes out the pipe, tells you that it's really not telling you anything about the capabilities of the treatment system.

So, again, I don't think those indicator
microbial standards are the most important. It's really the 4 categories of zooplankton, phytoplankton, bacteria and viruses that really matter the most, I think. But the tests are as we've got a paper in publication showing the tests are essentially meaningless, that in almost all of the tests that have been conducted under the IMO rules.

ACTING CHAIRPERSON GORDON: So let me ask another question and maybe I need an industry rep to answer this one.

So we continue to enforce the bacterial and viral standards over the next 2 years, what is the impact? I'm missing that.

DR. COHEN: Well, there isn't a ship-board treatment system that will meet them. So I guess that means you would have to find every single vessel that comes in and discharges ballast water, if you were really to enforce it. Now, the maximum penalty under the law is only $27,500. So whether that's -- you know, that's sort of a small slap on the wrist kind of level for vessels that have -- who's daily operating costs are more than that and that spend far more than that typically coming into port on the various services that they have to pay for.

So whether, you know, a ship coming into port half a dozen times in the year, even if you hit them with
that fine, whether it would be enough to induce them to do something that would be effective, there is no treatment system available that they could put on their ships. But, you know, under current law your fining capacity is really extraordinarily limited. It was an issue we raised in 2006, but your staff didn't want to see the fining capacity go up any -- their maximum fine ability go any higher. So you're kind of stuck on your enforcement capability.

ACTING CHAIRPERSON GORDON: Staff, is that your interpretation, that we have no on-board systems that meet and we'd be required to fine every ship that comes into California for violating the standard?

EXECUTIVE OFFICER FOSSUM: California is not in the position of telling people to put a treatment system on their vessel. That is their option. The standards that the Legislature adopted were standards of discharge only. As Nicole said early, there's 5 -- 4 or 5 different ways they can deal with this, ship-board treatment systems is one of those.

If California tried to direct ships from all over the world what to put on their vessels, we'd be in violation of federal and probably international law. So we're leaving it up to them to find the best way for them to deal with it, whether it's on-board treatment systems,
or land-based treatment systems. You know, that -- we're just -- this is just a report to the Legislature on the status of those things. We're not in a position to tell them to put a treatment system on their vessels.

ACTING CHAIRPERSON GORDON: But here's what I'm trying to understand, if the testimony that I've just -- if I understand the testimony I just heard, that there's no system they could put on board that would meet this standard, and there -- let me finish -- and they're going to come into California ports with the option of treating it however they choose, aren't we pretty much just -- why don't we just send them the bill for the $27,000 for every ship that comes in, because they can't meet the standard we've established.

EXECUTIVE OFFICER FOSSUM: I think they're assuming that these things will be on those ships. Without being able to measure those, because we have no testing protocol, we don't know that any of them will be bringing that material on board the ships.

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: This is why -- if I may just interject. This is why we planned to have the 2-year abeyance on enforcement. And for those 2 bacteria species, enterococci and E. coli, there are standard methods to detect them. The influent waters -- we don't care about what's coming into the tank. We have
a discharge standard.

   All of the results -- available results show that they are not exceeding that discharge standard. The Coast Guard uses the exact same methods of analysis. The EPA's Environmental Technology Verification Program uses the exact same methods of analysis.

   No one takes a bunch of E. coli, since they could cause disease, and throws them into a tank to load it up and then sees how the system does. You just use what are in available waters. That's all that we can do.

   The discharge meets the standard, and therefore these vessels should be fined and should be in compliance when they operate in California waters.

   ACTING CHAIRPERSON GORDON: Mr. Cohen and Mr. Berge, could you come forward. I need to hear your interpretation of what's going on here, too, because I'm -- for me, it's getting murkier and murkier.

   MR. BERGE: Thank you, Mr. Chairman. I can't speak to the scientific validity of either what Ms. Dobroski or Dr. Cohen is saying. But from a practical purpose, in order to enforce one aspect of that standard, essentially you're saying you're going to have to choose a treatment system to meet that particular aspect of the standard, knowing full well that that treatment system probably won't meet the other 2 aspects of the standard,
the greater than 50 and the 10 to 50.

And when you throw on that the fact that the Coast Guard is saying you can't operate in the United States without an approved system, and we don't know what those approved systems are right now, we are in a complete dilemma here. If we were to choose a system to somehow meet the bacterial standard, knowing full well it won't meet the other standards, finding out that the Coast Guard won't approve it, only to have it torn out 2 years later, I think is unacceptable to us.

I would point out one kind of ironic thing too, I looked at the list of treatment systems that staff had identified as being the most promising of the suite of 50-some systems out there. And the system that actually had the very best test results for treating the bacterial standard or the other smaller standards that was mentioned, also happened to have the worst test results for treating the greater than 50 and 10 to 50. That would be the Moll System, which had no failures on shore-based treatment system -- or shore-based testing for bacteria, but showed about a 90 percent failure for greater than 50 microns and a 63 percent failure for 10 to 50.

So we're kind of in a dilemma here that in order to follow that particular venue, we would essentially have to just be pursuing other aspects of the treatment that we
have no idea whether it will even be legal to operate with in 2 years.

So again, I can't speak from a scientific perspective. From a practical perspective, we don't see how we can operate in this type of environment.

ACTING CHAIRPERSON GORDON: Let me ask you another question that was just raised. Okay. So we're going to have to deal with this issue of whether we have full abeyance or abeyance absent -- we're going to have to deal with the issue of whether we're going to have full abeyance for 2 years or whether we're going to have abeyance minus these 2 -- with the exception of these 2 bacterial identified substances.

Other than that specifically in the report, Mr. Fossum points out that the opening line, as I read it, is -- let me get back there -- "No systems demonstrated the ability to meet California's ballast water discharge standards in 100 percent of land-based third-party tests". That strikes me as a fairly straightforward statement of acknowledgement that the systems don't work right now. Tell me what is it in that opening statement that you object to?

MR. BERGE: Well, first of all, as the Science Advisory Board, Dr. Cohen, EPA specifically has referred to, is the fact that all these assessments are based on
testing protocol that is not sufficiently rigorous to
demonstrate efficacy with the California standard, a
standard more stringent than the D2 standard.

So even though that particular statement does --
you could argue does address that question, there are a
myriad other statements in the report that suggest that
the systems are meeting it based on ship-board treatment,
or ship-board testing, various types of percentages. It
really does infer that these systems are very close to
meeting the standard.

And depending on how you look at it, they might
meet the standard. The fact is I don't think that's a
scientifically appropriate analysis, as Dr. Cohen said, to
use even that data to generate that kind of a conclusion.

All you can use that data for is to demonstrate
failure, but it's not rigorous enough to demonstrate
actual meeting the standard.

ACTING CHAIRPERSON GORDON: Mr. Newsom.

COMMISSIONER NEWSOM: Thank you, Mr. Chair.

Have you highlighted this? Curtis, have you guys
had a conversation about the specific language in this
report? I'm just trying to sort of cut to the chase here.
I hear this is just a report. We're not the Legislature.
We're not going to start. We don't want to get into the
details here of nuances of actually legislating this damn
thing. That's a -- I've got to run for another office, and we're in the wrong place.

I get the concern about the report, and I get Curtis's point, hell, we're saying this is hardly perfect. But you make a very fair point. Have you specifically laid out though details of what language you want to see struck out of this -- the core of the report? Have you guys had conversations?

We've been talking about this for a long time. I think this is the third hearing we've had on this. So you must have been able to sit down or someone sat down and worked through this. If you haven't, I would love to know why, what we've been doing all those months, because it's a little frustrating just sitting here having these granular conversations that frankly need to be had subsequent to this report being submitted, whatever the hell it looks like, at the Legislature.

And I'm sorry to be a little more obtuse here than I normally am. I'm just expressing a little concern by this circular arguments and -- you know, that may lead to really nothing here, but more delay.

MR. BERGE: Is that a question to me?

COMMISSIONER NEWSOM: Yes, and to Curtis.

MR. BERGE: Shall I go first?

COMMISSIONER NEWSOM: Please.
MR. BERGE: We've had numerous discussions over the last few years with staff. We've also submitted numerous comments along this line. To be honest with you, I think the Science Advisory Board is pretty much the definitive -- their Science Advisory Board Report was kind of --

COMMISSIONER NEWSOM: Specific to language that's currently drafted in the report?

MR. BERGE: Yeah. They specifically address that. The EPA, in their vessel general permit fact sheet, specifically looked at the California report, and made comment that it's inappropriate to use the data they're using to determine efficacy with their standards. So we put that information forward, and I've had those discussions with staff. To be perfectly honest, with you Mr. Lieutenant Governor --

COMMISSIONER NEWSOM: I hope everything you said was perfectly honest up to this point.

(Laughter.)

MR. BERGE: Yeah. No, to be perfectly honest, up till now it has essentially been a couple of industry people making these statements, even though we're referring to, I think, independent documentation. And essentially, I would suggest that the State Lands staff has disagreed with that interpretation.
I think this is the first time we've heard the
environmental community expressing our same concerns about
the validity of this report. The academic community doing
a similar type of presentation.

