

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

EL SEGUNDO CITY HALL
COUNCIL CHAMBERS
350 MAIN STREET
EL SEGUNDO, CALIFORNIA

THURSDAY, MAY 10, 2007

10: 30 A.M.

Michael Mac Iver
Shorthand Reporter

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

John Garamendi, Lieutenant Governor, Chairperson

Michael Genest, Director of Finance, represented by Anne Sheehan

John Chiang, State Controller, represented by Cindy Aronberg

STAFF

Paul Thayer, Executive Officer

Jack Rump, Chief Counsel

Barbara Dugal, Chief of Land Management Division

Alan Scott

ALSO PRESENT

Alan Hager, Assistant Attorney General

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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PROCEEDINGS

CHAIRPERSON GARAMENDI: Good morning everyone. It is now 10:30 and it's time for us to begin our meeting.

Joining me here today is Anne Sheehan, representing the Department of Finance. And Cindy Aronberg, representing the Controller, John Chiang.

Thank you very much. And, of course, I'm John Garamendi, the Lieutenant Governor.

For those of you in the audience, the State Lands Commission administers property owned by the people of California, the state, as well as its mineral interests. Today we will hear proposals concerning the leasing and management of these public properties.

We have our staff here, Paul Thayer and Jack Rump, from the Commission, the Commission staff. And Alan Hager from the Attorney General's office. We're looking forward to working with the staff on moving expeditiously through the agenda.

The first item of business will be the adoption of minutes from the Commission's last meeting. And I assume you've all read that completely. And, Anne, if you will move it.

ACTING COMMISSIONER SHEEHAN: I'll move the minutes.

CHAIRPERSON GARAMENDI: Second?

1 ACTING COMMISSIONER ARONBERG: Second.

2 CHAIRPERSON GARAMENDI: And all in favor?

3 (Ayes.)

4 CHAIRPERSON GARAMENDI: The minutes are
5 unanimously adopted.

6 The next order of business is the Executive
7 Officer's report.

8 Mr. Thayer, your report, please.

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

11 I just had three things that I wanted to discuss.
12 The first is that at the last meeting the Commissioners, I
13 think really the Controller, were interested in a schedule
14 for how the Commission staff intended for the Commission to
15 comply with the ballast water regulation requirements, we
16 have to have that completed by January 1st of next year.
17 And we have sent a memo around to your offices I think last
18 week. And so we don't intend to discuss that at length
19 today, but I'm just asking if the Commission has any other
20 questions about that to please let me know and we can do
21 that at any time.

22 ACTING COMMISSIONER ARONBERG: I just wanted to
23 thank you for everything.

24 EXECUTIVE OFFICER THAYER: Certainly. You're
25 welcome.

1 The second item is to report that we're continuing
2 to work on establishing and setting up these Public Trust
3 workshops that we discussed at the last meeting. And there
4 is one big purpose and an allied purpose for doing this that
5 the Commission has discussed. The big purpose is to
6 continue what we started several years ago which was to have
7 both an educational outreach and also an opportunity for
8 input from the public regarding the Public Trust Doctrine.
9 And we ran three Public Trust workshops I think about four
10 years ago. We had one in the Bay Area and one in the LA
11 area and one in San Diego. We've discussed this with the
12 Commission at a previous meeting and agreed that we would do
13 that by the end of July.

14 The other reason that these workshops are being
15 held is to allow for any additional input anybody might want
16 to make on the timeshare issue. So we have developed a
17 draft agenda which was sent around to the Commissioners.
18 And again if there are any concerns about that please let me
19 know. We're in the process of contacting the witnesses that
20 we would like to participate on that and our intent is to
21 have a panel at each of those workshops that would include
22 representatives from business, the environment and one of
23 the grantees. And then moving to the timeshare part of
24 that, we would anticipate that that panel in San Diego would
25 include a representative from the timeshare industry who

1 then would have a proposal before the Commission in
2 December. So once we've firmed up a schedule that works for
3 the witnesses we'd like to have there, we'll be promulgating
4 that and I imagine that will be in the next couple weeks.

5 CHAIRPERSON GARAMENDI: Very good.

6 EXECUTIVE OFFICER THAYER: And then the third item
7 is just to say --

8 CHAIRPERSON GARAMENDI: Before you move on.

9 EXECUTIVE OFFICER THAYER: Yes.

10 CHAIRPERSON GARAMENDI: The workshops' purpose, at
11 least one of the purposes, is to provide information to the
12 public about what the Public Trust Doctrine is all about.
13 The Ocean Protection Council is also taking up the issue of
14 education. And could you look at how we might coordinate
15 with the Ocean Protection Council and their education
16 issues, some of which will involve state lands.

17 EXECUTIVE OFFICER THAYER: Certainly.

18 CHAIRPERSON GARAMENDI: Okay. Perhaps we can get
19 some synergy going. Thank you very much.

20 EXECUTIVE OFFICER THAYER: You bet. I will talk
21 with you and the Chairman about that.

22 CHAIRPERSON GARAMENDI: Thank you.

23 EXECUTIVE OFFICER THAYER: And then the final item
24 is just to report that our next agreed-upon Commission
25 meeting date is going to be June 28th, and that one will be

1 in Sacramento. And we're looking to meet potentially in
2 July, we haven't firmed this up with all the Commissioners,
3 in the Bay Area. We'll let you know when that one is
4 established.

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

7 CHAIRPERSON GARAMENDI: Okay. Move to the consent
8 calendar. Before we do, the general procedure here is if
9 you want to speak at any point you are supposed to fill out
10 one of these forms which is a Request to Speak. And that
11 first opportunity to speak would be on any of the issues on
12 the consent calendar. So if anybody has any desire to speak
13 on any of those issues, the consent calendar has been a
14 public record for several days and is in the back of the
15 room. Apparently everybody is happy with the consent
16 calendar.

17 And I know, Cindy, you had a question you wanted
18 to raise about the consent calendar.

19 ACTING COMMISSIONER ARONBERG: Thank you.

20 I'm asking about Item 81 here, and, Mr. Hager, I
21 just have a question for you which is does the Commission
22 have discretion to deny the staff's recommendation
23 consistent with best oil field practices?

24 ASSISTANT ATTORNEY GENERAL HAGER: If the staff
25 has made the necessary findings, then the Commission doesn't

1 have any discretion beyond those findings.

2 ACTING COMMISSIONER ARONBERG: Mr. Thayer, have
3 you made the findings consistent with best oil field
4 practices?

5 EXECUTIVE OFFICER THAYER: Our Long Beach staff,
6 which includes several petroleum engineers, has reviewed the
7 five-year program proposed in Item 81 as well as the one-
8 year plan which is in Item 80 and concluded that they do
9 comply with the best oil field practices as required by the
10 statutes which govern operations of the Long Beach Unit.

11 ACTING COMMISSIONER ARONBERG: Thank you.

12 CHAIRPERSON GARAMENDI: And therefore upon
13 operation of law our action is simply ministerial.

14 EXECUTIVE OFFICER THAYER: That's just about the
15 case. The Commission's standard of review for this
16 particular proposal, the five-year program, is whether or
17 not it's consistent with the best oil field practices and
18 staff believes that it meets that standard.

19 CHAIRPERSON GARAMENDI: Very good.

20 Further questions, Cindy?

21 ACTING COMMISSIONER ARONBERG: No.

22 CHAIRPERSON GARAMENDI: Okay.

23 Then we have the consent calendar before us. Do I
24 have motion?

25 EXECUTIVE OFFICER THAYER: There are --

1 CHAIRPERSON GARAMENDI: Excuse me.

2 EXECUTIVE OFFICER THAYER: I'm sorry. There are
3 two items we'd like to pull due to various reasons and we'll
4 hear them at a future meeting. And those would be Items 48
5 and 87.

6 CHAIRPERSON GARAMENDI: So 47 and --

7 EXECUTIVE OFFICER THAYER: 48 and 87.

8 CHAIRPERSON GARAMENDI: 48 and 87 are off the
9 consent calendar and are going to be dealt with at a future
10 hearing?

11 EXECUTIVE OFFICER THAYER: Correct.

12 CHAIRPERSON GARAMENDI: Then the remaining consent
13 calendar is before us.

14 ACTING COMMISSIONER SHEEHAN: I'll move the
15 consent calendar.

16 ACTING COMMISSIONER ARONBERG: Second.

17 CHAIRPERSON GARAMENDI: Anne moves, Cindy seconds.

18 All those in favor?

19 (Ayes.)

20 CHAIRPERSON GARAMENDI: And it's unanimous and the
21 consent calendar is approved.

22 The next item is Item 88, an application for a
23 boat dock on the Sacramento River.

24 Paul.

25 EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

1 Making the presentation of the staff will be
2 Barbara Dugal who is Chief of our Land Management Division.

3 CHIEF OF LAND MANAGEMENT DUGAL: Good morning, Mr.
4 Chair and Commissioners. My name is Barbara Dugal with the
5 Land Management Division and I am presenting information
6 today on Calendar Item Number 88. Before I get to that
7 calendar item, I would like to provide some background
8 information on boat docks. First slide, please.

9 Thank you.

10 In 2003, staff began seeing an increase in
11 applications for construction of large new boat docks with
12 second story decks on the Sacramento River. These decks are
13 typically constructed on an expanded dock area, dock roof,
14 or on an adjacent boathouse roof and are built by the
15 adjoining homeowner and are intended for use as a deck.

16 They are most apparently intended as a deck when
17 they are part of a dock roof, typically there is a safety
18 railing and a stairway ramp for access. The deck can block
19 views from a public road and they have an impact on the view
20 from the water that is greater than what occurs with a
21 normal plain flat roof used to cover docks. Decks can also
22 represent a private use of public lands that is only
23 marginally, if at all, related to the water and are only
24 available to the adjacent landowner.

25 Next slide, please.

1 Over the years the Commission has approved a
2 limited number of leases for decks throughout the state.
3 There's 12 on the Sacramento River, although one of those
4 was built without the deck, less than 10 at Lake Tahoe and
5 less than 20 for cantilever decks. However, as I mentioned
6 before, the increase in the numbers for the construction of
7 a new deck in the Sacramento/San Joaquin delta area raises
8 issues with staff.

9 And the next slide represents some of the decks
10 that have been previously approved by the Commission.

11 Keep going.

12 Lake Tahoe. And then the next one is a
13 cantilevered deck in Huntington Park. Okay, the next slide,
14 please. Thank you.

15 The initial issue is whether a deck is a private
16 nonnavigational use or primarily of a residential nature and
17 therefore are considered to be inconsistent with the Public
18 Trust Doctrine.

19 Staff has informally consulted with the Attorney
20 General's office representative who has informally opined
21 that the decks are not sufficiently residential to be
22 inconsistent with the Public Trust Doctrine. However, the
23 AG's office also believes that the Commission as the
24 administrator of Public Trust land has complete discretion
25 as to whether to approve these types of structures.