We actually did also present a letter from one of
the leading scientists who was also on the Science
Advisory Board, Dr. Mario Tamburri, it was kind of a
question and answer type thing, or frequently asked
question document that basically said these same things.
But, to date, we've never really been able to get any
traction with that.

COMMISSIONER NEWSOM: All right. So may I ask
Curtis, is that an accurate reflection?

EXECUTIVE OFFICER FOSSUM: Well, let me just say
that the report is, as was just read by the Chairman, that
we admit that there are no systems. If you go on, even to
the next page, "In general, the quantity and quality of
ballast water treatment systems have improved since the
2010 report, but important areas of uncertainty persist in
the field". The next sentence says, "Staff's ability to
make robust conclusions is limited by availability -- or
available data sensitive enough to be applicable to
California's standards for this size class", talking about
10 to 50 class.

And then we go on to talk about, unless we have
an ability for California, for the Commission and staff, to test this data, the rest of the world isn't testing for it. We admit that. They are looking at standards for IMO, a much lower, in some instances, standard. They aren't testing to it. And so unless we're given direction by the Commission on how to test that, we're not going to know. It's ignorance here is what we're dealing with.

We haven't got enough data. What we have is, based upon the data that's been made available, it shows progress in all of those categories. What it doesn't show is 100 percent.

And so I think the report is honest on its face. It's showing progress, but we aren't there. And we caveat all those things to be able to say we need more information. We can't make robust conclusions on these things.

COMMISSIONER NEWSOM: I guess what -- and sorry to belabor, Mr. Chair. It seems to me -- I mean, it may sound naive that we're a heck of a lot closer than everyone thinks we are here, unless there's a different agenda that's not being expressed, which is let's just kill the report.

If the desire is to have a report, as we must, and then submit something that's a little more objective, is what I'm hearing from industry, then it sounds like
there's some language you're concerned about. And I'd love to know specifically, not generically, not a Q&A, not abstractly, what that language is and have a substantive dialogue about whether or not that takes away from the spirit of what staff believes is appropriate to move this agenda forward, as we were directed to move forward, as long as 2006. And that's what I'm trying to sort of workout.

Because if we delay this and then we come back and then there's still that angst and frustration, then we've wasted everyone's time. You guys -- I mean, have you had a granular conversation? Have you had direct conversations about that specific language.

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Mr. Newsom, I would like to point out that Dr. Cohen, Mr. Berge, they are on the Science -- the Technical Advisory Group that met to review a draft of this report as required by statute. So they did -- were involved in the development of this report. They had seen a draft before anyone else from the public has seen it.

The report was brought to the August meeting and it was pushed back because of another item, so the report has been out in the public realm for several months now. We have not received --

COMMISSIONER NEWSOM: Did you have specific --
you don't have any specific comments to the report as to the language?

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: And I would like to comment that the EPA SAB report that everyone keeps referring to was published in 2011, so it does not directly address this report, because this report we are looking at right now was not started until, you know, more recently.

COMMISSIONER NEWSOM: All right.

ACTING CHAIRPERSON GORDON: Well, let me go to what you just said there, because there is something. So if Ms. -- could you come please come back on up. If some of the members of this Science Advisory Panel -- I mean, what I heard from Dr. Cohen was that he doesn't think that the existing report accurately represents the existing science.

How many members are on Science -- the Technical Advisory Panel?

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Twenty odd -- 20 to 25.

ACTING CHAIRPERSON GORDON: So was he -- is he in a minority opinion on that panel? Are there -- is this a, you know, 18 to 2, 15 to 5? I mean, he seemed to have some fairly strong feelings, as did Mr. Holmes. Are you also on the Panel, Mr. Holmes?
MR. HOLMES: I want to clarify, because the panel's named has changed. I'm not a scientist.

ACTING CHAIRPERSON GORDON: Okay. All right.

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: I'm sorry, there's 2 panels. There's a Science Advisory Board that is at the EPA level and we have no control over that at all.

ACTING CHAIRPERSON GORDON: Okay.

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: There is a Technical Advisory Panel. Mr. Holmes is a member of that, Dr. Cohen and Mr. Berge are members of that, that are brought together to review this report. So that Panel is not just scientists. There are scientists. There are industry representatives. There are regulators and there are other environmental organizations.

ACTING CHAIRPERSON GORDON: So is there a split decision on that Panel as to the accuracy of this report? We've also got Mr. Tamburri -- Dr. Tamburri, who I believe is part of the Technical Advisory Panel?

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: No.

He's part of the Science Advisory Panel.

ACTING CHAIRPERSON GORDON: No, he's also jus the Science -- okay, the Science -- who also disagrees with the findings in the report. So on the Science Advisory Panel, which is the pure science. Let's leave out the
politics, leave out the economic concerns, the pure science. Are the scientists divided evenly? Is it 99 to 1? Is Dr. Cohen an outlier in the scientific community?

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Those scientists have not reviewed this report. The scientists were put together by the EPA in 2010 to create a report looking at available treatment technologies for the purposes of the EPA drafting a vessel general permit and to put standards into that permit.

So they were referring to a report that was put together by the scientists. When it comes to our report, our report is not reviewed by that Science Advisory Board, because that's an EPA group. That's outside of our area, and was also several years ago now, 2 years ago.

So, yes, some of the same people are involved with these panels and these boards, but one is an EPA federal action and one is a panel for California.

ACTING CHAIRPERSON GORDON: Okay. All right. Thank you for clarifying that. I appreciate it.

Mr. Reyes.

ACTING COMMISSIONER REYES: So I just -- you know, I like clarity when I'm listening to a presentation. They were involved in the review of the report, Nicole, is that correct?

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: As Panel
members, yes.

ACTING COMMISSIONER REYES: As Panel members. And was their input considered or -- I mean, did they get a chance to add to the report or where the review was take a look, thank you for playing?

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: I think they were, but I must admit I was on maternity leave at the time.

ACTING COMMISSIONER REYES: Mr. Berge, were your comments take into consideration, ignored, or how involved were you in the final draft or were you shown what it was and thank you for playing?

MR. BERGE: This last report, we provided comments, other people had provided comments. We participated in some conference calls, expressed these same concerns, other people expressed the same concerns as we did, including some of the scientific members of the Panel. But from what I can see, the fundamental aspect of the fact that the report is using insufficiently rigorous data, which was scaled for the IMO D2 standard to make the assumptions of what the efficacy is meeting the California standard has not been addressed at all in the report.

They essentially assume that we can use that standard and extrapolate it to determine the efficacy with the California standard. And I think that's absolutely
incorrect, and not consistent with science.

ACTING COMMISSIONER REYES: So, Mr. Chair, I'm sort of struggling. I think this is what the Lieutenant Governor is also struggling with, that if we were to give them more time, it's going be more time to do what, if it hasn't happened already?

COMMISSIONER NEWSOM: Right.

ACTING COMMISSIONER REYES: On the other hand, if there is pearls of wisdom that folks are adding to it that are being ignored, you know, I'd like to certainly give folks the opportunity to try to incorporate those pearls of wisdom, but I'm not quite sure where we are.

On the one hand, I'm reluctant to go with the report that is not viewed as accurate, because it is our agency that's putting it out there. On the other hand, I'm trying to figure out what would be the benefit of going out and spending more time with the opposition and supporters to try to come up with a report that better reflects if we, in fact, have that difference of philosophical views of this. I'm struggling with that. I'm not sure what the answer is.

COMMISSIONER NEWSOM: Yeah.

ACTING CHAIRPERSON GORDON: I'm in the same place.

EXECUTIVE OFFICER FOSSUM: Well, admittedly, I'm
not a scientist either. I guess none of the 3 of you are in that category either, so it is a difficult thing.

One thing the Commission could do is send the report to the Legislature with a cover letter acknowledging that, and say the staff of the Commission has developed its report, stands by it. We don't feel that we're in a position to judge it one way or the other, and that we encourage those people who disagree with the report to submit to the Legislature their comments.

So that you're basically neutral. You're providing -- you're allowing them to have the staff's comments on this, whether you want to bless it or not. And I think the more important thing is that the Commission has a role to play in adopting regulations. Issuing reports is kind of a -- you know, there's going to be people debating it. You have a quasi-legislative role when you adopt regulations. They're you're making your judgment calls.

And if you adopt regulations that say we believe that this is how you should measure these things and whether they should be enforced at some point in time, and which ones should be enforced, that's really conversation for another day, I believe. And whether you want to report to the legislature separately on some of these items like we think -- or you can direct staff to report
to the Legislature on the ability of land-based treatment systems to be developed and what the costs are and all those things.

It is difficult for all of us to try and understand all the details that go into this science. People on both sides of this have been working for dozens of years looking at these things. Can they come to different conclusions based on the facts?

Absolutely.

But we believe that this reflects the best ability we have, as a staff, to measure these things. We don't -- we aren't out there with laboratories going through this. The staff isn't doing it. It has to extrapolate from other people's studies to try and reach conclusions.