1 Last year staff sent a memo to the Commissioners
2 regarding the deck issue and was prepared to discuss the
3 issue at a subsequent Commission meeting. But two of the
4 pending applications for a deck were redesigned after staff
5 recommended that the deck component be eliminated from their
6 project. There are currently two more applications for a
7 new boat dock with sundeck in the Sacramento River, one of
8 which alone is Calendar Item 88. This application was
9 received in February of 2005 and it's for the removal of an
10 existing uncovered floating boat dock and the construction
11 of a private boat dock with a sundeck, railing, and stairs.

12 Because the proposed dock included a sundeck,
13 staff had met with the applicant and his contractor to find
14 that the sundeck components which would include the railing
15 and the stairs would have to be removed and the dock would
16 need to be redesigned with either a pitched roof or with a
17 flat roof that would be constructed out of non load bearing
18 material. The applicant has stated that he did not want to
19 redesign the project but wanted to construct the sundeck so
20 that it would be available as a gathering place for guests.
21 The applicant's contractor sent a letter to the
22 Commissioners on April 27th, which each of you have a copy
23 of, outlining the salient issue for his client's position.

24 The letter states that the use of a deck is
25 recreational and not residential and should be allowed. The

1 author's distinction appears to be based on a belief that
2 absent structures, such as a kitchen, a bedroom, or a
3 bathroom or a storage room, the Commission should allow the
4 use of a family recreational area above the boathouse.
5 Staff believes that no water-dependent private uses such as
6 that proposed by the applicant, although recreational, are
7 akin to a private residential backyard and should be located
8 on private uplands, not on public land.

9 The letter also then states that the improved
10 safety and durability that would result in the construction
11 of a dock and a boathouse as proposed. The arguments
12 concern the author's contention putting on a comparison to
13 an uncovered boat dock. Staff was not suggesting that this
14 dock can't be covered, only that again that the roof be
15 pitched or be flat with non load bearing materials. Either
16 of the means that staff is recommending should result in the
17 same effect presented in the letter.

18 The letter also suggests in absence of a flat
19 roof, the dock would have to be moved further out into the
20 river in order for the gangway. Staff believes that the
21 same results can be achieved by attaching the gangway from
22 the uplands to the front of the boathouse with a small
23 landing area and then proceeding to the dock by stairs which
24 is not unsimiliar to what is being proposed.

25 Lastly, the letter suggests that the proposed

1 construction reduces the footprint of the dock by moving the
2 recreational space to the top of the boathouse. This
3 suggests that absent a second story use area, a larger dock
4 would be constructed to accommodate the use of the dock.
5 Again staff believes that there is no distinction between a
6 private entertainment area either on top of the dock or on a
7 larger dock area at water level. The issue is the private
8 use that should be located on a private upland. Staff would
9 not recommend approval of a dock that encompassed a larger
10 area with the same use as proposed on top of a boathouse.

11 Next slide.

12 Staff believes that nonwater dependent private use
13 such as those proposed by the applicant although
14 recreational are akin to a private residential backyard and
15 should be located on private uplands, not on public lands.
16 Therefore, staff has recommended that the Commission
17 terminate the existing recreational pier lease and approve
18 the issuance of a general lease recreational use to the
19 applicant for the removal of the existing floating boat dock
20 and for the construction of a floating boat dock covered
21 with either a pitched roof or a non-load bearing flat roof.

22 And I just have a couple of slides to show as far
23 as the existing conditions there on the river and what would
24 be removed and where this would be going. And where the new
25 dock would be placed.

1 And this concludes staff's presentation. Thank
2 you.

3 CHAIRPERSON GARAMENDI: Thank you very much.

4 EXECUTIVE OFFICER THAYER: Mr. Chair, if I could
5 also add, that although the staff accurately depicted in its
6 presentation on the docks with sundecks and approved by the
7 Commission which amounted to 12, we're well aware that there
8 are other ones out there that don't have the benefit of a
9 Commission approval. I think the intent in giving those
10 figures though was to indicate how much the Commission has
11 been involved in this in the past which is a relatively low
12 number.

13 CHAIRPERSON GARAMENDI: Thank you. Are there any
14 people in the audience that would like to comment on this?

15 Please, if you would, step to the microphone and
16 introduce yourself.

17 MR. MORAIS: Thank you, Commissioners. My name is
18 J.B. Morais, I'm the owner of West Coast Docks, I'm the
19 contractor on this project.

20 My client here. I would like to say a few things
21 and then have him talk about couple things and then finish
22 up, if that's all right.

23 I have 15 years of dock building experience,
24 before that my family ran a marina on the river. I've
25 pretty much grown up on the Sacramento River and built a

1 majority of the docks in the last five years up and down the
2 river.

3 And we would like to discuss the concept of the
4 upper deck. This concept is not new, there is similar
5 designs up and down the river, although there are maybe a
6 couple apparently permitted. It's not a new design, it's
7 been around for 50 years, and there is docks all over the
8 place that show that it has been something that has been in
9 California for quite a long time. This type of design is on
10 over five or six hundred lakes around the country, on
11 numerous lakes all around California, and it's not a new
12 idea.

13 I'm basically transferring the usable recreational
14 space from the water level to above the slip. It does
15 create a stronger, safer dock. And Rob's going to talk a
16 little bit more about the safety issue and his safety
17 concerns.

18 We did apply for this permit over two years ago.
19 At the time we weren't told that the design wouldn't be
20 allowed, when other designs had been previously allowed just
21 actually a mile upstream, that one dock that was shown, that
22 large dock that was shown. We have obtained permits with
23 the upper deck from the Army Corps of Engineers, Department
24 of Water Resources, Fish and Game, the Regional Water
25 Quality Control Board, and it was reviewed by the National

1 Marine Fisheries and U.S. Fish and Wildlife. And they all
2 approved the design, mitigation was established, and we
3 agreed to pay for mitigation. And after pulling all these
4 permits together, we were told that there may be a problem.
5 And then after another year of wrangling, we were told that
6 the staff did not want to or was going to deny the upper
7 deck.

8 We discussed at that time the possibility of
9 requesting instead of doing a recreational rent free pier
10 lease, we would do a general lease and allow the applicant
11 to pay an annual rent for the privilege of having the upper
12 deck as opposed to having a lease without rent. And we
13 agreed to do that. That was suggested but then pulled back
14 and at that time we were told it would not be allowed, that
15 there was some staff change and policy change and it was not
16 going to be allowed at all. That brings us here.

17 From a contractor's business standpoint, I just
18 need to know the policy, if you're going to have one, so I
19 don't promise people something and after two years of
20 permitting that they don't do it and have to start all over
21 again with all these other seven agencies that we had to go
22 to. Also we do need a level playing field. That one very
23 large dock that you saw in there, the owner did come to me,
24 I did take a look at it. That was built a lot larger than
25 what they had been permitted for and so I told him I

1 wouldn't do it. They went ahead and did it anyway. And,
2 you know, it's not a good picture, when you look at that it
3 doesn't look nice, but it is a lot larger and it's not what
4 was originally permitted. And it should be enforced, the
5 original size should be enforced.

6 The size of this dock is modest, it's a lot
7 smaller, it's just one slip, there are no accessories. We
8 don't believe it's an addition to applicant's residential
9 space. There's no rooms, no balconies or utilities, no
10 water, no electric. It will be used solely for the
11 recreational use of the river.

12 Rob's going to talk about safety real quick and
13 his concern and then I will finish it up.

14 Thank you.

15 MR. VELLANOWETH: Good morning, my name is Robert
16 Vellanoweth, I'm the applicant of the proposed boat dock.
17 In my specific situation if you guys were to approve our
18 current proposal, that is you well know now we went through
19 the various agencies, I'm even willing to put in future
20 restrictions into the lease which could possibly include
21 maybe even limiting the people that are allowed on the boat
22 dock at that period of time, you know, a period maybe during
23 the day that it's to be used for, and J.B. said paying extra
24 lease to the state so the state can benefit so I can have
25 the privilege of, you know, having the upper deck.

1 And, you know, I'm even willing to reduce the
2 footprint of the upper deck because my main purpose for the
3 upper deck, and J.B. and I have been for some time
4 discussing the overall diagram of the outline of the deck
5 around the safety. I'm a father, I have a two-year-old and
6 one on the way, and my main goal is to deal with having a
7 close place with railing all the way around. I see the
8 upper deck's worth. Most of the decks you see don't have
9 the railings and it's not practical to have railings on the
10 lower deck because when you're on the river and getting on
11 and off the boat, it's just another barrier to get over a
12 railing there. It's obviously possible, but it's more of a
13 barrier, especially when you have current coming by and
14 you're getting people on and off the boats.

15 And, secondly, the way my house is set up, those
16 last pictures that you were able to see were of my current
17 dock. My house sits far back behind the levee. From the
18 point where my house sits, I'm walking out the backyard, you
19 know, through a gate, up a levee, over a gravel road, across
20 that first gangway that you saw and then down another. So,
21 you know, coordinating, it's a specific request and use for
22 me, but coordinating and getting on and off the boat would
23 be a lot different having them on an upper deck in a secure
24 area versus, you know, back at the house. So we originally
25 decided to choose an off area, because it has a neighborhood

1 setting unlike, you know, a lot of the county road levee
2 homes that don't have that, again revolving around the
3 safety issue of boat docks and access to boating and
4 recreational use.

5 Thank you.

6 CHAIRPERSON GARAMENDI: Thank you very much.

7 Do you want to wrap it up? I suspect there's some
8 questions coming.

9 MR. MORAIS: Okay. Well, the second issue we had
10 is reduced footprint. We feel to minimize the environmental
11 impacts, to best decrease mitigation fees which need to be
12 paid, which currently are over \$200,000 an acre for
13 mitigation of loss of wetlands, loss of wild habitat. A
14 smaller lot we just did they charged \$5,500 just for the
15 mitigation on that.

16 We've had docks permitted and installed with a lot
17 larger area, but the footprints could be reduced a lot by
18 building the upper deck. In two of the projects last year,
19 the owners we had did pull because they did want to get
20 their docks in last year. They did decide to go without the
21 upper deck because they did want to get the docks in, they
22 were worried about the moratorium because of the levee work.

23 The third, this is a highly engineered dock, it's
24 very strong, and the manufacturer is nationwide and are on
25 lakes around the country. And it is designed to take a lot

1 of abuse and it's going to be a lot more durable dock.

2 This comes down to what should be allowed on
3 docks, and I think that's what the main question is. I have
4 been told by staff that there is an opinion a dock is only
5 to be used to moor a boat. In my experience, that's not the
6 primary use. I have been around the river my whole life and
7 that's why I built a business around the river. Myself and
8 the majority of the people that I know spend much more time
9 on dock than out in a boat. My definition of recreation on
10 the river is swimming, reading a book, gathering with
11 friends, fishing, and just relaxing. It's a lease. I feel
12 it's always been historically what I feel is a lease for
13 recreational use of the river and not just the anchorage of
14 a boat. As people get older, they're less likely to hassle
15 with taking a boat out to enjoy the river. A lot of people
16 just like to hang out at the dock and enjoy it. There is
17 mechanical issues with boats, maintenance issues, fuel costs
18 on the river over \$5.00 a gallon. The definition of
19 recreation is obviously open to interpretation.

20 I always thought that a lease was to have a dock
21 to recreate on the river and now we're being told that in
22 order to use the river you have to own a boat, you can't
23 recreate on your dock. Honestly, I would rather spend time
24 on the dock and I shouldn't have to own a boat if I don't
25 want to. Why do people go to the beach, it must be to look

1 out at the ocean. And why is the river any different? Many
2 people would rather sit and enjoy the scenery and the
3 ambiance and relax next to the water, they shouldn't
4 necessarily have to get in a boat and go back and forth in
5 order to enjoy the river. Everyone's definition is
6 different and gathering on a dock during the day should be
7 allowed in our opinion. The upper deck concept is just a
8 safe way providing a smarter, a stronger, and a safer dock
9 for the applicant.

10 Now, we appreciate your time, we hope you see our
11 point of view, approve this project with the upper deck.
12 Like Rob said, we are open to any restrictions that you
13 impose. Time restrictions, use during the day; number of
14 people; no parties; and there are families out there. And I
15 don't think if you had a neighborhood that had a dock like
16 this you would want them out there having wild parties, but
17 I completely understand any restrictions like that. I
18 believe after getting into this more that it may not be a
19 use that's for everyone, there's a lot of homes on the levee
20 side of the water, so they can see the water, they have
21 backyard lawns that come down to the water so they can
22 easily spend time and sit on the lawn area while people come
23 and use that for recreation and they wouldn't need the upper
24 deck.

25 It's a big state, it's diverse, there's a lot of

1 different locations, some with a view. And the public does
2 not need to have this type of dock. In Rob's case, their
3 house is over the levee and you can't see the river from his
4 house, when you look out his back door you see a levee, and
5 it's not that type of house where you know. To be able to
6 use the river, he has to be out on the dock to enjoy the
7 river.

8 I believe that approval of these types of docks
9 should be maybe done on a case-by-case basis instead of a
10 blanket moratorium on it. In this case, my client feels
11 that the upper deck should be an acceptable design and I
12 urge you to support the design with restrictions you feel
13 appropriate and any applicable fees to the state so the
14 state can benefit. And we would be happy to answer any
15 questions.

16 CHAIRPERSON GARAMENDI: Thank you very much.
17 There will undoubtedly be questions.

18 What I've discussed with staff thus far is that we
19 really need to establish a policy here and the most
20 appropriate way to do that has yet to be determined and
21 we'll discuss that in a few moments. But clearly staff has
22 come to the conclusion that a new policy needs to be
23 established, and you have been the first to be caught up in
24 that process. It is asked of the three commissioners to set
25 the policy, and, sorry, but you are now the test case of

1 what the policy is going to be. We need to have a good
2 discussion on this matter and I'd like to start that
3 discussion. Now, it's going to take us a few minutes and
4 you may want to just stay there because you now are at least
5 one of the experts in this today.

6 A couple of things that I would like to do to
7 start this is a review of what the law is with regard to
8 docks and the recreational use of docks. Alan and Jack, I
9 have not previously asked you to do this, but we're going to
10 start with the foundation.

11 Alan, what's this recreation all about and the law
12 that's applicable?

13 ASSISTANT ATTORNEY GENERAL HAGER: Well, there are
14 two things. There's a recreational pier lease and a general
15 lease. The recreation pier lease is for both the formal
16 land owner, you have to own a home, and a significant part
17 of it is it's rent free. The legislature --

18 CHAIRPERSON GARAMENDI: Rent free, you have to own
19 a home, and the dock has to be on the land that you own.

20 ASSISTANT ATTORNEY GENERAL HAGER: And it has to
21 be on the land abutting.

22 CHAIRPERSON GARAMENDI: Abutting. But you have to
23 own it?

24 ASSISTANT ATTORNEY GENERAL HAGER: Yes, and you
25 have to own it. It has to be a single family home. And the

1 legislature has made certain findings on how these
2 recreational piers provide a public benefit and that's the
3 justification for not charging rent.

4 CHAIRPERSON GARAMENDI: Are any of those findings
5 applicable to the issue before us?

6 ASSISTANT ATTORNEY GENERAL HAGER: No.

7 CHAIRPERSON GARAMENDI: So is recreation defined?

8 ASSISTANT ATTORNEY GENERAL HAGER: Not in that
9 section, I don't believe.

10 CHAIRPERSON GARAMENDI: Is it defined in any other
11 section of the law that would be applicable here?

12 ASSISTANT ATTORNEY GENERAL HAGER: Not that I know
13 of, no. I mean recreation, one of the problems has been
14 saying is this a Public Trust issue or not. Recreation
15 being deemed as, you know, our office, State Lands staff, it
16 means water only for recreation. It doesn't mean something
17 else.

18 CHAIRPERSON GARAMENDI: So water-oriented
19 recreation. Has there been any definition of what water-
20 oriented recreation is?

21 ASSISTANT ATTORNEY GENERAL HAGER: We have done it
22 in the context of the Mills Project and the Piers in San
23 Francisco, and it was more or less institutionalized
24 recreation.

25 CHAIRPERSON GARAMENDI: Those are the big shipping

1 piers in San Francisco?

2 ASSISTANT ATTORNEY GENERAL HAGER: Yes. I mean it
3 would be like is boating water-oriented recreation or is
4 swimming. And these are obvious situations. What about
5 going out and playing frisbee on a dock or skateboarding.
6 It gets a little vague, but those issues. I mean when you
7 hear recreation and what is recreation, is it sitting around
8 on a dock enjoying the river or do you have to have a boat.
9 I mean I don't think there's any law that says what is what
10 and as far as, you know, just because you might even say
11 some of this stuff is water-oriented recreation, it doesn't
12 mean it's without your discretion to say we don't want to
13 issue a lease for that.

14 CHAIRPERSON GARAMENDI: So we may say, if we
15 choose to, that recreation as associated with these pier
16 projects is only boat? You know, somebody may test that.

17 ASSISTANT ATTORNEY GENERAL HAGER: Yes. You may
18 in your discretion say that, yes.

19 CHAIRPERSON GARAMENDI: Okay. Or we may say that
20 the pier can only be used for sunbathing?

21 ASSISTANT ATTORNEY GENERAL HAGER: Yes.

22 CHAIRPERSON GARAMENDI: Dip your toes in the
23 water.

24 (Laughter.)

25 ASSISTANT ATTORNEY GENERAL HAGER: Right.

1 CHAIRPERSON GARAMENDI: Or maybe your toe doesn't
2 have to be in the water. Swimming or diving or things of
3 those sorts, if we define those, we can define recreation as
4 -- I suppose somebody could sue us and say that's too narrow
5 or too broad.

6 ASSISTANT ATTORNEY GENERAL HAGER: Yes. And, as I
7 say, I don't think there's any statutory standard and you
8 know if you don't make this based on the Public Trust, you
9 don't have to deal with what is recreation under the Public
10 Trust Doctrine.

11 EXECUTIVE OFFICER THAYER: And one other thought
12 that occurs to me and obviously we'll look further into this
13 as part of the further explanation of this that I think the
14 Commissioners are going to want is how the legislature
15 intended or was really using the word recreational when
16 talking about recreational piers in the statute that Alan
17 refers to. And I think a strong argument is there, and I
18 haven't looked in a while so we'll have to double check
19 this, is the recreational versus commercial, that this
20 wasn't meant, oh, you can have a pier to recreate entirely,
21 but that this pier would be intended for recreational
22 boating, that kind of activity, versus the commercial
23 boating. But it's something we'd want to look at too.

24 CHAIRPERSON GARAMENDI: You know, there are piers
25 and piers are there not? There are piers that are for

1 docking boats and there are piers for fishing.

2 EXECUTIVE OFFICER THAYER: Certainly.

3 CHAIRPERSON GARAMENDI: All of which come before
4 the Commission?

5 EXECUTIVE OFFICER THAYER: Yes.

6 ASSISTANT ATTORNEY GENERAL HAGER: And Paul made a
7 point that made me think that in the justification for
8 legislative findings as to why rec piers should be rent
9 free, it's mostly dealing with boats. I think when they say
10 the idea is a rec pier would be out there available for a
11 boat to moor in the time of a storm or if there was an
12 accident or the boat had some problem. These are more
13 boating-oriented justifications for the absence of rent.

14 CHAIRPERSON GARAMENDI: Anne.

15 ACTING COMMISSIONER SHEEHAN: Well, yes, a couple
16 of questions. But if you don't require that they own a boat
17 to do that, then that was sort of -- you didn't say that,
18 but you implied, right? So you could have and approve a
19 dock that you know if some of their neighbors come and visit
20 them and they use the water as the transportation to get
21 there because that's the primary use of the dock is boating.
22 So it's not just water recreation, if I understood you,
23 Alan, it's boating, is that what the statute has referred
24 to?

25 ASSISTANT ATTORNEY GENERAL HAGER: I haven't read

1 it for a little bit, but I'm trying to recall, and most of
2 the justifications for the absence of rent on recreational
3 piers deal with boating.

4 ACTING COMMISSIONER SHEEHAN: Okay. Because I
5 need to get clear on that.

6 And then, Alan, you said something right at the
7 end that confused me or I would like some clarification.
8 Something about if we don't do it under the Public Trust
9 Doctrine. What --

10 ASSISTANT ATTORNEY GENERAL HAGER: I'm trying to
11 say that, okay, you can define water-oriented recreation
12 under the Public Trust Doctrine. What does the Public Trust
13 Doctrine mean is recreation, and then what you want to
14 define as recreation for purposes of issuing recreational
15 pier permits. There are two different definitions.

16 ACTING COMMISSIONER SHEEHAN: Under our general
17 statutes, is that what you're saying?

18 ASSISTANT ATTORNEY GENERAL HAGER: Yes, yes.

19 ACTING COMMISSIONER SHEEHAN: Not under the Public
20 Trust Doctrine, it's written down.

21 ASSISTANT ATTORNEY GENERAL HAGER: Right.

22 ACTING COMMISSIONER SHEEHAN: All right. So what
23 would be helpful to me is the distinction between those two
24 in taking action.

25 ASSISTANT ATTORNEY GENERAL HAGER: Okay.

1 ACTING COMMISSIONER SHEEHAN: Do you see what I
2 mean? One is under the Public Trust and one is under the
3 statutory --

4 ASSISTANT ATTORNEY GENERAL HAGER: I can see in
5 the recreational pier leases the statute authorizing those
6 rent free. More a legislative discussion of boating where
7 under the Public Trust Doctrine recreation must be water-
8 oriented recreation, but it certainly is not limited to
9 boating.

10 ACTING COMMISSIONER SHEEHAN: Right. So that is
11 actually broader or could be construed as a broader
12 definition of recreation?