As I read to you a few minutes ago, we don't believe we can reach those robust conclusions based upon that. We're admitting that. It's in the report. And so to try and characterize it being an absolutist report that, you know, people can put these systems and meet California standards, it's not in the report. It doesn't say that anywhere.

ACTING COMMISSIONER REYES: I appreciate the suggestion, Mr. Fossum, but I think, you know, the Legislature tasked the State Lands Commission that --
staff of the State Lands Commission to do that, and I view the 3 members up here as the State Lands Commission. And we either stand by the work of the staff and vote for it or we don't. And so, for me, to separate myself is just not a comfortable -- I appreciate that, but that's where I am.

EXECUTIVE OFFICER FOSSUM: May I add that we did get a comment letter last night from PMSA, and we received one I think in the last few days from WSPA. It should be in your package. There's also 3 additional comment letters from San Francisco Bay Water Board, the Oregon Department of Environmental Quality and the California Water Resources Control Board all -- the last 3 supporting the staff's report to the Legislature while the other 2 do oppose it.

COMMISSIONER NEWSOM: Yeah. In the ideal world -- I mean, this is not the Supreme Court, so I'm almost thinking there needs to be a dissent opinion here.

(Laughter.)

COMMISSIONER NEWSOM: But I'm not sure we're dissenting necessarily -- or we may be the dissent to your report in terms of clarity, which I do think -- I mean, I guess here's the point. I hesitate to say this, because nothing more frustrating than, you know, tyranny without end.
But if there is a way to just -- I mean, you've acknowledged, which I think is important, and you've in the preamble of the report itself have put that in writing, your understanding that there are those that may not necessarily agree, and -- or you've stated that you agree that there's not clarity on some of these points I guess is a better way of saying it.

But I think there could be some additional comments in the report that would begin to address some of the concerns we've heard expressed, because I think they're legitimate. I'm hearing a lot of things that, I -- you know, I'm shaking my head, but, as you note, the science is above at lot of our, you know, pay grade.

I'm just wondering if there's a way to add some additional language that goes beyond just the 2 citations that you've noted that could be put in this report in a way that would more -- would reflect the conversation we've been having today rather than a cover letter itself.

EXECUTIVE OFFICER FOSSUM: May I suggest that the Commission, if it wishes to submit this report, to be sure and include an appendix with the written statements made by those people who submitted those --

COMMISSIONER NEWSOM: I guess my concern is it seems additive. It loses -- I mean, I think I'd like to see things woven into the report to more reflect the
concerns that I'm hearing and the concerns that I'm
feeling.

EXECUTIVE OFFICER FOSSUM: And frankly, that's
what we attempted to do after the last hearing on this.
We went back and looked at the criticisms that were made.
And we did edit the report, to some degree, based upon
those criticisms, and tried to make it much clearer from
that standpoint. And that's why some of the statements
that you've heard us say are much clearer. They're up
front. They're not being hidden, not that they were
intended to before, but to the extent that they -- anybody
felt there was any kind of misleading statements in there,
we tried to make that very clear.

COMMISSIONER NEWSOM: I just think we need to go
a little further is, I guess, what I'm expressing. That's
my current judgment based on someone saying something
spectacularly insightful that may change my point of view.

ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Mr.
Newsom, just one additional comment. The transcripts from
the -- or notes from the Technical Advisory Panel meeting
where people did -- we did bring these individuals
together to discuss this report, it is included as an
appendix at the end. So the record of that discussion is
available.

COMMISSIONER NEWSOM: Yeah. Again, I just want
to -- I'd prefer to see something woven in here that deals
with some of this.

   ACTING CHAIRPERSON GORDON: Let me -- Mr. Fossum,
unless -- I'm going to glance to both sides as we do this,
your recommendation that we send the -- that we adopt the
report with essentially qualifying letters or disclaimers,
I'm not hearing 2 votes for here.

   So I think we are really left with the fact that
we are going to have to amend the report. Though I
actually tend to believe 100 percent with what the
Lieutenant Governor has just said which I think sending
you folks backs -- and I'm being -- having been way to
involved from -- in this for -- I mean, it seems like one
of the very first meetings I had when the Controller
appointed me to this job 18 months ago were on this
subject. And it's not striking me that we're really
making any progress. I think we have people of very good
will and very smart people working on this and we seem to
have gotten to loggerheads.

   And I'm going to suggest a way forward, and I
really somewhat hesitate to do this, because I think it's
pretty clear we're not going to put this report out today
in this existing form.

   I've spent 5 years negotiating the Delta
Stewardship Accord and have some skills in coming up with
language that is acceptable to various parties. And what
I think I'm going to offer, if it would be acceptable to
my 2 colleagues, would be for myself, through the Office
of the Controller, to call a meeting. I would like to
have Dr. Cohen there, Mr. Holmes there, your staff there,
industry representatives there. I would like each of
you -- other than the staff who've put forward their best
effort, I would like each of you to go through that report
as suggested by the Lieutenant Governor, and I want -- I
literally want an annotated copy of the existing report
coming into that meeting. I'll decide when I get back to
my office today, assuming that this is okay with my 2
colleagues, when we're going to hold that. They are both
welcome, if they would like, to be there, obviously.

EXECUTIVE OFFICER FOSSUM: Not if it isn't a
noticed meeting, Mr. Chairman.

(Laughter.)

ACTING CHAIRPERSON GORDON: Oh, never mind.

(Laughter.)

ACTING CHAIRPERSON GORDON: Never mind that
comment. But I would like each of you to go through that
report. You know, we have these -- I think Nicole has
done a phenomenal job of shepherding this through. And
rather than somewhat obtuse comments of we don't really
like the report. It's not accurate. I mean, there are
clearly statements in here, as Mr. Fossum has accurately pointed out, that simply say, we acknowledge that the science isn't there yet.

But beyond that, there are then cloudying(sic), if that is a word -- other statements that make that less than clear. And having spent 20 years in the Legislature and knowing how they are going to look at this report, the fact that it doesn't call out the possibility of moving forward on an onshore to at least compare it and see if it whether that is doable in itself is a problem for me.

What I would like to do is come forward. We will have a meeting in 2 or 3 weeks where everybody comes forward, so that you can be helped rather than them saying, gee, we don't really like the report, and an granular, to use the Lieutenant Governor's, analysis of the report. And we will sit down and we will hammer out a report that hopefully we can get agreement on.

I would like to put that forward to my 2 colleagues if that is an acceptable path forward for them.

COMMISSIONER NEWSOM: Well, certainly I think that's a fabulous recommendation.

(Laughter.)

EXECUTIVE OFFICER FOSSUM: You're just glad it isn't you.

ACTING CHAIRPERSON GORDON: Okay. And at the
next meeting, we will either have a report -- and I might be here, because I will have --

(Put hand in shape of gun to his forehead.)

(Laughter.)

ACTING CHAIRPERSON GORDON: Anyway. So I think we're going to put this over right now. I will get in touch with all the parties, and hopefully we will have a negotiated report that everybody can agree on that we can send forward.

I don't know. Mr. Cohen, are you acceptable to that, can we make you available? And Mr. Holmes, you seem to be very, very knowledgeable on this subject and I would like your input.

DR. COHEN: Yes. I want to clarify that since I've first read this report in April -- in August, I mean, in its earlier version, I've been in contact with Chris Scianni, who was the acting director, and others at the Lands Commission, have repeatedly offered to come up and meet with them to discuss these issues.

ACTING CHAIRPERSON GORDON: All right. Well, great. Now you're there.

DR. COHEN: They've not taken that up. But what I want to say, the problem with the report is not so much the individual statements that he's read, which are taken as a sentence are factual, it's what's missing from the
report, what we know --

      ACTING CHAIRPERSON GORDON: Okay. Well, that's -- that's what I would like you to submit, and I will set out a schedule of when I want things submitted, and we will then sit down -- Ms. Lucchesi, lucky you, you're going to be part of this.

      CHIEF COUNSEL LUCCHESI: Yes.

      ACTING CHAIRPERSON GORDON: And hopefully we will be able to come back and put this thing to rest in 2 months.

      Yes, ma'am.

      DR. McDowell: I'm just wondering if we could also ask possibly a few other scientists to participate in the process.

      ACTING CHAIRPERSON GORDON: What I will do is put out an email to the people that I've just mentioned, and they will have an opportunity to vet other people. And to the extent that there aren't any objections as to that person is carrying cholera and we can't let them in the room, I think we will have -- we'll have a robust discussion and hopefully we'll be able to move it forward, Okay?

      DR. McDowell: Thank you.

      ACTING CHAIRPERSON GORDON: All right. Thank all -- and I want to thank all of you. I do recognize
that for the time that -- the little time that we have all put in on this, you guys have spent, you know, exponentially more hours. And hopefully we are going to make some progress.

Let's move on now to Item number -- are we up to number 100 I believe, which is the --

EXECUTIVE OFFICER FOSSUM: Mr. Chair, can we take a break for --

ACTING CHAIRPERSON GORDON: No.

(Laughter.)

ACTING CHAIRPERSON GORDON: Yeah, let's all take a break. Let's see, it's a quarter to -- let's come back at 5 to 1:00.

(Off record: 12:47 PM)

(Thereupon a recess was taken.)

(On record: 1:02 PM)

ACTING CHAIRPERSON GORDON: Everybody, please take their seats.

All right. Call the California State Lands Commission back to order. That's not fair, Mr. Fossum.

And we're going to move on to Item 100, which is to consider a lease application for a floating restaurant on San Francisco Bay in the wonderful City of Burlingame.

May we have the staff presentation, please.

Ms. Kato.
PUBLIC LAND MANAGER KATO:  I'm short.

Good afternoon, Mr. Chairman and Commissioners.

My name is Grace Kato, I'm a member of the Commission's Land Management Division staff.

(Thereupon an overhead presentation was Presented as follows.)

PUBLIC LAND MANAGER KATO:  Before the Commission today is the application for a general lease commercial use of filled and unfilled sovereign land located at 410 Airport Boulevard in the City of Burlingame.

The Commission has already heard at its August meeting the History of the site. So in the interests of moving this along, I will not include any of the historical information on the site here, but I'm available to answer any questions specifically to this site, if necessary.

--o0o--

PUBLIC LAND MANAGER KATO:  At the August meeting, the Commission directed staff to continue to work with the applicant and to resolve the outstanding issues that we had presented at the meeting.

--o0o--

PUBLIC LAND MANAGER KATO:  Staff has been working with the applicant to alleviate the concerns raised regarding the operations proposed -- the floating
restaurant operations proposed at the site.

--o0o--

PUBLIC LAND MANAGER KATO: Although the applicant has responded to several of these issues, and the information that has been provided to staff does not sufficiently address our concerns regarding the proposed restaurant operation.

--o0o--

PUBLIC LAND MANAGER KATO: Additionally, staff has been made aware that ownership of the vessel is no longer held by Mr. Bothwell, but by Maxim Commercial Capital, LLC.

--o0o--

PUBLIC LAND MANAGER KATO: I'm going to skip the next 2 slides here.

The understanding of staff is that Mr. Bothwell has sold the vessel to Maxim under a lease-back scenario. Maxim has told staff that they have conducted a thorough title search on the vessel, and it is their position that there are no other valid title claims against this vessel. Maxim has indicated that they will grant the applicant the use of the vessel for the floating restaurant operation. Details regarding the business arrangement between Maxim and the applicant were requested by staff, but have not been provided yet at this time.
PUBLIC LAND MANAGER KATO: So staff still believes that there are significant issues surrounding the applicant's request for the State to enter into a lease. Those concerns are an extensive 40-year history of difficulty establishing a viable restaurant operation at this location; inadequate documentation by the applicant demonstrating the financial viability of the proposed business venture and how their restaurant will be different and more viable than previous operations; ownership of the vessel; and the pending and yet unresolved trespass action authorized by the Commission at this location.

PUBLIC LAND MANAGER KATO: Based on these factors, staff does not believe it would be prudent or in the best interests of the State for the Commission to approve this lease. Consequently, staff is recommending denial of the application and direction from Commission to pursue the existing trespass action.

PUBLIC LAND MANAGER KATO: However, should this Commission staff decide to issue a lease, staff does believe that certain special lease provisions are necessary to protect the State's interest and assure
adequate remedies are available to the State should the
lease operation fail and the proposed leaseholder cannot
be compelled to perform, including removal of the vessel
without any cost to the State. Some of these lease
provisions are listed here.

--o0o--

PUBLIC LAND MANAGER KATO: At the time of the
staff report, the applicant could not agree to a number of
these special lease provisions. Consequently, the staff's
recommendation is that the Commission deny this lease
application, because it is not in the State's best
interests

I'm available for any questions.

COMMISSIONER NEWSOM: I read through the report,
so I don't have any questions for you yet, but obviously
I'd love to hear from the representation of the applicant
and the applicant himself.

MR. HIGBIE: Good afternoon, gentlemen. My name
is Richard Higbie. I'm a member of the LLC that's the
operator of -- going to be the operator of the vessel.

I don't think there are any issues that concern
the staff that can't be adjusted. We are able to obtain a
report from the tow boat -- a reputable tow boat company,
that if the lease is terminated, at any time, they will be
available to tow it from the site in exchange for their
rights to be paid for that.

ACTING CHAIRPERSON GORDON: Sir, can I stop you right there. You said a report from the tug boat company. We asked for a contract. Do we have a contract with the tug boat company?

MR. HIGBIE: We don't have it completed at this time. We'd like the application to be conditioned on the acceptable provision -- providing a contract. The one we negotiated with wanted a few assurances that I don't think that the staff would have agreed with, so I'm going to have to negotiate a little more to get the contract done, so there will be no question that the boat will be removed.

And any of the other conditions the staff has imposed appear to be a reasonable way to protest the interests of the State and we have no objection. And it would be my suggestion that this be approved subject to the staff accepting our contract.

And that should cover it. I did indicate that because of all of the problems and the delays that we would have liked the 20-year lease that was offered initially. And I spoke to Ms. Kato, and she said that she believed the staff would be acceptable to adding to the lease, two 5-year options, which would give the investors and the owner an opportunity to recover their investment.
And she said -- she then indicated there'd be no objection to that. And she just wanted to ensure that if things weren't running as smoothly as Mr. Bothwell proposes, that the State would have a -- you know, another chance to reconsider things.

And we don't want the State to have any concerns or any worries. Mr. Bothwell bought that boat in 1955 and has been close to it ever since. And he ran it very successfully for 10 or 11 years. And subsequent owners haven't had his skills or ability, and -- but the most important thing is the area where it's now moored has become very vital, and another restaurant is going to be -- make that area even more exciting.

ACTING CHAIRPERSON GORDON: Sir, let me stop you right there. From my perspective, for the interests of the State right here, and I'm going to be fairly green eye shade accountant type.

Whether Mr. Bothwell can run the restaurant or not is not a major concern for my. My concern is what happens if he fails? The restaurant business has a remarkable failure rate, so the 2 things that we were primarily interested in here were the lease guarantee and the ability to have this boat removed if the restaurant fails for any reason.

So I'm hearing your testimony, you know, we had
indicated that one of the very first items on there is that Maxim, as a co-lessee, they are a deep pocket that the State could recover losses from. You're indicating that the only remaining issue for you is the towboat contract. Is that to say that Maxim has agreed to sign on as a co-lessee?

MR. HIGBIE: They will sign on -- I've got a commitment, they will sign on the co-lessee, but they would like their obligation under the lease limited to just removing the boat. They have subleased it to the LLC, so they don't have anything to do with the operation, but they are the -- they do have title to the boat, and it's important that they're the ones that sign on to the two agreement that -- and it would be very helpful if I could have an understanding that when -- at any time Maxim removes the boat, they no longer have any liability under the lease, because this really isn't their problem, but it is a problem that -- since it's their boat.

And with those concessions, or those understandings, we have no objection to providing a tow agreement that is acceptable to the staff and that it be also signed by Maxim.

ACTING CHAIRPERSON GORDON: All right. So let me summarize. So we -- if we were to grant a conditional lease today with codicils that Maxim would sign on as a
co-lessee with responsibility for removal of the boat, and a two company would sign on with legal responsibility to remove the boat upon cancellation of the lease for any reason. You would be able to deliver that to staff in what time frame?

MR. HIGBIE: That's correct. I think it would take us at least 10 days to get those documents all approved and drafted.

ACTING CHAIRPERSON GORDON: Ms. Kato, can you come forward, please?

MR. HIGBIE: I beg your pardon?

ACTING CHAIRPERSON GORDON: I'm talking to Grace. If you could let her have the microphone.

PUBLIC LAND MANAGER KATO: So just a few points of clarification. When I spoke with Mr. Higbie earlier this afternoon, he had asked whether or not staff would be amenable to the two 5-year options. I advised him that that would be a situation that the Commissioners would need to take into consideration, that staff recommendation is for a 10-year lease term.

He had requested a 20-year lease term or a 25-year lease term that number varies. However, that it would be the Commission's ability to make that determination whether or not 2 additional 5-year terms would be acceptable.
As far as the operations or the relationship between Maxim and the Frank M. Coxe, LLC, it has been -- our understanding, Staff spoke with Doug Houllahan of Maxim yesterday, and they specifically stated they would not be a co-lessee on this lease. So we had been working with them about the possibility of doing a guarantee type agreement. We have not been able to finalize that out yet.

ACTING CHAIRPERSON GORDON: Okay. Let's put -- but if we -- so we're getting conflicting opinions on what Maxim said. If we were to grant the lease with the condition of Maxim signing on, would that, in your opinion, plus the tow contract, cover the State's interests here?

LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR: I'm Colin Connor. I'm the Assistant Chief. I spoke to Doug Houllahan of Maxim yesterday, and actually have had 2 conversations with him, and I was following up -- my conversation yesterday was a follow up to an email that he had sent us, basically saying that he did not want anything to do with a lease, being a co-lessee. That's not their line of business. He would do a guarantee that the vessel would be removed if there was a -- if Mr. Higbie and Mr. Bothwell defaulted on their lease.
So we've been working along that line. The concern that staff has is under the sale and lease-back, it's for a limited term, and it could very well be that the sale and lease-back would be less, if Mr. Bothwell and Mr. Higbie satisfied the terms of their arrangement with Maxim, which we don't know what it is, that they could -- that guarantee would be null and void at that point in time, in the sense that now Maxim, they've been paid off as part of their arrangement. They are now out of the picture. Transfers title back -- is transferred back to Mr. Higbie and Mr. Bothwell, title of the vessel that is. So that guarantee could be for a shorter duration than the lease itself.