13 ASSISTANT ATTORNEY GENERAL HAGER: Than under a
14 recreational pier.

15 ACTING COMMISSIONER SHEEHAN: Okay.

16 ASSISTANT ATTORNEY GENERAL HAGER: I remember the
17 applicant saying, you know, they proposed a general lease as
18 opposed to a recreational pier lease.

19 ACTING COMMISSIONER SHEEHAN: Right.

20 ASSISTANT ATTORNEY GENERAL HAGER: Which would be
21 under a different statute.

22 ACTING COMMISSIONER SHEEHAN: Okay. All right.
23 That's what I wanted to clarify when you said that.

24 EXECUTIVE OFFICER THAYER: And you will recall I
25 think in the staff presentation, if not I want to make it

1 clear here, speaking for Alan, but Alan can do it better,
2 but if you believe the Commission has the discretion to go
3 either way on this under the Public Trust Doctrine, that you
4 could accept the arguments that the applicant has made, and
5 he does not believe there's a legal bar to the Commission
6 approving a certain thing. What staff is concerned about is
7 the exact same principles that formulated the Public Trust
8 Doctrine which is that this is water-oriented land that
9 should be used for water-related purposes suggests that a
10 sundeck which, you know, could have a barbecue, could have a
11 cocktail party, all those sorts of things, is inconsistent
12 with what the Public Trust Doctrine generally requires for
13 the water.

14 Alan would say that the document is not
15 prohibitive and our concern is that may be so, but does the
16 Commission want to have this sort of private use of the
17 public's land for a backyard sort of recreation. And so our
18 approach is not to tell you that this is inconsistent with
19 the Public Trust Doctrine, but that the issues raised by
20 these proposals are very similar to the ones that one talks
21 about when you talk about the Public Trust Doctrine, what's
22 the appropriate use of these lands under your management and
23 you can decide.

24 So basically it comes down to it's a harder
25 decision as a result to the Commission. We're not coming to

1 you and saying this is inconsistent with the law, we think
2 it's that policy and we think it's within your jurisdiction
3 to say that he shouldn't be there.

4 CHAIRPERSON GARAMENDI: Cindy, you had a question?

5 ACTING COMMISSIONER ARONBERG: I do. When we were
6 discussing the issue that raised the most concern for me was
7 what you just touched on which is public access, public
8 versus private. Can you expand on that? To me that was the
9 most interesting point because I think it sort of gives a
10 feel for the test case. What about public access and public
11 versus private?

12 EXECUTIVE OFFICER THAYER: Again, to touch on then
13 it's a test case. This is the first one to come to the
14 Commission and staff was interested last year in bringing
15 this to the Commission so that we could get a decision and
16 we could move forward with however that is. But the other
17 two applicants chose instead of coming to the Commission to
18 remove those. So this is the first one to come to the
19 Commission, but others have dealt with this impact in terms
20 of equity to the two applicants last year who have
21 constructed a project without these decks in order to
22 accommodate the Commission staff's concern.

23 Obviously there are different applications to the
24 Public Trust Doctrine which I think are consistent but end
25 up with different kinds of physical facilities being

1 allowed. And by that what I mean is that the same kind of
2 deck that the applicant here proposed would be consistent
3 with the Public Trust Doctrine if it were more broadly
4 available to the public. And the great analogy to that is
5 all the riverfront and waterfront restaurants that you see
6 where there are decks out there that people sit in chairs
7 and eat and drink, much as they're proposing to do
8 themselves. But they are available generally to the public.
9 If people want to go out there and take a meal others can do
10 that. The difference here is that it's going to be limited
11 to the guests and the family itself.

12 It's not unlike, again referring back to Public
13 Trust principles, it's not unlike the difference between a
14 house and a hotel room, that the Public Trust Doctrine does
15 not allow for residential use because, you know, the prime
16 example is converting the public's land to a strictly
17 private use, whereas a hotel people still sleep in it and a
18 lot of the same things as you would if you were in a house,
19 but because it's generally available to the public under the
20 Public Trust Doctrine that's permissible and we think that
21 from the Commission's staff perspective is the kind of
22 argument we see for not having private owners having decks
23 out there.

24 CHAIRPERSON GARAMENDI: If the deck were on the
25 dock itself, not on top of the boathouse, what would be the

1 staff's view?

2 EXECUTIVE OFFICER THAYER: The staff's view, and
3 we've informally pursued this, is that when you look at
4 streams, if someone came in and proposed a dock that was a
5 hundred feet by a hundred feet and they were going to put
6 volleyball courts on it and that sort of thing, we would say
7 that from a Public Trust perspective or certainly from a
8 policy perspective that that is inconsistent with good use
9 of the public's land, it's a private use. The public's land
10 has been converted to a private use. And so you can think
11 in extremes of situations which everyone would agree would
12 be inappropriate.

13 As you narrow that down to the more practical
14 real-world situation, our view and the things we generally
15 ask if someone has come in with an especially big private
16 dock, we've said why do you want 85 feet, do you have 85
17 feet worth of boat. We want to know that this is going to
18 be used for a boat and not as a deck and dock. And so this
19 response to what the applicant has said here which is wait a
20 minute, we're just moving the square footage that would
21 normally be used for recreational purposes on the dock to
22 the upstairs which would make this bottom part smaller. Our
23 view is the bottom part should be sized for the water-
24 oriented use the dock should be put to. And so I know
25 that's a tough one to make a judgment on, we do ask those

1 questions.

2 CHAIRPERSON GARAMENDI: As I understand this, it's
3 a dock with a boathouse, a structure that houses a boat; is
4 that correct?

5 MR. MORAIS: Correct.

6 CHAIRPERSON GARAMENDI: And that structure is
7 sufficient. Now, what's the size of the structure.

8 MR. MORAIS: Overall, 40 feet long by 22 feet.

9 CHAIRPERSON GARAMENDI: Is that somewhat bigger
10 than -- do you have a 40-foot boat, I guess that's the
11 question?

12 MR. MORAIS: Yes. Basically the inside is
13 designed for a 28-foot boat, really.

14 CHAIRPERSON GARAMENDI: So that leaves you six
15 feet on either side presumably, the front and back of the
16 boat, the bow and stern?

17 MR. MORAIS: Yes. On the front of the deck, on
18 the front of the boathouse there is just a minimal space now
19 because the boat takes up three feet inside and four or five
20 feet outside. And out of 40 feet, there's about 30 feet of
21 boat slip inside and 10 feet -- then the building takes up
22 about three feet, and then the stairway and the front area I
23 think is about five feet.

24 CHAIRPERSON GARAMENDI: So essentially the dock is
25 designed for the size of the boat and you have a space on

1 the river side to get on the boat?

2 MR. MORAIS: Correct. There's about three feet
3 access on the outside of the wall and three feet access on
4 the inside which is minimum, and there would not be a really
5 area to gather the way it's running now without the upper
6 deck.

7 CHAIRPERSON GARAMENDI: So if there were to be a
8 family gathering, not that that's illegal, there's no place
9 for then people to sit?

10 MR. MORAIS: Not under the current.

11 CHAIRPERSON GARAMENDI: Unless it's on top of the
12 boathouse?

13 MR. MORAIS: Correct.

14 EXECUTIVE OFFICER THAYER: I think it would be
15 helpful to the Commissioners, there is an exhibit attached
16 to the calendar item, it shows an outline of the proposal.
17 On the last page of the staff report.

18 ACTING COMMISSIONER SHEEHAN: I have a question.
19 Is the access to the deck, to the top of the second level
20 and then you go down to get into the water or do you --

21 MR. MORAIS: The access, currently we're going to
22 utilize the existing gangway that he has there now so we
23 don't have to install a new gangway at a higher cost. We're
24 going to use the existing gangway which is going to a lower
25 level at this point. In the future we were going to try to

1 adapt that to a new gangway that would come down to the
2 upper level which would make it not quite as steep right
3 now, it's about a 45-degree angle from where it's hinged
4 above floodplain down to the water. So in the future we are
5 going to redesign it and have it come to the upper level,
6 but for the time being it was originally designed now just
7 to bring the new dock in and use the existing gangway.

8 ACTING COMMISSIONER SHEEHAN: Okay. Because I
9 don't want to redesign your deck for you. But I mean
10 because of how steep the side is, you have to go to the
11 upper deck and then you go down to the water and the railing
12 down the stairs, you know, there may be ways to do -- but it
13 depends on what the situation of the sort of geography right
14 there and the engineering in terms of that.

15 MR. MORAIS: Yes. And that's the initial goal.
16 We at this point didn't want to come up with a big estimate
17 for a new gangway, although we could adopt the current one.
18 If you want to make that recommendation, we would be happy
19 to shorten the gangway and attach it to the upper deck.

20 ACTING COMMISSIONER SHEEHAN: It's going to go
21 this steep in some of the pictures and that's what I
22 couldn't quite figure out from one of the things that was
23 said because the access is still because of how steep it is
24 and then you go down the stairs. And I've seen those where
25 you go down the stairs to the water and the boat is covered

1 under by that to the access.

2 MR. MORAIS: And from my experience, going further
3 upriver another ten miles upriver, the floodplain gets
4 higher, instead of the 20-foot floodplain where he's at now,
5 it's 36 feet and it's even a steeper, longer ramp. You've
6 got to use a 70-, 80-foot ramp to get out at a decent pitch
7 to get out there. So bringing it out to an upper deck would
8 drastically help and we have done some covered docks with a
9 fishery but have the ramp come out to about the top of the
10 roof and just have stairs going down just so it's not as
11 steep, as steep angle.

12 ACTING COMMISSIONER SHEEHAN: All right. That's
13 what I couldn't figure out.

14 Did you want to say something?

15 EXECUTIVE OFFICER THAYER: No. Just that staff
16 doesn't have any problem with those sorts of designs. You
17 know, presumably if there needs to be some sort of railing
18 around the immediate area where people have walked out on
19 the ramp and then they are going to go down the stairway for
20 safety purposes, you know, there's no issue at all. But the
21 purpose of that railing is not to enclose a deck, it's to
22 provide safety to the people who are trying to get down on
23 the dock.

24 ACTING COMMISSIONER SHEEHAN: And that was one of
25 the issues, getting down to the boat. But I wouldn't want

1 to triple your costs in terms of how you do it. That was
2 the question I had.

3 CHAIRPERSON GARAMENDI: This issue seems to be
4 coming down to the law which allows for a free boat dock,
5 and the Public Trust issue which allows for recreation. So
6 the question here is how are we going to proceed with this
7 thing. I think it's foolish for us to assume that a deck or
8 dock is not going to be used for recreation, sunbathing,
9 sitting around drinking beer, somebody could even barbecue
10 out there, whatever. I mean that's going to happen. At
11 least everything I know about the river it happens on a
12 regular basis, particularly the beer drinking.

13 (Laughter.)