ACTING CHAIRPERSON GORDON: Let me play lawyer for a second, because this seems solvable. If we were to draft the lease that said Maxim -- that the initial lease would require Maxim to be the guarantor to remove the boat.

Upon Maxim transferring title within 30 days, Mr. Higbie -- Coxe, LLC must have a subsequent guarantor or the boat would be, at that point in time, required to be towed by the tugboat company on the second codicil. Would that cover the State's interests? Counsel, Mr. Rusconi?

DEPUTY ATTORNEY GENERAL RUSCONI: I would suggest that it be 30 days prior to any transfer.
ACTING CHAIRPERSON GORDON: Okay. Good point. Well put. Very well put. Okay. So would that cover the State's interest if we did it that way?

EXECUTIVE OFFICER FOSSUM: If I can, Mr. Chair, we had a list of 13 items that we felt were necessary to protect the State's interest, 7 of them they did agree to. The ones that we weren't provided were, as Grace said, the copy of the arrangement between the 2 parties, Maxim and --

ACTING CHAIRPERSON GORDON: Let me stop you right there. Mr. Higbie, why haven't we been able to receive a copy of the agreement between the LLC and Maxim?

MR. HIGBIE: We just concluded that agreement and I don't have a copy here with them now, but we could certainly make that a condition that we'd submit that. If you could give us a short time, we can have that concluded too.

ACTING CHAIRPERSON GORDON: COB Tuesday. Does that work?

Mr. Higbie, COB Tuesday?

Mr. Higbie.

MR. HIGBIE: Sure. Certainly.

ACTING CHAIRPERSON GORDON: All right. So condition would be that we have a copy of that agreement by Tuesday, which is -- I don't have a calendar in front
of me.

Next condition that hasn't been met, Mr. Fossum?

EXECUTIVE OFFICER FOSSUM: We asked the applicants to personally, because it being -- dealing with an LLC can sometimes be problematic, because of bankruptcy and other things, to personal indemnify, insure, and hold the State harmless from any claims arising from a challenge to the ownership of the vessel.

Mr. Higbie, in fact, is in the chain of title to the extent that in 1978, I believe, or thereabouts, signed over the property to another party. And to this date, I haven't seen anything as to how Mr. Bothwell or Mr. Higbie or Frank Coxe, LLC have obtained title from anybody.

We do have the deed from them to Maxim, but we're not exactly sure how they got access to the ownership of the vessel. So we asked that they personally be responsible for if the State gets sued from --

ACTING CHAIRPERSON GORDON: From a title issue.

EXECUTIVE OFFICER FOSSUM: -- that assumption that they do have control over the vessel

ACTING CHAIRPERSON GORDON: Is that acceptable to you, Mr. Higbie?

MR. HIGBIE: Oh, certainly.

ACTING CHAIRPERSON GORDON: Okay. Condition 2.

EXECUTIVE OFFICER FOSSUM: And one other item
that we received no response on was a lease provision
prohibiting the transfer of vessel to another party
without prior notification and consent of the Commission.

ACTING CHAIRPERSON GORDON: Is that acceptable to you, Mr. Higbie?

MR. HIGBIE: Certainly, yes.

ACTING CHAIRPERSON GORDON: Okay, 30 days prior, just as Mr. Rusconi did with the other condition, okay?

EXECUTIVE OFFICER FOSSUM: So at this point, there's only 3 outstanding matters. The first one being whether or not Maxim is a co-lessee. Actually, the way we have it --

ACTING CHAIRPERSON GORDON: Guarantor I think is what we're looking for at this point.

EXECUTIVE OFFICER FOSSUM: And if there's a guarantor -- and again, we -- I had one of the counsel working all day yesterday on a guarantee. There is the question, as Mr. Rusconi brought up, about well what if they -- what if Maxim just decides to deed back or deed to a third party, how do we tie that? It's not like a piece of property, you can record it against the land, so that there' knowledge to any purchaser.

ACTING CHAIRPERSON GORDON: You can take a lien against a piece of personal property, can't we? I haven't been in law school in 30 years, but memory --
EXECUTIVE OFFICER FOSSUM: Neither have I.

Thirty-five years, I think.

MR. HIGBIE: I think Maxim is an entity that we can always find. And their agreement to remove that boat at any time that lease is terminated should protect the State, because -- just because they sell the boat doesn't mean they're no longer liable on the lease that they made with the -- that they signed on with the State of California.

ACTING CHAIRPERSON GORDON: Mr. Rusconi, I think we can draft that, would you agree, to cover the State's interest?

DEPUTY ATTORNEY GENERAL RUSCONI: I think that, yeah, a lease term or a guarantee can be drafted to incorporate that to protect the Commission.

EXECUTIVE OFFICER FOSSUM: But we do still -- we are struggling with it. We did come up with a draft. I don't think we're quite ready to share it right now, but we did have one put together. And that was really in lieu of the fact that we'd asked for a bond, half a million dollar bond, because of the instance we've recently had where the State ended up -- lucky not the State Lands Commission, but another agency, picked up the tab of over $600,000 to remove a floating vessel from the Delta and having it scrapped. We don't want the State to be in that
position.

So we really -- I think what's going to be key is the guarantee and the contract from this company that -- and I really am struggling with seeing a company. We got an estimate with all kinds of caveats on it from them as to what a company would be willing to do, but this vessel probably would need to be surveyed before it was moved. There may be dredging involved. There may be all kinds of issues. And so if they can get that by close of business Tuesday, I would be very impressed.

ACTING CHAIRPERSON GORDON: Now, I don't think that's the contract we're talking about close of business Tuesday. The Tuesday is the agreement --

EXECUTIVE OFFICER FOSSUM: I'm sorry. You're right, a contractual arrangement.

ACTING CHAIRPERSON GORDON: -- between Maxim and the LLC.

EXECUTIVE OFFICER FOSSUM: So you haven't specified a date certain yet.

ACTING CHAIRPERSON GORDON: We will specify a date before we get through here. But I want to be clear, Mr. Bothwell and Mr. Higbie. I just -- for full advertises, I met with Mr. Bothwell down in San Francisco several weeks ago in an attempt to try to find a way to give him an opportunity to run his business.
That said, the most critical issue -- and I think I speak for both Commissioners -- is covering the State's interests in case the restaurant, like numerous other restaurants on that boat at that location, fails, can we cover the State's interests?

And, for me, now I'll speak strictly for this one Commissioner, it is about that contract with a reputable insured towing company that is enforceable, that in case this restaurant fails, the State is fully covered, and that boat is going to be removed and the State is not going to pay for it. The taxpayers of California cannot be on the hook for your personal business opportunity.

MR. HIGBIE: Your Honor, I'd like to address that point. The State has that problem now. We're trying to relieve it for them, and we're doing everything we can, and we'll be successful.

EXECUTIVE OFFICER FOSSUM: And we appreciate that. That, as Grace mentioned, the Commission did authorize ejectment from the last operator there, and that's still pending.

One last thing that is -- that the staff had recommended and that is proofs of letter of commitment. Mr. Chair, you indicated that that was not a priority for you necessarily as far as whether they are going to succeed, as far as having investment funds there, as long
as we get these other things. And I don't know what the
other Commissioners inclination is in that regard, but
I --

COMMISSIONER NEWSOM: This is verification of
that vessel.

EXECUTIVE OFFICER FOSSUM: That they have funds
available to actually operate the restaurant.

MR. HIGBIE: The provisions of that deposit, I
think we can meet those conditions.

ACTING CHAIRPERSON GORDON: With that, do I have
a motion?

COMMISSIONER NEWSOM: Is there -- I'm just --
well, there have been plenty, so I've got to ask, is there
anything else?

(Laughter.)

PUBLIC LAND MANAGER KATO: There is one
additional caveat.

COMMISSIONER NEWSOM: Okay.

PUBLIC LAND MANAGER KATO: That if the vessel
were to be removed by a reputable tugboat company, that
that vessel does not end up on State property at a
different location, so we don't have this problem all over
again.

EXECUTIVE OFFICER FOSSUM: In the middle of the
bay.
LAND MANAGEMENT DIVISION CHIEF BUGSCH:
And we also need clarification that -- I'm still not clear as to whether or not Maxim is going to be on this lease or not.

ACTING CHAIRPERSON GORDON: What we're looking for is a guarantee from -- if Maxim will sign a guarantee --

MANAGEMENT DIVISION CHIEF BUGSCH: Okay. So they will not be part of the lease, but we will get a guarantee.

ACTING CHAIRPERSON GORDON: Yes.

LAND MANAGEMENT DIVISION CHIEF BUGSCH: Okay. In that situation, we also need a guarantee that if it transfers back to that lessee, that we may gain title to that vessel at the end of that as well, if they haven't removed it within 90 days.

So we already have a provision in there that if the lessee -- if this lease is in default, in any way, that they have to remove the vessel within 90 days. We need to add to that, because there's 2 kind of issues. We need to have the financial wherewithal to remove the boat. The State needs to be protected there, and also the authority to remove that boat.

ACTING CHAIRPERSON GORDON: Understood.

LAND MANAGEMENT DIVISION CHIEF BUGSCH: So those
2 conditions need to be set.

ACTING COMMISSIONER REYES: And who has the responsibility for removing -- and who has the responsibility -- not just the authority, but the responsibility for removing the boat.

LAND MANAGEMENT DIVISION CHIEF BUGSCH: Right.

ACTING COMMISSIONER REYES: That's one of the things -- thank you for bringing that out, because that's one of the things that I wanted to seek clarification on, that to the extent that there is this agreement and the lease is settled, and we do get the 30- or 90-day notification, whatever it is we do, so what? Is then -- is he responsible then for getting somebody else guaranteed, because if the business is successful, we don't want to tow it. We want him to be successful and continue, but I still want some back-stop, somebody else to then assume that responsibility in the event that a year later he's not as successful.

EXECUTIVE OFFICER FOSSUM: And I believe that that is probably going to be the hardest one to accomplish, the guarantee. This company, I guess, has $100,000 into this boat as a loan. Are they willing to enter into a guarantee that ties them up for the next 20 years --

ACTING BOARD MEMBER REYES: Or terminate the
lease.

EXECUTIVE OFFICER FOSSUM: -- or costs that could exceed $100,000? I don't -- I'd be surprised if we can get a guarantee that they're willing to sign to that extent, but we'll certainly attempt to do so.

ACTING COMMISSIONER REYES: But in the event they do, I want to make sure that we have a guarantee. Even if they do guarantee, when the current owners do provide the guarantee and that guarantee goes away when the terms of the lease are satisfied, who then provides that guaranteed? Who comes into -- who is the --

EXECUTIVE OFFICER FOSSUM: I think the way -- and I had looked at this recently, I believe, and was considering a provision that said the guarantee continues for at least 90 days after the termination of the lease, so that there's time for the Commission to take action to call the guarantor and direct them to remove the vessel.

ACTING CHAIRPERSON GORDON: Yeah, or enforce the towboat contract to have it pulled away at that point in time.

ACTING COMMISSIONER REYES: But I guess my point is though, if 5 years from now the terms of the lease are satisfied, he's successful enough to be able to pay the lease -- the property, okay, if he's successful, I don't want to tow his property. He should continue to be
successful.

EXECUTIVE OFFICER FOSSUM: Absolutely.

ACTING COMMISSIONER REYES: However -- but I want to make sure there's somebody there. Ms. Kato and Colin understand what I'm trying to get at or am I too confused?

PUBLIC LAND MANAGER KATO: No, I think, Commissioner Gordon had specifically stated that if, in fact, Maxim does get paid off or the lease-back situation does get completed and resolved, that within 30 days, prior to the transfer of that, that we must have a subsequent guarantor, we can go ahead and call that out in the lease as well.

ACTING CHAIRPERSON GORDON: That's it exactly.

EXECUTIVE OFFICER FOSSUM: Otherwise, they would -- the breach would result again and we would use the existing guarantor at that point.

ACTING CHAIRPERSON GORDON: Belt and suspenders.

COMMISSIONER NEWSOM: And just for my own edification, there's a 3-year prepayment on the rent. What is the monthly rent?

PUBLIC LAND MANAGER KATO: It's like -- it would be a yearly rental term. And I think that is at $10,700.

COMMISSIONER NEWSOM: And there's any gross --

PUBLIC LAND MANAGER KATO: We did not do a percentage of gross rental associated with this. However,
we would have the ability to reassess the rental value at a 5-year mark.

COMMISSIONER NEWSOM: At 5-year mark.

PUBLIC LAND MANAGER KATO: At 5-year mark. And then at the 4th year would start an annual CPI adjustment as well.

COMMISSIONER NEWSOM: Okay. And then the subsequent 2 options would be at market mutually agreeable or what's the language on the options.

PUBLIC LAND MANAGER KATO: Assuming that the Commission would entertain the two 5-year options, we would be able to write in any lease term that you would so choose.

COMMISSIONER NEWSOM: And if we did, what would you recommend?

PUBLIC LAND MANAGER KATO: Most likely market rate, and then possibly additional -- assuming that the restaurant operations did continue or were successful, we may want to do a percentage of rate -- percentage of gross.

COMMISSIONER NEWSOM: Right.

LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR: I just want to add that it has been staff's practice not to do options or first rights of refusals or things of that nature. If the restaurant is successful at
the end of a 10-year term, it's in the State's best
interest to continue it. So that's kind of the way we're
looking at it.

COMMISIONER NEWSOM: Interesting. Okay.

ACTING CHAIRPERSON GORDON: So I'm looking for a
motion from one of the Commissioners.

COMMISIONER NEWSOM: I'll move it with every
damn one of those caveats.

(Laughter.)

COMMISIONER NEWSOM: And so you guys all have a
lot of work to do. I guess I'll say, I've got 7 of these
things, these restaurants, I'm going to just say good
luck. This isn't easy, in any respect. These conditions
just make it more challenging. I'll be impressed too if
we can work this thing out.

But I want to just compliment staff, despite I
think their best instincts, for be willing to work with
the Commission. And I really do appreciate the Commission
working with the applicant to give this guy a shot, give
these folks a chance. And I think it's important that
folks recognize that that wasn't necessarily the path we
were walking down. And so I'm grateful to everyone for
being willing to extend this opportunity.

ACTING COMMISSIONER REYES: I'll second and echo
those sentiments.
I just want to make sure that the applicant is aware that we're not obstructionists. We're just trying to protect all the taxpayers, including yourself.

COMMISSIONER NEWSOM: Yeah, absolutely.

ACTING CHAIRPERSON GORDON: So we have a motion. And that is without two 5-year extensions, with the implicit understanding that if the restaurant is successful, it will be in the State's interest to do it. So you're getting a 10-year lease, based on all of those conditions that we have listed.

Anybody in the audience wish to comment?

Public comment?

EXECUTIVE OFFICER FOSSUM: Is that clear --

ACTING CHAIRPERSON GORDON: That being said, we've got a motion, a second.

ACTING COMMISSIONER REYES: He's got a clarifying comment.

ACTING CHAIRPERSON GORDON: Oh, I'm sorry, Mr. Fossum.

EXECUTIVE OFFICER FOSSUM: I want to make sure what the motion was, was for the 10-year lease?

ACTING CHAIRPERSON GORDON: Yes, a straight 10-year lease.

EXECUTIVE OFFICER FOSSUM: And if they're successful we'll be welcoming them back with open arms.
ACTING COMMISSIONER REYES: And did we establish a timeline for the -- we established one timeline.

ACTING CHAIRPERSON GORDON: Oh, we didn't establish a timeline for the tugboat --

EXECUTIVE OFFICER FOSSUM: The guarantee.

ACTING CHAIRPERSON GORDON: -- the tugboat guarantee. Is 30 days reasonably for you folks?

MR. HIGBIE: That would be.

ACTING CHAIRPERSON GORDON: Okay, 30 days from today you must come forward with a guarantee from a reputable tugboat operator.

EXECUTIVE OFFICER FOSSUM: As a condition of approval.

ACTING CHAIRPERSON GORDON: As a condition of approval of the lease, yes.

Ms. Lucchesi.

CHIEF COUNSEL LUCCHESI: And in lieu of the bond a guarantee by Maxim to remove the vessel as well.

ACTING CHAIRPERSON GORDON: That's also -- that's already been part of that.

EXECUTIVE OFFICER FOSSUM: Both of those, the contract and the guarantee.

ACTING CHAIRPERSON GORDON: Yeah. Exactly.

EXECUTIVE OFFICER FOSSUM: And so the Commission is approving it with a condition subsequent or are we
looking at --

ACTING CHAIRPERSON GORDON: I think that's real property law.

ACTING COMMISSIONER REYES: Some criteria that needs to be -- there's some criteria that needs to be met before it is approved by -- are we delegating to staff to take care of it.

EXECUTIVE OFFICER FOSSUM: We will not execute the lease until we have those. Thank you.

ACTING CHAIRPERSON GORDON: It's an approval based on conditions that must be met. We've got a motion. We've got a second.

All those in favor?

(Ayes.)

ACTING CHAIRPERSON GORDON: Opposed?

Unanimously adopted. Gentlemen, good luck.

COMMISSIONER NEWSOM: Good luck.

PUBLIC LAND MANAGER KATO: Thank you.

Now the easiest -- yes, Mr. --

COMMISSIONER NEWSOM: You already won your arguments.

ACTING CHAIRPERSON GORDON: Yeah, go ahead.

MR. BOTHWELL: Do you know how hard it is to do anything with the building not having, you know, any
ground under it. So I need this lease to do anything. But I also want to say that in my -- my son will run this. I will help him, but he's been -- he's 30 years old now, and he's been with me since 15 running restaurants.