14 CHAIRPERSON GARAMENDI: So I cannot imagine that
15 we would put any kind of a restriction on what kind of
16 recreation is going to go on there. If the law says that
17 it's boat-oriented for free, and that you not have to pay,
18 then that takes us to an area where we may be able to say
19 that if this dock is designed in such a way as to encourage
20 nonboating recreation, such as a permanent water cooler,
21 then we're into a general lease, which may then bring us to
22 you're going to get to pay for the privilege of that kind of
23 recreation. It's going to get very difficult for us to make
24 the determination on what is which, and that's going to be a
25 troublesome and ongoing problem. I suppose a deck on top of

1 a boathouse would be a little difficult to say you're
2 getting from that deck on to the boat directly, and so it
3 would be easier to define that as general recreation, rather
4 than boating specifically.

5 So we might be able to move this thing to a point
6 of saying, okay, if you're going to put a deck on top of
7 your boathouse and that deck is not specifically associated
8 with getting into the boat, unless you jump --

9 ACTING COMMISSIONER SHEEHAN: They do that after
10 all the beer.

11 CHAIRPERSON GARAMENDI: I know.

12 (Laughter.)

13 CHAIRPERSON GARAMENDI: Anywhere between 13 and 18
14 years of age, that's how they do it.

15 And then you're going to get to pay a lease.
16 There's going to be some payment for that because it's not
17 specifically for a boat.

18 EXECUTIVE OFFICER THAYER: Chair of the
19 Commission, we have several items that are on the consent
20 calendar where there were preexisting decks that have
21 previously been approved by the Commission.

22 CHAIRPERSON GARAMENDI: So you're going to make
23 this more complex by saying we have grandfathers around
24 here?

25 EXECUTIVE OFFICER THAYER: Well, for the 12, yes,

1 our staff believes the approach should be, well, the
2 Commission did approve it and there were terms --

3 CHAIRPERSON GARAMENDI: Before we go to making
4 this thing more complex, can I deal with the simple portion
5 of this?

6 EXECUTIVE OFFICER THAYER: The only reason I
7 wanted to raise that is it's in that context staff's already
8 charging rent as you're suggesting might be the case for a
9 dock.

10 CHAIRPERSON GARAMENDI: Okay. Excuse me for
11 interrupting a continuation of my train of thought.

12 EXECUTIVE OFFICER THAYER: That was the only point
13 I wanted to make is that staff's recommendation is that if
14 you do decide you're going to allow these decks, that we
15 charge rent and in fact there are items here where they have
16 been grandfathered in in a way that we otherwise wouldn't
17 presently recommend approval of them, but where they're
18 already there, we're saying, okay, we'll charge rent. And
19 so that's what we need to do with that.

20 CHAIRPERSON GARAMENDI: Well, let me continue on.
21 My thoughts here is that if you have a deck on top of a
22 boathouse and it's more clearly for general recreation, at
23 least it's easier to argue it's for more general recreation
24 such as party, beer drinking, and sunbathing. Perhaps
25 diving into the water would be an exception to that. But in

1 any case I think we can probably say that's for that
2 purpose. It's not specifically to get on to a boat or to
3 moor a boat, and therefore a rent, a rental fee, would be
4 appropriate for that use taking us to the general Public
5 Trust Doctrine and away from the law that allows for a free
6 boat dock.

7 The next point I want to get to is the nature of
8 the dock itself. There are docks on the river that have hot
9 tubs, and there are docks on the river that are clearly for
10 nonboating, or at least a good portion of the dock, for
11 nonboating recreation, I think. In fact, I know that to be
12 the case. Those would be into the category of recreation,
13 and whether they are appropriate or not would seem to be a
14 second issue over and above the one that we have described
15 that we're faced with here. That question then is it
16 appropriate for the state to authorize a dock lease or
17 authorize a dock that is far more than boating, and much
18 more so for simple private recreation, as in the case of a
19 hot tub, wet bar, et cetera. I would like to raise that
20 point and then ponder it for a while here. But to stay to
21 the specific before us which is a dock that is clearly for
22 boating, it's got a slip, it's got a boathouse, and with the
23 addition of a deck whose purpose is principally nonboating
24 recreation, in that case I think we should approve those but
25 charge at least for that deck that is clearly not

1 specifically for boating purposes. So I would put that out
2 there for discussion as a way of resolving this particular
3 set of issues.

4 ACTING COMMISSIONER SHEEHAN: And to add on to the
5 idea there, on the ones that you said we had done or
6 grandfathered or whatever, I guess what I would suggest to
7 staff is other constraints in the lease, because I think we
8 should be clear, you know, we don't want them to build
9 permanent structures like we saw. That's where I get -- you
10 know, where they really truly make it into their extra
11 patio. And I know I have had this discussion with the
12 applicant and with others about if you want to sit there and
13 enjoy the water, you know, swim, but I don't want us to
14 encourage people that one will apply under a general lease
15 and then sort of turn that into their third patio or their
16 second patio where they bring out a refrigerator and
17 barbecue and all that. I understand, but I mean I think at
18 least we need to say, okay, you can have this for water
19 recreation, if that's the direction the Commission wants to
20 go, but I would make sure I mean we are clear in any of
21 these other things they can't add on to it or to turn it
22 into that.

23 Because I think if we're not clear in some of
24 this, that we are going to end up with those things where
25 you know they're a second living room and they run the TV

1 out there and all that. That's the concern I have. You
2 know, I understand on the general lease, okay, if you want a
3 deck that you sit in your chair and enjoy, but nothing
4 permanent, nothing more permanent on their than railing.
5 And I can understand for safety purposes if you have
6 children going up and down with that, I'm not sure under the
7 building code whether you could actually build something
8 that was load bearing without a railing. So that would be
9 an issue I would want to explore, if that's the direction we
10 want to go.

11 CHAIRPERSON GARAMENDI: Cindy.

12 ACTING COMMISSIONER ARONBERG: I have a concern
13 about folks using the public land as an extension of their
14 private backyard, and that's the main point here for me is
15 that it's the public's land and the more we give, the more
16 space and more space and more intrusive use, that's what
17 backyards are for. And so I'm inclined towards the staff's
18 recommendation. If you want to bring some deck chairs out,
19 you know, enjoying swimming, I think that's what these piers
20 are intended for. But to throw parties, what are folks
21 going to think who are using the rivers to float their rafts
22 down or whatever they do and they see a large private party
23 and it doesn't seem anymore like it's the public's land,
24 which it is. That's my concern.

25 EXECUTIVE OFFICER THAYER: I might have not have

1 been properly responsive to a question the Chair asked
2 earlier which is that from the staff's perspective, we're
3 looking at physical improvements and making that the
4 boundary. So if someone has put in a dock that has cleats
5 and doesn't have rails, it looks like a dock, tastes like a
6 dock, and somebody wants to bring down a chair and put it
7 there and eat or whatever, even a portable barbecue that
8 they bring back up, but they're not putting in permanent
9 improvements. We're not going to get involved in that. I
10 mean it doesn't seem worth the Commission's time to do that.
11 But it's when the physical improvements are put in to
12 accommodate that sort of thing, so if you permanently do
13 something, that's where staff is making the objection. I
14 heard the Chair suggest that perhaps we could allow for some
15 railings or other permanent improvements and I guess we want
16 some guidance in terms of figuring out, well, you know, how
17 far would we want to go in that direction if that's what the
18 Commission wanted to do. But again staff's recommendation
19 is not to stop somebody from bringing out a chair, that's
20 okay, I mean we're not going to get involved in that. But
21 it's drawing the line at physical improvements that are
22 intended to make a whole new deck.

23 ACTING COMMISSIONER ARONBERG: What about bringing
24 out a bunch of chairs?

25 EXECUTIVE OFFICER THAYER: It's where there is

1 physical improvement. You look at this and they've got the
2 railing around the edge and the pictures were intended to
3 display that as where the thing was being constructed with a
4 purpose in mind. And, in fact, the applicant indicated that
5 from their perspective people should be able to put out a
6 dock even if there is no reason, if there is no need for a
7 boat, they should still be able to go out there. And
8 Commission staff has a concern about that approach to it
9 that the improvements of the public's land for in the case
10 of the property owner should be related to the water. They
11 kind of have a leg up already because we generally do not
12 allow someone to put in a float or a dock or something like
13 that unless they own the adjoining property. So anybody who
14 doesn't own riverfront property doesn't even get a private
15 dock. So the residents who happen to live on a river or a
16 lake already have an opportunity to do something as riparian
17 owners that the rest of the public doesn't have an
18 opportunity to do with respect to owning their own docks.
19 But again this is up to the Commission and the Chair as to
20 where to draw the line here. Staff could go off and
21 research a little further and perhaps and come back with a
22 white paper that lays out these options and perhaps tries to
23 explore some of these choices to see if there is some way to
24 accommodate what the Chair was suggesting and draw the line
25 somewhere else.

1 CHAIRPERSON GARAMENDI: We've got a few more
2 issues on our agenda, but I think by our time, we have about
3 an hour remaining on our proposed schedule. So I think
4 another ten minutes or so is not going to hurt us here as we
5 try to push through this.

6 We know that we have a state law that says that a
7 landowner can put in and apply for a boat dock. Okay,
8 that's free of charge. Restrictions of all different kinds
9 from seven different agencies or eight different agencies.

10 The question is now can that dock be for
11 nonboating recreation; sunbathing, party, whatever. And if
12 so, are there limitations on it, and is there a fee to be
13 paid for that additional privilege. I think that's where we
14 are right now.

15 Now, somewhere along the line the dock morphed
16 into a boathouse. The dock's morphed into a boathouse. Was
17 there any decisions, any discussions made as that came
18 about?

19 EXECUTIVE OFFICER THAYER: I think that was long
20 before any of us came along.

21 CHAIRPERSON GARAMENDI: You never mentioned
22 anything, but boathouses are okay?

23 EXECUTIVE OFFICER THAYER: Right. It protects the
24 boat.

25 CHAIRPERSON GARAMENDI: Okay. And now the

1 question is can you put a deck on top of the boathouse. Can
2 you use the top for activities other than to shield from sun
3 and rain.

4 It seems to me, here's my proposal, is that we
5 would continue to authorize, at least authorize docks, I
6 think lease is a different word here. But we would
7 authorize construction of the dock for the purposes of
8 boating, and that that dock be limited and in that
9 circumstance limited to a facility necessary for boating.

10 And then if somebody wants to apply for a dock for
11 boating purposes that has a deck associated with it, either
12 on top of the boathouse or added to what would be a normal
13 dock for boating purposes, that we then look at that for the
14 following purposes. One, that it be limited in size
15 necessary for the boat, in other words, only on top, and
16 that there be a lease associated with it. And, thirdly,
17 this comes from what Anne was saying a moment ago, and that
18 is that it not be of a nature to become -- that there be
19 amenities beyond those necessary for safety, specifically a
20 railing. And we're not talking about a hot tub, we're not
21 talking about a permanent wetbar, we're not talking about
22 allowing other amenities that would be associated with a, I
23 want to say backyard, because that's what we're talking
24 about. In other words, rather limited use. So a lease
25 payment in some appropriate amount, limited in size and

1 shape and form and limited in functionality.