I've had 44 bars and restaurants from the Terri Pines Inn that we built, hotels in Reno, not one that I've ever operated, has failed. So I just want you guys to sleep good tonight

(Laughter.)

COMMISSIONER NEWSOM: Hear, hear.

ACTING CHAIRPERSON GORDON: Good luck, sir.

MR. BOTHWELL: Thank you and also to staff. I understand.

Thank you.

MR. HIGBIE: The first thing they teach a young lawyer is when you're ahead to quit talking.

(Laughter.)

MR. HIGBIE: And I'm sure you -- Mr. Bothwell feels strongly about his obligation and it will work.

COMMISSIONER NEWSOM: Well done.

ACTING CHAIRPERSON GORDON: Thank you, folks.

All right. Moving on -- the rest of you folks are all here because you want to dredge sand from San Francisco Bay or oppose it.

All right. Item 101 is to consider certification
of a final Environmental Impact Report and issuance of 4 leases for commercial sand and gravel extraction in central San Francisco Bay.

Staff presentation, please, sir.

(Thereupon an overhead presentation was presented as follows.)

PUBLIC LAND MANAGEMENT SPECIALIST OETZEL: Good afternoon, Mr. Chairperson and members of the Commission. I am Don Oetzel with the Commission's Land Management Division. And I'm here to present information on Calendar Item number 101. This item asks the Commission to consider certifying a Final EIR, adopting a Statement of Overriding Considerations, and authorizing a 10-year lease between the Commission and Hanson Marine Operations, covering the continued extraction of sand and gravel from San Francisco Bay.

The 4 proposed leases presented to you for your consideration, lease numbers PRC 709, 7779, 7780, and 2036 comprise approximately 2,601 acres of submerged land in San Francisco Bay.

The application for lease number PRC 7781, suisun Associates, is currently incomplete pending the receipt and review of information required for determining the appropriate consideration for its sand.

Hanson Marine Operations has applied for renewal
of their sand mining leases, as well as modification of annual volume limits for a term of 10 years. Hanson's proposed project would allow mining a combined maximum volume of 1,540,000 cubic yards per year. Staff recommends that the Commission authorize each of the 4 leases for 2 different mining levels.

Initially, the leases would be issued for the lower volumes set forth in the reduced project alternative, analyzed in the EIR, and identified as the environmentally superior alternative.

At this level, the 4 leases combined would allow a total maximum mining volume of 1,060,656 cubic yards per year, which is the same as the 5-year annual average volume mined from 2002 to 2007. The leases would allow an increase to the proposed project mining volumes provided that the lessee complies with 2 conditions that demonstrate the significant environmental effects of the increased mining identified in the EIR have been mitigated to a less-than-significant level.

The first condition requires that Hanson obtain an incidental take permit from the Department of Fish and Game for the mitigation of impacts to Delta smelt and longfin smelt.

The second lease condition requires Hanson to provide documentation that they have met the California
Air Resources Board regulations to upgrade to cleaner burning diesel engines for their mining equipment.

The lease described in Calendar Item 101 is for a term of 10 years beginning January 1, 2013. It has a base biannual royalty of $2.09 per cubic yard mined, and requires for each of the leases liability insurance in the amount of $1.5 million, water quality and environmental insurance of $1.5 million, performance bonds in the following unique provisions:

1. the biannual royalty of $2.09 per cubic yard is to be adjusted annually by the PPI;

2. minimum biannual royalty payments require a minimum biannual payment regardless of the amount of sand mined for a given lease area. Minimum biannual royalty amounts will increase by 25 percent from their 2013 levels beginning January 1, 2018;

3. annual land rent of $2 per acre for all of the leases; and,

4. the lease provides for reimbursement of staff costs for mitigation monitoring required by the EIR.

Present today from the Commission staff is Mr. Chris Huitt, Staff Environmental Scientist of the Commission's Division of Environmental Planning and Management who will be providing you with information regarding the EIR.
Also present is Mr. Jim Frey and Ms. Pam Griggs, staff counsel who are available for your questions.

Mr. Mike Roth and Mr. Greg Knapp are the representatives in attendance for Hanson.

I'm available for your questions. Thank you.

ACTING CHAIRPERSON GORDON: Let me ask one question before we go farther with the presentation. I'm looking through the requested speakers, I have 9 speakers in support of the lease. Is there anybody in the audience opposing the lease today?

There's not.

As was recommended earlier, and I'll go back to my days as a trial attorney, when you've won your case, keep it short. Go forward.

COMMISSIONER NEWSOM: And the only thing I'd add, and not to disrupt, but we did receive a number of letters from Baykeeper and others that have expressed some concern, so I'm candidly surprised they're not here to represent their written word.

STAFF ENVIRONMENTAL SCIENTIST HUITT: Good afternoon, Mr. Chairman and members of the Commission. My name is Christopher Huitt and I am with the Commission's Division of Environmental Planning and Management, or DEPM.

I'm here to present the final Environmental
Impact Report for the San Francisco Bay and Delta sand mining project Calendar Item 101.

DEPM staff is asking the Commission to consider certifying the Final EIR and leases to be continued for extraction of sand and gravel from San Francisco Bay.

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STAFF ENVIRONMENTAL SCIENTIST HUITT: First of all, I'd like to show you is the area that we're looking at in the Environmental Impact Report. These are the location of the lease areas, and the lease area of the entire project that was analyzed in the EIR.

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STAFF ENVIRONMENTAL SCIENTIST HUITT: This map here shows the central bay leases specifically that are being addressed today for your consideration. And these are called the central bay leases 709, 2036, 7779 and 7780.

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STAFF ENVIRONMENTAL SCIENTIST HUITT: The State Lands Commission is acting as the lead agency for this project pursuant to the California Environmental Quality Act, or CEQA, and in accordance with the State's CEQA guidelines.

The mining of sand for us as a construction material has occurred within the central bay and Delta for
more than 7 decades. Channel and harbor dredging to remove sand and other sediment deposits from the Bay Area began in the 1800s. Construction sand mining within the Bay-Delta Estuary began in the 1930s.

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STAFF ENVIRONMENTAL SCIENTIST HUITT: The depletion of sand from the San Francisco Bay littoral cell has been a topic of discussion relating to the sand mining EIR. What I'm showing you here are the impacts and the -- and the environmental -- excuse me, the Environmental Impact Report evaluated the potential impacts and identified mitigation measures for the reduced project alternative with the increased volume option, which is being presented to you today.

Some of the significant and unavoidable impacts that were identified in the document are for Delta and longfin smelts -- smelt, excuse me, and that's found in the biological resources section.

Air emissions are as a result of indirect impacts to the project. Sand being shipped from Canada and sand being mined from local quarries in opposition to sand being mined from the central bay. And these are found in air quality and climate change and greenhouse gases.

The concept was raised in comments in the Notice of Preparation by the San Francisco Bay Conservation and
Development Commission, or BCDC, and the U.S. Geological Survey. And the EIR explored these concepts and was one of the principal aims of the hydrodynamic modeling and bathymetric analysis performed by Coast and Harbor Engineering, CHE, and AMS, Applied Marine Sciences. And it was described in Appendix G of the EIR.

The CHE study was used in the EIR as the basis for impact -- hydrodynamic impact 2, in Section 4.3, hydrology and water quality. The conclusion reached in the EIR for impact hydro -- excuse me, hydrodynamic 2 is that the extension of sand mining for a 10-year period is not to expect to have a substantial effect on the amount of sand delivered to the bar or coastal beaches. This is the San Francisco Bar that directly is outside the Golden Gate. And the impact of the proposed project on sediment transport and the geomorphology of the coastline and on the floor of the bay, and Delta, and ocean would therefore be less than significant.

The discussion of cumulative impacts on sediment transport and coastal morphology found in Section 4.3 of hydrology and water quality, similarly concluded that the project would not make a cumulatively considerable contribution to a cumulative impact on coastal morphology.

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STAFF ENVIRONMENTAL SCIENTIST HUITT: Impact
Biology 1 -- or for biological resources, the impact of regular operation of sand mining activities will cause an entrainment and mortality of Delta and longfin smelt.

The mitigation measures that were applied to the EIR was timing of dredging, relative to X2. And X2 is a distance from the Golden Gate to inland that an -- and it signifies the total distance in miles to the point where the water quality for salinity reaches 2 parts per million.

Currently restrictions on sand mining operations for other agencies and additional requirements and restrictions to minimize and avoid take will be set through consultation with Fish and Game through the use of an ITP and it will be issued for the project.

And there will be other compensatory mitigation measures as well. And the impact will remain significant and unavoidable after the impact mitigation measures are enacted.