2 ACTING COMMISSIONER SHEEHAN: Can I ask a couple
3 of questions?

4 CHAIRPERSON GARAMENDI: Absolutely. That's what
5 we're doing right now.

6 ACTING COMMISSIONER SHEEHAN: Okay. And I
7 understand where the Chair wants to go, and I think it's not
8 building a building and I'm trying to figure out the
9 distinctions between. Because one of the issues I have is
10 informing our current leaseholders, applicants, whoever, you
11 know, what the policy is, that we have this new policy. The
12 issue would be are there some people who have these two
13 story or second story, you know, that are free, they aren't
14 paying, they were granted under the recreational one, and
15 now if we were to adopt a new policy should arguably be
16 paying under the general lease policy and trying to find
17 out.

18 Because I think one of the issues is the
19 enforcement, you know, is, one, communicating the policy
20 and, two, the enforcement. Because I think what's happened,
21 it sounds like what happened over time like the pictures we
22 saw, you know, they go out and get it and they said, oh,
23 nobody's going to look and, you know, people do this on
24 their homes all the time and don't get the proper permits
25 and whatever. But somehow reconciling, giving people notice

1 that the next time they come up for their lease application,
2 you now fall under this side and not that side as a result
3 of this. So that would be a question I would throw out to
4 the staff, is that is there a way we can figure that out
5 short of navigating all the waterways in the state of
6 California?

7 EXECUTIVE OFFICER THAYER: We could certainly
8 notify the existing lessees and we can put up something on
9 our website so that prospective lessees have some
10 opportunity to understand what's available to them. I don't
11 think we would want to send something out that would say if
12 you have a railing we might charge you later because the
13 lease is for a certain set of improvements, and if they want
14 to change those improvements say by adding a railing, they
15 should really be coming back to the Commission as a term
16 limit and then at that time we would start charging rent,
17 just as the other items were.

18 The other thing that happens is that these rec
19 pier leases are only good for ten years, it's a ten-year
20 lease, and we require them to send in pictures when they
21 reapply, and so if they do happen to have added a rail, we
22 have an opportunity to capture them and say okay, you know,
23 we're charging rent. But in terms of a set, whatever policy
24 the Commission decides, whether it says the Lieutenant
25 Governor provides or whatever comes out of this, I think all

1 the Commissioners and I know the Chair has talked about this
2 too agree that we should be transparent about this and it
3 should be apparent to anyone what they can and can't do.
4 And there are different ways to do that, whether it's
5 communicating directly with the lessees and/or putting stuff
6 on the website. We can do that.

7 ACTING COMMISSIONER SHEEHAN: Yes. Because I
8 guess the other thing is other additional enforcement. You
9 know, if it comes to our attention or if someone, you know,
10 who comes and is playing by the rules and someone else is
11 not, you know, people knowing that we will enforce this
12 policy once we do it. And I don't know in terms of what
13 legal authority we have in terms of, well, citations or, you
14 know, some sort of infraction or what. I mean I'm not sure
15 what our authority is to issue somebody a citation that
16 you're out of compliance with your lease or your
17 application.

18 EXECUTIVE OFFICER THAYER: Interestingly, Alan and
19 I just had a conversation about that before the meeting and
20 we've talked about it at our previous meeting about what is
21 available and maybe something in the way of trespass. And
22 basically we're looking to bring, because we think there is
23 almost encouragement for people not getting the proper lease
24 because nothing happens to them.

25 ACTING COMMISSIONER SHEEHAN: Well, yes, that's

1 why a ticket or an infraction or a penalty or a fine,
2 something, to figure out. And Alan's office obviously has
3 great expertise.

4 EXECUTIVE OFFICER THAYER: And maybe just trespass
5 is enough.

6 ACTING COMMISSIONER SHEEHAN: And I don't know
7 what it would be under our statute or whether we would need
8 additional, you know, language. But there isn't any
9 incentive for somebody to play by the rules.

10 EXECUTIVE OFFICER THAYER: And that's not fair
11 because the people who do get a lease actually have to pay
12 us for our staff cost so they're out some money. They're
13 complying, why should the noncompliance be rewarded.

14 CHAIRPERSON GARAMENDI: Okay. I think we're
15 coming to a point where we have a sense, at least I have a
16 sense of direction, I'm not sure where my colleagues are
17 yet. So I'm going to -- it's already been said, I guess you
18 could read it back, I'm not sure I could say it in the same
19 way I said it the first time, but I think we ought to be
20 establishing a policy here that is consistent with two of
21 our mandates, one, a law that would allow boat docks free of
22 charge. There apparently is no size restriction on those
23 docks, either by law or by our practice. I think we best be
24 careful here because we may wind up with some battleship or
25 some such creature being docked along the waterways.

1 Do we have any size restrictions?

2 EXECUTIVE OFFICER THAYER: Well, again, we do not
3 have anything written down, but as I explained earlier, you
4 know, staff's perspective is that these docks should be
5 sized for boating use, and so we tend to --

6 CHAIRPERSON GARAMENDI: That's where I was headed.
7 In fact, I think that's what I said earlier is that
8 consistent with the law that allows for a free boat dock,
9 that an applicant must come in with a proposal and that is
10 appropriate for a boat, recognizing they vary in size.
11 Secondly, that if that proposal -- well, let me just finish
12 that thought. That the applicant come in with a proposal
13 that is appropriate for a boat and space necessary for
14 boating recreation.

15 MR. MORAIS: Mr. Chairman.

16 CHAIRPERSON GARAMENDI: Go ahead.

17 MR. MORAIS: We do have size restrictions by other
18 various agencies. County restrictions allow 60 foot docks.
19 The Corps of Engineers regulates the size very strictly, so
20 we do have laws with size restrictions.

21 CHAIRPERSON GARAMENDI: That's helpful, thank you.
22 So I think my words are still applicable here. We don't
23 need to then on our side to regulate the size if somebody
24 else is.

25 So we have an applicant for a boat dock, sized

1 appropriate for a boat, and consistent with other regulating
2 agencies and regulatory agencies, that the dock be sized for
3 that boat. Now, if there is a boathouse in the application,
4 that that boathouse could have a deck no larger than the
5 boathouse, which again is sized appropriately, and that if
6 there is such a deck, it have no permanent recreation
7 amenities such as wetbar, refrigerators, hot tubs --

8 EXECUTIVE OFFICER THAYER: So safety devices only
9 is what I heard you say, railings.

10 CHAIRPERSON GARAMENDI: Railings, exactly. And
11 that there be an appropriate rental fee associated, rental
12 fee applied.

13 EXECUTIVE OFFICER THAYER: Okay.

14 CHAIRPERSON GARAMENDI: I would propose that as
15 our policy going forward. Now, it seems as though we need
16 to have that proposal written and vetted before we vote on
17 such a thing, and, therefore, I recommend a delay of no more
18 than one meeting for this applicant. And I would suggest to
19 the applicant that if the application is outside of that, is
20 contrary to what I just said, you may want to consider
21 modifications, because I don't think I'm going to be voting
22 for it. But I would like you not to have to wait another
23 year and a half or whatever the length of time is. Our next
24 meeting is a month, two months away?

25 EXECUTIVE OFFICER THAYER: June 28th, so a month

1 and a half.

2 CHAIRPERSON GARAMENDI: Okay. That we take up
3 this specific application together with the general policy,
4 and between now and then and with sufficient time for public
5 notice, if you could figure out what the appropriate way for
6 us to state policy.

7 EXECUTIVE OFFICER THAYER: Certainly.

8 CHAIRPERSON GARAMENDI: Recognizing that I would
9 propose that what I said be put into appropriate writing,
10 made public, and recognizing that we may seek modifications
11 without further public hearing at the next meeting. I think
12 we can do that.

13 EXECUTIVE OFFICER THAYER: Certainly.

14 CHAIRPERSON GARAMENDI: If that's contrary to the
15 rules of the law, then be instructed so.

16 Comments from my colleagues on this?

17 ACTING COMMISSIONER SHEEHAN: I have a question in
18 terms of how the remuneration under the general lease is
19 figured or calculated?

20 EXECUTIVE OFFICER THAYER: There's a couple
21 different mechanisms. They start with getting an appraisal
22 of the value of the riverbed. There's sometimes implemented
23 as well two benchmarks that are adopted for geographic areas
24 so that we don't have to do an appraisal for every pier and
25 so the amounts usually vary from pier to pier depending on

1 the sort of pier expected.

2 ACTING COMMISSIONER SHEEHAN: Okay. Because I
3 noticed as we were talking about this, as I went through the
4 consent calendar, many of them were the recreational lease,
5 there was a few that are general leases, and I'm just trying
6 to figure out in terms of -- because it would be helpful to
7 understand, you know, what kind of dollar amount we're
8 talking about for let's say a dock the size of this
9 application.

10 CHAIRPERSON GARAMENDI: We have some --

11 ACTING COMMISSIONER SHEEHAN: Can somebody give me
12 a --

13 CHIEF OF LAND MANAGEMENT DUGAL: Yes, we did that
14 analysis and it came out to \$99 a year based on the
15 benchmark that Paul used.

16 EXECUTIVE OFFICER THAYER: That, however, is an
17 older benchmark and we just revised our benchmark at Tahoe,
18 and so it's much more fair and enlightened and we're looking
19 at revising our benchmarks, it hasn't been done in a while,
20 for the delta area so it probably will end up more than that
21 once we've done that work.

22 CHAIRPERSON GARAMENDI: What it is it will be.

23 EXECUTIVE OFFICER THAYER: Right.

24 CHAIRPERSON GARAMENDI: Further questions?

25 Then I advance my proposal. Staff will take that

1 up.

2 Clarification? What is the Chairman thinking?

3 ASSISTANT ATTORNEY GENERAL HAGER: I was just
4 going to bring up one point. We had a problem just a while
5 ago about policies becoming underground regulations. We
6 don't want that to happen. So let us look and see how best
7 to present these policies so that they're not considered
8 regulations.

9 CHAIRPERSON GARAMENDI: I raised this issue with
10 Mr. Thayer when we met earlier this week and if anybody
11 knows about this issue it's the former Insurance
12 Commissioner.

13 (Laughter.)

14 CHAIRPERSON GARAMENDI: We wrote more regulations
15 than any other agency in the state by a factor of probably
16 20. So, yes, it's an issue and I ask that that be dealt
17 with and we do it appropriately.

18 I think we are where we are. I thank you very
19 much for your time in helping us understand this.

20 Now, I want to also move to just one more thing
21 here and state that we will undoubtedly have applications
22 that are clearly way beyond what boat docks should be, and I
23 would recommend that staff very carefully analyze those as
24 to the policy or the proposed policy that we talked about
25 here. If somebody is coming along with permanent backyard

1 facilities on a dock on public lands, I for one have a
2 rather dim view of that and I'm not sure how to go forward
3 with that. Clearly it's not the boat dock situation. So
4 forewarned.

5 Okay. Let's move on to our next item. Mr.
6 Thayer, if you could instruct us where we're going next.

7 EXECUTIVE OFFICER THAYER: This item is a
8 rehearing on the Cabrillo Power --

9 CHAIRPERSON GARAMENDI: Excuse me, before we move
10 on, I just want to make this point. On the number of people
11 and the kind of activities and the hours in which it could
12 be used and so on and so forth, I don't even want to begin
13 to go there. okay.

14 EXECUTIVE OFFICER THAYER: That would be very hard
15 to enforce.

16 CHAIRPERSON GARAMENDI: It would be very hard to
17 enforce.

18 Okay, next item.

19 EXECUTIVE OFFICER THAYER: The next item is
20 rehearing of the Cabrillo Power Plant lease for the once-
21 through cooling facilities. The Commission will recall that
22 at the last meeting we had three renewals of leases for
23 these kinds of facilities and the Chair had a concern about
24 whether or not there might be some shoreline erosion because
25 of the jetties there.

1 Alan Scott from our staff will make the
2 presentation on this.

3 MR. SCOTT: Good day, Mr. Chairman, Members of the
4 Commission. I'm Alan Scott with the Commission's Land
5 Management Division, and I'm presenting information on
6 Calendar Item Number 89.

7 This item involves an upland powerplant that
8 utilizes once-through cooling technology and was the subject
9 of a calendar item first presented to the Commission for
10 approval at the February 5th, 2007, Commission meeting.
11 However, during that meeting questions arose as to whether
12 or not the rock groins covered by the proposed lease have an
13 impact on sand transport and local beach erosion, and the
14 Commission asked that this issue be investigated and the
15 matter returned for the Commission's reconsideration.

16 Staff has completed its investigation and offers
17 the following. In the early 1950's, San Diego Gas and
18 Electric Company constructed a steam-powered electric
19 generating plant. As part of that project, as the San Diego
20 Gas and Electric Company deepened Agua Hedionda Lagoon and
21 constructed two rock groins protecting the lagoon entrance
22 so that it would remain open to the ocean. The sand dredged
23 from the lagoon was placed on local beaches significantly
24 expanding the width of those beaches beyond their natural,
25 relatively narrow conditions. Additionally, the dredging

1 project enhanced inland portions of the lagoon for public
2 boating and increased tidal action enhancing the lagoon's
3 fishery habitat.

4 Now, I might point out that there's an aerial
5 photograph on the easel of the area that we're talking
6 about, the Aqua Hedionda Lagoon, the entrance channel, the
7 powerplant locations, and a few other important pieces of
8 information on this.

9 Shortly after operation of the powerplant began,
10 the lagoon entrance and near shore portions of the lagoon
11 began clogging with sand, reducing the tidal flow into the
12 lagoon and subsequently the amount of water available for
13 cooling at the powerplant. To remedy this situation, San
14 Diego Gas and Electric began a maintenance dredging program
15 to maintain tidal flow into the lagoon. During the
16 California Coastal Commission's permit process in 1999,
17 concerns were raised regarding the potential impact that
18 maintenance dredging and sand placement was having on local
19 beaches and the Coastal Commission required that an
20 independent study of sand transport in the area be
21 conducted. This study was completed in April 1999.

22 The study's primary purpose was to determine what
23 impact, if any, the continued operation of the powerplant
24 and its dredging program was having on sand transport within
25 the literal cell. The study concluded that so long as the

1 rock groins at the lagoon mouth remained in place, dredging
2 on the lagoon would need to continue, not only for cooling
3 water intake, but because sand would naturally be pulled
4 into the lagoon and lost to the along shore transport
5 regardless of other activities within the lagoon. Also
6 local beaches would lose the benefit of regular sand
7 replacement provided during the maintenance dredging
8 program.

9 The study also identified the best locations in
10 the vicinity of the powerplant where the most public benefit
11 would be achieved through placement of dredged materials.
12 Based on this study, the Coastal Commission continued to
13 issue individual coastal development permits for each
14 separate dredging project requiring the placement of the
15 dredged material at specific beach locations and in specific
16 volumes to assure continued maximum public benefit and to
17 provide for a continuing sand supply to the along shore
18 transport within the literal cell.

19 The Coastal Commission has also required pre and
20 post surveys of beach profiles at soil deposit sites so that
21 adjustments could, if necessary, be made to deposit
22 locations. Additionally, they required compliance with Army
23 Corps of Engineer regulations regarding quality of sand used
24 for beach enhancement.

25 The proposed lease now includes specific language

1 requiring Cabrillo, the proposed lessee, to continue
2 maintenance dredging of the lagoon mouth for so long as the
3 powerplant requires cooling water from the lagoon and to
4 continue to place the dredged materials in accordance with
5 the requirements of the Coastal Commission permit and this
6 Commission's Dredge Spoils Placement Lease.

7 It was suggested by the Lieutenant Governor, we
8 have incorporated into the lease a requirement that provides
9 assurance that the lease improvements will not have a
10 negative impact on sand transport or supply in this literal
11 cell. The proposed lease also contains specific language
12 requiring once-through cooling compliance with other
13 regulatory agency requirements and requires a public hearing
14 in five years to evaluate Cabrillo's compliance with the
15 Commission's lease conditions, including other regulatory
16 agency requirements, and the placement of dredge spoils.

17 Staff recommends that the Commission approve the
18 lease as submitted today.

19 I will remain available, along with a
20 representative of Cabrillo, to answer any questions from the
21 Commission.

22 This concludes my presentation.

23 CHAIRPERSON GARAMENDI: Thank you very much and
24 thank you for the detailed information. It answers all the
25 questions that I had.

1 I was trying to recall the discussion when we took
2 this up a couple of months ago about the decommissioning of
3 this plant.

4 MR. SCOTT: Right now there is no specific
5 proposal for decommissioning of the plant. There is a
6 proposal, I believe on the drawing boards and maybe perhaps
7 Cabrillo's representative can answer this, indicating that
8 Cabrillo is considering the possibility of adding on some of
9 their property some small peaker plant facilities, that
10 would be inland of the existing powerplant, would not use
11 once-through cooling, would use an alternative method of
12 cooling, and should that come to fruition, they would then
13 begin decommissioning of some of the existing older
14 facilities in the existing powerplant location.

15 CHAIRPERSON GARAMENDI: Where I'm going here is
16 that the once-through cooling maybe over in California at
17 some time in the future, in which case the decommissioning
18 that I'm referring to is the decommissioning of the outflow
19 structure. Does the lease require them to return the beach
20 to its previous natural state?

21 MR. SCOTT: Yes, it does, Mr. Chairman. There are
22 standard provisions within our lease that require
23 restoration of the lease premises at the direction of the
24 Commission should a lease be terminated for any cause,
25 whether it is the date termination of the lease as it

1 expires naturally or for some other reason that there is a
2 need to terminate the lease.

3 CHAIRPERSON GARAMENDI: Thank you, that answers my
4 questions.

5 Do you have anything?

6 ACTING COMMISSIONER SHEEHAN: I'm fine with it.

7 ACTING COMMISSIONER ARONBERG: I move staff's
8 recommendation.

9 ACTING COMMISSIONER SHEEHAN: I will second.

10 CHAIRPERSON GARAMENDI: We have a motion and a
11 second. All those in favor?

12 (Ayes.)

13 CHAIRPERSON GARAMENDI: Opposed?

14 This is approved.

15 Moving on.

16 Paul.

17 EXECUTIVE OFFICER THAYER: The last item on the
18 regular calendar has to do with a resolution that was
19 proposed by the Controller's office which would support H.R.
20 1187. This is a bill introduced by Congresswoman Woolsey
21 and others. It's purpose is to expand the Cordell Bank and
22 Farallones, the bulk of the Farallones National Marine
23 Sanctuaries. The map shows this expansion. The dotted
24 yellowish lines are the existing boundary to the two
25 sanctuaries and the green blockier lines to the north are

1 the areas proposed for the expansion of the sanctuary by
2 H.R. 1187. As you can see, they include the coast of Sonoma
3 County and the southern portion of Mendocino County.

4 The expansion would completely include the
5 ecosystem that's caused by the upwelling in this area. This
6 upwelling is caused by offshore winds that move the surface
7 waters away and causes them to be replaced by nutrient rich
8 deeper waters. This phenomena exists in only four other
9 places in the world and creates a very rich environment.
10 The number of species and the number or amount of wildlife
11 in this area is especially dense because of the support that
12 comes from this upwelling. And again this expanded
13 sanctuary area would more fully encompass the whole of that
14 area.

15 The inclusion in this sanctuary will cause these
16 additional areas to be managed along with the rest of the
17 sanctuary. That means additional review for potential
18 projects that might impact the values, the environmental
19 values here. And the sanctuary language also prohibits any
20 new oil and gas exploration or development from this area
21 should otherwise that be proposed. This area is also very
22 important for the fishing, the good fishing that's there
23 both for recreational fishers and commercial fishers.

24 Zeke Grader from the Pacific Coast Fishermen's
25 Federation has reviewed the bill and has helped draft these

1 lines. He's in support of it.

2 We know of no opposition to this bill or to this
3 resolution. We have one letter in support, which I think
4 the Commissioners have had, from the Russian Riverkeeper.

5 The resolution, as I say, will support this
6 measure, H.R. 1187, and the provisions of the resolution
7 would also cause the Commission to send copies of the
8 resolution to not only the author but other congressional
9 leadership and the California Congressional delegation.

10 So staff is recommending that the Commission adopt
11 this resolution.

12 CHAIRPERSON GARAMENDI: This being the
13 Controller's motion, Cindy.

14 ACTING COMMISSIONER ARONBERG: I will move
15 approval.

16 ACTING COMMISSIONER SHEEHAN: I'll second.

17 CHAIRPERSON GARAMENDI: We have a motion and a
18 second.

19 All those in support, aye.

20 (Ayes.)

21 CHAIRPERSON GARAMENDI: Opposed, none.

22 The motion passes.

23 I believe that completes our formal agenda. We
24 now have the opportunity for public comments, and we have
25 Andy Mardesich.

1 MR. MARDESICH: My name is Andrew Mardesich, I'm
2 president of San Pedro Peninsula Homeowner's Coalition, and
3 we represent 11 homeowners organizations in San Pedro and
4 the eastside of Rancho Palos Verdes.

5 And we are warming up the computer.

6 I'm a new face to you all, but I'm an old hand to
7 Curtis and Paul and staff. And you will see that I have
8 been schooled in the Paul Thayer and Curtis Fossum workshop
9 on State Lands and how it works.

10 CEQA, the right to know about impacts. Off of
11 port lands. The Rancho Palos Verdes/San Pedro. Next slide.

12 The owners coalition reached a settlement in
13 granting injunctive relief to allow the operation of the
14 China Shipping Terminal to proceed. It was a \$50 million
15 grant in that -- grants in the settlement agreement, 10
16 million for the gateway cities project, 20 million for
17 further emissions reductions from ships, tugboats,
18 locomotives. And then uniquely, 20 million to reduce
19 industrial blight in surrounding communities through the
20 creation of open space, parks, and other community-based
21 projects.

22 Also there was a codicil in the agreement that
23 replaced four cranes with low profile cranes at China
24 Shipping. Next slide.