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STAFF ENVIRONMENTAL SCIENTIST HUITT: For air quality and climate change and greenhouse gases, the impact for the reduced project mining volumes -- excuse me, I'm getting cotton mouth here -- from non-project sources would result in emissions that exceed significant thresholds. Air 1, 2 -- thank you, Mr. Rusconi.
EXECUTIVE OFFICER FOSSUM: Does the Commission wish to have the entire report or do you want to ask questions or make a motion or--

ACTING COMMISSIONER REYES: Well, this Commissioner is ready to move the item. I've read all 72 pages of this, and staff has briefed me when I had questions. So, at this point, I move that we certify the EIR, we adopt the mitigation monitoring program, and adopt the findings made in conformance with the California Code of Regulations in the Statement of Overriding Considerations in the conformance of the California Code, Title 14, Section 15093 as outlined in Exhibit D.

And I also further find that this activity is consistent with the use of classifications designed by the Commission for the land use--

COMMISSIONER NEWSOM: Curtis, can you cut him off now.

(Laughter.)

EXECUTIVE OFFICER FOSSUM: Oh, no. No sir.

ACTING CHAIRPERSON GORDON: We have a motion. Before we have a second, we do have numerous members of the public who have sat here through fascinating conversations about invasive species, viruses, bacteria, et cetera. I would like each of you who has come and passed in a card to just come up, identify yourself very
briefly. You've sat here very patiently all day. Just come forward, identify yourself, your organization. And if you've got a sentence you'd like to say, feel free, but don't repeat what the person before you said.

Okay.

STAFF ENVIRONMENTAL SCIENTIST HUitt: I will be available for questions.

ACTING CHAIRPERSON GORDON: So why don't we start with Marina Secchitano.

ACTING COMMISSIONER REYES: And as they make their way up, my motion also includes renewal of the lease.

(Laughter.)

MS. SECCHITANO: Marina Secchitano, regional director of the Inland Boatman's Union. We represent maritime workers up and down the coast, ferry workers, workers on tugboats and dredges.

I just wanted to say that I appreciate your support of this project, because we have a lot of good union jobs paying great wages, great union pensions, great union health care. And by keeping that operation here working, we are keeping those very important jobs.

Thank you.

ACTING CHAIRPERSON GORDON: Mr. Robert Gregory, please, and Christian Lind will come up after him.
MR. GREGORY: Yes. Robert Gregory. I'm the operations manager for Foss Maritime Company that operates the dredges for Hanson, and we're in support of you certifying this. And thank you for your time.

ACTING CHAIRPERSON GORDON: Mr. Lind followed by Shane Gusman.

MR. LIND: Good afternoon, everybody. Christian Lind, Jerico Products, Incorporated. We are a responsible tugboat company that you were looking for a few minutes ago.

(Laughter.)

ACTING CHAIRPERSON GORDON: Can you just write a bond before you leave? Thank you.

COMMISSIONER NEWSOM: You may have a customer.

MR. LIND: And we did that, the tow job for Cal Recycle recently, the 600,000 -- we didn't get the 600,000, but we did that -- we were part of that process in moving forward with the State's contractor to do all that towing work.

Anyway, so we are a small family-owned and operated business, also employee owned. Been in business over 100 years. Mining materials from San Francisco Bay and Delta. We are a small business with the State of California and the SBA. I'm a 4th generation mariner, 4th generation mining resources from the bay.
We'll be seeing you here again when we do -- we've been part of this EIR process for the Suisun Associates and the middle ground, another lease up in Suisun Bay, so you'll be seeing us again at probably the next meeting. But anyway, so we -- this process is just really important to our business as a small business. It represents a huge part of our small business.

So with that, I'll shut up.

ACTING CHAIRPERSON GORDON: Thank you for taking your time away from your job, Mr. Evans.

Let's see, next, Mr. Bill Butler, please.

MR. BUTLER: Good afternoon. Bill Butler. I'm also with Jerico Products. And I would just like to say following Mr. Lind's comments, you know, that the staff and the professionals that they hired to do the EIR process did an exhaustive and thorough examination. And from the applicant's perspective, a very conservative examination of the potential impacts, and to -- you know, we are committed to working through the process, and being responsible operators.

Thank you.

ACTING CHAIRPERSON GORDON: Mr. Mike Bishop, please followed by Dr. Barry Keller.

MR. BISHOP: Good afternoon. Mike Bishop. I'm the marine operations manager for Hanson Aggregates. I've
been involved with the sand mining for about 12 years.

   Thank you very much.

   ACTING CHAIRPERSON GORDON: Thank you. Short and sweet.

   Mr. Hanson. Dr. Hanson.

   DR. KELLER: Dr. Barry Kelly, Ph.D. in Marine Geophysics, also a State Licensed Professional Geologist and Certified Hydrogeologist. I've been involved in studies of sediments within the San Francisco Bay Estuarine system for about 10 years.

   First off, I'd like to say that the latest scientific information which was discussed this week about 2 blocks away in the Bay-Delta Science Conference supports the conclusions of the EIR, as represented by the Coast and Harbor Engineering studies. And so I think we're up to date with the latest science and in very good shape.

   And for the Commission's information, an important thing to note that based on USGS studies by Dr. Patrick Barnard, Bruce Jaffe and Amy Foxgrover is that in central bay we have sources of sand that come both down the Sacramento River and from outside the Golden Gate inward into the Bay. And the ones that come inward into the Bay are ones that are not likely to impact other coastal resources. And that's where a lot of the sand mining happens.
ACTING CHAIRPERSON GORDON: Thank you, sir.
And Dr. Hanson. Last witness.

DR. HANSON: Good afternoon. My name is Chuck Hanson. I'm a fisheries biologist. I've been working with both Hanson and Jerico for the past 10 years on the effects of sand mining on aquatic habitats within central San Francisco Bay, as well as Suisun Bay. I've worked on those same issues for over 30 years.

Two points. One is I'd like to compliment the State Lands Commission staff and the consultants that worked on preparing the EIR. I had an opportunity to provide a variety of comments on drafts. They were considerate of those comments. They engaged in open discussions, and it was a good process, in terms of how this was actually developed.

The second is I'd like to point out the importance of the EIR from a regulatory and a resource perspective. This will serve as part of the foundation, not only for the State Lands Commission actions, but also for BCDC, for the Army Corps of Engineers, for the Regional Water Quality Control Board that all have regulatory authority regarding this activity, as well as it serves as an important foundation for the ongoing discussions, the collaborative discussions that we're currently having with the Department of Fish and Game in
support of the issuance of the incidental take permit
that's part of the mitigation requirements.

That information will be also used in support of
a biological assessment that will be provided to the Fish
and Wildlife Service. We have provided information to the
National Marine Fisheries Service who has issued a
biological opinion. So it has a variety of regulatory and
resource agency implications, but most importantly the
process has led to constructive dialogue and to
identifying actions that not only allow the sand mining to
continue, but to do so in a way that reduces and avoids
adverse impacts.

ACTING CHAIRPERSON GORDON: Thank you, sir.

I think we have one more witness who would like
to testify.

Please identify yourself, sir.

MR. EVANS: My name is Michael Evans. I've been
employed in the dredging industry since 1978. In fact, I
just got off the boat this morning. It's been an
all-nighter for me.

And I'm here to speak on behalf of the crew of
the dredges that operate -- that are operated by Foss
Maritime, servicing Hanson Aggregates facilities
throughout the greater San Francisco Bay. We on the crew
are all environmentally conscious people who enjoy our
outdoor recreation on our days off. We are proud to work for Foss Maritime who's commitment to safety and the environment is industry leading and second to none. Working in the industry has allowed us to support our families, buy homes, and send our kids to college, and we are eager to work with all agencies to mitigate concerns and lessens any impact we may have on the areas in which we operate.

We ask that you renew the leases and give us guidance in improving our systems and procedures, so that we may continue to operate in the benefit of all parties involved.

Thank you.

ACTING CHAIRPERSON GORDON: Thank you, sir. We have a motion. Do we have a second?

COMMISSIONER NEWSOM: I second.

ACTING CHAIRPERSON GORDON: Anymore testimony?

Great.

All those in favor?

(Ayes.)

ACTING CHAIRPERSON GORDON: Opposed?

Passes unanimously, 3 to nothing.

Congratulations, folks.

Mr. Fossum, were there any items that we pulled from consent that still need to be heard?
EXECUTIVE OFFICER FOSSUM: I don't believe so. There was one individual who identified that they wanted to speak on the public, as well as testify earlier, but I don't believe that she's still here.

ACTING CHAIRPERSON GORDON: Nobody, left Okay. What is the next order of business, sir?

EXECUTIVE OFFICER FOSSUM: Next order of business is adjourning into closed session.

ACTING CHAIRPERSON GORDON: That concludes the regular calendar, and we will now move into closed session.

Gentlemen, can you please clear the room.

(Thereupon the meeting recessed into closed session at 1:54.)

(Thereupon the meeting reconvened at 2:08 PM.)

ACTING CHAIRPERSON GORDON: We are back in open session. Mr. Fossum, any other thing to report?

EXECUTIVE OFFICER FOSSUM: There is no reportable actions from the closed session.

ACTING CHAIRPERSON GORDON: All right. Then with that, I will adjourn this October meeting of the California State Lands Commission.

(Thereupon the California State Lands Commission meeting adjourned at 2:08 PM)
CERTIFICATE OF REPORTER

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

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of November, 2012.

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