25 There's been a failure of the industrial blight

1 settlement agreement. The Port rather than evaluating off
2 port lands' impacts and then having the Port Community
3 Advisory Committee, PCAC, which I'm a delegate member of,
4 recommend a project-specific mitigation, created a contest
5 atmosphere process for community ideas which continues to be
6 promoted. Allocations for recommended projects now languish
7 for a lack of nexus.

8 Common ground. Our organization, as well as State
9 Lands staff, agree on these fundamentals of the State
10 Tidelands Trust Act. And the current situation at the Port
11 of Los Angeles. There is no record of impacts of off port
12 lands, impacts, if any, of off port lands need to be on the
13 record. To mitigate their needs to be a nexus. Mitigation
14 should be project specific.

15 Failure of the crane settlement. The four 16-
16 story China Shipping terminal cranes were never replaced.
17 In the alternate and as a remedy, the homeowners' coalition,
18 which I represented, has offered a quality of life study
19 program. The study would specifically focus on the impacts,
20 if any, of off port lands and would be under the guidelines
21 of CEQA.

22 Reality. EIRs for the many pending projects
23 valued in the hundreds of millions, and I would suggest that
24 we're approaching the billion with what's in the queue, will
25 be silent as to off port land impacts to Rancho Palos

1 Verdes, San Pedro and Wilmington. In a programmatic
2 fashion, EIRs will be trailed with a letter of overriding
3 consideration. There is no guarantee that any off port
4 lands' impacts will ever be mitigated without political
5 will.

6 State Lands remedy. State Lands use -- we're
7 asking State Lands to use its sovereign right under the
8 state constitution to ensure that under CEQA the citizens of
9 Rancho Palos Verdes, San Pedro, and Wilmington know what
10 impacts are off of port lands. So we're not asking for
11 mitigation, we're not recommending anything, we're just
12 asking for the knowledge of what those impacts are, either
13 positive and/or the negative.

14 Homeowner coalition remedy. Because of the
15 settlement agreement, San Pedro Peninsula Homeowners'
16 Coalition would make funds available from the China Shipping
17 settlement available to accomplish a knowledge-based
18 program. These are slides that were shown I think about
19 four years ago to a prior State Lands Commission and this is
20 an example of blight that has never been recorded. Next
21 slide.

22 Next slide.

23 Next slide.

24 Next slide.

25 Next slide.

1 Next slide.

2 Now, this is Ranchos Palos Verdes. Who ever
3 thought Rancho Palos Verdes which actually is only a
4 thousand yards away from the Port would be impacted. But
5 they are. As a matter of fact, as you go up the hill and
6 the peninsula, the impact, the visual blight and intrusion
7 is greater.

8 Next slide.

9 Next slide.

10 Next slide.

11 China Shipping cranes here. They were delivered
12 shortly -- they were a 18-month schedule and they were
13 delivered six weeks after the EIR was scheduled to be
14 approved but was delayed because of our litigation.

15 Next slide.

16 The China shipping cranes.

17 Next slide.

18 So what we're asking for is that State Lands
19 request and ensure from the Port that they conform with CEQA
20 and do what they should do anyway under the law. When you
21 look at, when you say how can this be, but it is.

22 CHAIRPERSON GARAMENDI: I'm a little curious here
23 as to what you're asking State Lands to do.

24 MR. MARDESICH: I'm asking State Lands to direct
25 their trustee to follow the law.

1 CHAIRPERSON GARAMENDI: Well, I think we had a
2 settlement, did we not? It was a CEQA lawsuit and it was
3 settled and approved by the court and I don't know all the
4 details, but let's assume that you have listed at least some
5 of the pertinent details with regard to the cranes which you
6 showed us here. If there was a specific order in the
7 settlement that the cranes be removed and replaced with a
8 lower profile crane, then that's an action that you take to
9 the court and ask for a specific remedy.

10 MR. MARDESICH: When you ask my organization to
11 report, you're saying forget it. Because in the litigation,
12 so you understand, we put all the documentation together, we
13 put the package together, and then we went and found a white
14 knight. And that white knight came in and they spent well
15 over a million dollars at their risk.

16 CHAIRPERSON GARAMENDI: I understand that.

17 MR. MARDESICH: And the thing is is that they
18 found ways of working around the language of the settlement
19 agreement. Now, we can go back to arbitration, we can do
20 all sorts of things. We had a meeting with our attorney of
21 record and a participant also, our white knight, which is
22 the NRDC, Natural Resources Defense Council. We met with
23 them this week and we gave them specific instructions,
24 because there's a four-year timeline on this and we have
25 asked for an extension. We've given direction to our white

1 knight to withdraw the request to extend this period of
2 mitigation, that we insist that we draw the line in the
3 sand, that we substitute out the failure of the crane
4 portion of the settlement agreement with a quality of life
5 study which matches CEQA to evaluate off port lands.

6 Our concern is not what's happening at the Port on
7 state lands and submerged lands or uplands, we're asking
8 what is the impact of the operation to off of port lands.
9 And that's where the Port historically and programmatically
10 has always been silent. And so we're saying the funds that
11 were dedicated for the cranes effort can be developed. The
12 Port has been playing games with us and saying yes, no, and
13 then now coming back and watering down our request, and
14 we've told State Lands -- I mean, excuse me, NRDC.

15 CHAIRPERSON GARAMENDI: Excuse me.

16 Question to State Lands. Are we a party to the
17 settlement?

18 EXECUTIVE OFFICER THAYER: No, we're not.

19 CHAIRPERSON GARAMENDI: We have then marginal
20 standing. We have no standing in the court. I suppose we
21 could ask the Port to obey the settlement. What power do we
22 have here?

23 EXECUTIVE OFFICER THAYER: I think that we have a
24 general oversight of how the Port conducts its business,
25 specifically with respect to Public Trust issues. We have,

1 I believe, in the past sent letters to the Port encouraging
2 them to comply with appropriate environmental regulation in
3 California. Specific mechanisms for compliance that Mr.
4 Mardesich is referring to we usually don't get involved in.
5 In other words, there's a variety of ways in which one can
6 comply and generally that's their responsibility. So
7 there's some opportunity here if the Commission decided that
8 we could send a letter to the Port recommending or urging
9 them to comply with the California Environmental Quality
10 Act, which I think --

11 MR. MARDESICH: That's all we're asking.

12 EXECUTIVE OFFICER THAYER: -- is mostly what he's
13 after. So without prejudice, something like that. But I
14 would not recommend getting involved in a fight over the
15 settlement terms and how they are being implemented, we're
16 not really a party to that.

17 MR. MARDESICH: The history, a little history,
18 during the negotiation phase --

19 CHAIRPERSON GARAMENDI: Excuse me, I want to try
20 to understand what our options are before we go into it
21 further. So with regard to the settlement, that's settled.
22 There may be clauses in the settlement agreement between the
23 parties that could reopen some piece of it I suppose, but
24 we're not in there. So among the things you're asking us to
25 do is ask, encourage, the Port to pay attention to CEQA and

1 I suppose pay attention to the settlement?

2 MR. MARDESICH: Correct. I also in our
3 negotiations that I didn't bring to the table here, but at
4 the original settlement agreement, one of the things that I
5 was asking for representing our component in the original
6 settlement and now I'm asking for in this quality of life
7 study is that State Lands come in to police and to ensure
8 that it's done and to give the proper guidance processwise
9 and governance to make sure --

10 CHAIRPERSON GARAMENDI: Excuse me. What does off
11 port mean?

12 MR. MARDESICH: Where I live. My home.

13 CHAIRPERSON GARAMENDI: So it's quality of life
14 off the port is what you're talking about?

15 MR. MARDESICH: Yes. In a sense one of the
16 components was covered in the first presentation where the
17 visual impairment to the river was a big concern.

18 CHAIRPERSON GARAMENDI: I understand. I just
19 didn't know what you meant by off port.

20 MR. MARDESICH: Off port is beyond the uplands.
21 I've been very well schooled earlier by Paul and company.

22 CHAIRPERSON GARAMENDI: Comments from my
23 colleagues?

24 ACTING COMMISSIONER ARONBERG: I feel comfortable
25 writing a letter urging the Port to comply with CEQA.

1 And Mr. Mardesich, is that something --

2 MR. MARDESICH: I would add make it a strong
3 letter, but at the same time as I go further with
4 negotiations on the quality of life study to substitute
5 because the cranes will never happen, that I would like to
6 invite State Lands to participate in that process, at least
7 as a facilitator. Because it didn't work the first time
8 around.

9 CHAIRPERSON GARAMENDI: I don't think I want State
10 Lands to participate as a facilitator. We have to deal with
11 those issues that are specific to our responsibilities which
12 are the Public Trust lands.

13 MR. MARDESICH: Right.

14 CHAIRPERSON GARAMENDI: And the issue of CEQA,
15 while it intersects and interacts with our work, we're
16 getting far afield if we were to proceed as you're
17 suggesting, so I'm not of a mind to do that. As to a
18 question of a letter, I'm always willing to see a draft of
19 the letter. We can take that issue up as to whether we want
20 to proceed.

21 So, Paul, if you would draft a letter along the
22 lines suggested and limited, we can have a look at that and
23 act formally upon it at our next meeting.

24 Okay. Thank you very much for your time and we'll
25 take it up at the next meeting as to what this letter might

1 be. We will look at it and make public at that point as to
2 how we act upon it.

3 MR. MARDESICH: Would that then be like an
4 agendized item or something?

5 CHAIRPERSON GARAMENDI: It would have to be.

6 MR. MARDESICH: Okay.

7 CHAIRPERSON GARAMENDI: Great.

8 And if you could send us a copy of a draft of that
9 before the meeting so that we would have that opportunity
10 individually to comment on it.

11 EXECUTIVE OFFICER THAYER: Certainly.

12 CHAIRPERSON GARAMENDI: Keeping in mind the public
13 meeting law.

14 EXECUTIVE OFFICER THAYER: Right, right. There
15 may be some legal implications that require --

16 CHAIRPERSON GARAMENDI: It just occurred to me
17 there might be. Okay.

18 Thank you.

19 MR. MARDESICH: Thank you.

20 CHAIRPERSON GARAMENDI: I have no other requests
21 to speak. I think we have gone through our agenda. And I
22 thank you all very much. Staff, thank you very much.

23 (Thereupon the meeting of the State
24 Lands Commission was concluded at
25 12:15 p.m. on May 10, 2007)

1 CERTIFICATE OF SHORTHAND REPORTER

2 I, MICHAEL J. MAC IVER, a Shorthand Reporter, do
3 hereby certify that I am a disinterested person herein; that
4 I reported the foregoing State Lands Commission proceedings
5 in shorthand writing; that I thereafter caused my shorthand
6 writing to be transcribed into typewriting.

7 I further certify that I am not of counsel or
8 attorney for any of the parties to said State Lands
9 Commission proceedings, or in any way interested in the
10 outcome of said State Lands Commission proceedings.

11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 29th day of May 2007.

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Michael J. Mac Iver

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Shorthand Reporter

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